AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

11-08-91
Vol. 56 No. 217
Pages 57231-57480

federal register

Friday
November 8, 1991

Briefing on How To Use the Federal Register
For information on a briefing in Washington, DC, see announcement on the inside cover of this issue.

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

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

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

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

WASHINGTON, DC

WHEN: November 25, at 9:00 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.
RESERVATIONS: 202–523–5240.
DIRECTIONS: North on 11th Street from Metro Center to southwest corner of 11th and L Streets

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 441

[Doc. No. 0276s]

Table Grape Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Notice to extend sunset review date.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby publishes this notice to extend the sunset review date for the Table Grape Crop Insurance Regulations (7 CFR part 441) which was published in the **Federal Register** of November 21, 1988 (53 FR 46848). The intended effect of this notice is to reestablish the sunset review date of these regulations following a review in accordance with the provisions of Departmental Regulation 1512–1 to determine the need, currency, clarity, and effectiveness of these regulations under those procedures.

EFFECTIVE DATE: November 8, 1991.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under the USDA procedures established by Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is May 1, 1996.

Done in Washington, DC, on October 17, 1991.

James E. Cason,

Manager, Federal Crop Insurance Program.

[FR Doc. 91–26876 Filed 11–7–91; 8:45 am]

BILLING CODE 3410–08–M

Agricultural Marketing Service

7 CFR Parts 907 and 908

[FV–91–433FR]

Navel and Valencia Oranges Grown in Arizona and Designated Parts of California; Expenses and Assessment Rates for the 1991–92 Fiscal Years

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes assessment rates under Marketing Order Nos. 907 and 908 for California-Arizona navel and Valencia oranges, respectively, for the 1991–92 fiscal years established for each order. Funds to administer these programs are derived from assessments on handlers. These actions are needed in order for the navel and Valencia orange Administrative Committees, which are responsible for local administration of the respective orders, to have sufficient funds to meet the expenses of operating the programs. Expenses are incurred on a continuous basis.

EFFECTIVE DATE: November 8, 1991.

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Marketing Specialist, MOAB, F&V, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 475–3921.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order Nos. 907 and 908 (7 CFR parts 907 and 908), both as amended, regulating the handling of California-Arizona navel and Valencia oranges, respectively. Both orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

This final rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in the Executive Order 12291 and has been determined to be a "non-major" rule.

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

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

There are approximately 130 handlers of navel oranges and 115 handlers of Valencia oranges subject to regulation under the respective marketing orders. There are approximately 4,000 producers of navel oranges and 3,500 producers of Valencia oranges in the regulated areas. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of producers and handlers of California-Arizona navel and Valencia oranges may be classified as small entities.

The navel and Valencia orange marketing orders require that assessment rates for a particular fiscal year shall apply to all assessable navel or Valencia oranges handled from the beginning of such year. An annual budget of expenses is prepared by the Navel Orange Administrative Committee (NOAC) and the Valencia Orange Administrative Committee (VOAC) and submitted to the Department for approval. The members of the NOAC and VOAC are handlers and producers of navel and Valencia oranges. They are familiar with the NOAC's and VOAC's needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by each committee is derived by dividing anticipated expenses by expected shipments of navel or Valencia oranges. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay each committee's expected expenses. The recommended budget and rate of assessment is usually acted upon by each committee shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the committees will have funds to pay their individual expenses.

The NOAC met on September 10, 1991, and recommended, by a vote of six in favor, three opposed, and one abstention, 1991–92 fiscal year expenditures of $1,255,760 and an assessment rate of $0.0315 per carton of navel oranges. In comparison, 1990–91 fiscal year budgeted expenditures were $931,920, and the assessment rate was $0.0296 per carton. Major expenditure categories in the 1991–92 budget are $388,490 for program administration, $194,315 for compliance activities, $512,295 for the field department, $157,300 for direct expenses, and $3,360 for a salary reserve. This compares to $297,330, $143,060, $409,690, $79,900, and $1,940, respectively, for the 1990–91 fiscal year. Expenditures for the 1990–91 fiscal year were lower than those budgeted for 1991–92 since last year's crop was dramatically reduced because of the December freeze. Assessment income for 1991–92 is expected to total $1,291,500, based on shipments of 41 million cartons of oranges. Interest and incidental income is estimated at $34,970. The increase in the assessment rate was recommended to minimize the expected shortfall in income. The NOAC utilized $393,120 from its 1990–91 operational reserve and plans on allocating $70,710 back to the 1991–92 reserve. Additional reserve funds may be used to meet any other unanticipated deficit in assessment income.

The VOAC also met on September 10, 1991, and recommended, by a vote of seven in favor and one abstention, 1991–92 fiscal year expenditures of $661,540 and an assessment rate of $0.032 per carton of Valencia oranges. In comparison, 1990–91 fiscal year budgeted expenditures were $517,280 and the assessment rate was the same. Major expenditure categories in the 1991–92 budget are $189,510 for program administration $94,785 for compliance activities, $249,905 for the field department, $125,700 for direct expenses, and $1,640 for a salary reserve. This compares to $161,770, $77,840, $222,910, $53,700, and $1,060, respectively, for the 1990–91 fiscal year. Assessment income for 1991–92 is expected to total $640,000 based on shipments of 20 million cartons of oranges. Interest and miscellaneous income is estimated at $22,730. The VOAC utilized $198,480 from its 1990–91 operational reserve and plans on allocating $1,190 back to the 1991–92 reserve. Additional reserve funds may be used to meet any unanticipated deficit in assessment income.

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

This action adds new §§ 907.229 and 908.231, and is based on committee recommendations and other information. A proposed rule on this action was published in the October 11, 1991, issue of the **Federal Register** (56 FR 51345). Comments on the proposed rule were invited from interested persons until October 21, 1991. No comments were received.

After consideration of the information and recommendation submitted by the committees, and other available information, it is found that this final rule will tend to effectuate the declared policy of the Act.

This action should be expedited because the committees need to have sufficient funds to pay their expenses, which are incurred on a continuous basis. Therefore, it is found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553).

List of Subjects in 7 CFR parts 907 and 908

Marketing agreements, Oranges, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Parts 907 and 908 are amended as follows:

Note: These sections will not appear in the Code of Federal Regulations.

1. The authority citation for both 7 CFR parts 907 and 908 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

2. A new § 907.229 is added to read as follows:

§ 907.229 Expenses and assessment rate.

Expenses of $1,255,760 by the Navel Orange Administrative Committee are authorized and an assessment rate of $0.0315 per carton of navel oranges is established for the fiscal year ending on October 31, 1992. Unexpended funds from the 1991–92 fiscal year may be carried over as a reserve.

PART 908—VALENCIA ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

3. A new § 908.231 is added to read as follows:

§ 908.231 Expenses and assessment rate.

Expenses of $661,540 by the Valencia Orange Administrative Committee are authorized and an assessment rate of $0.032 per carton of Valencia oranges is established for the fiscal year ending on October 31, 1992. Unexpended funds from the 1991–92 fiscal year may be carried over as a reserve.

Dated: November 4, 1991.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–26967 Filed 11–7–91; 8:45 am]

BILLING CODE 3410–02–M

FARM CREDIT SYSTEM INSURANCE CORPORATION

12 CFR Part 1410

Premiums

AGENCY: Farm Credit System Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Farm Credit System Insurance Corporation (Corporation) amends § 1410.6(a)(2) to revise the description of the format of the Certified Statement (Form FCSIC 90–002). Farm Credit System banks are required to use Form FCSIC 90–002 to calculate and report annual premiums due the Corporation for calendar year 1991 and subsequent years. The effect of this amendment is to correctly describe the format of Form FCSIC 90–002, which will only require annual reporting of the total premium base, rather than quarterly, as reflected in the current regulation.

EFFECTIVE DATE: This regulation is effective November 8, 1991.

FOR FURTHER INFORMATION CONTACT:
Alan J. Glenn, Acting Chief Financial Officer, Farm Credit System Insurance Corporation, P.O. Box 9826, McLean, VA 22102–0826, (703) 888–4384, TDD (703) 883–4455,
or
Christine C. Dion, Attorney, Regulatory and Legislative Law Branch, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090 (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: The Corporation has developed forms to be used by all insured banks for the submission of Certified Statements for the calculation of premiums due. When § 1410.6(a)(2) was originally adopted (56 FR 3196, January 29, 1991), the Corporation envisioned quarterly tracking and reporting of annual premium accruals. Form FCSIC 90–002, designed for use in calendar year 1991 and subsequent years, required quarterly reporting of accruals of premium amounts along with the annual premium due at yearend. After further consideration, the Corporation has determined that use of a simple annual reporting format, similar to that of Form FCSIC 90–001 (§ 1410.6(a)(1)) used for calendar years 1989 and 1990, would provide adequate information and be more efficient than a quarterly reporting format. Accordingly, § 1410.6(a)(2) is hereby amended to reflect the annual reporting format of Form FCSIC 90–001.

The Corporation adopts the amendment to § 1410.6(a)(2) as a final rule, effective upon publication. The amended regulation does not impact the amount of premiums to be paid by Farm Credit banks; rather, it lessens the reporting burden on insured banks. The purpose of the form is to inform the Corporation and the Corporation has determined that annual reporting is adequate. Therefore, the Corporation has determined that notice and comment are unnecessary. Furthermore, notice and comment would delay the availability of Form FCSIC 90–002 which must be used by Farm Credit banks for calendar year 1991 by January 31, 1992, and is therefore impractical and contrary to the public interest. The Corporation also finds that a delayed effective date is unnecessary. By revising the format of Form FCSIC 90–002 from showing the premium base quarterly to be shown only annually, the amended regulation relaxes the reporting burden of Farm Credit banks.

List of Subjects in 12 CFR Part 1410

Bonds, Insurance, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, part 1410 of chapter XIV, title 12 of the Code of Federal Regulations is amended to read as follows:

PART 1410—PREMIUMS

1. The authority citation for part 1410 continues to read as follows:

Authority: 12 U.S.C. 2277a–5; 12 U.S.C. 2277a–7.

2. Section 1410.6 is amended by revising paragraph (a)(2) to read as follows:

§ 1410.6 Certified statements.

(a) * * *

(2) *Form FCSIC 90–002: Certified Statement.* This form must be used for calendar year 1991 and subsequent years. The form shows the premium base for the annual premium payment period. The premium payment period is from January 1 of each year to December 31 of each year. The form must show the computation of the premium base and the bank's calculation of the amount of the premium due the Corporation.

* * * * *

Dated: November 1, 1991.

Curtis M. Anderson,

Secretary, Board of Directors, Farm Credit System Insurance Corporation.

[FR Doc. 91–26930 Filed 11–7–91; 8:45 am]

BILLING CODE 6710–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91–NM–113–AD; Amdt. 39–8068; AD 91–22–08]

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 727 series airplanes, which currently requires inspection for cracks and repair, if necessary, of the main landing gear (MLG) wheel well pressure floor. This action requires additional inspections of airplanes on which the terminating modification has been installed in accordance with the existing AD, requires inspections of additional airplanes on which the terminating modification was incorporated in production, requires an expanded inspection area for unmodified airplanes, reduces the initial inspection threshold, and limits the time that blind rivets may be used. This amendment is prompted by several reports of cracking in areas adjacent to the modification and in areas not required to be inspected by the existing AD. This condition, if not corrected, could result in loss of cabin pressure.

DATES: Effective December 13, 1991.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 13, 1991.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Kathi N. Ishimaru, Seattle Aircraft Certification Office, Airframe Branch, ANM–120S; telephone (206) 227–2778. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 74–21–01, Amendment 39–1982 (39 FR 35332, October 1, 1974), applicable to Boeing Model 727 series airplanes, was published in the **Federal Register** on July 2, 1991 (56 FR 30351). That action proposed to require additional inspections of airplanes on which the terminating modification had been installed in accordance with the existing AD, to require inspections of additional airplanes on which the terminating modification was incorporated in production, to require an expanded inspection area for unmodified airplanes, to reduce the initial inspection threshold, and to limit the time that blind rivets may be used.

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 supported adoption of the proposed rule.

Two commenters requested that the NPRM be withdrawn. They both reasoned that the size of the potential hole on previously modified airplanes is too small to be a safety of flight concern. They believe the cracks will be confined

to the 10-inch square unmodified area. The FAA does not concur. There have been two reports of cracks found after the modification straps were installed. It is reasonable to assume that the cracks were of undetectable size when the straps were installed and grew to detectable sizes during subsequent pressurization cycles. The FAA has concluded that the straps will not limit the crack to the unmodified area. Consequently, an inspection of the unmodified area is necessary to find cracks before they extend into the modified area.

Several commenters requested that the proposed inspection interval be increased from 2,000 flight cycles to the same intervals required by AD 90–17–06, Amendment 39–6691 (55 FR 33099, August 14, 1990). That AD requires repetitive inspections of the MLG wheel well pressure floor in the area fore and aft of the area described in the proposed rule. Repetitive inspections required by AD 90–17–06 are at 4,000 flight cycle intervals for visual inspections, and at 5,000 flight cycle intervals for HFEC inspections. The commenters reasoned that, since the proposed rule and AD 90–17–06 both specify inspection of similar structure, the inspection intervals should be the same. In addition, two commenters requested that the initial inspection threshold for airplanes with more than 12,000 flight cycles be increased from the proposed 2,000 flight cycles to 4,000 flight cycles so that the proposed visual inspections could be accomplished concurrently with those required by AD 90–17–06.

The FAA partially concurs with the requests. Paragraph (c) of the proposal refers to airplanes that have been modified with straps. The straps will not stop crack growth, but they will inhibit the crack growth rate. The FAA has determined that the presence of the straps will permit an increase in the inspection interval and threshold without adversely affecting safety. Therefore, the airplanes identified in paragraph (c) of the proposed rule must be inspected visually or with dye penetrant at intervals not to exceed 4,000 flight cycles, or inspected at 5,000 flight cycles intervals if a high frequency eddy current (HFEC) inspection is performed. In addition, the modified airplanes over the 12,000 flight cycle threshold must be inspected within 3,000 flight cycles, rather than the 2,000 flight cycles proposed in the Notice. Paragraphs (c) and (d) of the final rule have been modified to incorporate these changes.

However, the FAA does not concur that the main landing gear wheel well pressure floor of an unmodified airplane has similar enough structure at all buttock lines and body stations to warrant identical inspection intervals and threshold at all locations. The area covered by AD 90–17–06 has support structure more closely spaced than in the area covered by this AD action. The longer unsupported structure results in higher stresses in the pressure floor and potentially longer cracks. This justifies the shorter inspection interval required by this AD action.

One commenter requested that, for the sake of clarity and convenience, the FAA should issue one AD to supersede both AD 90–17–06 and AD 74–21–01. The FAA concurs that the request has merit since both AD's require inspection for cracks in the main landing gear wheel well pressure floor. However, the issuance of a new Notice and additional time for public comment would be required in order to combine the two AD's. The FAA has determined that it is not prudent to delay issuing this final rule. The FAA may consider combining the two AD's in a future rulemaking action.

One commenter requested that the proposed inspection requirements be added to the aging aircraft modification document so a separate AD would not be needed. The FAA does not concur. Incorporation of the request would delay the effective date of the proposed inspection requirements by approximately 12 months. To delay this action would be inappropriate, since the FAA has determined that an unsafe condition exists which has been documented by service experience.

One commenter requested that the first sentence of proposed paragraph (c) be revised by inserting a comma after the word "subsequent," so that it reads, "For airplanes with line number 1103 and subsequent, and earlier airplanes that have been modified * * *." The commenter indicated that this revision will make it clear that the phrase "airplanes that have been modified" refers only to the "earlier" airplanes. The FAA concurs, since this was the intent of the paragraph's applicability. The final rule has been revised accordingly.

One commenter requested that paragraph (f) of the Notice be clarified by adding reference to the "interim repair limits listed in Table V of the Accomplishment Instructions * * *" in lieu of merely the "limits listed in the Accomplishment Instructions * * *." The FAA concurs and paragraph (f) of the final rule has been changed accordingly. Additionally, paragraph (e) also has been clarified by adding references to the interim repair limit to Table V.

Since issuance of the proposed rule, Boeing Drawing, 65C36247, Revision New, has become available. This drawing specifies additional repair and modification procedures for addressing the subject cracking. Paragraph (h) of the final rule has been changed to add the new drawing as an additional optional method of terminating action for the repetitive inspections. Paragraphs (e) and (f) of the final rule also have been changed to add the new drawing as an optional repair method.

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 previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the rule.

There are approximately 1,710 Model 727 series airplanes of the affected design in the worldwide fleet. It is estimated that 1,143 airplanes of U.S. registry will be affected by this AD, that it will take approximately 12 manhours per airplane to accomplish the required actions, and that the average labor cost will be $55 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $754,380.

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 "major rule" under Executive Order 12291; (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 is contained in the Rules Docket. A copy of it 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 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–1982 and by adding with the following new airworthiness directive:

91–22–08. Boeing: Amendment 39–8068. Docket No. 91–NM–113–AD. Supersedes AD 74–21–01, Amendment 39–1982.

Applicability: Model 727 series airplanes, certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To detect cracking in the main landing gear (MLG) wheel well pressure floor, accomplish the following:

(a) For airplanes with line numbers 001 through 1102, except those modified in accordance with Boeing Alert Service Bulletin 727–53A0124, original release, dated May 3, 1974; Revision 1, dated September 27, 1974; or Revision 2, dated May 2, 1975: Prior to the compliance time specified in paragraph (a)(1) or (a)(2) of this AD, whichever occurs earlier, perform a detailed visual, high frequency eddy current (HFEC), or dye penetrant inspection for cracks in the pressure floor at body station (BS) 910, in accordance with Boeing Alert Service Bulletin 727–53A0124, Revision 3, dated November 30, 1989, or earlier FAA-approved revisions.

(1) Prior to the accumulation of 15,000 landings or within 800 landings after November 2, 1974 (the effective date of AD 74–21–01, Amendment 39–1982), whichever occurs later; or

(2) Prior to the accumulation of 12,000 landings or within 2,000 landings after the effective date of this AD, whichever occurs later.

(b) For airplanes with line numbers 001 through 1102, except those modified in accordance with Boeing Alert Service Bulletin 727–53A0124, original release, dated May 3, 1974; Revision 1, dated September 27, 1974; or Revision 2, dated May 2, 1975: Prior to the accumulation of 12,000 landings or within 2,000 landings after the effective date of this AD, whichever occurs later, perform a detailed visual, HFEC, or dye penetrant inspection for cracks in the pressure floor at BS 900 and BS 920, in accordance with Boeing Alert Service Bulletin 727–53A0124, Revision 3, dated November 30, 1989, or earlier FAA-approved revisions.

(c) For airplanes with line number 1103 and subsequent, and earlier airplanes that have been modified in accordance with Boeing Alert Service Bulletin 727–53A0124, original release, dated May 3, 1974; Revision 1, dated September 27, 1974; or Revision 2, dated May 2, 1975: Prior to the accumulation of 12,000 landings since manufacture or within the next 3,000 landings after the effective date of this AD, whichever occurs later, perform a detailed visual, HFEC, or dye penetrant inspection to detect cracks in the pressure floor at BS 910, and BS 920 between buttock line (BL) 00 and right BL 10, in accordance with Boeing Alert Service Bulletin 727–53A0124, Revision 3, dated November 30, 1989.

(d) The inspections required by paragraphs (a), (b), and (c) of this AD must be repeated in accordance with the following schedule:

(1) Repeat the inspections required by paragraphs (a) or (b) of this AD at intervals not to exceed 2,000 landings.

(2) Repeat the inspections required by paragraph (c) of this AD at intervals as follows:

(i) If the immediately preceding inspection was performed using a visual or dye penetrant inspection technique, the next inspection must be performed within 4,000 landings.

(ii) If the immediately preceding inspection was performed using an HFEC inspection technique, the next inspection must be performed within 5,000 landings.

(e) If cracks are detected that do not exceed the interim repair limits listed in Table V of the Accomplishment Instructions of Boeing Alert Service Bulletin 727–53A0124, Revision 3, dated November 30, 1989, prior to further flight, repair in accordance with the interim repair described in Part I of the Accomplishment Instructions, or the permanent repair described in Part II of the Accomplishment Instructions of that service bulletin, or repair in accordance with Boeing Drawing 65C36247, Revision New. The interim repair must be replaced, within 600 landings after accomplishment, with the permanent repair.

(f) If cracks are found that exceed the interim repair limits listed in Table V of the Accomplishments Instructions of Boeing Alert Service Bulletin 727–53A0124, Revision 3, dated November 30, 1989, prior to further flight, accomplish the permanent repair described in Part II of the Accomplishment Instructions of that service bulletin, or repair in accordance with Boeing Drawing 65C36247, Revision New.

(g) Blind fasteners installed in accordance with Part II of Boeing Alert Service Bulletin 727–53A0124, Revision 3, dated November 30, 1989, may be used as an interim repair only. The blind fasteners have a life limit of 10,000 landings before they must be replaced with solid fasteners in accordance with Part II of that service bulletin. The blind fasteners must be inspected for loose or missing fasteners after accumulating 3,000 landings since installation or within 1,000 landings after the effective date of this AD, whichever occurs later, and thereafter must be inspected at intervals not to exceed 2,500 landings until replaced. Blind fasteners installed prior to the effective date of this AD must be replaced prior to the accumulation of 10,000 landings since installation or within 3,000 landings after the effective date of this AD, whichever occurs later.

(h) Terminating action for the repetitive inspection requirements of this AD is as follows:

(1) Incorporation of the preventative modification described in Part III or Part IV, as applicable, of the Accomplishment Instructions of Boeing Alert Service Bulletin 727–53A0124, Revision 3, dated November 30, 1989, constitutes terminating action for the repetitive inspection requirement of paragraph (d) of this AD.

(2) Repair or modification in accordance with Boeing Drawing 65C36247, Revision New, constitutes terminating action for the repetitive inspection requirement of paragraph (d) of this AD.

(3) Incorporation of the permanent repairs in accordance with paragraph (e) or (f) of this AD constitutes terminating action for the repetitive inspection requirement of paragraph (d) of this AD for the repaired area only.

(i) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

(j) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

(k) The inspection requirements shall be done in accordance with Boeing Service Bulletin 727–53A0124, Revision 3, dated November 30, 1989. The repair requirements shall be done in accordance with Boeing Service Bulletin 727–53A0124, Revision 3, dated November 30, 1989; or in accordance with Boeing Drawing 65C36247, drawn December 13, 1990. 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 Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. Copies may be inspected at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

This amendment supersedes Amendment 39–1982, AD 74–21–01.

This amendment (39–8068, AD 91–22–08) becomes effective December 13, 1991.

Issued in Renton, Washington, on October 9, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–27001 Filed 11–7–91; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 91-CE-20-AD; Amendment 39-8073; AD 91-23-04]

Airworthiness Directives; Fairchild Aircraft (formerly Swearingen Aviation Corporation) SA226 and SA227 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Fairchild Aircraft SA226 and SA227 series airplanes. This action requires a one-time modification of the engine power lever flight idle detent arms and cover assembly. It has been reported that significant wear has caused improper operation of the engine power control levers on the affected airplanes. The actions specified by this AD are intended to prevent improper operation of the power lever flight idle detent arms, which could result in loss of control of the airplane.

DATES: Effective December 10, 1991.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 10, 1991.

ADDRESSES: Fairchild Aircraft Service Bulletin (SB) No. 226-76-008 and SB 227-76-002, both issued January 15, 1991, revised May 9, 1991, that are discussed in this AD may be obtained from the Fairchild Aircraft Corporation, P.O. Box 790490, San Antonio, Texas 78279-0490. This information may also be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Ms. Alma Ramirez-Hodge, Aerospace Engineer, Fort Worth Airplane Certification Office, FAA, Fort Worth, Texas 76193-0150; Telephone (817) 624-5147.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD that is applicable to certain Fairchild SA226 and SA227 series airplanes was published in the **Federal Register** on June 14, 1991 (56 FR 27467). The action proposed a one-time modification of the power lever detent arms and cover assembly in accordance with the instructions in Fairchild Service Bulletin (SB) No. 226-76-008 or Fairchild SB No. 227-76-002, both issued January 15, 1991, revised May 9, 1991.

Interested persons have been afforded an opportunity to participate in the making of this amendment. One comment was received in favor of the proposed action. After careful consideration, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

It is estimated that 770 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 1.5 hours per airplane to accomplish the required action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $214 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $228,305.

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 "major rule" under Executive Order 12291; (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 copy of the final 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, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

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

91-23-04 Fairchild (formerly Swearingen Aviation Corporation):

Amendment 39-8073; Docket No. 91-CE-20-AD.

Applicability: The following Model airplanes and serial numbers, certificated in any category:

Model	Serial Nos.
SA226-T	T201 through T275, and T277 through T291.
SA226-T(B)	T(B)276, and T(B)292 through T(B)417.
SA226-AT	AT001 through AT074.
SA226-TC	TC201 through TC419.
SA227-TT	TT421 through TT541.
SA227-AT	AT423 through AT695.
SA227-AC	AC406, AC415, AC416, and AC420 through AC777.
SA227-BC	BC762, BC764, BC766, and BC777.

Compliance: Required within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent loss of control of the airplane because of improper operation of the power lever flight idle detent arms, accomplish the following:

(a) Modify the power lever detent arms and cover assembly in accordance with the instructions in Fairchild Service Bulletin (SB) No. 226-76-008 or SB No. 227-76-002, both issued January 15, 1991, revised May 9, 1991, as applicable.

(b) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes 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, Fort Worth Airplane Certification Office, FAA, Fort Worth, Texas 76193-0150. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Fort Worth Airplane Certification Office.

(d) The modification required by this AD shall be done in accordance with either Fairchild SB No. 226-76-008 or SB 227-76-002, both issued January 15, 1991, revised May 9, 1991. 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 Fairchild Aircraft Corporation, P.O. Box 790490, San Antonio, Texas 78279-0490. 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, 1100 L Street, NW; room 8401, Washington, DC.

This amendment becomes effective on December 10, 1991.

Issued in Kansas City, Missouri, on October 11, 1991.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-27002 Filed 11-7-91; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210, 229, 239 and 240

[Release Nos. 33-6922; 34-29883; FR-38]

RIN 3235-AE45

Roll-up Transactions

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Securities and Exchange Commission ("Commission") today adopted rules intended to enhance the quality of information provided to investors in connection with transactions involving roll-ups of limited partnerships or similar entities. The new rules require heightened disclosure with respect to the fundamental changes and potential adverse effects arising from roll-up transactions, and the conflicts of interest, reasons for, alternatives to and fairness of such transactions. The rules also call for enhanced disclosure concerning valuation methods and additional pro forma financial statements. In order to highlight for investors the differing effects that roll-up transactions may have on investors in various partnerships, the rules require delivery of individual partnership prospectus supplements highlighting, among other things, the effects of the roll-up transaction on investors in each partnership. Technical amendments to the business combination registration statement forms under the Securities Act of 1933, Forms S-4 and F-4, and to Article 11 of Regulation S-X, also have been adopted.

In addition to the new disclosure rules, the Commission is today adopting amendments to Forms S-4 and F-4 and to Rules 14a-6, 14c-2 and 14e-1 under the Securities Exchange Act of 1934, establishing a 60-day minimum solicitation period for roll-up transactions, or, if shorter, the maximum period permitted under applicable state law.

EFFECTIVE DATE: October 30, 1991. The rules will apply to roll-up disclosure documents filed with the Commission or sent to investors subsequent to the effective date of the rules. Filings pending on or before the effective date of the rules will be subject to the rules.

FOR FURTHER INFORMATION CONTACT: Meredith B. Cross, Michael L. Hermsen or Amy S. Bowerman at (202) 272-2573, Division of Corporation Finance, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission today adopted subpart 900 of Regulation S-K,[1] technical revisions to Forms S-4 and F-4 under the Securities Act of 1933 ("Securities Act"),[2] the registration forms generally used in roll-up transactions, and a technical amendment to Article 11 of Regulation S-X.[3] The rules are applicable to registration statements filed with the Commission in connection with roll-up transactions, as defined in the rules. The Commission also has adopted rules establishing a minimum 60-calendar day soliciting or offering period (or lesser maximum period specified under applicable state law) for roll-up transactions.

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I. Executive Summary

Serious concerns have been raised about roll-ups in Congressional hearings [4] and investor complaints to the Commission. These transactions include the combination or reorganization of two or more public or private limited partnerships or other similar entities, or the reorganization of a single partnership or similar entity into a new legal entity.[5] Investors in the partnerships usually receive an equity interest in the successor entity, which may be a limited partnership, an entity taxed as a real estate investment trust ("REIT") or a corporation. In most roll-ups, if a majority of the limited partners in a partnership approve the transaction, all investors in the partnership must exchange their partnership interests for interests in the successor.

The concerns expressed about roll-up transactions revolve around four principal areas. First, and foremost, critics have taken issue with the fundamental change in the nature of the investment forced upon limited partners who object to the roll-up but are bound by the vote of other limited partners. Most roll-ups change the partnerships from finite-life entities that hold assets for a limited period of time, distribute cash generated from operations to investors and then sell the assets and distribute proceeds to investors in connection with liquidation (generally referred to as "finite-life" partnerships), to longer-term entities that reinvest cash generated from operations and proceeds from the sale of assets in the business rather than distributing such cash or proceeds to investors (generally referred to as "reinvesting" or "infinite-life" partnerships). The adverse effects of this change are exacerbated by the illiquid

[1] 17 CFR 229.900 *et seq.*

[2] 17 CFR 239.25 and 17 CFR 239.34; 15 U.S.C. 77a *et seq.*

[3] 17 CFR 210.11.

[4] *See, e.g.*, Written Testimony of Richard C. Wollack, Chairman of Liquidity Fund Management, Inc., Before the Subcommittee on Securities of the Committee on Banking, Housing and Urban Affairs, United States Senate at 10 (February 27, 1991) and Written Testimony of Michael Joseph Connolly, Secretary of State, Commonwealth of Massachusetts, Before the Subcommittee on Telecommunications and Finance of the Committee on Energy and Commerce, United States House of Representatives at 1 (April 23, 1991).

[5] For a detailed discussion of transactions subject to the rules, see part III below.

market for most limited partnership interests. Objecting limited partners have little alternative to being rolled-up.

Second, critics have questioned the fundamental fairness of the terms of roll-ups and the lack of arm's-length negotiations in structuring roll-ups. Roll-ups frequently result in increased compensation for roll-up sponsors, the receipt of substantial payments or securities by general partners, reduced cash distributions for investors, the imposition of super-majority voting requirements to remove management and the receipt by investors of securities that trade at a substantial discount in the securities market. Nor are appraisal rights commonly provided.

Third, objections have been raised about the uncertainties involved in combining numerous partnerships, the differing effects on investors in the various partnerships, and the valuation and allocation methods used to divide the securities of the successor amongst the partnerships.

Finally, investors have complained that informed decision making is hampered by the nature of the disclosure documents and brevity of the solicitation period. They say that roll-up disclosure documents, inherently complex given the nature of the transaction, often are substantially longer than necessary, and obtuse to the point of obfuscation. In addition, given the complexities of the transaction, investors find the solicitation period too short to make an informed decision.

In response to the concerns described above, the Commission has taken a number of actions, including the issuance of a release providing interpretive guidance of the existing disclosure requirements applicable to roll-up transactions.[6] The Interpretive Release reiterates the requirements for clear, concise and comprehensible disclosure, and the need to highlight the potential risks and adverse effects of roll-ups. As stated in the Interpretive Release, a registrant that fails to file a registration statement reflecting a good faith effort to provide clear, concise comprehensible disclosure to investors will be advised that the filing will not be processed until the document is amended to do so. The Commission is adopting new rules today to improve further the disclosure required in connection with roll-up transactions.[7]

The rules adopted today address the four principal concerns expressed about roll-up transactions through enhanced disclosure requirements [8] and extension of the solicitation period. The rules apply to roll-ups of limited partnerships and similar entities, and the rules, as well as this release, refer to such entities as "limited partnerships" or "partnerships." First, the new rules require specific disclosure with respect to risks, changes and effects of the transaction, such as changes in the expected term of existence of the partnership and the partnership's business plan, decreased cash distributions, reduced investor voting rights and increased management compensation. Second, heightened disclosure is required with respect to conflicts of interest, alternatives, valuation methods and fairness. Third, the rules require additional pro forma financial statements to highlight the effects of a partial roll-up and separate prospectus supplements summarizing the effects of the roll-up on investors in each partnership and providing more detailed disclosure with respect to valuation of the partnership's assets and allocation of the roll-up consideration to its limited partners. Finally, the rules require roll-up sponsors to distribute roll-up disclosure documents to investors at least 60 calendar days in advance of the proposed action, or, if shorter, the maximum period permitted under state law.

The rules adopted today are substantially the same as those proposed, with three principal revisions. First, the definition of roll-up transaction has been more precisely tailored to target those transactions that raise the concerns addressed by the rules. Under the revised definition,[9] a "roll-up transaction" includes a combination or reorganization of two or more finite-life limited partnerships or other finite-life entities, or a reorganization of a single finite-life limited partnership or other finite-life entity into a new entity. Transactions involving the roll-up or reorganization of infinite-life or reinvesting entities, substantially similar to ordinary operating businesses, have been excluded from the definition. In addition, the rules include a provision permitting a sponsor of a transaction that is subject to the rules, but does not raise the concerns addressed by the rules, to apply to the Commission for an exemption for the transaction.

Second, in response to comments asserting limited utility and inordinate costs, the proposal to require multiple pro forma financial statements in each partnership supplement has not been adopted.[10] Instead, additional pro forma financial statements based on the partial roll-up combination that produces the least cash flow will be required in the principal disclosure document and textual disclosure of the financial effects of this partial roll-up combination on each particular partnership will be required in the supplement relating to that entity.

Third, the proposed property appraisal and partnership-specific information requirements have been streamlined in response to concerns that the proposed requirements would result in voluminous disclosures without enhancing the quality of the information provided to investors. These and other changes in the rules as adopted are discussed below.

II. Background and Purposes of the Roll-Up Rules

A. Background of Limited Partnerships and Roll-Ups

Limited partnership interests have been offered to investors as a means to participate in the ownership of real estate, oil and gas properties, equipment or other types of assets. Investors usually purchase such interests with the expectation that the partnership will purchase assets, operate the assets for a limited period of time, in many cases make regular cash distributions to investors, and then sell the assets and distribute the proceeds to investors in connection with liquidation. Such limited partnerships typically are not authorized or expected to reinvest cash from operations or proceeds obtained from the sale of assets in assets owned or to be owned by the partnership. Although limited partnership interests often are offered in public, registered offerings and are transferable, for tax and other reasons there usually is no significant public market for the interests. Rather, investors generally purchase the interests with the understanding that they represent illiquid investments.

The limited partnership usually pays the general partner or its affiliates compensation for forming the partnership and for acquiring, operating and selling the partnership's assets. Partnership agreements generally

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[6] See Release No. 33-6900 (June 17, 1991) (56 FR 28979 (June 25, 1991)) (the "Interpretive Release").

[7] The rules were proposed for comment in Release No. 33-6899 (June 17, 1991) (56 FR 28962 (June 25, 1991)). (the "Proposing Release").

The Proposing Release elicited 18 letters from 17 commenters; these letters, as well as the comment summary prepared by the staff, are available for public inspection and copying at the Commission's Public Reference Room (see File No. S7-21-91).

[8] The rules adopted today include new disclosure requirements and codify interpretive positions of existing disclosure requirements.

[9] Item 901.

[10] Proposed Item 902(a)(6).

provide for the distribution of proceeds from the sale of assets and cash from operations in accordance with the investors' interests (both limited and general partner interests) in the partnership. However, once investors receive specified minimum returns (often called "preferred returns"), the general partner often is entitled to receive a portion of the proceeds of asset sales or cash from operations greater than its interest in the partnership (often referred to as the general partner's "subordinated return" or "back-end interest").

Recessionary conditions in the real estate and oil and gas markets and changes in the tax laws have caused many limited partnerships and limited partnership sponsors to experience financial difficulties. These factors also have led to a significant reduction in the number and dollar amount of new limited partnership offerings.

At the same time, many limited partnership sponsors have proposed combinations of partnerships they have sponsored. The combined entities are expected to exist for a substantially longer period of time than the partnerships. The new entities will reinvest cash generated from operations and proceeds received from the sale of assets in new assets or in the improvement of existing assets, instead of making distributions to investors. Securities of the new entity, which are received by investors in exchange for their partnership interests, usually are listed for trading on a national securities exchange or traded in the NASDAQ system. Partnership sponsors proposing roll-ups generally state that the transactions should benefit investors for a variety of reasons, such as increased diversification of assets, increased liquidity for investors, increased access to capital sources and lower administrative costs.

B. Concerns Addressed by the Rules

1. Fundamental Changes and Adverse Effects

Serious objections have been raised about the fundamental changes in the nature of an investment that result from roll-ups. Many of the fundamental changes, adverse effects for investors and benefits for sponsors brought about by roll-ups are related to the change in the nature of partnerships from finite-life entities to reinvesting entities.

When a roll-up changes the cash distribution policy to permit reinvestment of cash generated from operations or proceeds from the sale of properties, investors generally must look to the securities markets for investment returns. However, securities issued in roll-up transactions frequently trade at a substantial discount from the value of the successor's assets. This may result in investors receiving lower returns from their investment than they would receive if the partnerships were left unchanged.

Increases in management compensation following many roll-ups also are related to the change from finite-life. The compensation arrangements in effect prior to a roll-up generally are based on the assumption that assets will be purchased, operated and sold over a limited period of time. When a partnership will be operated on a longer-term basis following a roll-up, partnership sponsors often change the compensation arrangements to provide for a "net asset value" or similar fee tied to the value of the partnership's assets, which will be paid for a substantially longer period of time. In addition, in many cases, property acquisition or disposition fees continue to be paid, but the amount of such fees paid by the partnership will increase as a result of the partnership's new policy of continuously selling properties and purchasing new properties. These changes reduce the amount of cash available for distribution to investors or for investment in new properties.

Roll-ups also may change the general partner's interest in the partnerships to eliminate its subordinated nature. The terms of some roll-ups provide that the general partner will receive securities of the successor, or cash or other consideration, in exchange for its subordinated interest at the time of the roll-up. In many cases, however, the general partner would not otherwise be entitled to these subordinated payments because limited partners have not yet received their minimum returns. In addition, net asset value or similar fees payable by the successor typically are not subordinated to minimum investor returns. These changes not only increase compensation to management, but also may diminish the general partner's incentive to generate maximum returns for investors.

Another fundamental change made in roll-ups, the imposition of a super-majority voting requirement to remove management or to engage in certain business combinations, also is related, in part, to the change from finite-life. As a publicly-traded entity after the roll-up, management of the successor faces a more substantial risk of an unwanted proxy contest or takeover. Consequently, roll-up sponsors frequently include provisions in the governing instruments of the successor, such as super-majority voting and other requirements, that make such actions more difficult.

Under the new rules, each of the fundamental changes brought about by a roll-up transaction will be highlighted to insure that investors have clear and full disclosure of the changes and the consequent risks and adverse effects of such changes.

2. Conflicts of Interest and Fairness

In most roll-up transactions, the general partner of the partnerships proposed to be combined determines the terms of the transaction, including the allocation of securities of the successor among the partnerships, the consideration to be paid to the general partner for its interests, the compensation to be paid to the general partner or its affiliates in the future and the voting and other rights of investors in the successor. The potential for conflict between the interests of the general partner and the limited partners in structuring the roll-up is considerable.

Roll-ups proposed by unaffiliated parties also may involve significant conflicts of interest. In a transaction in which an unaffiliated party proposes to acquire partnerships in exchange for interests in a newly-formed successor, for example, the general partner may negotiate both the sale of its interest to the unaffiliated party and the terms upon which the unaffiliated party will acquire the limited partners' interests.

Despite these serious conflicts of interest, most roll-ups are not structured to provide safeguards, traditional in the corporate context, such as independent representation of limited partners, to insure that their interests are fairly considered. Where fairness opinions are obtained from financial advisors, the scope of the opinions may be so limited that they may have no application to the roll-up as it is eventually completed. Frequently, a fairness opinion in a multiple-partnership roll-up does not address the fairness of each combination of partnerships that may result; for example, the opinion may be based only on the participation of all partnerships or a majority. Where possible partial roll-up combinations that may occur are not covered by the fairness opinion, investors may be misled.

The rules adopted today require enhanced disclosure, comparable to that required in going private transactions subject to Rule 13e–3,[11] of the conflicts

[11] 17 CFR 240.13e–3.

of interest and the general partner's beliefs concerning the fairness of the roll-up, as well as the bases for such beliefs.

3. Combinations of Multiple Partnerships

A roll-up of multiple entities presents several important concerns. First, when there are differences among the partnerships, the roll-up may have different effects on investors in the partnerships. It may be difficult for an investor to comprehend the effects of the roll-up on him or her when the effects on all of the partnerships are discussed together.

Second, securities of the roll-up successor must be allocated among the limited partners based on the comparative valuation of the participating partnerships. This requires a valuation of each partnership, and then the application of a formula to allocate the securities. In a roll-up with numerous entities, this process is quite complex. Investors in each partnership evaluating the fairness of the allocation require information about how their partnership was valued, as well as information from which to judge whether the valuation and allocation methods have been applied to all of the partnerships in a fair and uniform manner.

Third, if the roll-up is structured to permit completion with less than all partnerships (as is often the case), serious uncertainties may be present. Investors deciding whether to approve the roll-up are faced with making an investment decision without knowing which partnerships will be combined to form the successor. Depending on which partnerships participate, the assets, liabilities and cash flow of the successor may be quite different, particularly if there are significant differences among the partnerships proposed to be combined.

The rules adopted today contain several provisions, including the requirement of a partnership specific supplement, designed to address these disclosure concerns raised by multiple-entity transactions.

4. Complex Disclosure and Time Constraints

Investors and commenters have complained that, even if roll-up disclosure documents contain all relevant information, the disclosure is difficult to understand because of the length and complexity of the documents. Current Commission rules require disclosure to be presented in a clear, concise and comprehensible manner.[12] The Interpretive Release emphasizes this requirement, and provides specific guidance concerning the manner in which roll-up documents must be written. The rules adopted today further the goal of obtaining understandable disclosure through the separate prospectus supplements noted above and through a specific direction to include a clear, concise and understandable summary addressing specific concerns raised by roll-ups. Finally, to insure that investors have sufficient time to consider the disclosure provided in roll-ups, the rules adopted today impose a minimum 60–calendar day solicitation or offering period, or, if shorter, the maximum period permitted under applicable state law.

III. Transactions Subject to the Roll-Up Rules

A. General

The disclosure requirements set forth in new subpart 900 of Regulation S-K [13] and the minimum solicitation or offering period [14] apply to any "roll-up transaction" as defined in the rules.[15] The definition of roll-up transaction and other related definitions adopted today have been revised from those proposed to limit the application of the new rules to those transactions that are likely to involve the principal concerns addressed by the rules. In addition, the rules have been revised to include a provision pursuant to which a sponsor of a transaction that comes within the roll-up rules, but does not raise the concerns addressed by the rules, will be permitted to apply to the Commission for an exemption.

B. Combinations of Limited Partnerships

Combinations of two or more finite-life limited partnerships have generated the concerns and controversy associated with roll-ups described above. Therefore, the rules as adopted apply to a transaction or series of transactions that directly or indirectly, through acquisition or otherwise, involves a combination or reorganization of two or more finite-life limited partnerships or other finite-life entities, provided securities of a successor entity will be issued in connection with the transaction. Such a transaction may be structured in a variety of ways, such as a merger of the limited partnerships into a successor entity (whether newly-formed or previously existing),[16] in which limited partners receive securities of the successor entity in exchange for their limited partnership interests, or as an exchange offer in which the limited partnerships are acquired by a successor entity through the issuance of securities of the successor in exchange for limited partnership interests. In the latter case, the transaction would come within the rules whether or not the partnerships are merged into the successor entity.[17]

The rules apply whether the roll-up is proposed by an affiliate or a non-affiliate. Transactions proposed by non-affiliates have involved the fundamental changes associated with roll-ups when the transactions involve finite-life entities. In addition, as discussed above, "unaffiliated" roll-ups may raise serious conflicts of interest and fairness concerns as a result of the general partner's involvement in the negotiations of the sale of both its interests and those of the limited partners.

The rules as adopted have been revised to cover only transactions involving "finite-life" limited partnerships and other "finite-life" entities.[18] A partnership is "finite-life" if it (1) operates as a conduit vehicle for investors to participate in the ownership of assets for a limited period of time, and (2) has as a policy or purpose distributing to investors cash from operations or proceeds from the sale, financing or refinancing of assets, rather than reinvesting such cash or proceeds in the business.[19] The question of

[12] See Rule 421(b) of Regulation C (17 CFR 230.421(b)).

[13] 17 CFR 229.900 *et seq.*

[14] See General Instruction I.2 of Form S–4; General Instruction G.4 of Form F–4, Rules 14a–6(m), 14c–2(c) and 14e–1(a) (17 CFR 240.14a–6(m), 14c–2(c) and 14e–1(a)).

[15] Item 901(c). The disclosure requirements apply to registration statements on Form S–4 or Form F–4, the forms generally used in connection with business combinations or reorganizations. If securities to be issued in a roll-up transaction are registered on another form, such as Form S–1 (17 CFR 239.11) or Form S–11 (17 CFR 239.18), but would be authorized to be registered on Form S–4 or Form F–4, the roll-up rules will apply in that context.

[16] The definition of "roll-up transaction" in Item 901(c) has been revised to clarify that the successor entity need not be newly formed.

[17] The definition in Item 901(c) has been revised to clarify that a combination or reorganization accomplished indirectly through an acquisition transaction is included.

[18] If a combination or reorganization transaction includes a finite-life partnership and any other entities, the requirements apply to each entity proposed to be included in the roll-up transaction, whether or not the entity is a "partnership" as defined in Item 901(b). See Instruction to Item 901.

[19] See Item 901(b)(2). A partnership would be considered "finite-life" under the definition even if the partnership's governing instruments permitted the reinvestment of cash from operations or proceeds received from the sale of assets or did not explicitly address the point, if the partnership's

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whether a particular partnership is "finite-life" will depend upon an examination of the partnership's purposes and is not subject to any numerical tests.

Transactions involving combinations of reinvesting limited partnerships are not subject to the rules as adopted, since such partnerships are closely akin to ordinary operating businesses. Business combinations involving such reinvesting partnerships have not been subject to the criticisms associated with roll-ups. Investors in such partnerships, like investors in other operating businesses, have no expectation that the partnership will distribute its cash from operations or sell its assets and distribute the proceeds to investors. Moreover, since many of the other fundamental changes associated with roll-ups, such as changes in management compensation and investor voting rights, are related to the change from finite-life, roll-ups of reinvesting limited partnerships should not involve such changes. In the event that a combination of reinvesting limited partnerships involves some of the concerns addressed by the new rules, such as differing effects on investors and valuation and allocation complexities, sponsors of such transactions should consider the disclosures required under the new rules in connection with the anti-fraud provisions of the Federal securities laws.[20]

C. Single Partnership Reorganizations

As with the proposal, the rules as adopted apply to a reorganization of a single limited partnership in which securities of a successor entity will be issued in exchange for the limited partnership interests, such as converting a limited partnership into a corporation or an entity taxed as a REIT. Such transactions often include changing a finite-life partnership to a reinvesting entity and, therefore, raise many of the serious concerns associated with roll-ups of multiple limited partnerships.

The rules apply to a reorganization of a single, finite-life partnership whether proposed by an affiliate or a non-affiliate. For the reasons noted above with respect to combinations of two or more partnerships proposed by non-affiliates, reorganizations of single, finite-life limited partnerships proposed by nonaffiliates may raise many of the concerns addressed in the rules.

The rules as adopted do not apply to reorganizations of single, reinvesting limited partnerships. As is the case with combinations of such entities, reorganizations of such entities should not raise the concerns addressed by the rules.

The rules have not been revised to include amendments to the governing instruments of a limited partnership that do not involve the issuance of securities of a successor entity. However, to the extent that such proposals raise concerns addressed by the roll-up rules, the disclosures required under the rules should be considered from an anti-fraud perspective.

D. Transactions Involving Other Finite-life Entities

The rules apply to combinations or reorganizations of entities that are substantially similar to finite-life limited partnerships.[21] As with limited partnerships, a REIT or business trust or another entity is a "finite-life entity" subject to the new rules, if it (1) operates as a conduit vehicle for investors to participate in the ownership of assets for a limited period of time, and (2) has as a policy or purpose distributing to investors cash from operations or proceeds from the sale, financing or refinancing of assets, rather than reinvesting such cash or proceeds in the business.[22] From an investor's point of view, such an entity is substantially similar to a finite-life limited partnership. As a result of the change in the definition, some REITs and business trusts will be subject to the rules, and others will not.[23]

The rules as adopted also have been revised to clarify that transactions involving entities registered as investment companies under the Investment Company Act of 1940 (the "1940 Act")[24] are not subject to the rules.[25] Transactions involving such entities are subject to extensive regulation under the 1940 Act, and the concerns associated with roll-ups have not been perceived in this area.

E. Exemption Upon Application

The Commission recognizes that there may be specific transactions subject to the rules adopted today that will not raise the concerns addressed by the new requirements, and where the public interest and investor protection would not require such disclosures. The question of whether such a transaction should be subject to the rules would depend upon all of the circumstances of the proposed transaction. The rules as adopted permit a sponsor of a transaction that does not raise the concerns addressed by the rules to apply to the Commission for an exemption from the application of the rules.[26]

IV. Requirements for Roll-Up Transactions

A. General

Roll-up sponsors preparing documents to be filed with the Commission must comply with the disclosure requirements in the new rules, and must present the information in a clear, concise and understandable manner as required by the Commission's rules[27] and the Interpretive Release.[28] The disclosure must be written in a "plain English," direct fashion that will enable investors to easily comprehend the substance of the disclosure and understand the importance of the disclosures.[29] The disclosure guidance provided by the Interpretive Release applies fully to the disclosure called for by the new rules as well as existing requirements.

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policies or purposes included that such cash would be distributed to investors and would not be reinvested in the business, as evidenced by such matters as the partnership's offering materials or reports filed with the Commission or sent to investors. In addition, a partnership would be "finite-life" if it were permitted to reinvest cash from operations or proceeds received from the sale of assets during a limited period of time, if, after such initial period, the partnership's purposes or policies would call for the distribution of such cash.

[20] See, *e.g.*, section 17(a) of the Securities Act of 1933 (the "Securities Act"), 15 U.S.C. 77q(a); section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. 78j(b), and Rule 10b-5 thereunder, 17 CFR 240.10b-5. See also Rule 408 under the Securities Act (17 CFR 230.408), and Rule 12b-20 under the Exchange Act (17 CFR 240.12b-20).

[21] Such entities are included in the definition of the term "partnership" set forth in Item 901(b).

[22] Item 901(b)(2).

[23] A REIT that is required to distribute net income to investors in accordance with the Federal tax laws applicable to REITs will not be a "finite-life" entity under the rules if its policies or purposes do not include that proceeds from the sale, financing or refinancing of assets will be distributed to investors and will not be reinvested in the business. The definition in Item 901(b) includes a specific provision to clarify this point.

[24] 15 U.S.C. 80a *et seq.*

[25] Item 901(b) (3). The exemption includes registered investment companies and companies that have elected to be regulated as "business development companies" under the 1940 Act.

[26] Item 901(c)(2).

[27] See Rule 421(b) of Regulation C.

[28] Registrants are reminded that these disclosure standards apply to all documents filed with the Commission in connection with roll-up transactions, including, for example, letters to shareholders and supplemental soliciting materials.

[29] As stated in the Interpretive Release, roll-up documents that have not been written in this manner will not be processed by the Division staff until the document has been so written.

B. Fundamental Changes Causing Adverse Effects for Investors and Benefits for Management

1. Risk Factors and Other Considerations

The new rules call for specific information about the risks and effects of roll-up transactions.[30] The risks and effects of the roll-up must be identified briefly in the forepart of the summary [31] and described in detail in a separate risk factors section immediately following the summary.[32]

The summary and the risk factors requirement each list factors that generally will be of significance. The factors listed are not exclusive; the summary and risk factors section are required to disclose all material risks and effects of the transaction. In discussing the risks and effects specific to the transaction, the heightening of one risk or effect by the presence of other risks or effects of the transaction or investment should be clearly stated and explained.[33]

The risks and effects of the roll-up on investors in each partnership must be described.[34] However, to the extent that the risks and effects are substantially the same for investors in various partnerships, the information may be presented on a combined basis.

2. Comparative Information

The new rules require specific, detailed information about significant business terms and policies and rights and obligations of managers and the investors of the successor and a comparison of those business terms and policies, rights and obligations to those of the limited partnerships. The rule lists specific items that must be addressed, including voting rights, management compensation, business plan, borrowing and cash distribution policies. The list is not exclusive; disclosure is required concerning any other similar matters material to an understanding of the changes caused by the roll-up.[35] This item has been adopted substantially as proposed.[36]

The various comparative tables required under the new rules will be required to be included in the detailed discussion of the particular subject matter in the disclosure documents.[37] For example, the comparative presentation of compensation before and after the roll-up would be included with the detailed description of the compensation arrangements to be in effect after the roll-up.[38] The comparative presentations would be required to be specifically crossed-referenced in the risk and effect disclosure.

3. Federal Income Tax Consequences

Roll-ups typically change substantially the tax treatment of the investment. In addition, the roll-up transaction itself may have adverse tax consequences for investors. However, the complex tax disclosure often included in roll-up documents may not be useful for investors. To address these concerns, the rules as adopted include a specific requirement to provide a brief, clear and understandable summary of the material Federal income tax consequences of the roll-up transaction and an investment in the successor.[39] If any of the material Federal income tax consequences are reasonably expected to be different for different partnerships' investors, the differences must be described. Where a tax opinion has been provided, the substance of the opinion should be briefly summarized, including identification of those material consequences as to which counsel has not been asked, or is unable, to opine. Repeating the "long form" tax opinion in the disclosure document would not satisfy the summary of the opinion requirement. The entire opinion of counsel would be filed as an exhibit to the registration statement, and required to be made available to investors upon request, or included as an appendix to the prospectus.[40]

As proposed, the tax disclosure item required a table showing the expected tax liabilities arising from the roll-up for investors in each partnership, if any of the partnerships were expected to incur such liabilities. In light of concerns expressed by commenters about the potentially significant differences in the tax profiles of investors, the requirement to provide an expected tax liabilities table has not been included in the rules as adopted. However, because expected tax liabilities would be an important consideration to investors deciding whether to participate in a roll-up, information that will provide investors an understanding of the general magnitude of the expected tax liabilities should be provided in the disclosure document.[41]

C. Conflicts of Interest and Fairness

1. Conflicts of Interest

The conflicts of interest item requires a brief description of the general partner's fiduciary duties to investors in each partnership and any potential material conflict of interest between the general partner and such investors relating to the roll-up transaction.[42] This item also requires specific information about any person that has been retained to represent the interests of investors in connection with the roll-up. If no such representative has been retained, that must be disclosed, together with the general partner's reasons for not retaining a representative and the risks to limited partners arising from the absence of separate representation.[43]

As adopted, the rules do not include a requirement included in the proposed rules for the general partner to state whether or not it reasonably believed it had satisfied its fiduciary duties in connection with the roll-up. Upon consideration, the Commission believes that the central issue is the fairness, both procedural and substantive, of the transaction for investors. The new rules require the sponsor's belief as to the fairness of the transaction to investors, and the underlying bases for such belief.

2. Background of, Reasons for and Alternatives to the Roll-up Transaction

The new rules require specific information about the background of the roll-up transaction,[44] the sponsor's

[30] Item 903(b)(1) and Item 904.

[31] As proposed, the summary rule required the risks and effects to be set forth first in the summary. In response to commenters' concerns that this order of presentation might confuse investors, the Instruction to the summary rule provides that the material risks and effects of the transaction must be presented prominently in the forepart of the summary. The staff in reviewing any roll-up disclosure document will raise objections to any summary that does not adequately highlight the risks and effects of the transaction.

[32] Item 904(a). See also Item 503(c) of Regulation S-K (17 CFR 229.503(c)) which requires the risk factor section to be set forth immediately following the cover page of the prospectus, or following the summary if a summary is included.

[33] For example, if the transaction both increases the amount of management compensation and the expected term of existence of the entity, the disclosure must explain that not only is compensation increasing, but that this increased compensation will be paid for a longer period of time.

[34] The rules have been revised in response to comments to clarify that disclosure must be provided under the rules with respect to each entity subject to a roll-up, whether or not the particular entity is a "partnership" as defined in the rules. See Instruction to Item 901.

[35] Item 905.

[36] As proposed, Item 905 was included as Item 904(b).

[37] Instruction 1 to Item 905.

[38] Item 905(b).

[39] Item 915(a).

[40] Item 915(b).

[41] See also section II.A.3.e of the Interpretive Release ("If a roll-up transaction is taxable to an investor, risk factor treatment should be afforded.").

[42] Item 909(a).

[43] Item 909(b).

[44] Item 907(a).

reasons for proposing the transaction (including its reasons for proposing the particular structure selected) [45] and alternatives to the roll-up considered by the general partner or available to investors.[46] With the exceptions noted below, these requirements have been adopted without substantial revision.

To assist investors in considering whether opportunities other than the proposed roll-up might be available or have been considered and rejected by the general partner, the rules require disclosure of any discussions between the general partner and its affiliates and third parties (or any of their advisors) concerning specified transactions involving any of the partnerships or their assets within the previous two years, such as mergers, consolidations or acquisitions involving such partnerships.[47] This disclosure requirement is based on a similar requirement in Schedule 13E–3 [48] and is to be interpreted in the same manner.[49]

The rules require a description of the alternatives to the roll-up considered by the general partner and the reasons for the general partner's rejection of each alternative.[50] In addition, the possibility and results of continuing the partnerships in accordance with their business plans must be described even if the general partner did not consider that possibility.[51] This disclosure item also requires a description of the potential for, and results of, an orderly liquidation of the partnerships, whether or not considered by the general partner.[52]

3. Fairness

The new rules require disclosure of the general partner's beliefs concerning the fairness of the roll-up transaction and the bases for such beliefs. This fairness item is comparable to the fairness item in Schedule 13E–3 for going private transactions [53] and will be interpreted in a similar manner. In addition, the fairness item for roll-up transactions has been supplemented to address concerns specific to roll-ups, such as the uncertainties and differing effects arising from combinations of multiple partnerships and the change in business plan resulting from going from a finite-life partnership to a reinvesting entity.

The new disclosure rules require the general partner to state whether or not it reasonably believes the roll-up is fair or unfair to investors in each partnership.[54] This statement must address the fairness of all possible combinations of partnerships if the roll-up may be completed on a partial basis.[55] A fairness statement that did not apply to the transaction as it is eventually completed would not satisfy the purposes of this disclosure requirement.[56]

In order to insure that investors have adequate information upon which to assess the merits of the general partner's fairness determination, the rules require a discussion of matters, both procedural and substantive, considered by the general partner as a part of its fairness analysis.[57] For example, the rules require a discussion of the weight given to the form and amount of, and the methods used to determine, the consideration to be received by investors and the general partner, and the compensation to be paid to the sponsor in the future.[58] This discussion also must address the weight given to alternatives to the roll-up considered by the general partner.[59] In addition, the rules require the general partner to discuss the fairness of the roll-up in comparison to the possible alternatives of continuing the partnerships in accordance with their original business plans or liquidating the partnerships in an orderly fashion, even if those alternatives were not considered by the general partner.[60] The disclosure must describe any material differences among the partnerships relating to the fairness of the transaction.[61]

The rules do not mandate specific valuation methods to be used in connection with the discussion of the fairness of the roll-up compared to alternatives. Valuation methods likely will be determined consistent with state law fiduciary duties. However, the rules would not permit, as some have attempted, the general partner to present the disclosure in a manner that would lead investors to discount the information as totally unreliable. For example, it would not be appropriate for the disclosure to set forth possible liquidation values, coupled with disclosure to the effect that such values are merely theoretical and there is no reasonable likelihood that such values would be obtained in a liquidation.[62]

Finally, the rules require a description of the weight given by the general partner in the fairness analysis to any reports, opinions or appraisals obtained from third parties, together with a description of any material uncertainties known to the general partner that have affected or are reasonably likely to affect the conclusions in such documents.[63] Where, for example, the general partner's fairness analysis is based, in whole or part, on a fairness opinion that does not address the fairness of all possible combinations of partnerships, prominent disclosure of the limited scope of the opinion would be required to enable investors to evaluate whether reliance upon such an opinion is appropriate. Similarly, disclosure would be required if the general partner relied upon appraisals in the fairness analysis and the general partner is aware that events subsequent to the date of the appraisals may have affected the appraiser's conclusions.

4. Reports, Opinions and Appraisals

a. *General Requirements.* All reports, opinions and appraisals obtained from outside parties that are materially related to the roll-up transaction must be identified and summarized in the disclosure document.[64] This disclosure

[45] Item 908(a).

[46] Item 908(b).

[47] Item 907(a).

[48] See Item 3(b) of Schedule 13E–3.

[49] Item 907(a) has been revised consistent with Item 3(b) of Schedule 13E–3 to limit its applicability to discussions with persons (or their representatives) having a direct interest in the matter discussed, such as persons considering any of the specified transactions involving the partnerships.

[50] Item 908(b)(1).

[51] Item 908(b)(2).

[52] Item 908(b)(3).

[53] See Item 8 of Schedule 13E–3.

[54] Item 910(a).

[55] In a transaction in which portions of partnerships may be included (e.g., if a percentage of the assets of a partnership equal to the percentage of investors that voted to approve the transaction will become assets of the roll-up successor, or the successor will own a percentage of the equity securities of a partnership equal to the percentage of investors in the partnership that voted to approve the transaction), the fairness statement must address the fairness of any combination of partnerships or portions of partnerships. Language has been added to Item 910 to clarify this point.

[56] If there are possible combinations of partnerships that would result in a different evaluation by the general partner of the fairness of the transaction to the investors in one or more entities to be rolled-up, that combination should be specifically identified and the general partners' evaluation disclosed along with the basis for that evaluation.

[57] Item 910(b).

[58] Item 910 (Instruction 3).

[59] Item 910(b)(1).

[60] *Id.*

[61] Item 910(b)(2). This disclosure would discuss, for example, the general partner's consideration of the financial condition of the partnerships if some, but not all, of the partnerships were experiencing financial difficulties.

[62] The liquidation analysis contemplated would be that of an orderly liquidation pursuant to the terms of the partnership agreement or other organizational documents.

[63] Item 910(e).

[64] Item 911. This Item has been revised (consistent with the comparable requirement in Item 9 of Schedule 13E–3) to clarify that opinions of counsel are not required to be described pursuant to this Item.

item calls for the information required under the comparable item in Schedule 13E–3,[65] as well as additional information specifically related to the concerns associated with roll-up transactions.

The disclosure document must state that copies of the reports, opinions and appraisals described in the disclosure document will be provided without charge promptly upon written request of an investor or his representative.[66] In addition, the reports, opinions and appraisals must be filed with the Commission as exhibits to the registration statement.[67] With the exception of the revisions to the appraisal disclosure requirements discussed below, this disclosure item has been adopted substantially as proposed.

b. *Disclosure of "Opinion Shopping".* To provide disclosure of opinion shopping that could bear on the weight an investor might place on the opinions disclosed, the rules require the sponsor to disclose contacts with any person concerning a fairness opinion, valuation or report on the roll-up transaction, if such person's opinion, valuation or report is not filed as an exhibit to the document.[68] Under this item, the identity of the firm, the nature of the contact, any actions taken by the firm, and any views (preliminary or final) expressed on the proposed subject matter of the opinion, report or appraisal must be disclosed. Disclosure of all contacts is required pursuant to this item, whether formal or informal, and regardless of whether an agreement of retainer was reached with an outside party.

c. *Fairness Opinions.* The fairness opinion disclosure item requires the document to state whether the fairness opinion addresses the fairness of the roll-up for investors in each partnership and the fairness of all possible combinations of partnerships.[69] If all combinations are not addressed, the document must identify those combinations that are addressed and provide information about the bases for the selection.[70] In addition, if all combinations are not addressed, prominent disclosure is required to clearly alert investors to the limited scope of the fairness opinion. Where materially limited, great care must be taken in the disclosure document to insure that investors are not misled to believe a fairness opinion has been obtained with respect to partial roll-up combinations not actually covered by the opinion.[71]

d. *Appraisals.* The rules as proposed required specific detailed information about each separate appraisal. Commenters questioned whether in roll-ups involving numerous separately appraised assets, the disclosures required under the proposed rules would be too voluminous to be of value to most investors considering the roll-up. In light of this concern and given the availability (without cost) of the appraisals to any interested investor upon request, the appraisal information item has been revised.[72] As adopted, the item requires the disclosure document to provide basic information about the appraisals intended to facilitate an investor's understanding of the appraisal process. Specific tabular information about the appraisals of significant assets is required in an appendix to the disclosure document.

The basic information to be set forth in the disclosure document is to include:

- A description of the purposes for which the appraisals were obtained and how the appraisals were used in connection with the roll-up;
- A general description of the assets covered by the appraisals and disclosure of the aggregate appraised value of such assets (including such value net of associated indebtedness), together with a description of and valuation of assets subject to any material qualifications by the appraiser and a summary of such qualifications; and
- Disclosure of the date of the appraisals, whether and in what circumstances the appraisals will be updated and whether any events have occurred or conditions have changed since the date of the appraisals that may have caused a material change in the value of the assets.[73]

The appendix to the disclosure document must include specific information about the appraisal of any property or asset that is significant [74] to the partnership holding such property or asset. The appraised value of each such asset must be set forth, together with specific information about values under different valuation approaches considered by the appraiser and assumptions used by the appraiser.[75]

5. Roll-up Expenses; Dissenters' Rights; Inspection Rights

The new rules also include other specific disclosure requirements intended to elicit information relevant to the fairness of the roll-up and alternatives available to investors. Specifically, the rules require information to be provided about expenses of the roll-up [76] and the sources and amount of funds used to finance the roll-up.[77] In addition, information must be provided about the availability of dissenters' appraisal or similar rights, investor access to partnership books and records or the services of an appraiser (including whether the sponsor will pay the expenses of the appraiser) and investors' rights under Federal and state law to obtain a list of the partnership's security holders.[78] Each of these provisions has been adopted substantially as proposed.

D. Combinations of Multiple Entities

1. Individual Partnership Supplements

When two or more entities are proposed to be included in a roll-up transaction, the new rules require the delivery of a separate prospectus supplement to investors in each entity.[79]

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[65] *See* Item 9 of Schedule 13E–3. The report, opinion or appraisal does not have to be prepared for purposes of the roll-up transaction to be discloseable. The fact that a report, opinion or appraisal is not specifically prepared for the transaction is not dispositive of its relevance or materiality. See letter to Charles L. Ephraim (available Sept. 30, 1987). See also, In re Meyers Parking System. Inc., Exchange Act Release No. 26069 (Sept. 12, 1988).

[66] Item 911(a)(3).

[67] Item 911(a)(4). A specific provision concerning the exhibit filing requirement has been added to the rule as adopted for clarity.

[68] Item 911(a)(5).

[69] Item 911(b). If the roll-up is structured so that portions of partnerships may participate, the disclosure must address whether the fairness opinion covers all possible combinations of partnerships or portions of partnerships. Language has been added to Item 911 as adopted to clarify this point.

[70] Item 911(b)(2). This requirement has been revised from the proposed requirement to provide that the combinations that have been addressed must be identified, rather than the combinations that have not been addressed.

[71] Item 911(b)(2)(iii).

[72] Item 911(c). This disclosure item does not require roll-up sponsors to obtain appraisals of assets, nor does it require any appraisals that are obtained to be prepared in accordance with any particular standards. As with fairness opinions, the rules are confined to requiring information about the appraisals intended to assist investors in understanding the appraisals.

[73] Item 911(c)(1)–(3).

[74] An asset would be "significant" if it represents more than 10% of the value of the partnership's assets or if 10% or more of the partnership's cash flow or net income was derived from such asset. See Item 911(c)(5).

[75] Item 911(c)(4).

[76] Item 912(b).

[77] Item 912(a) and (c).

[78] Item 913.

[79] Item 902(a). If the transaction is a roll-up transaction involving more than one entity, a supplement would be required for each entity, whether or not the entity is a "partnership" as defined in Item 901(b) (e.g., if the roll-up includes one partnership and one corporation, a supplement would be required for the partnership and the corporation). See Instruction to Item 901.

The purposes of the separate supplement are twofold. First, the supplement, rather than being a summary of all important information about the roll-up transaction, is designed to highlight for investors in each partnership the risks, effects and fairness of the roll-up with respect to their own partnership. It is often difficult for an investor to comprehend the risks and effects applicable to him or her, when all of the effects are discussed together in one disclosure document. Therefore, the rule requires a brief description of each material risk and effect and a statement as to the general partner's views of the fairness of the roll-up transaction for investors in the partnership. This discussion in the supplement will highlight the disclosure relevant to a particular partnership that is contained in the principal disclosure document. The supplement must be written in direct, plain English, and include descriptive headings or "bullet" lists, followed by brief discussions.

Second, the supplement will provide additional detail bearing on the valuation of the particular partnership and its assets in the roll-up transaction. The supplement must provide detailed information about: (1) The valuation of the partnership for purposes of the allocation of the successor's securities in the roll-up; and (2) the compensation and cash distributions received by the general partner and its affiliates from the partnership during the previous three-year period and most recently completed interim period, together with a comparison of those amounts to the amounts that would have been paid if the compensation and distribution arrangements to be in effect after the roll-up had been in effect during such periods. This detailed information is not required to be reiterated in the principal disclosure document.[80]

The rules have been revised to require the supplement to include information about cash distributions made to limited partners during the last five fiscal years and most recently completed interim period. Although this information also will be set forth in the selected financial information concerning each partnership included in the principal disclosure document, it is required to be shown separately in the supplements in light of its importance to an evaluation of the fairness of the roll-up to investors in a particular partnership.

The sponsor will be required to file all supplements with the Commission and must undertake to promptly provide upon written request (without cost) of a limited partner (or his or her representative), a copy of any supplement with respect to a roll-up.[81] Thus, if, for example, a limited partner has an interest in assessing the detailed valuation of other partnerships, that partner may request the supplements applicable to other partnerships participating in the roll-up transaction.

Although the separate supplement requirement may impose additional costs on roll-up sponsors, the benefits to investors considering complex roll-up transactions warrant the additional expense. However, in order to address commenter concerns about the additional costs, the rule as adopted limits the information required about individual assets to those assets that are significant to the partnership.[82] In addition, in lieu of the pro forma statements and a discussion of the statements required under the proposed rule, the rule as adopted requires the supplement to refer the reader to the pro forma financial statements included in the principal disclosure document.[83] However, in order to insure that investors understand the financial impact of the transaction, the brief discussion of the risks and effects of the transaction included in the supplement must alert the investor to the successor's possible financial condition and results of operations after the roll-up if such condition or results may be significantly different from those of the partnership.[84]

With the exception of the revisions discussed above, the supplement rule has been adopted substantially as proposed.[85] In light of the individual partnership valuation and compensation information required in the supplements, the rule has not been revised to permit combined supplements. A combined supplement would undermine the effectiveness of the supplement in highlighting the partnership-specific information, and could present the same complex disclosure problems currently present in many roll-up documents.

2. Allocation of Roll-up Consideration

The rules require the principal disclosure document to include a detailed description of, and a table showing, the method used to allocate securities and other consideration in the roll-up transaction to each of the partnerships.[86] Under this requirement, the value assigned to each significant category of assets of each partnership would be presented. For example, in a roll-up of several real estate programs, separate columns would be included for real estate net of mortgage debt, cash and cash equivalents, and net other assets.[87] In addition, detailed information about the method used to allocate securities or other consideration to the general partner is required.[88] The requirements of this item are intended to clarify the requirements currently set forth in Forms S–4 and F–4 to describe the terms of the roll-up transaction.[89] This item

[80] Thus, the valuation and allocation information required in the supplements will show the value of each significant asset owned by the partnership, while the valuation and allocation information included in the principal disclosure document pursuant to Item 906 will show each partnership's assets on an aggregate basis by type of asset (e.g., real estate assets and cash). Similarly, the management compensation and distribution information required in the supplements will show the amounts paid by the individual partnership, while the management compensation and distribution information included in the principal disclosure document pursuant to Item 905(b) will be set forth on an aggregate basis for all of the partnerships.

[81] Item 902(b)(1). This Item has been revised to require a statement to be included in the supplement informing investors of the existence and availability of other supplements.

[82] Item 902(b)(4)(i).

[83] Item 902(b)(7).

[84] For example, if the partnership has been experiencing positive cash flow and the pro forma statements required to be included in the principal disclosure document reflect that the successor would have experienced a negative cash flow for the comparable period, this would be discussed in the risks and effects portion of the supplement.

[85] Other nonsubstantive or clarifying changes also have been made. For example, the requirement included in proposed Item 902(a)(4) to discuss factors that may cause the method of allocating securities to be more or less favorable to investors in the partnership has been deleted since such a discussion should be included either in the effects or the fairness discussions otherwise required by Item 902. In addition, the requirement to discuss effects of the transaction in proposed Item 902(a)(1) has been revised to make clear that the discussion must address each material risk and effect of the transaction for investors in the partnership. Language has been added to the requirement to provide detailed information concerning how the partnership was valued (Item 902(b)(4)) to clarify that any other information material to an understanding of the valuation must be set forth.

[86] Item 906. Although the item specifies certain matters that must be included in the allocation table, to the extent that other or additional matters are significant to the allocation, the table should include such matters. Language has been added to the rule as adopted to clarify this point.

[87] This information is intended to enable an investor to evaluate the fairness of how his partnership was valued for purposes of the allocation in comparison to the other partnerships. The table required pursuant to this rule would show, for example, if a partnership held a substantial amount of its assets in cash or cash equivalents and other partnerships had little or no cash.

[88] Item 906(c). Language has been added to this item to clarify that the consideration paid by the general partner for interests that will be exchanged in the roll-up must be set forth. For example, if the general partner will be allocated securities for its general partner interest, the amount paid for the general partner interest would be stated.

[89] See Item 4 of Part I.A of Form S–4 and Form F–4.

has been adopted substantially as proposed.

3. Financial Information

Specific pro forma and selected financial information is required under the rules.[90] The item requiring such information has been adopted without substantial revision.

The new rules require the inclusion of pro forma financial statements based on (at least) the following two assumptions: (1) Participation by all partnerships, and (2) participation by those partnerships that on a combined basis have the lowest combined net cash provided by operating activities for the last fiscal year of the partnerships, provided such participation satisfies all conditions to completing the roll-up.[91] The purpose of this requirement is to provide a means for investors to evaluate the possible financial condition of the successor if such a combination were to occur.[92] The pro forma financial information rule also requires the inclusion of pro forma statements of cash flow.[93]

The selected financial data required by the new rules with respect to each partnership expands the current selected financial information requirements.[94] For example, information is required about cash held by the partnerships, total assets at both book value and at the value assigned for purposes of the roll-up, net cash provided by operating activities and distributions.[95]

4. Background of the Partnerships

The rules require roll-up disclosure documents to include basic information about the background of the partnerships proposed to be included in the roll-up transaction.[96] This requirement, which has been adopted substantially as proposed, is intended to address the concern that investors considering a multiple partnership roll-up may have little or no previous knowledge about all of the partnerships that are proposed to be combined with their own. The information required includes (for each partnership) the investment objective(s), the amount of capital raised from unaffiliated investors, the extent to which funds have been invested as planned, and the extent to which the partnership has achieved its investment objective(s). This information may be presented on a combined basis provided each partnership covered in the combined presentation is clearly identified and the information is presented in a clear and understandable manner.[97] However, separate disclosure is required with respect to recent or likely materially adverse financial developments involving the partnerships or the general partner and the effect the roll-up transaction will have on such developments.[98]

Upon further consideration of the information required under the current rules, the proposed requirement to provide summary information concerning partnership properties and other assets has not been adopted.[99] Under the current requirements, information about the assets of each entity proposed to be included in a roll-up must be included in the registration statement, either directly or through incorporation by reference to filings made with the Commission.[100] This information is substantially the same as that which would be provided to investors if the partnership proposed to be included in the roll-up registered its securities for sale, and generally includes the information specified in the proposed summary information rule. Consequently, additional information is not necessary. However, in the event that a roll-up transaction includes numerous partnerships, care should be taken to insure that the information provided about partnership assets is presented in a manner that is clear and understandable for investors.

E. Solicitation Period

As discussed in the Proposing Release, investors and many in Congress have expressed concerns that investors have had insufficient time to read and understand the complex disclosure contained in roll-up documents and arrive at an informed decision regarding proposed roll-up transactions. Therefore, subject to the exception described below for shorter maximum periods under state law, the rules establish a minimum solicitation period of 60-calendar days prior to a limited partners' meeting at which a roll-up transaction will be submitted to a vote or 60 calendar days prior to the earliest date on which partnership action could be taken by consent.[101] Similarly, if the roll-up transaction is an exchange offer subject to the Williams Act, a minimum 60-calendar day offering period is imposed.[102] If, however, under applicable state law, the maximum period permitted for giving notice is less than 60 calendar days, the state law maximum notice period will apply. The rules establishing the minimum period have been adopted substantially as proposed.[103] Where the state law does

[90] Item 914. A clarifying amendment also has been added to Article 11 of Regulation S–X to refer to the pro forma financial statement requirements included in Item 914.

[91] Item 914(b). In the event that the sponsor believes that pro forma financial statements based on other assumptions should be included, this would be permitted provided the assumptions are reasonable under the circumstances and described in an understandable manner. In addition, if the roll-up transaction is structured to permit participation by portions of partnerships, consideration should be given to the effect of such participation in preparing the pro forma financial statements reflecting a partial roll-up. See Instruction 2 to Item 914.

[92] Pro forma financial statements based on the minimum participation standard set by the general partner do not fulfill this requirement since minimum participation may include partnerships that, although holding less assets than other partnerships, are experiencing more favorable operating results than other partnerships. In addition, minimum participation is often defined by the general partner as a percentage of the assets held by all of the partnerships (e.g., 50% of the total exchange value), and may not be achieved through any possible combination of partnerships. Pro forma statements based upon a combination that actually may occur in the roll-up should be more meaningful for investors.

[93] Consistent with Article 11 of Regulation S–X, Item 914(c) has been revised to delete the requirement to include pro forma balance sheet data for the most recently completed fiscal year in the event that such pro forma information is provided as of a more recent interim period.

[94] See Item 3(d) of Part I.A of Form S–4 and Form F–4.

[95] Revisions to the language of some of the line item requirements in Item 914 have been included in the rules as adopted to clarify the disclosure requirements. For example, assets at appraised value has been changed to read "assets at the value assigned for purposes of the roll-up." In addition, language has been added to make clear that other selected financial information may be included if appropriate for the particular type of business, such as estimated present value of future net revenues from proved reserves in the case of an oil and gas partnership.

[96] Item 907 (b) and (c).

[97] For example, information about investment objectives could be presented on a combined basis for groups of partnerships that had substantially the same investment objective(s).

[98] Such adverse developments would include, for example, defaults on mortgage debt, property foreclosures and deferral of payment of debt service or other material financial commitments.

[99] Proposed Item 914.

[100] *See* Part I.C of Form S–4 and Part I.C of Form F–4.

[101] *See* General Instruction I.2 to Form S–4; General Instruction G.2 to Form F–4; Rules 14a–6(m) and 14c–2(c).

[102] Rule 14e–1(a).

[103] One commenter questioned the authority of the Commission under section 14(a) of the Exchange Act to adopt a minimum solicitation period, arguing that the time periods within which an investor vote may be taken is a matter of state law. To the contrary, the Commission's authority under Section 14(a), as well as other provisions of the Securities Act and the Exchange Act (*e.g.*, section 19(a) of the Securities Act (15 U.S.C. 77s(a)) and sections 13(e), 14(a), 14(c), 14(e) and 23(a) of the Exchange Act (15

Continued

not preclude a 60-day solicitation period, the 60-day requirement will apply, notwithstanding any provision in the partnership agreement to the contrary.

V. Cest-Benefit Aanalysis

In the Proposing Release, the Commission requested commenters to provide views and data as to the costs and benefits associated with amending the disclosure requirements. No commenters specifically responded to this request, however, three commenters expressed concern that the costs of these transactions to sponsors and to the Commission staff would be significant.

The Commission believes that while some additional costs to registrants will result from the adoption of subpart 900 of Regulation S–K and the other revisions being made, such costs will be outweighed by the benefits resulting from the amended disclosure requirements which enhance the ability of securityholders to analyze limited partnership roll-up transactions. Subpart 900 of Regulation S–K and the other revisions have been formulated against the template of evolving state partnership law and will not subject additional persons to filing requirements.

VI. Final Regulatory Flexibility Analysis

A Final Regulatory Flexibility Analysis in accordance with 5 U.S.C. 604 has been prepared regarding the new rules described in this release. Members of the public who wish to obtain a copy of the Final Regulatory Analysis should contact Michael L. Hermsen, Special Counsel, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 7–6, Washington, DC 20549 (202) 272–2573. The summary of the Initial Regulatory Flexibility Analysis appears at 56 FR 28971 (Securities Act Release No. 6899).

U.S.C. 78m(e), 78n(a), 78n(c), 78n(e) and 78w(a)), does encompass the rule adopted today, and the Commission has exercised its authority to establish minimum solicitation and offering periods under the Securities Act and the Exchange Act in various other contexts. For example, the business combination registration statement forms, Form S–4 and Form F–4, require that a combined proxy statement/prospectus be mailed to securityholders at least 20 business days before a meeting if information concerning the registrant or the companies to be acquired is incorporated by reference into the disclosure document. See Instruction A.2 to Form S–4; Instruction A.2 to Form F–4. Other minimum periods include the 20-business day offering period applicable to tender offers under Rule 14e–1(a), the 20-calendar day solicitation period for going-private transactions under Rule 13e–3(f), and the 20 calendar-day period applicable to the dissemination of information statements in connection with meetings for which proxies will not be solicited under Rule 14c–2(b).

VII. Effective Date

The disclosure and other requirements relating to roll-up transactions are effective on October 30, 1991, in accordance with the Administrative Procedures Act, which allows for effectiveness in less than 30 days after publication, *inter alia*, "as provided by the agency for good cause found and published with the rule." 5 U.S.C. 553(d)(3). It is necessary for the disclosure and other requirements relating to roll-up transactions to become effective immediately in order to address effectively and comprehensively the serious investor protection concerns described in this release regarding roll-up transactions. Based on the Commission's experience in reviewing documents of this type, and review of pending documents, it appears that investors could be deprived of the protections provided by the new rules, although receiving disclosure documents a significant period of time after adoption of the requirements. Immediate effectiveness will prevent delays in applicability of the requirements, prevent circumvention of the requirements and assure that all investors who are asked to participate in roll-up transactions from the time the rules are adopted receive comparable and concise disclosure.

VIII. Statutory Basis

The amendment to Regulation S–X is being adopted pursuant to Sections 6, 7, 8, 10, 19 and Schedule A of the Securities Act of 1933, as amended (15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77aa); Sections 12, 13, 14, 15 and 23 of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78l, 78m, 78n, 78o, 78w); and Sections 5, 14 and 20 of the Public Utility Holding Company Act of 1935, as amended (15 U.S.C. 79e, 79n, 79t).

The amendments to Regulation S–K and Forms S–4 and F–4 are being adopted pursuant to sections 6, 7, 8, 10 and 19 of the Securities Act of 1933, as amended (15 U.S.C. 77f, 77g, 77h, 77j, 77s).

The amendments to Rule 14a–6, Rule 14c–2 and Rule 14e–1 are being adopted pursuant to sections 14(a), 14(c), 14(e) and 23(a) of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78n(a), 78n(c), 78n(e), 78w(a)).

List of Subjects in 17 CFR Parts 210, 229, 239 and 240

Accounting, Reporting and recordkeeping requirements, Securities.

IX. Text of Amendments

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

1. The authority citation for Part 210 is revised to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77aa(25), 77aa(26), 78l, 78m, 78n, 78o, 78w(a), 79e(a) (b), 79n, 79t, 80a–8, 80a–20, 80a–29, 80a–30, 80a–37, unless otherwise noted.

§ 210.11–01 [Amended]

2. By amending § 210.11–01 to redesignate paragraphs (a)(6) and (a)(7) as paragraphs (a)(7) and (a)(8) and to add new paragraph (a)(6) to read as follows:

(a) * * *

(6) Pro forma financial information required by § 229.914 is required to be provided in connection with a roll-up transaction as defined in § 229.901(c).

* * * * *

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER THE SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

3. The authority citation for Part 229 continues to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78l, 78m, 78n, 78o, 78w, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, unless otherwise noted.

4. By amending part 229 to add a new subpart 229.900, to read as follows:

Subpart 229.900—Roll-Up Transactions

Sec.

229.901 (Item 901) Definitions.
229.902 (Item 902) Individual partnership supplements.
229.903 (Item 903) Summary.
229.904 (Item 904) Risk factors and other considerations.
229.905 (Item 905) Comparative information.
229.906 (Item 906) Allocation of roll-up consideration.
229.907 (Item 907) Background of the roll-up transaction.
229.908 (Item 908) Reasons for and alternatives to the roll-up transaction.
229.909 (Item 909) Conflicts of interest.

Sec.

229.910 (Item 910) Fairness of the transaction.
229.911 (Item 911) Reports, opinions and appraisals.
229.912 (Item 912) Source and amount of funds and transactional expenses.
229.913 (Item 913) Other provisions of the transaction.
229.914 (Item 914) Pro forma financial statements; selected financial data.
229.915 (Item 915) Federal income tax consequences.

Subpart 229.900—Roll-Up Transactions

§ 229.901 (Item 901) Definitions.

For the purposes of this subpart 229.900:

(a) *General partner* means the person or persons responsible under state law for managing or directing the management of the business and affairs of a partnership that is the subject of a roll-up transaction including, but not limited to, the general partner(s), board of directors, board of trustees, or other person(s) having a fiduciary duty to such partnership.

(b)(1) *Partnership* means any:

(i) Finite-life limited partnership; or

(ii) Other finite-life entity.

(2)(i) Except as provided in paragraph (b)(2)(ii) of this Item (§ 229.901(b)(2)(ii)), a limited partnership or other entity is "finite-life" if:

(A) It operates as a conduit vehicle for investors to participate in the ownership of assets for a limited period of time; and

(B) It has as a policy or purpose distributing to investors proceeds from the sale, financing or refinancing of assets or cash from operations, rather than reinvesting such proceeds or cash in the business (whether for the term of the entity or after an initial period of time following commencement of operations).

(ii) A real estate investment trust as defined in I.R.C. section 856 is not *finite-life* solely because of the distribution to investors of net income as provided by the I.R.C. if its policies or purposes do not include the distribution to investors of proceeds from the sale, financing or refinancing of assets, rather than the reinvestment of such proceeds in the business.

(3) *Partnership* does not include any entity registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.) or any Business Development Company as defined in section 2(a)(48) of that Act (15 U.S.C. 80a–2(a)(48)).

(c)(1) Except as provided in paragraph (c)(2) of this Item (§ 229.901), *roll-up transaction,* means any transaction or series of transactions that directly or indirectly, through acquisition or otherwise, involves the combination or reorganization of one or more partnerships and either:

(i) The offer or sale of securities by a successor entity, whether newly formed or previously existing, to one or more limited partners of the partnerships to be combined or reorganized; or

(ii) The acquisition of the successor entity's securities by the partnerships being combined or reorganized.

(2) The Commission, upon written request or upon its own motion, may exempt any transaction from the definition of *rollup transaction* if it finds such action to be in the public interest and consistent with the protection of investors.

(d) *Sponsor* means the person proposing the roll-up transaction.

(e) *Successor* means the surviving entity after completion of the roll-up transaction or the entity whose securities are being offered or sold to, or acquired by, limited partners of the partnerships or the limited partnerships to be combined or reorganized.

Instruction to Item 901. If a transaction is a roll-up transaction as defined in Item 901(c) of this subpart (§ 229.901(c)), the requirements of this subpart apply to each entity proposed to be included in the roll-up transaction, whether or not the entity is a "partnership" as defined in Item 901(b) of this subpart (§ 229.901(b)).

§ 229.902 (Item 902) Individual partnership supplements.

(a) If two or more entities are proposed to be included in the roll-up transaction, provide the information specified in this Item (§ 229.902) in a separate supplement to the disclosure document for each entity.

(b) The separate supplement required by paragraph (a) of this Item (§ 229.902) shall be filed as part of the registration statement, shall be delivered with the prospectus to investors in the partnership covered thereby, and shall include:

(1) A statement in the forepart of the supplement to the effect that:

(i) Supplements have been prepared for each partnership;

(ii) The effects of the roll-up transaction may be different for investors in the various partnerships; and

(iii) Upon receipt of a written request by an investor or his representative who has been so designated in writing, a copy of any supplement will be transmitted promptly, without charge, by the general partner or sponsor.

This statement must include the name and address of the person to whom investors should make their request.

(2) A brief description of each material risk and effect of the roll-up transaction, including, but not limited to, federal income tax consequences, for investors in the partnership, with appropriate cross references to the discussions of the risks, effects and tax consequences of the roll-up transaction required in the principal disclosure document pursuant to Items 904 and 915 of this subpart (§ 229.904 and § 229.915). Such discussion shall address the effect of the roll-up transaction on the partnership's financial condition and results of operations.

(3) A statement concerning whether the general partner reasonably believes that the roll-up transaction is fair or unfair to investors in the partnership, together with a brief discussion of the bases for such belief, with appropriate cross references to the discussion of the fairness of the roll-up transaction required in the principal disclosure document pursuant to Item 910 of this subpart (§ 229.910). If there are material differences between the fairness analysis for the partnership and for the other partnerships, such differences shall be described briefly in the supplement.

(4) A brief, narrative description of the method of calculating the value of the partnership and allocating interests in the successor to the partnership, and a table showing such calculation and allocation. Such table shall include the following information (or other information of a comparable character necessary to a thorough understanding of the calculation and allocation):

(i) The appraised value of each separately appraised significant asset (as defined in Item 911(c)(5) of this subpart (§ 229.911(c)(5)) held by the partnership, or, if appraisals have not been obtained for each significant asset, the value assigned for purposes of the valuation of the partnership to each significant asset for which an appraisal has not been obtained;

(ii) The dollar amount of any mortgages or other similar liabilities to which each of such assets is subject;

(iii) Cash and cash equivalent assets held by the partnership;

(iv) Other assets held by the partnership;

(v) Other liabilities of the partnership;

(vi) The value assigned to the partnership;

(vii) The value assigned to the partnership per interest held by investors in the partnership (on an equivalent interest basis, such as per $1,000 original investment);

(viii) The aggregate number of interests in the successor to be allocated

to the partnership and the percentage of the total interests of the successor;

(ix) The number of interests in the successor to be allocated to investors in the partnership for each interest held by such investors (on an equivalent interest basis, such as per $1,000 original investment); and

(x) The value assigned to the general partner's interest in the partnership, and the number of interests in the successor or other consideration to be allocated in the roll-up transaction to the general partner for such general partnership interest or otherwise as compensation or reimbursement for claims against or interests in the partnership, such as foregone fees, unearned fees and for fees to be earned on the sale or refinancing of an asset.

(5) The amounts of compensation paid, and cash distributions made, to the general partner and its affiliates by the partnership for the last three fiscal years and the most recently completed interim period and the amounts that would have been paid if the compensation and distributions structure to be in effect after the roll-up transaction had been in effect during such period. If any proposed change(s) in the business or operations of the successor after the roll-up transaction would change materially the compensation and distributions that would have been paid by the successor (e.g., if properties will be sold or purchased after the roll-up transaction and no properties were sold or purchased during the period covered by the table), describe such changes and the effects thereof on the compensation and distributions to be paid by the successor.

(6) Cash distributions made to investors during each of the last five fiscal years and most recently completed interim period, identifying any such distributions which represent a return of capital.

(7) An appropriate cross reference to selected financial information concerning the partnership and the pro forma financial statements included in the principal disclosure document in response to Item 914(b)(2) of this subpart (§ 229.914(b)(2)).

§ 229.903 (Item 903) Summary.

(a) Provide in the forepart of the disclosure document a clear, concise and comprehensible summary of the roll-up transaction.

(b) The summary required by paragraph (a) of this Item (§ 229.903) shall include a summary description of each of the following items, as well as any other material terms or consequences of the roll-up transaction necessary to an understanding of such transaction:

(1) Each material risk and effect on investors, including, but not limited to:

(i) Changes in the business plan, voting rights, cash distribution policies, form of ownership interest or management compensation;

(ii) The general partner's conflicts of interest in connection with the roll-up transaction and in connection with the successor's future operations; and

(iii) The likelihood that securities received by investors in the roll-up transaction will trade at prices substantially below the value assigned to such securities in the roll-up transaction and/or the value of the successor's assets;

(2) The material terms of the roll-up transaction, including the valuation method used to allocate securities in the successor to investors in the partnerships;

(3) Whether the general partner reasonably believes that the roll-up transaction is fair or unfair to investors in each partnership, including a brief discussion of the bases for such belief;

(4) Any opinion from an outside party concerning the fairness of the roll-up transaction, including whether the opinion addresses the fairness of all possible combinations of partnerships or portions of partnerships, and contacts with any outside party concerning fairness opinions, valuations or reports in connection with the roll-up transaction required to be disclosed pursuant to Item 911(a)(5) of this subpart (§ 229.911(a)(5));

(5) The background of and reasons for the roll-up transaction, as well as alternatives to the roll-up transaction described in response to Item 908(b) of this subpart (§ 229.908(b));

(6) Rights of investors to exercise dissenters' or appraisal rights or similar rights and to obtain a list of investors in the partnership in which the investor holds an interest; and

(7) If any affiliates of the general partner or the sponsor may participate in the business of the successor or receive compensation from the successor, an organizational chart showing the relationships between the general partner, the sponsor and their affiliates.

Instruction to Item 903. The description of the material risks and effects of the roll-up transaction required by paragraph (b)(1) of this Item (§ 229.903) must be presented prominently in the forepart of the summary.

§ 229.904 (Item 904) Risk factors and other considerations.

(a) Immediately following the summary required by Item 903 of this subpart (§ 229.903), describe in reasonable detail each material risk and effect of the roll-up transaction on investors in each partnership, including, but not limited to:

(1) The potential risks, adverse effects and benefits of the roll-up transaction for investors and for the general partner, including those which result from each matter described in response to Item 905 of this subpart (§ 229.905), with appropriate cross references to the comparative information required by Item 905;

(2) The material risks arising from an investment in the successor; and

(3) The likelihood that securities of the successor received by investors in the roll-up transaction will trade in the securities markets at a price substantially below the value assigned to such securities in the roll-up transaction and/or the value of the assets of the successor, and the effects on investors of such a trading market discount.

(b) Quantify each risk or effect to the extent practicable.

(c) State whether any of such risks or effects may be different for investors in any partnership and, if so, identify such partnership(s) and describe such difference(s).

Instruction to Item 904. The requirement to quantify the effects of the roll-up transaction shall include, but not be limited to:

(i) If cost savings resulting from combined administration of the partnerships is identified as a potential benefit of the roll-up transaction, the amount of cost savings and a comparison of such amount to the costs of the roll-up transaction; and

(ii) If there may be a material conflict of interest of the sponsor or general partner arising from its receipt of payments or other consideration as a result of the roll-up transaction, the amount of such payments and other consideration to be obtained in the roll-up transaction and a comparison of such amounts to the amounts to which the sponsor or general partner would be entitled without the roll-up transaction.

§ 229.905 (Item 905) comparative information.

(a)(1) Describe the voting and other rights of investors in the successor under the successor's governing instruments and under applicable law. Compare such rights to the voting and other rights of investors in each partnership subject to the transaction under the partnerships' governing instruments and under applicable law. Describe the effects of the change(s) in such rights.

(2) Describe the duties owed by the general partner of the successor to investors in the successor under the successor's governing instruments and

under applicable law. Compare such duties to the duties owed by the general partner of each partnership to investors in the partnership under the partnership's governing instruments and under applicable law. Describe the effects of the change(s) in such duties.

(b)(1) Describe each item of compensation (including reimbursement of expenses) payable by the successor after the roll-up transaction to the general partner and its affiliates or to any affiliate of the successor. Compare such compensation to the compensation currently payable to the general partner and its affiliates by each partnership. Describe the effects of the change(s) in compensation arrangements.

(2) Describe each instance in which cash or other distributions may be made by the successor to the general partner and its affiliates or to any affiliate of the successor. Compare such distributions to the distributions currently paid or payable to the general partner and its affiliates by each partnership. Describe the effects of the change(s) in distribution arrangements. If distributions similar to those currently paid or payable by any partnership to the general partner or its affiliates will not be made by the successor, state whether or not other compensation arrangements with the successor described in response to paragraph (b)(1) of this Item (§ 229.905) (e.g., incentive fees payable upon sale of a property) will, in effect, replace such distributions.

(3) Provide a table demonstrating the changes in such compensation and distributions setting forth among other things:

(i) The actual amounts of compensation and distributions, separately identified, paid by the partnerships on a combined basis to the general partner and its affiliates for the partnerships' last three fiscal years and most recently ended interim periods; and

(ii) The amounts of compensation and distributions that would have been paid if the compensation and distributions structure to be in effect after the roll-up transaction had been in effect during such period.

(4) If any proposed change(s) in the business or operations of the successor after the roll-up transaction would change materially the compensation and distributions that would have been paid by the successor from that shown in the table provided in response to paragraph (b)(3)(ii) of this Item (§ 229.905) (e.g., if properties will be sold or purchased after the roll-up transaction and no properties were sold or purchased during the period covered by the table), describe such changes and the effects thereof on the compensation and distributions to be paid by the successor.

(5) Describe the material conflicts that may arise between the interests of the sponsor or general partner and the interests of investors in the successor as a result of the compensation and distribution arrangements described in response to paragraphs (b)(1) and (2) of this Item (§ 229.905) and describe any steps that will be taken to resolve any such conflicts.

(c) Describe any provisions in the governing instruments of the successor and any policies of the general partner of the successor relating to distributions to investors of cash from operations, proceeds from the sale, financing or refinancing of assets, and any other distributions. Compare such provisions and policies to those of each of the partnerships. Describe the effects of any change(s) in such provisions or policies.

(d)(1) Describe each material investment policy of the successor, including, without limitation, policies with respect to borrowings by the successor. Compare such investment policies to the investment policies of each of the partnerships. Describe the effects of any change(s) in such policies.

(2) Describe any plans of the general partner, sponsor or of any person who will be an affiliate of the successor with respect to:

(i) A sale of any material assets of the partnerships;

(ii) A purchase of any material assets; and

(iii) Borrowings.

(3)(i) State whether or not specific assets have been identified for sale, financing, refinancing or purchase following the roll-up transaction.

(ii) If specific assets have been so identified, describe the assets and the proposed transaction.

(e) Describe any other similar terms or policies of the successor that are material to an investment in the successor. Compare any such terms or policies to those of each of the partnerships. Describe the effects of any change(s) in any such terms or policies.

Instructions to Item 905. (1) The information provided in response to this Item (§ 229.905) should be illustrated in tables or other readily understandable formats, which should be included together with the disclosures required by this Item.

(2) The information required by this Item (§ 229.905) shall be set forth in appropriate separate sections of the principal disclosure document.

§ 229.906 (Item 906) Allocation of roll-up consideration.

(a) Describe in reasonable detail the method used to allocate interests in the successor to investors in the partnerships and the reasons why such method was used.

(b) Provide a table showing the calculation of the valuation of each partnership and the allocation of interests in the successor to investors. Such table shall include for each partnership the following information (or other information of a comparable character necessary to an understanding of the calculation and allocation):

(1) The value assigned to each significant category of assets of the partnership and the total value assigned to the partnership;

(2) The total value assigned to all partnerships;

(3) The aggregate amount of interests in the successor to be allocated to each partnership and the percentage of the total amount of all such interests represented thereby; and

(4) The amount of interests of the successor to be issued to investors per interest held in each partnership (on an equivalent interest basis, such as per $1,000 invested).

(c) If interests in the successor will be allocated to the general partner in exchange for its general partner interest or otherwise or if the general partner will receive other consideration in connection with the roll-up transaction:

(1) Describe in reasonable detail the method used to allocate interests in the successor to the general partner or to determine the amount of consideration payable to the general partner and the reasons such method(s) was used; and

(2) Identify the consideration paid by the general partner for interests in the partnerships that will be exchanged in the roll-up transaction.

§ 229.907 (Item 907) Background of the roll-up transaction.

(a)(1) Furnish a summary of the background of the transaction. Such summary shall include, but not be limited to, a description of any contacts, negotiations or transactions concerning any of the following matters:

(i) A merger, consolidation, or combination of any of the partnerships;

(ii) An acquisition of any of the partnerships or a material amount of any of their assets;

(iii) A tender offer for or other acquisition of securities of any class issued by any of the partnerships; or

(iv) A change in control of any of the partnerships.

(2) The summary required by paragraph (a)(1) of this Item shall:

(i) Cover the period beginning with each partnership's second full fiscal year preceding the date of the filing of the roll-up transaction;

(ii) Include contacts, negotiations or transactions between the general partner or its affiliates and any person who would have a direct interest in the matters listed in paragraph (a)(1)(i)–(iv) of this Item; and

(iii) Identify the person who initiated such contacts, negotiations or transactions.

(b) Briefly describe the background of each partnership, including, but not limited to:

(1) The amount of capital raised from investors, the extent to which net proceeds from the original offering of interests have been invested, the extent to which funds have been invested as planned and the amount not yet invested; and

(2) The partnership's investment objectives and the extent to which the partnership has achieved its investment objectives.

(c) Discuss whether the general partner (including any affiliated person materially dependent on the general partner's compensation arrangement with the partnership) or any partnership has experienced since the commencement of the most recently completed fiscal year or is likely to experience any material adverse financial developments. If so, describe such developments and the effect of the transaction on such matters.

§ 229.908 (Item 908) Reasons for and alternatives to the roll-up transaction.

(a) Describe the reason(s) for the roll-up transaction.

(b)(1) If the general partner or sponsor considered alternatives to the roll-up transaction being proposed, describe such alternative(s) and state the reason(s) for their rejection.

(2) Whether or not described in response to paragraph (b)(1) of this Item (§ 229.908), describe in reasonable detail the potential alternative of continuation of the partnerships in accordance with their existing business plans, including the effects of such continuation and the material risks and benefits that likely would arise in connection therewith, and, if applicable, the general partner's reasons for not considering such alternative.

(3) Whether or not described in response to paragraph (b)(1) of this Item (§ 229.908), describe in reasonable detail the potential alternative of liquidation of the partnerships, the procedures required to accomplish liquidation, the effects of liquidation, the material risks and benefits that likely would arise in connection with liquidation, and, if applicable, the general partner's reasons for not considering such alternative.

(c) State the reasons for the structure of the roll-up transaction and for undertaking such transaction at this time.

(d) State whether the general partner initiated the roll-up transaction and, if not, whether the general partner participated in the structuring of the transaction.

(e) State whether the general partner recommends the roll-up transaction and briefly describe the reasons for such recommendation.

§ 229.909 (Item 909) Conflicts of interest.

(a) Briefly describe the general partner's fiduciary duties to each partnership subject to the roll-up transaction and each actual or potential material conflict of interest between the general partner and the investors relating to the roll-up transaction.

(b)(1) State whether or not the general partner has retained an unaffiliated representative to act on behalf of investors for purposes of negotiating the terms of the roll-up transaction. If no such representative has been retained, describe the reasons therefor and the risks arising from the absence of separate representation.

(2) If an unaffiliated representative has been retained to represent investors:

(i) Identify such unaffiliated representative;

(ii) Briefly describe the representative's qualifications, including a brief description of any other transaction similar to the roll-up transaction in which the representative has served in a similar capacity within the past five years;

(iii) Describe the method of selection of such representative, including a statement as to whether or not any investors were consulted in the selection of the representative and, if so, the names of such investors;

(iv) Describe the scope and terms of the engagement of the representative, including, but not limited to, what party will be responsible for paying the representative's fees and whether such fees are contingent upon the outcome of the roll-up transaction;

(v) Describe any material relationship between the representative or its affiliates and:

(A) The general partner, sponsor, any affiliate of the general partner or sponsor; or

(B) Any other person having a material interest in the roll-up transaction,

which existed during the past two years or is mutually understood to be contemplated and any compensation received or to be received as a result of such relationship;

(vi) Describe in reasonable detail the actions taken by the representative on behalf of investors; and

(vii) Describe the fiduciary duties or other legal obligations of the representative to investors in each of the partnerships.

§ 229.910 (Item 910) Fairness of the transaction.

(a) State whether the general partner reasonably believes that the roll-up transaction is fair or unfair to investors and the reasons for such belief. Such discussion must address the fairness of the roll-up transaction to investors in each of the partnerships and as a whole. If the roll-up transaction may be completed with a combination of partnerships consisting of less than all partnerships, or with portions of partnerships, the belief stated must address each possible combination.

(b) Discuss in reasonable detail the material factors upon which the belief stated in paragraph (a) of this Item (§ 229.910) is based and, to the extent practicable, the weight assigned to each such factor. Such discussion should include an analysis of the extent, if any, to which such belief is based on the factors set forth in Instructions (2) and (3) to this Item (§ 229.910), paragraph (b)(1) of Item 909 of this subpart (§ 229.909(b)(1)) and Item 911 of this subpart (§ 229.911). This discussion also must:

(1) Compare the value of the consideration to be received in the roll-up transaction to the value of the consideration that would be received pursuant to each of the alternatives discussed in response to Item 908(b) of this subpart (§ 229.908(b)); and

(2) Describe any material differences among the partnerships (e.g., different types of assets or different investment objectives) relating to the fairness of the transaction.

(c) If any offer of the type described in Instruction (2)(viii) to this Item (§ 229.910) has been received, describe such offer and state the reason(s) for its rejection.

(d) Describe any factors known to the general partner that may affect materially the value of the consideration to be received by investors in the roll-up transaction, the values assigned to the partnerships for purposes of the comparisons to alternatives required by paragraph (b) of this Item (§ 229.910)

and the fairness of the transaction to investors.

(e) State whether the general partner's statements in response to paragraphs (a) and (b) of this Item (§ 229.910) are based, in whole or in part, on any report, opinion or appraisal described in response to Item 911 of this subpart (§ 229.911). If so, describe any material uncertainties known to the general partner that relate to the conclusions in any such report, opinion or appraisal including, but not limited to, developments or trends that have affected or are reasonably likely to affect materially such conclusions.

Instructions to Item 910. (1) A statement that the general partner has no reasonable belief as to the fairness of the roll-up transaction to investors will not be considered sufficient disclosure in response to paragraph (a) of this Item (§ 229.910(a)).

(2) The factors which are important in determining the fairness of a roll-up transaction to investors and the weight, if any, which should be given to them in a particular context will vary. Normally such factors will include, among others, those referred to in paragraph (b)(1) of Item 909 (§ 229.909(b)(1)) and whether the consideration offered to investors constitutes fair value in relation to:

(i) Current market prices, if any;

(ii) Historic market prices, if any;

(iii) Net book value;

(iv) Going concern value;

(v) Liquidation value;

(vi) Purchases of limited partnership interests by the general partner or sponsor or their affiliates since the commencement of the partnership's second full fiscal year preceding the date of filing of the disclosure document for the roll-up transaction;

(vii) Any report, opinion, or appraisal described in Item 911 of this subpart (§ 229.911); and

(viii) Offers of which the general partner or sponsor is aware made during the preceding eighteen months for a merger, consolidation, or combination of any of the partnerships; an acquisition of any of the partnerships or a material amount of their assets; a tender offer for or other acquisition of securities of any class issued by any of the partnerships; or a change in control of any of the partnerships.

(3) The discussion concerning fairness should specifically address material terms of the transaction including whether the consideration offered to investors constitutes fair value in relation to:

(i) The form and amount of consideration to be received by investors and the sponsor in the roll-up transaction;

(ii) The methods used to determine such consideration; and

(iii) The compensation to be paid to the sponsor in the future.

(4) Conclusory statements, such as "The roll-up transaction is fair to investors in relation to net book value, going concern value, liquidation value and future prospects of the partnership," will not be considered sufficient disclosure in response to paragraph (b) of this Item (§ 229.910(b)).

(5) Consideration should be given to presenting the comparative numerical data as to the value of the consideration being received by investors, liquidation value and other values in a tabular format. Financial and other information concerning the partnerships should be prepared based upon the most recent available information, such as, in the case of financial information, the periods covered by interim selected financial information included in the prospectus in accordance with Item 914 of this subpart (§ 229.914).

§ 229.911 (Item 911) Reports, opinions and appraisals.

(a)(1) *All material reports, opinions or appraisals.* State whether or not the general partner or sponsor has received any report, opinion (other than an opinion of counsel) or appraisal from an outside party which is materially related to the roll-up transaction including, but not limited to, any such report, opinion or appraisal relating to the consideration or the fairness of the consideration to be offered to investors in connection with the roll-up transaction or the fairness of such transaction to the general partner or investors.

(2) With respect to any report, opinion or appraisal described in paragraph (a)(1) of this Item (§ 229.911):

(i) Identify such outside party;

(ii) Briefly describe the qualifications of such outside party;

(iii) Describe the method of selection of such outside party;

(iv) Describe any material relationship between:

(A) The outside party or its affiliates; and

(B) The general partner, sponsor, the successor or any of their affiliates,

which existed during the past two years or is mutually understood to be contemplated and any compensation received or to be received as a result of such relationship;

(v) If such report, opinion or appraisal relates to the fairness of the consideration, state whether the general partner, sponsor or affiliate determined the amount of consideration to be paid or whether the outside party recommended the amount of consideration to be paid.

(vi) Furnish a summary concerning such report, opinion or appraisal which shall include, but not be limited to, the procedures followed; the findings and recommendations; the bases for and methods of arriving at such findings and recommendations; instructions received from the general partner, sponsor or its affiliates; and any limitation imposed by the general partner, sponsor or affiliate on the scope of the investigation.

(3) Furnish a statement to the effect that upon written request by an investor or his representative who has been so designated in writing, a copy of any such report, opinion or appraisal shall be transmitted promptly, without charge, by the general partner or sponsor. The statement also must include the name and address of the person to whom investors or their representatives should make their request.

(4) All reports, opinions or appraisals referred to in paragraph (a)(1) of this Item (§ 229.911) shall be filed as exhibits to the registration statement.

(5)(i) Describe any contacts in connection with the roll-up transaction between the sponsor or the general partner and any outside party with respect to the preparation by such party of an opinion concerning the fairness of the roll-up transaction, a valuation of a partnership or its assets, or any other report with respect to the roll-up transaction. No description is required, however, of contacts with respect to reports, opinions or appraisals filed as exhibits pursuant to paragraph (a)(4) of this Item (§ 229.911).

(ii) The description of contacts with any outside party required by paragraph (a)(5)(i) of this Item (§ 229.911) shall include the following:

(A) The identity of each such party;

(B) The nature of the contact;

(C) The actions taken by such party;

(D) Any views, preliminary or final, expressed on the proposed subject matter of the report, opinion or appraisal; and

(E) Any reasons such party did not provide a report, opinion or appraisal.

(b) *Fairness opinions.* If any report, opinion or appraisal relates to the fairness of the roll-up transaction to investors in the partnerships, state whether or not the report, opinion or appraisal addresses the fairness of:

(1) The roll-up transaction as a whole and to investors in each partnership;

(2) All possible combinations of partnerships in the rollup transaction (including portions of partnerships if the transaction is structured to permit portions of partnerships to participate). If all possible combinations are not addressed:

(i) Identify the combinations that are addressed;

(ii) Identify the person(s) that determined which combinations would be addressed and state the reasons for the selection of the combinations; and

(iii) State that if the roll-up transaction is completed with a combination of partnerships not addressed, no report, opinion or appraisal concerning the fairness of the roll-up transaction will have been obtained.

(c) *Appraisals.* If the report, opinion or appraisal consists of an appraisal of the assets of the partnerships:

(1) Describe the purpose(s) for which the appraisals were obtained and their use in connection with the roll-up transaction;

(2) Describe which assets are covered by the appraisals and state the aggregate appraised value of the assets covered by the appraisals (including such value net of associated indebtedness). Provide a description of, and valuation of, any assets subject to any material qualifications by the appraiser and a summary of such qualifications;

(3) Identify the date as of which the appraisals were prepared. State whether and in what circumstances the appraisals will be updated. State whether any events have occurred or conditions have changed since the date of the appraisals that may have caused a material change in the value of the assets;

(4) Include as an appendix to the prospectus one or more tables setting forth the following information:

(i) The appraised value of any separately appraised asset that is significant to the partnership holding such asset;

(ii) If the appraiser considered different valuation approaches in preparing the appraisals of the assets identified in response to paragraph (c)(4)(i) of this Item (§ 229.911(c)(4)(i)), the value of each such asset under each valuation approach considered by the appraiser, identifying the valuation approach used by the appraiser in determining the appraised value and the reason such approach was chosen; and

(iii) All material assumptions used by the appraiser in appraising the assets identified in response to paragraph (c)(4)(i) of this Item (§ 229.911(c)(4)(i)), and, if the appraiser used different assumptions for any of such assets, the reasons the different assumptions were chosen.

(5) For purposes of this Item and Item 902 of this subpart (§ 229.902), an asset is "significant" to a partnership if it represents more than 10% of the value of the partnership's assets as of the end of the most recently-completed fiscal year or recently-completed interim period or if 10% or more of the partnership's cash flow or net income for the most recently-completed fiscal year or most recently-completed subsequent interim period was derived from such asset.

Instructions to Item 911. (1) The reports, opinions and appraisals required to be identified in response to paragraph (a) of this Item (§ 229.911) include any reports, opinions and appraisals which materially relate to the roll-up transaction whether or not relied upon, such as reports or opinions regarding alternatives to the roll-up transaction whether or not the alternatives were rejected.

(2) The information called for by paragraph (a)(2) of this Item (§ 229.911) should be given with respect to the firm which provides the report, opinion or appraisal rather than the employees of such firm who prepared it.

(3) With respect to appraisals, a summary prepared by the appraisers should not be included in lieu of the description of the appraisals required by paragraph (c) of this Item (§ 229.911). A clear and concise summary description of the appraisals is required.

§ 229.912 (Item 912) Source and amount of funds and transactional expenses

(a) State the source and total amount of funds or other consideration to be used in the roll-up transaction.

(b)(1) Furnish a reasonably itemized statement of all expenses incurred or estimated to be incurred in connection with the roll-up transaction including, but not limited to, filing fees, legal, financial advisory, accounting and appraisal fees, solicitation expenses and printing costs. Identify the persons responsible for paying any or all of such expenses.

(2) State whether or not any partnership subject to the roll-up transaction will be, directly or indirectly, responsible for any or all of the expenses of the transaction. If any partnership will be so responsible, state the amount to be provided by each partnership and the sources of capital to finance such amount.

(c) If all or any part of the consideration to be used by the sponsor or successor in the roll-up transaction is expected to be, directly or indirectly, provided by any partnership, state the amount to be provided by each partnership and the sources of capital to finance such amount.

(d) If all or any part of the funds or other consideration is, or is expected to be, directly or indirectly borrowed by the sponsor or successor for the purpose of the roll-up transaction:

(1) Provide a summary of each such loan agreement containing the identity of the parties, the term, the collateral, the stated and effective interest rates, and other material terms or conditions; and

(2) Briefly describe any plans or arrangements to finance or repay such borrowing, or, if no plans or arrangements have been made, make a statement to that effect.

(e) If the source of all or any part of the funds to be used in the roll-up transaction is a loan made in the ordinary course of business by a bank as defined by section 3(a)(6) of the Exchange Act and section 13(d) or 14(d) is applicable to such transaction, the name of such bank shall not be made available to the public if the person filing the statement so requests in writing and files such request, naming such bank, with the Secretary of the Commission.

§ 229.913 (Item 913) Other provisions of the transaction.

(a) State whether or not appraisal rights are provided under applicable state law, under the partnership's governing instruments or will be voluntarily accorded by the successor, the general partner or the sponsor (or any of their affiliates) in connection with the roll-up transaction. If so, summarize such appraisal rights. If appraisal rights will not be available to investors who object to the transaction, briefly outline the rights which may be available to such investors under such law.

(b) If any provision has been made to allow investors to obtain access to the books and records of the partnership or to obtain counsel or appraisal services at the expense of the successor, the general partner, the partnership, the sponsor (or any of their affiliates), describe such provision.

(c) Discuss the investors' rights under federal and state law to obtain a partnership's list of investors.

§ 229.914 (Item 914) Pro forma financial statements: selected financial data.

(a) In addition to the information required by Item 301 of Regulation S–K, Selected Financial Data (§ 229.301), and Item 302 of Regulation S–K, Supplementary Financial Information (§ 229.302), for each partnership proposed to be included in a roll-up transaction provide: Ratio of earnings to fixed charges, cash and cash equivalents, total assets at book value, total assets at the value assigned for purposes of the roll-up transaction (if applicable), total liabilities, general and limited partners' equity, net increase (decrease) in cash and cash equivalents, net cash provided by operating activities, distributions; and per unit data for net income (loss), book value, value assigned for purposes of the roll-up transaction (if applicable), and distributions (separately identifying distributions that represent a return of capital). This information should be provided for the same period(s) for which Selected Financial Data and Supplementary Financial Information are required to be provided. Additional or other information should be provided if material to an understanding of each

partnership proposed to be included in a roll-up transaction.

(b) Provide pro forma financial information (including oil and gas reserves and cash flow disclosure, if appropriate), assuming:

(1) All partnerships participate in the roll-up transaction; and

(2) Participation in a roll-up transaction of those partnerships that on a combined basis have the lowest combined net cash provided by operating activities for the last fiscal year of such partnerships, *provided* participation by such partnerships satisfies all conditions to consummation of the roll-up transaction. If the combination of all partnerships proposed to be included in a roll-up transaction results in such lowest combined net cash provided by operating activities, this shall be noted and no separate pro forma financial statements are required.

(c) The pro forma financial statements required by paragraph (b) of this Item (§ 229.914) shall disclose the effect of the roll-up transaction on the successor's:

(1) Balance sheet as of the later of the end of the most recent fiscal year or the latest interim period;

(2) Statement of income (with separate line items to reflect income (loss) excluding and including the roll-up expenses and payments), earnings per share amounts, and ratio of earnings to fixed charges for the most recent fiscal year and the latest interim period;

(3) Statement of cash flows for the most recent fiscal year and the latest interim period; and

(4) Book value per share as of the later of the end of the most recent fiscal year or the latest interim period.

Instructions to Item 914. (1) Notwithstanding the provisions of this Item (§ 229.914), any or all of the information required by paragraphs (b) and (c) of this Item (§ 229.914) that is not material for the exercise of prudent judgment in regard to the matter to be acted upon, may be omitted.

(2) If the roll-up transaction is structured to permit participation by portions of partnerships, consideration should be given to the effect of such participation in preparing the pro forma financial statements reflecting a partial roll-up.

§ 229.915 (Item 915) Federal income tax consequences.

(a) Provide a brief, clear and understandable summary of the material Federal income tax consequences of the roll-up transaction and an investment in the successor. Where a tax opinion has been provided, briefly summarize the substance of such opinion, including identification of the material consequences upon which counsel has not been asked, or is unable, to opine. If any of the material Federal income tax consequences are not expected to be the same for investors in all partnerships, the differences shall be described.

(b) State whether or not the opinion of counsel is included as an appendix to the prospectus. If filed as an exhibit to the registration statement and not included as an appendix to the prospectus, include a statement to the effect that, upon receipt of a written request by an investor or his representative who has been so designated in writing, a copy of the opinion of counsel will be transmitted promptly, without charge, by the general partner or sponsor. The statement should include the name and address of the person to whom investors should make their request.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

5. The authority citation for part 239 continues to read, in part, as follows:

Authority: 15 U.S.C. 77a, *et seq.*, unless otherwise noted.

§ 239.25 [Amended]

6. By amending Form S–4 (17 CFR 239.25) by adding General Instruction I to read as follows:

Note: Form S–4 does not appear in the Code of Federal Regulations.

Form S–4

* * * * *

General Instructions

* * * * *

I. *Roll-Up Transactions.*

1. If securities to be registered on this Form will be issued in a roll-up transaction as defined in Item 901(c) of Regulation S–K (17 CFR 229.901(c)), then the disclosure provisions of subpart 229.900 of Regulation S–K (17 CFR 229.900) shall apply to the transaction in addition to the provisions of this Form. To the extent that the disclosure requirements of subpart 229.900 are inconsistent with the disclosure requirements of any other applicable forms or schedules, the requirements of subpart 229.900 are controlling.

2. If securities to be registered on this Form will be issued in a roll-up transaction as defined in Item 901(c) of Regulation S–K (17 CFR 229.901(c)), the prospectus must be distributed to security holders no later than the lesser of 60 calendar days prior to the date on which action is to be taken or the maximum number of days permitted for giving notice under applicable state law.

§ 239.34 [Amended]

7. By amending Form F–4 (17 CFR 239.34) by adding General Instruction G to read as follows:

Note: Form F–4 does not appear in the Code of Federal Regulations.

Form F–4

* * * * *

General Instructions

* * * * *

G. *Roll-Up Transactions.*

1. If securities to be registered on this Form will be issued in a roll-up transaction as defined in Item 901(c) of Regulation S–K (17 CFR 229.901(c)), then the disclosure provisions of subpart 229.900 of Regulation S–K (17 CFR 229.900) shall apply to the transaction in addition to the provisions of this Form. To the extent that the disclosure requirements of subpart 229.900 are inconsistent with the disclosure requirements of any other applicable forms or schedules, the requirements of subpart 229.900 are controlling.

2. If securities to be registered on this Form will be issued in a roll-up transaction as defined in Item 901(c) of Regulation S–K (17 CFR 229.901(c)), the prospectus must be distributed to security holders no later than the lesser of 60 calendar days prior to the date on which action is to be taken or the maximum number of days permitted for giving notice under applicable state law.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

8. The authority citation for part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77s, 77ttt, 78c, 78d, 78i, 78j, 78l, 78m, 78n, 78o, 78p, 78s, 78w, 78x, 79q, 79t, 80a–29, 80a–37, unless otherwise noted.

* * * * *

9. By amending § 240.14a–6 (17 CFR 240.14a–6) by adding new paragraph (m) to read as follows:

§ 240.14a–6 Filing requirements.

* * * * *

(m) *Roll-up transactions.* If a transaction is a roll-up transaction as defined in Item 901(c) of Regulation S–K (17 CFR 229.901(c)) and is registered (or authorized to be registered) on Form S–4 (17 CFR 229.25) or Form F–4 (17 CFR 229.34), the proxy statement of the sponsor or the general partner as defined in Item 901(d) and Item 901(a), respectively, of Regulation S–K (17 CFR 229.901) must be distributed to security holders no later than the lesser of 60 calendar days prior to the date on which the meeting of security holders is held or action is taken, or the maximum number of days permitted for giving notice under applicable state law.

10. By amending § 240.14c–2 (17 CFR 240.14c–2) by adding new paragraph (c) to read as follows:

§ 240.14c–2 Distribution of information statement.

* * * * *

(c) If a transaction is a roll-up transaction as defined in Item 901(c) of Regulation S–K (17 CFR 229.901(c)) and is registered (or authorized to be registered) on Form S–4 (17 CFR 229.25) or Form F–4 (17 CFR 229.34), the information statement must be distributed to security holders no later than the lesser of 60 calendar days prior to the date on which the meeting of security holders is held or action is taken, or the maximum number of days permitted for giving notice under applicable state law.

11. By amending § 240.14e–1 (17 CFR 240.14e–1) by revising paragraph (a) to read as follows:

§ 240.14e–1 Unlawful tender offer practices.

* * * * *

(a) Hold such tender offer open for less than twenty business days from the date such tender offer is first published or sent to security holders; provided, however, that if the tender offer involves a roll-up transaction as defined in Item 901(c) of Regulation S–K (17 CFR 229.901(c)) and the securities being offered are registered (or authorized to be registered) on Form S–4 (17 CFR 229.25) or Form F–4 (17 CFR 229.34), the offer shall not be open for less than sixty calendar days from the date the tender offer is first published or sent to security holders;

* * * * *

Dated: October 30, 1991.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–26632 Filed 11–7–91; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 2, 154, 157, 284, 375, and 380

[Docket No. RM90–1–002]

Revisions to Regulations Governing Authorizations for Construction of Natural Gas Pipeline Facilities

October 30, 1991.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule; notice of technical conference.

SUMMARY: On September 20, 1991, the Commission issued a final rule, Order No. 555, to revise its regulations governing authorizations to construct natural gas pipeline facilities and its environmental regulations (56 FR 52330, October 18, 1991). A technical conference will be held solely on the environmental provisions of the order, as well as the Interim Guidelines for Applicant-Prepared Draft Environmental Assessments, issued by the Director of Pipeline and Producer Regulation on September 12, 1991. All persons are invited to attend and to participate.

DATES: The conference will be held on Tuesday, November 12, 1991 at 10 a.m.; requests to participate should be filed by November 5, 1991.

ADDRESSES: The conference will be held in Hearing Room 1, 810 First Street, NE., Washington, DC; requests to participate should be filed with the Secretary of the Commission, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Lois Cashell, Secretary of the Commission, (202) 208–0400.

SUPPLEMENTARY INFORMATION: A transcript will be made of the technical conference. All interested persons are invited to attend and to participate. All persons intending to participate should include in their request to participate the amount of time desired for presentation. Participants will be restricted to lesser periods of time if necessary to afford each participant an opportunity to speak.

Lois D. Cashell,

Secretary.

[FR Doc. 91–26826 Filed 11–7–91; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

23 CFR Part 1327

[Docket No. 84–02; Notice 9]

RIN 2127–AD26

Procedures for Participating in and Receiving Data From the National Driver Register Problem Driver Pointer System

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

ACTION: Final rule; correction.

SUMMARY: On August 20, 1991 (56 FR 41394), NHTSA published a final rule implementing the new National Driver Register (NDR) system, also called the Problem Driver Pointer System (PDPS), which was developed and pilot tested in accordance with the NDR Act of 1982. Specifically, the final rule established the procedures that a State must follow to notify the agency of its intention to participate in the NDR PDPS, the conditions of State participation, and the procedures and conditions under which other authorized parties may receive NDR information. This document corrects errors that appeared in the regulatory text and appendix A to the August 20, 1991, final rule.

FOR FURTHER INFORMATION CONTACT: Mr. Clayton Hatch, Chief, Driver and Vehicle Services Division (NTS–24), National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590; telephone (202) 366–4800.

SUPPLEMENTARY INFORMATION: Section 1327.6 of the final rule contains two paragraphs numbered (e). The first, which begins on page 41407, third column, includes the heading "U.S. Coast Guard;" the second, which begins on page 41408, first column, includes no heading but pertains to third parties. This correction notice adds a heading to and redesignates the second paragraph (e). It also redesignates the remaining paragraphs in that section.

Appendix A to the final rule contains an Abridged Listing of the American Association of Motor Vehicle Administrators (AAMVA) Violations Exchange Code, used by the NDR for Recording Driver License Denials and Withdrawals. The preamble to the final rule, on page 41397, column 2, states that, "NHTSA believes that the codes it has excluded from the abbreviated list (such as suspension for failure to pay insurance) are of questionable utility to those served by the NDR, and States should not be required to submit this information." Inadvertently, two such codes (FR4, failure to file future proof of financial responsibility as required under any other provision of the financial responsibility law, and FR5, failure to maintain required compulsory liability insurance) were mistakenly included on the Abridged Listing. This correction notice removes these two codes from the list.

This correction notice also corrects a punctuation error. Accordingly, the following corrections are made on page 41408 of Volume 56 of the **Federal Register**, in the issue that was published on August 20, 1991:

§ 1327.6 [Corrected]

1. In the first column, line 1, change "(e)" to "(f) *Third Parties.*".

2. In the first column, line 35, change "(f)" to "(g)".

3. In the first column, line 52, remove the symbol "(" which appears after the word "maiden".

Appendix A [Corrected]

4. In the third column, remove lines 3–7

Issued on: October 30, 1991.

Editorial Note: For a related document, see the Corrections Section in this issue of the **Federal Register.**

Jerry Ralph Curry,

Administrator, National Highway Traffic Safety Administration.

[FR Doc. 91–26681 Filed 11–7–91; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 202, 206, 210, and 212

RIN 1010–AB22

Revision of Geothermal Resources Valuation Regulations and Related Topics

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Final rule.

SUMMARY: The Minerals Management Service (MMS) is amending its regulations governing the valuation of Federal geothermal resources for the purposes of computing and paying royalties. The revised regulations describe the methods by which value is determined for all geothermal resources, including byproducts, produced from Federal leases.

EFFECTIVE DATE: January 1, 1992.

FOR FURTHER INFORMATION CONTACT: Dennis C. Whitcomb, Chief, Rules and Procedures Branch, MMS, Royalty Management Program, Mail Stop 3910, P.O. Box 25165, Denver, Colorado, 80225–0165, (303) 231–3432 or (FTS) 326–3432.

SUPPLEMENTARY INFORMATION: The principal authors of this final rule are Charles Brook and Michael Throckmorton of the Royalty Valuation and Standards Division, Royalty Management Program, MMS, Lakewood, Colorado.

I. Introduction

On January 5, 1989, MMS published a notice in the **Federal Register** (54 FR 354) of a proposed rulemaking revising geothermal resources valuation regulations. This action was undertaken because the existing regulations at 30 CFR 206.350 and 206.351 provide only a list of general criteria that could be considered in establishing the value of geothermal production for royalty purposes; they do not give specific guidance or standards on how to apply the criteria. They particularly do not provide sufficiently specific standards for valuing those geothermal resources that are utilized directly by the lessee and consequently are not subject to a sales transaction on which to determine value.

To resolve some of the shortcomings of the regulations and to establish consistent valuation standards, MMS instituted various interpretative policies and procedures. Specific valuation procedures were developed within the context of, and consistent with, the existing regulations. Standards and procedures for valuing those geothermal resources used to generate electricity were set forth in the report "Valuation of Federal Geothermal Resources—Electrical Generation" issued to the public in October 1987 and revised June 1988. Standards and procedures for valuing those few geothermal resources used in direct utilization processes were issued to lessees on the basis of individual need.

The public comment period for the proposed rulemaking closed April 17, 1989, having been extended from March 6, 1989 (54 FR 9066, March 3, 1989), during which MMS received 15 responses to its request for comments. A public hearing was held on March 28, 1989, in Lakewood, Colorado, where 10 individuals made oral presentations.

The public comment period was reopened from May 7 to June 6, 1990, to obtain additional information on the rates of return applicable to capital investments in geothermal power projects (55 FR 18911, May 7, 1990, and 55 FR 20679, May 18, 1990). Additional comments on any other issues called for in the first notice of proposed rulemaking were also welcomed if new information had become available since the close of the initial comment period. Six comments were received during the second comment period; five addressed the rate of return issue and one addressed measurement standards.

After carefully considering all of the public comments received during the rulemaking process, MMS hereby adopts final regulations governing the valuation of geothermal resources from Federal leases.

II. Purpose and Background

The MMS is revising the current regulations governing the valuation of Federal geothermal resources to accomplish the following:

(a) Clarify existing valuation policy and standards as they apply to geothermal resources used for electrical generation;

(b) Provide clear standards for valuing geothermal resources used in direct utilization processes;

(c) Provide clear standards for valuing geothermal byproducts; and

(d) Provide industry and the public with a comprehensive and consistent geothermal valuation policy.

For the convenience of geothermal resources lessees, payors, and the public, the following chart summarizes the effects of these rules.

Regulation changes	Descriptions
I. *Title Revision:*	
Part 212:	
The title of subpart B is revised to read "Oil, Gas, and OCS Sulfur—General"..	Retitled for consistency with the title of subpart B in other parts of MMS regulations.
II. *Removals:*	
Part 206:	
Sections 206.350 and 206.351 are removed from subpart H.....	These sections are replaced by new sections.
Part 210:	
Sections 210.350 and 210.351 are removed from subpart H.....	These sections are replaced by new sections.
Part 212:	
The authority citation under subpart B is removed.....	This is an administrative amendment because the authority citation is not required under the subpart.
III. *Additions:*	
Part 202:	
New §§ 202.350, 202.351, 202.352 and 202.353 are added to subpart H.....	These new sections provide geothermal resources valuation standards and procedures.
Part 206:	
New §§ 206.350, 206.351, 206.352, 206.353, 206.354, 206.355, 206.356, 206.357, and 206.358 are added to Subpart H.	These new sections provide geothermal resources valuation standards and procedures.

Regulation changes	Descriptions
Part 210:	
New §§ 210.350, 210.351, 210.352, 210.353, 210.354, and 210.355 are added to subpart H.	These new sections provide geothermal resources reporting standards and procedures.
Part 212:	
New §§ 212.350 and 212.351 are added to Subpart H	These new sections were added to provide geothermal resources recordkeeping standards and procedures.

This rule applies prospectively to production on and after the effective date specified in the **EFFECTIVE DATE** section of this preamble. It supersedes all existing geothermal resources valuation directives issued by MMS or its predecessor Agency, the U.S. Geological Survey. However, the general concepts and principles provided by this rule will be applied to geothermal value determinations currently pending before MMS unless these concepts and principles are specifically precluded from use by previously effective rules. Specific guidelines governing valuation and reporting requirements consistent with the new valuation regulations will be incorporated into a Geothermal Payor Handbook at a future date.

This rule applies only to the valuation, for royalty purposes, of geothermal resources produced from leases issued under the authority of the Geothermal Steam Act of 1970, as amended (30 U.S.C. 1001–1025).

Geothermal valuation standards—contained in part 206—are grouped according to how the geothermal resource is used: Electrical generation, direct utilization, and/or byproduct recovery. Valuation standards within each group are described according to the type of transaction under which the resource is disposed: Arm's-length sales, non-arm's-length sales, and dispositions not subject to a sales transaction—the so-called "no sales" dispositions where the resource is used directly by the lessee. Valuation standards are different for each group.

Geothermal resources are a concentration of the Earth's natural heat, or thermal energy. They provide a fundamental form of energy that can be used directly in any process requiring heat for operation. However, they must be used in some fashion, either by performing thermodynamic work or by transferring the heat to other mediums, to be of any benefit. Generally, the quality of the resource, primarily temperature, dictates the type of usage suitable to the resource. Higher-temperature geothermal resources are particularly suited to the generation of electricity; lower-temperature resources are suited to a wide variety of space heating and other direct utilization functions.

Unlike other energy resources—such as oil, gas, and coal—geothermal resources must be used immediately after production and in close proximity to the production well because of the rapid dissipation of heat in the surface environment. Accordingly, markets for geothermal resources are restricted to the fields in which they are produced and to the type of usage for which they are suited. Therefore, geothermal resources do not have a truly open market.

Development of geothermal resources has been aided in the last few years by implementation of the Public Utilities Regulatory Policies Act of 1978, 16 U.S.C. 2601 (PURPA). This legislation permits the ownership and operation of electrical powerplants by nonutility companies and requires public utilities to purchase the electricity from these powerplants at avoided costs. As a result, several geothermal developers have constructed their own geothermal powerplants to use resources that otherwise might be bypassed.

One of the most controversial issues in this rulemaking was the method of valuing those resources used by the lessee in its own powerplant for the generation and sale of electricity. On the basis of past practice and policy, MMS proposed the geothermal netback valuation procedure. The MMS also described and requested comments on the proportion-of-profits method proposed by industry as an alternative to the netback procedure. Following review of the public comments and consideration of the pros and cons of each valuation method, MMS is adopting the netback procedure as its valuation policy. Because of public comments, MMS is deleting the weighted-average method as the first valuation benchmark for non-arm's-length and no sales dispositions under proposed paragraph (c) of § 206.352. As a result, the valuation criteria will emphasize the netback procedure. Paragraph (c) is revised to address valuation under non-arm's-length sales and a new paragraph (d) is added to address valuation under no sales situations. The rationale for these decisions is discussed in the following section.

III. Response to Comments Requested on Specific Issues

In the preamble of the proposed rulemaking (54 FR 354, January 5, 1989), MMS requested comments on a variety of issues, some of which were conceptual and others of which were related to specific sections of the regulations. Consequently, most of the comments received were confined to the stated issues. The issues are restated below in question format and addressed in the order they appeared in the preamble; the applicable sections of the proposed regulations are given, where appropriate, to facilitate reference. Comments received during the second comment period are introduced in the appropriate issues only where they differ substantially from initial comments or add new insight to the issue.

Comments were received from industry, industry trade organizations (both geothermal and electrical utility), a Federal Agency, States, a city, private interest owners, and other interested parties. Respondents were generally divided, with industry on one side of the issues and States and royalty interest owners on the other side.

As a general matter, MMS is adopting the proposed provisions regarding geothermal resources disposed of pursuant to arm's-length transactions: with some exceptions, value will be determined by the lessee's gross proceeds. Most of the comments addressed below relate to non-arm's-length and "no sales" situations.

(a) Section 202.353 Measurement Standards for Reporting and Paying Royalties

What should be the proper reporting units for direct utilization resources when measurements are made on a volume (gallonage) basis (proposed § 202.353(b))?

Two comments were received regarding reporting units. One respondent suggested that reporting units be consistent with a heat measurement because heat is the resource being used; either millions of Btu's (MMBtu) or therms (100,000 Btu) were recommended for reporting geothermal production. The other

respondent recommended that reporting units be based on whatever unit of measurement and royalty is based on, consistent with other mineral commodities. For most direct-use geothermal resources, this unit would be MMBtu's rather than hundreds of gallons because all current, and likely most future, direct-use valuations will be based on the alternative-fuels approach.

MMS Response: The MMS agrees that reporting units should be the same as those on which royalty is based. Reporting standards for electrical-generation resources already allow for multiple reporting units; doing the same for direct-use resources would have little impact on accounting procedures and would simplify the audit process, the Bureau of Land Management's (BLM) production verification process, and the lessee's reporting. Accordingly, paragraph (b) of § 202.353, governing the measurement standards for reporting and paying royalties on direct-use geothermal resources, is modified in the final rule to provide for multiple reporting units.

(b) Section 206.352, Valuation Standards for Electrical Generation

(1) Is the weighted-average method proposed as the first non-arm's-length and "no sales" valuation benchmark (proposed § 206.352(c)(1)(i)) appropriate for valuing geothermal resources?

Six respondents representing States, private interest owners, and an industry trade organization, commented on the weighted-average method as a benchmark for determining geothermal values in non-arm's-length and no sales situations; five were opposed to the concept and one (the industry trade organization) suggested it could be used but with modification. In addition, one speaker at the public hearing argued against the weighted-average method.

Value under the proposed weighted-average method would have been determined by the weighted average of the gross proceeds paid or received by the lessee under its own arm's-length contracts for the purchase or sale of similar quantities of like-quality geothermal resources in the same field. Most of the comments opposing the weighted-average benchmark focused on the inclusion of antiquated sales contracts that do not reflect current market values. Thus, the weighted-average method would tend to skew geothermal values toward obsolete, lower prices. One commenter indicated that the method is administratively unrealistic because of the varying vintages and pricing schemes of arm's-length contracts.

Some commenters questioned whether the method was needed or appropriate because of its infrequent use. Other respondents recommended that the weighted-average method be abandoned as a benchmark and replaced with the netback procedure.

The one commenter supporting the weighted-average method suggested that it may be useful in certain circumstances, but did not elaborate. This commenter also suggested incorporating an efficiency factor to adjust resource values for different powerplant efficiencies. (One other commenter also suggested factoring in plant efficiencies, but as an incentive for efficient operation.) A timeframe during which a weighted-average value would be determined was also suggested.

MMS Response: The valuation for royalty purposes of Federal mineral resources disposed of under non-arm's-length sales contracts or without a sales contract has long been a contentious issue. With the promulgation of new oil and gas valuation regulations effective March 1, 1988 (53 FR 1184 and 53 FR 1230, January 15, 1988), MMS instituted a hierarchical system that embodies a series of methods, or "benchmarks," ranked in succeeding order of use for valuing these resources. A benchmark system was also adopted in the new coal valuation regulations effective March 1, 1989 (54 FR 1492, January 13, 1989). The determination of value under the oil, gas, and coal benchmark systems is based first on a comparison of the lessee's gross proceeds derived under its non-arm's-length contract with the gross proceeds established under comparable arm's-length transactions occurring in the same field or area. Various criteria were established to evaluate the comparability of an arm's-length transaction. Other valuation methods in order of priority are used in the absence of comparable arm's-length transactions.

The MMS also proposed a benchmark system for valuing geothermal resources not sold under arm's-length contracts (i.e., geothermal resources disposed under non-arm's-length and "no sales" conditions), with the weighted-average method as the first benchmark (proposed § 206.352(c)(1)(i)). As proposed, the weighted average would have been based on the gross proceeds paid or received by the lessee under its own arm's-length contracts for the purchase or sale of similar quantities of like-quality geothermal resources in the same field. Contract vintages or other comparability criteria were not considered, due in part to MMS's belief that this benchmark would be seldom used because of its "similar quantity" restriction.

The MMS now agrees with the majority of the commenters that the weighted-average method as proposed is not a satisfactory method for establishing reasonable value. In addition to the concerns expressed in the public comments regarding contract vintages, MMS is concerned that the proceeds paid or received by the lessee under only its own arm's-length contracts for the purchase or sale of similar quantities of like-quality resources in the same field may not reflect reasonable value because of the variety of resource characteristics and usages and the multitude of powerplant designs and efficiencies. Nonetheless, prices established in arm's-length contracts may reflect at least a local market and could be practical gauges for defining comparable value. Thus, weighted averages of arm's-length gross proceeds could provide reasonable resource values in certain situations.

As previously indicated, § 206.352(c) is revised to address valuation only of those electrical generation resources disposed under non-arm's-length contracts. The MMS believes that the gross proceeds received under a lessee's non-arm's-length contract must be considered in any valuation scheme. Accordingly, the first benchmark in § 206.352(c)(1)(i) is revised to establish the gross proceeds received by the lessee under its non-arm's-length contract as value for royalty purposes provided those gross proceeds are not less than the gross proceeds derived from or paid under the lowest-priced available comparable arm's-length contract for sales of geothermal resources to the lessee-affiliate's same powerplant (the "minimum value"). If the gross proceeds under the lessee's non-arm's-length contract are less than the minimum value, or if there are no available comparable arm's-length contracts, value will be determined by the weighted average of the gross proceeds established under arm's-length contracts for the sales of significant quantities of geothermal resources to the same powerplant.

For purposes of this benchmark, available contracts means contracts in the possession of the lessee, the lessee's affiliate, or MMS. Because the lessee and powerplant operator are affiliated in non-arm's-length transactions, the arm's-length contracts used for comparative purposes will involve only sellers unaffiliated with the lessee and the powerplant operator. The comparability of an arm's-length contract would be determined by its

similarity to the non-arm's-length contract, considering such factors as time of execution, duration, terms, quality of the geothermal resource, volume, dedication to the same powerplant, and other factors that may be appropriate to reflect the value of the resource. Comparability of volumes is particularly necessary to avoid the possibility that purchases of small quantities of resources may unduly affect the valuation. While the term "significant quantities" is not readily quantifiable, it is intended to exclude unusual purchases of small volumes that may unduly skew the value.

Only those geothermal resources utilized in the same powerplant are compared because other powerplants in the field or area may, and often do, have different conversion efficiencies and different sales prices for the generated electricity. (The lessee's arm's-length sales of any excess geothermal resources from the same lease to another powerplant operator would not necessarily be considered a measure of value for the same reasons.) Conversion efficiencies and electricity sales prices will in part dictate what the purchaser is willing to pay for geothermal resources. Thus, the same resource may have different values to different powerplant operators.

The MMS still believes this first valuation benchmark, even though in revised form, will seldom be used because there likely will be few instances where the lessee's powerplant affiliate will need to purchase geothermal resources to operate the powerplant. Nonetheless, such a scenario is possible and must be considered.

If no comparable arm's-length contracts exist, or if there are no arm's-length contracts for sales of significant quantities of geothermal resources to the same powerplant, then value will be established by the second benchmark, the netback procedure in § 206.352(c)(1)(ii). The MMS believes this will be the most widely used method for valuing geothermal resources disposed of under non-arm's-length contracts. The netback procedure is designated as the second valuation benchmark to clarify its order of usage. (The netback procedure is discussed further below.) "A value determined by any other reasonable valuation method approved by MMS" is redesignated as the third benchmark in § 206.352(c)(1)(iii); this provision is intended to be used only in those instances where the lessee can demonstrate that the first two valuation benchmarks are unworkable.

Paragraph (c) of § 206.352 is further modified by reassigning valuation standards for those geothermal resources not subject to a sales transaction but instead used by the lessee in its own powerplant for the generation and sale of electricity—the "no sales" resources—to a new paragraph (d); succeeding paragraphs are recodified accordingly. This revision is made to distinguish "no sales" valuations as a separate category with specific valuation standards.

Valuation criteria for "no sales" resources are established in a benchmark system similar to that for non-arm's-length sales valuations, with the first benchmark again considering prices established in arm's-length sales contracts as a measure of value. Although the lessee generally will use only its own geothermal resources to operate the powerplant, there may be some situations where the lessee purchases additional resources from other producers for powerplant consumption. These other purchases, if arm's-length, would provide a logical basis for establishing value. Accordingly, the first valuation benchmark for "no sales" geothermal resources at paragraph (d)(1)(i) is revised to consider the weighted average of the gross proceeds established in arm's-length contracts for the purchase of significant quantities of geothermal resources to operate the lessee's powerplant. The acceptability of the gross proceeds under the arm's-length contract(s) to value the lessee's production will be determined in large part by the volume and quality of resources purchased compared to that of the lessee's own production; other contract elements such as a time of execution, duration, terms, and other factors affecting the disposition or value of the resource will also be considered. Thus, for example, prices established in a contract entered into after commencement of power generation, for a short period of time, and/or for small volumes of resource would not necessarily be considered in determining value. On the other hand, prices established in a contract (or contracts) executed before or at the time of commencement of power generation, for the life of the electricity sales contract, and for volumes approaching or exceeding those of the lessee's own production would be considered in determining value. The MMS reserves the right, however, to determine whether the arm's-length prices or gross proceeds are reasonable.

As with the first benchmark under the non-arm's-length valuations, MMS believes that the first "no sales" valuation benchmark will have limited application. Again, however, such a scenario is possible and should be the first choice for valuation.

The second benchmark under the revised "no sales" valuation standards in § 206.352(d)(1)(ii) is the netback procedure. The MMS anticipates that this procedure will be used to value most geothermal resources used by lessees in their own powerplant. "Other reasonable valuation methods approved by MMS" is assigned as a third benchmark in § 206.352(d)(1)(iii), with the intent that this benchmark would be used only when the lessee demonstrates that the first two benchmarks are unworkable.

(2) Should the "area" concept for comparative valuation in non-arm's length and "no sales" situations be abandoned?

No comments specifically addressed abandonment of the "area" concept. Commenters generally recognized the highly variable nature of geothermal resources.

MMS Response: In the preamble of the proposed rulemaking, MMS concluded that a non-arm's-length or "no sales" valuation based on comparison to contract sales outside of any given field was inappropriate because of the highly variable nature of geothermal resources. Accordingly, the "area" concept, in which sales of like-quality resources in nearby fields or areas would be considered for valuing lease production, was rejected. Upon further consideration, MMS believes that comparison of contract sales even within a given field also may not be an appropriate method for determining value of lease production in non-arm's-length and "no sales" situations. As discussed above, the same resource may have different values to different purchasers because of different powerplant efficiencies and electricity sales prices. Accordingly, MMS has further restricted the use of other sales transactions for comparative valuation purposes to those contracts supplying resources to the lessee's or lessee's power-generating affiliate's powerplant.

(3) Is the concept of not using prices established in other lessee's contracts and the rejection of the majority price approach appropriate for geothermal valuation?

The issue of not using prices established in other lessee's contracts to determine value under the weighted-average benchmark was indirectly addressed by two commenters, both within the context of rejecting the weighted-average method. The

commenters agreed with MMS's belief that other lessees' contracts should not be considered because of differing prices and powerplant efficiencies. They also declared that the subject lessee's other contracts should not be considered for the same reasons. One commenter said that prices established in arm's-length contracts might be used for valuation purposes, but that such a valuation method should be the second benchmark after the netback procedure.

Only one comment was received regarding the rejection of the majority price approach due to substitution of the weighted-average method. That commenter suggested that the majority price approach may be useful in certain limited situations and that the lessee should be allowed to demonstrate to MMS that such an approach is appropriate.

MMS Response: The MMS has addressed the applicability of contract prices in its discussion of the weighted-average method. The MMS maintains that prices established in arm's-length contracts are valid measures of value if certain qualifications are met. Because the use of arm's-length contracts is greatly restricted, a majority price approach becomes impractical for determining value.

(4) Should the netback valuation procedure (proposed §§ 206.353 and 206.354) be modified and, if so, how?

Most of the comments received on the netback procedure during the first comment period were philosophical arguments addressing its suitability as a valuation method. Twelve respondents representing the views of States, industry, and private interest owners commented either directly or indirectly on the netback procedure's propriety. Several respondents merely stated a position, with nonindustry commenters favoring the netback procedure and most of the industry commenters opposing it. Aside from comments on the appropriate rate of return, which is addressed later, few respondents suggested specific modifications to the netback procedure. In comments received during the second comment period, however, five industry respondents collectively advocated certain specific modifications to the netback procedure, which, together with an increase in the rate of return, would result in a resource value during the term of a project that would be equivalent to the value calculated by the proportion-of-profits method. Comments arguing the suitability of the netback procedure will be reviewed first, followed by comments addressing specific modifications to the procedure.

Most industry respondents, particularly those representing integrated resource and power producers, strongly opposed the netback procedure. Much of the testimony presented at the public hearing was in opposition to the netback procedure. Several reasons, which were itemized and discussed in one industry trade organization response, were given for the netback procedure's inapplicability for valuing geothermal resources. The MMS will respond to each reason individually.

The commenter's first reason is that the netback approach is conceptually inappropriate because it is not responsive to the economic realities of the geothermal industry and does not recognize all costs associated with enhancement of the resource downstream of the wellhead. The commenter stated further that the value of the geothermal resource is dependent on the economics of transforming heat into usable work or another form of energy; e.g., electricity. In establishing an acceptable economic price for sales of either the resource or electricity, it was alleged that the geothermal producer would take into account his costs of developing the resource and transporting it to its point of utilization. The commenter argued that because geothermal resources are usually in marketable condition at the wellhead, each cost element of the geothermal utilization process downstream of the wellhead would add value to the resource. Accordingly, each cost element downstream of the wellhead would be part of the total processing cost and should be deductible.

MMS Response: A netback approach is a recognized method of deriving the value of mineral resources for royalty purposes. The MMS disagrees that the netback procedure is conceptually inappropriate for valuing geothermal resources used to generate electricity. The electricity generated by geothermal powerplants is a form of energy converted from the naturally occurring thermal energy of the resource (first law of thermodynamics). The conversion is accomplished by the equipment of the powerplant facility. Under the netback procedure, the value of the geothermal resource (thermal energy) is determined by subtracting the costs of generating and transmitting electricity from the revenue received for the sale of the electricity (that is, the value of the electricity). Thus, the resource value tracks the value of the converted form of energy (electricity) derived from use of the resource. The cost deductions also allow for a return on the lessee's invested capital. The MMS believes, in these respects, that the netback procedure is indeed responsive to the economic realities of the geothermal power industry.

Based on MMS's experience, cost deductions allowed under the netback procedure can exceed two-thirds of the value of electricity, thus deriving a geothermal resource value that is less than one-third of the electricity value. (As discussed later, the two-thirds and 50 percent threshold limits on generating and transmission deductions, respectively, are not being adopted. The two-thirds cost deduction cited here is used only for comparative purposes.) The MMS is aware of arm's-length contracts that establish the value of the geothermal resource at approximately one-half the value of the electricity. The MMS is also aware of revenue sharing agreements in which the geothermal owner receives a percentage of the total revenue accruing to the geothermal developer for sale of electricity (that is, a percentage of the full value of the electricity without any deductions); the revenue sharing rates in these agreements are greater than the royalty rates provided in Federal geothermal leases. The MMS therefore believes that the values derived by the netback procedure are reasonable in view of actual industry practice.

The MMS disagrees that all costs downstream of the wellhead enhance the value of the resource, especially those costs associated with transporting the resource from the wellhead to the point of utilization. The MMS maintains that the enhancement of the resource's value occurs in the energy conversion process performed by the powerplant and in the transmission line operations. The MMS believes that the netback procedure adequately accounts for the costs associated with these value-enhancing operations. Furthermore, the lessee is ultimately responsible under the terms of the Geothermal Resources Lease to avoid waste of the resource; this responsibility is repeated at 43 CFR 3262.1(b)(1). "Waste" is defined at 43 CFR 3260.0–5(c)(4) as "the inefficient transmission of geothermal energy from the source (wellhead) to point of utilization."

The lessee also has the right under the Geothermal Resources Lease to site a powerplant (or other utilization facility) on the Federal lease. Inasmuch as placement of a powerplant is largely a matter of the lessee's choice, MMS does not believe that the royalty value of a Federal geothermal resource should suffer because the lessee or its affiliate chooses a powerplant site distant from

the lease. The MMS contends that the costs of gathering and transportation should not be allowable expenses unless the resource is made more valuable by transporting it to a powerplant located off the lease. To the contrary, it can be argued that a geothermal resource becomes increasingly less valuable as it is transported farther from the wellhead due to the continued dissipation of heat and resultant loss of enthalpy. How the value of the resource is increased by transportation or how transportation is considered part of the utilization process has not been clearly demonstrated to MMS. Accordingly, MMS maintains its position that all costs of gathering and transporting the geothermal resource from the wellhead to the point of utilization are to be borne solely by the lessee/operator or resource user, unless the lessee can demonstrate that value is actually enhanced by the gathering and/or transportation operations.

The second argument presented by the commenter is that the netback procedure undercompensates for the full cost of capital invested in electrical generation and transmission facilities. The commenter explained that substantial investment in the form of debt and equity is incurred in these facilities prior to commercial operations and before receipt of revenue and creation of value. Thus, the treatment of return under the netback procedure results in a mismatch between the structure of the actual costs of capital and allowed deductions.

MMS Response: The MMS agrees that debt and equity costs associated with power generation and transmission facilities are part of the lessee's actual capital costs to install those facilities. The regulations governing allowable capital investments under the netback procedure (appearing at paragraphs (b)(2) of §§ 206.353 and 206.354) are intended to reflect inclusion of debt and equity costs. A list of specific allowable capital items and costs will be addressed in the Geothermal Payor Handbook.

In a related issue, MMS would like to clarify its position on deductions for real estate purchases and acquisitions of easements or rights-of-way to site geothermal utilization facilities. Real estate purchases were specifically excluded as allowable capital investments in the proposed rule (§§ 206.353(b)(2) and 206.354(b)(2)). Lessees have requested a deduction for the purchase of a powerplant site. Real estate is not a depreciable asset and MMS therefore does not allow real estate purchases as part of the capital investment for depreciation purposes. Also, as previously indicated, the Geothermal Resources Lease confers to the lessee the right to construct and operate all facilities necessary to produce and use the resource and to use as much of the surface of the leased land as is necessary for these functions. The MMS therefore would normally view the purchase of an off-lease site for a geothermal powerplant as an unnecessary cost.

On the other hand, MMS will recognize the costs of acquiring easements or rights-of-way and the costs of renting or leasing powerplant sites and transmission corridors as acceptable deductions. The method of incorporating these costs into the transmission line and generating cost rate calculations would depend on their accounting disposition. For example, if an easement or right-of-way is acquired by a lump-sum payment at the beginning of operations, the cost would be amortized over the life of the project and the declining balance entered as a component in computing the lessee's annual return on capital investment. If the sites are rented or leased, or otherwise held by periodic payments, the payments would be included as part of the lessee's operating and maintenance expenses.

The MMS recognizes that the purchase of land for a powerplant is a capital cost to the lessee. Given the duality of treatment between real estate purchases and the costs of renting, leasing, and acquiring easements or rights-of-way, and the consideration that land is not a depreciable asset, MMS has determined that real estate purchases may be at least eligible for a return on investment. In practice, real estate costs would be added to the annual undepreciated capital investment to compute the return on investment factor under the depreciation method of calculating capital costs; real estate costs would be included as part of the total capital investment under the return-on-capital-investment method. To be eligible for the deduction, the purchased land must not be on the subject, or another, Federal geothermal lease and the lessee must demonstrate to MMS's satisfaction that the siting of the geothermal powerplant off the lease was necessary. A return on real estate costs will not be allowed in situations where the lessee could have located the powerplant on the lease but chose to locate elsewhere. Only the portion of the real estate costs attributable and allocable to the land on which the powerplant or transmission facilities are actually located will be eligible for a return. The lessee must obtain approval from MMS prior to taking a return on real estate purchases.

The language excluding real estate purchases from the lessee's allowable capital costs in §§ 206.353(b)(2) and 206.354(b)(2) is deleted in the final rule and new language is added to allow consideration of a return on real estate purchases. The handling of real estate costs in the netback deduction calculations, as well as costs associated with renting and leasing of land and acquisition of easements or rights-of-way, will be addressed in greater detail in the Geothermal Payor Handbook. The terminology "fixed assets" in these paragraphs is changed to "depreciable assets" to clarify that allowable capital costs (or investments) are generally those associated with tangible, depreciable equipment and facilities.

The third reason arguing the unsuitability of the netback procedure revolved around the potential for subtractive error in the value calculation. The commenter explained that small errors in determining allowable capital costs would expand to large errors in calculating the resource value because of the proportionately large investment in the powerplant compared to the value of the resource.

MMS Response: The implication here is that the regulations may not accurately reflect the lessee's economic costs. The MMS recognizes that the netback procedure, or any other method that attempts to value a resource on the basis of the price of a commodity or service derived from use of the resource, can potentially result in errors if the regulations do not accurately recognize and allow for the lessee's economic costs. The MMS believes that the netback procedure described in these rules accurately reflects the lessee's costs of converting geothermal resources into electricity, and thereby is an accurate determinant of the resource's value. The MMS also believes, as it explains throughout this preamble, that the netback valuation accurately reflects economic conditions in the geothermal industry. Therefore, MMS has attempted to avoid the risk of subtractive error.

The commenter's fourth point is that the netback does not give an appropriate treatment of the rate of return. The commenter asserted that deductions for return on investments in the netback calculation do not match the actual costs of capital for reasons of both timing and magnitude. Also, the rate of return under the netback disproportionately favors the geothermal field economics by allowing the internal rate of return on the

investment in the resource (that is, cost to bring the resource into production) to exceed greatly the internal rate of return on the investment in power production.

MMS Response: These comments were made from the perspective of the integrated geothermal producers and power generators, who view the capital risks of financing a geothermal project as being spread evenly over the resource development and power generation (and transmission) components of the project as a whole. Accordingly, capital invested in development of the geothermal field would receive the same rate of return as the capital invested in the powerplant and transmission line. The MMS does not believe that economic rationale compels the equation of field economics to powerplant (and transmission) economics. Because the characteristics of the producible resource determine the design and operation of the power conversion equipment, a powerplant is not installed until sufficient reserves have been discovered—and tested—to supply the powerplant at the capacity for which it was designed. Furthermore, most independent (nonutility) geothermal powerplant operators have long-term (10- to 30-year) electricity sales agreements with utilities. It is reasonable to assume that operators anticipate a sufficient supply of geothermal resources to meet the delivery commitments of the electricity sales agreements and thus justify the financial investment in the powerplant. The MMS has determined, however, that the rate of return specified in the proposed rulemaking (proposed §§ 206.353(b)(2)(v) and 206.354(b)(2)(v)) does not adequately account for the return on investments required for geothermal power projects. This issue is discussed in greater detail later in the preamble.

The fifth comment argues that the threshold limits placed on the generating and transmission deductions (two-thirds and 50 percent, respectively) are arbitrary and do not reflect real costs (proposed §§ 206.354(c)(1) and 206.353(c)(1)).

MMS Response: The MMS recognizes that generating and transmission costs may exceed the threshold limits. The limits were not meant as absolute restrictions but rather were intended to alert MMS to possible excessive deductions. The MMS has determined that it can monitor excessive deductions by other methods. The threshold limits therefore are deleted in the final rule. However, MMS will not allow the deductions to reduce the value of the geothermal resource to zero. (The MMS is protected from accepting no royalties by the minimum royalty provisions of the lease and by § 202.352 of the final rule.) The lessee will be expected to provide all relevant information upon request to support its generating and transmission deductions.

The final comment is that geothermal values determined under the netback procedure are disproportionately greater (by a factor of two to three) than the market value of other fuels used for the generation of a comparable amount of electricity. Also, netback values escalate at higher rates than those projected for other fuels.

MMS Response: This argument was based on calculated fuel costs of 2.55 cents/kWh and 1.8 cents/kWh for natural gas- and coal-fired powerplants, respectively. Geothermal values calculated under the netback procedure were cited to range from 4 cents/kWh to 6 cents/kWh. The heat rate for natural gas was given as 8,500 Btu/kWh and that for coal as 12,000 Btu/kWh. These heat rates are for modern turbine generators that are designed to operate at steam pressures 10 to 30 times greater than steam pressures available to geothermal powerplants. By comparison, geothermal powerplants have heat rates of about 18,000 Btu/kWh to 25,000 Btu/kWh.

The MMS questions the validity of comparing fuel costs for fossil fuel-fired powerplants with those for geothermal powerplants because of different design and operating characteristics and different heat rates. Nevertheless, geothermal values computed by the netback procedure can be shown to be comparable to hydrocarbon fuel values if heat rates for geothermal powerplants are considered. For example, using a typical heat rate for a dual-flash powerplant of 24,500 Btu/kWh, a geothermal netback value of 5 cents/kWh yields an equivalent natural gas value of $2.04/MMBtu, which is comparable to current (November 1990) spot-gas prices for deliveries to pipelines. The 5 cents/kWh netback value yields an equivalent oil value of $11.84/bbl, assuming the average heat content of a barrel of oil is 5.8 MMBtu.

The MMS can find no valid basis for comparing the escalation of netback values with projected fuel prices. Forecasting future oil and gas prices is an inexact science at best, as demonstrated by the rapid rise of oil prices in the late 1970's and their unexpected collapse in 1986.

In general, opponents of the netback procedure contend that the derived royalty values are much greater than could possibly be negotiated between a geothermal buyer and a seller under arm's-length conditions.

MMS Response: The MMS disagrees with this conclusion. As discussed above, netback values appear to be within the range of prices established in arm's-length contracts and value bases established in certain revenue sharing agreements currently existing in the geothermal industry.

In comments submitted during both comment periods, one industry trade organization, representing the collective viewpoints of several integrated resource and power producers, suggested the following modifications to the netback procedure:

(i) The first suggestion is that deductions should be allowed for both depreciation and interest on a constant investment base to better reflect the actual costs of the amounts of debt and equity invested in geothermal power facilities.

MMS Response: The MMS believes that its method of calculating deductions on the undepreciated capital investment balance adequately accounts for the lessee's actual generating and transportation costs. The MMS also believes that its method better reflects an actual internal rate of return earned on the power generating and transmission operations. Calculation of depreciation and interest on the basis of a constant investment would overstate the lessee's capital cost.

(ii) The commenter next suggested that all costs related to the delivery of the geothermal resource—including gathering and reinjection systems, downhole pumps for binary powerplants, and other field equipment—should be included in the generating costs to determine value at the wellhead. That is, the point of royalty valuation should be at the wellhead and all costs subsequent to extraction of the resource should be deductible.

MMS Response: The MMS's long-standing position is that all costs related to field operations are to be borne solely by the lessee. These operations include gathering and reinjection as required by regulations at 43 CFR part 3260. The MMS's position on gathering and transportation of the geothermal resource from the wellhead to the point of utilization is discussed above. Lease terms allow the lessee to reinject unused geothermal resources and geothermal effluent without payment of royalties (unless the lessee receives compensation for these operations); deductions cannot be applied against nonroyalty-bearing production or operations that are field related. The

MMS agrees that certain downhole pump operations are related to the power conversion cycle in binary powerplants. Accordingly, the regulation at paragraph (b)(2) of § 206.354 addressing allowable capital costs is revised to allow inclusion of those downhole pump costs that are directly attributable and allocable to the design requirements of the power conversion cycle in determining generating deductions. It will be the responsibility of the lessee to accurately allocate, subject to audit and adjustment, only that part of downhole pump cost attributable to the power conversion process. Costs associated with extraction of the resource are not allowed in determining generating deductions.

(iii) The third suggestion was to eliminate the threshold limits on the generating and transmission deductions. An annual limit of 80 to 85 percent on all costs, instead of separate caps on the generating and transmission deductions, was recommended.

MMS Response: As discussed above, the threshold limits have been deleted.

(iv) The commenter next argued that if the deduction limits are retained, which in effect establish a floor value for the resource, then a ceiling value should also be established, especially in view of the fact that the netback value approaches the electricity sales price near the end of the depreciation period. A resource value cap of 40 percent of gross proceeds was recommended.

MMS Response: The MMS can find no justifiable reason to place a cap on the value of the resource.

(v) The commenter next suggested that reclamation costs associated with the powerplant, including costs of dismantling the powerplant and restoring the lease, should be an allowable deduction in the netback procedure because such costs are an integral part of operating the powerplant.

MMS Response: The MMS recognizes that the costs of dismantling, decommissioning, or abandoning the powerplant and/or transmission line are indeed part of the lessee's costs associated with those facilities. However, these are future costs that are not easily estimated tens of years in advance, and in fact may not even occur at the end of a given project if the facilities are converted to other uses. Nevertheless, it is MMS' intent to recognize powerplant and transmission-line dismantlement costs when those costs actually occur. This will be accomplished by allowing the lessee a one-time refund of royalties equal to the royalty amount of actual dismantlement costs in excess of actual salvage income (i.e., royalty rate times the amount of dismantlement costs in excess of salvage income); the refund should be requested at the completion of the dismantlement and salvage operations and include all supporting documentation. New paragraphs (f) are added to §§ 206.353 and 206.354 to address refunds for dismantlement costs. Because of this treatment of dismantlement costs, salvage value (usually deducted from gross investment prior to calculating depreciation) will also be recognized at the time of plant dismantlement. Thus, depreciation will be calculated on the full gross investment, and the allowed return will be applied to that gross investment less accumulated depreciation.

The costs of lease restoration, however, will not be recognized by MMS as an allowable cost in the netback valuation. Restoration of Federal leases is a specific requirement of the lessee under section 14 of the Geothermal Resources Lease. The MMS considers lease restoration to be a function of operating the lease rather than generating electricity; costs associated with lease operations are not shared by the Government.

(vi) The cost of purchased electricity to operate well pumps and other field equipment when those operations are an inherent part of the power generating process was also recommended as an allowable deduction in the netback procedure.

MMS Response: As discussed above, MMS recognizes that certain equipment associated with the generating process may be located in the field or well and has revised the regulations accordingly. Such equipment may include wellhead separators and downhole pumps. Thus, any costs associated with the operation and maintenance of this equipment would be included in determining generating deductions. However, the lessee must properly allocate the costs between resource extraction functions and power generation processes and use only those costs attributable to the power generation process in its deduction calculations.

(vii) The commenter next prescribed that the generating deduction (actually the generating cost rate) should be based on net output (tailgate electricity) rather than gross generator output (proposed § 206.354(b)(1)). The commenter reasoned that internal power demands ("parasitic" electricity) should not figure into the deduction calculation because if a comparable amount of electricity were purchased, it would be considered a deductible generating expense. The commenter concludes that real revenues would then be comparable to real generating costs. In comments submitted during the second comment period, the respondent advocated the use of delivered electricity to calculate both transmission and generating deductions.

MMS Response: The MMS agrees that the costs of generating parasitic electricity is an inherent part of powerplant operation and therefore should be compensated. Computing the generating cost rates on the basis of net powerplant output (tailgate electricity) rather than gross generator output accomplishes this goal. Accordingly, regulations at paragraphs (b)(1) and (b)(3) of § 206.354 are revised by replacing "generated electricity" with "plant tailgate electricity." The definition of "generated electricity" in § 206.351 is deleted in the final rule.

However, a caveat must be added to the definition of "plant tailgate electricity" to protect the Government from sharing in the cost of generating any electricity that is returned to the lease for lease operations. To reiterate, deductions cannot be applied against nonroyalty-bearing production or operations that are field related. Although electricity returned to the lease does not produce revenue, it cannot be viewed the same as parasitic electricity, which is used in, and is necessary to, the energy conversion process. Rather, it is electricity that normally would be purchased by the lessee for field operations and thus would not be compensated by the Federal lessor. It is also electricity that otherwise would be available for sale. Accordingly, the definition of "plant tailgate electricity" in § 206.351 is modified in the final rule to be inclusive of electricity generated by the powerplant and returned to the lease for lease operations.

The MMS disagrees that generating deductions should be calculated on delivered electricity. The use of delivered electricity to calculate generating cost rates would overstate generating costs and ultimately generating deductions.

(viii) If the netback procedure is adopted, the commenter recommended tha specific standards be developed that would authorize the lessee to use an alternate valuation approach in certain circumstances. The following standard for triggering this exception was proposed:

> The value calculated from the netback must allow money invested in power production and transmission to earn an internal rate of return equal to 1.5 times S&P's [Standard and Poor's] BBB bond rate as

calculated from the project's discounted cash flows.

This standard would be used as a test to determine whether the netback value reflects the lessee's internal rate of return on investment in power production and transmission as measured by discounted cash flows. If the netback approach fails this test, it was suggested that a different methodology (namely the proportion-of-profits method) should be used to value the resource.

MMS Response: The intent of the return on investment is to recognize the cost of funds necessary to finance the construction of the powerplant and transmission line. The return on investment is not intended to reflect a discounted cash-flow or other rate-of-return analysis used by a lessee to evaluate a particular project. Rather, it is intended to reflect a reasonable cost of capital. The MMS perceives no requirement for ensuring that the netback value reflects the lessee's actual internal rate of return used for a variety of corporate purposes. The MMS has determined, however, that the rate of return used in the netback calculations should be 2 times Standard and Poor's industrial BBB bond rate. The rationale for this decision is discussed later.

(ix) The commenter next argued that capacity payments should not be included in the measure of gross proceeds from which the netback deductions are subtracted because capacity payments are considered a function of the powerplant design and performance characteristics rather than the resource. The commenter urged that at least that part of capacity payments made during scheduled downtime or forced outages not be included in the lessee's gross proceeds for the sale of electricity.

MMS Response: Capacity payments, which are further addressed in question 8 below, were discussed in the preamble of the proposed rules (54 FR 357) within the context of valuing the lessee's electricity. As described in that preamble, rules implementing PURPA (for example, 18 CFR 292.304 (1984)) require electric utilities to purchase available electricity from qualifying powerplants at rates equal to the purchasing utility's "avoided costs." Avoided costs are defined at 18 CFR 292.101(b)(6) (1984) as the incremental costs to an electric utility of electric energy or capacity, or both, which the utility would otherwise generate itself or purchase from another source. Avoided costs are generally represented by two payments: an energy payment and a capacity payment. The energy payment represents the purchasing utility's avoided costs of fuels used to operate conventional powerplants. The capacity payment represents the utility's avoided costs associated with capital investments in powerplants and transmission systems needed to meet customer delivery demands or utility loan requirements. In effect, capacity payments are made in fulfillment of the lessee's contractual obligation to deliver a minimum amount of electricity to the purchasing utility. Because capacity payments are a component of avoided costs, MMS maintains its position that capacity payments are part of the total value of the electricity and therefore are part of the lessee's gross proceeds received for the sale of electricity.

The MMS disagrees that capacity payments are a function of powerplant design and performance because these features are determined by resource characteristics. Simply stated, the quality and volume of geothermal production dictate powerplant design; any degradation or improvement of resource characteristics will affect powerplant performance.

Capacity payments are generally established yearly and paid in equal monthly installments; scheduled downtimes and brief periods of forced outages are usually taken into account. Accordingly, MMS finds no reason to discount capacity payments during these periods. If the downtime or forced outage lasts an entire production month, however, MMS would consider an exception, assuming that geothermal production is either shut in and/or determined by BLM not to be royalty-bearing.

(x) The commenter finally suggested that a return on funds expended prior to commercial operation of a facility should be allowed as part of the capital investment base. The commenter reasoned that carrying costs incurred during the construction phase of a project, which can include service payments for both debt and equity, are an integral part of the lessee's invested capital because investments do not produce income until a powerplant is operational. The commenter suggested that the depreciable investment base be calculated by summing the annual investments adjusted by an annual rate of return based on a weighted-average cost of capital for the geothermal industry.

MMS Response: Interest charges incurred by a lessee on capital borrowed to finance construction of a project, also known as interest during construction (IDC), are currently recognized by MMS as part of the depreciable capital investment base on which the transmission and generating cost rates are calculated. Service payments on equity investments are also considered part of the depreciable capital investment. However, the interest and equity payments must be the actual amounts clearly attributable and allocable to the powerplant or transmission line for which the money was borrowed, and must be incurred during the planning and construction phases of those facilities; these payments also must be verifiable upon audit. In those cases where IDC or equity payments cannot be attributed to a particular powerplant or transmission line, MMS may, at its discretion, approve an amount provided the lessee submits a written request and provides adequate documentation supporting the proposed amount.

(5) What should be the proper rate of return under the netback valuation procedure and what sources of information are publicly available to support any suggested alternative rates of return?

The MMS proposed a rate of return of 1.5 times Standard and Poor's industrial BBB bond rate at §§ 206.353(b)(2)(v) and 206.354(b)(2)(v) in the proposed rulemaking. Six respondents commented on the proposed rate of return during the first comment period. Five commenters representing States and private interest owners opposed using the factor of 1.5 to calculate the rate of return, citing the lack of rationale and inconsistency with valuation of other minerals (oil, gas, and coal) as reasons; they generally preferred a straight Standard and Poor's industrial BBB bond rate as the rate of return. Two of these commenters suggested that the Standard and Poor's industrial BBB rate may be liberal because the element of risk is so low for companies constructing geothermal-driven PURPA plants that loans are made on the basis of nonrecourse financing. On the other hand, an industry trade organization argued that the proposed rate of return of 1.5 times Standard and Poor's industrial BBB rate was insufficient to cover the actual costs of generating and transmitting electricity. (Industry generally shares this viewpoint as indicated by testimony at the public hearing.)

Five respondents commented on the rate-of-return issue during the second comment period; four represented industry and one represented a State. The State commenter again opposed any rate of return greater than Standard and Poor's industrial BBB bond rate, but did not present any factual basis for its position.

Industry commenters collectively endorsed a rate of return equal to the weighted-average cost of debt and equity—also referred to as the weighted-average cost of capital—for integrated geothermal resource and power developers. An industry trade organization, which represented the views of the other industry commenters, observed that the weighted-average cost of debt and equity was dependent upon (1) the initial capitalization (the proportion of debt to equity), (2) cost of debt, and (3) return on (or cost of) equity. The commenter indicated that capitalization of geothermal projects varied in the extreme, ranging from 100 percent equity financed to 100 percent debt financed; representative debt to equity ratios were estimated to range from 50/50 to 70/30. Long-term debt during the mid–1980's, when many of the existing geothermal projects were developed, was available at interest rates of 11 to 12 percent. Letters from investment banking firms, submitted with the commenter's analysis, indicated that the pre-tax return on equity needed to attract investments in geothermal power projects during the mid–1980's was in excess of 25 percent and as high as 40 percent; the commenter asserted that the typical equity return was between 30 and 35 percent. By assuming representative debt to equity ratios of 50/50 to 70/30, an average interest rate of 11.5 percent on long-term debt, and an average return on equity of 32.5 percent, the commenter calculated that the weighted-average cost of capital (debt and equity) for the geothermal industry ranged between 17.8 percent and 22.0 percent. The commenter noted that this analysis yielded a rate of return approximately 2 times Standard and Poor's industrial BBB bond rate. The commenter then proposed to avoid the multiplier and establish a fixed rate of 20 percent.

MMS Response: As previously discussed, the return on invested capital is intended to compensate the lessee for its costs necessary to finance a powerplant and transmission line. The MMS recognizes that geothermal powerplant operations may contain a certain element of risk attributable to the continued producibility of a viable resource, and that geothermal powerplants therefore may incur relatively greater financing costs than conventionally fueled powerplants.

Industry's proposal to fix the rate of return at 20 percent will not accurately reflect the cost of capital in view of the rise and fall of interest rates over time. A fixed rate of return would penalize lessees during periods of higher interest rates and subsidize them during periods of lower interest rates.

In previous product valuation rulemakings (for example, oil and gas valuation rulemakings at 53 FR 1213 and 1262, January 15, 1988), MMS determined that the rate of return on depreciable capital investment should be closely associated with the cost of money necessary for construction of transportation and processing facilities. The MMS concluded that a corporate bond rate adequately considered the risks involved in such ventures and believed that the Standard and Poor's industrial BBB bond rate represented a rational choice among the available alternatives. This conclusion was viewed primarily in terms of long-term debt; the impact of equity financing was unknown. During the mid-1980's (1983 to 1987), Standard and Poor's industrial BBB bond rate ranged from a low of about 9.5 percent to a high of about 15 percent; the average was about 12 percent, which is correlative with the interest rates on long-term debt reported in the geothermal industry's comments. However, considering that equity financing may account for 50 percent or more of the capital invested in a powerplant and transmission line, and that the return on equity may be as high as 40 percent, the weighted-average cost of capital to finance geothermal power projects is easily greater than a straight corporate bond rate. For example, if half of a project was financed by equity investment at an expected rate of return of 40 percent and the remaining half by long-term debt at an interest rate of 12 percent, the total cost of financing the project would be about 26 percent. This amount, as well as the weighted-average rates of return calculated by the industry commenter, is within the range of Standard and Poor's industrial BBB bond rates increased by a factor of two. The MMS finds that a rate of return of 2 times Standard and Poor's industrial BBB bond rate is a reasonable representative cost of capital for financing geothermal power projects; this rate of return therefore is adopted in the final rule for use in determining transmission line and generating cost rates under the netback procedure.

(6) Is the proportion-of-profits method appropriate for geothermal resource valuation?

Like the controversy surrounding the netback valuation procedure, the proportion-of-profits method also generated divisive argument; most of industry favored the exclusive use of the proportion-of-profits method, whereas nonindustry opposed its use.

Briefly summarized, value of the geothermal resource under the proportion-of-profits method is the proportional share of the geothermal project's net operating income attributable to the geothermal field. The proportional share is based on the ratio of capital invested in developing the geothermal field to capital invested in the entire geothermal project (field development, powerplant construction, and transmission line installment). (See proposed rulemaking at 54 FR 357, January 5, 1988, for further details.)

Five respondents representing States and private interest owners opposed the proportion-of-profits method. One commenter pointed out that the proportion-of-profits method is similar to Internal Revenue Service's (IRS) proportional profits method used in depletion calculations for Federal income tax, except the Federal depletion calculation uses a ratio of mining costs over total costs of producing the mineral resource instead of the ratio of investment in the geothermal field over total investment in the geothermal field, powerplant, and transmission line used under the proportion-of-profits method. This commenter suggested that the use of investments rather than costs seems to be chosen so that most of the net income is allocated to the powerplant rather than the geothermal field, thus reducing the value attributable to the geothermal resource. The commenter also noted that IRS's proportional profits method is seldom used because the IRS is uncomfortable with the idea that a ratio of one cost over total costs is a reliable method of determining how profit should be allocated between production and post production processes.

One commenter criticized the basic concept of the proportion-of-profits method—the greater the costs attributable to a component of the project, such as electrical generation or field production, the greater the value attributable to that component of the project—as being incorrect. Rather, a lower cost of producing the resource should correspond to a higher value of that resource. The concept that rates of return on powerplant and transmission line investments should equal those for field-development investments was further criticized for the following reasons:

(i) The rates of return expected on investments in the production of geothermal resources are greater than those expected on investments in electrical generation. Accordingly, a greater proportionate cash flow should be allocated to the geothermal field,

which in effect would increase the value of the geothermal resource; and

(ii) If generating plant capital costs are financed with nonrecourse financing, the only real plant capital investment is the interest actually paid. This would lower the cash flow for the plant and increase the cash flow for the geothermal field, thereby increasing the value of the resource.

It was also argued that the proportion-of-profits method merely derives a unit amount (dollars per kilowatthour) of the costs of producing the resource, not the resource's value.

Finally, two of the commenters advised that audits would be more difficult for proportion-of-profits valuations than for netback valuations.

Five respondents representing industry and industry trade organizations strongly advocated the proportion-of-profits method. Several speakers at the public hearing also testified in favor of the proportion-of-profits method. The proportion-of-profits method is premised on the allocation of net operating income (or actual cash flow) to each component of an integrated geothermal project (production field, powerplant, and transmission line) based on the relative proportion of the capital invested in each component. The need for determining an appropriate proxy rate of return and depreciation schedule (as under the netback procedure) is eliminated. The specific rate of return earned by the project is whatever the actual cash flows produce. The rate of return attributable to the resource investment is the same as that attributable to the other component investments.

Because field investment costs and operating expenses are considered in the proportion-of-profits method, the proponents argue that the resource value derived by this method would reflect a fair and reasonable arm's-length negotiated price. Under the recommended proportion-of-profits formula, the geothermal resource value would be no less than the field operating expenses (net operating income was defined as never being less than zero). The commenter concluded that inclusion of field investments and operating expenses in the value determination would encourage efficient operation.

In summary, supporters of the proportion-of-profits method believe that it calculates a more accurate value of the resource while providing the Government with a fair return commensurate with the intent of Congress in passing the Geothermal Steam Act of 1970.

MMS Response: The proportion-of-profits method and the netback procedure are similar in that both derive a value of the geothermal resource by taking into account the lessee's expenses and investments. (In fact, the proportion-of-profits method can be viewed as a form of netback calculation, with the allowed rate of return varying according to the return to the project.) The MMS has determined that the two methods differ primarily in their handling of the lessee's return on invested capital. Under the netback procedure, the return on investment is intended to reflect a reasonable cost of capital; the cost of capital is expressed by the rate of return, determined to be 2 times Standard and Poor's industrial BBB bond rate as previously discussed. Under the proportion-of-profits method, the lessee's return on investment is not explicitly stated but is determined inherently by the electricity sales price (or revenue received) and ultimately by the company's profitability. In application, the proportion-of-profits method confuses investment profitability with a company's minimum return on investment necessary to cover the cost of capital.

As discussed above, the return on investment under the netback procedure is intended to recognize the lessee's cost of funds necessary to finance the powerplant and transmission line. Capital costs must be accurately estimated because, if the cost of capital is overestimated, the generating and transmission deductions would be overstated and royalty values would be understated. The MMS does not view the proportion-of-profits method as an accurate determinant of capital cost because it reflects a company's profitability rather than the industry's cost of capital.

Also, as previously stated, MMS does not find compelling the argument that the rate of return on investment attributable to resource development must be the same as that attributable to other components of the geothermal project. In addition, MMS is not comfortable using a different rate of return for each project.

In view of MMS's knowledge of actual pricing and revenue sharing provisions in arm's-length contracts, MMS does not believe that the values derived by the proportion-of-profits method would reflect prices negotiated in arm's-length contracts any better than those values derived by the netback procedure. In summary, none of the comments received convinced MMS that the proportion-of-profits method derived a more accurate value of the geothermal resource compared to the netback procedure.

(7) Should an alternative fuels approach be used to value "no sales" geothermal resources (for both electrical generation and direct utilization)? If so, how should the value of the alternative fuels be determined?

Value of the geothermal resource under the alternative fuels approach is determined by the Btu value (or cost) of the conventional fuel (oil, gas, coal, wood, etc.) displaced by use of the geothermal resource.

Six commenters addressed the alternative fuels approach for valuation; all were within the context of geothermal power generation. None of the commenters completely endorsed the method. Three commenters directly opposed the method, and three others suggested that the valuation of the alternative fuel alone would create insurmountable administrative and auditing difficulties.

MMS Response: The MMS agrees that an alternative fuel approach is inappropriate for valuing geothermal resources used to generate electricity. Considering that electricity is a form of energy converted from the thermal energy of the resource, MMS believes that a netback valuation based on the value of the geothermally generated electricity is a more proper approach. However, MMS is adopting an alternative fuels method to value "no sales" geothermal resources used for direct utilization. (See § 206.355(c)(1)(ii) or (d)(1)(ii) of this rule for further details.)

No comments were received on how the alternative fuel should be valued. The MMS has determined that the value of the alternative fuel should be the price that the lessee would otherwise pay for purchasing the particular fuel.

(8) Should capacity payments be included in the value of electricity?

Four comments addressed the capacity payment issue; three were from States and private interest representatives and one was from an industry trade organization. The nonindustry respondents favored the inclusion of capacity payments in the value of electricity. One respondent suggested that if capacity payments were considered payments for the capital cost of the powerplant (industry's position), then a deduction for capital investments should be disallowed; that is, only plant operating expenses would constitute the generating deduction. Industry opposed the inclusion of capacity payments, claiming that they are a function of

powerplant design rather than the resource.

Within the context of capacity payments, MMS also requested information as to what extent geothermal production is shut in during forced outages or scheduled powerplant downtimes but capacity payments are still received. No statistical data were received, although MMS understands that it is general industry practice to shut in or throttle back wells as soon as practical during unscheduled outages ("trips" in industry terms) as well as scheduled downtimes. One nonindustry respondent commented that capacity payments received during the outages, whether scheduled or unscheduled, should still be included as part of the value of electricity because they are established yearly with a certain amount of downtime factored in.

MMS Response: Capacity payments were discussed in question 4(ix) above. The MMS has determined that capacity payments are a part of the electricity sales value.

(9) How should electricity be valued when the geothermal lessee is also the power generating utility?

In situations where the lessee is also a utility, MMS suggested that the value of the electricity might be established as the weighted average of the utility's customer rates. No comments were received on this or any alternative method of valuing electricity for application of the netback valuation procedure under these unique lessee-utility situations.

MMS Response: Due to their rarity, MMS will review these situations individually to determine the proper methods of valuing the electricity and/or the resource as allowed under the benchmark systems.

(10) What criteria should be used to value the geothermal resource when the lessee has an arm's-length generating agreement with a third party but receives revenue from the sale of electricity (that is, the lessee sells electricity generated by an unaffiliated party using the lessee's geothermal resource)?

The only comment received on this question implied that the contract with the powerplant owner would establish a generating-cost deduction, which could be used in valuing the resource.

MMS Response: The MMS does not foresee such situations occurring. The MMS believes that the regulations in § 206.352(d) are sufficiently flexible to allow individual value determinations in these situations.

(11) Should there be a one-time election to use the return-on-capital-investment method for valuation under the netback procedure (proposed §§ 206.353(b)(2)(iv)(B) and 206.354(b)(2)(iv)(B)) for those facilities placed into service before March 1, 1988?

A return-on-capital-investment is one of two alternative methods proposed to determine the lessee's costs associated with capital investment in the powerplant and transmission line; the other method involves depreciation and a return on undepreciated capital investment. One commenter (from industry) favored having the method available for use for facilities placed into service prior to March 1, 1988, and one commenter (from nonindustry) disagreed with its use prior to March 1, 1988; neither commenter provided substantive reasons for their position.

MMS Response: The MMS first adopted the return-on-capital-investment method (as an alternative to the depreciation method) with the promulgation of new transportation and processing allowance regulations for oil and gas valuation effective March 1, 1988 (53 FR 1184 and 53 FR 1230, January 15, 1988). Those regulations provide that the return-on-capital-investment method will apply only to facilities first placed into service after March 1, 1988 (30 CFR 206.157(b)(2)(iv)(B) and 206.159(b)(2)(iv)(B) (1990). For consistency with those regulations, MMS also adopted the return-on-capital-investment method for determining transmission and generating cost rates/deductions under the netback procedure for powerplants first placed into service on or after March 1, 1988 (MMS report "Valuation of Federal Geothermal Resources—Electrical Generation," June 1988, pages 7 and 13). The MMS can find no compelling reason to allow application of the return-on-capital-investment method solely for geothermal resource valuation in a manner inconsistent with the intent of the regulations introducing the policy.

(12) Should depreciation (under the netback procedure) be based on a fixed time period commensurate with the first electricity sales agreement (proposed §§ 206.353(b)(2)(iv)(A) and 206.354(b)(2)(iv)(A)) or some other reasonable time period, and what conditions or considerations might extend or decrease the depreciation period?

Two State commenters expressed concern that a depreciation schedule tied to the life of an electricity sales contract may unduly entitle the lessee to an accelerated depreciation, especially when the expected useful life of the generating and transmission facilities is longer than the sales contract. They recommended that depreciation be based on the useful life of the capital assets (powerplant and transmission line) rather than a contract term.

An industry trade organization recommended that adjustment to the depreciation time period be allowed when (1) the actual performance of the geothermal reservoir is not able to support the optimal performance of the powerplant as originally projected or (2) the powerplant becomes technologically obsolete within a very short period of time, and upgrading requires substantial infusions of new capital investment. The commenter recommended that the lessee be allowed to use either a straight-line or accelerated depreciation method, presumably as circumstances dictate.

One industry respondent expressed concern that the straight-line depreciation method does not correctly allocate the cost of geothermal powerplants over the life of the project (or contract). The straight-line depreciation method was considered inapplicable because geothermal powerplants must rely on a local source of geothermal production, which cannot be supplemented by other fuel sources. Accordingly, costs tend to be understated in the early years when plant capacities are high and overstated in the later years as the annual amount of generation declines. This commenter recommended a depletion-accounting method to allocate capital costs over the primary term of the electricity sales contract. The depletion rate would be adjusted yearly on the basis of the forecasted amount of geothermal resource remaining to the termination of the sales contract.

MMS Response: After reviewing the above comments, MMS has determined that the proposed depreciation method is proper for netback valuation. A depreciation period based on the term of the electricity sales agreement avoids guessing about the life of the geothermal reserves as well as the useful life of the capital assets. The final rules, however, provide for alternative depreciation periods upon proper showing by the lessee and acceptance by MMS. This exception is intended to be used primarily in situations where the lessee/powerplant operator (such as a municipal utility) does not have an electricity sales contract on which to base a depreciation period, or in other unusual or extraordinary situations currently not anticipated by MMS. Assuming that the netback procedure is applicable in these cases, a depreciation schedule based on the expected life of the capital assets, or some other period

acceptable to MMS, would be considered.

The MMS has determined that a straight-line depreciation method is more administratively manageable than other depreciation methods and therefore is subject to less interpretation and possible misuse. The MMS believes that accelerated depreciation based on a depletion-accounting method is inappropriate, because this method was devised for tax purposes and is not consistent with MMS's intent to account for the lessee's actual generating and transmission costs.

The MMS recognizes that subsequent expenditures for the addition or replacement of major capital items, or for other powerplant or transmission line improvements, may occur over the original depreciation period. The MMS believes the regulations are sufficiently flexible to allow these costs to be incorporated into depreciation schedules.

(13) Should recapitalization and redepreciation of powerplants and transmission lines be allowed with a change in ownership?

The only commenter (from an industry trade organization) on this issue recommended that recapitalization and redepreciation be allowed with changes in ownership. The commenter believed that doing so would provide an incentive for new investments in geothermal projects and might encourage potential purchasers to pay a premium over the original cost of the plant in order to offset higher construction costs of new facilities.

MMS Response: The MMS has considered the issue of recapitalization with a change in ownership and decided that it is appropriate for the Government to participate in the depreciation of powerplant and transmission facilities only once, especially in view of MMS's nonparticipation in the profits or losses attendant upon the sale of these facilities. Accordingly, the language in proposed §§ 206.353(b)(2)(iv)(A) and 206.354(b)(2)(iv)(A) disallowing recapitalization and redepreciation on a change of ownership is adopted in the final rule.

(c) Valuation Standards—Direct Utilization

(1) Does the least expensive, reasonable alternative fuel approach (proposed § 206.355(c)(2)) correctly reflect the value of geothermal resources utilized by the lessee in his own direct utilization process facility?

The least expensive, reasonable alternative fuel approach (or simply the "alternative fuels approach") is intended to be used when the first benchmarks for non-arm's-length and "no sales" valuations are not applicable. As described above, value under the alternative fuel approach (or simply the alternative fuels approach) is based on the Btu value (or cost) of the conventional fuel displaced by the geothermal resource. Two commenters addressed the applicability of the alternative fuels approach for valuing direct utilization resources. Both respondents agreed with the overall premise of the approach but each suggested specific modifications to the calculation method. One commenter stated that direct utilization of geothermal resources usually involves a relatively high capital investment which is justified on the assumption of low feedstock costs and therefore lower operating expenses. Substitution of a more valuable feedstock to estimate the geothermal resource value thus would disproportionately increase the cost to the operator unless an adjustment is made to reflect the lessee's greater capital investment over that required for the alternative fuel. The commenter suggested that an appropriate adjustment would be to subtract from the calculated cost of the required alternative fuel an amount equal to the allowed return on capital cost of a facility designed to burn the alternative fuel plus the actual capital cost of the development of the geothermal resource.

The second commenter advised that the equation proposed by MMS to determine the amount of thermal energy displaced was appropriate in terms of density and conversion factors but was flawed in regard to the definition of the terms for enthalpies. The commenter suggested that to be more precise, the inlet enthalpy should be measured at the wellhead and the discharge enthalpy should be measured at the point just before ultimate disposal of the geothermal fluid. The commenter also recommended that a process called the "cascade" operation, in which the user gains the use of the heat by hand-off from the same or a different operator who is using the higher-grade geothermal resource, be addressed in the regulations. In this instance, the initial enthalpy for the second heat user would be equal to the field enthalpy for the first heat user. Finally, the commenter recommended modifying MMS's alternative fuel methodology with a five-step approach. Step 1 would calculate the amount of geothermal energy used, measured in therms of heat. This process would use the proposed MMS formula, and replace the "efficiency factor" by the number 100,000. The result would be:

$$\text{thermal energy used} = \frac{\text{enthalpy difference} \times \text{density} \times \text{volume} \times 9.133681.}{100{,}000}$$

Step 2 would calculate the purchase price of the alternative fuel in terms of dollars per therm using data submitted by the lessee. Step 3 would calculate the equivalent purchase price of geothermal heat used from the equation:

geothermal effective base cost = geothermal heat used (therms) × purchase price of alternate fuel ($/therm).

Step 4 would calculate the effects of end-use conversion efficiencies (based on the U.S. Department of Energy (DOE) sources) to determine the cost of alternative fuel displaced by the equation:

$$\text{cost of alternative fuel displaced} = \frac{\text{geothermal effective base cost.}}{\text{efficiency factor}}$$

Step 5 would calculate the amount of royalty due.

MMS Response: The MMS has considered the proposal to adjust the alternative fuel price to account for the relatively high, initial capital investment of a direct use facility and decided that no adjustment is necessary. In developing a direct use facility, MMS believes that a lessee has decided that his long-term fuel supply is best furnished by geothermal resources. Although many factors may have influenced the lessee's decision, one of the most likely reasons for utilizing the geothermal resource is the overall low cost of energy. The MMS believes that the value of the resource should be no less than the value of fuels displaced by the geothermal resource.

The MMS has carefully considered the comments of the second commenter and has decided not to revise the regulations as suggested. The five-step alternative fuel methodology varies little from the MMS-proposed methodology, and there appears to be little or no advantage to the commenter's suggestion. Regarding the suggestion to change measurement points to determine inlet and discharge enthalpies, this issue is the responsibility of BLM. The commenter's suggestion that "cascading" should be addressed in the regulations also has merit. However, the issue of royalties due on geothermal resources utilized in cascading steps is straightforward: the lessee is responsible for paying royalty on the total thermal energy yielded by the resource. Because this concept may

be complicated by the lessee allowing other operators to utilize the resource, MMS will treat the use of geothermal heat by a "cascade" operation on a case-by-case basis.

One respondent observed that the method for calculating the Btu's utilized (displaced) under the alternative fuel approach should be prescribed by BLM, not MMS, because BLM is responsible for ensuring that reported sales quantities are correct.

MMS Response: The MMS believes that the equation for calculating thermal energy displaced, prescribed in paragraphs (c)(1)(ii) and (d)(1)(ii) of § 206.355, is necessary to ensure proper valuation and therefore should remain in the final rule. The MMS does agree, however, that BLM has the authority to establish the methods and frequency of measuring resource parameters (temperature, volume, etc.), as well as the conditions for calculating the cumulative amount of thermal energy displaced (hourly cumulative, monthly average, etc.). Language to this effect has been added to the subject paragraphs in the final rule.

(2) What alternative methods may be used to value these lessee-owned and used direct utilization resources?

Except for the suggested modifications to MMS's proposed alternative fuels methodology discussed above, no alternative methods for valuing the lessee-owned and -used direct utilization resources were offered.

(3) Should efficiency factors be used in the calculation of thermal energy displaced (proposed § 206.355(c)(2))?

Only one comment was received on the applicability of using the efficiency factors in MMS's proposed direct utilization valuation equation. The commenter stated that MMS's definition of an efficiency factor fails to account for the differences in heating values (and relative thermodynamic efficiencies) represented by the different fuels and does not account for the conversion efficiencies of the wide variety of potential heat conversion apparatus. Each conversion apparatus has a "like-new" conversion efficiency, and a lower operating efficiency controlled by the state of cleanliness and maintenance. The commenter recommended that rather than an arbitrary selection of a single numerical efficiency factor applied to a wide range of apparatus, with a wider efficiency range also governed by the type of fuel burned, MMS should adopt a range of probable efficiencies as provided by DOE or the Solar Energy Research Institute.

MMS Response: The MMS believes that the regulation governing efficiency factors is sufficiently flexible to accommodate alternate efficiency factors proposed by lessees. The numerical efficiency factors are believed to be reasonable at this time. However, MMS is prepared to revise the factors by amending the final rulemaking at a later date if one or more of the factors are shown to be less than reasonable.

(4) Is it reasonable to restrict the alternative fuel to one that would normally be used in a given direct utilization process at the location of utilization (proposed § 206.355(c)(2)) and, if so, what criteria should be used to determine the most reasonable alternative fuel?

Only one comment was received on the qualifications and criteria for determining the most reasonable alternative fuel. The commenter agreed with MMS that the alternative fuel chosen should be the one that would normally be used in a given direct utilization process at the location of utilization because geothermal direct use is absolutely site specific. The commenter suggested that the lessee be required to identify the industry-preferred conventional fuel that would otherwise be used in the direct utilization facility. In addition, the commenter recommended that the lessee be required to define the price and availability of alternative fuels in the specific locale and also provide price and availability quotations from potential suppliers in that locale.

MMS Response: A lessee that values its geothermal resource by the most reasonable alternative fuel methodology is required under paragraph (e)(3) of § 206.355 to notify MMS and provide a description of the valuation procedure followed. Such description is intended to contain an explanation of the selected alternative fuel and its valuation.

(5) Should the methods of valuing alternative fuels be addressed in the final rulemaking and, if so, what criteria should be used to value the alternative fuel?

Aside from the comments proclaiming administrative and auditing difficulties associated with valuing an alternative fuel, as previously summarized at question 7 addressing valuation of geothermal resources used to generate electricity, one commenter suggested that a valuation procedure for alternative fuels should be addressed in the rulemaking and offered that the value should be based on arm's-length contract prices (which would be periodically updated) received in the local retail market.

MMS Response: The MMS believes that there is not sufficient cause to establish formal standards to value alternative fuels in the regulation. Under paragraph (e)(3) of § 206.355, a lessee is required to explain the alternative fuel valuation methodology used under non-arm's-length or "no sales" conditions. The MMS will evaluate the lessee's proposal for reasonableness on a case-by-case basis.

(d) Valuation Standards—Byproducts

(1) Are the proposed procedures for valuing geothermal byproducts (proposed § 206.356) appropriate and are there any alternative methods for byproduct valuation?

No comments were received regarding the appropriateness of the proposed byproduct valuation procedure or any alternative valuation methods. The valuation standards published in the January 5, 1989, proposed rulemaking are adopted unchanged in this rulemaking.

(2) Is the method proposed to determine byproduct transportation allowances (proposed §§ 206.357 and 206.358) reasonable and what costs should be allowed in the determination?

Only one commenter addressed allowable costs in determining byproduct transportation allowances. The commenter suggested that a proportionate share of the cost of acquisition and maintenance of easements (for transportation facilities) should be deductible as transportation costs. The commenter also recommended that MMS should have the burden of demonstrating why specific expenses are disallowed when MMS excludes those expenses from the transportation allowance.

MMS Response: The MMS intends to recognize the costs of acquiring easements or rights-of-way for geothermal byproduct transportation facilities. The method of incorporating these costs in the transportation allowance calculation would depend on their accounting disposition. For example, if the easement or right-of-way is acquired by a lump-sum payment at the beginning of operations, the cost would be included as part of the lessee's capital investment. If the easement or right-of-way is held by periodic payments, the payments would be included as part of the lessee's operating and maintenance expenses. Maintenance of the easements or rights-of-way would be included in the lessee's operating and maintenance expenses. The purchase of land to site transportation facilities might be eligible for a return on investment if the location is off the lease, is not located on another Federal geothermal resources lease, and the lessee can demonstrate to MMS's

satisfaction that the purchase of the off-lease site was absolutely necessary.

When MMS renders any valuation or allowance decision, particularly those decisions disallowing certain expenses, it issues written documentation explaining the reasons for the decision and citing the regulatory authority permitting the decision. This policy will be continued.

(3) Should the regulations provide for byproduct processing allowances and, if so, how should they be determined?

Three respondents commented on whether a processing allowance for byproducts should be included as a deduction in the valuation regulations. However, no suggestions were offered regarding the procedures or criteria that should be used in determining the allowance.

Two commenters opposed any processing allowance for byproducts because the royalty rate for such products is extremely low, a maximum of only 5 percent. One commenter advised that MMS should not promulgate regulations in an informational vacuum due to its lack of experience in byproduct recovery technology. One commenter was in favor of processing allowances for byproducts and suggested that an allowance be granted even when byproducts have negative values, as is the case when byproducts are disposed of to meet environmental standards.

MMS Response: The proposed regulations did not provide for processing allowances for geothermal byproducts. None of the comments received convinced MMS to change the proposed rule. The final regulations require that the lessee must bear the full responsibility and expense for placing geothermal byproducts in marketable condition.

(e) Miscellaneous Issues Addressed in Preamble

(1) Should MMS grant transportation allowances for the lessee's costs of delivering the resources to a point of utilization (powerplant or direct utilization facility) off the lease, unit area, or participating area?

Six commenters addressed the issue of granting transportation allowances for delivery of the geothermal resource to a point off the lease, unit, or participating area. Three commenters, including two from States and one from industry, opposed any transportation allowance. They argued that transportation to the point of utilization is a production-related cost, which should not be shared by the lessor. However, one of the comments was tempered with the suggestion that transportation allowances might be considered if the transportation results in an increased value of the resource to both the lessor and the lessee. Three commenters representing industry's position favored transportation allowances, arguing that value should be established at the wellhead and any transportation costs, including gathering from the production facilities to the utilization facilities, are post-production costs that should be deductible.

MMS Response: The lessee's responsibility to efficiently transport the resource from the wellhead to the point of utilization has already been discussed. The MMS maintains its position that gathering and transportation are production- and/or marketing-related costs that should not be shared by the lessor.

(2) Should MMS allow costs of hydrogen sulfide abatement facilities (and other facilities to mitigate environmental hazards) as part of the determination for generating deductions under the netback procedure?

Two commenters, both from States, strongly opposed any allowance for costs associated with the mitigation of environmental hazards. They cite that geothermal operators are bound by various legal requirements (Federal, State, and local) and lease terms to ensure the environment is adequately protected. One of the commenters suggests that any deductions for environmental mitigation in effect would be a subsidy to the environmental polluter. The other commenter believed that expenses associated with mitigating environmental hazards are costs of extracting the resource and placing it in marketable condition.

Two commenters, one from industry and one from an industry trade organization, favored deducting the costs of hydrogen sulfide abatement facilities and other facilities required for the mitigation of environmental hazards. They argue that abatement facilities are an integral part of the power-generating operation, and because geothermal resources with higher levels of contaminants are more expensive to use, they have less value.

MMS Response: The MMS agrees that geothermal operators are responsible under the lease terms and various legal requirements to operate the lease and manage the resource in an environmentally sound manner. After giving the issue of hydrogen sulfide abatement facilities careful consideration, however, MMS believes that a distinction must be drawn between mitigating environmental hazards associated with geothermal production and mitigating environmental hazards associated with geothermal utilization. The MMS agrees that hydrogen sulfide abatement facilities are an integral part of the generating facilities utilizing the geothermal resource and therefore should be an allowable capital cost in determining the generating deduction. The regulation in paragraph (b)(2) of § 206.354 is modified accordingly. Other facilities to mitigate environmental hazards can be included if they are shown to be an integral part of the powerplant. However, MMS maintains its position that reinjection of geothermal effluent is a production-related operation. Accordingly, the costs of effluent injection equipment—including pumps, controls, and pipes regardless of their location—are not allowable capital investments. Likewise, the costs of mitigating any other environmental hazards that are related to production are to be borne solely by the lessee.

(3) Should processing allowances be granted for geothermal resources used in direct utilization processes?

No comments were offered justifying the application of processing allowances to direct utilization technologies. Three commenters opposed any such allowance, with one rationalizing that the lure of inexpensive geothermal heat and low operating costs offset any investment costs necessary to use the heat.

MMS Response: Geothermal resources used in direct utilization facilities are not processed or converted to another form of energy as in a powerplant. The MMS can find no rational basis to grant processing allowances for direct utilization of geothermal resources.

IV. Section-by-Section Analysis and Response to Comments

This part of the preamble focuses on comments received on sections of the regulations not addressed by the selected issues discussed in part III above. Comments were not received on every section of the proposed regulations. Consequently, those sections that were not changed significantly from the proposal are not discussed further in this preamble. Changes made to the proposed regulations as a result of the comments received on the selected issues are briefly summarized. Other sections are addressed to the extent they are changed. The purpose of each section discussed is briefly described. The preamble of the proposed regulations (54 FR 354, January 5, 1989) may be

consulted for additional description of selected sections.

Section 202.351 Royalties on Geothermal Resources

The proposed paragraph (d) of § 202.351 provided that royalty would be assessed on insurance payments for resources unavoidably lost unless the lessee is self-insured. Two commenters, both from States, objected to the exclusion of royalties on self-insurance payments. They claim that insurance proceeds, whether received for self-insurance or otherwise, represent payment for production and that the exclusion of royalty on self-insured payments discriminates between the small operators who cannot afford to self-insure and the large companies.

MMS Response: The MMS has determined that royalties are due only if the lessee receives insurance compensation from a third party. No royalty is due where the lessee self-insures primarily because the insurance compensation usually represents internal funds rather than an outside source of income. The proposed regulation is adopted without change in the final rule.

Section 202.353 Measurement Standards for Reporting and Paying Royalties

This section establishes consistent units of measurement for reporting geothermal production for royalty purposes. Comments addressing this section were discussed in part III of this preamble. The final rule is modified to allow for multiple units of measurement for reporting direct-utilization resources.

Section 206.351 Definitions

This section defines terms specifically associated with valuation of geothermal resources. The terms defined here may have different meanings for other Agencies' regulations and should not be confused with other intended usages.

"Audit"—Although no comments were received on this term, the definition of audit is revised in the final rule to accommodate the meaning and intent of present and future rules regarding audits contained in 30 CFR part 217. The words "* * * review, conducted in accordance with generally-accepted accounting and auditing standards, of * * *" are replaced with "* * * procedure having the same meaning and effect as that described at 30 CFR part 217 for verifying * * *."

"Generated electricity"—As discussed in part III of this preamble, this term is deleted because of the modification to the method of calculating generating cost rates/deductions.

"Gross proceeds"—Four commenters suggested modifications to the definition of "gross proceeds." One State commenter recommended that capacity payments be specifically cited as part of gross proceeds. However, an industry commenter suggested that capacity payments be explicitly excluded from the definition of gross proceeds because capacity payments depend on the attributes of the powerplant, rather than the resource, and may be made during periods of nonproduction. Another State commenter recommended that the language "or which could accrue" be added after the words "consideration accruing" in the definition to clarify that MMS intends to include all consideration due under a contract, whether or not actually received by the lessee. The last commenter (an industry trade organization) suggested that the definition was too broad and recommended that tax reimbursements (or refunds) and any payments the lessee receives for services such as wheeling, effluent injection, hydrogen sulfide abatement, and other operating expenses be excluded, as these expenses/reimbursements have no relation to the resource.

MMS Response: The capacity payment issue has been discussed previously. The MMS clearly intends that capacity payments be a part of the "total payments received for the sale of electricity" and believes that the "total payments" term is sufficiently inclusive for this purpose. The MMS believes that the phrase "or which could accrue" following the words "consideration accruing" in the first sentence of the definition is unnecessary; the intent of this phrase is embodied in the last sentence of the definition.

Production and production-related operations are lease obligations which the lessee must perform at no cost to the Federal Government. The services listed in the definition, except for wheeling and hydrogen sulfide abatement, are all benefits that a lessee may receive for production under the terms of a geothermal resources sales contract and thus are considered part of the value (for royalty purposes) for lease production. Wheeling and hydrogen sulfide abatement are deleted in the final rule because these operations are associated with utilization of the geothermal resource rather than production; any reimbursements the lessee receives for these operations would be deducted from the lessee's costs of performing them when calculating the transmission and generating cost rates under the netback procedure.

"Plant tailgate electricity"—As discussed in part III of this preamble, the definition of plant tailgate electricity is modified to include any electricity generated by the powerplant and returned to the lease for lease operations.

Section 206.352 Valuation Standards for Electrical Generation

This section establishes the method for valuing geothermal resources used to generate electricity. Valuation methods are described according to the type of transaction under which the resource is disposed: arm's-length sales, non-arm's-length sales, and "no sales." Many of the issues surrounding the valuation of these resources were addressed in part III of this preamble.

Paragraph (b)(1)(i) of § 206.352 defines the value of those geothermal resources sold pursuant to an arm's-length contract as the gross proceeds accruing to the lessee. One State commenter objected to the use of arm's-length contracts for valuation purposes. Citing the necessity to utilize geothermal resources at or near the wellhead, the commenter questioned whether open, competitive markets for geothermal resources actually exist and whether a producer is able to obtain fair-market value because it may be forced to sell its production to whatever purchaser is available in the vicinity. (The lack of a typical open-market environment for sales of geothermal resources is also acknowledged by the geothermal industry, as indicated by remarks made during the public hearing.) The commenter recommended deleting the arm's-length methodology for valuing geothermal resources, or, in the alternative, abandoning the benchmark system so that arm's-length contracts are merely one indicia of value to be cross-checked against other indicia, such as netted-back value. As another alternative, the commenter recommended amending the definition of "arm's-length contract" (at § 206.351) either to (1) place upon the lessee the affirmative burden to establish that its contract was negotiated in an open, competitive market, or (2) permit auditors to rebut the assumption that such contracts were negotiated in an open, competitive market. (This comment also applies to paragraphs (b)(1)(i) of §§ 206.355 and 206.356, valuation standards for direct utilization resources and byproducts, respectively.)

MMS Response: The MMS recognizes that geothermal resources do not have an open market in the conventional sense. Nonetheless, MMS maintains its position that prices established in arm's-length sales contracts are reflective of market value on at least a local level.

The MMS has discussed the issue of the arm's-length gross proceeds standard at length in the preambles to the oil and gas valuation regulations effective March 1, 1988 (53 FR 1184 and 53 FR 1230); the reader is referred to those documents for a full treatment of the issue. The MMS finds no justification to abandon the arm's-length gross proceeds criterion for geothermal valuation and believes the regulation allows sufficient discretion in accepting or rejecting arm's-length contract prices as value.

An industry trade organization objected to the provisions for "monitoring" and "review" of the lessee's values used to report royalties, remarking that such activities presented the possibility of unnecessary involvement by MMS in the lessee's operations. The commenter recommended that lessees be provided with the opportunity to arrange for an independent third-party audit rather than an audit to be performed only by MMS.

MMS Response: Monitoring and review activities are well within the purview of MMS. Audits will be conducted by MMS or its designated agent, or by other Federal Agencies having jurisdiction in such matters.

Paragraph (c) of § 206.352 is revised to address only the valuation of geothermal resources sold under non-arm's-length contracts. The weighted-average method, as proposed, has been deleted as the first valuation benchmark and replaced with the minimum value criterion, and the revised weighted-average method, as described in part III of this preamble. The netback procedure and "other reasonable methods approved by MMS" are separated and assigned secondary and tertiary benchmark priority, respectively. The notification requirements of this paragraph are maintained at redesignated paragraph (c)(2) of § 206.352.

Paragraph (d) of § 206.352 is added to address only the valuation of "no sales" geothermal resources used to generate electricity. The rationale for this revision is discussed in part III of this preamble. Subsequent paragraphs are redesignated accordingly and modified by adding references to new paragraph (d) where appropriate.

Paragraph (e)(2) of § 206.352, originally proposed as paragraph (d)(2) of § 206.352, requires the lessee to make available to MMS and other authorized personnel all documents and other information necessary to support a value determination. An industry trade organization objected to the requirement obligating lessees to disclose valuation information to State representatives. The commenter recommended that "authorized person" be defined to mean an individual acting on behalf of MMS under contract, cooperative agreement, or other authorization. (This comment also applies to redesignated paragraph (e)(2) of § 206.355 and paragraph (d)(2) of § 206.356.)

MMS Response: The MMS agrees in principle with the commenter's suggestion, but does not believe a definition of "authorized person" is necessary. References to State representatives and the Office of the Inspector General (OIG) of the Department of the Interior are deleted in the final rule as being unnecessary, although their absence from the rule does not mean that the lessee is not required to provide State and OIG representatives the information at their request if they have jurisdiction or MMS authorization. The MMS believes the modified language sufficiently conveys the intent that only those representatives who are authorized to conduct audits have access to the required information.

Paragraph (f) of § 206.352, originally designated as paragraph (e) of § 206.352, requires the lessee to pay additional royalties plus interest if MMS determines a higher value of the resource than that used by the lessee for royalty calculations. An industry trade organization urged that because the lessee is responsible for interest payments on underpayment of royalties, the lessee should likewise receive interest when excessive royalty payments are made to satisfy MMS requirements. (This comment also applies to paragraph (f) of § 206.355 and paragraph (e) of § 206.356.)

MMS Response: The Geothermal Steam Act does not provide for interest compensation due to royalty overpayments. The MMS has no other statutory authority permitting such compensation.

Paragraph (h) of § 206.352 established gross proceeds as minimum value where geothermal resources are directly sold. The final rule is modified by deleting "* * * pursuant to arm's-length or non-arm's-length contracts" and simply referencing resources "directly sold."

Section 206.353 Determination of Transmission Deductions

Paragraph (b)(1) of § 206.353 describes the basis for determining a transmission line cost rate. No comments were received. However, since publication of the proposed rulemaking, MMS has become aware of transmission lines that service powerplants utilizing non-Federal geothermal resources in addition to ones utilizing Federal resources. The MMS will not share in the costs of transmitting electricity generated by powerplants utilizing non-Federal geothermal resources. This point is clarified by adding at the end of the first sentence "* * * for the purpose of transmitting electricity attributable and allocable to powerplants utilizing Federal geothermal resources." The intent is that transmission line costs must be allocated between powerplants utilizing non-Federal geothermal resources and those utilizing Federal resources, and only those transmission line costs attributable to powerplants utilizing Federal geothermal resources may be included in determining the lessee's transmission line cost rate/deduction.

Paragraphs (b)(1) of §§ 206.353 and 206.354 also provide alternative accounting periods for the transmission and generating deductions (third sentence). Language is added to § 206.353(b)(1) in the final rule to include an accounting period for the transmission deduction that is coincident with the same month in which the powerplant was placed into service. Both sections are modified in the final rule by repositioning and rewording the language requiring transmission and generating deduction periods to coincide.

Modifications common to paragraphs (b)(2) of §§ 206.353 and 206.354 were discussed in part III of this preamble. Briefly summarized, the language explicitly excluding real estate purchases from allowable capital costs (investments) in the second sentence is deleted in the final rule and new language is added as a third sentence to allow consideration of a return on real estate costs if their necessity is demonstrated by the lessee and approved by MMS. The terminology "fixed assets" in the second sentence is changed to "depreciable assets" to clarify MMS's general intent regarding allowable investment costs.

Paragraphs (b)(2)(iii) of §§ 206.353 and 206.354 establish overhead costs as allowable operating and maintenance expenses in determining the transmission and generating cost rates/deductions under the netback valuation procedure. One State commenter recommended that overhead costs be more explicitly defined. For example, legal fees, accounting functions, computer time, and other functions performed at the corporate level and belonging to the geothermal project were cited as overhead costs that should be specifically identified.

MMS Response: The MMS agrees that a more explicit listing of overhead costs would be beneficial, but believes the proper place for such detail is in the forthcoming Geothermal Payor Handbook.

Paragraphs (b)(2)(iv)(A) of §§ 206.353 and 206.354 establish the method of computing depreciation and include a prohibition on depreciating equipment below a reasonable salvage value. An industry commenter recommended that depreciation under the netback valuation procedure be allowed on the full costs of installing the power generation and transmission facilities without a reduction for salvage value. They argued that a salvage value is at best a "guesstimate" and in fact may be negative for facilities in remote areas.

MMS Response: As discussed above, salvage value is defined to be net of dismantlement costs. Salvage value is not a depreciable cost; therefore, it should be subtracted from the lessee's capital investment prior to depreciation. The MMS recognizes that some equipment, particularly transmission lines, may have zero salvage value and will accept such value if adequately demonstrated by the lessee. The MMS realizes that a salvage value will be a lessee's best estimate; but because MMS does not share in the profits (or losses) due to facility dismantlement, it will generally accept a lessee's estimated salvage value if that value is reasonable and is adequately supported.

As discussed in part III of this preamble, MMS intends to consider depreciation periods other than those based on the term of an electricity sales contract, if the lessee can demonstrate to MMS's satisfaction that an alternative depreciation period is reasonable and justified. The first sentence of paragraphs (b)(2)(iv)(A) of §§ 206.353 and 206.354 is modified in the final rule to clarify this intent by replacing the clause "* * * unless the lessee can show otherwise" with "* * * or other depreciation period acceptable to MMS."

Paragraphs (b)(2)(v) of §§ 206.353 and 206.354 establish the rate of return to be used in determining the returns on investments for transmission lines and powerplants. As discussed in part III of this preamble, MMS has determined that the rate of return on these investments should be 2 times Standard and Poor's industrial BBB bond rate. The first sentences of these paragraphs are modified accordingly and are reworded for simplification. The second sentences are modified to refer to annual deduction periods rather than operating years or periods. The third sentences, which prescribe the month in which the rate of return is annually redetermined, are reworded to refer to the same month beginning the annual deduction period chosen pursuant to paragraphs (b)(1) of the sections.

Paragraphs (c) of §§ 206.353 and 206.354 originally established threshold limits on monthly transmission and generating deductions. Three commenters (industry, an industry trade organization, and an industry representative) objected to the limits. They contended that the costs of generating and transmitting electricity are real costs and should not be subjected to arbitrary restrictions. One commenter expressed concern that the monthly application of the transmission and generating cost rates may lead to inequities in valuing the resource if the limits remain in place because seasonal adjustments in the electricity price rates could result in relatively low gross proceeds.

MMS Response: As discussed in part III of this preamble, MMS has determined that the threshold limits on transmission and generating deductions are unnecessary. Paragraphs (c)(1) and (c)(2) of §§ 206.353 and 206.354 are deleted accordingly. However, total deductions (transmission plus generating) are not allowed to reduce the value of the geothermal resource to zero. Language stating this caveat appears as new paragraphs (c) of §§ 206.353 and 206.354.

Paragraphs (d)(1) of §§ 206.353 and 206.354 establish the methods of adjusting royalty payments at the end of the accounting year when actual transmission and generating deductions (based on the accounting year's actual costs) result in royalty underpayments or overpayments. A State commenter objected to the crediting procedure when royalties are overpaid due to understated transmission and generating deductions. They argued that any mechanism for providing a credit must take into account the gross proceeds requirement; thus any credit extended in a subsequent month because of overpayment using the netback method in a prior month must not result in a value that is less than the lessee's gross proceeds for the prior month.

MMS Response: This comment presumably refers to non-arm's-length situations, since both gross proceeds and the netback value are involved. The MMS does not perceive a problem with the proposed crediting mechanism. If the recalculated deductions result in netback values that are less than the lessee's gross proceeds under a non-arm's-length contract, the minimum royalty will be based on the gross proceeds as required by § 206.352(h). Accordingly, no credit would be due the lessee.

New paragraphs (f) are added to §§ 206.353 and 206.354 to allow for the recoupment of royalties attributable to actual dismantlement costs in excess of salvage income, as discussed in part III of this preamble.

Section 206.354 Determination of Generating Deductions

Paragraph (b)(1) of § 206.354 describes the method of calculating generating cost rates. As discussed in part II of this preamble, the MMS is modifying the method of calculating generating cost rates by using plant tailgate electricity rather than generated electricity. Accordingly, the word "generated" in the third sentence of this paragraph is replaced with "plant tailgate" in the final rule.

Paragraph (b)(2) of § 206.354 describes in general terms the capital costs allowed for computing a generating cost rate. As discussed in part III of this preamble, MMS recognizes that some equipment associated with the power conversion cycle may be located at or in the well, such as separators or downhole pumps used to meet pressure specifications of the power conversion equipment. To allow for these costs, the final rule is modified by adding at the end of the second sentence "* * * or are required by the design specifications of the power conversion cycle." The third sentence is modified in the final rule by deleting reference to hydrogen sulfide abatement equipment and other powerplant facilities installed to mitigate environmental hazards because MMS has determined that this equipment is an integral part of a powerplant operation.

Paragraph (b)(3) of § 206.354, which further addresses the method of calculating generating cost rates, is modified in the final rule by replacing the word "generated" with "plant tailgate."

Section 206.355 Valuation Standards for Direct Utilization

Proposed paragraph (c) of § 206.355 established a benchmark system for valuing direct use geothermal resources sold under non-arm's-length contracts or not sold but instead directly utilized by the lessee in its own utilization facility ("no sales" resources). The first benchmark designated the weighted-average method for valuation. As discussed previously for geothermal resources used to generate electricity and sold under a non-arm's-length contract, MMS has rejected the proposed weighted-average valuation

method and determined that a lessee's gross proceeds received under its non-arm's-length contract must be considered in any valuation scheme. Also, MMS determined that arm's-length sales of significant quantities of geothermal resources to the same facility would be considered if the non-arm's-length gross proceeds were not acceptable. Accordingly, this section is revised to reflect that position. A new benchmark system incorporating MMS's gross proceeds philosophy and the least expensive, reasonable alternative fuel approach is established to value those direct utilization resources sold under non-arm's-length contracts. Valuation standards for "no sales" direct utilization resources are reassigned to a new paragraph (d).

The first valuation benchmark under revised § 206.355(c) is similar to the first benchmark used to value electrical generation resources sold under non-arm's-length contracts (final rule § 206.352(c)(1)(i)): the gross proceeds received by the lessee under its non-arm's-length contract will be acceptable for royalty valuation provided those gross proceeds are not less than the gross proceeds derived from or paid under the lowest-priced available comparable arm's-length contract for sales of geothermal resources to the lessee-affiliate's same direct utilization facility (the "minimum value"). If the gross proceeds under the lessee's non-arm's-length contract are less than the "minimum value," or if there are no available comparable arm's-length contracts, value will be determined by the weighted average of the gross proceeds established under arm's-length contracts for the sales of significant quantities of geothermal resources to the same direct utilization facility. The same conditions regarding the availability and comparability of arm's-length contracts noted for valuing the electrical generation resources are applicable to the direct utilization resources.

If the first benchmark is not applicable, value would then be established by the second benchmark—the least expensive, reasonable alternative fuel approach (§ 206.355(c)(1)(ii)). "Any other reasonable valuation method approved by MMS" is assigned separately as the third valuation benchmark in § 206.355(c)(1)(iii). This provision is intended to be used only in those cases where the lessee can demonstrate that the first two benchmarks are unworkable or inapplicable. The notification requirements of this section are maintained as redesignated paragraph (c)(2) of § 206.355.

Paragraph (d) of § 206.355 is added to address the valuation of "no sales" direct utilization resources. It appears separately because in these situations the lessee has no gross proceeds for the sale of the resource (or a converted form of energy) on which to base or compare value. Valuation criteria are established in a benchmark system similar to that for non-arm's length sales valuations, with the first benchmark at paragraph (d)(1)(i) again considering prices established in arm's-length sales contracts as a measure of value. Although the lessee generally will utilize only its own geothermal resources to supply the direct utilization facility, there may be some situations where the lessee purchases additional resources from other parties for utilization facility consumption. These other purchases, if arm's-length and of significant quantities, would provide a logical basis for establishing value. Accordingly, valuation under the first benchmark for "no sales" direct utilization resources is the weighted average of gross proceeds established in arm's-length contracts for the purchase of significant quantities of geothermal resources to supply the lessee's facility. As with the electrical generation resources, the acceptability of the gross proceeds under the arm's-length contract(s) to value the lessee's production will be determined in large part by the volume and quality of resources purchased compared to that of the lessee's own production; other contract elements such as time of execution, duration, terms, and other factors affecting the disposition or value of the resource will also be considered.

The second benchmark under the "no sales" direct utilization valuation standards in § 206.355(d)(1)(ii) is the least expensive, reasonable alternative fuel method. The MMS anticipates that this procedure will be used to value most geothermal resources used by lessees in their own direct utilization facilities. "Other reasonable valuation methods approved by MMS" are assigned as a third benchmark in § 206.355(d)(1)(iii), with the intent that this benchmark can be used only when the lessee demonstrates that the first two benchmarks are unworkable.

All paragraphs following newly designated paragraph (d) of § 206.355 are redesignated accordingly; references to new paragraph (d) are made where appropriate.

Paragraph (h) of § 206.355 establishes gross proceeds as minimum value where geothermal resources are directly sold. The final rule is modified by deleting "* * * pursuant to arm's-length or non-arm's-length contracts" and simply referring to resources "directly sold."

Section 206.356 Valuation Standards for Byproducts

This section establishes the methods of valuing geothermal byproducts for royalty purposes. Although no comments were received, paragraph (c)(1), the first benchmark for valuing non-arm's-length and "no sales" byproducts, is revised by replacing the "equivalent gross proceeds" methodology with the minimum value methodology, consistent with the first non-arm's-length valuation benchmark for electrical generation and direct utilization of geothermal resources. Paragraph (c)(1) is further modified by incorporating the provisions of the second benchmark (proposed paragraph (c)(2)). Thus, the first benchmark for valuing non-arm's-length and "no sales" byproducts would compare the lessee's non-arm's-length gross proceeds with the minimum value under available comparable arm's length contracts in the field or, if necessary to obtain a representative sample, from the same area. Again, if the lessee's gross proceeds are less than the "minimum value," or if there are no comparable contracts, then value is determined by the weighted average of the gross proceeds established under arm's-length contracts for the sale of like-quality products in the field or the same area. Paragraph (c)(2) is deleted and the following paragraphs are renumbered accordingly.

Section 206.357 Byproduct Transportation Allowances—General

This section establishes the conditions for application of byproduct transportation allowances. No comments were received addressing this section, but the final rule is modified by inserting references to unit areas and participating areas at appropriate places. This change recognizes that unitization consolidates various leases into a single operating unit without regard to separate ownership and establishes allocation of costs and benefits on a basis defined in the agreement.

Section 206.358 Determination of Byproduct Transportation Allowances

This section describes the methods of determining transportation allowances for geothermal byproducts. Paragraph (b)(2) describes the general costs allowed in determining a transportation allowance under non-arm's-length or no transportation contract situations. The terminology "fixed assets" in the second

sentence is changed to "depreciable assets" in the final rule to clarify MMS's intent of recognizing only those costs associated with the capital equipment and facilities required to transport the byproduct as part of the capital investment base. The parenthetical phrase "but excluding real estate purchases" in the second sentence is deleted and a new sentence is added to allow consideration of a return on the cost of land purchased to site a transportation facility if the lessee can demonstrate the necessity for the purchase and the cost is approved by MMS.

Paragraph (b)(2)(v) establishes the rate of return to be used in computing the allowance when the transportation is performed by the lessee or the lessee's affiliate. In the proposed rule, MMS suggested a rate of return of 1.5 times Standard and Poor's industrial BBB bond rate. Although no comments were received on this particular rate of return, MMS has re-examined the issue and determined that the 1.5 multiplier is not warranted. The MMS does not foresee byproduct transportation systems involving unusual design or extraordinary costs. Rather, they are perceived as conventional operations analogous to coal and other solid mineral transportation methods. The final rule is modified by designating Standard and Poor's industrial BBB bond rate, without a multiplier, as the rate of return for determining byproduct transportation allowances.

Section 212.351 Required Recordkeeping and Reports

This section is modified in the final rule by incorporating the requirements of § 212.352 (records and files maintenance). Section 212.352 is deleted as being duplicative and unnecessary.

The final rule also includes an administrative amendment to subpart B of 30 CFR part 212 to remove the authority citation included therein. The authority citation for part 212 is included directly after the table of contents and before the regulatory text and therefore is not required under this subpart.

V. Procedural Matters

Executive Order 12991

The Department has determined that this document is not a major rule and does not require a regulatory analysis under Executive Order 12291. This rulemaking will establish regulations to reflect current policy and practices with respect to the valuation of geothermal byproducts and resources used in direct utilization processes.

Regulatory Flexibility Act

Because this rule primarily clarifies existing requirements, there are no significant additional requirements or burdens placed upon small business entities as a result of implementation of this rule. Therefore, the Department has determined that this rulemaking will not have a significant economic effect on a substantial number of small entities and does not require a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Executive Order 12630

The Department certifies that this rulemaking does not represent a governmental action capable of interference with constitutionally protected property rights. Thus, a Takings Implication Assessment need not be prepared pursuant to Executive Order 12630, "Government Action and Interference with Constitutionally Protected Property Rights."

Paperwork Reduction Act of 1980

The information collection and recordkeeping requirements located at §§ 202.353, 210.352, and 210.354 of this rule have been approved by the Office of Management and Budget OMB under 44 U.S.C. 3501 *et seq.* and assigned OMB Clearance Numbers 1010–0033 and 1010–0022.

National Environmental Policy Act of 1969

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and a detailed statement pursuant to paragraph (2)(C) of Section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is not required.

List of Subjects

30 CFR Part 202

Coal, Continental shelf, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Petroleum, Public lands—mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 206

Coal, Continental shelf, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Petroleum, Public lands—mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 210

Coal, Continental shelf, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Petroleum, Public lands—mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 212

Coal, Continental shelf, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Petroleum, Public lands—mineral resources, Reporting and recordkeeping requirements.

Dated: June 25, 1991.

David C. O'Neal,

Assistant Secretary—Land and Minerals Management.

For the reasons set out in the preamble, 30 CFR parts 202, 206, 210, and 212 are amended as follows:

PART 202—ROYALTIES

1. The authority citation for part 202 is revised to read as follows:

Authority: 5 U.S.C. 301 *et seq.*; 25 U.S.C. 396 *et seq.*; 25 U.S.C. 396a *et seq.*; 25 U.S.C. 2101 *et seq.*; 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351 *et seq.*; 30 U.S.C. 1001 *et seq.*; 30 U.S.C. 1701 *et seq.*; 31 U.S.C. 9701; 43 U.S.C. 1301 *et seq.*; 43 U.S.C. 1331 *et seq.*; 43 U.S.C. 1801 *et seq.*

2. Subpart H, previously reserved, is amended by adding §§ 202.350 through 202.353 to read as follows:

Subpart H—Geothermal Resources

Sec.

202.350 Scope and definitions.
202.351 Royalties on geothermal resources.
202.352 Minimum royalty.
202.353 Measurement standards for reporting and paying royalties.

Subpart H—Geothermal Resources

§ 202.350 Scope and definitions.

(a) This subpart is applicable to all geothermal resources produced from Federal geothermal leases issued pursuant to the Geothermal Steam Act of 1970, as amended (30 U.S.C. 1001 *et seq.*).

(b) The definitions in 30 CFR 206.351 are applicable to this subpart.

§ 202.351 Royalties on geothermal resources.

(a) Royalties on geothermal resources, including byproduct minerals and commercially demineralized water, shall be at the royalty rate(s) specified in the lease, unless the Secretary of the Interior temporarily waives, suspends, or reduces that rate(s). Royalties shall be paid in value. The royalty due shall be the value determined pursuant to subpart H of 30 CFR part 206 multiplied by the royalty rate in the lease.

(b)(1) Royalties are due on all geothermal resources, except those

specified in paragraph (b)(2) of this section, that are produced from a lease and are sold or utilized by the lessee or are reasonably susceptible to sale or utilization by the lessee.

(2) Geothermal resources that are unavoidably lost, as determined by the Bureau of Land Management (BLM), and geothermal resources that are reinjected prior to use on or off the lease, as approved by BLM, are not subject to royalty. The Minerals Management Service (MMS) will allow free of royalty a reasonable amount of geothermal energy necessary to generate electricity for internal powerplant operations or to generate electricity returned to the lease for lease operations. If a powerplant uses geothermal production from more than one lease, or uses unitized or communitized production, only that proportionate share of each lease's production (actual or allocated) necessary to operate the powerplant may be used royalty free. The MMS will also allow free of royalty a reasonable amount of commercially demineralized water necessary for powerplant operations or otherwise used on or for the benefit of the lease.

(3) Royalties on byproducts are due at the time the recovered byproduct is used, sold, or otherwise finally disposed of. Byproducts produced and added to stockpiles or inventory do not require payment of royalty until the byproducts are sold, utilized, or otherwise finally disposed of. The MMS may ask BLM to increase the lease bond to protect the lessor's interest when BLM determines that stockpiles or inventories become excessive.

(c) If BLM determines that geothermal resources (including byproducts) were avoidably lost or wasted from the lease, or that geothermal resources (including byproducts) were drained from the lease for which compensatory royalty is due, the value of those geothermal resources shall be determined in accordance with subpart H of 30 CFR part 206.

(d) If a lessee receives insurance or other compensation for unavoidably lost geothermal resources (including byproducts), royalties at the rates specified in the lease are due on the amount of that compensation. This paragraph shall not apply to compensation through self-insurance.

§ 202.352 Minimum royalty.

In no event shall the lessee's annual royalty payments for any producing lease be less than the minimum royalty established by the lease.

§ 202.353 Measurement standards for reporting and paying royalties.

(a) For geothermal resources used to generate electricity, the quantity on which royalty is due shall be reported on Form MMS–2014 (Report of Sales and Royalty Remittance) as follows:

(1) For geothermal resources valued under arm's-length or non-arm's-length contracts, quantities shall be reported in:

(i) Kilowatthours to the nearest whole kilowatthour if the contract specifies payment in terms of generated electricity,

(ii) Thousands of pounds to the nearest whole thousand pounds if the contract specifies payment in terms of weight, or

(iii) Millions of Btu's to the nearest whole million Btu if the contract specifies payment in terms of heat or thermal energy.

(2) For geothermal resources valued by the netback procedure pursuant to 30 CFR 206.352(c)(1)(ii) or (d)(1)(ii), the quantities shall be reported in kilowatthours to the nearest whole kilowatthour.

(b) For geothermal resources used in direct utilization processes, the quantity on which royalty is due shall be reported on Form MMS–2014 in:

(1) Millions of Btu's to the nearest whole million Btu if valuation is in terms of thermal energy used or displaced,

(2) Hundreds of gallons to the nearest hundred gallons of geothermal fluid produced if valuation is in terms of volume, or

(3) Other measurement unit approved by MMS for valuation and reporting purposes.

(c) For byproduct minerals, the quantity on which royalty is due shall be reported on Form MMS–2014 consistent with MMS-established reporting standards.

(d) For commercially demineralized water, the quantity on which royalty is due shall be reported on Form MMS–2014 in hundreds of gallons to the nearest hundred gallons.

(e) Lessees are not required to report the quality of geothermal resources, including byproducts, to MMS. The lessee must maintain quality measurements for audit and valuation purposes. Quality measurements include, but are not limited to, temperatures and chemical analyses for fluid geothermal resources and chemical analyses, weight percent, or other purity measurements for byproducts.

PART 206—PRODUCT VALUATION

1. The authority citation for part 206 continues to read as follows:

Authority: 5 U.S.C. 301 *et seq.*; 25 U.S.C. 396 *et seq.*; 25 U.S.C. 396a *et seq.*; 25 U.S.C. 2101 *et seq.*; 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351 *et seq.*; 30 U.S.C. 1001 *et seq.*; 30 U.S.C. 1701 *et seq.*; 31 U.S.C. 9701; 43 U.S.C. 1301 *et seq.*; 43 U.S.C. 1331 *et seq.*; and 43 U.S.C. 1801 *et seq.*

2. Subpart H is amended by revising §§ 206.350 and 206.351 and by adding §§ 206.352 through 206.358 to read as follows:

Subpart H—Geothermal Resources

Sec.

206.350 Purpose and scope.
206.351 Definitions.
206.352 Valuation standards for electrical generation.
206.353 Determination of transmission deductions.
206.354 Determination of generating deductions.
206.355 Valuation standards for direct utilization.
206.356 Valuation standards for byproducts.
206.357 Byproduct transportation allowances—general.
206.358 Determination of byproduct transportation allowances.

Subpart H—Geothermal Resources

§ 206.350 Purpose and scope.

(a) This subpart is applicable to all geothermal resources produced from Federal geothermal leases issued pursuant to the Geothermal Steam Act of 1970, as amended (30 U.S.C. 1001 *et seq.*). The purpose of this subpart is to establish the value of geothermal production for royalty purposes.

(b) All royalty payments made to MMS are subject to audit and adjustment.

§ 206.351 Definitions.

For purposes of this subpart:

Arm's-length contract means a contract or agreement that has been arrived at in the marketplace between independent, nonaffiliated persons with opposing economic interests regarding that contract. For purposes of this subpart, two persons are affiliated if one person controls, is controlled by, or is under common control with, another person. For purposes of this subpart, based on the instruments of ownership of the voting securities of an entity, or based on other forms of ownership:

(1) Ownership in excess of 50 percent constitutes control;

(2) Ownership of 10 through 50 percent creates a rebuttable presumption of control; and

(3) Ownership of less than 10 percent creates a presumption of noncontrol which MMS may rebut if it demonstrates actual or legal control, including the existence of interlocking directorates.

Notwithstanding any other provisions of this subpart, contracts between relatives, either by blood or by marriage, are not arm's-length contracts. The MMS may require the lessee to certify the claimed nature of ownership control. To be considered arm's-length for any production month, a contract must meet the requirements of this definition for the production month as well as when the contract was executed.

Audit means a procedure having the same meaning and effect as that described at 30 CFR part 217 for verifying royalty payment compliance activities of lessees or other authorized persons who pay royalties, rents, or bonuses on Federal geothermal leases.

Byproduct means:

(1) Any mineral or minerals (exclusive of oil, hydrocarbon gas, and helium) which are found in solution or developed in association with geothermal fluids and which have a value of less than 75 per centum of the value of the geothermal energy or are not, because of quantity, quality, or technical difficulties in extraction and production, of sufficient value to warrant extraction and production by themselves, and

(2) Commercially demineralized water.

Byproduct recovery facility means the facility or facilities at which byproducts are placed in marketable condition.

Byproduct transportation allowance means an approved allowance for the lessee's reasonable, actual costs, excluding gathering, incurred for moving byproducts, including commercially demineralized water, to a point of sale or point of delivery off the lease, unit area, or communitized area.

Contract means any oral or written agreement, including amendments or revisions thereto, between two or more persons and enforceable by law that with due consideration creates an obligation.

Deduction means a subtraction used in the geothermal netback procedure for determining the value of geothermal resources utilized by the lessee to generate electricity. *Transmission deduction* means a deduction for the lessee's reasonable actual costs incurred to wheel or transmit the electricity from the lessee's powerplant to the purchaser's delivery point. *Generating deduction* means a deduction for the lessee's reasonable, actual costs of generating plant tailgate electricity.

Delivered electricity means the amount of electricity in kilowatthours delivered to the purchaser.

Direct utilization means any process other than electrical generation in which the thermal energy of the geothermal resource is utilized, including, but not limited to, space heating, greenhouse operations, and industrial or agricultural process heat.

Field means the land surface vertically projected over a subsurface geothermal reservoir encompassing at least the outermost boundaries of all geothermal accumulations known to be within that reservoir. Geothermal fields are usually given names and their official boundaries are often designated by regulatory agencies in the respective States in which the fields are located.

Gathering means the efficient movement of lease production from the wellhead to the point of utilization.

Geothermal netback procedure means the method of determining the value of geothermal resources that are utilized in a lessee-owned powerplant for the generation and sale of electricity by deducting the lessee's reasonable, actual transmission and generating costs from the sales price or value of the electricity to derive the value of the geothermal resource at the powerplant inlet.

Geothermal resources means:

(1) All products of geothermal processes, including indigenous steam, hot water, and hot brines;

(2) Steam and other gases, hot water, and hot brines resulting from water, gas, or other fluids artificially introduced into geothermal formations;

(3) Heat or other associated energy found in geothermal formations; and

(4) Any byproducts.

Geothermal utilization facility means a powerplant or direct utilization facility that utilizes the heat or other energy of the geothermal resource.

Gross proceeds (for royalty purposes) means the total monies and other consideration accruing to a geothermal lessee for any disposition of geothermal resources, including total payments for the sale of electricity generated by the lessee from lease-produced geothermal resources. Gross proceeds includes, but is not limited to, payments to the lessee for certain services such as effluent injection, field operation and maintenance, drilling or workover of wells, and/or field gathering to the extent that the lessee is obligated to perform them at no cost to the Federal Government. Gross proceeds also includes, but is not limited to, reimbursements for production taxes and other taxes. Tax reimbursements are part of gross proceeds accruing to a lessee even though the Federal royalty interest may be exempt from taxation. Monies and other consideration, including the forms of consideration identified in this paragraph, to which a lessee is contractually or legally entitled but which it does not seek to collect through reasonable efforts are also part of gross proceeds.

Lease means a geothermal lease issued under authority of the Geothermal Steam Act of 1970, as amended (30 U.S.C. 1001 *et seq.*), unless the context indicates otherwise.

Lessee means any person to whom the United States issues a geothermal lease, and any person who has been assigned an obligation to make royalty or other payments required by the lease. This includes any person who has an interest in a geothermal lease as well as an operator or payor who has no interest in the lease but who has assumed the royalty payment responsibility. This also includes any affiliate of the lessee that utilizes the geothermal resource to generate electricity, in a direct utilization process, or to recover byproducts, or any affiliate that transports lease production.

Like-quality lease products means lease products that have similar chemical, physical, and legal characteristics.

Marketable condition means lease products that are sufficiently free from impurities and otherwise in a condition that they will be accepted by a purchaser under a sales contract typical for the field.

Minimum royalty means the minimum amount of annual royalty as specified in the lease or in applicable leasing regulations that the lessee must pay after commencement of geothermal production in commercial quantities.

No sales means the utilization or disposal of geothermal resources without the benefit of a sale.

Person means any individual, firm, corporation, association, partnership, consortium, or joint venture (when established as a separate entity).

Plant tailgate electricity means the amount of electricity in kilowatthours generated by the powerplant exclusive of plant parasitic electricity, but inclusive of any electricity generated by the powerplant and returned to the lease for lease operations. Plant tailgate electricity should be measured at, or calculated for, the high voltage side of the transformer in the plant switchyard.

Point of utilization means the powerplant or direct utilization facility in which the geothermal resource (steam or hot water) is utilized.

Reasonable alternative fuel means a conventional fuel (such as coal, oil, gas, or wood) that would normally be used as a source of heat in direct utilization operations.

Secretary means the Secretary of the Department of the Interior or any person

duly authorized to exercise the powers vested in that office.

Selling arrangement means the individually contracted arrangements under which sales or dispositions of geothermal resources are made, including sales or dispositions of byproducts and electricity sales where the lessee generates electricity from lease geothermal production.

Spot market price means the price received under any sales transaction when planned or actual deliveries span a short period of time, usually not exceeding 1 year.

Wheeling means the transmission of electricity from a powerplant to the point of delivery.

§ 206.352 Valuation standards for electrical generation.

(a) The value of geothermal resources produced from leases subject to this subpart and used to generate electricity shall be determined pursuant to this section.

(b)(1)(i) The value of geothermal resources that are sold pursuant to an arm's-length contract shall be the gross proceeds accruing to the lessee, except as provided in paragraphs (b)(1)(ii) and (b)(1)(iii) of this section. The lessee shall have the burden of demonstrating that its contract is arm's-length. The value that the lessee reports for royalty purposes is subject to monitoring, review, and audit.

(ii) In conducting reviews and audits, MMS will examine whether the contract reflects the total consideration actually transferred, either directly or indirectly, from the buyer to the seller for the geothermal resource. If the contract does not reflect the total consideration, MMS may require that the geothermal resource sold pursuant to that contract be valued in accordance with paragraph (d) of this section. Value shall not be less than the gross proceeds accruing to the lessee, including any additional consideration received.

(iii) If MMS determines that the gross proceeds accruing to the lessee pursuant to an arm's-length contract do not reflect the reasonable value of the production because of misconduct by or between the contracting parties, or because the lessee otherwise has breached its duty to the lessor to market the production for the mutual benefit of the lessee and the lessor, MMS shall require the geothermal resource to be valued pursuant to paragraph (d) of this section, and notification provided to MMS in accordance with paragraph (e)(3) of this section. If MMS determines that the value may be unreasonable, MMS will notify the lessee and give the lessee an opportunity to provide written information justifying the lessee's value.

(2) The MMS may require a lessee to certify that the provisions in its arm's-length contract include all of the consideration to be paid by the buyer, either directly or indirectly, for the geothermal resource.

(c)(1) The value of geothermal resources subject to this section that are sold under a non-arm's-length contract shall be determined in accordance with the first applicable of the following paragraphs:

(i) The gross proceeds accruing to the lessee pursuant to a sale under its non-arm's-length contract provided that those gross proceeds are not less than the gross proceeds derived from or paid under the lowest-priced available comparable arm's-length contract for sales of geothermal resources to the lessee-affiliate's same powerplant (the "minimum value"). If the gross proceeds under the lessee's non-arm's-length contract are less than the "minimum value" under available comparable arm's-length contracts, or if there are no available comparable arm's-length contracts, value will be determined by the weighted average of the gross proceeds established under arm's-length contracts for the sale of significant quantities of geothermal resources to the same powerplant. Available contracts will mean contracts in the possession of the lessee, the lessee's affiliate, or MMS. In evaluating the comparability of arm's-length contracts for the purposes of these regulations, the following factors shall be considered: Time of execution, duration, terms, quality of the geothermal resource, volume, dedication to the same powerplant, and other factors that may be appropriate to reflect the value of the resource;

(ii) The value determined by the geothermal netback procedure. Under the geothermal netback procedure, the lessee's reasonable actual costs for the generation and transmission of electricity shall be deducted from the lessee's gross proceeds received for the sale of electricity to determine the value of the geothermal resource. Transmission deductions shall be determined pursuant to § 206.353 of this part. Generating deductions shall be determined pursuant to § 206.354 of this part; or

(iii) A value determined by any other reasonable valuation method approved by MMS.

(2) Value determinations made pursuant to this paragraph are subject to the notification requirements of paragraph (e) of this section.

(d)(1) The value of geothermal resources subject to this section that are not subject to a sales transaction ("no sales" geothermal resources) but are instead utilized directly by the lessee in its own powerplant for the generation and sale of electricity shall be determined in accordance with the first applicable of the following paragraphs:

(i) The weighted average of the gross proceeds established in arm's-length contracts for the purchase of significant quantities of geothermal resources to operate the lessee's same powerplant. In evaluating the acceptability of arm's-length contracts, the following factors shall be considered: Time of execution, duration, terms, volume, quality of resource, and such other factors as may be appropriate to reflect the value of the resource;

(ii) The value determined by the geothermal netback procedure. Under the geothermal netback procedure, the lessee's reasonable actual costs for the generation and transmission of electricity shall be deducted from the lessee's gross proceeds received for the sale of electricity to determine the value of the geothermal resource. Transmission deductions shall be determined pursuant to § 206.353 of this part. Generating deductions shall be determined pursuant to § 206.354 of this part; or

(iii) A value determined by any other reasonable valuation method approved by MMS.

(2) Value determinations made pursuant to this paragraph are subject to the notification requirements of paragraph (e) of this section.

(e)(1) Pursuant to subpart H of 30 CFR part 212, the lessee shall retain all data relevant to the determination of royalty value, particularly where the value is determined pursuant to paragraph (c) or (d) of this section. Such data shall be subject to review and audit, and MMS will direct a lessee to use a different value if it determines that the reported value is inconsistent with the requirements of these regulations.

(2) Upon request, lessees shall make available to authorized MMS representatives or to other authorized persons any and all contracts for the sale or other disposition of the lease production; contracts for the sale, generation, and/or transmission of electricity attributable to lease production; and any arm's-length sales and other data for like-quality production sold, purchased, or otherwise obtained by the lessee from the field as may be necessary to support a value determination.

(3) A lessee shall notify MMS if it has determined value pursuant to paragraph (c) or (d) of this section. The notification

shall be by letter to the MMS Associate Director for Royalty Management or his/her designee. The letter shall identify the valuation method to be used and contain a brief description of the procedure to be followed. The notification required by this paragraph is a one-time notification due no later than the end of the month following the month the lessee first reports royalties on a Form MMS–2014 using a valuation method authorized by paragraph (c) or (d) of this section.

(f) If MMS determines that a lessee has not properly determined value, the lessee shall pay the difference, if any, between royalty payments made based upon the value it has used and the royalty payments that are due based upon the value established by MMS. The lessee shall also pay interest on that difference computed pursuant to 30 CFR 218.302. If the lessee is entitled to a credit, MMS will provide instructions for the taking of that credit.

(g) The lessee may request a value determination from MMS. In that event, the lessee shall propose to MMS a value determination method and may use that method in determining value, for royalty purposes, until MMS issues its decision. The lessee shall submit all available data relevant to its proposal. The MMS shall expeditiously determine the value based upon the lessee's proposal and any additional information MMS deems necessary. In making a value determination, MMS may use any of the valuation criteria consistent with this subpart. That determination shall remain effective for the period stated therein. After MMS issues its determination, the lessee shall make the adjustments in accordance with paragraph (f) of this section.

(h) Notwithstanding any other provision of this section, under no circumstances shall the value of production for royalty purposes be less than the gross proceeds accruing to the lessee where geothermal resources are directly sold.

(i) The lessee is required to place geothermal resources in marketable condition and to deliver geothermal resources to the powerplant at no cost to the Federal lessor. Where the value established pursuant to this section is determined by a lessee's gross proceeds, that value shall be increased to the extent that the gross proceeds have been reduced because the purchaser, or any other person, is providing certain services the cost of which ordinarily is the responsibility of the lessee to place the geothermal resource in marketable condition or deliver it to the powerplant.

(j) Value shall be based on the highest price a prudent lessee can receive through legally enforceable claims under its contract. Absent contract revision or amendment, if the lessee fails to take proper or timely action to receive prices or benefits to which it is entitled, it must pay royalty at a value based upon that obtainable price or benefit. Contract revisions or amendments shall be in writing and signed by all parties to the contract. If the lessee makes timely application for a price increase or benefit allowed under its contract but the purchaser refuses and the lessee takes reasonable measures, which are documented, to force purchaser compliance, the lessee will owe no additional royalties unless or until monies or consideration resulting from the price increase or additional benefits are received. This paragraph shall not be construed to permit a lessee to avoid its royalty payment obligation in situations where a purchaser fails to pay, in whole or in part or timely, for a quantity of geothermal resources.

(k) Notwithstanding any provision in these regulations to the contrary, no review, reconciliation, monitoring, or other like process that results in a redetermination by MMS of value under this section shall be considered final or binding as against the Federal Government or its beneficiaries until the audit period is formally closed.

(l) Certain information submitted to MMS to support value determinations is exempted from disclosure by the Freedom of Information Act, 5 U.S.C. 552, or other Federal law. Any data specified by law to be privileged, confidential, or otherwise exempt will be maintained in a confidential manner in accordance with applicable law and regulations. All requests for information about determinations made under this subpart are to be submitted in accordance with the Freedom of Information Act regulations of the Department, 43 CFR part 2.

§ 206.353 Determination of transmission deductions.

(a) Where the value of geothermal energy is determined by the geothermal netback procedure pursuant to paragraphs (c)(1)(ii) and (d)(1)(ii) of § 206.352 of this subpart, a transmission deduction shall be subtracted from the lessee's gross proceeds received for the sale of electricity to determine the plant tailgate value of the electricity. The transmission deduction consists of either or both of two components:

(1) Transmission line costs as determined pursuant to paragraph (b) of this section, and

(2) Wheeling costs if the electricity is transmitted across a third-party's transmission line under an arm's-length wheeling agreement. Transmission deductions are subject to the limitation prescribed in paragraph (c) of this section.

(b)(1) Transmission-line costs shall be based on the lessee's actual costs associated with the construction and operation of a transmission line for the purpose of transmitting electricity attributable and allocable to the lessee's powerplant utilizing Federal geothermal resources. The monthly transmission line cost component of the transmission deduction is determined by multiplying the annual transmission line cost rate (in dollars per kilowatthour) by the amount of electricity delivered for the reporting month. The transmission line cost rate shall be redetermined annually at the beginning of the same month of the year in which the transmission line was placed into service, the same month of the year in which the powerplant was placed into service, or, at the lessee's option, at a time concurrent with the beginning of the lessee's annual corporate accounting period; *Provided,* however, the period selected must coincide with the same period chosen for the generating deduction pursuant to § 206.354(b)(1). After a deduction period is chosen, the lessee may not later elect to use a different deduction period without MMS approval.

(2) Allowable transmission-line costs include operating and maintenance expenses, overhead, and either depreciation and a return on undepreciated capital investment in accordance with paragraph (b)(2)(iv)(A) of this section, or a cost equal to the capital investment in the transmission line multiplied by a rate of return in accordance with paragraph (b)(2)(iv)(B) of this section. Allowable capital costs are generally those costs for depreciable assets, including costs of delivery and installation of capital equipment, that are an integral part of the transmission line. A return on capital invested in the purchase of real estate for transmission facilities may be allowed provided that the lessee demonstrates the necessity for such purchase, the purchased land is not on a Federal geothermal lease, and MMS approves the deduction; the rate of return shall be the same rate determined in paragraph (b)(2)(v) of this section.

(i) Allowable operating expenses include operations supervision and engineering, operations labor, materials, ad valorem property taxes, rent, supplies, and any other directly allocable and attributable operating expenses that the lessee can document.

(ii) Allowable maintenance expenses include maintenance of the transmission line, maintenance of equipment,

maintenance labor, and other directly allocable and attributable maintenance expenses that the lessee can document.

(iii) Overhead directly attributable and allocable to the operation and maintenance of the transmission line is an allowable expense. State and Federal income taxes and severance taxes and other fees, including royalties, are not allowable expenses.

(iv) To compute costs associated with capital investment, a lessee may use either depreciation with a return on undepreciated capital investment, or a return on capital investment. After a lessee has elected to use either method, the lessee may not later elect to change to the other alternative without MMS approval.

(A) To compute depreciation, the lessee must use a straight-line depreciation method based on the expected life of the geothermal project, usually the term of the electricity sales contract or other depreciation period acceptable to MMS. A change in ownership of a transmission line shall not alter the depreciation schedule established by the original lessee-owner for purposes of computing transmission line costs. With or without a change in ownership, a transmission line shall be depreciated only once. The rate of return used to compute the return on undepreciated capital investment shall be determined pursuant to paragraph (b)(2)(v) of this section.

(B) To compute a return on capital investment, the allowed cost shall be the amount equal to the allowable capital investment in the transmission line multiplied by the rate of return determined pursuant to paragraph (b)(2)(v) of this section. No allowance shall be provided for depreciation. This alternative shall apply only to transmission lines first placed into service on or after March 1, 1988.

(v) The rate of return shall be 2 times Standard and Poor's industrial BBB bond rate. The rate of return shall be 2 times the monthly average rate as published in Standard and Poor's Bond Guide for the first month of the annual deduction period and shall be effective during the following deduction period. The rate shall be redetermined annually at the beginning of the same month beginning the annual deduction period chosen pursuant to paragraph (b)(1) of this section.

(3) Transmission-line cost rates, determined annually, are computed by dividing the sum of the operating, maintenance, overhead, and capital costs by the annual amount of delivered electricity.

(4) For new transmission lines, the lessee's costs for the first deduction period shall be based on estimated expenses (including overhead) for operating and maintaining the transmission line. For subsequent deduction periods, the transmission line costs shall be estimated based on the lessee's actual operating and maintenance expenses for the previous period adjusted for decreases or increases that the lessee knows will affect the deduction in the current period.

(c) Under no circumstances shall the transmission deduction plus the generating deduction determined pursuant to § 206.354 of this subpart reduce the royalty value of the geothermal resource to zero.

(d)(1) If the actual transmission deduction determined at the end of the annual reporting period is less than the amount the lessee estimated and used in the netback procedure during the reporting period, the lessee shall be required to pay additional royalties retroactive to the first month of the reporting period, plus interest computed pursuant to 30 CFR 218.302. If the actual transmission deduction is greater than the amount applied in the netback calculation, the lessee shall be entitled to a credit.

(2) Lessees must submit corrected Forms MMS–2014 to reflect adjustments to royalty payments in accordance with MMS instructions.

(e)(1) All transmission deductions are subject to review, audit, and adjustment. When necessary or appropriate, MMS may direct a lessee to modify its estimated or actual transmission deduction and adjust royalty values accordingly.

(2) Pursuant to subpart H of 30 CFR part 212, the lessee must maintain all data and records supporting its transmission deduction, including wheeling and other transmission-related agreements. These data and records must be made available to MMS and other authorized personnel upon request, and shall be maintained in a confidential manner in accordance with applicable laws and regulations pursuant to § 206.352 of this subpart.

(f) A one-time refund of royalties equal to the royalty amount of actual dismantlement costs attributable to the transmission line that are in excess of actual income attributable to the salvage of the transmission line will be allowed at the completion of the dismantlement and salvage operations.

§ 206.354 Determination of generating deductions.

(a) Where the value of geothermal energy is determined by the geothermal netback procedure pursuant to paragraphs (c)(1)(ii) and (d)(1)(ii) of § 206.352 of this subpart, that value shall be determined by deducting the lessee's reasonable actual costs incurred to generate electricity from the plant tailgate value of the electricity (usually the transmission-reduced value of the delivered electricity). Generating deductions are subject to the limitation prescribed in paragraph (c) of this section.

(b)(1) Generating costs shall be based on the lessee's actual annual costs associated with the construction and operation of a geothermal powerplant. The monthly generating deduction is determined by multiplying the annual generating cost rate (in dollars per kilowatthour) by the amount of plant tailgate electricity measured (or computed) for the reporting month. The generating cost rate is determined from the annual amount of plant tailgate electricity and must be redetermined annually at the beginning of the same month of the year in which the powerplant was placed into service or, at the lessee's option, at a time concurrent with the beginning of the lessee's annual corporate accounting period; *Provided,* however, the period selected must coincide with the same period chosen for the transmission deduction pursuant to § 206.353(b)(1). After a deduction period is chosen, the lessee may not later elect to use a different deduction period without MMS approval.

(2) Allowable generating costs include operating and maintenance expenses, overhead, and either depreciation and a return on undepreciated capital investment in accordance with paragraph (b)(2)(iv)(A) of this section, or a cost equal to the capital investment in the powerplant multiplied by a rate of return in accordance with paragraph (b)(2)(iv)(B) of this section. Allowable capital costs are generally those costs for depreciable assets, including costs of delivery and installation of capital equipment, that are an integral part of the powerplant or are required by the design specifications of the power conversion cycle. A return on capital invested in the purchase of real estate for a powerplant site may be allowed provided that the lessee demonstrates the necessity for such purchase, the purchased land is not on a Federal geothermal lease, and MMS approves the deduction; the rate of return shall be the same rate determined in paragraph (b)(2)(v) of this section. The costs of gathering systems and other production-related facilities are not allowed.

(i) Allowable operating expenses include operations supervision and

engineering, operations labor, materials, ad valorem property taxes, rent, supplies, auxiliary fuel and/or utilities used to operate the powerplant during down time, and any other directly allocable and attributable operating expense that the lessee can document.

(ii) Allowable maintenance expenses include maintenance of the powerplant, maintenance of equipment, maintenance labor, and other directly allocable and attributable maintenance expenses that the lessee can document.

(iii) Overhead directly attributable and allocable to the operation and maintenance of the powerplant is an allowable expense. State and Federal income taxes and severance taxes, including royalties, are not allowable expenses.

(iv) To compute costs associated with capital investment, a lessee may use either depreciation with a return on undepreciated capital investment, or a return on capital investment. After a lessee has elected to use either method, the lessee may not later elect to change to the other alternative without MMS approval.

(A) To compute depreciation , the lessee must use a straight-line depreciation method based on the life of the geothermal project, usually the term of the electricity sales contract or other depreciation period acceptable to MMS. A change in ownership of a powerplant shall not alter the depreciation schedule established by the original lessee-owner for computing the generating costs. With or without a change in ownership, a powerplant shall be depreciated only once. The rate of return used to compute the return on undepreciated capital investment shall be determined pursuant to paragraph (b)(2)(v) of this section.

(B) To compute a return on capital investment, the allowed cost shall be the amount equal to the allowable capital investment in the powerplant multiplied by the rate of return determined pursuant to paragraph (b)(2)(v) of this section. No allowance shall be provided for depreciation. This alternative shall apply only to powerplants first placed into service on or after March 1, 1988.

(v) The rate of return shall be 2 times Standard and Poor's industrial BBB bond rate. The rate of return shall be 2 times the monthly average rate as published in Standard and Poor's Bond Guide for the first month of the annual deduction period and shall be effective during the following deduction period. The rate shall be redetermined annually at the beginning of the same month beginning the annual deduction period chosen pursuant to paragraph (b)(1) of this section.

(3) Generating cost rates, determined annually, shall be computed by dividing the sum of the operating, maintenance, overhead, and capital costs by the annual amount of plant tailgate electricity.

(4) For new powerplants, the lessee's generating costs for the first deduction period shall be based on estimated expenses (including overhead) for operating and maintaining the powerplant. For subsequent deduction periods, the generating costs shall be estimated based on the lessee's actual operating and maintenance expenses for the previous period adjusted for decreases or increases that the lessee knows will affect the deduction in the current period.

(c) Under no circumstances shall the generating deduction plus the transmission deduction determined pursuant to § 206.353 of this subpart reduce the royalty value of the geothermal resource to zero.

(d)(1) If the actual generating deduction determined at the end of the annual reporting period is less than the amount the lessee estimated and used in the netback procedure during the reporting period, the lessee shall be required to pay additional royalties retroactive to the first month of the reporting period, plus interest computed pursuant to 30 CFR 218.302. If the actual generating deduction is greater than the amount applied in the netback calculation, the lessee shall be entitled to a credit.

(2) Lessees must submit corrected Forms MMS–2014 to reflect adjustments to royalty payments in accordance with MMS instructions.

(e)(1) All generating deductions are subject to review, audit, and adjustment. When necessary or appropriate, MMS may direct a lessee to modify its estimated or actual generating deduction and adjust royalty values accordingly.

(2) Pursuant to subpart H of 30 CFR part 212, the lessee must maintain all data and records supporting its generating deduction. These data and records must be made available to MMS and other authorized personnel upon request, and shall be maintained in a confidential manner in accordance with applicable laws and regulations pursuant to § 206.352 of this subpart.

(f) A one-time refund of royalties equal to the royalty amount of actual dismantlement costs attributable to the powerplant that are in excess of actual income attributable to the salvage of the powerplant will be allowed at the completion of the dismantlement and salvage operations.

§ 206.355 Valuation standards for direct utilization.

(a) The value of geothermal resources produced for leases subject to this subpart and used in direct utilization processes shall be determined pursuant to this section.

(b)(1)(i) The value of geothermal resources that are sold pursuant to an arm's-length contract shall be the gross proceeds accruing to the lessee, except as provided in paragraphs (b)(1)(ii) and (b)(1)(iii) of this section. The lessee shall have the burden of demonstrating that its contract is arm's-length. The value that the lessee reports for royalty purposes is subject to monitoring, review, and audit.

(ii) In conducting these reviews and audits, MMS will examine whether or not the contract reflects the total consideration actually transferred either directly or indirectly from the buyer to the seller for the geothermal resource. If the contract does not reflect the total consideration, MMS may require that the geothermal resource sold pursuant to that contract be valued in accordance with paragraph (d) of this section. Value shall not be less than the gross proceeds accruing to the lessee, including any additional consideration received.

(iii) If MMS determines that the gross proceeds accruing to the lessee pursuant to an arm's-length contract do not reflect the reasonable value of the geothermal resource because of misconduct by or between the contracting parties, or because the lessee otherwise has breached its duty to the lessor to market the production for the mutual benefit of the lessee and the lessor, MMS shall require the geothermal resource to be valued pursuant to paragraph (d) of this section and in accordance with the notification requirements of paragraph (e) of this section. When MMS determines that the value may be unreasonable, MMS will notify the lessee and give the lessee an opportunity to provide written information justifying the lessee's value.

(2) The MMS may require a lessee to certify that its arm's-length contract provisions include all of the consideration to be paid by the buyer, either directly or indirectly, for the geothermal resource.

(c)(1) The value of geothermal resources subject to this section that are sold under a non-arm's-length contract shall be determined in accordance with the first applicable of the following paragraphs:

(i) The gross proceeds accruing to the lessee pursuant to a sale under its non-arm's-length contract provided that those gross proceeds are not less than

the gross proceeds derived from or paid under the lowest-priced available comparable arm's-length contract for sales of geothermal resources to the lessee-affiliate's same direct utilization facility (the "minimun value"). If the gross proceeds under the lessee's non-arm's-length contract are less than the "minimum value" under available comparable arm's-length contracts, or if there are no available comparable arm's-length contracts, value will be determined by the weighted average of the gross proceeds established under arm's-length contracts for the sale of significant quantities of geothermal resources to the same direct utilization facility. Available contracts will mean contracts in the possession of the lessee, the lessee's affiliate, or MMS. In evaluating the comparability of arm's-length contracts for the purposes of these regulations, the following factors shall be considered: Time of execution, duration, terms, quality of the geothermal resource, volume, dedication to the same direct utilization facility, and other factors that may be appropriate to reflect the value of the resource;

(ii) The equivalent value of the least expensive, reasonable alternative energy source (fuel). The equivalent value of the least expensive, reasonable alternative energy source shall be based on the amount of thermal energy that would otherwise be used by the direct utilization process in place of the geothermal resource. That amount of thermal energy (in Btu's) displaced by the geothermal resource shall be determined by the equation

$$\text{thermal energy displaced} = \frac{(h_{in} - h_{out}) \times density \times 0.133681 \times volume,}{\text{efficiency factor}}$$

Where h_{in} is the enthalpy in Btu's/lb at the utilization facility inlet (based on measured inlet temperature), h_{out} is the enthalpy in Btu's/lb at the facility outlet (based on measured outlet temperature), density is in lbs/cu ft based on inlet temperature, the factor 0.133681 (cu ft/gal) converts gallons to cubic feet, and volume is the quantity of geothermal fluid in gallons produced at the wellhead or measured at an approved point. The efficiency of the alternative energy source shall be 0.7 for coal and 0.8 for oil, natural gas, and other fuels derived from oil and natural gas, or an efficiency factor proposed by the lessee and approved by MMS. The methods of measuring resource parameters (temperature, volume, etc.) and the frequency of computing and accumulating the amount of thermal energy displaced shall be determined and approved by BLM; or

(iii) A value determined by any other reasonable valuation method approved by MMS.

(2) Valuations made pursuant to this paragraph are subject to the notification requirements of paragraph (e) of this section.

(d)(1) The value of geothermal resources subject to this section that are not subject to a sales transaction but are instead used by the lessee in its own direct utilization facility ("no sales" geothermal resources) shall be determined in accordance with the first applicable of the following paragraphs:

(i) The weighted average of the gross proceeds established in arm's-length contracts for the purchase of significant quantities of geothermal resources to operate the lessee's same direct utilization facility. In evaluating the acceptability of arm's-length contracts, the following factors shall be considered: Time of execution, duration, terms, volume, quality of resource, and such other factors as may be appropriate to reflect the value of the resource;

(ii) The equivalent value of the least expensive, reasonable alternative energy source (fuel). The equivalent value of the least expensive, reasonable alternative energy source shall be based on the amount of thermal energy that would otherwise be used by the direct utilization process in place of the geothermal resource. That amount of thermal energy (in Btu's) displaced by the geothermal resource shall be determined by the equation

$$\text{thermal energy displaced} = \frac{(h_{in} - h_{out}) \times density \times 0.133681 \times volume,}{\text{efficiency factor}}$$

Where h_{in} is the enthalpy in Btu's/lb at the utilization facility inlet (based on measured inlet temperature), h_{out} is the enthalpy in Btu's/lb at the facility outlet (based on measured outlet temperature), density is in lbs/cu ft based on inlet temperature, the factor 0.133681 (cu ft/gal) converts gallons to cubic feet, and volume is the quantity of geothermal fluid in gallons produced at the wellhead or measured at an approved point. The efficiency of the alternative energy source shall be 0.7 for coal and 0.8 for oil, natural gas, and other fuels derived from oil and natural gas, or an efficiency factor proposed by the lessee and approved by MMS. The methods of measuring resource parameters (temperature, volume, etc.) and the frequency of computing and accumulating the amount of thermal energy displaced shall be determined and approved by BLM; or

(iii) A value determined by any other reasonable valuation method approved by MMS.

(2) Valuations made pursuant to this paragraph are subject to the notification requirements of paragraph (e) of this section.

(e)(1) Pursuant to subpart H of 30 CFR part 212, the lessee shall retain all data relevant to the determination of royalty value, particularly where the value is determined pursuant to paragraph (c) or (d) of this section. Such data shall be subject to review and audit, and MMS will direct a lessee to use a different value if it determines that the reported value is inconsistent with the requirements of these regulations.

(2) Upon request, lessees shall make available to authorized MMS representatives or to other authorized persons any and all contracts for the sale or other disposition of the lease production, and any arm's-length sales and other data for like-quality production sold, purchased, or otherwise obtained by the lessee from the field as may be necessary to support a value determination.

(3) A lessee shall notify MMS if it has determined value pursuant to paragraph (c) or (d) of this section. The notification shall be by letter to the MMS Associate Director for Royalty Management or his/her designee. The letter shall identify the valuation method to be used and contain a brief description of the procedure to be followed. The notification required by this paragraph is a one-time notification due no later than the end of the month following the month the lessee first reports royalties

on a Form MMS–2014 using a valuation method authorized by paragraph (c) or (d) of this section.

(f) If MMS determines that a lessee has not properly determined value, the lessee shall pay the difference, if any, between royalty payments made based upon the value it has used and the royalty payments that are due based upon the value established by MMS. The lessee shall also pay interest on that difference computed pursuant to 30 CFR 218.302. If the lessee is entitled to a credit, MMS will provide instructions for the taking of that credit.

(g) The lessee may request a value determination from MMS. In that event, the lessee shall propose to MMS a value determination method and may use that method in determining value, for royalty purposes, until MMS issues its decision. The lessee shall submit all available data relevant to its proposal. The MMS shall expeditiously determine the value based upon the lessee's proposal and any additional information MMS deems necessary. In making a value determination, MMS may use any of the valuation criteria consistent with this subpart. That determination shall remain effective for the period stated therein. After MMS issues its determination, the lessee shall make adjustments in accordance with paragraph (f) of this section.

(h) Notwithstanding any other provision of this section, under no circumstances shall the value of production, for royalty purposes, be less than the gross proceeds accruing to the lessee where geothermal energy is directly sold.

(i) The lessee is required to place geothermal resources in marketable condition and to deliver geothermal resources to the direct utilization facility at no cost to the Federal lessor. Where the value established pursuant to this section is determined by a lessee's gross proceeds, that value shall be increased to the extent that the gross proceeds have been reduced because the purchaser, or any other person, is providing certain services the cost of which ordinarily is the responsibility of the lessee to place the geothermal resource in marketable condition or to deliver it to the direct utilization facility.

(j) Value shall be based on the highest price a prudent lessee can receive through legally enforceable claims under its contract. Absent contract revision or amendment, if the lessee fails to take proper or timely action to receive prices or benefits to which it is entitled, it must pay royalty at a value based upon that obtainable price or benefit. Contract revisions or amendments shall be in writing and signed by all parties to the contract. If the lessee makes timely application for a price increase or benefit allowed under its contract but the purchaser refuses and the lessee takes reasonable measures, which are documented, to force purchaser compliance, the lessee shall owe no additional royalties unless or until monies or consideration resulting from the price increase or additional benefits are received. This paragraph shall not be construed to permit a lessee to avoid its royalty payment obligation in situations where a purchaser fails to pay, in whole or in part or timely, for a quantity of geothermal resources.

(k) Notwithstanding any provision in these regulations to the contrary, no review, reconciliation, monitoring, or other like process that results in a redetermination by MMS of value under this section shall be considered final or binding against the Federal Government or its beneficiaries until the audit period is formally closed.

(l) Certain information submitted to MMS to support value determinations is exempted from disclosure by the Freedom of Information Act, 5 U.S.C. 552, or other Federal law. Any data specified by law to be privileged, confidential, or otherwise exempt will be maintained in a confidential manner in accordance with applicable laws and regulations. All requests for information about determinations made under this subpart are to be submitted in accordance with the Freedom of Information Act regulation of the Department, 43 CFR part 2.

§ 206.356 Valuation standards for byproducts.

(a) The value of geothermal byproducts, including commercially demineralized water, shall be determined pursuant to this section, less applicable byproducts transportation allowances determined pursuant to §§ 206.357 and 206.358 of this subpart.

(b)(1)(i) The value of byproducts that are sold pursuant to an arm's-length contract shall be the gross proceeds accruing to the lessee, except as provided in paragraphs (b)(1)(ii) and (b)(1)(iii) of this section. The lessee shall have the burden of demonstrating that its contract is arm's-length. The value that the lessee reports for royalty purposes is subject to monitoring, review, and audit.

(ii) In conducting reviews and audits, MMS will examine whether the contract reflects the total consideration actually transferred, either directly or indirectly, from the buyer to the seller for the byproducts. If the contract does not reflect the total consideration, MMS may require that the byproducts sold pursuant to that contract be valued in accordance with paragraph (c) of this section. Value may not be less than the gross proceeds accruing to the lessee, including any additional consideration received .

(iii) If MMS determines that the gross proceeds accruing to the lessee pursuant to an arm's-length contract do not reflect the reasonable value of the production because of misconduct by or between the contracting parties, or because the lessee otherwise has breached its duty to the lessor to market the production for the mutual benefit of the lessee and the lessor, MMS shall require that the byproduct production be valued pursuant to paragraph (c) of this section and in accordance with the notification requirements of paragraph (d) of this section. If MMS determines that the value may be unreasonable, MMS will notify the lessee and give the lessee an opportunity to provide written information justifying the lessee's reported byproduct value.

(2) The MMS may require a lessee to certify that the provisions in its arm's-length contract include all of the consideration to be paid by the buyer, either directly or indirectly, for the byproduct.

(c) The value of byproducts that are sold pursuant to a non-arm's-length contract or that are utilized by the lessee (no sales), except demineralized water used for the benefit of the lease pursuant to paragraph (b)(2) of § 202.351 of this subpart, shall be determined in accordance with the first applicable of the following paragraphs:

(1) The gross proceeds accruing to the lessee pursuant to a sale under its non arm's-length contract (or other disposition by other than an arm's-length contract), provided that those gross proceeds are not less than the gross proceeds derived from or paid under the lowest-priced available comparable arm's-length contract for sales, purchases, or other dispositions of like-quality byproducts in the field or, if necessary to obtain a representative sample, from the same area (the "minimum value"). If the gross proceeds under the lessee's non-arm's-length contract are less than the "minimum value" under available comparable arms length contracts, or if there are no available comparable arm's-length contracts, value will be determined by the weighted average of the gross proceeds established under arm's-length contracts for the sale of like-quality products in the field or, if necessary to obtain a representative sample, from the same area. Available contracts will mean contracts in the possession of the

lessee, the lessee's affiliate, or MMS. In evaluating the comparability of arm's-length contracts for the purposes of these regulations, the following factors shall be considered: Field or area, price, time of execution, duration, terms, quality of the byproduct, volume, market or markets served, and other factors that may be appropriate to reflect the value of the byproduct;

(2) Other relevant matters including, but not limited to, published or publicly available spot-market prices, or information submitted by the lessee concerning circumstances unique to a particular lease operation or the saleability of certain byproducts; or

(3) A netback method or any other reasonable method used to determine value.

(d)(1) Pursuant to subpart H of 30 CFR part 212, the lessee shall retain all data relevant to the determination of royalty value, particularly where the value is determined pursuant to paragraph (c) of this section. Such data shall be subject to review and audit, and MMS will direct a lessee to use a different value if it determines that the reported value is inconsistent with the requirements of these regulations.

(2) Upon request, lessees shall make available to authorized MMS representatives or to other authorized persons any and all contracts and/or invoices for the sale or other disposition of the byproducts, and any arm's-length sales and other data for like-quality production sold, purchased, or otherwise obtained by the lessee from the field or other area as may be necessary to support a value determination.

(3) A lessee shall notify MMS if it has determined value pursuant to paragraph (c) of this section. The notification shall be by letter to the MMS Associate Director for Royalty Management or his/her designee. The letter shall identify the valuation method to be used and contain a brief description of the procedure to be followed. The notification required by this paragraph is a one-time notification due no later than the end of the month following the month the lessee first reports royalties on a Form MMS–2014 using a valuation method authorized by paragraph (c) of this section, and each time there is a change in a method under paragraph (c) of this section.

(e) If MMS determines that a lessee has not properly determined value, the lessee shall pay the difference, if any, between royalty payments made based upon the value it has used and the royalty payments that are due based upon the value established by MMS. The lessee shall also pay interest on that difference computed pursuant to 30 CFR 218.302. If the lessee is entitled to a credit, MMS will provide instructions for the taking of that credit.

(f) The lessee may request a value determination from MMS. In that event, the lessee shall propose to MMS a value determination method and may use that method in determining value, for royalty purposes, until MMS issues its decision. The lessee shall submit all available data relevant to its proposal. The MMS shall expeditiously determine the value based upon the lessee's proposal and any additional information MMS deems necessary. In making a value determination, MMS may use any of the valuation criteria consistent with this subpart. That determination shall remain effective for the period stated therein. After MMS issues its determination, the lessee shall make the adjustments in accordance with paragraph (e) of this section.

(g) Notwithstanding any other provisions of the section, under no circumstances shall the value of byproducts for royalty purposes be less than the gross proceeds accruing to the lessee, less applicable byproduct transportation allowances determined pursuant to §§ 206.357 and 206.358 of this subpart.

(h) The lessee is required to place the byproducts in marketable condition at no cost to the Federal Government. Where the value established pursuant to this section is determined by a lessee's gross proceeds, that value shall be increased to the extent that the gross proceeds have been reduced because the purchaser, or any other person, is providing certain services the cost of which ordinarily is the responsibility of the lessee to place the byproducts in marketable condition.

(i) Value shall be based on the highest price a prudent lessee can receive through legally enforceable claims under its contract. Absent contract revision or amendment, if the lessee fails to take proper or timely action to receive prices or benefits to which it is entitled, it must pay royalty at a value based upon that obtainable price or benefit. Contract revisions or amendments shall be in writing and signed by all parties to the contract, and may be retroactively applied to value byproducts, for royalty purposes, for a period not to exceed 2 years, unless MMS approves a longer period. If the lessee makes timely application for a price increase allowed under its contract but the purchaser refuses and the lessee takes reasonable measures, which are documented, to force purchaser compliance, the lessee will owe no additional royalties unless or until monies or consideration resulting from the price increase are received. This paragraph shall not be construed to permit a lessee to avoid its royalty payment obligation in situations where a purchaser fails to pay, in whole or in part or timely, for a quantity of byproducts.

(j) Notwithstanding any provision in these regulations to the contrary, no review, reconciliation, monitoring, or other like process that results in a redetermination by MMS of value under this section shall be considered final or binding against the Federal Government or its beneficiaries until the audit period is formally closed.

(k) Certain information submitted to MMS to support valuation proposals, including byproduct transportation allowances pursuant to §§ 206.357 and 206.358 of this subpart, is exempted from disclosure by the Freedom of Information Act, 5 U.S.C. 552. Any data specified by the act to be privileged, confidential, or otherwise exempt shall be maintained in a confidential manner in accordance with applicable laws and regulations. All requests for information about determinations made under this subpart are to be submitted in accordance with the Freedom of Information Act regulation of the Department, 43 CFR part 2.

§ 206.357 Byproduct transportation allowances—general.

(a) Where the value of byproducts has been determined at a point off the geothermal lease, unit, or participating area, MMS shall allow a deduction in determining value, for royalty purposes, for the lessee's reasonable, actual costs incurred to:

(1) Transport the byproducts from a Federal lease, unit, or participating area to a sales point or point of delivery that is off the lease, unit, or participating area; or

(2) Transport the byproducts from a Federal lease, unit, or participating area, or from a geothermal utilization facility to a byproduct recovery facility when that byproduct recovery facility is off the lease, unit, or participating area and, if applicable, from the recovery facility to a sales point or point of delivery off the lease, unit, or participating area. Costs for transporting geothermal fluids from the lease to the geothermal utilization facility, whether on or off the lease, shall not be included in the transportation allowance.

(b) Under no circumstances shall the byproduct transportation allowance authorized by paragraph (a) of this section reduce the value of the byproducts under any selling arrangement to zero.

(c)(1) When byproducts are transported from a lease, unit, participating area, or geothermal utilization facility to a byproduct recovery facility, the lessee is not required to allocate transportation costs between the quantity of marketable byproducts and the rejected waste material. The byproduct transportation allowance shall be authorized for the total production that is transported. Byproduct transportation allowances shall be expressed as a cost per unit of marketable byproducts transported.

(2) For byproducts that are extracted on the lease, unit, or participating area, or at the geothermal utilization facility, the byproduct transportation allowance shall be authorized for the total production that is transported to a point of sale off the lease, unit, or participating area. Byproduct transportation allowances shall be expressed as a cost per unit of byproduct transported.

(3) Transportation costs shall be authorized as allowances only when the transported byproduct is sold, delivered, or otherwise utilized by the lessee and royalties are reported and paid.

(d) Byproduct transportation allowances are subject to monitoring, review, and audit. If, after a review and/or audit, MMS determines that a lessee has improperly determined a byproduct transportation allowance authorized by this section, then the lessee shall pay any additional royalties plus interest determined in accordance with 30 CFR 218.302, or shall be entitled to a credit without interest.

(e) If byproducts produced from Federal and non-Federal leases are commingled for transportation, lessees shall not disproportionately allocate transportation costs to Federal lease production.

(f) Upon request, the lessee shall make available to authorized MMS representatives or to other authorized persons all transportation contracts and all other information as may be necessary to support a byproduct transportation allowance.

(g) Byproduct transportation allowances are to be reported as separate lines on Form MMS–2014.

§ 206.358 Determination of byproduct transportation allowances.

(a) *Arm's-length contracts.* (1) For transportation costs incurred by a lessee pursuant to an arm's-length contract, the transportation allowance shall be the reasonable, actual costs incurred by the lessee for transporting the byproducts under that contract, subject to monitoring, review, audit, and possible future adjustments. The MMS's prior approval is not required before a lessee may deduct costs incurred under an arm's-length transportation contract.

(2) In conducting reviews and audits, MMS will examine whether the contract reflects more than the consideration actually transferred either directly or indirectly from the lessee to the transporter for the transportation. If the contract reflects more than the total consideration paid, MMS may require that the byproduct transportation allowance be determined in accordance with paragraph (b) of this section.

(3) If MMS determines that the consideration paid pursuant to an arm's-length byproduct transportation contract does not reflect the reasonable value of the transportation because of misconduct by or between the contracting parties, or because the lessee otherwise has breached its duty to the lessor to market the production for the mutual benefit of the lessee and the lessor, MMS shall require that the byproduct transportation allowance be determined in accordance with paragraph (b) of this section. When MMS determines that the value of the transportation may be unreasonable, MMS will notify the lessee and give the lessee an opportunity to provide written information justifying the lessee's transportation costs.

(4) Where the lessee's payments for transportation under an arm's-length contract are not established on a dollars-per-unit basis, the lessee shall convert whatever consideration is paid to a dollar value equivalent for the purposes of this section.

(b) *Non-arm's-length or no contract.* (1) If a lessee has a non-arm's-length transportation contract or has no contract, including those situations where the lessee performs transportation services for itself, the byproduct transportation allowance shall be based upon the lessee's reasonable actual costs. All byproduct transportation allowances deducted under a non-arm's-length or no-contract situation are subject to monitoring, review, audit, and possible future adjustment. Prior MMS approval of byproduct transportation allowances is not required for non-arm's-length or no-contract situations.

(2) The byproduct transportation allowance for non-arm's-length or no-contract situations shall be based upon the lessee's actual costs for transportation during the reporting period, including operating and maintenance expenses, overhead, and either depreciation and a return on undepreciated capital investment in accordance with paragraph (b)(2)(iv)(A) of this section, or a cost equal to the capital investment in the transportation system multiplied by the rate of return in accordance with paragraph (b)(2)(iv)(B) of this section. Allowable capital costs are generally those for depreciable assets, including costs of delivery and installation of capital equipment, that are an integral part of the transportation system. A return on capital invested in the purchase of real estate to locate the byproduct transportation facilities may be allowed provided that the lessee demonstrates the necessity for such purchase, the purchased land is not on a Federal geothermal lease, and MMS approves the deduction; the rate of return shall be the same rate determined in paragraph (b)(2)(v) of this section.

(i) Allowable operating expenses include operations supervision and engineering, operations labor, fuel, utilities, materials, ad valorem property taxes, rent, supplies, and any other allocable and attributable operating expenses that the lessee can document.

(ii) Allowable maintenance expenses include maintenance of the transportation system, maintenance of equipment, maintenance labor, and other directly allocable and attributable maintenance expenses that the lessee can document.

(iii) Overhead attributable and allocable to the operation and maintenance of the transportation system is an allowable expense. State and Federal income taxes and severance taxes and other fees, including royalties, are not allowable expenses.

(iv) To compute costs associated with capital investment, a lessee may use either paragraph (b)(2)(iv)(A) or (b)(2)(iv)(B) of this section. After a lessee has elected to use either method for a transportation system, the lessee may not later elect to change to the other alternative without MMS approval.

(A) To compute depreciation, the lessee must use a straight-line depreciation method based on, as appropriate, either the life of equipment or the life of the geothermal project that the transportation system services. After an election is made, the lessee may not change methods. A change in ownership of a transportation system shall not alter the depreciation schedule established by the original transporter/lessee for purposes of the allowance calculation. With or without a change in ownership, a transportation system shall be depreciated only once. Equipment shall not be depreciated below a reasonable salvage value. The rate of return used to compute the return on undepreciated

capital investment shall be determined pursuant to paragraph (b)(2)(v) of this section.

(B) To compute a return on capital investment, the allowed cost shall be the amount equal to the allowable capital investment in the transportation system multiplied by the rate of return determined pursuant to paragraph (b)(2)(v) of this section. No allowance shall be provided for depreciation.

(v) The rate of return shall be Standard and Poor's industrial BBB bond rate. The rate of return shall be the monthly average rate as published in *Standard and Poor's Bond Guide* for the first month of the annual reporting period for which the allowance is applicable and shall be effective during the reporting period. The rate shall be redetermined at the beginning of each subsequent transportation allowance reporting period.

PART 210—FORMS AND REPORTS

1. The authority citation for part 210 is revised to read as follows:

Authority: 5 U.S.C. 301 *et seq.*; 25 U.S.C. 396 *et seq.*; 25 U.S.C. 396a *et seq.*; 25 U.S.C. 2101 *et seq.*; 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351 *et seq.*; 30 U.S.C. 1001 *et seq.*; 30 U.S.C. 1701 *et seq.*; 31 U.S.C. 9701; 43 U.S.C. 1301 *et seq.*; 43 U.S.C. 1331 *et seq.*; and 43 U.S.C. 1801 *et seq.*

2. Subpart H is amended by revising §§ 210.350 and 210.351 and by adding §§ 210.352 through 210.355 to read as follows:

Subpart H—Geothermal Resources

Sec.
210.350 Definitions.
210.351 Required recordkeeping.
210.352 Payor information forms.
210.353 Special forms and reports.
210.354 Monthly report of sales and royalty.
210.355 Reporting instructions.

Subpart H—Geothermal Resources

§ 210.350 Definitions.

Terms used in this subpart shall have the same meaning as in 30 CFR 206.351.

§ 210.351 Required recordkeeping.

Information required by MMS shall be filed using the forms prescribed in this subpart, which are available from MMS. Records may be maintained on microfilm, microfiche, or other recorded media that are easily reproducible and readable. See subpart H of 30 CFR part 212.

§ 210.352 Payor information forms.

The Payor Information Form (Form MMS–4025) must be filed for each Federal lease on which geothermal royalties (including byproduct royalties) are paid. Where specifically determined by MMS, Form MMS–4025 is also required for all Federal leases on which rent is due. The completed form must be filed by the party who is making the rent or royalty payment (payor) for each revenue source. Form MMS–4025 must be filed no later than 30 days after issuance of a new lease or a modification to an existing lease that changes the paying responsibility on the lease. The Form MMS–4025 shall identify the payor of production royalty, and identify revenue sources and selling arrangements for all leased geothermal resources (including byproducts). After filing the initial form, a new Form MMS–4025 must be filed no later than 30 days after the occurrence of any of the following:

(a) Assignment of all or any part of the lease;
(b) Production of new product;
(c) A change in a selling arrangement;
(d) Change in royalty rate;
(e) Change of payor; or
(f) Abandonment of a lease.

§ 210.353 Special forms and reports.

The MMS may require submission of additional information on special forms or reports. When special forms or reports other than those referred to in this subpart are necessary, MMS will give instructions for the filing of such forms or reports. Requests for the submission of such forms will be made in conformity with the requirements of the Paperwork Reduction Act of 1980 and other applicable laws.

§ 210.354 Monthly report of sales and royalty.

A completed Report of Sales and Royalty Remittance (Form MMS–2014) must be submitted each month once sales or utilization of production occur, even though sales may be intermittent, unless otherwise authorized by MMS. This report is due on or before the last day of the month following the month in which production was sold or utilized, together with the royalties due the United States.

§ 210.355 Reporting instructions.

(a) Specific guidance on how to prepare and submit required information collection reports and forms to MMS is contained in an MMS Oil and Gas Payor Handbook which is available from the Minerals Management Service, Royalty Management Program, Fiscal Accounting Division, P.O. Box 5760, Denver, Colorado 80217–5760.

(b) Royalty payors should refer to this handbook for specific guidance with respect to geothermal resources reporting requirements. If additional information is required, the payor should contact the MMS Lessee Contact Branch at the above address. The appropriate telephone numbers are listed in the handbook.

PART 212—RECORDS AND FILES MAINTENANCE

1. The authority citation for part 212 is revised to read as follows:

Authority: 5 U.S.C. 301 *et seq.*; 25 U.S.C. 396 *et seq.*; 25 U.S.C. 396a *et seq.*; 25 U.S.C. 2101 *et seq.*; 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351 *et seq.*; 30 U.S.C. 1001 *et seq.*; 30 U.S.C. 1701 *et seq.*; 31 U.S.C. 9701; 43 U.S.C. 1301 *et seq.*; 43 U.S.C. 1331 *et seq.*; and 43 U.S.C. 1801 *et seq.*

2. Subpart B—Oil and Gas, General, is amended by removing the authority citation and by revising the title of the subpart to read as follows:

Subpart B—Oil, Gas, and OCS Sulfur—General

3. Subpart H, previously reserved, is amended by adding §§ 212.350 and 212.351 to read as follows:

Subpart H—Geothermal Resources

Sec.
212.350 Definitions.
212.351 Required recordkeeping and reports.

Subpart H—Geothermal Resources

§ 212.350 Definitions.

Terms used in this subpart shall have the same meaning as in 30 CFR 206.351.

§ 212.351 Required recordkeeping and reports.

(a) *Records.* Each lessee, operator, revenue payor, or other person shall make and retain accurate and complete records necessary to demonstrate that payments of royalties, rentals, and other amounts due under Federal geothermal leases are in compliance with laws, lease terms, regulations, and orders. Records covered by this section include those specified by lease terms, notices, and orders, and those identified in paragraph (c) of this section. Records also include computer programs, automated files, and supporting systems documentation used to produce automated reports or magnetic tapes submitted to MMS for use in its AFS, or in its Production Accounting and Auditing System.

(b) *Period for keeping records.* All records pertaining to Federal geothermal leases shall be maintained by a lessee, operator, revenue payor, or other person for 6 years after the records are generated unless the recordholder is notified, in writing, before the expiration of that 6-year period that records must be maintained for a longer period for purposes of audit or investigation. When an audit or investigation is underway,

records shall be maintained until the recordholder is released by written notice of the obligation to maintain records.

(c) *Access to records.* The Associate Director for Royalty Management shall have access to all records in the possession of the lessee, operator, revenue payor, or other person pertaining to compliance with royalty obligations under Federal geothermal leases (regardless of whether such records were generated more than 6 years before a request or order to produce them and they otherwise were not disposed of), including, but not limited to:

(1) Qualities and quantities of all products extracted, processed, sold, delivered, or used by the operator/lessee;

(2) Prices received for products, prices paid for like or similar products, and internal transfer prices; and

(3) Costs of extraction, power generation, electrical transmission, and byproduct transportation.

(d) *Inspection of Records.* The lessee, operator, revenue payor, or other person required to keep records shall be responsible for making the records available for inspection. Records shall be made available at a business location of the lessee, operator, revenue payor, or other person during normal business hours upon the request of any officer, employee, or other party authorized by the Secretary. Lessees, operators, revenue payors, and other persons will be given a reasonable period of time to produce records.

[FR Doc. 91-26823 Filed 11-7-91; 8:45 am]
BILLING CODE 4310-MR-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD8-91-21]

Drawbridge Operation Regulations; Escatawpa River, MS

AGENCY: Coast Guard, DOT.

ACTION: Final rule; removed.

SUMMARY: This amendment revokes the regulation for the Mississippi State Highway Department swing span bridge across the Escatawpa River, mile 1.0, at Moss Point, Jackson County, Mississippi, because a fixed span replacement bridge has been constructed and the swing span bridge has been removed. Notice and public procedure have been omitted from this action since the bridge is no longer in existence.

EFFECTIVE DATE: This regulation becomes effective on November 8, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. John Wachter, Bridge Administration Branch, Eighth Coast Guard District, telephone (504) 589-2965.

DRAFTING INFORMATION: The drafters of this regulation are Mr. John Wachter, project officer, and LT J.A. Wilson, project attorney.

SUPPLEMENTARY INFORMATION: This action has no economic consequences. It merely revokes regulations that are now meaningless because they pertain to a drawspan that no longer exists. Consequently, this action is considered to be non-major under Executive Order 12291 and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979). Since there is no economic impact, a full regulatory evaluation is unnecessary. Because no notice of proposed rulemaking is required under 5 U.S.C. 553, this action is exempt from the Regulatory Flexibility Act (5 U.S.C. 605(b)). However, this action will not have a significant economic impact on a substantial number of small entities.

Federalism Implications

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, part 117 of title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

2. Section 117.679 is removed.

Dated: October 16, 1991.

J.M. Loy,

Rear Admiral, U.S. Coast Guard Commander, Eighth Coast Guard District.

[FR Doc. 91-27020 Filed 11-7-91; 8:45 am]
BILLING CODE 4910-14-M

33 CFR Part 117

[CGD7-91-101]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, Little River to Savannah River, South Carolina

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule with request for comments.

SUMMARY: At the request of the State of South Carolina, the Coast Guard is temporarily changing the regulations governing the operation of the Wappoo Creek Drawbridge, mile 470, at Charleston, by permitting the draw to be closed to all non-exempt vessels an additional one-half hour at the beginning of the morning regulated period. This change is being made because of complaints about highway traffic delays caused by the increased bridge openings as a result of the seasonal migration of vessels on the Atlantic Intracoastal Waterway. This action will accommodate the increase in vehicular commuter traffic originating from James Island and will continue to provide for the reasonable needs of navigation.

DATES: These temporary regulations become effective on October 1, 1991, and will terminate on November 29, 1991. Comments must be received on or before November 29, 1991.

ADDRESSES: Comments regarding this temporary change should be mailed to Commander (oan), Seventh Coast Guard District, Brickell Plaza Federal Building, 909 SE 1st Avenue, Miami, Florida 33131-3050. Any comments received will be available for inspection and copying in the office of the Bridge Administrator located in room 484, Brickell Plaza Federal Building, 909 S.E. 1st Avenue, Miami, Florida. Documents and comments concerning this regulation may be inspected Monday through Friday between the hours of 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Gary D. Pruitt (305) 536-4103.

SUPPLEMENTARY INFORMATION: Interested parties submitting written views, comments, data, or arguments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change to the temporary regulation.

Drafting Information

The drafters of this notice are Mr. Gary Pruitt, Project Officer, and

Lieutenant M.R. Higgins, Project Attorney.

Discussion of Temporary Rule

This rule is a temporary deviation from the permanent rules under the provisions of 33 CFR 117.43 to evaluate an alternative opening schedule being considered for a permanent change in the regulations. This temporary regulation changes only the morning regulated period on weekdays. Before any permanent changes are made in the operating rule for the Wappoo Bridge a notice of proposed rulemaking will be published and comments will be solicited. The draw presently opens on signal except that the draw need not open from 6:30 a.m. to 9 a.m. Monday through Friday except federal holidays. A review of the seasonal waterway traffic requiring openings indicates extended draw openings for pleasure craft between the hours of 6 a.m. and 6:30 a.m., just prior to the rush hour closures, adversely impacts movement of land transportation. The Coast Guard has extended the existing morning closed periods by one-half hour in an effort to evaluate the impact these changes may have. Elimination of the bridge openings from 6 a.m. to 6:30 a.m. on weekdays should improve the morning traffic flow with minimum impact on normal navigation. Because this is a temporary regulation, it will not appear in the Code of Federal Regulations.

Economic Assessment and Certification

This temporary regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034: February 26, 1979). The economic impact is expected to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because it exempts public vessels of the United States, tugs with tows, and vessels in a situation where a delay would endanger life or property. Since the economic impact is expected to be minimal, the Coast Guard certifies that it will not have a significant impact on a substantial number of small entities.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that, under section 2.b.2.g(5) of Commandant Instruction M16475.1B, promulgation of operating requirements for drawbridges is categorically excluded from further environmental documentation. A Categorical Exclusion Determination has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

In consideration of the foregoing, part 117 of title 33 Code of Federal Regulations is temporarily amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. For the period between October 1, 1991, and November 29, 1991, paragraph (d) of § 117.911 is revised to read as follows:

Note: This is a temporary rule and will not appear in the Code of Federal Regulations.

§ 117.911 Atlantic Intracoastal Waterway, Little River to Savannah River.

* * * * *

(d) SR 171/700 bridge across Wappoo Creek Mile 470.8 at Charleston. The draw shall open on signal, except that the draw need not open from 6 a.m. to 9 a.m. and from 4 p.m. to 6:30 p.m. Monday through Friday, except federal holidays. From April 1 to November 30 from 9 a.m. to 4 p.m. Monday through Friday, except federal holidays, the bridge need not open except on the hour and on the half-hour. From April 1 to November 30, from 9 a.m. to 7 p.m., on Saturdays, Sundays and federal holidays, the bridge need not open except on the hour and half-hour.

* * * * *

Dated: September 19, 1991.

Robert E. Kramek,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 91–27019 Filed 11–7–91; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[FRL–4028–7]

State Implementation Plan Completeness Criteria

AGENCY: Environmental Protection Agency.

ACTION: Technical correction.

SUMMARY: On August 26, 1991 (56 FR 42216), the Environmental Protection Agency (EPA) promulgated minimum criteria that any plan submission must meet in order to be considered a complete State implementation plan (SIP) submission. The purpose of this document is to make a correction to appendix V of part 51 at paragraph 2.2(i). In the August 26 final rulemaking, the word "not" was inadvertently left out of amended paragraph 2.2(i). Inclusion of the word "not" in paragraph 2.2(i) will allow the States to submit an explanation as to why special economic and technological justifications are not necessary and still be considered complete for purposes of the completeness review. It was the EPA's intent to permit such an explanation in lieu of a justification by the State in order to be deemed a complete submission.

DATES: This action becomes effective December 9, 1991.

FOR FURTHER INFORMATION CONTACT: Denise Gerth, Office of Air Quality Planning and Standards (MD–15), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Telephone (919) 541–5550 or FTS 629–5550.

List of Subjects in 40 CFR Part 51

Administrative practice and procedure; Air pollution control; Reporting and recordkeeping requirements.

Dated: November 3, 1991.

Michael Shapiro,

Acting Assistant Administrator for Air and Radiation.

Title 40 Code of Federal Regulations, part 51, is amended as follows:

PART 51 [AMENDED]

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

Authority: 42 U.S.C. 7401(b)(1), 7407(d), 7410(k)(1), 7470–79, 7501–7508, and 7601(a).

2. Part 51, Appendix V, is amended by revising paragraph 2.2(i) to read as follows:

Appendix V, Criteria for Determining the Completeness of Plan Submissions

* * * * *

2.2 * * *

(i) Special economic and technological justifications required by any applicable EPA policies, or an explanation of why such justifications are not necessary.

* * * * *

[FR Doc. 91-27027 Filed 11-7-91; 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 302-4, 303-1, and 303-2

[FTR Amendment 22]

Federal Travel Regulation; Allowance for Travel to Seek Residence Quarters in Alaska or Hawaii; Allowance for the Preparation and Transportation of the Remains of an Employee who Dies While Stationed in Alaska or Hawaii

AGENCY: Federal Supply Service, GSA.

ACTION: Final rule.

SUMMARY: This final rule implements paragraphs (c) and (d) of section 1206 of the Defense Authorization Act for Fiscal Year 1991 (Pub. L. 101-510, November 5, 1990). This rule allows authorization at Government expense of a househunting trip for an employee and spouse when the employee is transferred to Alaska or Hawaii. This rule also allows payment for the expenses of preparing and transporting to the home, official station, or place of interment the remains of an employee who dies while performing official duties in, or in transit to or from, Alaska or Hawaii, as well as the expenses of transporting to the former home or other designated place the deceased employee's dependents and household goods.

EFFECTIVE DATE: Part 302-4 is effective November 8, 1991, and applies to an employee whose effective date of transfer (date the employee reports for duty at the new official station) is on or after November 8, 1991. Amendments to parts 303-1 and 303-2 are effective November 5, 1990, and applies to an employee whose death occurs on or after November 5, 1990.

FOR FURTHER INFORMATION CONTACT: Robert A. Clauson, Transportation Management Division (FBX), Washington, DC 20406, telephone FTS 557-1253 or commercial (703) 557-1253.

SUPPLEMENTARY INFORMATION: Paragraphs (c) and (d) of section 1206 of the Defense Authorization Act for Fiscal Year 1991 (Pub. L. 101-510, November 5, 1990) amended title 5 of the United States Code by modifying section 5724a(a)(2), relating to payment for the expenses of travel to seek residence quarters, and by modifying section 5742 "Transportation of remains, dependents, and effects; death occurring away from official station or abroad". This final rule amends the Federal Travel Regulation to implement these statutory provisions.

The amendment allows an agency to authorize at Government expense the travel of an employee and spouse to seek residence quarters at the new official station when the employee is transferred to Alaska or Hawaii. Previously, househunting trips were allowed solely in connection with transfers inside the continental United States.

The amendment also allows payment for the expenses of preparing and transporting to the home, official station, or place of interment the remains of a Federal employee who dies while performing official duties in, or in transit to or from, Alaska or Hawaii. Previously, the statute and implementing regulations allowed payment for these costs only for a Federal employee stationed outside the United States, which effectively precluded the benefit for an employee stationed in Alaska or Hawaii, unless the employee was in a travel status at the time of death. Paragraph (d) of section 1206 of the statute authorizes payment for the expenses of transporting the deceased employee's dependents and household goods to the former home or other designated place when the employee dies while performing official duties in, or in transit to or from, Alaska or Hawaii. The Federal Travel Regulation previously allowed payment for the expenses of transporting the deceased employee's dependents and household goods to the employee's actual place of residence based on a Comptroller General decision that addressed the matter.

The General Services Administration (GSA) has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects

41 CFR Part 302-4

Government employees, Relocation allowances and entitlements, Transfers.

41 CFR Parts 303-1 and 303-2

Government employees, Relocation allowances and entitlements.

For the reasons set out in the preamble, 41 CFR parts 302-4, 303-1, and 303-2 are amended as follows:

PART 302-4—TRAVEL TO SEEK RESIDENCE QUARTERS

1. The authority citation for part 302-4 continues to read as follows:

Authority: 5 U.S.C. 5721-5734; 20 U.S.C. 905(a); E.O. 11609, July 22, 1971 (36 FR 13747).

2. Section 302-4.1 is amended by revising paragraph (c)(3) to read as follows:

§ 302-4.1 Applicability and general policy for authorizing travel to seek residence quarters.

* * * * *

(c) * * *

(3) When either the old or new duty station, or both, are located outside the United States; and

* * * * *

PART 303-1—GENERAL

3. The authority citation for part 303-1 continues to read as follows:

Authority: 5 U.S.C. 5721-5734, 5741-5742; E.O. 11609, July 22, 1971 (36 FR 13747).

4. Part 303-1 is amended by redesignating § 303-1.4 as § 303-1.7 and redesignating § 303-1.3 as § 303-1.4.

5. Section 303-1.1 is revised to read as follows:

§ 303-1.1 Authority, coverage, and applicability.

(a) *Statutory Authority.* This chapter sets forth the allowable expenses, not otherwise provided for by law, authorized by 5 U.S.C. 5742(b) for the preparation and transportation of the remains of a deceased employee, and by 5 U.S.C. 5722 (See § 303-2.6 of this chapter) for the transportation of the immediate family and household goods of a deceased employee.

(b) *Persons covered.* The provisions of this chapter cover an employee who dies while:

(1) On official travel away from his/her official station in the United States.

(2) Performing official duties outside CONUS.

(3) Absent from duty as provided in § 303–1.5.

(4) Reassigned away from his/her home of record pursuant to a mandatory mobility agreement executed as a condition of employment.

(c) *Applicability.* The provisions of this chapter apply whether an employee's death is or is not work-related.

6. Section 303–1.2 is amended by removing the phrase "official station outside the United States", and adding in its place "official station outside CONUS"; and by removing the reference "Chapter 303", and adding in its place the word "chapter".

7. Section 303–1.3 is added to read as follows:

§ 303–1.3 Definitions.

As used in this chapter, and unless otherwise specifically provided in this chapter, the following definitions apply:

(a) *United States.* United States means the 50 States and the District of Columbia.

(b) *Continental United States.* The continental United States (or CONUS) means the 48 contiguous States and the District of Columbia.

8. Section 303–1.5 is revised to read as follows:

§ 303–1.5 Death during a period of absence from duty.

The provisions of this chapter apply when an employee is performing official travel away from his/her official station located in the United States and dies while temporarily absent from a temporary duty station. The provisions of this chapter also apply when an employee is performing official duties outside CONUS and dies while temporarily absent from his official station or temporary duty station outside CONUS. If the temporary absence is for the purpose of taking leave or occurs during nonworkdays, the allowable cost for the transportation of remains shall not exceed the amount which would have been allowed if death had occurred at the temporary duty station or at the official station outside CONUS.

PART 303–2—ALLOWANCES

9. The authority citation for part 303–2 continues to read as follows:

Authority: 5 U.S.C. 5721–5734, 5741–5742; E.O. 11609, July 22, 1971 (36 FR 13747).

§ 303–2.1 [Amended]

10. Section 303–2.1 is amended by removing the phrase "official station outside the United States", and adding in its place "official station outside CONUS".

11. Section 303–2.3 is revised to read as follows:

§ 303–2.3 Transportation of employee remains.

(a) *Death while performing official travel within the continental United States.* When an employee dies while performing official travel within CONUS, payment is authorized for the cost of transporting the remains to the employee's place of actual residence, official station, or place of interment. The cost of transportation shall not exceed the cost to the place of actual residence or official station, whichever is more distant.

(b) *Death while performing official duties outside the continental United States.* When an employee dies while performing official duties outside CONUS, payment is authorized for the cost of transporting the remains to the employee's place of actual residence, official station, or place of interment. The cost of transportation shall not exceed the cost to the place of actual residence or official station, whichever is more distant.

12. Section 303–2.6 is amended by revising paragraph (a)(1), by removing paragraph (b), and by redesignating paragraph (c) as paragraph (b) to read as follows:

§ 303–2.6 Transportation of the immediate family and household goods.

(a) *While performing duties outside CONUS*—(1) *General.* The cost of return transportation of the immediate family and the baggage and household goods of the decedent and his/her immediate family shall be allowed when an employee dies while he/she is performing official duties outside CONUS, or while he/she is in transit to or from that place. Allowable transportation costs shall not exceed the costs of returning the immediate family and the baggage and household goods from the place where the official duties were performed or were to be performed, by the most direct route, to the decedent's place of actual residence, or to any other place as the head of the agency concerned or his/her designated representative may designate, provided the cost to the Government shall not exceed the cost of transportation to the decedent's place of actual residence.

* * * * *

§ 303–2.8 [Amended]

13. Section 303–2.8 is amended by removing the reference "Chapter 303" wherever it appears in the section, and adding in its place the word "chapter".

Dated: October 3, 1991.

Richard G. Austin,

Administrator of General Services.

[FR Doc. 91–26693 Filed 11–7–91; 8:45 am]

BILLING CODE 6820–24–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87–121, FCC 91–273]

FM Broadcast Services; Short-Spaced Station Assignments With Reduced Facilities and/or Directional Antenna Systems

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Through this decision, the Commission responds to petitions for reconsideration of the Report and Order (Report) in this proceeding (54 FR 9800, March 8, 1989). The Commission reaffirms its decision to allow routine short-spaced FM assignments, but adopt several of the requested refinements.

EFFECTIVE DATE: December 19, 1991.

FOR FURTHER INFORMATION CONTACT: Bernard Gorden, Mass Media Bureau, Policy and Rules Division, (202) 632–9660.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Memorandum Opinion and Order (MO&O) in MM Docket No. 87–121, adopted August 28, 1991, and released September 17, 1991. Adoption of this MO&O will have no additional significant resource implications beyond those specified at the time of its related earlier Report and Order was adopted. The decisions in this action have also been analyzed with respect to the Paperwork Reduction Act of 1980.

The complete text of this Memorandum Opinion and Order is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, Downtown Copy Center, at (202) 452–1422, 1919 M Street, NW., Room 246, Washington, DC 20554.

Synopsis of Memorandum Opinion and Order

1. This action responds to petitions for reconsideration of rule amendments contained in the Report, filed by the Association for Broadcast Engineering Standards, Inc. (ABES), du Treil, Lundin

& Rackley, Inc. (dLR), Genesis Broadcasting, Inc. (Genesis), Greater Media, Inc. (Greater Media), Mullaney Engineering, Inc. (Mullaney) and the National Association of Broadcasters (NAB). Subsequently, NAB joined with ABES, dLR, Greater Media and Mullaney in filing a "Consensus and Joint Supplement to Petitions for Reconsideration" ("Consensus"). Two of the original petitions request that the Commission's action be set aside; the remaining petitions support the basic decision but suggest refinements to the adopted rules. After careful consideration of the issues raised in these petitions, this MO&O reaffirms the Commission's decision to allow routine short-spaced FM assignments, but adopts several of the requested refinements.

2. The Commission concludes that the rules adopted in the Report do not represent a departure from traditional methods of contour protection. They are largely based on an accurate determination of the antenna height above average terrain ("HAAT") in critical directions and they reflect essentially the same method for determining HAAT that the Commission has used for years in the non-commercial FM service and the Low Power TV service. Contrary to the assertions of ABES and NAB, the rules for determining antenna HAAT for short-spaced FM facilities do not include provisions for the use of either terrain shielding or a terrain roughness factor. Instead, the Commission has taken the well-established procedures currently required in the NCE–FM service and the Low Power TV service and adopted them for use in calculating protected and interfering contours for short-spaced FM station assignments. Adequate notice of the HAAT rules adopted was given because the Notice of Proposed Rule Making, 53 FR 12779, April 19, 1988 (Notice) clearly proposed use of predicted field strength contours as in the NCE–FM service, and the position of such contours in that service are now and have always been based on calculations of antenna HAAT in specific directions. Thus, the rules adopted in the Report do not implement a novel method of "terrain shielding" or use of a "terrain roughness factor," but rather, represent another application of a method already used in other services.

3. With respect to the impact of contour protection on the Commission's general allotment rules, the Commission has held throughout this proceeding that no change has been made or will be made in the FM channel allotment process. All proposals for channel allotments must meet the minimum distance separations of § 73.207 of the Commission's Rules with respect to other existing and prospective stations. All station assignments are still bound by the requirement of § 73.315(a), which requires a minimum field strength of 3.16 millivolts per meter over the principal community to be served. Therefore, these rules do not alter the service obligations of licenses. Consequently, the use of directional antennas permitted by the Commission's Rules is not inconsistent with the mandate of section 307(b).

4. While the Report clearly stated that no change was being made to the FM channel allotment process in this proceeding, Mullaney asserts that this point is not clearly expressed in paragraph (a) of § 73.207 and that this could easily be misunderstood by the public. Upon review of that particular paragraph, the Commission agrees with Mullaney that the existing wording of paragraph (a) of § 73.207 could be misinterpreted. Thus, the Commission makes a minor editorial change to avoid misunderstanding.

5. Because contour protection has been used for many years in the NCE–FM broadcast service, the Commission anticipated that there would be little question of its validity as a station assignment methodology. In the Report, the Commission noted that contour protection takes into account the differences in elevations of the terrain surrounding stations, whereas the distance separation requirements are based on average terrain assumed to be uniform in all compass directions. The Commission observed that this failure to account for variations in the HAAT as a function of direction means that the separation requirements sometimes overprotect, and at other times, underprotect FM service. Thus, contour protection is a more accurate approach to making FM assignments. Consequently, the Commission concludes that in the Report, it did consider whether contour protection would adequately protect the FM service.

6. With respect to the NAB and ABES allegations that the Commission did not provide adequate notice of its proposals, the Commission notes that 5 U.S.C. 553(b)(3) requires only that Agencies give notice of "either the terms or substance of the proposed rule or a description of the subjects and issues involved." NAB is correct that when the Commission proposed to relax its spacing rules to permit short-spacing where contours were protected, it did not suggest that some spacing limits would still be maintained. In response to concerns expressed by commenters, including NAB, that this approach might cause objectionable interference, the Commission took a somewhat more cautious approach and retained some spacing requirements. Such a decision is well within the scope of the Notice and self-evidently a "logical outgrowth" therefrom. See *Small Refiner Lead Phase-Down Task Force* v. *EPA*, 705 F. 2d 506, 547 (D.C. Cir. 1983). With respect to NAB's suggestion that there was insufficient notice that non-commercial FM stations might be affected presumably because short-spacing to non-commercial stations might be permitted, paragraph 12 of the Notice indicated that short-spacing would be permitted to "adjacent and co-channel stations and allotments * * *" 3 FCC Rcd at 1821. Some non-commercial stations and allotments are, of course, adjacent to commercial stations. Thus, it was self-evident in the Notice that such non-commercial stations would be affected. Indeed, NPR recognized in its comments that some non-commercial stations could be affected. Finally, as indicated above, the Commission has not allowed the routine use of terrain shielding or terrain roughness. In footnote 15 of the Notice of Inquiry, 52 FR 20430, June 1, 1987 (Inquiry) the Commission specifically declined to consider terrain roughness in this proceeding. Terrain variation is a fundamental component of the contour determination process, an issue discussed in paragraph 15 of the Inquiry and paragraph 24 of the Notice. In view of the extensive description of the subject in both the Inquiry and the Notice, the Commission found that the notice requirements of the Administrative Procedures Act were legally satisfied.

7. The table in § 73.215(e) gives one minimum short-spaced separation distance for each class pair regardless of the class of station to be short-spaced. Problems occur when classes are mixed, *e.g.* B to C. Also, flexibility for second and third adjacent channels is modest because spacings are tight to begin with. Moreover, since the adoption of these new short-spacing distances, the Commission has created an additional intermediate C3 class of FM broadcast station for Zone II with maximum facilities of 25 kW effective rated power at 100 meters reference height above average terrain, and has also increased the maximum permitted power for Class A stations, including increased minimum separation distances with respect to Class A stations.

Prior to creation of the Class C3 stations, Class A station status was the next lower class from a Class C2 station that might propose to short-space its facilities; now, Class C3 is the next lower station classification in such situation. Also, with the Class A power increase provisions, the previously permitted amount of short-spaced separation has been reduced towards Class A stations. Thus, portions of the table in § 73.215(e) need updating.

8. Petitioners believe that the limits in the § 73.215(e) table are arbitrary and unduly restrictive (particularly in the case of second and third adjacent channel separations). There also appears to be some agreement that a fixed limit should be applied. The most popular limit mentioned is 8 kilometers (5 miles). Eight kilometers is, of course, the limit currently imposed by what was intended as a temporary note to the table in § 73.215(e). However, the Commission believes that it should continue to strike a balance between the 8 kilometer initially imposed and the essentially unrestricted limit suggested in dLR's petition. Therefore, the Commission concludes that the "next lower class" approach continues to be the most suitable limit at this time. Accordingly, § 73.215(e) will be updated to reflect changes in the station classes that have occurred since its adoption and to consistently reflect that the amount of short-spacing permitted is the lesser value obtained by referring to Table A in § 73.207.

9. The Commission concluded, in the Report, that the new FM short-spacing rules would permit it to discontinue granting waivers of § 73.207 for co-channel and adjacent channel short-spacing. Greater Media urges the Commission, however, to reconsider this policy change and to allow very minor short-spacing for multi-user common antenna systems that permit desirable co-location of facilities in metropolitan areas.

10. The FM directional antenna rules were developed in order to permit stations to short space in cases of necessity without diminishing the coverage of other stations. Certainly, technology exists that will afford the desired protection. Moreover, the Commission viewed the policy of waiving § 73.207, even if only to permit short-spacing of a mile, as undesirable because it undermines, at least to some extent, the effectiveness of the distance separation table. The adopted § 73.215 provides the site selection flexibility in those exceptional circumstances where no fully spaced sites are available. The Commission does not believe additional short-spacing waivers of § 73.207 would generally be in the public interest where an alternative means of achieving a similar result, such as § 73.215, is available. The Commission will also consider waiving § 73.215 to permit greater power where an applicant demonstrates the waiver is necessary to allow use of a multiplexed transmitting antenna and the authorization would otherwise serve the public interest. Therefore, the Commission will not reinstate consideration of § 73.207 waivers.

11. The Commission denies a request that stations authorized pursuant to § 73.215 be protected based on their maximum possible facilities and also a request that the Commission consider allowing stations to accept interference in limited cases. The Commission also maintains the adopted protection method involving contour overlap standards and declines to change either to an "equivalent protection" method as used in the television service or an alternate method used under the provisions for grandfathered short-spaced FM stations in § 73.213.

12. The Commission is concerned by an issue raised in petitions about the inconsistent treatment of second adjacent channel stations accorded by the commercial FM distance separation table in § 73.207 and the site flexibility provisions in § 73.215. In adopting the contour protection provisions, the Commission's model was the interference protection criteria that have been employed successfully by non-commercial educational FM stations (§ 73.509). In most situations, the NCE–FM requirements are based on the same planning factors as the commercial FM requirements. However, the second adjacent channel protection ratio is a significant exception. The adopted rules establish an incongruity in the way commercial FM stations are treated. Both the § 73.207 domestic distance separation table and the § 73.215(e) minimum distance table, which limits the extent of short-spacing, are based on a 40 dB protection ratio while the adopted contour protection provisions of section 215(a) require use of a more restrictive 20 dB protection ratio. The Commission has no reason to believe that the commercial FM second adjacent channel protection is inadequate, or that it allows significantly more actual interference than NCE–FM protection. Therefore, even though the Commission's confidence that contour protection is a valid approach is founded in part on non-commercial educational FM experience, the Commission now believes that it is more important to make the commercial FM contour protection provisions internally consistent with the other commercial FM requirements. Accordingly, the Commission amends § 73.215(a)(2) by replacing the overlap provision of an interference contour that is 20 dB higher than the protected contour of second adjacent channel stations with one that is 40 dB higher.

13. In the Report, the Commission concluded that its existing policy of restricting the rate of change of the horizontal antenna radiation pattern to 2 dB per 10 degrees of azimuth should be applied to all future directional antenna systems. Additionally, due to a lack of support in the comments, the Commission decided not to amend the current requirement restricting the maximum to minimum antenna pattern gain to a 15 dB ratio.

14. Upon reconsideration, the Commission is persuaded that it should apply to 2 dB per 10 degrees rate of change limitation only where the directional antenna is used to provide protection to a short-spaced station. At this time the Commission is not prepared to eliminate or otherwise change either this requirement or the 15 dB maximum to minimum radiation ratio limit. While the Commission recognizes that the contour overlap provisions of § 73.215 adopted in this proceeding require protection of a station's entire service area, the Commission does not have an adequate record to justify relaxing these antenna requirements. The Commission expects to further consider these matters when it institutes a separate proceeding on FM directional antennas. Finally, the Commission is amending § 73.316(b)(1) to clarify that it now considers the 15 dB maximum to minimum radiation limit to be a requirement imposed on the antenna design and, while the goal should be to construct an antenna that will match the predicted pattern, the Commission recognizes that the actual pattern of the constructed and installed antenna may depart from that limit.

15. The intent behind the provision of § 73.316(c) (6) and (7) adopted in the Report was to ensure that the pattern of a directional antenna was not distorted by other nearby objects in the horizontal plane. For example, the "platform restriction" was developed out of concern that a directional antenna intended to be mounted on top of a tower in an unobstructed configuration could have its pattern distorted by another FM, TV or even a land mobile antenna that might be mounted nearby elsewhere on the platform.

16. The Commission continues to believe that at this time it must proceed cautiously and assure that FM directional antennas operate in a controlled, unobstructed and static environment. The Commission's review of the provisions in § 73.316(c) (6) and (7) leads it to conclude that they strike an appropriate balance between the differing concerns of the parties in this proceeding and that their amendment at this time is not warranted. However, the Commission recognizes that these provisions could unnecessarily preclude some valid FM directional antenna designs. Therefore, while the Commission will consider waiving these rules in appropriate cases, upon a showing that the particular antenna design takes into consideration all other nearby antennas and other potentially reradiating structures, the requests for amendment of § 73.316(c) (6) and (7) will be denied.

17. The Commission agrees with the petitioners that a refinement in § 73.316(c)(8) is necessary. On reconsideration, the Commission believes that certification of an FM directional antenna's installation "pursuant to the manufacturer's instructions" is outside the competence of a surveyor. Therefore, the Commission is revising the rule to require that the installation be certified by an engineer whose qualifications shall be submitted at the time of application for license. However, inasmuch as most electronics engineers are not trained in surveying, the Commission will continue to require that a licensed surveyor certify that the azimuth of the directional antenna is "in the proper orientation." The Commission expects that at the time surveying services are either arranged for or provided, the surveyor will be provided with the information necessary to determine the relationship between the antenna's main lobe and its mechanical construction.

18. In the Report, the Commission found no apparent need for changes in the policies and rules governing installation and maintenance of directional antenna performance. The Commission stated that existing requirements would be sufficient, for the most part, but added a number of requirements in § 73.316(c) to further ensure that the predicted directional performance will be realized and maintained. The Commission will also continue to require proofs of performance to establish that directional antennas have acceptable measured patterns. While petitions do not contain the information necessary to improve upon the current requirements, this matter may be explored further in a future directional antenna rule making. Until then, the Commission believes the current provisions will be sufficient.

19. The Report did not address the greater facilities permitted for FM stations in Puerto Rico and the Virgin Islands by § 73.211(b)(3). The Commission now concludes that stations in Puerto Rico and the Virgin Islands that may wish to short-space their antenna sites may do so by applying the protection method set forth in the grandfather provisions of § 73.213. Thus, § 73.215 is amended to allow these stations to short-space their locations provided the predicted distance to the 1 mV/m field strength contour is not extended toward the 1 mV/m field strength contour of any short-spaced station.

20. The Commission notes that non-commercial licensees operate on channels 218, 219, and 220 on a contour protection basis, and are required to afford maximum protection to adjacent channel commercial station licensees. Thus, in keeping with current assignment practice, the Commission wishes to make clear that adjacent channel commercial stations should base the protection afforded such non-commercial stations on their actual facilities since this is the level of protection that they receive from other non-commercial stations.

21. The Commission clarifies that existing short-spacings that occurred after November 1964, and therefore, are not covered under § 73.213 of the rules may also seek modifications pursuant to § 73.215 even if they have existing overlap with another FM station. While the directional antenna provisions are primarily intended to maximize protection to the service of the non-encroaching station, the Commission sees no reason why existing short-spaced licensees seeking to re-locate to another similarly short-spaced site should forfeit service already established in directions where some overlap exists. Therefore, the Commission will permit such facility re-location provided the current overlap is not increased.

22. Pursuant to the Regulatory Flexibility Act of 1980, the decisions in this action have been analyzed and found to impose a new or modified information collection requirement on the public. Implementation of any new or modified requirement will be subject to approval by the Office of Management and Budget as prescribed by the Act.

23. Accordingly, *it is ordered* That the Petitions for Reconsideration *are granted* to the extent indicated above and are denied in all other respects. *It is Further ordered* That, pursuant to authority contained in section 4 and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154 and 303, and effective November 15, 1991, part 73 of the Commission's rules *is amended* as set forth below.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Amendatory Text

47 CFR part 73 is amended as follows:

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

Authority: 47 U.S.C. 154 and 303.

2. 47 CFR 73.207 is amended by revising paragraph (a) to read as follows:

§ 73.207 Minimum distance separation between stations.

(a) Except for assignments made pursuant to § 73.213 or 73.215, FM allotments and assignments must be separated from other allotments and assignments on the same channel (co-channel) and five pairs of adjacent channels by not less than the minimum distances specified in paragraphs (b) and (c) of this section. The Commission will not accept petitions to amend the Table of Allotments unless the reference points meet all of the minimum distance separation requirements of this section. The Commission will not accept applications for new stations, or applications to change the channel or location of existing assignments unless transmitter sites meet the minimum distance separation requirements of this section, or such applications conform to the requirements of § 73.213 or 73.215. However, applications to modify the facilities of stations with short-spaced antenna locations authorized pursuant to prior waivers of the distance separation requirements may be accepted, provided that such applications propose to maintain or improve that particular spacing deficiency. Class D (secondary) assignments are subject only to the distance separation requirements contained in paragraph (b)(3) of this section. (See § 73.512 for rules governing the channel and location of Class D (secondary) assignments.)

* * * * *

3. 47 CFR 73.215 is amended by revising paragraph (a)(2), adding paragraph (a)(4), and revising paragraph (e) to read as follows:

§ 73.215 Contour protection for short-spaced assignments.

* * * * *

(a) * * *

(2) The interfering contours, for the purpose of this section, are defined as follows. For co-channel stations, the F(50,10) field strength along the interfering contour is 20 dB lower than the F(50,50) field strength along the protected contour for which overlap is prohibited. For first adjacent channel stations (±200 kHz), the F(50,10) field strength along the interfering contour is 6 dB lower than the F(50,50) field strength along the protected contour for which overlap is prohibited. For both second and third adjacent channel stations (±400 kHz and ±600 kHz), the F(50,10) field strength along the interfering contour is 40 dB higher than the F(50,50) field strength along the protected contour for which overlap is prohibited.

* * * * *

(4) Stations in Puerto Rico and the Virgin Islands may submit application for short-spaced locations provided the predicted distance to their 1 mV/m field strength contour is not extended toward the 1 mV/m field strength contour of any short-spaced station.

* * * * *

(e) The Commission will not accept applications that specify a short-spaced antenna location for which the following minimum distance separation requirements, in kilometers (miles), are not met:

Relation	Co-Channel	200 kHz	400/600 kHz
A to A	92(57)	49(30)	29(18)
A to B1	119(74)	72(45)	46(29)
A to B	143(89)	96(60)	67(42)
A to C3	119(74)	72(45)	40(25)
A to C2	143(89)	89(55)	53(33)
A to C1	178(111)	111(69)	73(45)
A to C	203(126)	142(88)	93(58)
B1 to B1	143(89)	96(60)	48(30)
B1 to B	178(111)	114(71)	69(43)
B1 to C3	143(89)	96(60)	48(30)
B1 to C2	175(109)	114(71)	55(34)
B1 to C1	200(124)	134(83)	75(47)
B1 to C	233(145)	165(103)	95(59)
B to B	211(131)	145(90)	71(44)
B to C3	178(111)	114(70)	69(43)
B to C2	211(131)	145(90)	71(44)
B to C1	241(150)	169(105)	77(48)
B to C	270(168)	195(121)	105(65)
C3 to C3	142(88)	89(55)	42(26)
C3 to C2	166(103)	106(66)	55(34)
C3 to C1	200(124)	133(83)	75(47)
C3 to C	226(140)	165(103)	95(59)
C2 to C2	177(110)	117(73)	56(35)
C2 to C1	211(131)	144(90)	76(47)
C2 to C	237(147)	176(109)	96(60)
C1 to C1	224(139)	158(98)	79(49)
C1 to C	249(155)	138(117)	105(65)
C to C	270(168)	209(130)	105(65)

* * * * *

4. 47 CFR 73.316 is amended by revising paragraphs (b) and (c)(8) to read as follows:

§ 73.316 FM antenna systems.

* * * * *

(b) *Directional antennas.* A directional antenna is an antenna that is designed or altered for the purpose of obtaining a non-circular radiation pattern.

(1) Applications for the use of directional antennas that propose a ratio of maximum to minimum radiation in the horizontal plane of more than 15 dB will not be accepted.

(2) Directional antennas used to protect short-spaced stations pursuant to § 73.213 or § 73.215 of the rules, that have a radiation pattern which varies more than 2 dB per 10 degrees of azimuth will not be authorized.

(c) * * *

(8) In the case of applications for license upon completion of antenna construction, a statement from an engineer (as well as a statement of the engineer's qualifications) that the antenna has been installed pursuant to the manufacturer's instructions and a statement from a licensed surveyor that the antenna is installed in the proper orientation.

* * * * *

[FR Doc. 91-24502 Filed 11-7-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 91-124; RM-7586]

Radio Broadcasting Services; Bentonville, AR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 252C3 for Channel 252A at Bentonville, Arkansas, and modifies the license of Station KOLZ(FM) to specify operation on the higher powered channel, as requested by Demaree Media, Inc. See 56 FR 19827, April 30, 1991. Coordinates for Channel 252C3 at Bentonville are 36-31-08 and 94-10-38. With this action, the proceeding is terminated.

EFFECTIVE DATE: December 23, 1991.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 91-124, adopted October 24, 1991, and released November 5, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714-21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments for Arkansas, is amended by removing Channel 252A at Bentonville and adding Channel 252C3.

Federal Communications Commission.

Michael C. Ruger,

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

[FR Doc. 91-27034 Filed 11-7-91, 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 301

[Docket No. 911066-1266]

Pacific Halibut Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: The Assistant Administrator for Fisheries, NOAA, on behalf of the International Pacific Halibut Commission, publishes notice of amended regulations promulgated by that Commission and approved by the U.S. Government to govern the Pacific halibut fishery. These regulations are intended to allow full harvests, within conservation constraints, of available

Pacific halibut stocks in the northern Pacific.

EFFECTIVE DATE: November 4, 1991.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten, Regional Director, National Marine Fisheries Service, Northwest Region, 7600 Sand Point Way NE., BIN C15700, Bldg. 1, Seattle, WA, 98115, telephone 206–526–6140; or Donald McCaughran, Executive Director, International Pacific Halibut Commission, P.O. Box 5009, University Station, Seattle, Washington 98105, telephone 206–624–1838.

SUPPLEMENTARY INFORMATION: The International Pacific Halibut Commission (IPHC), under the Convention between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (signed at Ottawa, Ontario, on March 2, 1953), as amended by a Protocol Amending the Convention (signed at Washington, DC, on March 29, 1979), has promulgated new regulations governing the Pacific halibut fishery. The regulations have been approved by the Secretary of State of the United States of America and by the Governor-General of Canada. On behalf of the IPHC, these regulations are published in the **Federal Register** to provide notice of their effectiveness, and to inform persons subject to the regulations of the restrictions and requirements established therein.

The IPHC met by telephone conference call on September 20, 1991, to discuss several issues of regulatory oversight. One issue was the closure of the treaty Indian ceremonial and subsistence (C&S) fishery on April 22, 1991. The C&S fishery was intended to be a priority for 10,000 of the 112,500 pounds allocated to treaty Indian fishermen. However, this priority was inadvertently not specified in the 1991 regulations and all tribal fisheries were closed when the tribal commercial fishery exceeded the overall tribal allocation. The tribes had harvested about 4,000 pounds of the 10,000 pounds that were intended for the C&S fishery as of April 22, 1991. Therefore, the IPHC amended its current regulations (56 FR 18535, April 23, 1991) to allow treaty Indian fishermen in Washington, as defined in § 301.19, to harvest the balance of their 1991 C&S allocation of 10,000 pounds.

Classification

Because approval by the Secretary of State of the IPHC regulations is a foreign affairs function, *Jensen* v. *National Marine Fisheries Service,* 512 F. 2d 1189 (9th Cir. 1975), 5 U.S.C. 553, of the Administrative Procedure Act and Executive Order 12291 do not apply to this notice of the effectiveness and content of the regulations. Because notice of proposed rulemaking is not required, the Regulatory Flexibility Act does not apply. These regulations do not contain collection of information requirements subject to the Paperwork Reduction Act.

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

List of Subjects in 50 CFR Part 301

Fisheries, Treaties.

Dated: November 4, 1991.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, part 301 is amended as follows:

PART 301—PACIFIC HALIBUT FISHERIES

1. The authority citation for part 301 continues to read as follows:

Authority: 5 UST 5; TIAS 2900; 16 U.S.C. 773–773k.

2. In § 301.19, paragraph (e) is revised and paragraph (f) is removed and reserved as follows:

§ 301.19 Fishing by United States treaty Indian tribes.

* * * * *

(e) Ceremonial and subsistence fishing for halibut by treaty Indian tribes in subarea 2A–1 is permitted with hook and line gear from January 1 to December 31 or until 10,000 pounds (4.5 metric tons) have been taken and the fishery is closed by the IPHC.

(f) [Reserved]

* * * * *

[FR Doc. 91–26968 Filed 11–4–91; 4:09 pm]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 56, No. 217
Friday, November 8, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 401

[Amendment No. 66; Doc. No. 0031S]

General Crop Insurance Regulations; ASCS Farm Program Payment Yield Option

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the General Crop Insurance Regulations (7 CFR part 401), effective for the 1992 and succeeding crop years, by adding a new section, 7 CFR 401.149, to be known as the ASCS Farm Program Payment Yield Option. The intended effect of this rule is to provide the provisions permitting the amount of insurance for certain crops to be based on the adjusted yield which the Agricultural Stabilization and Conservation Service (ASCS) has established for the farming unit ("ASCS yield"), rather than the recorded and appraised yield ("Appraised yield") as established by FCIC.

DATES: Written comments, data, and opinions on this proposed rule must be submitted not later than December 9, 1991, to be sure of consideration.

ADDRESSES: Written comments on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, room 4096, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (703) 235–1168.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is March 1, 1996.

James E. Cason, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) an annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

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

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

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

FCIC proposed to amend the General Crop Insurance Regulations (7 CFR part 401) by adding a new section 7 CFR 401.149, to be known as the ASCS Farm Program Payment Yield Option. The intended effect of this rule is to make provisions for permitting, at the option of the insured, the amount of insurance to be based on the insured's ASCS farm program payment yield instead of FCIC's recorded and appraised yield.

On November 28, 1990, the President signed into law the Food, Agriculture, conservation, and Trade Act of 1990, (the "1990 Act") (Pub.L. 101–624, 104 Stat. 3359). While the 1990 Act amended several sections of the Federal Crop Insurance Act (the FCIA) (7 U.S.C. 1501 *et seq.*), an amendment to section 508 of the FCIA constitutes the basis of this proposed rulemaking, setting forth the provisions permitting the insured's amount of insurance to be based on the insured's ASCS yield, rather than on the approved yield established by FCIC.

Section 508(a) of the FCIA now provides in part, that * * * Corporation shall make available to producers lesser levels of yield coverage, including a level of coverage at 50 per centum of the recorded or appraised average yield, as adjusted. For any commodity for which the Agricultural Stabilization and Conservation Service has established for the farming unit involved an adjusted yield for the purposes of programs administered by such Service (or a yield for crop insurance purposes under the provisions of this title), and such yield is greater than the recorded or the appraised yield, as established by the Corporation, of a commodity on such farming unit, insurance coverage may be provided to cover against the loss in yield of the commodity on the basis of the adjusted yield for the commodity established by the Agricultural Stabilization and Conservation Service rather than the recorded or appraised yield established by the Corporation.

Such additional insurance shall be provided for an additional premium (for which no premium subsidy or administrative subsidy may be provided) set at such rate as the Board determines appropriate to reflect accurately the increased risk involved and that the Board determines actuarially sufficient to cover claims for losses on such insurance and to establish a reasonable reserve against unforeseen losses * * *. (7 U.S.C. 1508(a)).

FCIC proposes to implement this amendment to the FCIA, effective for the 1992 and succeeding crop years by adding a new section to 7 CFR part 401, to be known as the ASCS Farm Program Payment Yield Option, providing that the amount of insurance on certain crops may be based on the policyholder's ASCS yield instead of FCIC's approved yield for such crops.

FCIC is soliciting written comments on this rule for 30 days following publication in the **Federal Register**. Written comments should be sent to

Peter F. Cole, Secretary, Federal Crop Insurance Corporation, room 4096, South Building, U.S. Department of Agriculture, Washington, DC 20250.

Written comments received pursuant to this rule will be available for public inspection and copying in room 4906, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 401

Crop insurance, ASCS farm program payment yield option.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby proposes to amend 7 CFR Part 401 as follows:

1. The authority citation for part 401 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. Section 401.149 is added to read as follows:

§ 401.149 ASCS Farm Program Payment Yield Option Regulations.

The ASCS Farm Program Payment Yield Option Provisions for the 1992 and subsequent crop years are as follows:

FEDERAL CROP INSURANCE CORPORATION; ASCS FARM PROGRAM PAYMENT YIELD OPTION TO THE GENERAL CROP INSURANCE POLICY

[This is continuous option—See section 8 of this option]

Insured's Name & Address:
Contract No.:
Identification No:
SSN:
Tax:

Crop Elected	Crop Year	ASCS Farm Serial Number (FSN)	Practice	Type

Upon submission of this Option on or before the sales closing date for the crop year shown above, your amount of insurance will be based on your ASCS farm program yield (ASCS yield) for those Farm Units which qualify, subject to the following terms:

1. You must have a General Crop Insurance Policy and applicable Crop Endorsement in effect and this option is an addition to and amends said policy and endorsements.

2. You may elect your ASCS yield under this Option for any or all of the following crops: Barley, Corn, ELS Cotton, Grain Sorghum, Oats, Rice, and Wheat.

3. For the crops, FSN's, types, and practices you have listed above, the ASCS yield will be used to calculate your amount of insurance, provided such yield is greater than, and is established for the same crops, types and/or practices as your FCIC recorded and appraised yield (approved yield).When both ASCS and FCIC establish yields for the same practices and crop types, all such practices and crop types must be included in this option for the FSN's listed above.

4. Your ASCS yield will be the yield applicable for the FSN on the FCIC sales closing date for the applicable crop and year.

5. The additional amount of insurance established under this Option is provided for at an additional unsubsidized premium. The premium will be determined by applying applicable adjustments contained on the actuarial table to the base premium rate for your approved yield. The additional amount of insurance is the difference between the applicable ASCS yield and your approved yield, times your coverage level, times the maximum value per bushel.

6. For the purposes of this option, the unit division section of your Crop Endorsement is amended to read as follows: If you elect to use optional units, they will be established by FSN for the FSN's on which the ASCS yield is used to establish the amount of insurance under the ASCS Farm Program Payment Yield Option. You may elect to use optional units, by irrigated and non-irrigated practice, if ASCS and FCIC yields are both established by irrigated or non-irrigated practice. Optional units will not be allowed on any crop on which you use a "T" or a "D" yield as your approved yield under this option.

7. All provisions of the General Crop Insurance Policy and the applicable endorsement apply except to the extent said provisions may be in conflict with this Option.

8. This Option may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date provided by the applicable crop endorsement, preceding such crop year.

9. For the purpose of this Option: *Approved Yield* means the recorded and appraised yield established by FCIC for each crop, practice, and type for each FSN; or the transitional ("T") yield or determined ("D") yield established by FCIC, depending upon the insured crop, or a yield determined by FCIC and based on an average of your actual yields and "T" or "D" yields.

If you use the "T" or "D" yield as your approved yield for a crop, you must use the "T" or "D" yield applicable to that crop for each practice, and type, for each FSN for which this Option is in effect. The production reporting requirements provided in section 4.d. of the General Crop Insurance Policy will not apply to insured acreage under this option on which you elect to use the "T" or "D" yield.

Insured's Signature and Date

Corporation Representative's Signature & Code No. and Date

Done in Washington DC on July 19, 1991.

James E. Cason,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 91-26877 filed 11-7-91; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Marketing Service

7 CFR Part 1139

[DA-91-019]

Milk in the Great Basin Marketing Area; Notice of Proposed Revision of Allowable Diversion Percentages for Cooperative Association Handlers

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed revision of rule.

SUMMARY: Magic Valley Quality Milk Producers, Inc., has requested that the percentage of a cooperative association's milk supply that may be diverted to nonpool plants be increased by 10 percentage points. Authorization for this increase is contained in the Great Basin Federal Milk Order. Interested parties are requested to present comments on the proposal.

DATES: Comments are due no later than November 25, 1991.

ADDRESSES: Comments (two copies) should be sent to USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456 (202) 447-4829.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action would not have a significant economic impact on a substantial number of small entities. This action would also tend to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This proposed rule has been reviewed by the Department in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the provisions of § 1139.13(d)(4) of the order, the revision of certain provisions of the order regulating the handling of milk in the Great Basin marketing area is being considered.

All persons who desire to submit written data, views or arguments about the proposed revision should send two copies of their views to USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456 by the 15th day after publication of this notice in the **Federal Register**. The period for filing comments is limited to 15 days because a longer period would not provide the time needed to complete the required procedures and make the revision effective for milk marketed in December 1991.

All written submissions made pursuant to this notice will be made available for public inspection in the Dairy Division during regular business hours (7 CFR 1.27(b)).

Statement of Consideration

Magic Valley Quality Milk Producers, Inc. (MVQMP), has requested that the percentages of milk that may be diverted by a cooperative association pursuant to § 1139.13(d)(2) of the Great Basin order be increased. Presently, a cooperative association may divert 60 percent of its milk supply in April through August and 50 percent in other months. MVQMP has requested that these percentages be increased to 70 percent for April through August and 60 percent in the remaining months.

Within the Great Basin order, § 1139.13(d)(4) provides that the Director may increase or decrease the diversion limitations by up to 10 percentage points if necessary to obtain needed shipments or to prevent uneconomic shipments. The diversion allowances for handlers other than cooperative associations were relaxed under this provision on June 1, 1989.

Magic Valley Quality Milk Producers, Inc., has requested this revision of the allowable diversion percentages because of economic distress sustained by its membership. MVQMP closed and returned to creditors its pool plant in Wellsville, Utah. The cooperative attributes its financial difficulty to depressed prices for nonfat dry milk and butter. Without the pool plant, MVQMP asserts that it has been unable to pool substantial amounts of its members' milk. The proposed revision of diversion percentages for cooperative association handlers would allow the milk of producers traditionally associated with the market to continue to be pooled and priced under the order.

List of Subjects in 7 CFR Part 1139

Milk.

The authority citation for 7 CFR part 1139 continues to read as follows:

Authority: 7 U.S.C. 601-674.

Signed at Washington, DC, on: November 5, 1991.

W.H. Blanchard,

Director, Dairy Division.

[FR Doc. 91-27037 Filed 11-7-91; 8:45 am]

BILLING CODE 3410-02-M

FEDERAL MARITIME COMMISSION

46 CFR Part 552

[Docket No. 91-51]

Financial Reports of Common Carriers by Water in the Domestic Offshore Trades

AGENCY: Federal Maritime Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Federal Maritime Commission ("Commission" or "FMC") intends to publish new and revised substantive guidelines for determining what constitutes a just and reasonable rate of return or profit for common carriers by water in the FMC-regulated portion of the domestic offshore trades. The purpose of this Advance Notice is to solicit comments and information from the public on the issues which should be addressed by the proposed rule.

DATES: Written comments in response to this Advance Notice are to be submitted on or before January 7, 1992.

ADDRESSES: Comments (original and 15 copies) are to be submitted to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573.

FOR FURTHER INFORMATION CONTACT:

Austin L. Schmitt, Director, Bureau of Trade Monitoring and Analysis, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523-5787.

Bryant L. VanBrakle, Director, Bureau of Tariffs, Certification and Licensing, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523-5796.

SUPPLEMENTARY INFORMATION:

Background

The Federal Maritime Commission regulates the activities of common

carriers by water in the domestic offshore trades.

Section 3(a) of the Intercoastal Shipping Act, 1933 ("1933 Act"), 46 app. U.S.C. 845, directs that:

> After the regulations [prescribing guidelines for the determination of what constitutes a just and reasonable rate of return or profit for common carriers by water] * * * are initially prescribed, the Commission shall from time to time thereafter review such regulations and make such amendments thereto as may be appropriate.

The Commission undertook a full-scale re-evaluation of its financial regulations in the domestic offshore trades in FMC Docket No. 78–46, *Financial Reports of Common Carriers by Water in the Domestic Offshore Trades*, 19 SRR 1283 (1980). A further limited review was conducted in FMC Docket No. 81–46, *Financial Reports of Common Carriers by Water in the Domestic Offshore Trades*, 21 SRR 97 (1981). The regulations produced in those two proceedings are published at 46 CFR part 552, and prescribe rate-of-return on rate base as the primary standard for evaluating the reasonableness of a carrier's overall level of rates.

Recent rate investigations in the Hawaiian trade have raised questions regarding the adequacy and appropriateness of various aspects of the prevailing rate-of-return regulations, including concerns about tax treatment, allocation of assets and expenses, the comparable earnings test, and methods for forecasting the allowable rate-of-return on rate base. In addition, issues have arisen with respect to "efficient and economical management" of carriers in the domestic offshore trades, as that phrase is used in *Bluefield Waterworks and Improvement Company* v. *Public Service Commission of West Virginia*, 262 U.S. 679, 693 (1923). The Commission's rules do not currently address the measurement or application of management efficiency or economy.

The return of a growing number of carrier tariffs in the Puerto Rican trade from Interstate Commerce Commission ("ICC") to FMC regulatory jurisdiction adds to the need to review the effectiveness of the current rate-of-return evaluation process. Furthermore, one of the major carriers operating in the Puerto Rican trade is state-owned, and the applicability of the current analytical framework to a government-owned shipping line requires evaluation. Additionally, the very existence of the jurisdictional split between ICC and FMC regulation, with the attendant opportunity for forum-shopping, raises questions about the efficacy of the FMC's current economic regulation of the domestic offshore trades.

The Commission believes that its obligations under the 1993 Act can best be met, and the concerns expressed above can best be addressed, through the issuance of this Advance Notice of Proposed Rulemaking to solicit the views of governmental bodies, shippers, carriers, and the interested public. Specific comments are sought on the following issues, as well as on any other issues deemed to be relevant.

Issues Upon Which Comments are Requested

1. Should the current waiver level for detailed annual reporting requirements for carriers serving in the domestic offshore trades ($10 million or less in gross revenues per reporting year per trade) be raised? If so, to what level? Should any level be subject to annual adjustment? If so, by what amount or in connection with the results of what regularly published index (e.g. Producer Price Index)? What would be the likely consequences of such changes?

2. Should changes be made in the methods for allocating carrier assets, revenues and expenses to the FMC-regulated portions of the domestic offshore trades? If so, what changes would be most appropriate and why? What would be the likely consequences of such changes on the carriers serving the trades and on the shipping public served?

3. Under the current return on rate base formula, tax expenses are calculated by application of the maximum statutory tax rate rather than the actual taxes paid by the regulated carrier. In addition, the rate base may be financed, in part, by deferred taxes attributable to a variety of tax-related provisions such as accelerated depreciation and the Capital Construction Fund.

Should this approach be changed? In particular, what provisions should be made for the treatment of income tax expenses, and how should deferred taxes (including the Capital Construction Fund) be treated for rate base purposes? If changes are warranted, what changes would be most appropriate and why? What would be the likely consequences of such changes on the carriers serving the trades and on the shipping public served?

4. Currently, the Commission applies a comparable earnings test in arriving at a reasonable rate-of-return on rate base. That test requires the construction of a "benchmark" rate of return derived from the "earnings of U.S. corporations over an extended period of time . . . and where appropriate, adjusted for current trends in rates of return, the cost of money and relative risk." 46 CFR 552.6(d)(2)(ii).

Should the Commission revise its method of computing the benchmark rate of return and the adjustments to that benchmark? If so, what alternative method is most appropriate to replace the current one, and why? For example, rather than construct a benchmark based on historic data, would it be preferable to project a test year rate of return for U.S. manufacturing corporations and then make adjustments to the projection-based benchmark only for relative risk? What would be the likely consequences of the adoption of the proposed alternative approach on carriers serving the trades and on the shipping public being served?

5. Should the Commission establish incentive-based regulations aimed at encouraging efficiencies and cost reductions, conservation of capital investment, and the partial passthrough of any savings carriers achieve to the shipping public? If so, what regulatory approach would be most appropriate and why? What would be the likely consequences of the adoption of the recommended approach on the carriers serving the trades and on the shipping public served?

6. Are there any unique and significant characteristics of a specific trade served, or of the kinds of carriers serving a trade, that would indicate the need for special (i.e. non-standard) regulatory treatment (e.g. government ownership of a carrier)? If so, please specify the nature of the unique and significant characteristic, the nature of the special treatment required, and the most appropriate form for that treatment to take. What would be the likely consequences of adoption of that special treatment on the carrier(s) and/or trade(s) involved and on the shipping public served?

7. If a portion of a carrier's revenues in a particular trade is based on ICC-tariffed trade and another portion on FMC-tariffed trade, can FMC regulation be effective or meaningful using a method of evaluating the rate-of-return on rate base which requires that assets, revenues and expenses be allocated between FMC-regulated, and non-FMC-regulated, portions of the trade? If not, are there other ratemaking methods the Commission should consider to avoid such allocations?

8. With jurisdiction over domestic offshore trades split between the FMC and the ICC, and with carriers having the ability to file tariffs for comparable or virtually identical service at either agency and the ability to switch the

forum for filing, does the FMC have the ability to effectively regulate those trades? Please explain your answer in detail.

The above issues are not exhaustive nor are they meant to limit the subject matter upon which respondents to this Advance Notice may comment. All responding parties are encouraged to discuss fully all issues that they believe are relevant to an eventual proposed rulemaking. All parties are also urged to be as specific as possible in their comments, including illustrative examples and quantitative support wherever appropriate.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91-26986 Filed 11-7-91; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[CC Docket 91-281; FCC 91-300]

Calling Number Identification

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This notice of proposed rulemaking (NPRM) is initiated to establish federal policies and rules governing calling number identification service (caller ID) on an interstate basis. Implementation by telephone companies of Signalling System 7 (SS7) switching technology has fostered new telephone services for both business and residential use. Such services include intrastate caller ID which facilitates identification of the calling party's telephone number to the called party. As with many new technologies and services, regulatory issues need to be addressed and resolved to ensure that regulation is adaptive to new services. The Commission tentatively concludes that a federal model for interstate caller ID is necessary and in the public interest and seeks comment on whether any state policies exist which may impede development of that model.

DATES: Comments must be filed with the Commission on or before January 6, 1992, and reply comments on or before February 5, 1992.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Olga Madruga-Forti, Attorney, Domestic Services Branch, Domestic Facilities Division, Common Carrier Bureau (202) 634-1332.

SUPPLEMENTARY INFORMATION: This summarizes the Commission's NPRM, In the Matter of Rules and Policies Regarding Calling Number Identification Service, CC Docket 91-281 (FCC 91-300) adopted September 26, 1991 and released October 23, 1991. The item is available for inspection and copying on weekdays during the hours of 9 a.m. to 4:30 p.m. in the Commission's Dockets Branch, room 239, 1919 M St., NW., Washington, DC, or a copy may be purchased from the duplicating contractor, Downtown Copy Center (202) 452-1422, 1114 21st St., NW., Washington, DC 20036. The NPRM will be published in the FCC Record.

Paperwork Reduction Act of 1980

The NPRM will neither increase nor decrease the burden hours imposed on the public. It therefore does not require the collection of information for OMB review under section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3504(h)).

Summary of NPRM

1. *Procedure:* A petition for rulemaking was filed by Joseph Baer, who petitioned the Commission to initiate a proceeding which, among other things, would establish a national calling number delivery service that would enable non-business callers having unlisted numbers, who seek to prevent called parties from detecting the calling number, to substitute a confidentially registered alphanumeric designation for the billing number. See FCC Report No. 1817 (RM 7397) released June 18, 1990. The Commission rejects this proposal and denies Mr. Baer's petition, terminating RM 7397. The Commission issues this NPRM with a goal of establishing a federal model for interstate caller ID which will aid the efforts of carriers, standards setting bodies, states, customer premises equipment manufacturers and others in providing the service in an efficient manner.

2. *Technical Background:* Caller ID, currently offered on an intrastate basis, allows the recipient of a local telephone call to "read," via transmission from the local exchange carrier (LEC), the telephone number from which the call is placed. Subscribers to intrastate caller ID must purchase a number identification device (NID) which is connected to a network jack and then to the subscriber's telephone, unless the device already is incorporated into the telephone unit itself. The device, which retails for between $60 and $100, displays the calling party's telephone number during the first and second ring via common channel signaling. In addition to purchasing the NID, the customer must subscribe to caller ID service from the LEC at a cost of approximately $6 to $10 per month pursuant to telephone company tariffs filed with state regulatory agencies. NID and number-identification-capable telephones are customer premises equipment which manufacturers must register under part 68 of the Commission's rules.

Interstate caller ID is in the developmental stages. A form of interstate caller ID is available via Automatic Number Identification (ANI) technology in conjunction with interexchange carriers' (IXCs') 800 and 900 service offerings which allows businesses to identify incoming customer calls. The availability of interstate caller ID requires interconnection of LEC SS7 networks with IXC SS7 networks so that the calling party's number can be transmitted from the originating end to the terminating end of the call. Therefore, nationwide caller ID will not be feasible until SS7 interconnection has become fairly widespread. Once SS7 interconnections are in place, interstate caller ID also will require agreement among the IXCs and LECs regarding the transmission of caller ID data from one caller to another. Because delivery of the calling party number will involve both IXCs and LECs, it is necessary for us to address regulatory issues to determine under what structure the service will be made available. The Commission tentatively proposes that on interstate calls, carriers should pass on the calling party number from the originating carrier to the terminating carrier.

3. *Issues involving states:* The NPRM focuses on interstate services and seeks comment on the impact of state regulations or policies on the development of interstate caller ID. The item is meant to develop a framework whereby consumers have caller ID available nationwide. The NPRM seeks also to determine whether state policies concerning caller ID negate or hinder the development of interstate caller ID and/or ANI interstate services.

4. *Privacy:* The privacy interests of both calling and called parties must be balanced. The item recognizes that, especially in the residential setting, called parties have a privacy interest in determining the calling number. But the item recognizes also that the calling party may have a need to exercise a measure of control over dissemination of the calling number. The Commission

tentatively concludes that a regulatory framework for interstate caller ID should include some type of privacy mechanism. The NPRM seeks comment on establishing a requirement that interstate caller ID incorporate a per call blocking option.

5. *Conclusions:* Our initial view of the services which need to be coordinated within this federal model is caller ID, interstate ANI, and intrastate caller ID. We tentatively conclude that the costs of the service should be recovered from the users, who are the beneficiaries; that carriers should pass on the calling party number from the originating carrier to the terminating carrier; and that it is not necessary at this time to propose to preempt any intrastate caller ID offerings. We seek to analyze fully whether interstate and intrastate models may coexist harmoniously both legally and technologically.

Initial Regulatory Flexibility Analysis

Reasons for Action: This rulemaking proceeding is initiated to obtain comment on whether the Commission's express goal in this proceeding should lead it to adopt rules which provide for national policies for interstate caller ID.

Objectives: The Commission seeks to establish an environment in which interstate caller ID services are made possible, and stranded investment is minimized.

Legal Basis: The proposed action is authorized under sections 1, 4, 201–205, 218, 220 and 403 of the Communications Act of 1934, as amended; and 5 U.S.C. 553.

Reporting, Recordkeeping and Other Compliance Requirements: This NPRM proposes that originating local exchange and interexchange carriers be required to pass on the calling party number to terminating local exchange carriers. The Notice also seeks comment on regulatory mechanisms to balance the privacy considerations of both the calling and called party.

Federal Rules Which Overlap, Duplicate or Conflict With These Rules: None.

Description, Potential Impact, and Number of Small Entities Involved: Rule revisions in this proceeding could affect the offering by carriers of caller ID. After evaluating the comments and reply comments in this proceeding, the Commission will examine further the impact of any rule changes on small entities, and will set forth its findings in the Final Regulatory Flexibility Analysis.

Any Significant Alternatives Minimizing the Impact on Small Entities Consistent With the Stated Objectives: The NPRM solicits comments on any significant alternatives minimizing the impact on small entities consistent with the stated objectives.

Ex Parte Presentations: This is a nonrestricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as required by Commission rules. *See generally* 47 CFR 1.1202, 1.1203 and1.1206(a).

Legal Basis: Sections 1, 4, 201–205, 218, 220 and 403 of the Communications Act of 1934, as amended; and 5 U.S.C. 553.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91–26797 Filed 11–7–91; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 69

[CC Docket No. 91–213; DA 91–1330]

Transport Rate Structure and Pricing

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of time.

SUMMARY: The Common Carrier Bureau extended the comment date in Transport Rate Structure and Pricing, Order and Further Notice of Proposed Rulemaking, CC Docket No. 91–213, 56 FR 51869 (October 16, 1991). Given the Commission's concern with ensuring that the interexchange carriers and others have a reasonable opportunity to evaluate the local exchange carrier pricing analysis, the Common Carrier Bureau extended the comment date to November 22, 1991, and directed the BOCs and GTE to file their pricing analyses by this date. Reply comments are to be filed on December 23, 1991.

DATES: Comments and analyses by the BOCs and GTE are to be filed by November 22, 1991. Reply comments are to be filed on December 23, 1991.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Melissa Newman at (202) 632–9342, Policy and Program Planning Division, Common Carrier Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Extension of time Order in CC Docket No. 91–213, adopted October 24, 1991, and released October 25, 1991. The full text of this order is available for inspection and copying during normal business hours in the Dockets Reference Room (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1114 21st Street, NW., Suite 140, Washington, DC 20036, (202) 452–1422.

Summary of Order

In the Order and Further Notice of Proposed Rulemaking instituting this proceeding, the Commission proposed to adopt a new rate structure for local exchange carrier switched transport. In that Notice, the Commission asked the BOCs and GTE to prepare analyses of the effects of various pricing scenarios. The Commission directed the BOCs and GTE to work together and with the Common Carrier Bureau in selecting the pricing alternatives to be examined and in developing the methodologies for the preparation of these estimates. The Commission established October 29, 1991, and November 28, 1991, as the respective dates for filing comments and replies.

It appears that certain local exchange carriers will be unable to complete their pricing analyses late November. Given the Commission's concern with ensuring that the interexchange carriers and others have a reasonable opportunity to evaluate the local exchange carrier pricing analysis, the Common Carrier Bureau extended the comment date to November 22, 1991, and directed the BOCs and GTE to file their pricing analyses by this date. The Common Carrier Bureau also encouraged the BOCs and GTE to file their analyses and to make the data available to interested parties prior to this date if possible. Reply comments are to be filed on December 23, 1991.

In addition, the Common Carrier Bureau described five separate pricing scenarios and required that the BOCs and GTE file analyses of these pricing options. Each BOC and GTE was also required to file a complete explanation of their methodology consistent with the need to avoid disclosure of commercially sensitive information for interexchange carriers.

Ordering Clauses

1. Accordingly, *It is ordered,* pursuant to sections 4(j) and 5(c) of the Communications Act of 1934, as amended, 47 U.S.C. 154(j) and 155(c), and authority delegated thereunder pursuant to Sections 0.91 and 0.291 of the Commission's Rules, 47 CFR 0.91 and 0.291, that the BOCs and GTE ARE TO FILE their pricing analyses no later than November 22, 1991.

2. *It is further ordered,* That comments are to be filed on November 22, 1991,

and that reply comments are to be filed on December 23, 1991.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91–26956 Filed 11–7–91; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 91–316, RM–7834]

Radio Broadcasting Services; Corrales, NM

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by LV Broadcasting Educational Foundation, Inc., seeking the substitution of Channel 236C1 for Channel 236A at Corrales, New Mexico, and the modification of Station KSVA's construction permit to specify operation on the higher class channel. Channel 236C1 can be allocated to Corrales in compliance with the Commission's minimum distance separation requirements with a site restriction of 24.5 kilometers (15.2 miles) southwest to accommodate petitioner's desired transmitter site, at coordinates North Latitude 35–03–55 and West Longitude 106–46–27. In accordance with Section 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest in use of Channel 236C1 at Corrales or require the petitioner to demonstrate the availability of an additional equivalent class channel.

DATES: Comments must be filed on or before December 30, 1991, and reply comments on or before January 14, 1992.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Donald E. Martin, Esq., Spencer W. Weisbroth, Esq., Donald E. Martin, P.C., 2000 L Street, NW., suite 200, Washington, DC 20036 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91–316, adopted October 24, 1991, and released November 5, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1714 21st Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

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

[FR Doc. 91–27036 Filed 11–7–91; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 91–315, RM–7830]

Radio Broadcasting Services; Perham, MN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by John A. Brush, Yvonne M. Brush and Amy C. Rutledge, requesting the allotment of Channel 258A to Perham, Minnesota, as that community's first FM broadcast service. Canadian concurrence will be requested for this allotment at coordinates 46–35–42 and 95–34–24.

DATES: Comments must be filed on or before December 30, 1991, and reply comments on or before January 14, 1992.

ADDRESSES: Federal Communications Commission, Washington, DC 20554 In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: John A. Brush, Yvonne M. Brush, Amy C. Rutledge, P.O. Box 4, Perham, Minnesota 56573.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 91–315, adopted October 24, 1991, and released November 5, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1714 21st Street, NW., Washington, DC 20036, (202) 452–1422.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

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

[FR Doc. 91–27035 Filed 11–7–91; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 646

[Docket No. 911063–1263]

RIN 0648–AD57

Snapper-Grouper Fishery of the South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NOAA issues this proposed rule to implement Amendment 5 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). This proposed rule would (1) implement a limited entry program for the wreckfish sector of the snapper-grouper fishery consisting of transferable percentage shares of the annual total allowable catch (TAC) of wreckfish and individual transferable

quotas (ITQs) based on a person's share of each TAC; (2) require a dealer to obtain a dealer permit to receive wreckfish; (3) remove the 10,000-pound (4,536-kilogram) trip limit for wreckfish; (4) require that wreckfish be off-loaded from fishing vessels only between 8 a.m. and 5 p.m.; (5) reduce the occasions when 24-hour advance notice must be made to NMFS Law Enforcement of off-loading of wreckfish; and (6) make other minor modifications and clarifications to the regulations. In addition, Amendment 5 would (1) revise the lists of problems in the snapper-grouper fishery and objectives of the FMP; and (2) specify the procedure for the initial distribution of percentage shares of the wreckfish TAC. The intended effect of this rule is to manage the wreckfish sector of the snapper-grouper fishery so that its long-term economic viability will be preserved.

DATES: Written comments must be received on or before December 19, 1991.

ADDRESSES: Comments on the proposed rule should be sent to Peter J. Eldridge, Southeast Region, NMFS, 9450 Koger Boulevard, St. Petersburg, FL 33702.

Comments on the information collection requirements that would be imposed by this rule should be sent to Edward E. Burgess, Southeast Region, NMFS, 9450 Koger Boulevard, St. Petersburg, FL 33702; and to the Office of Information and Regulatory Affairs of the Office of Management and Budget, Washington, DC 20503, (Attention: Desk Officer for NOAA).

Requests for copies of Amendment 5, which includes a regulatory impact review and an environmental assessment, should be sent to the South Atlantic Fishery Management Council, Southpark Building, suite 306, One Southpark Circle, Charleston, SC 29407–4699.

FOR FURTHER INFORMATION CONTACT: Peter J. Eldridge, 813–893–3161.

SUPPLEMENTARY INFORMATION: Snapper-grouper species are managed under FMP prepared by the South Atlantic Fishery Management Council (Council), and its implementing regulations at 50 CFR part 646, under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

Background

The directed fishery for wreckfish began with two vessels harvesting approximately 29,000 pounds (13,154 kilograms) in 1987. The fishery developed rapidly after 1987 and by 1990, 70 to 80 vessels were believed to be targeting wreckfish with annual landings exceeding 4 million pounds (1.8 million kilograms). Under the management measures implemented in Amendment 3 to the FMP in 1990, a classic fishing "derby" evolved where approximately 80 vessels were in competition for the 2 million-pound (.9 million-kilogram) quota for the 1990 fishing year. A substantial number of vessels added wreckfish reels to catch fish faster, thereby garnering more of the available total allowable catch (TAC), while others began to use bottom longline gear to catch wreckfish more rapidly, despite reportedly significant gear conflicts and losses using bottom longlines.

As the pace of wreckfish landings increased in 1990, exvessel prices decreased substantially. The fact that as many as 80 vessels were fishing for wreckfish on the relatively small rock ridge areas known to have concentrations of wreckfish created a potential for conflicts among harvesters and vessel safety problems.

Although still one of the most profitable fishing opportunities in the Southeast in 1990, the wreckfish fishery had already begun to show signs of excess capacity and over-capitalization by the end of that year. Public comment stressed the detrimental effects of continued entry and competitive fishing practices under a restrictive TAC. Along with the economic problems of over-capitalization and excess capacity common to open access fisheries managed by TAC, public comment stressed the absence of conservation incentives and probable lack of regulatory compliance in the fishery. Comments from wreckfish dealers pointed to the tendency for markets to become flooded as the pace of wreckfish harvest increased beyond their ability to move the product through the market chain. Other marketing problems resulting from inconsistent supply when TAC was met were also identified.

Concurrent with the evolving fishing derby for wreckfish in 1990 and 1991, the Council began to consider alternative management for the wreckfish fishery. As the Council explored options to preserve and enhance the economic and socio-economic viability of the fishery in the face of continued incentives for entry and competition, it became evident that an individual transferable quota (ITQ) system held the most promise for management of the burgeoning wreckfish fishery.

The ITQ System

The ITQ system proposed in Amendment 5 is based on percentage shares. The size of a person's percentage share and the available TAC would determine how many pounds of wreckfish a shareholder may harvest each year, subject to the spawning-season closure. The TAC would be set for the wreckfish fishery each year. Percentage shares in the wreckfish fishery would be for an indefinite duration. Percentage shares may be held until revoked for noncompliance or until the ITQ system is modified or revoked through plan amendment or emergency action. Percentage shares could be sold; however, sales of percentage shares would not be final until the sale had been recorded by the Regional Director, Southeast Region, NMFS (Regional Director).

A person holding a percentage share would receive coupons equaling his individual quota (in eviscerated weight) each year. Coupons could be sold, leased, or loaned, but only to a person who holds a percentage share in the wreckfish fishery at the time of the sale, lease, or loan. Sales of quota coupons would be recorded on the sale endorsement portion of coupons and the buyer would be responsible for entering this wreckfish vessel permit number on the appropriate portion of the coupons purchased.

Eligibility for and Initial Allocation of Shares

Percentage shares would be allocated initially to wreckfish vessel owners applying for percentage shares who could document wreckfish landings by a vessel the applicant owned during the period January 1, 1989, to September 24, 1990, the latter date being the date of publication of a notice that a control date was being established for future access to the wreckfish fishery (55 FR 39039). To be eligible, an applicant would also have to document that vessels owned by him landed at least 5,000 pounds (dressed weight) of wreckfish in aggregate between January 1, 1987, and September 24, 1990, the base period. An applicant may apply for an initial percentage share with documentation of wreckfish landings from one or more vessels or from a vessel he no longer owns, provided proper documentation is provided of vessel ownership during the base period.

The initial allocation of percentage shares to eligible applicants would be based on a distribution formula that divides 50 of the 100 available shares equally among eligible applicants. The remaining 50 shares would be divided based on an applicant's total documented catch during the base period divided by total catch of all eligible applicants over the same period.

An applicant's initial percentage share would be the sum of his share from the equal and weighted portions of the distribution formula. The maximum limit of an individual's or business entity's initial percentage share would be 10 percent.

The initial allocation of percentage shares would begin after Amendment 5 is approved by the Secretary of Commerce (Secretary). Wreckfish fisherman would be requested to send in fish house receipts of their wreckfish catch for the base period. Where fish house receipts do not identify wreckfish as "wreckfish" or "wreck grouper," or fish house receipts have not been retained, an applicant may submit copies of dealer records that identify the individual and/or vessel from whom wreckfish were purchased, accompanied by sworn affidavits confirming the accuracy and authenticity of the records. In addition to fish house receipts, or dealer records and sworn affidavits, each applicant would have to submit a copy of the portion of his Federal income tax return that documents revenues from fishing for each year the applicant claimed wreckfish landings. Such copies would be treated as confidential data but would be subject to verification with the Internal Revenue Service.

The initial allocations would be made by Council staff with assistance from state and Federal personnel who have access to catch records. The initial allocation process would be conducted over a limited period of time, probably one month. Fisherman have been and are advised to begin collecting their records so they will have ample time to apply for initial percentage shares. As the initial allocation period approaches, fishermen would again be notified by the Council of the upcoming initial allocation and would be given instructions on how to apply.

For a limited period of time, approximately one month, after applicants are advised of the initial allocations of percentage shares, an Application Oversight Committee (AOC) would consider requests from persons wishing to contest the initial allocations. The AOC would be empowered to consider only allegations of improper calculations or improper determinations based on documentation submitted with an application. The AOC would not be empowered to reconsider an application from a person not meeting the criteria for eligibility or initial allocation or from a person who believes he should be eligible because of extenuating circumstances or other factors.

ITQ Coupons

Individual quotas would be tracked by the "fisherman's side" of ITQ coupons. Fishermen would be required to submit the fisherman's side to the Regional Director along with logbook sheets showing catch and effort after trips are completed. Returned coupons would be checked against dealer reporting and the "fish house side" of ITQ coupons that dealers would be required to submit to the Regional Director each month. A dealer would be required to obtain a Federal wreckfish dealer's permit under Amendment 5. The requirements to obtain that permit would be a state wholesaler's permit and a physical facility at a fixed location in the state where the wholesaler's permit is held.

Fishermen would be required to possess a wreckfish vessel permit, logbook, and ITQ coupons equaling the approximate weight of catch in their possession. Such coupons would have to be signed and dated by the time of landing. Amendment 5 recommends that the penalties for significant violations of the regulations, such as non-reporting, exceeding individual quotas, and fishing during the spawning season, should include forfeitures of shares, forfeitures of individual quotas, and/or vessel or dealer permit sanctions.

Amendment 5 contains a requirement that unused ITQ coupons be returned to the Regional Director at the end of each fishing year. When preparing this proposed rule, the Council and NMFS concluded that such a requirement would not contribute to effective management of the ITQ system because the coupon would be clearly marked to indicate their period of validity. Accordingly, as a further refinement contemplated by the amendment, this requirement is deleted.

Other Management Measures

Amendment 5 proposes a requirement that all offloading of wreckfish occur between 8 a.m. and 5 p.m., and that 24-hour notice be given to the NMFS Law Enforcement Office if wreckfish are to be off-loaded at a location other than one of the fixed facilities of a federally permitted wreckfish dealer. The current regulations require 24-hour notice before all off-loadings of wreckfish. Amendment 5 proposes elimination of the 10,000-pound trip limit for wreckfish. A trip limit, which was designed to be an interim measure to control the pace of harvest under open access, will no longer be necessary or beneficial.

In its future framework actions under the FMP, the Council will probably remove the current quarterly apportionment of the wreckfish TAC.

Information on the proposed additions to the problems in the snapper-grouper fishery and the proposed new objectives of the FMP and additional information and rationale for the measures in this proposed rule are contained in Amendment 5, the availability of which was announced in the **Federal Register** (56 FR 50551, October 7, 1991).

Additional Changes Proposed by NMFS

The current regulations require that an application for a vessel permit must be submitted at least 60 days prior to the date on which the applicant desires to have the permit made effective. This rule would reduce that period to 30 days. Except for brief periods when applications for permits are extremely numerous, NMFS is able to process and issue a permit in significantly less time than 30 days. However, an application at least 30 days before it is needed provides time to clear up discrepancies in its initial submission. Persons are encouraged to submit applications well in advance of their required use.

This rule would clarify that a fee is charged for each application for a permit, rather than for each permit issued, and for each sea bass trap identification tag issued. NMFS's costs in administering the permit system are incurred for each application, rather than for each permit issued. Further, the amount of the fee would be included with each application form but would not be included in the regulations. The Magnuson Act authorizes a level of fees not exceeding the administrative costs in issuing the permits. Such costs are computed at least annually in accordance with the NOAA Finance Handbook. The fees thus calculated are subject to change for a number of reasons, including increases due to Federal pay raises and reductions due to improved efficiency in the permitting system. Reference in the regulations to the NOAA Finance Handbook regarding the computation of fees would preclude the necessity for regulatory amendments when the computations indicate a new level of fees. Currently, a fee of $34 would be charged for each application for a vessel or dealer permit, $7 for a replacement permit, and $1 for each sea bass trap identification tag.

This rule would require any change in application information to be reported within 15 days of the charge. Effective administration of the permit system requires more timely receipt of changed information than is provided by the current requirement to report changes within 30 days.

This rule would change the submission of logbook forms, which are required to be maintained by certain permitted vessels, from a monthly basis to a trip-by-trip basis. The Science and Research Director, Southeast Region, NMFS, is in the process of standardizing the logbook forms of the fisheries where they are required. Under the proposed logbooks and revised procedure, a vessel would not be selected to maintain and submit the logbook forms in more than one fishery, as may occur now. A necessary element of the revised procedure is uniformity of submission requirements among the fisheries. Although not essential for the management of the snapper-grouper fishery, submission of logbook forms on a trip-by-trip basis is required in other fisheries and should not present a significant problem in the snapper-grouper fishery.

Classification

Section 304(a)(1)(D)(ii) of the Magnuson Act, as amended, requires the Secretary to publish regulations proposed by a council within 15 days of receipt of an FMP amendment and regulations. At this time, the Secretary has not determined that Amendment 5, which this proposed rule would implement, is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making that determination, will take into account the data, views, and comments received during the comment period.

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has initially determined that this proposed rule is not a "major rule" requiring the preparation of a regulatory impact analysis under E.O. 12291. This proposed rule, if adopted, is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Council prepared a regulatory impact review (RIR) for Amendment 5, which concludes that this rule, if adopted, would have overall net economic benefits, summarized as follows. The ITQ program is expected to increase benefit to wreckfish harvesters by decreasing fishing costs and allowing them to harvest wreckfish when it is optimal in terms of exvessel prices and other factors. Benefits to the processing/distribution sector should accrue because ITQ management should facilitate the establishment of product continuity and may allow for investment in marketing of wreckfish so that product identification can be achieved. Exploration of potentially valuable ethnic markets and other market niches should be facilitated with ITQs. Net benefits to society should increase because over-capitalization should be reduced, making that excess capital available for more productive uses. Consumer benefits should be enhanced because consumers should receive a high quality product that is available for a longer portion of the year. The degree to which production cost efficiencies under ITQs may or may not be passed on to consumers cannot be determined because information on the price elasticity of demand for wreckfish is not available at this time. A copy of the RIR is available (see **ADDRESSES**).

The General Counsel of the Department of Commerce has certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities because management measures in Amendment 5 are not expected to result in a reduction in gross revenues by more than 5 percent. As with the overall economic effects, the positive long-term impacts on small businesses are expected to outweigh negative short-term impacts, if any.

The Council prepared an environmental assessment (EA) that discusses the impact on the environment as a result of this rule. A copy of the EA is available (see **ADDRESSES**) and comments on it are requested.

The Council has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of Florida, South Carolina, and North Carolina. Georgia does not participate in the coastal zone management program. These determinations have been submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act.

Amendment 5 would require a new, one-time collection-of-information to initiate the limited entry program for wreckfish. This proposed rule contains two new collection-of-information requirements and revises three existing requirements subject to the Paperwork Reduction Act. A request to collect this information has been submitted to the Office of Management and Budget for approval. The new requirements are (1) submission of information for the initial allocation of wreckfish percentage shares; (2) applications for dealer permits for dealers who receive wreckfish; and (3) reports of transfer of percentage shares in the wreckfish fishery. The public reporting burdens for these collections of information are estimated to average 240, 15, and 15 minutes, respectively, per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Revisions to the existing requirements are as follows: (1) All vessels that harvest wreckfish, in lieu of only those specifically selected, must maintain and submit trip reports, and all such vessels must submit ITQ coupons with each report. The requirement to maintain and submit trip reports by vessels that do not harvest wreckfish remains on an if-selected basis. Further, trip reports must be postmarked not later than the third day after sale of the fish off-loaded from a trip, in lieu of "on a monthly basis (or more frequently, if requested by the Science and Research Director)." (OMB Control No. 0648–0016) (2) All dealers that receive wreckfish, in lieu of only those specifically selected, must submit reports on such receipt, and all such dealers must submit ITQ coupons with each report. (OMB Control No. 0648–0013) (3) The requirement to provide 24-hour notice preceding the landing of wreckfish is removed when the wreckfish are to be off-loaded at a facility of a permitted dealer. Twenty-four-hour notice is required only when wreckfish are to be off-loaded at a facility other than that of a permitted dealer. (OMB Control No. 0648–0016) The public reporting burdens for these revised collections of information are estimated to average 10, 20, and 3 minutes, respectively, per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. This proposed rule restates the collection of information on applications for vessel permits to distinguish between permits for snapper-grouper, excluding wreckfish, and permits for wreckfish. This collection of information was previously approved by OMB under Control No. 0648–0205, with a public reporting burden estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing

the collection of information. Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing the burdens, to Edward E. Burgess, NMFS, and to the Office of Information and Regulatory Affairs, Office of Management and budget (see **ADDRESSES**).

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

List of Subjects in 50 CFR Part 646

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: November 4, 1991.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 646 is proposed to be amended as follows:

Part 646—SNAPPER-GROUPER FISHERY OF THE SOUTH ATLANTIC

1. The authority citation for part 646 continues to read as follows:

Authority: 16 U.S.C. 1802 *et seq.*

2. Section 646.4 is revised to read as follows:

§ 646.4 Permits and fees.

(a) *Applicability*—(1) *Annual vessel permits for snapper-grouper, excluding wreckfish.* (i) To be eligible for exemption from the bag limits specified in § 646.23(b); to engage in a directed fishery for tilefish in the EEZ; or to use a sea bass trap in the EEZ north of Cape Canaveral, Florida, an owner or operator of a vessel must have a permit for snapper-grouper, excluding wreckfish. A vessel with longline gear and more than 200 pounds (90.7 kilograms) of tilefish aboard is considered to be in a directed fishery for tilefish. It is a rebuttable presumption that a fishing vessel with more than 200 pounds of tilefish aboard harvested such tilefish in the EEZ.

(ii) A qualifying owner or operator of a charter vessel or headboat may obtain a permit for snapper-grouper, excluding wreckfish. However, such vessel must adhere to the bag limits when operating as a charter vessel or headboat.

(iii) For a vessel owned by a corporation or partnership to be eligible for a vessel permit for snapper-grouper, excluding wreckfish, the earned income qualification specified in paragraph (b)(2)(vii) of this section must be met by, and the statement required by that paragraph must be submitted by, an officer or shareholder of the corporation, a general partner of the partnership, or the vessel operator.

(iv) An owner or operator of a vessel using or possessing a sea bass trap in the EEZ must obtain a permit for snapper-grouper, excluding wreckfish, a color code, and a trap identification tag from the Regional Director.

(v) A permit for snapper-grouper, excluding wreckfish, issued upon the qualification of an operator is valid only when that person is the operator of the vessel.

(2) *Annual vessel permits for wreckfish.* To harvest or possess wreckfish in or from the EEZ, off-load wreckfish from the EEZ, or sell wreckfish in or from the EEZ, a wreckfish shareholder must have a vessel permit for wreckfish.

(3) *Annual dealer permits for wreckfish.* A dealer who receives a wreckfish must obtain an annual dealer permit. To be eligible for such permit, an applicant must possess a valid state wholesaler's license in the state where he operates and is required to have a physical facility at a fixed location in that state.

(b) *Application for a vessel permit for snapper-grouper, excluding wreckfish.* (1) An application for a vessel permit for snapper-grouper, excluding wreckfish, must be submitted and signed by the owner (in the case of a corporation, a qualifying officer or shareholder; in the case of a partnership, a qualifying general partner) or operator of the vessel. The application must be submitted to the Regional Director at least 30 days prior to the date on which the applicant desires to have the permit made effective.

(2) A permit applicant must provide the following information:

(i) A copy of the vessel's U.S. Coast Guard certificate of documentation or, if not documented, a copy of its state registration certificate;

(ii) The vessel's name and official number;

(iii) Name, mailing address including zip code, and telephone number of the owner of the vessel;

(iv) Name, mailing address including zip code, and telephone number of the applicant, if other than the owner;

(v) Social security number and date of birth of the applicant and the owner (if the owner is a corporation, the employer identification number, if one has been assigned by the Internal Revenue Service);

(vi) If a sea bass trap will be used,

(A) The number, dimensions, and estimated cubic volume of the traps that will be used;

(B) The applicant's desired color code for use in identifying his or her vessel and buoys; and

(C) A statement that the applicant will allow an authorized officer reasonable access to his or her property (vessel, dock, or structure) to examine traps for compliance with these regulations;

(vii) A sworn statement by the applicant certifying that, during one of the 3 calendar years preceding the application,

(A) More than 50 percent of his or her earned income was derived from commercial, charter, or headboat fishing; or

(B) His or her gross sales of fish were more than $20,000; or

(C) For a vessel owned by a corporation or partnership, the gross sales of fish of the corporation or partnership were more than $20,000;

(viii) Documentation supporting the statement of income, if required by paragraph (b)(3) of this section;

(ix) Any other information concerning vessel and gear characteristics requested by the Regional Director; and

(x) Any other information that may be necessary for the issuance or administration of the permit.

(3) The Regional Director may require the applicant to provide documentation supporting the sworn statement under paragraph (b)(2)(vii) of this section before a permit is issued. Such required documentation may include copies of appropriate forms and schedules from the applicant's income tax return. Copies of income tax forms and schedules are considered confidential data but are subject to verification with the Internal Revenue Service.

(c) *Application for a vessel permit for wreckfish.* (1) An application for a vessel permit for wreckfish must be submitted and signed by a wreckfish shareholder. If the wreckfish shareholder is a corporation, an officer or shareholder of the corporation must sign the application; if the wreckfish shareholder is a partnership, a general partner must sign the application. The application must be submitted to the Regional Director at least 30 days prior to the date on which the wreckfish shareholder desires to have the permit made effective.

(2) An applicant must provide the following information:

(i) A copy of the vessel's U.S. Coast Guard certificate of documentation or, if not documented, a copy of its state registration certificate;

(ii) The vessel's name and official number;

(iii) Name, mailing address including zip code, and telephone number of the wreckfish shareholder;

(iv) Social security number and date of birth of the wreckfish shareholder (if the wreckfish shareholder is a corporation, the employer identification number, if one has been assigned by the Internal Revenue Service);

(v) Name, mailing address including zip code, telephone number, social security number, and date of birth of the owner of the vessel, of other than the wreckfish shareholder (if the vessel owner is a corporation and is other than the wreckfish shareholder, the employer identification number, if one has been assigned by the Internal Revenue Service);

(vi) If the wreckfish shareholder is not the vessel owner, as shown on the vessel's U.S. Coast Guard certificate of documentation or, if not documented, on the state registration certificate, a sworn statement by the wreckfish shareholder certifying that the vessel owner or operator is an employee, contractor, or agent of the shareholder;

(vii) Documentation supporting the sworn statement of paragraph (c)(2)(vi) of this section, if required by paragraph (c)(3) of this section;

(viii) Any other information concerning vessel and gear characteristics requested by the Regional Director; and

(ix) Any other information that may be necessary for the issuance or administration of the permit.

(3) The Regional Director may require the wreckfish shareholder to provide documentation supporting the sworn statement under paragraph (c)(2)(vi) of this section before a permit is issued. Such required documentation may include copies of appropriate forms and schedules from the shareholder's income tax return; articles of incorporation for a corporate-owned vessel; a partnership agreement for a partnership-owned vessel; a lease on the vessel for which a permit is requested; or an employment or other contract, or agency agreement that demonstrates an agency, employment, or contract relationship between the wreckfish shareholder and the vessel owner or operator. Copies of such required documentation are considered confidential data but are subject to verification with the Internal Revenue Service and other appropriate authorities.

(d) *Application for an annual dealer permit.* (1) An application for a dealer permit must be submitted and signed by the dealer or an officer of a corporation acting as a dealer. The application must be submitted to the Regional Director at least 30 days prior to the date on which the applicant desires to have the permit made effective.

(2) A permit applicant must provide the following information:

(i) A copy of each state wholesaler's license held by the dealer;

(ii) Business name, address including zip code of the business office, and employer identification number, if one has been assigned by the Internal Revenue Service;

(iii) A list, by state where licensed, of each physical facility at a fixed location where the business receives or stores fish.

(iv) Name, official capacity in the business, mailing address including zip code, telephone number, social security number, and date of birth of the applicant.

(v) Any other information that may be necessary for the issuance or administration of the permit.

(e) *Fees.* A fee is charged for each permit application submitted under paragraph (b), (c), or (d) of this section and for each sea bass trap identification tag required under § 646.6(d). The amount of the fee is calculated in accordance with the procedures of the NOAA Finance Handbook for determining the administrative costs of each special product or service. The fee may not exceed such costs and is specified with each application form. The appropriate fee must accompany each application.

(f) *Issuance.* (1) The Regional Director will issue a permit at any time to an applicant if the application is complete; in the case of an application for a vessel permit for snapper-grouper, excluding wreckfish , the applicant meets the earned income requirement specified in paragraph (b)(2)(vii) of this section; and, in the case of an applicant for a vessel permit for wreckfish, a wreckfish shareholder is the owner of the vessel or the vessel owner or operator is an employee, contractor, or agent of the shareholder, as certified in the statement specified in paragraph (c)(2)(vi) of this section. An application is complete when all requested forms, information, and documentation have been received and the applicant has submitted all applicable reports specified at § 646.5.

(2) Upon receipt of an incomplete application, the Regional Director will notify the applicant of the deficiency. If the applicant fails to correct the deficiency with 30 days of the date of the Regional Director's letter of notification, the application will be considered abandoned.

(g) *Duration.* A permit remains valid for the remainder of the period for which it is issued unless revoked, suspended, or modified pursuant to subpart D of 15 CFR part 904. In addition, a vessel permit for wreckfish remains valid only when a wreckfish shareholder is an owner of the permitted vessel, or the vessel owner or operator is an employee, contractor, or agent of the shareholder, as certified in the statement specified in paragraph (c)(2)(vi) of this section.

(h) *Transfer.* (1) A vessel permit issued under paragraph (b) or (c) of this section is not transferable or assignable. A person purchasing a permitted vessel who desires to conduct activities for which a permit is required must apply for a permit in accordance with the provisions of paragraph (b) or (c) of this section. The application must be accompanied by a copy of a signed bill of sale.

(2) A dealer permit issued under paragraph (d) of this section may be transferred upon sale of the dealer's business. Information on the original application that is changed as a result of the sale must be reported to the Regional Director within 15 days of any such change.

(i) *Display.* A vessel permit issued under paragraph (b) or (c) of this section must be carried on board the fishing vessel and such vessel must be identified as provided for in § 630.6. A dealer permit issued under paragraph (d) of this section must be available on the dealer's premises. The operator of a fishing vessel or a dealer must present the permit for inspection upon request of an authorized officer.

(j) *Sanctions and denials.* Procedures governing enforcement-related permit sanctions and denials are found at subpart D of 15 CFR part 904.

(k) *Alteration.* A permit that is altered, erased, or mutilated is invalid.

(l) *Replacement.* A replacement permit may be issued. An application for a replacement permit will not be considered a new application. A fee, the amount of which is stated with the application form, must accompany each request for a replacement permit.

(m) *Change in application information.* The owner or operator of a vessel with a permit for snapper-grouper, excluding wreckfish, the wreckfish shareholder of a vessel with a permit for wreckfish, or a dealer with a permit must notify the Regional Director within 15 days after any change in the application information required by paragraph (b), (c), or (d) of this section. The permit is void if any change in the information is not reported within 15 days.

3. In § 646.5, paragraphs (a) and (c) are revised to read as follows:

§ 646.5 Recordkeeping and reporting.

(a) *Permitted vessels.* The owner or operator of a vessel for which a permit for snapper-grouper, excluding wreckfish, has been issued under § 646.4(b) and that is selected by the Science and Research Director, and the wreckfish shareholder or operator of a vessel for which a permit for wreckfish has been issued under § 646.4(c) must maintain a daily logbook form for each fishing trip on a form available from the Science and Research Director. The logbook forms will provide a record of fishing locations, time fished, fishing gear used, numbers of each species caught, and numbers of each species discarded. Logbook forms must be submitted to the Science and Research Director postmarked not later than the third day after sale of the fish off-loaded from a trip. If no fishing occurred during a month, a report so stating must be submitted in accordance with instructions provided with the forms.

* * * * *

(c) *Dealers.* A person who receives fish in the snapper-grouper fishery by way of purchase, barter, or trade that were harvested from the EEZ off the South Atlantic states or from adjoining state waters and who is selected by the Science and Research Director, and a dealer who has been issued an annual dealer permit for wreckfish under § 646.4(d) must provide information on receipts of such fish and prices paid, by species, to the Science and Research Director at monthly intervals, or more frequently if requested.

* * * * *

4. In § 646.6, paragraph (a) introductory text is revised to read as follows:

§ 646.6 Vessel and gear identification.

(a) *Official number.* A vessel for which a permit has been issued under § 646.4 (b) or (c) must display its official number—

* * * * *

5. Section 646.7 is revised to read as follows:

§ 646.7 Prohibitions

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

(a) Engage in a directed fishery for tilefish in the EEZ or use a sea bass trap in the EEZ north of Cape Canaveral, Florida, without a vessel permit for snapper-grouper, excluding wreckfish, as specified in § 646.4(a)(1).

(b) Harvest or possess wreckfish in or from the EEZ, off-load wreckfish from the EEZ, or sell wreckfish in or from the EEZ without a vessel permit for wreckfish, as specified in § 646.4(a)(2).

(c) As a dealer, receive wreckfish without a dealer permit, as specified in § 646.4(a)(3).

(d) Falsify information specified in § 646.4(b)(2), (c)(2), (c)(3), or (d)(2) on an application for a permit.

(e) Fail to display a permit, as specified in § 646.4(i).

(f) Falsify or fail to maintain or provide information required to be submitted or reported, as specified in § 646.5 (a) through (d).

(g) Fail to make fish in the snapper-grouper fishery, or parts thereof, available for inspection, as specified in § 646.5(e)(1).

(h) Fail to make available records of off-loadings, purchases, barters, or sales of wreckfish, as specified in § 646.5(e)(2); or fail to make available individual transferable quota (ITQ) coupons, as specified in § 646.10 (c)(5) and (c)(6).

(i) Falsify or fail to display and maintain vessel and gear identification, as specified in § 646.6(a) through (e).

(j) Possess an ITQ coupon not issued to him or, if received by transfer, without all required sale endorsements properly completed thereon, as specified in § 646.10(c)(3).

(k) Possess wreckfish on board a fishing vessel in an amount exceeding the total of the ITQ coupons on board the vessel or without a vessel permit or the form for recording the fishing trip on board, as specified in § 646.10(c)(4).

(l) Fail to sign and date the "Fisherman's Side" of ITQ coupons or submit such sides with the record of the fishing trip, as specified in § 646.10(c)(5).

(m) Fail to give a dealer the "Fish House Side" of ITQ coupons or transfer a wreckfish to a dealer who does not hold a permit, as specified in § 646.10(c)(5).

(n) Receive a wreckfish from a vessel that does not have a vessel permit for wreckfish, as specified in § 646.10(c)(6).

(o) Fail to receive the "Fish House Side" of ITQ coupons from a fisherman, to enter the date of receipt and dealer's permit number on such sides, to sign such sides, and to submit such sides with the dealer report, as specified in § 646.10(c)(6).

(p) Possess a fish in the snapper-grouper fishery smaller than the minimum size limit, as specified in § 646.21(a)(1).

(q) Sell, purchase, trade, or barter, or attempt to sell, purchase, trade, or barter fish in the snapper-grouper fishery smaller than the minimum size limit, as specified in § 646.21(a)(2).

(r) Possess a fish in the snapper-grouper fishery without its head and fins intact, as specified in § 646.21(b).

(s) Operate a vessel with fish in the snapper-grouper fishery aboard that are smaller than the minimum size limits, do not have head and fins intact, or are in excess of the cumulative bag limit, as specified in § 646.21(c) and § 646.23(e).

(t) Transfer wreckfish at sea, as specified in § 646.21(d)(1).

(u) Off-load a wreckfish at a time not authorized or without prior notification, as specified in § 646.21 (d)(3) and (d)(4).

(v) Harvest or possess a jewfish or Nassau grouper in or from the EEZ or fail to release a jewfish or Nassau grouper taken in the EEZ, as specified in § 646.21 (e) and (f).

(w) During the wreckfish spawning-season closure or after a wreckfish quota closure, harvest or possess wreckfish in or from the EEZ; off-load wreckfish from the EEZ; sell, purchase, trade, or barter wreckfish in or from the EEZ; or attempt any of the foregoing, as specified in § 646.21(g) and § 646.24(b).

(x) During the greater amberjack and mutton snapper spawning seasons, exceed the bag limits for those species, as specified in § 646.21 (h) and (i).

(y) Fish with poisons or explosives or possess on board a fishing vessel any dynamite or similar explosive substance, as specified in § 646.22(a).

(z) Use a fish trap in the EEZ, or use a sea bass trap in the EEZ south of Cape Canaveral, Florida, as specified in § 646.22 (b) and (c)(1).

(aa) When using or possessing a sea bass trap north of Cape Canaveral, Florida, possess fish in the snapper-grouper fishery exceeding the limits, as specified in § 646.22(c)(2).

(bb) Use or possess in the EEZ north of Cape Canaveral, Florida, a sea bass trap that does not conform to the requirements for degradable openings and mesh sizes specified in § 646.22 (c)(3) and (c)(4).

(cc) Pull or tend another person's sea bass trap except as specified in § 646.22(c)(5).

(dd) Aboard a vessel that possesses or uses a crustacean trap in the EEZ, possess fish in the snapper-grouper fishery exceeding the limits, as specified in § 646.22(d).

(ee) Use trawl gear in a directed snapper-grouper fishery in the EEZ between Cape Hatteras, North Carolina and Cape Canaveral, Florida, as specified in § 646.22(e)(1).

(ff) Transfer at sea any fish in the snapper-grouper fishery from a vessel with trawl gear aboard to another vessel, or receive at sea any such fish, as specified in § 646.22 (e)(2) and (e)(3).

(gg) Use an entanglement net to fish for fish in the snapper-grouper fishery in the EEZ; or, aboard a vessel that fishes in the EEZ on a trip with an entanglement net on board, possess fish in the snapper-grouper fishery exceeding the limits, as specified in § 646.22(f).

(hh) Use a longline to fish for fish in the snapper-grouper fishery in the EEZ where the charted depth is less than 50 fathoms (91.5 meters) or without a permit issued under § 646.4(b) on board; or, aboard a vessel with a longline on board that fishes on a trip in the EEZ where the charted depth is less than 50 fathoms (91.5 meters) or without a permit specified in § 646.4(b) on board, possess fish in the snapper-grouper fishery exceeding the limits, as specified in § 646.22(g)(1).

(ii) Fish for wreckfish with a bottom longline; or possess a wreckfish aboard a vessel that has a longline aboard, as specified in § 646.22(g)(2).

(jj) Exceed the bag and possession limits, as specified in § 646.23 (a) through (c).

(kk) Transfer at sea fish in the snapper-grouper fishery subject to a bag limit, as specified in § 646.23(f).

(ll) Use prohibited or unauthorized fishing gear in a special management zone, as specified in § 646.26 (b) and (c).

(mm) Interfere with, obstruct, delay, or prevent by any means an investigation, search, seizure, or disposition of seized property in connection with enforcement of the Magnuson Act.

6. A new § 646.10 is added to subpart A to read as follows:

§ 646.10 Wreckfish individual transferable quota (ITQ) system:

(a) *Percentage shares.* (1) In accordance with the procedure specified in the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region, as amended, a person will be assigned initial percentage shares of the annual total allowable catch (TAC) of wreckfish. Each person will be notified by the Regional Director of his or her initial percentage shares.

(2) All or a portion of a person's percentage shares may be transferred to another person. Transfer of shares must be reported on a form available from the Regional Director. The Regional Director will confirm, in writing, each transaction. The effective date of each transaction is the confirmation date provided by the Regional Director. The confirmation date will normally be not later than three working days after receipt of a properly completed transaction form. A fee is charged for each transaction of percentage shares. The amount of the fee is calculated in accordance with the procedures of the NOAA Finance Handbook for determining the administrative costs of each special product or service provided by NOAA to non-Federal recipients. The fee may not exceed such costs and is specified with each transaction form. The appropriate fee must accompany each transaction form.

(b) *Lists of wreckfish shareholders and permitted vessels.* Annually on or about March 1, the Regional Director will provide each wreckfish shareholder with a list of all wreckfish shareholders and their percentage shares, reflecting share transactions on forms received through February 15. Annually by April 15, the Regional Director will provide each dealer who holds a permit issued under § 646.4(d) with a list of vessels for which wreckfish permits have been issued under § 646.4(c). Annually by April 15, the Regional Director will provide each wreckfish shareholder with a list of dealers who have permits issued under § 646.4(d). From April 16 through January 14, updated lists will be provided when required. Updated lists may be obtained at other times or by a person who is not a wreckfish shareholder or dealer permit holder by written request to the Regional Director.

(c) *Individual transferable quotas.* (1) Annually, as soon after March 1 as the TAC for wreckfish for the fishing year that commences April 16 is known, the Regional Director will calculate each wreckfish shareholder's ITQ. Each ITQ is the product of the wreckfish TAC, in whole weight, for the ensuing fishing year, the factor for converting whole weight to eviscerated weight, and each wreckfish shareholder's percentage share, reflecting share transactions reported on forms received by the Regional Director through February 15. Thus, the ITQs will be in terms of eviscerated weight of wreckfish.

(2) The Regional Director will provide each wreckfish shsreholder with ITQ coupons in various denominations, the total of which equals his ITQ, and a copy of the calculations used in determining his ITQ. Each coupon will be coded to indicate the initial recipient.

(3) An ITQ coupon may be transferred from one wreckfish shareholder to another by completing the sale endorsement thereon, including the date of transfer, the name of the recipient, and the signature of the seller. An ITQ coupon may be possessed only by the shareholder to whom it has been issued, or by his employee, contractor, or agent unless the ITQ coupon has been transferred to another shareholder. An ITQ coupon that has been transferred to another shareholder may be possessed only by the shareholder named on the coupon as the recipient, or by his employee, contractor, or agent, and with all required sale endorsements properly completed.

(4) Wreckfish may not be possessed on board a fishing vessel—

(i) In an amount exceeding the total of the ITQ coupons on board the vessel;

(ii) That does not have on board a vessel permit for wreckfish issued under § 646.4(c); or

(iii) That does not have on board logbook forms for that fishing trip, as required by § 646.5(a).

(5) Prior to termination of a trip, a signature and date signed must be affixed in ink to the "Fisherman's Side" of ITQ coupons totalling the eviscerated weight of the wreckfish on board. The "Fisherman's Side" of each such coupon must be separated from the coupon and submitted with the logbook forms required by § 646.5(a) for that fishing trip.

(6) The "Fish House Side" of such coupons must be given to each dealer to whom the wreckfish are transferred in amounts totalling the eviscerated weight of the wreckfish transferred to that dealer. A wreckfish may be transferred only to a dealer who holds a permit issued under § 646.4(d).

(7) An owner or operator of a vessel must make available for inspection to an authorized officer all ITQ coupons in his or her possession upon request.

(8) A dealer may receive a wreckfish only from a vessel for which a wreckfish permit has been issued under § 646.4(c). A dealer must receive the "Fish House Side" of ITQ coupons in amounts totalling the eviscerated weight of the wreckfish received; indicate date received, enter the dealer's permit number, and sign each such "Fish House Side"; and submit all such sides with the dealer reports required by § 646.5(b). A dealer must make available for inspection to an authorized officer all ITQ coupons in his possession upon request.

7. In § 646.21, paragraph (d) is revised to read as follows.

§ 646.21 Harvest limitations.

* * * * *

(d) *Wreckfish limitations.* (1) A wreckfish taken in the EEZ may not be transferred at sea, regardless of where the transfer takes place; and a wreckfish may not be transferred in the EEZ, regardless of where the wreckfish was taken.

(2) A wreckfish possessed by a fisherman or dealer shoreward of the outer boundary of the EEZ or in an Atlantic coastal state will be presumed to have been harvested from the EEZ

unless accompanied by documentation that it was harvested from other than the EEZ.

(3) A wreckfish may be off-loaded from a fishing vessel only between 8 a.m. and 5 p.m., local time.

(4) If a wreckfish is to be off-loaded at a location other than at a fixed facility of a dealer who holds a permit issued under § 646.4(c), the wreckfish shareholder or the vessel operator must advise the NMFS Law Enforcement Office, Southeast Area, St. Petersburg, FL, telephone (813) 893–3145, of the location not less than 24 hours prior to off-loading.

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[FR Doc. 91–26981 Filed 11–4–91; 4:45 pm]

BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 56, No. 217
Friday, November 8, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

[Doc. No. 8161-S/A&US-91-1]

Request for Comments on Methodology for Yield Determinations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Notice with request for comment.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) publishes this notice to solicit public comment, suggestions, and analytical studies concerning procedures to determine average yields for crop insurance purposes. FCIC is actively seeking public evaluation of its method of determining yield; that element which is critical to the insurance offer, that is fair to the farmer, the program, the taxpayer, and the Congress. These comments and assistance are sought so that FCIC can:

—Improve service to insured persons;
—Improve the accuracy of insurance guarantees;
—Identify improved methods or approaches;
—Improve program performance;
—Reduce taxpayer costs;
—Reduce paperwork burden on insured persons, insurance agents and companies, and FCIC; and
—Ensure public and customer confidence with the administration of the crop insurance program.

Background:

It is the mission of the Federal Crop Insurance Corporation to offer an actuarially sound insurance program on crops of agricultural significance, which is based on established insurance principles that are required to maintain a stable risk management protection approach responsive to both producer and taxpayer financial interests. FCIC accomplishes its mission by offering contracts of insurance which compensate a person with a financial interest in a crop for losses of production caused by adverse natural conditions beyond the control of that person. A deductible amount is established; only that amount of loss which exceeds the deductible is compensated in the form of a payment to the person. For most crops, the amount of insurance and the right to an indemnity are established on the basis of an average yield per acre of land planted to the crop. Some important calculations used in the program are:

1. *Bushel-guarantee per acre.*

Average yield per acre × Coverage percentage (50, 65, or 75 percent)

2. *Total bushel guarantee.*

Guarantee per acre × Planted acres

3. *Liability (total dollar value of the insurance).*

Total bushel guarantee × Price election × Share

4. *Amount of premium.*

Liability × Premium Rate

5. *Amount of bushel deficiency (amount of guarantee lost).*

(Total bushel guarantee − production to count) × Share

6. *Amount of indemnity (dollars paid to insured person).*

Amount of bushel deficiency × Price election

The appropriate unit of measure (hundredweight, ton, etc.) is substituted for the term bushel in the above equations.

These equations demonstrate the critical role of yield in determining the success of the crop insurance program. It determines the amount of premium which will be paid by an insured person. It influences the amount of losses payable to insured persons. It is critical criterion for establishing the magnitude of a loss (assuming that a covered peril has occurred) as well as determining the amount of such losses. And, initially, it is a measure of the worth of the crop insurance program to the potentially insured person in that the amount of the bushel guarantee is directly determined by it.

An average yield that is low relative to that which the producer expects under normal conditions does not provide an attractive insurance offer for that individual. Participation can be adversely affected if the yield-determining procedures systematically underestimate the potential. An average yield that is high relative to normal potential may be attractive to the producer in the short run. But, if the insurance guarantee is too high, losses will be paid more frequently than anticipated by the premium rating structure. These more frequent and larger payments of indemnities are paid by insured farmers and taxpayers. Ultimately, these excessive yield guarantees will force premium rates to increase, which reduces the attractiveness of the insurance program over the long run.

Thus, an average yield determination that systematically is either too high or too low influences the decision to participate in the crop insurance program as well as the financial performance of it. Both factors (program participation and financial performance) must be recognized explicitly when evaluating methods for establishing the yield per acre for crop insurance purposes. The term systematically is deliberately chosen because FCIC recognizes that no method will be exact for every individual case. Regardless of the methodology employed, some determinations will differ significantly from the true average value.

The Federal Crop Insurance Act (7 U.S.C. 1501 *et. seq.*)(FCI Act)), as amended, directs that insurance offered against loss of production be based on "* * * the recorded or appraised average yield of the commodity on the insured farm for a representative period * * *" (7 U.S.C. 508(a)). The FCI Act does not further define the terms "recorded or appraised average yield" and "representative period."

Present Procedures for Determining Recorded or Appraised Average Yields

The following is a synopsis of presently used methods for determining the recorded or appraised average yield. This discussion is not intended to present a comprehensive guidebook of procedures. Instead, principal components and reasons for these are outlined to provide a framework within which comments and suggestions can be advanced. Those interested in a complete discussion of the procedures should request a copy of the "1991 Crop Insurance Handbook (CIH)" (M8–CIH (APH), dated 12–90).

General Concepts

Average yields are established by FCIC on the basis of the acreage planted to the crop by the insured person. In some cases, the acreage harvested may be less than the acreage planted because part of the acreage incurred losses to the extent that harvesting is uneconomical. Insurance attaches to the acreage planted. A yield calculated on the basis of acreage harvested would be excessive for the acreage insured.

The years for which yield history is reported by insured individuals must be continuous. This requirement simply recognizes that there may be an incentive to report only the years of highest yield if the insured person were given a choice. This represents a minimum control over such incentives.

Average yields are calculated separately for types of a commodity (for example, winter or spring wheat), farming practices (irrigated, non-irrigated, etc.), and crop insurance unit. Insured persons are allowed considerable latitude in structuring their crop insurance plan, and this provision is needed to assure that an average yield that is insured for any year is based upon the same technology as the farmer will use to produce the crop. For example, allowing the producer to establish an average yield based on irrigation and then insuring that same average yield for a crop grown with dryland technology would be financial suicide for the crop insurance program.

No one method of yield determination is likely to prove acceptable for all crops and conditions. Variations to recognize unique production and marketing characteristics are needed. For example, yields of some tree and vine crops increase rapidly from year to year in an initial stage once they begin bearing, level on a plateau for a few or many years, and then enter a period of decline. An estimation method that used a fixed number of years (say, 10 years) in for such crops likely would underestimate yield potential substantially in the initial spurt, might catch up with production sometime in the plateau period, and overestimate potential during the period of decline. Such characteristics must be recognized.

Simplicity also is an attribute that is sought for yield determination methods. Farmers, agents, and insurance marketers are expected to understand and comply with rules governing the determinations. Processes and procedures also must be communicated to persons less familiar with the crop insurance program. A methodology that is precise yet simple is difficult to achieve, especially considering the needs of the various crops.

The average yield also must be determined on the same basis as the insurance is offered. The FCI Act directs that "* * * insurance shall not extend beyond the period the insured commodity is in the field." (7 U.S.C. 508(a)). Tobacco is the only crop excepted from this provision. Many crops are subjected to immediate processing or storage after removal from the field. Varying percentages of the commodity may be culled or may spoil during such processes. The insurance does not cover such losses. In some cases, the culling may be attributed to economic factors (for example, undersized fruit that are physiologically perfect but economically worthless) rather than to natural causes. Yield determining methods must recognize this limitation imposed by the FCI Act.

The Actual Production History Program

All average yields are established under a program designated as Actual Production History (APH). Crops are assigned to one of several categories to recognize differences in the type of insurance offer as well as data requirements and production characteristics. For example:

Category A—Includes peanuts; a crop that is produced and marketed under quota programs administered by the Agricultural Stabilization and Conservation Service (ASCS), USDA. Yields are established by using the data accumulated by ASCS in its administration of these programs.

Category B—Contains field crops including corn, soybeans, and wheat etc., having a plan of insurance for which an average yield per acre is established. FCIC defines the representative period for these crops as the most recent ten continuous years. The recorded or appraised average yield is determined as a simple average of the ten years of data (add the 10 observations and divide the total by 10).

Category C—Same as B, above.

Category D—Includes crops having a plan of insurance that is not yield-based (raisins, citrus trees, nursery crop, others).

Category E—Includes quota plan tobacco; a crop that is produced and marketed under quota programs administered by the Agricultural Stabilization and Conservation Service (ASCS), USDA. Yield is not used for tobacco. Instead, the quota assigned by ASCS forms the basis of the insurance offer because the holder of the quota may market only that amount regardless of the number of acres planted to the crop.

Category F—Contains most other tobacco types produced and marketed under quota programs administered by the Agricultural Stabilization and Conservation Service (ASCS), USDA. Yields are established by using the data accumulated by ASCS in its administration of these programs.

Category G—Same as D, above.

Insured persons are required to report their annual production. Failure of the insured person to submit a production report causes entry of a proxy yield equal to 75 percent of the yield used to establish the insurance guarantee for that year. A claim for indemnity is considered a production report in the event a loss was reported.

A year in which the crop was not planted is not considered as a break in continuity. The yield at which the acreage would have been insured for that year if it had been planted is inserted into the calculations.

Transitional yields are inserted into the ten year history if there are no records and the crop was planted, or if there is a break in continuity. Transitional yields are established in a variety of ways. For many crops, the transitional yield is a multiple of the yield assigned to the farm by ASCS for the purpose of its programs.

For other crops, the transitional yield may be indexed to the program yield for one of the ASCS crops (e.g., the transitional yield for soybeans is indexed to the ASCS program yield for corn in much of the country). In other cases, FCIC assigns a transitional yield based upon estimated average yields in the area in which the land is located. The method depends upon the quantity and quality of the information that is available.

The ASCS program yield is used whenever available and pertinent because it has been assigned on an individual basis to the farm on which the commodity is grown and is not an area average. However, an area average is needed for some crops because they are not under ASCS programs; are in an area of the country in which few ASCS yields are established; or the yields of the crop do not have a reasonable correlation to the yields of an ASCS program crop commonly grown in the area.

The multiple of the ASCS program yield is derived because the program yields were not established on the same basis as the yield on which FCIC bases the insurance guarantee. FCIC uses planted acres; the ASCS program yield more closely resembles one based on harvested acres. FCIC uses a 10 year base period to compute an average yield

for an area; ASCS used a shorter base period.

ASCS program yields have not changed since 1985; FCIC updates its base period each year. Under some circumstances, FCIC permits a producer to report insured acreage by separate units corresponding to farming practices, crop types, and other factors; the ASCS program yield normally corresponds to all of the crop grown on the entire farm.

Category C crops (all tree crops and selected specialty crops such as sugarcane, processing vegetables, etc.) are treated in a manner that is conceptually similar to the Category B crops. The major difference is that the recorded or appraised average yield is the simple average of at least four and not more than 10 years of yield data. A proxy called the determined yield, rather than a transitional yield, is substituted for any missing years during the first four years.

The difference in terminology only indicates the difference in the base period for calculating the average yield. There are several reasons for the difference in base period between Category B and C crops. One concerns the life cycle of some of the crops as described in the General Concepts. Much more attention is given to specific individual situations for Category C crops.

Inspections of the insured acreage often required as part of the process of establishing the average yield. Values per acre can be substantial with many of these crops and production potential can vary greatly from producer to producer.

New Yield Options

The Food, Agriculture, Conservation, and Trade Act of 1990 (Farm Act) amended the FCI Act and directed FCIC to undertake two additional offers of insurance based on yield, as follows:

ASCS Program Yield

This directs FCIC to permit a person to establish a guarantee based upon the program yield assigned by ASCS to the farm (FCIC is also seeking public comment on this option under a separate **Federal Register** notice).

The ASCS program yield determines the FCIC transitional yield which normally is lower than the ASCS yield. Under this option, administrative expense reimbursement and premium subsidy are to be paid only on that portion of the producer's premium that would be owed had that person accepted the recorded or appraised average yield as determined by FCIC's procedures. The insured person is responsible for the entire premium amount over and above the currently calculated premium, as well as any additional expenses that may be incurred by the insurance entity which accepts the policy.

The additional cost to the producer thus is directly dependent upon the amount of premium that would be owed under the standard procedures used by FCIC to establish the average yield. This also directly affects the financial performance of the program. Standard yields that are too high will reduce the cost of the ASCS option to the insured person and encourage more to accept it.

Should this result in sales that otherwise would not have been made, costs will increase further because more losses will occur on the underlying coverage. Standard yields that are too low will increase the cost to the individual and increase dissatisfaction with the program because the incremental cost of the ASCS option will be too great.

Area Yield Coverage

The second mandate directs FCIC to offer a plan of insurance that is based upon an area average in a specific year. The area yield coverage envisioned by these amendments to the FCI Act is based upon the average yield of all persons over a relatively large area. Purchasers of crop insurance are entitled to an indemnity only if the area average yield in any year is below the long term average by some amount. In this case, determination of the area average in terms of the number of years included in the base period, as well as the area to which an average yield applies, become critical variables to assessing program performance and acceptability to potential buyers.

Issues to which FCIC specifically requests comments are stated below. However, the public is encouraged to comment on any aspect of establishing recorded or appraised average yields in addition to these issues. All comments should address the: (1) Impact upon participation in crop insurance; (2) acceptability of the crop insurance program; (3) impact upon taxpayers' costs; and (4) impact upon crop insurance premium rates.

Issues

FCIC is seeking your comments on the following issues; identifying, by number, which of the nine issues are being addressed:

1. Requiring ten consecutive years in the base period means that a crop insurance unit farmed under any crop rotation practice will never have ten consecutive years of actual production records. Whenever the unit is not planted to the particular crop, a proxy yield equal to the yield on which the guarantee was based for the previous year is inserted. Should the number of years in the base period be increased to include more actual production reports? If so, should the proxy yield now used be inserted for any years that the crop is not planted? Should the average be calculated from the total number of years of actual and proxy yields needed to record ten years of actual observations (for example, 19 years under an every other year cropping pattern)?

2. The recorded or appraised average yield calculated under these procedures is a simple average, i.e., it is the sum of the annual yields divided by 10. This implies that each annual yield that is included in the base period has an equal chance of occurring, and that the pattern of yields observed in the base period is likely to occur in the future. Are there alternative methods for using the information that FCIC should consider?

3. Related to the above, a few years of abnormally high or low yields can cause the recorded or appraised average yield to deviate substantially from the yield that would be expected under more normal conditions. Should FCIC make adjustments to yields for years in which the area averages are much higher or lower than normal?

4. One result of the procedures used by FCIC is that the recorded or appraised average yield is likely to fluctuate from year to year. The amount of fluctuation is limited to plus or minus ten percent from the previous year. Should the amount of change continue to be capped? Should the recorded or appraised average yield change with each minor change in the ten year average, or should it remain the same from year to year if the amount of change is small? If you favor the latter, what amount of change would be considered small?

5. At one time, FCIC used a "trimmed average" to calculate the recorded or appraised average yield from the ten years of data. A trimmed average, sometimes called "Olympic scoring," is calculated by eliminating the largest and the smallest observations. The resultant average is based on the remaining eight years. Should FCIC return to the trimmed average or continue using the ten year average? Is there another method that FCIC should consider?

6. Should the proxy yields for years for which records are unavailable be based on the ASCS farm yield for those commodities or should some other basis for the proxy yields be established? If the latter, what should be the basis of

the proxy? Should the proxy yields for some crops be indexed to the ASCS farm yield for a different crop?

7. The present program for determining the recorded or appraised average yield is mandatory for insured persons. Those persons who fail to file a production report have a proxy yield inserted in their data base. This proxy yield is 75 percent of the yield that was used to establish the insurance guarantee for the year that the production report is not filed. Should the program be mandatory? If not, should the previous year's average yield be carried forward if there was no loss and no production report is filed?

8. A claim for indemnity is considered to be a production report, and the information from it is used to calculate the yield for years that a loss occurred. How should the person with a loss be treated if the program is not mandatory and such a person fails to file a production report?

9. Current procedures permit an individual to report the yield for the most recently completed crop year. This imposes a paperwork burden on agents and insurance marketers since this information must be processed during a short period of time at which other sales and servicing activities are underway. If the yield calculations were made using a lag year (i.e., the yield for the 1992 crop would be an average of 1981–1990), servicing activities could be scheduled better. This also might provide opportunity to reduce overall costs. Comments and suggestions regarding use of a lag year are encouraged.

Use of five years of records to establish the recorded or appraised average yield for a crop insurance unit has been proposed by some interested parties. This proposal generally would use the same procedures and processes as now followed by FCIC under the ten year approach described in Part A.

It can be anticipated that a five year approach will more rapidly recognize a producer's potential by eliminating the influence of inappropriate proxy yields more rapidly. It also can be anticipated that periods of bumper or disaster yields will have a much more pronounced effect upon the recorded or appraised average yield established for an insured individual.

Respondents are urged to identify any other issues and make any other suggestions to improve the procedures for determining the recorded or appraised average yields that they deem relevant.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447–3325.

ADDRESSES: Written responses to this notice should be sent, not later than April 1, 1991, to Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250.

Written comments in response to this notice should be identified at the top of the first page with the number "A&US–91–1." It would also be helpful if your response identified, by number, which of the nine issues are being addressed.

All written comments received pursuant to this notice will be available for public inspection and copying in room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

Done in Washington, DC on October 29, 1991.

James E. Cason,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 91–26878 Filed 11–7–91; 8:45 am]

BILLING CODE 3410–08–M

Packers and Stockyards Administration

Amendment to Certification of Central Filing System; OK

The Statewide Central filing system of Oklahoma has been previously certified, pursuant to section 1324 of the Food Security Act of 1985, on the basis of information submitted by Hannah D. Atkins, Secretary of State, for farm products produced in that State (52 FR 49056, December 29, 1987).

The certification is hereby amended on the basis of information submitted by John Kennedy, Secretary of State, for an additional farm produced in that State as follows:

Rice

This is issued pursuant to authority delegated by the Secretary of Agriculture.

Authority: Sec. 1324(c)(2), Pub. L. 99–198, 99 Stat. 1535, 7 U.S.C. 1631(c)(2); 7 CFR 2.18(e)(3), 2.56(a)(3), 55 FR 22795.

Dated: November 4, 1991.

Virgil M. Rosendale,

Administrator, Packers and Stockyards Administration.

[FR Doc. 91–27013 Filed 11–7–91; 8:45 am]

BILLING CODE 3410–KD–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

[Docket No. 911048–1248]

Export Control Restrictions: Review of Unprocessed Timber Exports Harvested From Public Lands in Washington State

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Notice and request for comments.

SUMMARY: On October 24, 1990, the Secretary of Commerce, pursuant to section 491 of the Forest Resources Conservation and Shortage Relief Act of 1990 (the Act), issued an order prohibiting (for the period beginning January 1, 1991, and ending December 31, 1991) the export of 75 percent of the unprocessed timber originating from public lands located in states with annual timber sales volumes greater than 400 million board feet. Under the Act, the Secretary is also required to issue a similar order, after opportunity for notice and a hearing, prohibiting exports for the period beginning on January 1, 1992, and ending on December 31, 1993. The Secretary is authorized to increase the amount prohibited from export provided certain determinations are made. This notice solicits comments on the extension of this order for the 1992–93 period.

DATES: Comments must be received by November 22, 1991.

ADDRESSES: Written comments (three copies) should be sent to Bernard Kritzer, Senior Policy Advisor, Office of Industrial Resource Administration, room H–3878, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Bernard Kritzer, Senior Policy Advisor, Office of Industrial Resource Administration, room H–3878, U.S. Department of Commerce, Washington, DC 20230, (202) 377–4060.

SUPPLEMENTARY INFORMATION:

I. Background

Section 491 of the Forest Resources Conservation and Shortages Relief Act of 1991 (the Act), contains prohibitions on the export of unprocessed timber harvested from state or other public lands (hereinafter public lands) in the contiguous states located west of the 100th meridian. The Act requires the Secretary of Commerce to issue orders prohibiting the export of all unprocessed timber originating from public lands in

states with annual timber sales volumes of 400 million board feet (MMBF) or less; and to restrict the export of 75 percent of the annual sales volume of unprocessed timber from public lands in any states with annual timber sales volumes exceeding 400 MMBF. The State of Washington is the only state that qualifies under the 75 percent standard.

On Cctober 24, 1991, the Secretary issued an order imposing the Washington State timber export prohibitions for calendar year 1991, as required by the Act. Section 491(b)(1)(B) of the Act requires that the Secretary of Commerce, after notice and an opportunity for a hearing, also issue an order prohibiting the export of at least 75 percent of Washington State's annual sale volume for the two-year period beginning on January 1, 1992, and ending on December 31, 1993.

Section 491(c) permits the Secretary of Commerce to increase the amount of unprocessed Washington State timber prohibited from export above the 75 percent minimum amount required by the Act, based on a determination that: (1) The purposes of this Act have not been adequately met; and (2) such an increase would further the purposes of the Act.

II. Scope/Definitions/Species Coverage

A. Scope

The Department invites written comments from interested parties concerning the timber export limitation order required for Washington State by the Act. In addition, comments that may assist the Secretary in making the determinations whether to increase the quantity of unprocessed timber subject to the prohibition are welcome. Specifically, we solicit information concerning the following:

(1) Actions or decisions taken, for the purpose of conserving or protecting exhaustible natural resources in the United States, which have affected the use or availability of forest products;

(2) Whether the volume of timber from public lands that is under contract has increased or decreased by an amount greater than 20 percent within the previous 12 months;

(3) The probable effects of unprocessed timber exports on the ability of timber mills to acquire unprocessed timber;

(4) Whether the purposes of the Act are being adequately met; and

(5) Whether hearings on this matter should be held.

B. Definitions

For the purposes of this notice, the Department is using the following definitions:

(1) "Unprocessed timber" means trees or portions of trees or other roundwood not processed to standards and specifications suitable for end-product use. The term "unprocessed timber" does not include timber processed into any one of the following:

(a) Lumber or construction timbers, meeting current American Lumber Standard Grades, sawn on 4 sides not intended for remanufacture;

(b) Lumber, construction timbers, or cants for remanufacture, meeting current American Lumber Standard Grades, sawn on four sides, not to exceed twelve inches in thickness;

(c) Lumber, construction timbers, or cants for remanufacture that do not meet the grades referred to in paragraph (b) above, and are sawn on four sides, with wane less than one-quarter of any face, not exceeding eight and three-quarters inches in thickness;

(d) Chips, pulp, or pulp products;

(e) Veneer or plywood;

(f) Poles, posts, or piling cut or treated with preservatives for use as such;

(g) Shakes or shingles;

(h) Aspen or other pulpwood bolts, not exceeding 100 inches in length, exported for processing into pulp;

(i) Pulp logs or cull logs processed at domestic pulpmills, domestic chip plants, or other domestic operations for the purpose of conversion of the logs into chips.

(2) The term "public lands" means lands located west of the 100th meridian in the contiguous 48 states, that are held or owned by a State or political subdivision thereof, or any other public agency. Such term does not include any lands the title to which is:

(a) Held by the United States;

(b) Held in trust by the United States for the benefit of any Indian tribe or individual; or

(c) Held by any Indian tribe or individual subject to a restriction by the United States against alienation.

C. Species Coverage

This notice only pertains to unprocessed timber harvested from public lands in Washington State. The subject timber is described in Schedule B (Statistical Classification of Domestic and Foreign Commodities Exported from the United States) as wood in the rough whether or not stripped of bark or sapwood, or roughly squared, which includes:

4403.20.0025/2—Ponderosa Pine (Pinus ponderosa);

4403.20.0030/5—Pine Other;

4403.20.0035/0—Spruce (Picea spp.);

4403.20.0040/3—Douglas-fir (Psuedotsuga menziesii);

4403.20.0050/0—Western Hemlock (Tsuga metero-phylla);

4403.20.0060/8—Logs & Timber Other; and

4403.99.0050/6—Western Red Alder (Alnus rubra).

This notice does not pertain to unprocessed western red cedar timber harvested from Washington State public lands. (Under the Export Administration Regulations the Department maintains other quantitative restrictions on the export of unprocessed western red cedar logs harvested from Federal and state lands).

III. Procedure

The General Counsel of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that the statutorily-mandated limitation on the export of unprocessed timber, which would be continued or possibly be increased following consideration of the public comments on this notice, will not have a significant economic impact on a substantial number of small entities. This is because the range of possible limitations amounts to a small expansion of a preexisting export prohibition, and would involve only a small number of exporters.

This notice is intended to provide all interested parties, especially those in the forest products industry, consumer groups, environmental groups, the maritime industry, and all other industries, groups, or individuals likely to be affected by continued export restrictions on unprocessed timber harvested from public lands in the State of Washington, with an opportunity to submit written comments.

In addition, the Department is interested in receiving comments regarding whether a public hearing should be held and how such hearing would contribute to this review.

The following procedures will apply for any comments submitted pursuant to this notice:

(1) Interested parties are invited to submit written comments (3 copies), opinions, data, information or advice with respect to the investigation to the address stated above. Interested parties shall have a period of 14 days beginning

on the date of publication of this notice in which to submit to the Secretary written data, views, or arguments.

(2) All comments received before the close of the comment period will be considered by the Department in completing the review. While comments received after the end of the comment period will be considered if possible, their consideration cannot be assured. All public comments, whenever received, will be a matter of public record and will be available for public inspection and copying. (Communications from agencies of the United States Government or foreign governments will not be made available for public inspection).

(3) If oral comments are received during a meeting or telephone conversation, a written summary will be prepared by the person receiving the oral comments. That written summary will also be a matter of public record and will be available for public review and copying.

(4) Anyone submitting business confidential information should clearly identify the business confidential portion of the submission and also provide a nonconfidential submission that can be placed in the file. If this procedure is not followed, the comments and materials that appear to be business confidential will be returned to the submitter and will not be considered in completing this investigation.

(5) The comments received in response to this notice will be maintained in the Bureau of Export Administration's Freedom of Information Records Inspection Facility, Bureau of Export Administration, U.S. Department of Commerce, room H–4505, 14th Street and Constitution Avenue, NW., Washington, DC 20230. The records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with the regulations published in part 4 of title 15 of the Code of Federal Regulations. Information pertaining to the inspection and copying of records may be obtained from Ms. Margaret Cornejo, Freedom of Information Officer, Bureau of Export Administration, at the above address or by calling (202) 377–2593.

Dated: November 1, 1991.

Michael P. Galvin,

Assistant Secretary for Export Administration.

[FR Doc. 91–27029 Filed 11–7–91; 8:45 am]

BILLING CODE 3510–DT–M

Economics and Statistics Administration

Advisory Committee of the Task Force for Designing the Year 2000 Census and Census-Related Activities for 2000–2009

AGENCY: Economics and Statistics Administration, Department of Commerce.

ACTION: Notice of Public Meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Public Law 92–463 as amended by Public Law 94–409) we are giving notice of a meeting of the Advisory Committee of the Task Force for Designing the Year 2000 Census and Census-Related Activities for 2000–2009. The meeting will convene on Monday, December 9, 1991, at the Washington Court Hotel, 525 New Jersey Avenue, NW., Washington, DC 20001.

The Advisory Committee is composed of a Chairperson, twenty-five member organizations, and eight *ex officio* members, all appointed by the Secretary of Commerce. The Advisory Committee will consider the goals of the census and user needs for information provided by the census, and provide a perspective from the standpoint of the outside user community on how proposed designs for the year 2000 Census realize those goals and satisfy those needs. The Advisory Committee shall consider all aspects of the conduct of the census of population and housing for the year 2000, and shall make recommendations for improving that census.

DATES: The meeting will begin at 9:30 a.m. and adjourn at 4:30 p.m. on Monday, December 9, 1991.

ADDRESSES: The meeting will take place at the Washington Court Hotel, 525 New Jersey Avenue, NW., Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Persons wishing additional information regarding this meeting, or who wish to submit written statements or questions, may contact Thomas P. DeCair, Office of the Under Secretary, Economics and Statistics Administration, Department of Commerce, room 4838, Herbert C. Hoover Building, Washington, DC 20230. Telephone: (202) 377–3709.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include the Department of Commerce charge to the Advisory Committee, statements from Advisory Committee members concerning the Advisory Committee's task, and other items that the Chair and Advisory Committee members deem appropriate for this initial meeting.

The meeting is open to the public. A brief period will be set aside for public comment and questions. However, persons with extensive questions or statements for the record must submit them in writing to the Commerce Department official named below at least three working days prior to the meeting.

Dated: November 4, 1991.

Mark W. Plant,

Deputy Under Secretary.

[FR Doc. 91–27033 Filed 11–7–91; 8:45 am]

BILLING CODE 3510–EAM

Foreign-Trade Zones Board

[Docket No. 68–91]

Proposed Foreign-Trade Zone—Yakima, Washington Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Yakima Air Terminal Board, a public agency of the City of Yakima and the County of Yakima, requesting authority to establish a general-purpose foreign-trade zone in Yakima, Washington. The Yakima Air Terminal has been designated a "Customs user fee port facility" by the U.S. Customs Service. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on October 28, 1991. The applicant is authorized to make the proposal under the Revised Code of Washgington, section 24.46.020.

The application requests zone status for the Yakima Air Terminal complex (810 acres), located at 2300 West Washington Avenue in Yakima. The facility is owned by the City of Yakima and the Yakima County Commission, and operated by the Yakima Air Terminal Board, which will also operate the zone project.

The application contains evidence of the need for zone services in the Yakima area. Several firms have indicated an interest in using zone procedures for warehousing/distribution of such items as agricultural products, plastics, foam products, electronic equipment and wood products. Specific manufacturing approvals are not being sought at this time. Requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The

committee consists of Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Daniel C. Holland, District Director, U.S. Customs Service, Pacific Region, 909 First Avenue, room 2039, Seattle, Washington 98174; and Colonel Milton Hunter, District Engineer, U.S. Army Engineer District, Seattle, P.O. Box 3755, Seattle, Washington 98124–2255.

As part of its investigation the examiners committee will hold a public hearing on December 5, 1991, at 8:30 a.m., Yakima Air Terminal, Conference Room, 2300 West Washington Avenue, Yakima, Washington 98903.

Interested parties are invited to present their views at the hearing. Persons wishing to testify should notify the Board's Executive Secretary in writing at the address below or by phone (202/377–2862) by November 29, 1991. Instead of an oral presentation written statements may be submitted in accordance with the Board's regulations to the examiners committee, care of the Executive Secretary at any time from the date of this notice through January 6, 1992.

A copy of the application and accompanying exhibits will be available during this time for public inspection at the following locations:

Kittitas-Yakima Economic Development, District Office, 32 North Front Street, Yakima, Washington 98902.

Office of the Executive Secretary, Foreign-Trade Zone, Board, U.S. Department of Commerce, room 3716, 14th and Pennsylvania Avenue, N.W., Washington, DC 20230.

Dated: November 4, 1991.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 91–27030 Filed 11–7–91; 8:45 am]

BILLING CODE 3510–DS–M

International Trade Administration

[A–122–601]

Final Results of Antidumping Duty Administrative Review of Brass Sheet and Strip From Canada and Revocation, in Part, of the Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Commerce.

EFFECTIVE DATES: November 8, 1991.

FOR FURTHER INFORMATION CONTACT: Erik Warga, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377–8922.

Final Results

Background

Since the publication of the preliminary results of this administrative review (56 FR 29938, July 1, 1991), the following events have occurred.

On August 13, 1991, we published a notice announcing our intent to revoke in part the antidumping duty order with respect to Ratcliffs/Severn Limited (Ratcliffs), the sole respondent in this review (56 FR 38408).

We received case briefs from Ratcliffs and petitioners (American Brass; Hussey Copper, Ltd; The Miller Company; Olin Corporation; Revere Copper Products, Inc.; International Association of Machinists and Aerospace Workers; International Union, Allied Industrial Workers of America (AFL–CIO); Mechanics Educational Society of America (Local 56); and United Steelworkers of America (AFL–CIO/CLC)) on July 26, 1991. Petitioners and respondent filed rebuttal briefs on August 1, 1991. In addition, petitioners also filed an authorized supplemental brief on July 30, 1991, and respondent filed an authorized rebuttal to that brief on August 5, 1991. On August 15, 1991, petitioners filed comments on the Department's intent to revoke; respondent commented on August 23, 1991.

The Department has completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of Review

Imports covered by the review are shipments of brass sheet and strip, other than leaded brass and tin brass sheet and strip, from Canada. The chemical composition of the products covered is currently defined in the Copper Development Association (C.D.A.) 200 series or the Unified Numbering System (U.N.S.) C2000 series. Products whose chemical compositions are defined by other C.D.A. or U.N.S. series are not covered by this order.

The physical dimensions of the products covered by this review are brass sheet and strip of solid rectangular cross section over 0.006 inches (0.15 millimeters) through 0.188 inches (4.8 millimeters) in finished thicknesses or gauge, regardless of width. Coiled, wound on reels (traverse wound) and cut-to-length products are included.

During the review period, such merchandise was classifiable under subheadings 7409.21.00 and 7409.29.00 of the Harmonized Tariff Schedule (HTS). Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Period of Review

This review covers the exports of one company, Ratcliffs, during the period January 1, through December 31, 1989.

United States Price

We based United States price (USP) on purchase price, as defined in section 772 of the Act, because Ratcliffs sold the subject merchandise to unrelated purchasers before its importation into the United States and because exporter's sales price methodology was not indicated by other circumstances. Purchase price was based on the C&F, packed price to unrelated customers in the United States. We made no adjustment for uncollected value added tax (VAT) because VAT normally would not have been collected on sales of intermediate merchandise in the home market sales. Specific adjustments to the amounts reported are fully discussed in the Notice of Preliminary Results of Antidumping Duty Administrative Review of Brass Sheet and Strip from Canada (56 FR 29938, July 1, 1991) (Preliminary Results).

Foreign Market Value

As a result of petitioners' allegation of sales below cost, we gathered and analyzed data on Ratcliffs' production costs for this review.

Ratcliffs reported its cost of production (COP) data based on materials, labor, overhead, and selling, general, and administrative costs incurred during the period of review (POR), which coincides with Ratcliffs' fiscal reporting year. We relied on the submitted data except in the following instances where the costs were not appropriately quantified or valued:

(1) We adjusted the submitted costs to exclude metals holding gains calculated by Ratcliffs;

(2) We calculated interest expenses based on the actual interest expenses reported in the consolidated financial statements;

(3) We increased general and administrative costs to account for certain legal fees and a management fee paid to the parent company which Ratcliffs had not included in its calculations; and

(4) We did not allow Ratcliffs to use foreign exchange gains and excess interest income as an offset to general and administrative costs.

After disregarding those sales that were made below COP, we found that a sufficient percentage of Ratcliffs' POR sales of the subject merchandise remained to serve as the basis for FMV. We did not add an amount to FMV for VAT because VAT normally would not have been collected on sales of intermediate merchandise in the home market sales.

See the Preliminary Results for the calculation of COP and an explanation of the deductions from home market price and circumstance of sale (COS) adjustments.

Interested Party Comments

Comment 1

In the preliminary results, the Department calculated the difference in similar merchandise as the difference between the average POR metal prices. Petitioners contend that (1) month-specific differences in metal costs should have been used; (2) "other fabrication costs such as direct labor and variable factory overhead costs" should also have been accounted for (and, because respondent did not provide information on differences in fabrication costs, the Department should base such an adjustment on BIA); and (3) upward adjustments should have been made for "arsenic inhibited" brass sold in the United States. Respondent contends that month-specific differences in metal costs should have been used.

DOD Position

We agree that using month-specific differences in metal costs to calculate differences in merchandise is appropriate, and have done so for purposes of these final results. The monthly costs were those in effect during the month in which the U.S. sale took place. With respect to other fabrication costs, we verified that no quantifiable differences exist. With respect to "arsenic-inhibited" brass strip, we found this difference to be insignificant within the meaning of 19 CFR 353.59(a) and thus made no adjustment.

Comment 2

Respondent contends that the Department should make a COS adjustment to account for changes in prices of component metals when comparing U.S. and home market sales of brass strip that took place in different months.

Petitioners contend that, because the differences in price are not due to differences in selling expenses, no COS adjustment is warranted.

DOC Position

We agree with petitioners. COS adjustments are normally limited to differences in selling expenses related to the sales being compared. The differences in prices of component metals are differences in manufacturing costs and nothing on the record of this review indicates that the Department's comparisons were distorted by the monthly metal price fluctuations. Therefore, we did not make the COS adjustment.

Comment 3

Respondent contends that the Department was incorrect in excluding all sales of products from home market sales when more than 90 percent of sales of that product—as opposed to more than 90 percent of all products—were at prices below cost.

Petitioners contend that the Department's product-specific application of the "90/10" rule is correct and in accordance with past Departmental practice.

DOC Position

We agree with petitioners. We applied the 90/10 test on a two-step basis. First, we tested the home market sales by applying the test on a such or similar basis. We find it useful to evaluate sales below cost preliminarily on a such or similar basis because this approach facilitates a prompt, simple decision by the Department on whether to ignore home market sales below cost (if less than 10 percent of the such or similar category is sold below cost) or to proceed directly to constructed value (if more than 90 percent of the such or similar category is sold below cost). Thus, by applying the test on a such or similar category basis, we may avoid having to apply the test on a model-by-model basis if sales below cost fall either below 10 percent or above 90 percent. Once we make our preliminary evaluation of below cost sales, we then apply the 90/10 test on a model-specific basis. We find that it is preferable to perform the cost test on a model-specific basis because we make model-specific comparisons in our price-to-price analysis.

Comment 4

Both petitioners and respondent contend that the sales to certain low-volume customers should be included in the pool of home market sales for purposes of the COP analysis.

Respondent also contends that sales to these customers were properly excluded from price comparisons because the individual orders were very small and only taken from certain customers.

Petitioners contend that sales to these customers should also be compared to U.S. sales because those sales are not at a different level of trade than sales to the other categories of customers. Petitioners argue that ignoring sales to these low-volume customers for price comparison purposes was improper because (1) there is no statutory or regulatory basis for doing so; and (2) exclusion of these sales further dilutes a home market sales pool from which below cost sales have been extracted.

DOC Position

We agree with respondent and petitioners that sales to these low-volume customers should be included in our analysis of whether home market sales are at prices below COP. We also agree with respondents that sales to these customers should be excluded from price comparisons.

We verified that, as respondent reported in this and previous reviews, the sales in question were to low-volume customers. These customers were assigned to a particular price list on the basis of anticipated annual purchases. They have generally purchased in very small annual quantities in comparison to U.S. customers. Because these quantities are generally smaller than the quantities shipped to the United States, we have not included these sales in accordance with 19 CFR 353-55(a).

Comment 5

Respondent contends that, pursuant to 19 CFR 353.25(c)(iv), the Department should have published a preliminary intention to revoke the antidumping duty order with respect to Ratcliffs with the preliminary results because this administrative review is the third consecutive review in which the company's margins were zero or *de minimis*.

Petitioners argue that, because Ratcliffs' ownership changed during the period of review, the Department should make "a full inquiry into" the issue of whether Ratcliffs/Severn is the successor to Ratcliffs (Canada) before determining that Ratcliffs/Severn merits revocation based on three consecutive review periods with zero or *de minimis* margins.

DOC Position

We agree with respondent. In administrative reviews in which revocation is a consideration, the Department is concerned with the consequences of a change in ownership

in the proper administration of the antidumping laws. (See *NIEL* v. *United States*, 739 F. Supp. 1567, 1574 (CIT 1990).) We examine the change in ownership to ensure that it is not simply an attempt to avoid a higher deposit rate or otherwise circumvent the antidumping law.

The record in this case indicates that the entire business complex of Ratcliffs was acquired by Severn PLC and its business activities are continuing under the new ownership (e.g., the location of the physical plant has not changed and its customers during the POR had been customers before the ownership change). Ratcliffs' new owner is not a manufacturer of the subject merchandise and had no other business holdings. In addition, we found *de minimis* margins both before and after the change in ownership. Finally, petitioners did not provide any information from which we could infer that Ratcliffs/Severn is not the successor to Ratcliffs (Canada) for antidumping purposes.

Under these circumstances, the Department considers Ratcliffs/Severn to be a successor to Ratcliffs (Canada) for antidumping purposes and, therefore, eligible for a revocation of the antidumping order on the basis of three years with no sales at less than fair value. Accordingly, for these final results, we are announcing the revocation in part of this order (see "Determination to Revoke in Part" section of this notice).

Comment 6

Respondent claim that interest expenses of Severn PLC should not be added to Ratcliffs' COP, because Ratcliffs received no debt, equity or other financial assistance from Severn at any time before or after the acquisition.

Petitioners claim that the Department correctly calculated interest expenses based on actual expenses set forth in the consolidated financial statements.

DOC Position

We agree with petitioners. Following Department practice, we calculated interest expenses using the financial statements of the consolidated entity, Severn PLC. The interest expenses were incurred within the consolidated entity and its capital structure is fungible in nature. We consider these expenses to be costs incurred for the operations of the consolidated entity, and we calculated these costs accordingly.

Comment 7

Petitioners claim that the reported fabrication costs were not calculated based on "expected card weight" (expected production output in pounds) but rather based on pounds of brass strip shipped, and should therefore not be adjusted downward to account for production "yield" (the difference between expected and actual production output).

Respondent claims that it used a two-part process for calculating its production costs which accounted for some costs on the basis of card weight (adjusted for yield), and for other costs on the basis of actual production quantities. Respondent further asserts that there was no further adjustment when actual production figures were used.

DOC Position

We agree with petitioners in part. Ratcliffs used bases for process center per-pound cost calculations. We verified that the per-pound costs had all been adjusted for production yield. We permitted the adjustment for production yield only when the per-pound cost had actually been based on "expected card weight." For those processes whose per pound production calculation was based on actual production quantities or sales volume, we did not allow the adjustment for yield.

Comment 8

Petitioners claim that the production yield figures should not be relied on because they are inconsistent with sales volume reported, and that changes in inventories do not account for this inconsistency.

Respondents claims that there is no inconsistency between the production figures used in the yield calculations and reported sales quantities.

DOC Position

We disagree with petitioners. The yield calculations were derived based on production quantities rather than sales quantities. Petitioners' contention that changes in inventory levels do not account for the differences between production volumes and sales volumes is not supported by evidence in the record. The Department verified beginning and ending inventory quantities and values for both work-in-process and finished goods inventories, and determined that the excess of production volume over sales volume is reflected in an increase in inventory levels from the beginning of 1989 to the end of 1989.

Comment 9

Petitioners claim that, because the production volume and expected card weights are inconsistent, the Department should not rely on either quantity in calculation of per-pound production costs. Petitioners state that Ratcliffs did not use the reported "expected card weight" quantity to calculate its unadjusted per-pound cost for all processes.

Respondent claims that it did not use a quantity other than the expected card weight quantity to calculate its reported production costs at all production stages.

DOC Position

We agree with respondent in part. We verified the methodology used in the submission and tested the calculation of the per-pound costs. Calculations were made, predominantly, on the basis of anticipated production output (expected card weight). When card weight was not available, respondent used actual production or sales quantities. We did not allow adjustments for yield when actual production or sales quantities were used. This yield adjustment is only appropriate for per-pound costs calculated on the basis of card weight.

Comment 10

Petitioners claim that it appears that Ratcliffs does not maintain recipe sheets for the billet furnace and hot mill stages of production. Petitioners further assert that since the methodology for calculating costs for these processes is inconsistent with the methodology used for the casting and receiving stages, these costs should be allocated based on 1989 reported sales volume.

Respondent claims that its two-part allocation methodology is valid because the minor differences in production quantities at the casting and receiving stages and production quantities at the billet furnace and hot-mill stages occur whenever there is a change in work-in-process inventories. Respondent further claims that these differences are minor and would not have a material impact on the Department's analysis.

DOC Position

We disagree with petitioners. We verified the methodology employed by Ratcliffs. In our analysis of yield we examined the production records maintained at Ratcliffs' Toronto plant. These production records were the source for the company's yield calculation, and for the production volume of the billet furnace and hot mill production stages. The costs accumulated at the casting and receiving stages and the inspection stage were allocated on the basis of quantities shipped. We allowed the adjustment for production yield for these processes

where the yield calculations were based on card weight. Other per-pound costs based on production or sales volume were not adjusted by the production yield factors because the yield was related only to card weight.

Final Results of the Review

As a result of our review, we determine that the following weighted-average margins exist for the period January 1 through December 31, 1989:

Manufacturer/exporter	Margin (percent)
Ratcliffs	0.46
All others	0.00

In accordance with 19 CFR 353.6, the Department normally considers margins of less than 0.5 percent to be *de minimis*.

On the basis of Ratcliffs' having sold merchandise covered by the antidumping duty order at not less than foreign market value for a period of at least three consecutive years and because there is no information indicating that Ratcliffs is likely to sell the merchandise at less than fair value in the future, the requirements of 19 CFR 353.25 have been met for revocation of the order with respect to Ratcliffs.

The Department will now instruct the Customs Service to assess antidumping duties on and liquidate all appropriate entries. Individual differences between USP and FMV may vary from the percentages listed above. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for by section 751(c) of the Act and 19 CFR 353.25, the antidumping duty order with respect to Ratcliffs has been revoked. No cash deposit will be required for Ratcliffs. The cash deposit rate for merchandise exported by manufacturers or exporters not covered in this review but covered in previous reviews or the final determination in the original investigation will continue to be the rate published in the most recent final results or determination for which the manufacturer or exporter received a company-specified rate. If the exporter is not a firm covered in this or prior reviews, but the manufacturer is, the cash deposit rate shall be the rate for the manufacturer established in the final results of this review or the most recent review or, if not covered in this review or an earlier review, the rate from the original investigation. A cash deposit for any future entries from all other manufacturers or exporters who are not covered in this or prior administrative reviews and who are unrelated to any reviewed firm will not be required.

This administrative review, revocation in part, and notice are in accordance with section 751 of the Act (19 U.S.C. 1675) and 19 CFR 353.22 and 353.25.

Dated: October 30, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-27031 Filed 11-7-91; 8:45 am]

BILLING CODE 3510-DS-M

Scope Rulings

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of scope rulings.

SUMMARY: The International Trade Administration (ITA) hereby publishes a list of scope rulings completed between July 1, 1991, and September 30, 1991. In conjunction with this list, the ITA is also publishing a list of pending scope inquiries. The ITA intends to publish future lists within thirty days of the end of each quarter.

EFFECTIVE DATE: November 8, 1991.

FOR FURTHER INFORMATION CONTACT: Melissa G. Skinner, Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-4851.

Background

Sections 353.29(d)(8) and 355.29(d)(8) of the Department's regulations (19 CFR 353.29(d)(8) and 355.29(d)(8)) provide that on a quarterly basis the Secretary will publish in the **Federal Register** a list of scope rulings completed within the last three months. The lists are to include the case name, reference number, and brief description of the ruling.

This notice lists scope rulings completed between July 1, 1991 and September 30, 1991, and pending scope clarification requests. The ITA intends to publish in January 1992 a notice of scope rulings completed between October 1, 1991, and December 31, 1991.

The following lists provide the country, case reference number, requester(s), and a brief description of either the ruling or product subject to the request.

Scope Rulings Completed Between July 1, 1991, and September 30, 1991

Country: Sweden.

A-401-801: Antifriction Bearings: Lindsay Forest Products, Inc.—products termed "snap rings" and "wire races" are bearings within the scope of the order—7/22/91.

Country: United Kingdom.

A-412-801: Antifriction Bearings: Essco Inc.—products considered "linear motion bearings" are not within the scope of the order 8/26/91.

Country: Federal Republic of Germany.

A-428-801: Antifriction Bearings: Reifenhauser-Van Dorn Co.—products considered "spare parts" (bearings) to rebuild gear boxes are within the scope of the order—7/22/91.

SDF Textilmaschinen-Komponenten GmbH and SKF Textile Products, Inc.—products considered textile machinery components (rotor assembly numbers TE-226-0036225 and TE-226-1246788) are not within the scope of the order 8/8/91

Wafios Machinery Corporation—products considered "spare parts" (bearings) are within the scope of the order—7/22/91.

A-428-802: Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured: Ernst Siegling and Siegling America—nylon core flat belts are within the scope of the order and spindle belting is not within the scope of the order—9/11/91.

Country: Thailand.

C-549-501: Certain Circular Welded Carbon Steel Pipes and Tubes: Intrepid—British Standard light pipe 1387/67, Class A-1 is within the scope of the order—9/30/91.

Country: People's Republic of China.

A-570-504: Petroleum Wax Candles: Fabri-centers of America, Inc.—citronella candles are not within the scope of the order—9/3/91.

Country: Korea.

A-580-008: Color Television Receivers: Commodore Business Machines—computer monitor model 1084(D) is not within the scope of the order—8/27/91.

A-580-806: Sweaters Wholly or in Chief Weight of Man-Made Fiber: Associated Merchandising Corporation—sweater jacket model 7330 is within the scope of the order and sweater jacket model 211 is not within the scope of the order 7/26/91.

Country: Hong Kong.

A-582-802: Sweaters Wholly or in Chief Weight of Man-Made Fiber: Associated Merchandising Corporation—sweater jacket model 7330 is within the scope of the order

and sweater jacket model 211 is not within the scope of the order 7/26/91.

Country: Taiwan.

A–58–808: Sweaters Wholly or in Chief Weight of Man-Made Fiber: Associated Merchandising Corporation—sweater jacket model 7330 is within the scope of the order and sweater jacket model 211 is not within the scope of the order 7/26/91.

Bernard Chaus, Inc.—certain acrylic sweaters (models S924J, S925J, and S771J) are not within the scope of the order—8/28/91.

Country: Japan.

A–588–015: Television Receivers, Monochrome and Color: P.T. Imports, Inc.—multiple voltage and receiving system TVs, JVC series "ME" and "MU" are within the scope of the order—8/20/91.

Sharp—LCD TV/Radio/Cassette, model JC–AV1, is within the scope of the order—7/2/91.

Synergistic Technologies Incorporated—JVC video/RGB monitor (model TM–90PSN) is outside the scope of the order—9/24/91.

Teknika Electronics Corp.—certain printed circuit board subassemblies, described as replacement, service parts, are not within the scope of the order—8/2/91.

A–588–087: Portable Electric Typewriters: Tokyo Juki—typewriter models: Juki Sierra 4500, Sierra 3300, Sierra 3400, Sierra 3400C, Sierra 3500, Sierra 3500XL, Sierra Officewriter, Remington Rand 770, Remington Rand 775, Remington Rand 880, Avanti 1400, and Avanti 1500 are office typewriters and are not within the scope of the order—7/26/91.

A–588–405: Cellular Mobile Telephones and Subassemblies: Matsushita Industrial—Panasonic hand-held portables (models EB–3520 and EB–3521) are not within the scope of the order—8/20/91.

Murata Manufacturing Co., Ltd., and Murata Erie North America, Inc.—certain voltage control oscillators (VCOs), active filters, and duplexers are subassemblies within the scope of the order—final 8/30/91.

Sanyo North America Corp.—hand-held portable model CMP 330 is not within the scope of the order—8/20/91.

A–588–804: Antifriction Bearings: DHL Worldwide Express—certain replacement "spare parts" (bearings) are within the scope of the order 7/22/91.

Oilgear—certain specialized bearings are within the scope of the order—7/22/91.

A–588–809: Certain Small Business Telephone Systems and Subassemblies Thereof: Iwatsu Electric and Iwatsu America—subassemblies including: common and expansion modules, circuit cards, power supplies, and stations, are not within the scope of the order—9/26/91.

Requests Withdrawn

Country: Republic of Korea.

A–580–605: Color Picture Tubes: Penn-Ray Sutra Corp.—video game displays—effective 7/21/91.

Country: Japan.

A–588–015: Television Receiving Sets, Monochrome and Color: NEC—Subassemblies: W5A–1 (HE), W4A–1 (HE), W3A–1 (HE), W5A–1, and W4A–1—5/17/91.

Pending Scope Inquiries as of September 30, 1991

Country: Federal Republic of Germany.

A–428–801: Antifriction Bearings: FAG Kugelfischer George Schaefer KGaA—certain "needle roller" bearings.

GMN—bearings for use in machine tool spindles.

Sachs Automotive Products—clutch releasers.

Country: USSR.

A–461–008: Titanium Sponge: Hi-Temp Specialty Metals, Inc.—compacted (or compressed) titanium scrap fines.

Country: Italy.

A–475–703: Granular Polytetrafluroethylene (PTFE) Resin: E.I. DuPont de Nemours & Company, Inc—granular PTFE raw polymer.

A–475–801: Antifriction Bearings: Meter S.p.A.—"chain sheaves" (forklift truck mast components).

Wolf D. Barth Co., Inc., and SKF Component System Co.—7/32" chrome steel balls.

Country: Singapore.

A–559–801: Antifriction Bearings: SKF—loose ball rollers used in textile drafting machinery (top rollers).

C–559–802: Antifriction Bearings: SKF—loose ball rollers used in textile drafting machinery (top rollers).

Country: People's Republic of China.

A–570–003: Cotton Shop Towels: Win-Tex Products, Inc.—towels assembled in Honduras.

A–570–504: Petroleum Wax Candles: San Francisco Candle Company—Moonlite and Candylite candles.

Country: Korea.

A–580–008: Color Television Receivers: Granada Hospital Group—Spectrum C–10 Interactive Receiver.

A–580–803: Certain Small Business Telephone Systems and Subassemblies Thereof: Cord Electronics, Inc.—Digital Display Set telephone set (DDS).

Country: Japan.

A–588–007: Certain High Capacity Pagers: Motorola—components and subassemblies.

A–588–014: Tuners: Nichimen America Inc.—Sanshin compact direct broadcast satellite (DBS) tuners.

A–588–015: Television Receiving Sets, Monochrome and Color: Sharp—LCD TV/VCR model VC–V542U.

Casio Computer Co., Ltd., Casio, Inc., Citizen Watch Co., Ltd., Hitachi, Ltd., Hitachi Sales Corporation of America, Hitachi Sales Corporation of Hawaii, Inc., Matsushita Electric Industrial Co., Ltd., Matsushita Electric Corporation of America, NEC Corporation, NEC Home Electronics (U.S.A.), Inc., Seiko Epson Corporation, Toshiba Corporation, and Toshiba America, Inc.—certain hand-held liquid crystal display televisions (Casio Computer Co., Ltd. models TV–400T, TV–500, TV–1400, TV–3100, TV–8500; Citizens Watch Co., Ltd. models 06TA, 08TA, TB20, TA80, TC50, TC53, DD–T126, DD–P226, TC52; Matsushita Electric Industrial Co., Inc. models CT–301E/302B, CT–311E/312B; and Seiko Epson Corporation models LVD–602, LVD–702, LVD–802) and all other LCD TVs under 6" in screen size imported into the United States.

A–588–087: Portable Electric Typewriters: Smith Corona Corporation—anti-circumvention inquiry to determine whether Brother Industries, Ltd. and Brother Industries (USA), Inc., by importing parts and components from Japan, and assembling them into finished portable electric typewriters for sale in the U.S., is circumventing the order—preliminary negative determination 9/6/91.

Nakajima, Canon, and Smith Corona—portable electric typewriters with computer interface.

A–588–504: Erasable Programmable Read Only Memories: Intel Corporation, Advanced Micro Devices, Inc., and National Semiconductor Corporation—flash memory EPROM.

A–588–806: Electrolytic Manganese Dioxide: Sumitomo—High-grade chemical manganese dioxide (CMD–U).

A–588–809: Certain Small Business Telephone Systems and Subassemblies Thereof: Kyushu Matsushita Electric Co., Ltd.—KME

336, certain subassemblies, and accessories.

A–588–810: Mechanical Transfer Presses: Aida Engineering—spare and replacement parts.

Customs—destack sheet feeder.

A–588–815: Gray Portland Cement and Cement Clinker: Onoda Cement Co., Ltd.—Classes G and H of oil well cement.

A–588–817: High Information Content Flat Panel Displays: Sharp—Sharp model QA–1000 computer projection panel.

A–588–818: Personnel Word Processors: Fujitsu—Fujitsu model OASYS–30AX–W Japanese language word processor.

A–100–001: Antifriction Bearings—General Issues: Customs—ceramic bearings.

Interested parties are invited to comment on the accuracy of the list of pending scope clarification requests. Any comments should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

Dated: November 1, 1991.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 91–27032 Filed 11–7–91; 8:45 am]

BILLING CODE 3510–DS–M

National Institute of Standards and Technology

Computer System Security and Privacy Advisory Board; Meeting

AGENCY: Natonal Institute of Standards and Technology, Commerce.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the Computer Systems Security and Privacy Advisory Board will meet Tuesday, December 10, 1991, and Wednesday, December 11, 1991, from 9 a.m. to 5 p.m. The Advisory Board was established by the Computer Security Act of 1987 (Pub. L. 100–235) to advise the Secretary of Commerce and the Director of NIST on security and privacy issues pertaining to Federal computer systems. All sessions will be open to the public.

DATES: The meetings will be held on December 10 and 11, 1991, from 9 a.m. to 5 p.m.

ADDRESSES: The meetings will take place at the Marroitt Hotel, 620 Perry Parkway, Gaithersburg, MD 20877. Please contact the individual in the "for further information" section to obtain specific building and conference room assignment. Inquiries regarding the Board meeting should not be directed to the conference facility.

Agenda:

—Welcome
—Digital Signature Briefing
—NIST/NSA/OMB Visit Update
—Information Security Foundation Update
—FIPS 140–1 Draft Briefing
—Pending Board Issues
—Public Participation
—Wrap-up

PUBLIC PARTICIPATION: The Board agenda will include a period of time, not to exceed thirty minutes, for oral comments and questions from the public. Each speaker will be limited to five minutes. Members of the public who are interested in speaking are asked to contact the Board Secretary at the telephone number indicated below. In addition, written statements are invited and may be submitted to the Board at any time. Written statements should be directed to the Computer Systems Security and Privacy Advisory Board, National Computer Systems, Laboratory, Building 225, room B154, National Institute of Standards and Technology, Gaithersburg, MD 20899. It would be appreciated if fifteen copies of written material could be submitted for distribution to the Board by November 29, 1991. Approximately fifteen seats will be available for the public, including three seats reserved for the media. Seats will be available on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Mr. Lynn McNulty, Associate Director for Computer Security, National Computer Systems Laboratory, National Institute of Standards and Technology, Building 225, room B154, Gaithersburg, MD 20899, telephone (301) 975–3240.

Dated: November 4, 1991.

John W. Lyons,

Director.

[FR Doc. 91–27003 Filed 11–7–91; 8:45 am]

BILLING CODE 3510–CN–M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: December 9, 1991.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: On August 30, September 6 and 20, 1991, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (56 FR 42985, 44077 and 47743) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to produce the commodities and provide the services at a fair market price and impact of the addition on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities and services listed.

c. The actions will result in authorizing small entities to produce the commodities and provide the services procured by the Government.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Line, Multi-Loop

1670–01–064–4453

Bag, Waterproof

4240–00–803–5839

Spacer, Sleeve

5365–01–138–6660

Services

Food Service Attendant, Naval Security Group Activity, Homestead Air Force Base, Florida

Janitorial/Custodial, Buildings 928, 1002 and 1029, Kirtland Air Force Base, New Mexico

This action does not affect contracts awarded prior to the effective date of

this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 91-27004 Filed 11-7-91; 8:45 am]

BILLING CODE 6820-33-M

Procurement List; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: December 9, 1991.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities nd services listed below from nonprofit agencies employing persons who are blind or have severe disabilities.

It is proposed to add the following commodities and services to the Procurement List:

Commodities

Reeling Machine

3895-00-498-8343

Cleaning Compound, Windshield

6850-00-926-2275 (Requirements for Palmetto, GA; Fort Worth, TX; and Belle Mead, NJ depots only)

Cassette, Mailing Container

8115-00-NSH-0151 (Requirements for Library of Congress)

Coveralls, Men's

8405-00-037-9184
8405-00-037-9234
8405-00-037-9274
8405-00-037-9280
8405-00-037-9281
8405-01-173-7438
8405-01-173-7439
8405-01-173-7440

Services

Embroidery of Name and Service Tapes, U.S. Marine Corps, Arlington, Virginia

Janitorial/Custodial, Food and Drug Administration, 240 Hennepin Avenue, South, Minneapolis, Minnesota

Janitorial/Grounds Maintenance, U.S. Department of Agriculture, Coshocton, Ohio.

Beverly L. Milkman,

Executive Director.

[FR Doc. 91-27005 Filed 11-7-91; 8:45 am]

BILLING CODE 6820-33-M

COMMODITY FUTURES TRADING COMMISSION

Chicago Mercantile Exchange Proposed Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures and futures option contracts.

SUMMARY: The Chicago Mercantile Exchange (CME or Exchange) has applied for designation as a contract market in the Standard and Poor's (S&P) MidCap 400 Stock Price Index futures and as a contract market in the S&P MidCap 400 Stock Price Index futures options. The Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before December 9, 1991.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the CME S&P MidCap 400 Stock Price Index futures or futures option contract.

FOR FURTHER INFORMATION CONTACT: Please contact Stephen Sherrod of the Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, telephone 202-254-7227.

SUPPLEMENTARY INFORMATION: The CME originally applied for designation as a contract market in the MidMarket 200 Stock Price Index futures and as a contract market in options on that futures contract in September 1991. Those applications were published for comment in the **Federal Register** on September 27, 1991 (56 FR 49177). In a subsequent amendment, the CME indicated that the proposed S&P MidCap 400 Stock Price Index futures and option contracts supersede the MidMarket 200 Stock Price Index futures and option contracts in those applications. In view of this substantive change to the original applications, the Director of the Division believes that an additional opportunity for public comment on the proposals of the CME is warranted.

Copies of the terms and conditions of the proposed amended contracts will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254-6314.

Other materials submitted by the CME in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552 (1987)) and the Commission's regulations thereunder (17 CFR part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the terms and conditions of the proposed futures and option contracts, or with respect to other materials submitted by the CME in support of the applications, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581 by the specified date.

Issued in Washington, DC, on November 4, 1991.

Gerald Gay,

Director.

[FR Doc. 91-26993 Filed 11-7-91; 8:45 am]

BILLING CODE 6351-01-M

ENDANGERED SPECIES COMMITTEE

Meeting

AGENCY: Endangered Species Committee.

ACTION: Notice of meeting.

DATE AND ADDRESS: The Endangered Species Committee will meet on Tuesday, November 19, 1991 at 11 a.m. in room 5160, Department of the Interior, 1849 C Street, NW., Washington, DC 20240.

SUMMARY: The Secretary of the Interior and Chairman of the Endangered Species Committee will hold an organizational meeting of the Endangered Species Committee on Tuesday, November 19, 1991 at 11 a.m. in room 5160, Department of the Interior, 1849 C Street, NW., Washington, DC 20240. The meeting is necessary because the Secretary has determined that the Bureau of Land Management's exemption application meets the threshold requirements of section 7(g)(3) of the Endangered Species Act. As a result, the Committee will consider the Bureau of Land Management's request for an exemption from section 7 of the Endangered Species Act that would permit the Bureau to hold timber sales on 44 tracts remaining in its 1991 timber sales program in Oregon. The topics to be considered at the meeting are the exemption consideration process and other organizational matters. The merits of the Bureau of Land Management's exemption application will not be addressed. The meeting will be open to the public.

FOR FURTHER INFORMATION CONTACT: Jon H. Goldstein, (202) 208–4077, FTS: 268–4077.

SUPPLEMENTARY INFORMATION: A Notice in the September 25, 1991 **Federal Register**, 56 FR 48546, advised that the Bureau of Land Management filed an application with the Secretary of the Interior seeking an exemption from section 7 of the Endangered Species Act that would permit the Bureau to hold timber sales on 44 tracts remaining in its 1991 timber sales program in Oregon.

A Notice in the October 22, 1991 **Federal Register**, 56 FR 54562, advised that on October 1, 1991, the Secretary of the Interior, who is also the Chairman of the Endangered Species Committee, determined that the threshold requirements concerning the application have been met and that a hearing will be conducted.

The Secretary has designated an administrative law judge to conduct a fact-finding hearing to develop the record from which the Secretary of the Interior will prepare his report to the Committee. A **Federal Register** notice advising of this designation, the date and location of the hearing and other information will be published shortly.

John E. Schrote,

Assistant Secretary-Policy, Management and Budget and Staff to the Chairman, Endangered Species Committee.

[FR Doc. 91–27137 Filed 11–6–91; 2:32 pm]

BILLING CODE 4310–10–M

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board Task Force on Energy Research Priorities; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: Secretary of Energy Advisory Board Task Force on Energy Research Priorities.

Date and Time: Tuesday, November 26, 1991, 8:30 a.m.–4:30 p.m.

Place: U.S. Department of Energy, Room 1E–245, 1000 Independence Avenue, SW, Washington, DC 20585.

Note: To obtain badge at front desk it will be necessary to have a picture I.D. (For example, Driver's License, Passport or Company I.D.) All visitors will be escorted at all times for security reasons.

Contact: Dr. Robert M. Simon, Designated Federal Officer, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–7092.

Purpose: The Secretary of Energy Advisory Board Task Force on Energy Research Priorities has been established to advise the Secretary of Energy on priorities and program balance for the budget for the Office of Energy Research of the Department of Energy.

Tentative Agenda

Tuesday, November 26, 1991—8:30 a.m.–4:30 p.m.

8:30 a.m.—Call to Order and Introductions. Welcoming Remarks.
8:45 a.m.—Review and Discussion of Fusion Energy Advisory Committee Report.
10:30 a.m.—Break.
10:45 a.m.—Review and Discussion of the High Energy Physics Advisory Panel Report.
Noon–1:00 p.m.—Lunch.
1:00–2:00 p.m.—Review and Discussion of Nuclear Science Advisory Committee Report.
2:00–4:00 p.m.—Discussion of Plans for Future Prioritization efforts.
4:00 p.m.—Public Comment.
4:30 p.m.—Adjourn.

Public Participation: The Chairman of the Task Force is empowered to conduct the meeting in a fashion that will, in the Chairman's judgment, facilitate the orderly conduct of business.

Persons wishing to attend the public meeting should provide their names and social security numbers to (202) 586–7092 by November 22 to arrange for visitor passes to the Forrestal Building.

Any member of the public who wishes to make an oral statement pertaining to agenda items should contact the Designated Federal Officer at the address or telephone number listed above. Requests must be received before 3 p.m. (E.D.T.) Friday, November 22, 1991, and reasonable provision will be made to include the presentation during the public comment period. It is requested that oral presenters provide 15 copies of their statements at the time of their presentations.

Written testimony pertaining to agenda items may be submitted prior to the meeting. Written testimony must be received by the Designated Federal Officer at the address shown above before 5 p.m. (E.D.T.) Friday, November 22, 1991, to assure that it is considered by Task Force members during the meeting.

Minutes: A transcript of the meeting will be available for public review and copying approximately 30 days following the meeting at the Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday except Federal holidays.

Issued: Washington, DC, on: November 4, 1991.

Marcia L. Morris,

Deputy Advisory Committee Management Officer.

[FR Doc. 91–27018 Filed 11–7–91; 8:45 am]

BILLING CODE 6450–01–M

Office of Fossil Energy

[FE Docket No. 91–92–NG]

Commonwealth Gas Company, The Brooklyn Union Gas Company, et al.; Application To Transfer Long-term Import Authorization to Commonwealth Gas Company

AGENCY: Office of Fossile Energy, Department of Energy.

ACTION: Notice of application to transfer long-term import authorization to Commonwealth Gas Company.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of an application filed on August 12, 1991, by Brooklyn Union Gas Company, *et al.* (Brooklyn Union), a group of local distribution companies (the Repurchasers) currently holding long-term authorizations to import natural gas from Canada. The application was filed on behalf of Commonwealth Gas Company (Commonwealth) and Boston Gas Company (Boston Gas), and requests the transfer of 4,500 Mcf per day of Boston Gas' import current authority as a Repurchaser to Commonwealth.

The Repurchasers were given final authorization to import 352,100 Mcf per day of Canadian natural gas pursuant to DOE/FE Opinion and Order No. 368 (Order 368), and 368–A (368–A), issued on January 11, 1990, and November 15, 1990, respectively. DOE/FE Opinion and Order No. 368–B, issued January 16, 1991, denied rehearing of Order 368 and 368–A, and DOE/FE Opinion and Order No. 368–C, issued March 18, 1991, granted certain technical amendments to Order 368 in conformance with contract changes.

In the current application, Boston Gas seeks to transfer to Commonwealth 4,500 Mcf per day of its pro rata share of the Brooklyn Union volumes authorized by Orders 368 and 368–A, in FE Docket No. 86–48–NG. The terms of the underlying import arrangement would remain the same. The gas would be supplied by TransCanada Pipelines Limited (TCPL), exported from Canada and sold to Commonwealth by Alberta Northeast Gas, Ltd, (ANE), a Canadian corporation established by the Repurchasers, and transported in the U.S. on the Iroquois Gas Pipeline Transmission System (Iroquois) and the Tennessee Pipeline Gas Company (Tennessee).

The application is filed under section 3 of the Natural Gas Act (NEA) and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed in Washington, DC at the address listed below no later than 4:30 p.m., Eastern time, December 9, 1991.

ADDRESS: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, FE–50, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478.

FOR FURTHER INFORMATION CONTACT:
Thomas Dukes, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–070, FE–53, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9590.
Lot Cooke, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E–042, GC–14, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–0503.

SUPPLEMENTARY INFORMATION: In Brooklyn Union's August 12 filing, it reported several adjustments to the gas import arrangement approved by DOE in Orders 368, 368–A and 368–C. These contract adjustments included among other changes the assignment by Boston Gas of 4,500 Mcf per day of its authorized volumes to Commonwealth. Because Commonwealth is not an existing repurchaser, DOE has determined the requested transfer of authority is outside the scope of Brooklyn Union's current authorization and issuance of this **Federal Register** notice and opportunity for public comment is necessary in order to make a public interest determination under section 3 of (NGA).

The import authorization transfer request does not involve any change to the substantive terms and conditions of the underlying Brooklyn Union import arrangement. The application states, "there would be no change in the scope of the ANE project, the total volume of gas to be imported, the dates of commencement or completion of the project, the source and security of the gas supply, the price and other terms of the transaction, or the proven need for the supply." The application notes the proposed gas sales agreement between ANE and Commonwealth is identical to the ones between ANE and Boston Gas and the other Repurchasers. In addition, the application indicates the volumes would be transported to Commonwealth by Iroquois and Tennessee utilizing capacity previously associated with transportation of those same volumes to Boston Gas.

On November 1, 1991, Brooklyn Union filed a letter with FE requesting expedited treatment of the application to transfer import authority. Brooklyn Union stated that Commonwealth has contracted to begin taking the ANE volumes as of December 1, 1991, and, since no notice had been issued as of the date of the letter, a 30-day notice period would preclude issuance of the authorization in time to permit deliveries of natural gas on December 1st. Brooklyn Union requested that the authorization be issued immediately under § 590.405 of DOE's Rules and Regulations, or, in the alternative, that the notice be issued with a shortened notice period. Brooklyn Union has not provided DOE with sufficient reasons to grant the expedited treatment and therefore Brooklyn Union's request for immediate authorization or a shortened notice period is denied.

The decision on the application to transfer import authority will be made consistent with DOE's natural gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In the case of a long-term arrangement such as this, other matters that will be considered in making a public interest determination include need for the natural gas and security of the long-term supply. In orders 368 and 368-A, DOE determined that the Brooklyn Union import arrangements were competitive, needed, secure, and environmentally acceptable. Inasmuch as Boston Gas' assignment of volumes to Commonwealth does not change the import arrangements, intervenors should limit their comments to the effect that adding Commonwealth would have on the arrangements. The Repurchasers and Commonwealth assert this transfer of import authorization is in the public interest because it is competitive. Parties opposing the import arrangement bear the burden of overcoming this assertion.

NEPA Compliance. The National Environmental Policy Act (NEPA), 42 U.S.C. 4321, *et seq* requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures. In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filling of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the

requirements that are specified by the regulations in 10 CFR Part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If a additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR § 590.316.

A copy of the application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056 at the above address. The docket room is open between the hours of 8 a.m., and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, November 6, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91–27136 Filed 11–7–91; 8:45 am]

BILLING CODE 6450–01–M

Office of Hearings and Appeals

Issuance of Decisions and Orders During the Week of September 16 Through September 20, 1991

During the week of September 16 through September 20, 1991 the decisions and others summarized below were issued with respect to appeals and applications for other relief 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.

Appeal

Harold H. Johnson, 9/20/91, LFA–0141

Harold H. Johnson filed an Appeal from a determination issued by the Director of the Division of Personnel Management of the Bonneville Power Administration (BPA) of the DOE in response to a request for information which Mr. Johnson had submitted under the Freedom of Information Act (FOIA). BPA had withheld the name of the subject-matter expert on a ranking panel for the position of Support Service Manager in BPA's Administrative Services. In considering the Appeal, the DOE found that Mr. Johnson's request was identical to part of an earlier request in which the DOE had affirmed BPA's withholding of the requested information. *Harold H. Johnson*, 21 DOE ¶ 80,142 (1991). Because Mr. Johnson presented no new arguments or facts, the DOE summarily reaffirmed its prior determination that the name was properly withheld by BPA under the "determination process" privilege incorporated in Exemption 5 of the FOIA and under FOIA Exemption 6 as a clearly unwarranted invasion of personal privacy. Accordingly, the Appeal filed by Mr. Johnson was denied.

Refund Application

Colowyo Coal Company, 9/17/91, RF272–09955, RD272–09955

The DOE issued a Decision and Order denying an Application for Refund filed by the Colowyo Coal Company (Colowyo) in the Subpart V crude oil special refund proceeding. An affiliate of the Applicant, Grace Distribution Services, Inc. (Grace Distribution), had received a refund from the Surface Transporters (ST) Escrow pursuant to the M.D.L. No. 378 Stripper Well Settlement Agreement. W.R. Grace & Co., parent company of Grace Distribution, owned 50% of Colowyo through its wholly-owned subsidiary, Gracoal, Inc. Grace Distribution signed a required ST waiver pursuant to which it released all rights, including those of its affiliates, to a Subpart V crude oil refund. Being under the common control of W.R. Grace, Colowyo and Grace Distribution were affiliates, as that term is defined in the Stripper Well Settlement Agreement. Colowyo was thus bound by the Waiver signed by Grace Distribution, and its Application for Refund was accordingly denied. A Motion for Discovery filed by a consortium of States was dismissed as moot.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Atlantic Richfield Co./ G&S Oil Company.	RF304–12359	9/19/91
Atlantic Richfield Co./ Tom's Truck Stop.	RF304–12360	9/19/91
Burrell Construction & Supply Co.	RF272–68915 RD272–68915	9/19/91
City of Stockton, California.	RF272–27729	9/17/91
Evergreen International Aviation.	RF272–68627	9/17/91
Gulf Oil Corporation/ Bill's Holiday Inn Gulf.	RR300–98	9/20/91
Liberty Corporation	RF272–69043 RD272–69043	9/17/91
Smiths Sand & Gravel Co. *et al.*	RF272–58088	9/19/91
Texaco Inc./Gregoire Distribution, Inc. *et al.*	RF321–5252	9/17/91
Texaco Inc./Jeff's Texaco Service *et al.*	RF321–6326	9/17/91
Texaco Inc./Lee Johnson's Texaco *et al.*	RF321–10200	9/18/91
Texaco Inc./Lenny's Texaco Service.	RF321–14910 RF321–16752	9/20/91
Texaco Inc./Mayhall Oil Company, Inc.	RF321–9775	9/18/91
Jr.'s Sure Save	RFR321–12838	
Texaco Inc./Tom's Texaco *et al.*	RF321–1613	9/17/91
Texaco Inc./Vrabic & Sons Texaco #1 *et al.*	RF321–1461	9/20/91
Texaco Inc./White's Breech Inlet Texaco.	RF321–10869	9/20/91
White's Texaco	RF321–16788	

Dismissals

The following submissions were dismissed:

Name	Case No.
A.D.S. Shell	RF315–7794
Bachmayer Brothers	RF321–15843
Bridge Avenue Texaco	RF321–15758
Cookenour's Texaco	RF321–4851
D&D Oil Co., Inc	RF315–7793
Dave's Texaco	RF321–2919
David E. Knox	RF329–9
Edina Texaco	RF321–16401
Gene's Texaco	RF321–4082
George's ARCO	RF304–10933
Grimwood's Texaco	RF321–2885
Interstate Texaco	RF321–2084
Lammers Oil Co	RF321–1661
Lowell's Texaco	RF321–5970
Neighborhood Texaco	RF321–401
R.C. Scallions Texaco	RF321–4175
Roach Gas Co., Inc	RF307–10165
Short Stop Convenience Stores	RF321–4078
Short Stop Convenience Stores	RF321–4077

Name	Case No.
Short Stop Convenience Stores	RF321-4076
Silver Springs Motor Service	RF321-6030
Swede's Square ARCO	RF304-12043
Tony's Texaco	RF321-4134
Tradewinds West Texaco	RF321-1421
Watson's Texaco #2	RF321-1481

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: November 1, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 91-27016 Filed 11-7-91; 8:45 am]

BILLING CODE 6450-01-M

Determination of Excess Petroleum Violation Escrow Funds for Fiscal Year 1992

AGENCY: Office of Hearings and Appeals, U.S. Department of Energy.

ACTION: Notice of Determination of Excess Monies Pursuant to the Petroleum Overcharge Distribution and Restitution Act of 1986.

SUMMARY: The Petroleum Overcharge Distribution and Restitution Act of 1986 requires the Secretary of Energy to determine annually the amount of oil overcharge funds held in escrow that is in excess of the amount needed to make restitution to injured parties. Notice is hereby given that $22,970,755 of the amounts currently in escrow is determined to be excess funds for fiscal year 1992. Pursuant to the statutory directive, these funds will be made available to state governments for use in specified energy conservation programs.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director; Roger Klurfeld, Assistant Director; Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. (202) 586-2094 [Mann]; (202) 586-2383 [Klurfeld].

SUPPLEMENTARY INFORMATION: The Petroleum Overcharge Distribution and Restitution Act of 1986 (hereinafter PODRA), contained in title III of the Omnibus Budget Reconciliation Act of 1986, Public Law No. 99-509, establishes certain procedures for the disbursement of funds collected by the Department of Energy (hereinafter DOE) pursuant to the Emergency Petroleum Allocation Act of 1973 (hereinafter EPAA) or the Economic Stabilization Act of 1970 (hereinafter ESA). These funds, commonly referred to as oil overcharge funds, are monies obtained through enforcement actions instituted to remedy actual or alleged violations of those Acts.

PODRA requires the DOE, through the Office of Hearings and Appeals (hereinafter OHA), to conduct proceedings under 10 CFR part 205, subpart V, to accept claims for restitution from the public and to refund oil overcharge monies to persons injured by violations of the EPAA or the ESA. In addition, PODRA requires the Secretary of Energy to determine annually the amount of oil overcharge funds that will not be required for restitution to injured parties in these refund proceedings and to make this excess available to state governments for use in four energy conservation programs. This determination must be published in the **Federal Register** within 45 days after the beginning of each fiscal year. The Secretary has delegated this responsibility to the OHA Director.

Notice is hereby given that based on the best currently available information, $22,970,755 is in excess of the amount that is needed to make restitution to injured parties.

To arrive at that figure, the OHA has reviewed all accounts in which monies covered by PODRA are deposited. PODRA generally covers all funds now in DOE escrow which are derived from alleged violations of the EPAA or the ESA, with certain exclusions. Excluded are funds which (1) have been identified for indirect restitution in orders issued prior to enactment of PODRA; (2) have been identified for direct restitution in a judicial or administrative order; or (3) are attributable to alleged violations of regulations governing the pricing of crude oil and subject to the settlement agreement in *In re The Department of Energy Stripper Well Exemption Litigation*, M.D.L. No 378 (D. Kan., July 7, 1986). As of September 30, 1991, the total in escrow subject to the PODRA procedures was $265,471,363.

The OHA has employed the following methodology to determine the amount of excess funds. We took special account of the provision of PODRA which directs that "primary consideration [be given] to assuring that at all times sufficient funds (including a reasonable reserve) are set aside for making [direct] restitution." Thus, in proceedings in which refund claims are pending, we have on a claim-by-claim basis examined pending claims and established reserves sufficient to pay the entire amount of these claims. The reserves also include all refunds ordered by the OHA since the end of the last fiscal year on September 30, 1991, but not yet paid. For proceedings in which all claims have been considered or in which no claims have been filed, and the deadline for filing claims has passed, all funds remaining are excess. Small amounts of interest accrued, until transfer, or funds in accounts that were closed (with a zero balance) in the fiscal year 1991 PODRA determination (55 FR 46986 (1990)) are included as part of the "excess" for fiscal year 1992. Finally, a relatively small amount of oil overcharge funds is currently subject to the control of the Department's Economic Regulatory Administration, which finds in its accompanying determination, as it has found in the past, that none of those funds are currently excess. No "other commitments" are reflected in the reserves.

As indicated above, the total escrow account equity subject to PODRA is $265,471,363. The total amount needed as reserves for direct restitution in those cases is $242,500,608. When this figure is subtracted from the former, the remainder—$22,970,755—is the amount is fiscal year 1992 that is "in excess" of the amount that will be needed to make restitution to injured persons. Appendix A set forth for each refund case within the OHA's jurisdiction the total amount eligible for distribution under PODRA and the "excess" amount. Appendix B reflects information supplied by the Economic Regulatory Administration regarding cases subject to PODRA under its jurisdiction.

Accordingly, $22,970,755 will be transferred to a separate account within the United States Treasury and made available to the States for use in the four designated energy conservation programs in the manner prescribed by PODRA.

Dated: November 4, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

Appendix A: Excess Funds Available Under PODRA in Fiscal Year 1992

Case name	Case No.	Consent Order No.	Equity as of Sept. 30, 1991	Excess funds available under PODRA
Enron Corporation	HEF-0116	730V00221Z	$44,454,565	$5,000,000
Thomas P. Reidy, Inc.	KEF-0137	720H06015Z	6,474,511	4,500,000
Witco Chemical Corporation	HEF-0227	240S00054Z	4,175,179	3,500,000
Exxon Corporation	KEF-0087	REXL00201Z	6,865,163	3,000,000
Aminoil, U.S.A., Inc	HEF-0007	740V01259Y	5,108,690	2,000,000
Northeast Petroleum Industries	HEF-0580	6C0X00241Z	1,735,474	1,690,466
Fletcher Oil & Refining Company	LEF-0010	960S00100Z	806,769	600,000
Mobil Oil Corporation	HEF-0508	RMOA0001Z	830,632	504,427
EDG, Inc	KEF-0003	930S00173Z	1,284,599	450,000
Pester Marketing Company	KEF-0134	730S011236Z	385,965	300,000
Macmillan Ring-Free Oil Co	HEF-0506	960S00053Z	290,527	290,527
Placid Oil Company	KEF-0007	6D0S00005Z	183,668	183,668
Metropolitan Petroleum Co, Inc	LEF-0032	412H00171Z	662,958	165,740
Point Landing, Inc	HEF-0152	640H00175Z	161,540	161,540
Gasoline Marketers of America	KEF-0138	320H00318Z	91,961	91,961
Product Tracking—PODRA	N/A	999DOE005W	89,029	89,029
Butler Fuel Corporation	KEF-0094	110E00421Z	68,950	68,950
Petrolane-Lomita Gasoline Co	HEF-0269	940V00195Z	66,551	66,551
West Coast Oil Company	KEF-0142	961S00028Z	80,518	60,000
McClure Oil Company	KEF-0009	660E00083Z	55,808	55,808
Suburban Propane Gas Corp	KEF-0038	733V02010Z	53,619	53,619
South Hampton Refining	HEF-0222	6E0S00002Z	35,599	35,599
John R. Adams	LEF-0020	660H00060Z	85,219	21,305
Elias Oil Company	KEF-0022	412H00105Z	55,862	20,000
Crown Central Petroleum Corp	KEF-0044	RCWA00000Z	55,311	15,000
Starks Shell Service	LEF-0034	999K90065Z	33,151	8,288
Appalachian Flying Service, Inc	HEF-0028	432K00435Z	7,126	7,126
Power Test Petroleum Dist	KEF-0042	240H00499Z	5,640	5,640
Dorchester Gas Corporation	HEF-0559	670S00113Z	5,194	5,194
O'Neals Service Center	KEF-0117	999K90056Z	4,891	4,891
Gulf Oil Corporation	DFF-0001	NOOR00007Y	2,982	2,982
Wallace & Wallace Fuel Oil Co	HEF-0190	240H00399Z	2,827	2,827
Gary Energy Corporation	HEF-0245	810V00003Z	2,537	2,537
Northeast Petroleum Industries	HEF-0137	110H00334Z	2,141	2,141
Northeast Petroleum, Inc	HEF-0138	120H00491Z	2,141	2,141
MCO Holdings Inc & MGPC Inc	KEF-0108	831V00016Z	1,622	1,622
Power Pak Co., Inc	HEF-0155	610H10452Z	382	382
World Oil Company	KEF-0005	960S00104Z	250	250
Pedersen Oil, Inc	HEF-0147	000H00418Z	212	212
Amtel, Inc	HEF-0027	720H00552Z	174	174
White Petroleum, Inc	HEF-0196	550H00317Z	157	157
Green Oil, C/O Terry's Propane	LEF-0013	811E00237Z	1	1
Agway, Inc	KEF-0102	RTYA00001Z	853,318	0
Anchor Gasoline Corporation	KEF-0120	740S01247Z	3,949,270	0
AOC Acquisition Corporation	LEF-0003	RCKH016A1Z	10,618,389	0
Atlantic Richfield Company	HEF-0591	RARH00001Z	23,744,862	0
Automatic Comfort Corp	LEF-0005	110H00519A	10,579	0
Beacon Oil Company	HEF-0203	910S00008Z	2,951,345	0
Diamond Industries, Inc	KEF-0130	320H00097Z	374,170	0
Empire Gas Corporation	KEF-0048	720T00521Z	1,381,869	0
Getty Oil Company	HEF-0209	RGEA0001Z	4,924,815	0
Good Hope Refineries, Inc	HEF-0211	150S00154Z	7,602,294	0
Gulf Oil Corp	HEF-0590	RGFA00001Z	20,000,000	0
Indian Wells Oil Company	KEF-0103	710V02002Z	1,519,305	0
Marathon Petroleum Company	KEF-0021	RMNA0001Z	7,690,934	0
Maxwell Oil Co	HEF-0125	000H00425W	13,879	0
Meadows Realty Company	KEF-0133	910S00001Z	1,053,411	0
Murphy Oil Corporation	KEF-0095	RMUH01983Z	3,866,413	0
Oasis Petroleum Corp	LEF-0007	940X00217Z	1,117,810	0
Paul Invests & A.B. Holding Co	LEF-0006	400H00231Z	67,762	0
Quantum Chemical Corporation	LEF-0011	720V01245Z	566,222	0
Quintana Energy Corp. et al	KEF-0131	650X00356Z	1,544,786	0
Reinauer Petroleum Company, Inc	KEF-0110	240H004927	393,538	0
Sauvage Gas Company, Inc	KEF-0024	710H06008Z	246,934	0
Shell Oil Company	KEF-0093	RSHA00001Z	7,186,198	0
Strasburger Enterprises, Inc	LEF-0014	400H00219Z	565,430	0
Tesoro Petroleum Corp	KEF-0128	BUBBBBBBBB	6,281,100	0
Texaco Inc	KEF-0119	RTXE006A1Z	78,257,902	0
True Companies, The	HEF-0557	733V02019Z	273,005	0
United Refining Company	KEF-0132	340S00445Z	4,185,728	0
Total funds subject to PODRA			265,471,363	
Total excess funds in fiscal year 1992				22,970,755

Appendix B

October 22, 1991.

Memorandum for: George B. Breznay, Director, Office of Hearings and Appeals

From: Chandler L. Van Orman, Acting Administrator, Economic Regulatory Administration

Subject: ERA Input for the PODRA Section 3003(c) Report

ERA has reviewed the funds held in escrow as of September 30, 1991, which have not been petitioned under Subpart V. A Subpart V petition is filed with your office following completion of the required payments into an escrow account. Thus, payment into the escrow accounts we examined has not been completed.

The purpose of the review was to identify funds held in escrow in excess of the amounts required to effect restitution to persons or classes of persons in accordance with section 3003(b)(1) of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA). Since the amount of funds which will be available and the extent of claims which will be filed are not known, the funds currently on deposit in these escrow accounts are not excess funds for the purposes of PODRA.

[FR Doc. 91-27017 Filed 11-7-91; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-4028-5]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared October 21, 1991 Through October 25, 1991 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the national Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the office of Federal activities at (202 260-5076.)

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the **Federal Register** dated April 5, 1991 (56 FR 14096).

Draft EISs

ERP No. D-AFS-J65183-UT Rating EC2, East Fork Black Forks Multiple Use Management Project. Implementation, Wasatch-Cache National Forest, Evanston Ranger District, Summit County, UT.

Summary

EPA has environmental concerns regarding potential project impacts to water quality and aquatic life. Additional information should be provided in the final EIS to allow full assessment of potential environmental impacts and specific mitigation methods designed to minimize those impacts.

ERP No. D-FHW-L40177-WA Rating LO, I90 Seattle Added Access Ramp, Construction to and from I-90 between I-5 the west shore of Lake Washington, Funding, City of Seattle, King County, WA.

Summary

EPA had no objections to the proposed action.

ERP No. DS-AFS-J67012-MT Rating EC2, East Boulder Mine Project, Platinum and Palladium Mining, Construction and Operation, Additional Alternative, Plan of Operations Approval and COE section 404 Permit, Gallatin National Forest, Sweet Grass County, MT.

Summary

EPA continues to have environmental concerns but supports Alternative 8 as the environmentally preferable action alternative regarding potential mining impacts to water quality, aquatic habitat, and wildlife.

Final EISs

ERP No. F-AFS-J65154-CO Hatchet Park Timber Sales, Implementation, Arapaho National Forest, Sulphur Ranger District, Grand County, CO.

Summary

EPA's concerns on the draft EIS was addressed in the final. EPA requests expansion analysis of ecosystems-wide impacts for subsequent projects.

ERP No. F-AFS-J65175-MT Price Wise Timber Sale, Implementation, Beaverhead National Forest, Wise River Ranger District, Beaverhead County, MT.

Summary

EPA has no objections to the selected alternative.

ERP No. F-AFS-L67025-ID Beartrack Open Pit Heap Leach Gold Mine Project, Construction and Operation, NPDES Permit and section 404 Permit, Salmon National Forest, Lemhi County, ID.

Summary

EPA continues to have environmental concerns regarding the lack of a final wetlands mitigation plan in the final EIS.

ERP No. F-FHW-E50284-FL Roosevelt Bridge Replacement carrying US 1/FL-5 across the St. Lucie River, South of FL-76 to North of Wright Boulevard, Funding, Coast Guard Permit and COE section 404 Permit, City of Stuart, Martin County, FL.

Summary

EPA has concerns with potential impacts from hazardous waste and noise to residents along the alignment. Waste cleanup plans and mitigation of noise impacts were recommended.

ERP No. FS-FHW-E40108-NC Smith Creek Parkway and Downtown Spur Construction, from NC 133 at Northeast Cape Fear River to US-74/Eastwood Road and US-117/Caste Hayne Road at Smith Creek to 3rd Street, Updated and Additional Information, Funding, Wilmington, New Hanover County, NC.

Summary

EPA recommended the development of a detailed wetland restoration plan which would consider the quality of the wetland types together with some quantification of whether the proposed mitigation areas (sizewise) will actually provide functional equivalency for the unavoidable losses.

Dated: November 5, 1991.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 91-27025 Filed 11-7-91; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-4028-4]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260-5073 or (202) 260-5075. Availability of Environmental Impact Statements Filed October 28, 1991 Through November 01, 1991 Pursuant to 40 CFR 1506.9.

EIS No. 910390, Draft EIS, VAD, NY, Albany New York Area National Cemetery Development, Construction and Operation, Sites Selection, Town of Florida, Montgomery Co., Town of Saratoga and Town of Waterford Cos; NY; Albany County, NY, Due: December 23, 1991, Contact: Mart Kibena (202) 233-8450.

EIS No. 910391, Final EIS, AFS, CA, Stanislaus National Forest, Land and Resource Management Plan, Implementation, Alpine, Calaveras, Mariposa and Tuolumne Counties, CA, Due: December 09, 1991, Contact: Linda Graham (209) 532-3671.

EIS No. 910392, Draft EIS, COE, CA, Sacramento Metropolitan Area Flood Control Plan, Implementation, Yolo and Sacramento Counties, CA Due: December 23, 1991, Contact: Cynthia Adornetto (916) 557-6738.

EIS No. 910393, Final EIS, BLM, CA, Bishop Resource Area, Resource Management Plan, Implementation,

Bakersfield District, Mono and Inyo Counties, CA, Due: December 09, 1991, Contact: Douglas Dodge (619) 872–4881.

EIS No. 910394, Draft Supplement, AFS, MT, Montanore Mine/Mill Project, Construction and Operation, Additional Information and Modifications, Permit Approval, section 404 Permit, Special Use Permit, Kootenai National Forest, Lincoln and Sanders Counties, MT, Due: December 23, 1991, Contact: Bob Thompson (406) 293–6211.

EIS No. 910395, Draft EIS, AFS, OR, Big Bend Timber Sale and Road Construction Implementation, Umpqua National Forest, North Umpqua Ranger District, Douglas and Lane Counties, OR, Due: December 23, 1991, Contact: Ned H. Davis (503) 496–3532.

EIS No. 910396, Draft EIS, FHW, CA, Eastern Transportation Corridor (ETC), Construction, CA–231 between the Riverside (CA–91) and Santa Ana Freeways (I–5), Funding and section 404 Permit, Orange County, CA, Due: December 30, 1991, Contact: James J. Bednar (916) 551–1310.

EIS No. 910397, Draft EIS, COE, PR, Rio Grande de Arecibo Basin, Flood Control Plan, Implementation, Arecibo River, City of Areciba, PR, Due: December 23, 1991, Contact: Barbara B. Cintron (904) 791–1692.

EIS No. 910398, Draft EIS, COE, TX, Sargent Beach Gulf Intracoastal Waterway (section 216 study) Flood Control Plan and Erosion Protection, Implementation, San Bernard National Wildlife Refuge, Galveston District, Matagorda County, TX, Due: December 23, 1991, Contact: Richard Medina (409) 766–3044.

Dated: November 5, 1991.

William D. Dickerson,

Deputy Director Office of Federal Activities.

[FR Doc. 91–27026 Filed 11–7–91; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4029–1]

Science Advisory Board, Radiation Advisory Committee, Open Meeting

November 21–22, 1991.

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Science Advisory Board's (SAB) Radiation Advisory Committee (RAC) will meet on November 21–22, 1991 at the St. James Hotel, 950 24th St. NW., Washington, DC. The Hotel telephone number is (202) 457–0500. The meeting will begin both days at 9:30 a.m., ending no later than 6 p.m. on November 22. The meeting is open to the public and seating is limited.

The Committee expects to consider approval of two documents. One is the Nonionizing Electric and Magnetic Fields Subcommittee's report on its review of the Office of Research and Development's draft A Research Strategy for Electric and Magnetic Fields: Research Needs and Priorities (EPA/600/9–91/016A). The other is a closure/commentary letter concerning radionuclides in drinking water. The Committee will also hear briefings on various EPA radiation-related activities.

For details concerning this meeting, including a draft agenda, please contact Mrs. Kathleen Conway or Mrs. Dorothy Clark, Science Advisory Board (A–101F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Telephone: (202) 260–6552 and FAX: (202) 260–7118. Members of the public who wish to make a brief oral presentation to the Committee should contact Mrs. Conway no later than Friday, November 15, 1991 in order to be included on the Agenda. Written statements of any length (at least 15 copies) may be provided to Mrs. Conway for distribution to the Committee up until the meeting. The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements.

Dated: November 4, 1991.

Donald G. Barnes,

Director, Science Advisory Board.

[FR Doc. 91–27101 Filed 11–7–91; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–59921; FRL 4003–5]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of 4 such PMN(s) and provides a summary of each.

DATES: Close of review periods:

Y 92–29, November 17, 1991.

Y 92–30, November 18, 1991.

Y 92–31, 92–32, November 19, 1991.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS–799), Office of Toxic Substances, Environmental Protection Agency, rm. E–545, 401 M St., SW., Washington, DC, 20460, (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the TSCA Public Docket Office, NE–G004 at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

Y 92–29

Manufacturer. Brewer Science, Inc.

Chemical. (G) Aromatic polyurea.

Use/Production. (S) Temporary coating. Prod. range: Confidential.

Y 92–30

Manufacturer. Confidential.

Chemical. (S) Butoxyethoxy ethanel; ethylene oxide; propylene oxide; potassium hydroxide.

Use/Production. (S) Defoaming agent. Prod. range: Confidential.

Y 92–31

Manufacturer. Huls America Inc.

Chemical. (G) Dibasic acid glycol polyester.

Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

Y 92–32

Importer. Confidential.

Chemical. (G) Modified polyalkylene terephathalate.

Use/Import. (G) Resin for photocopy toner/developer. Import range: Confidential.

Dated: November 4, 1991.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 91–27028 Filed 11–7–91; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

On Fridays, the Department of Health and Human Services, Office of the Secretary publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following are those information collections recently submitted to OMB.

1. Uniform Relocation and Real Property Acquisition under Federal and Federally Assisted Programs—0990–0150—Extension, no change—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 acquisition and displacement activities sufficient to demonstrate compliance with these regulations. They may also be required to file reports to permit Federal verification of compliance. Respondents: State or local governments, Federal agencies; Project Report: Annual Number of Respondents: 5; Annual Frequency of Response: 1 time; Average Burden per Response: 6 hours; Estimated Annual Burden for Project Report: 30 hours. Project Files: Annual Number of Recordkeepers: 5; Annual Frequency: 10; Average Burden per Response: 30 minutes; Estimated Annual Burden for Project Files: 25 hours. Total annual burden: 55 hours.

OMB Desk Officer: Allison Eydt.

Copies of the information collection packages listed above can be obtained by calling the OS Reports Clearance Officer on (202) 619–0511. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: October 28, 1991.

James F. Trickett,

Deputy Assistant Secretary for Management and Acquisition.

[FR Doc. 91–26533 Filed 11–7–91; 8:45 am]

BILLING CODE 4150–04–M

Health Care Financing Administration

Public Information Collection Requirements Submitted to the Office of Management and Budget for Clearance

AGENCY: Health Care Financing Administration, HHS.

The Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information in compliance with the Paperwork Reduction Act (Pub. L. 96–511). The HCFA has requested expedited review by OMB. In keeping with the requirements for expedited reviews, we are including a copy of the forms and instructions. Comments may be sent to OMB at the address below for seven (7) days after the date of this notice.

Type of Request: New; *Title of Information Collection:* Medicaid Provider Taxes and Donations Programs Applications; *Form Number:* HCFA–840; *Use:* Regulation MB–022–IFC was published in the **Federal Register** on September 12, 1991. The regulation established the amount of Federal Financial Participation that would be available in State Medicaid expenditures, effective January 1, 1992, when the State used donations or revenues from provider-specific taxes as part of the State's share of those expenditures. This form is completed by Medicaid State agencies to request a deferred effective date; *Frequency:* One-time; *Respondents:* State/local governments; *Estimated Number of Responses:* 50; *Average Hours per Response:* 80; *Total Estimated Burden Hours:* 4,000.

Additional Information or Comments: Written comments and recommendations for the proposed information collections should be sent directly to the following address: OMB Reports Management Branch, Attention: Laura Oliven, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: November 1, 1991.

Gail R. Wilfnsky,

Administrator, Health Care Financing Administration.

Supporting Statement, Application for Deferred effective Date Request: Provider Taxes and Donation Programs, HCFA–840

Justification

1. Need and Legal Basis

Section 4701(b)(2) of OBRA '90 precludes Federal Financial Participation (FFP) in State payments to hospitals, nursing facilities, and intermediate care facilities for the mentally retarded for facility expenditures that are attributable provider-specific State taxes. Additionally, HCFA published in the **Federal Register** (September 12, 1991) an interim final regulation (MB–022–IFC) that established the amount of FFP that would be available in State Medicaid expenditures, when the State used donations or revenues from provider-specific taxes as the State share of Medicaid expenditures. In order to avoid hardship in the case of any State that is interested in revising its tax laws or provider donation arrangements to be consistent with the provisions of this rule, we will consider delaying the effective date of the rule in that State for 6 months to enable the State to enact or implement the necessary changes. However, States must complete an application to be considered for selection.

2. Information Uses

The completed application is the vehicle by which HCFA will initiate the process for selecting the States that will receive a deferred effective date. HCFA will review the applications to verify that all necessary assurances, protections and supporting documentation are properly comprised. Failure to collect this information would result in an inability to select participating States.

3. Improved Information Technology

The application has been designed to include all requirements dictated by law in a preprint format to aid the State in completion of the form.

4/5. Duplication/Similar Information

No other entity is collecting this same information. Because section 4701(B)(2) of OBRA '90 officially established that FFP would not be available in State payments to hospitals, nursing facilities, and intermediate care facilities for the mentally retarded for facility expenditures that are attributable provider-specific State taxes, no other collection vehicle currently exists that could be easily modified for this purpose.

6. Small Business

The collection of information does not involve small businesses or entities.

7. Less Frequent Collection

This is a one-time submission and will be used for the selection of States that will receive time to transition out of financing the medicaid program with State laws or provider donation arrangements that violate HCFA regulations effective January 1, 1992.

8. General Collection Guidelines

These requirements comply with all general information collection guidelines in 5 CFR 1320.6.

9. Outside Consultations

In developing this application, HCFA has consulted and discussed this form in detail with other HCFA offices and the Office of the General Counsel.

10. Confidentiality

Confidentiality has been assured in accordance with section 1902(a)(7) of the Social Security Act.

11. Sensitive Questions

There are no questions of a sensitive nature associated with these data collection.

12. Cost Estimates

Federal Costs

The estimated annual cost to the Federal Government is $231. The cost estimate is computed as follows:

Printing	$136
Postage	95
Total	$231

State Costs

The estimated annual cost to the State governments is $40,000. The cost estimate is computed as follows: $10 × 80 hours × 50 respondents = $40,000.

13. Estimate of Burden

The reporting burden is 80 hours per application. Only one response per State is required; therefore, the total burden is 4,000 hours.

14. Change in Burden

There are no changes in burden.

15. Publication and Tabulation Data

There are no plans to publish these data collection for statistical use.

Deferred Effective Date Request: Provider Taxes and Donations Programs

Standard Application Format

1. State: _____
2. Contact Person: _____
3. Phone: _____
4. Summary Description of Current Provider Taxes/Donations Program: _____
5. Summary Description of Proposed Changes:
6. Vehicle for Implementing Changes; e.g., legislation, State regulation, etc.
7. Proposed Changes Concurred in by:
   a. State Budget Office ___ Yes ___ No ___ Undecided
   b. Governor ___ Yes ___ No ___ Undecided
   c. Legislative Committee Chair(s)
   Name of Person _____ ___ Yes ___ No ___ Undecided
   Name of Committee _____ ___ Yes ___ No ___ Undecided
   Name of Person _____ ___ Yes ___ No ___ Undecided
   Name of Committee _____
   State FY: _____
   Next Legislative Session: _____
   Regular _____
   Special _____
8. Anticipated Effective Date of Proposed Changes: _____

HCFA–840 (10/91)

Certification

I hereby apply for a deferment of the effective date for the Federal regulation published on October , 1991, pertaining to Federal matching for donated funds and provider taxes. I also certify that to the best of my knowledge and belief, the information provided is true, correct and a complete statement prepared in accordance with applicable instructions.

_____

(Signed) Single State Agency Director

_____

Date

Attachments

1. Tax Program
2. Donation Program

Attachment I. Tax Program(s) (Complete one attachment for *each* provider tax program within the State)

For purposes of this form, a provider tax is a tax imposed on Health Care Providers, items, or services that is not a tax of general applicability to other businesses and individuals in the State.

1. What was/is the effective date of the tax program? _____
2. Describe the health care providers, services, or items subject to the tax (e.g., all hospitals, all nursing facilities, State owned facilities, physician services, pharmacy goods, durable medical equipment, etc.)
3. Specify the base for the tax; i.e., gross revenues, Medicaid revenues, non-Medicaid revenues, bed fee, surcharge, etc.:
4. Does the tax program contain a "hold harmless" provision, i.e., guarantees that providers will receive sufficient funds back from the State and to restore their tax payments.

Yes ___ No ___ If "yes," please specify the source of this money: i.e., general revenue, special fund, etc.

5. Are the taxes earmarked for or transferred to a special fund or account? Yes ___ No ___ If "yes," please describe.
6. Are the taxes reported as allowable costs for which the provider is reimbursed? Yes ___ No ___ If "yes," please explain.
7. List any type of health care provider or supplier that receives a payment from this tax or from the fund into which the tax receipts are deposited.
8. Estimate the amount of Federal financial participation the State expects to raise through this tax program in: FY 91 _____ and FY 92 _____.
9. (a) What changes does the State propose for bringing this tax program into compliance with section 1903(i)(10) of the Social Security Act (as added by section 4701(b)(2) of the Omnibus Budget Reconciliation Act of 1990) and implementing regulations published on _____?

(b) Describe the proposed changes as they modify the information provided in items 1 through 8 above.

(c) What steps does the State intend to take to accomplish these changes?

10. Our questions may not address all appropriate and important points of the funding process(es). Therefore, please add or attach any other information that you believe complements your explanation.
11. Questions regarding this information should be directed to:

_____

(Name)

_____

(Title)

_____

(Address)

_____

(Phone Number)

Attachment II. Provider Donation Program(s)

(Complete one Attachment II, for *each* separate provider donations program within the State)

1. What was/is the effective date of the donation program? _____
2. Are the donations reported as allowable costs for which the provider is reimbursed? Yes ___ No ___ If "yes," please explain.
3. Does the donation program contain a "hold harmless" provision, i.e. guarantees that providers will receive sufficient funds back from the State to restore donations. Yes ___ No___ If "yes," please specify the source of this money: i.e., general revenue, special fund, etc.:
4. Are the donations earmarked for or transferred to a special fund or account? Yes___ No___ If "yes," please describe.
5. List any type of health care provider or supplier that receives a payment from this program.
6. Estimate the amount of Federal financial participation the State expects to raise through this donation program in: FY 91_____ and FY 92_____
7. (a) What changes does the State propose to eliminate this donation program as required by regulations published on _____?

(b) Describe the proposed changes as they modity the information provided in items 1 through 6 above.

(c) What steps does the State intend to take to accomplish these changes?

8. Our questions may not address all appropriate and important points of the funding process(es). Therefore, please add or attach any other information that you believe complements your explanation.
9. Questions regrading this information should be directed to:

(Name)

(Title)

(Address)

(Phone Number)

Instructions for Completing Application

1. *Definition of Terms in This Application*

For the purpose of completing this form unless the context indicates otherwise, the following definitions will pertain.

Current Program means a donations and/or tax program in effect on the date of the application or expected to be in effect before January 1, 1992.

Donation means any voluntary payment, including, but not limited to, a gift, contribution, presentation or award.

Each Porgram denotes a breaking down of donations or provider taxes programs into individual programs for each provider type and/or differential donations/taxing principles involved.

Health Care Provider includes any Medicaid provider; organization or association of which Medicaid providers are members or which operates on behalf of Medicaid providers; corporation or partnership formed or organized by or on behalf of Medicaid providers; person who has ownership or control interest (as defined in section 1124(a)(3) of Act) in a Medicaid provider; employee, spouse, parent, child, or sibling of an individual described above; or, an individual or entity that is a major customer or supplier of a Medicaid provider.

Proposed Program means the revised donations (including the absence of donations) program which the State is proposing to put into effect before July 1, 1992.

Tax means any mandatory payment imposed by a State or subordinate unit of government, including, but not limited to, assessments, fees, charges or duties.

2. *Supplementary Information*

Copies of any all of the following documents must accompany your response:

State statutes imposing/enacting, or administrative practices authorizing, provider taxes.

State statutes imposing/enacting, or administrative practices authorizing, provider donations.

Published legislative history of such statutes; i.e., committee reports, digests, floor debates, etc.

Any State regulations, rules, or administrative guidelines relating to such tax or donation programs.

All agreements, memoranda of understanding or similar documents between the State and providers relating to such programs.

3. *Completeness of Submission*

Note that Attachments I and II need to be completed for *each* taxes/donations program.

4. *Submission of Application and Questions About Application*

This application should be submitted to the applicable HCFA Regional Administrator as soon as possible, and by January 2, 1992, at the latest.

Questions should be addressed to the applicable HCFA Associate Regional Administrator for Medicaid.

Public reporting burden for this collection of information is estimated to average 80 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to HCFA, Office of Financial Management, P.O. Box 26684, Baltimore, Maryland 21207; and the Office of Management and Budget, Paperwork Reduction Project (0938–), Washington, DC 20503.

[FR Doc. 91–91 Filed 26978–11–91; 8:45 am]

BILLING CODE 4120–03–M

Health Resources and Services Administration

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following National Advisory body scheduled to meet during the months of December 1991 and January 1992.

Name: Departments of Family Medicine Review Committee.

Date and Time: December 5–6, 1991, 8:30 a.m.

Place: Conference Rooms J and K, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Open on December 5, 8:45 a.m.–9:30 a.m.

Closed for Remainder of Meeting.

Purpose: The Departments of Family Medicine Review Committee shall review applications that (1) either assist in meeting the cost of planning, developing and operating; or participating in approved predoctoral training programs in the field of family medicine; and (2) assist in meeting the costs of projects to establish, maintain, or improve academic administrative units (which may be departments, division, or other units) to provide clinical instruction in family medicine.

Agenda: The open portion of the meeting will cover welcome and opening remarks, financial management and legislative implementation updates, and overview of the review process. The meeting will be closed to the public on December 5, at 9:30 a.m. for the remainder of the meeting for the review of grant applications. The closing is in accordance with the provisions set forth in section 552b(c)(6), title 5 U.S.C. Code, and the Determination by the Administrator, Health Resources and Services Administration, pursuant to Public Law 92–463.

* * * * *

Name: Departments of Family Medicine Review Committee.

Date and Time: January 9–10, 1992, 8:30 a.m.

Place: Conference Rooms J and K, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Open on January 9, 8:30 a.m.–9:30 a.m.

Closed for Remainder of Meeting.

Agenda: The open portion of the meeting will cover welcome and opening remarks, financial management and legislative implementation updates, and overview of the review process. The meeting will be closed to the public on January 9 at 9:30 a.m. for the remainder of the meeting for the review of grant applications. The closing is in accordance with the provisions set forth in section 552b(c)(6), title 5 U.S.C. Code, and the Determination by the Administrator, Health Resources and Services Administration, pursuant to Public Law 92–463.

Anyone requiring information regarding the subject Council should contact Mrs. Sherry Whipple, Executive Secretary, Departments of Family Medicine Review Committee, room 4C–18, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–6874.

Agenda Items are subject to change as priorities dictate.

Dated: November 4, 1991.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 91–26989 Filed 11–7–91; 8:45 am]

BILLING CODE 4160–15–M

National Institutes of Health

Consensus Development Conference on Acoustic Neuroma

Notice is hereby given of the NIH Consensus Development Conference on "Acoustic Neuroma" sponsored by the National Institute of Neurological Disorders and Stroke and by the NIH Office of Medical Applications of Research. The conference will be held December 11–13, 1991, in the Masur Auditorium of the Warren Grant Magnuson Clinical Center (Building 10) at the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland, 20892.

An acoustic neuroma is a relatively common brain tumor that can produce serious morbidity, or even death, by compressing vital structures including the cranial nerves and the brain stem. The tumor can be more accurately described as a vestibular Schwannoma that forms within the internal auditory canal at the base of the brain. Acoustic neuromas account for 5 to 10 percent of all intracranial tumors and an estimated 2,000 to 3,000 are diagnosed in the United States annually. Initial symptoms usually consist of hearing loss, tinnitus, and imbalance or disorientation.

In its most common form, acoustic neuroma occurs as a sporadic, isolated event in adults over 40 years of age. Total removal or ablation of such isolated tumors is generally curative although some residual disability such as unilateral deafness, facial weakness, or both is common. In selected cases, useful hearing has been preserved.

Less often acoustic neuromas may develop on both acoustic nerves, in which the implications regarding etiology and management of patient and family are quite different. The occurrence of such tumors are part of a heritable trait known as neurofibromatosis 2. Tumors may form in other areas of the brain and spinal cord as well. When present, characteristic physical signs involving the skin and eye permit critical early diagnosis. The gene responsible for the disorder has been linked to markers on chromosome 22, but routine predictive testing is not yet possible.

The conference will bring together specialists in neurology, neurosurgery, otolaryngology, audiology, radiology, ophthalmology, neuro-oncology, rehabilitation medicine, genetics, epidemiology, cell biology, counseling and other health care professionals as well as representatives of the public.

The goal of the conference is to reach agreement on defining the clinical types of acoustic neuroma, on which procedures are useful for screening and diagnosis, on the options available for managing the disorder as well as the complications of treatment, and on the key clinical and biological areas for future research.

Following one-and-a-half days of presentations and discussion by the audience, an independent consensus panel will weight the scientific evidence and write a draft statement in response to the following key questions:

- What are acoustic neuromas and how are they classified?
- In whom should an acoustic neuroma be suspected and what evaluation is indicated?
- What are the treatment options for people with acoustic neuroma?
- What are possible adverse consequences of treatment and the management options for each?
- What are appropriate areas for future research?

On the final day of the meeting, the consensus panel chairman will read the draft statement to the conference audience and invite comments and questions.

The conference is cosponsored by the National Institute on Deafness and Other Communicative Disorders and the National Cancer Institute.

Information on the program may be obtained from: Conference Registrar, Prospect Associates, 1801 Rockville Pike, suite 500, Rockville, Maryland 20852, (301) 468–6338.

Dated: November 1, 1991.

Bernadine Healy,

Director, NIH.

[FR Doc. 91–26983 Filed 11–7–91; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Meetings of the National Cancer Advisory Board and its Subcommittees

Pursuant to Public Law 92–463, notice is hereby given of the meetings of the National Cancer Advisory Board and its Subcommittees, National Cancer Institute, National Institutes of Health, November 24–26, 1991. Meetings will be held at the times and places listed below. All meetings will be open to the public to discuss issues relating to committee business as indicated in the notice. Attendance by the public will be limited to space available.

The Committee Management Office, National Cancer Institute, Building 31, room 10A06, National Institutes of Health, Bethesda, Maryland 20892, Tel. 301–496–5708, will provide summaries of meetings and rosters of committee members upon request. Other information pertaining to the meetings can be obtained from the indicated Executive Secretary.

Name of Committee: National Cancer Advisory Board.

Executive Secretary: Mrs. Barbara Bynum, Building 31, room 10A03, Bethesda, MD 20892 (301) 496–5147.

Date of Meeting: November 25–26, 1991.

Place of Meeting: November 25—Conference 10, Building 31C, NIH, 9000 Rockville Pike, Bethesda, Maryland 20892.
November 26—Masur Auditorium, Building 10 NIH, 9000 Rockville Pike, Bethesda, Maryland 20892.

November 25, 8 a.m. to recess.
November 26, 8 a.m. to adjournment.

Agenda

November 25: Reports on activities of the President's Cancer panel; the Director's Report on the National Cancer Institute; DCBDC Program Review; DCT Program Review; Cooperative Group Program; Scientific Presentations; and new business.

November 26: 20th Anniversary Symposium commemorating the passage of the National Cancer Act.

Name of Committee: Subcommittee on Planning and Budget.

Executive Secretary: Ms. Judith Whalen, Building 31, room 11A23 Bethesda, MD 20892 (301) 496–5515.

Date of Meeting: November 25, 1991.

Place of Meeting: Conference 10, Building 31C, NIH, 9000 Rockville Pike, Bethesda, Maryland 20892.

Open: 5:15 p.m. to adjournment.

Agenda: Discussion of the NCAB Biannual Report and 1992 Budget.

Name of Committee: Subcommittee on Women's Health and Cancer.

Executive Secretary: Ms. Iris Schneider, Building 31, room 11A48 Bethesda, MD 20982 (301) 496–5534.

Date of Meeting: November 25, 1991.

Place of Meeting: Hyatt Regency Bethesda, Room to be Posted in Hotel Lobby, One Metro Center, Bethesda, MD 20814.

Open: November 25, 8 p.m. to adjournment.

Agenda: Future plans for special activities.

Name of Committee: Subcommittee on Aging and Cancer.

Executive Secretary: Dr. Marvin Kalt, Building 31, room 10A03, Bethesda, MD 20892 (301) 496–4218.

Date of Meeting: November 24, 1991.

Place of Meeting: Hyatt Regency Bethesda, Room to be Posted in Hotel Lobby, One Metro Center, Bethesda, MD 20814.

Open: 8 p.m. to adjournment.

Agenda: Initial organization and charges to the Subcommittee.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control.)

Dated: November 1, 1991.

Raymond Bahor,

Acting Committee Management Officer, NIH.

[FR Doc. 91–26984 Filed 11–7–91; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Meeting (President's Cancer Panel)

Pursuant to Public Law 91–463, notice is hereby given of the meeting of the President's Cancer Panel, National Cancer Institute, December 9, 1991, at the University of Texas, M.D. Anderson Cancer Center, Clark Auditorium, 10th Floor, Clark Clinic Building, 1515 Holcombe Avenue, Houston, TX 77030.

This meeting will be open to the public on December 9, 1991, 1 p.m. to 5 p.m. Attendance will be limited to space available. Agenda items will include reports by the Chairman, President's Cancer Panel, the Director, NCI, members of the staff of the University and M.D. Anderson Cancer Center and other participants.

Dr. Elliott Stonehill, Executive Secretary, President's Cancer Panel, National Cancer Institute, Building 31, room 434, National Institutes of Health, Bethesda, Maryland 20892 (301/496–1148) will provide a roster of the Panel

members and substantive program information upon request.

Dated: November 1, 1991.

Raymond Bahor,

Acting Committee Management Officer, NIH.

[FR Doc. 91-26985 Filed 11-7-91; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-91-1917; FR-2934-N-51]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact James N. Forsberg, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708-4300; TDD number for the hearing- and speech-impaired (202) 708-2565 (these telephone numbers are not toll-free), or call the toll-free title V information line at 1-800-927-7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR Part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88-2503-OG (D.D.C.).

Properties reviewed are listed in this notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A-10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443-2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1-800-927-7588 for detailed instructions or write a letter to James N. Forsberg at the address listed at the beginning of this notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: Corps of Engineers: Bob Swieconek, Army Corps of Engineers, Civilian Facilities, rm. 5138, 20 Massachusetts Ave. NW., Washington, DC 20314-1000; (202) 272-1750; (This is not a toll-free number.)

Dated: November 1, 1991.

Paul Roitman Bardack,

Deputy Assistant Secretary for Economic Development.

Title V, Federal Surplus Property Program Federal Register Report for 11/08/91

Suitable/Available Properties

Buildings (by State)

Alabama

Bldg. TU-43
Millers Ferry Lock and Dam
Route 1, Box 102
Camden Co: Wilcox AL 36726-
Landholding Agency: COE
Property Number: 319011549
Status: Unutilized
Comment: 1,000 sq. ft.; 1 story frame residence; needs minor repair; most recent use—lock tender's dwelling.

Bldgs. TU-21, TU-22, TU-23, TU-24
Selden Lock and Dam
Route 1
Sawyerville Co: Hale AL 36776-
Landholding Agency: COE
Property Numbers: 319011551-319011554
Status: Unutilized
Comment: 1,080 sq. ft.; 1 story frame residence; needs minor repair; most recent use—lock tender's dwelling.

Bldg. TU-15
Coffeeville Lock and Dam
Star Route Box 77
Blandon Springs Co: Choctaw AL 36919-
Landholding Agency: COE
Property Number: 319011556
Status: Unutilized
Comment: 1,547 sq. ft.; 1 story frame residence; most recent use—lock tender's dwelling.

California

Santa Fe Flood Control Basin
Irwindale Co: Los Angeles CA 91706-
Landholding Agency: COE
Property Number: 319011298
Status: Unutilized
Comment: 1,400 sq. ft.; 1 story stucco; needs rehab; termite damage; secured area with alternate access.

Florida

Bldg. CN-3
1651 S. Franklin Lock Road
Alva Co: Lee FL 33920-
Landholding Agency: COE
Property Number: 319130006
Status: Unutilized
Comment: 1,500 sq. ft.; 1 story concrete block residence, off-site use only.

Idaho

Bldg.
Albeni Falls Dam
U.S. Highway 2, Priest River

Bonner Co: Bonner ID 83856–
Location: 3½ miles west of Priest River.
Landholding Agency: COE
Property Number: 319110028
Status: Unutilized
Comment: 2,989 sq. ft.; 3 story log construction with wood frame; off-site removal only; needs rehab.

Kentucky

Green River Lock & Dam #3
Rochester Co: Butler KY 42273–
Location: SR 70 west from Morgantown, KY., approximately 7 miles to site.
Landholding Agency: COE
Property Number: 319010022
Status: Unutilized
Comment: 980 sq. ft.; 2 story wood frame; two story residence; potential utilities; needs major rehab.

Minnesota

Orwell Dam Reservoir
RFD #4, Box 100
Fergus Falls Co: Ottertail MN 56537–
Location: Off highway 210, 12 miles from Fergus Falls.
Landholding Agency: COE
Property Number: 319011039
Status: Unutilized
Comment: 1,040 sq. ft.; frame house; possible asbestos; potential utilities.

Former Yardmaster's Dwelling
Duluth Vessel Yard
900 Minnesota Avenue
Duluth Co: St. Louis MN 55802–
Landholding Agency: COE
Property Number: 319011042
Status: Unutilized
Comment: 1,568 sq. ft.; 2 story wood frame residence; potential utilities; minor rehab.

Nebraska

Concession Stand
Former Niobrara State Park Bldg.
Lewis and Clark Lake, NE Co: Knox NE 68760–
Location: North side of Hwy 12, one mile west of the Village of Niobrara.
Landholding Agency: COE
Property Number: 319120004
Status: Unutilized
Comment: 756 sq. ft., 1 story wood frame, off-site removal only, needs rehab, possible water damage.

Barracks Bldg.
Former Niobrara State Park Bldg.
Lewis and Clark Lake, NE
Co: Knox NE 68760–
Location: North side of Hwy. 12, one mile west of the Village of Niobrara.
Landholding Agency: COE
Property Number: 319120005
Status: Unutilized
Comment: 1,080 sq. ft., 1 story wood frame, needs rehab, possible water damage, off-site removal only.

Dining Hall
Former Niobrara State Park Bldg.
Lewis and Clark Lake, NE Co: Knox NE 68760
Landholding Agency: COE
Property Number: 319120006
Status: Unutilized
Comment: 1,700 sq. ft., 1 story wood frame, needs rehab, possible water damage, off-site removal only.

New Mexico

Bldg. 3W
Conchas Lake Project
(See County) Co: San Miquel NM 88416–
Landholding Agency: COE
Property Number: 319011507
Status: Underutilized
Comment: 1,000 sq. ft.; 1 story adobe residence; intermittently occupied.

Ohio

Barker Historic House
Willow Island Locks and Dam
Newport Co: Washington OH 45768–9801
Location: Located at lock site, downstream of lock and dam structure.
Landholding Agency: COE
Property Number: 319120018
Status: Unutilized
Comment: 1,600 sq. ft. bldg. with ½ acre of land, 2 story brick frame, needs rehab, on Natl Register of Historic Places, no utilities, secured area with alternate access.

South Carolina

Bldgs. 1–5
J. S. Thurmond Dam and Reservoir
Clarks Hill Co: McCormick SC 29821–
Location: ½ mile east of Resource Managers Office.
Landholding Agency: COE
Property Numbers: 319011544–319011548
Status: Excess
Comment: 1,900 sq. ft. each; 1 story masonry frame; possible asbestos; most recent use—storage.

Wisconsin

Former Lockmaster's Dwelling
Cedar Locks
4527 East Wisconsin Road
Appleton Co: Outagamie WI 54911–
Landholding Agency: COE
Property Number: 319011524
Status: Unutilized
Comment: 1,224 sq. ft.; 2 story brick/wood frame residence; needs rehab; secured area with alternate access.

Former Lockmaster's Dwelling
Appleton 4th Lock
905 South Lowe Street
Appleton Co: Outagamie WI 54911–
Landholding Agency: COE
Property Number: 319011525
Status: Unutilized
Comment: 908 sq. ft.; 2 story wood frame residence; needs rehab.

Former Lockmaster's Dwelling
Kaukauna 1st Lock
301 Canal Street
Kaukauna Co: Outagamie WI 54131–
Landholding Agency: COE
Property Number: 319011527
Status: Unutilized
Comment: 1,290 sq. ft.; 2 story wood frame residence; needs rehab; secured area with alternate access.

Former Lockmaster's Dwelling
Appleton 1st Lock
905 South Oneida Street
Appleton Co: Outagamie WI 54911–
Landholding Agency: COE
Property Number: 319011531
Status: Unutilized
Comment: 1,300 sq. ft.; potential utilities; 2 story wood frame residence; needs rehab; secured area with alternate access.

Former Lockmaster's Dwelling
Rapid Croche Lock
Lock Road
Wrightstown Co: Outagamie WI 54180–
Location: 3 miles southwest of intersection State Highway 96 and Canal Road.
Landholding Agency: COE
Property Number: 319011533
Status: Unutilized
Comment: 1,952 sq. ft.; 2 story wood frame residence; potential utilities; needs rehab.

Former Lockmaster's Dwelling
Little KauKauna Lock
Little KauKauna
Lawrence Co: Brown WI 54130–
Location: 2 miles southeasterly from intersection of Lost Dauphin Road (County Trunk Highway "D") and River Street.
Landholding Agency: COE
Property Number: 319011535
Status: Unutilized
Comment: 1,224 sq. ft.; 2 story brick/wood frame residence; needs rehab.

Former Lockmaster's Dwelling
Little Chute, 2nd Lock
214 Mill Street
Little Chute Co: Outagamie WI 54140–
Landholding Agency: COE
Property Number: 319011536
Status: Unutilized
Comment: 1,224 sq. ft.; 2 story brick/wood frame residence; potential utilities; needs rehab; secured area with alternate access.

Land (by State)

Arkansas

Parcel 01
DeGray Lake
Section 12
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 319010071
Status: Unutilized
Comment: 77.6 acres.

Parcel 02
DeGray Lake
Section 13
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 319010072
Status: Unutilized
Comment: 198.5 acres.

Parcel 03
DeGray Lake
Section 18
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 319010073
Status: Unutilized
Comment: 50.46 acres.

Parcel 04
DeGray Lake
Section 24, 25, 30 and 31
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 319010074
Status: Unutilized
Comment: 236.37 acres.

Parcel 05
DeGray Lake
Section 16
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 319010075

Status: Unutilized
Comment: 187.30 acres.

Parcel 06
DeGray Lake
Section 13
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 319010076
Status: Unutilized
Comment: 13.0 acres.

Parcel 07
DeGray Lake
Section 34
Arkadelphia Co: Hot Springs AR 71923–9361
Landholding Agency: COE
Property Number: 319010077
Status: Unutilized
Comment: 0.27 acres.

Parcel 08
DeGray Lake
Section 13
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 319010078
Status: Unutilized
Comment: 14.6 acres.

Parcel 09
DeGray Lake
Section 12
Arkadelphia Co: Hot Springs AR 71923–9361
Landholding Agency: COE
Property Number: 319010079
Status: Unutilized
Comment: 6.60 acres.

Parcel 10
DeGray Lake
Section 12
Arkadelphia Co: Hot Springs AR 71923–9361
Landholding Agency: COE
Property Number: 319010080
Status: Unutilized
Comment: 4.5 acres.

Parcel 11
DeGray Lake
Section 19
Arkadelphia Co: Hot Springs AR 71923–9361
Landholding Agency: COE
Property Number: 319010081
Status: Unutilized
Comment: 19.50 acres.

Lake Greeson
Section 7, 8 and 18
Murfreesboro Co: Pike AR 71958–9720
Landholding Agency: COE
Property Number: 319010083
Status: Unutilized
Comment: 46 acres.

California

Lake Mendocino
1160 Lake Mendocino Drive
Ukiah Co: Mendocino CA 95482–9404
Landholding Agency: COE
Property Number: 319011015
Status: Unutilized
Comment: 20 acres; steep, dense brush; potential utilities.

New Hogan Lake
2713 Hogan Dam Road
Valley Springs Co: Calaveras CA 95252–0128
Landholding Agency: COE
Property Number: 319011017
Status: Unutilized
Comment: 3.08 acres; potential utilities; brush covered.

Kansas

Parcel 1
El Dorado Lake
Section 13, 24, and 18
(See County) Co: Butler KS
Landholding Agency: COE
Property Number: 319010064
Status: Unutilized
Comment: 61 acres; most recent use—recreation.

Kentucky

Tract 2625
Barkley Lake, Kentucky, and Tennessee
Cadiz Co: Trigg KY 42211–
Location: Adjoining the village of Rockcastle.
Landholding Agency: COE
Property Number: 319010025
Status: Excess
Comment: 2.57 acres; rolling and wooded.

Tract 2709–10 and 2710–2
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211–
Location: 2½ miles in a southerly direction from the village of Rockcastle.
Landholding Agency: COE
Property Number: 319010026
Status: Excess
Comment: 2.00 acres; steep and wooded.

Tract 2708–1 and 2709–1
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211–
Location: 2½ miles in a southerly direction from the village of Rockcastle.
Landholding Agency: COE
Property Number: 319010027
Status: Excess
Comment: 3.59 acres; rolling and wooded; no utilities.

Tract 2800
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211–
Location: 4½ miles in a southeasterly direction from the village of Rockcastle.
Landholding Agency: COE
Property Number: 319010028
Status: Excess
Comment: 5.44 acres; steep and wooded.

Tract 2915
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211–
Location: 6½ miles west of Cadiz.
Landholding Agency: COE
Property Number: 319010029
Status: Excess
Comment: 5.76 acres; steep and wooded; no utilities.

Tract 2702
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211–
Location: 1 mile in a southerly direction from the village of Rockcastle.
Landholding Agency: COE
Property Number: 319010031
Status: Excess
Comment: 4.90 acres; wooded; no utilities.

Tract 4318
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: Trigg Co. adjoining the city of Canton, KY. on the waters of Hopson Creek.
Landholding Agency: COE
Property Number: 319010032
Status: Excess
Comment: 8.24 acres; steep and wooded.

Tract 4502
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: 3½ miles in a southerly direction from Canton, KY.
Landholding Agency: COE
Property Number: 319010033
Status: Excess
Comment: 4.26 acres; steep and wooded.

Tract 4611
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: 5 miles south of Canton, KY.
Landholding Agency: COE
Property Number: 319010034
Status: Excess
Comment: 10.51 acres; steep and wooded; no utilities.

Tract 4619
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: 4½ miles south from Canton, KY.
Landholding Agency: COE
Property Number: 319010035
Status: Excess
Comment: 2.02 acres; steep and wooded; no utilities.

Tract 4817
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: 6½ miles south of Canton, KY.
Landholding Agency: COE
Property Number: 319010036
Status: Excess
Comment: 1.75 acres; wooded.

Tract 1217
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: On the north side of the Illinois Central Railroad.
Landholding Agency: COE
Property Number: 319010042
Status: Excess
Comment: 5.80 acres; steep and wooded.

Tract 1906
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: Approximately 4 miles east of Eddyville, KY.
Landholding Agency: COE
Property Number: 319010044
Status: Excess
Comment: 25.86 acres; rolling steep and partially wooded; no utilities.

Tract 1907
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42038–
Location: On the waters of Pilfen Creek, 4 miles east of Eddyville, KY
Landholding Agency: COE
Property Number: 319010045
Status: Excess
Comment: 8.71 acres; rolling steep and wooded; no utilities.

Tract 2001 #1
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: Approximately 4½ miles east of Eddyville, KY.
Landholding Agency: COE
Property Number: 319010046
Status: Excess

Comment: 47.42 acres; steep and wooded; no utilities.

Tract 2001 # 2
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: Approximately 4½ miles east of Eddyville, KY.
Landholding Agency: COE
Property Number: 319010047
Status: Excess
Comment: 8.64 acres; steep and wooded; no utilities.

Tract 2005
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: Approximately 5½ miles east of Eddyville, KY.
Landholding Agency: COE
Property Number: 319010048
Status: Excess
Comment: 4.62 acres; steep and wooded; no utilities.

Tract 2307
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: Approximately 7½ miles southeasterly of Eddyville, KY.
Landholding Agency: COE
Property Number: 319010049
Status: Excess
Comment: 11.43 acres; steep; rolling and wooded; no utilities.

Tract 2403
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: 7 miles southeasterly of Eddyville, KY.
Landholding Agency: COE
Property Number: 319010050
Status: Excess
Comment: 1.56 acres; steep and wooded; no utilities.

Tract 2504
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: 9 miles southeasterly of Eddyville, KY.
Landholding Agency: COE
Property Number: 319010051
Status: Excess
Comment: 24.46 acres; steep and wooded; no utilities.

Tract 214
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: South of the Illinois Central Railroad, 1 mile east of the Cumberland River.
Landholding Agency: COE
Property Number: 319010052
Status: Excess
Comment: 5.5 acres; wooded; no utilities.

Tract 215
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: 5 miles southwest of Kuttawa
Landholding Agency: COE
Property Number: 319010053
Status: Excess
Comment: 1.40 acres; wooded; no utilities.

Tract 241
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: Old Henson Ferry Road, 6 miles west of Kuttawa, KY.
Landholding Agency: COE
Property Number: 319010054
Status: Excess
Comment: 1.26 acres; steep and wooded; no utilities.

Tracts 306, 311, 315 and 325
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: 2.5 miles southwest of Kuttawa, KY. on the waters of Cypress Creek.
Landholding Agency: COE
Property Number: 319010055
Status: Excess
Comment: 38.77 acres; steep and wooded; no utilities.

Tracts 2305, 2306, and 2400–1
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: 6½ miles southeasterly of Eddyville, KY.
Landholding Agency: COE
Property Number: 319010056
Status: Excess
Comment: 97.66 acres; steep rolling and wooded; no utilities.

Tract 500–2
Barkley Lake, Kentucky and Tennessee
Kuttawa Co: Lyon KY 42055–
Location: Situated on the waters of Poplar Creek, approximately 1 mile southwest of Kuttawa, KY.
Landholding Agency: COE
Property Number: 319010057
Status: Excess
Comment: 3.58 acres; hillside ridgeland and wooded; no utilities.

Tracts 5203 and 5204
Barkley Lake, Kentucky and Tennessee
Linton Co: Trigg KY 42212–
Location: Village of Linton, KY state highway 1254.
Landholding Agency: COE
Property Number: 319010058
Status: Excess
Comment: 0.93 acre; rolling, partially wooded; no utilities.

Tract 5240
Barkley Lake, Kentucky and Tennessee
Linton Co: Trigg KY 42212–
Location: 1 mile northwest of Linton, KY.
Landholding Agency: COE
Property Number: 319010059
Status: Excess
Comment: 2.26 acres; steep and wooded; no utilities.

Tract 4628
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: 4½ miles south from Canton, KY.
Landholding Agency: COE
Property Number: 319011621
Status: Excess
Comment: 3.71 acres; steep and wooded; subject to utility easements.

Tract 4619–B
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: 4½ miles south from Canton, KY.
Landholding Agency: COE
Property Number: 319011622
Status: Excess
Comment: 1.73 acres; steep and wooded; subject to utility easements.

Tract 2403–B
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42038–
Location: 7 miles southeasterly from Eddyville, KY.
Landholding Agency: COE
Property Number: 319011623
Status: Unutilized
Comment: 0.70 acre, wooded; subject to utility easements.

Tract 241–B
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: South of Old Henson Ferry Road, 6 miles west of Kuttawa, KY.
Landholding Agency: COE
Property Number: 319011624
Status: Excess
Comment: 11.16 acres; steep and wooded; subject to utility easements.

Tracts 212 and 237
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: Old Henson Ferry Road, 6 miles west of Kuttawa, KY.
Landholding Agency: COE
Property Number: 319011625
Status: Excess
Comment: 2.44 acres; steep and wooded; subject to utility easements.

Tract 215–B
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: 5 miles southwest of Kuttawa
Landholding Agency: COE
Property Number: 319011626
Status: Excess
Comment: 1.00 acre; wooded; subject to utility easements.

Tract 233
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: 5 miles southwest of Kuttawa
Landholding Agency: COE
Property Number: 319011627
Status: Excess
Comment: 1.00 acre; wooded; subject to utility easements.

Louisiana

Wallace Lake Dam and Reservoir
Shreveport Co: Caddo LA 71103
Landholding Agency: COE
Property Number: 319011009
Status: Unutilized
Comment: 11 acres; wildlife/forestry; no utilities.

Bayou Bodcau Dam and Reservoir
Haughton Co: Caddo LA 71037–9707
Location: 35 miles Northeast of Shreveport, LA.
Landholding Agency: COE
Property Number: 319011010
Status: Unutilized
Comment: 203 acres; wildlife/forestry; no utilities.

Minnesota

Parcel D
Pine River
Cross Lake Co: Crow Wing MN 56442
Location: 3 miles from city of Cross Lake, between highways 6 and 371.
Landholding Agency: COE
Property Number: 319011038
Status: Excess

Comment: 17 acres; no utilities.

Tract 92
Sandy Lake
McGregor Co: Aitkins MN 55760
Location: 4 miles west of highway 65, 15 miles from city of McGregor.
Landholding Agency: COE
Property Number: 319011040
Status: Excess
Comment: 4 acres; no utilities.

Tract 98
Leech Lake
Benedict Co: Hubbard MN 56641
Location: 1 mile from city of Federal Dam, MN.
Landholding Agency: COE
Property Number: 319011041
Status: Excess
Comment: 7.3 acres; no utilities.

Missouri

Parcel E
Wappapello Lake
Section 23
Wayne Co: Wayne MO
Location: NW ¼, NE ¼, Section 23 and Survey 813, T29N, 5th PM.
Landholding Agency: COE
Property Number: 319010094
Status: Excess
Comment: 46 acres; most recent use—wild life management.

Parcel D
Wappapello Lake
Section 3
Wayne Co: Wayne MO
Landholding Agency: COE
Property Number: 319010095
Status: Excess
Comment: 38 acres; most recent use—wild life management.

Harry S Truman Dam & Reservoir
Warsaw Co: Benton MO 65355
Location: Triangular shaped parcel southwest of access road "B", part of Bledsoe Ferry Park Tract 150.
Landholding Agency: COE
Property Number: 319030014
Status: Underutilized
Comment: 1.7 acres; potential utilities.

Mississippi

Parcel 7
Grenada Lake
Sections 22, 23, T24N
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 319011019
Status: Underutilized
Comment: 100 acres; no utilities; intermittently used under lease—expires 1994.

Parcel 8
Grenada Lake
Section 20, T24N
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 319011020
Status: Underutilized
Comment: 30 acres; no utilities; intermittently used under lease—expires 1994.

Parcel 9
Grenada Lake
Section 20, T24N, R7E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 319011021
Status: Underutilized
Comment: 23 acres; no utilities; intermittently used under lease—expires 1994.

Parcel 10
Grenada Lake
Sections 16, 17, 18 T24N R6E
Grenada Co: Calhoun MS 38901–0903
Landholding Agency: COE
Property Number: 319011022
Status: Underutilized
Comment: 490 acres; no utilities; intermittently used under lease—expires 1994.

Parcel 2
Grenada Lake
Section 20 and T23N, R5E
Grenada Co: Grenada MS 38901–0903
Landholding Agency: COE
Property Number: 319011023
Status: Underutilized
Comment: 60 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 3
Grenada Lake
Section 4, T23N, R5E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 319011024
Status: Underutilized
Comment: 120 acres; no utilities; most recent use—wildlife and forestry management; (13.5 acres/agriculture lease).

Parcel 4
Grenada Lake
Section 2 and 3. T23N, R5E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 319011025
Status: Underutilized
Comment: 60 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 5
Grenada Lake
Section 7, T24N, R6E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 319011026
Status: Underutilized
Comment: 20 acres; no utilities; most recent use—wildlife and forestry management; (14 acres/agriculture lease).

Parcel 6
Grenada Lake
Section 9, T24N, R6E
Grenada Co: Yalobusha MS 38903–0903
Landholding Agency: COE
Property Number: 319011027
Status: Underutilized
Comment: 80 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 11
Grenada Lake
Section 20, T24N, R8E
Grenada Co: Calhoun MS 38901–0903
Landholding Agency: COE
Property Number: 319011028
Status: Underutilized
Comment: 30 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 12
Grenada Lake
Section 25, T24N, R7E
Grenada Co: Yalobusha MS 38903–0903
Landholding Agency: COE
Property Number: 319011029
Status: Underutilized
Comment: 30 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 13
Grenada Lake
Section 34, T24N, R7E
Grenada Co: Yalobusha MS 38903–0903
Landholding Agency: COE
Property Number: 319011030
Status: Underutilized
Comment: 35 acres; no utilities; most recent use—wildlife and forestry management; (11 acres/agriculture lease).

Parcel 14
Grenada Lake
Section 3, T23N, R6E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 319011031
Status: Underutilized
Comment: 15 acres; no utilities; most recent use—wildlife and forestry management

Parcel 15
Grenada Lake
Section 4 T24N, R6E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 319011032
Status: Underutilized
Comment: 40 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 16
Grenada Lake
Section 9, T23N, R6E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 319011033
Status: Underutilized
Comment: 70 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 17
Grenada Lake
Section 17, T23N, R7E
Grenada Co: Grenada MS 28901–0903
Landholding Agency: COE
Property Number: 319011034
Status: Underutilized
Comment: 35 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 18
Grenada Lake
Section 22, T23N, R7E
Grenada Co: Grenada MS 28902–0903
Landholding Agency: COE
Property Number: 319011035
Status: Underutilized
Comment: 10 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 19
Grenada Lake
Section 9, T22N, R7E
Grenada Co: Grenada MS 38901–0903
Landholding Agency: COE
Property Number: 319011036
Status: Underutilized
Comment: 20 acres; no utilities; most recent use—wildlife and forestry management.

Ohio

Hannibal Locks and Dam
Ohio River
P.O. Box 8

Hannibal Co: Monroe OH 43931–0008
Location: Adjacent to the new Martinsville Bridge.
Landholding Agency: COE
Property Number: 319010015
Status: Underutilized
Comment: 22 acres· river bank.

Oklahoma

Parcel No. 8
Fort Gibson Lake
Section 22
Cherokee County, OK
Landholding Agency: COE
Property Number: 219013801
Status: Underutilized
Comment: 5 acres; bushy and timbered; subject to grazing lease.

Parcel No. 9
Fort Gibson Lake
Section 16
Cherokee County, OK
Landholding Agency: COE
Property Number: 219013802
Status: Underutilized
Comment: 7.5 acres; rolling; relatively open; subject to grazing lease; most recent use—recreation.

Parcel No. 10
Fort Gibson Lake
Section 16
Cherokee County, OK
Landholding Agency: COE
Property Number: 219013803
Status: Underutilized
Comment: 36 acres; rolling; relatively open; subject to grazing lease; most recent use—recreation.

Parcel No. 11
Fort Gibson Lake
Section 16
Cherokee County, OK
Landholding Agency: COE
Property Number: 219013804
Status: Underutilized
Comment: 60.34 acres; semi open with trees; most recent use—recreation.

Parcel No. 12
Fort Gibson Lake
Section 16
Cherokee County, OK
Landholding Agency: COE
Property Number: 219013805
Status: Underutilized
Comment: 6 acres; flat and open; subject to grazing lease; most recent use—recreation.

Parcel No. 13
Fort Gibson Lake
Section 21
Cherokee County, OK
Landholding Agency: COE
Property Number: 219013806
Status: Underutilized
Comment: 7 acres; flat and open; subject to grazing lease; most recent use—recreation.

Parcel No. 17
Fort Gibson Lake
Section 12
Wagoner Co. Co: Wagoner OK
Landholding Agency: COE
Property Number: 219013807
Status: Underutilized
Comment: 25.09 acres; flat with trees; subject to grazing lease; most recent use—recreation.

Parcel No. 18
Fort Gibson Lake
Section 12
Wagoner Co. Co: Wagoner OK
Landholding Agency: COE
Property Number: 219013808
Status: Underutilized
Comment: 8.77 acres; subject to grazing lease; most recent use recreation.

Parcel No. 22
Fort Gibson Lake
Section 16 and 21
Wagoner Co. Co: Wagoner OK
Landholding Agency: COE
Property Number: 219013809
Status: Underutilized
Comment: 177.84 acres; rolling with timbered and open areas; subject to grazing lease; most recent use—recreation.

Parcel No. 32
Fort Gibson Lake
Section 2
Mayes County, OK
Landholding Agency: COE
Property Number: 219013810
Status: Underutilized
Comment: 22 acres; rolling and open; subject to grazing lease; most recent use—recreation.

Parcel No. 33
Fort Gibson Lake
Section 4
Mayes County, OK
Landholding Agency: COE
Property Number: 219013811
Status: Underutilized
Comment: 18 acres; flat and open; subject to grazing lease; most recent use—recreation.

Parcel No. 34
Fort Gibson Lake
Section 34
Mayes County, OK
Landholding Agency: COE
Property Number: 219013812
Status: Underutilized
Comment: 18 acres; hilly-timbered; subject to grazing lease; most recent use—recreation.

Parcel No. 36
Fort Gibson Lake
Section 12
Mayes County, OK
Landholding Agency: COE
Property Number: 219013813
Status: Underutilized
Comment: 19 acres; subject to grazing lease; most recent use—recreation.

Parcel No. 38
Fort Gibson Lake
Section 7 and 8
Mayes County, OK
Landholding Agency: COE
Property Number: 219013814
Status: Underutilized
Comment: 97.39 acres; rolling, partially open with trees; subject to grazing lease; most recent use—recreation.

Parcel No. 40
Fort Gibson Lake
Section 5
Mayes County, OK
Landholding Agency: COE
Property Number: 219013815
Status: Underutilized
Comment: 42 acres; timber; subject to grazing lease; most recent use recreation.

Parcel No. 41
Fort Gibson Lake
Section 5
Mayes County, OK
Landholding Agency: COE
Property Number: 219013816
Status: Underutilized
Comment: 10 acres; some trees; subject to grazing lease; most recent use—recreation.

Pine Creek Lake
Section 27
McCurtain County, OK
Landholding Agency: COE
Property Number: 319010923
Status: Unutilized
Comment: 3 acres; no utilities; subject to right of way for Oklahoma State Highway 3.

Pennsylvania

Mahoning Creek Lake
New Bethlehem Co: Armstrong PA 16242–9603
Location: Route 28 north to Belknap, Road #4.
Landholding Agency: COE
Property Number: 319010018
Status: Excess
Comment: 2.58 acres; steep and densely wooded.

Tracts 610, 611, 612
Shenango River Lake
Sharpsville Co: Mercer PA 16150
Location: I–79 North, I–80 West, Exit Sharon. R18 North 4 miles, left on R518, right on Mercer Avenue.
Landholding Agency: COE
Property Number: 319011001
Status: Excess
Comment: 24.09 acres; subject to flowage easement

Tracts L24, L26
Crooked Creek Lake
Armstrong County, PA 03051
Location: Left bank—55 miles downstream of dam.
Landholding Agency: COE
Property Number: 319011011
Status: Unutilized
Comment: 7.89 acres; potential for utilities.

Tennessee

Tract 6827
Barkley Lake
Dover Co: Stewart TN 37058
Location: 2½ miles west of Dover, TN.
Landholding Agency: COE
Property Number: 319010927
Status: Excess
Comment: .57 acres; subject to existing easements.

Tracts 6002–2 and 6010
Barkley Lake
Dover Co: Stewart TN 37058
Location: 3½ miles south of village of Tabaccoport.
Landholding Agency: COE
Property Number: 319010928
Status: Excess
Comment: 100.86 acres; subject to existing easements.

Tract 11516
Barkley Lake
Ashland City Co: Dickson TN 37015
Location: ½ mile downstream from Cheatham Dam

Landholding Agency: COE
Property Number: 319010929
Status: Excess
Comment: 26.25 acres; subject to existing easements.

Tract 2319
J. Percy Priest Dam and Resorvoir
Murfreesboro Co: Rutherford TN 37130
Location: West of Buckeye Bottom Road
Landholding Agency: COE
Property Number: 319010930
Status: Excess
Comment: 14.48 acres; subject to existing easements.

Tract 2227
J. Percy Priest Dam and Resorvoir
Murfreesboro Co: Rutherford TN 37130
Location: Old Jefferson Pike
Landholding Agency: COE
Property Number: 319010931
Status: Excess
Comment: 2.27 acres; subject to existing easements.

Tract 2107
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford TN 37130
Location: Across Fall Creek near Fall Creek camping area.
Landholding Agency: COE
Property Number: 319010932
Status: Excess
Comment: 14.85 acres; subject to existing easements.

Tracts 2601, 2602, 2603, 2604
Cordell Hull Lake and Dam Project
Doe Row Creek
Gainesboro Co: Jackson TN 38562
Location: TN Highway 56
Landholding Agency: COE
Property Number: 319010933
Status: Unutilized
Comment: 11 acres; subject to existing easements.

Tract 1911
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford TN 37130
Location: East of Lamar Road
Landholding Agency: COE
Property Number: 319010934
Status: Excess
Comment: 15.31 acres; subject to existing easements.

Tract 2321
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford TN 37130
Location: South of Old Jefferson Pike
Landholding Agency: COE
Property Number: 319010935
Status: Excess
Comment: 12 acres; subject to existing easements.

Tract 7206
Barkley Lake
Dover Co: Stewart TN 37058
Location: 2½ miles SE of Dover, TN.
Landholding Agency: COE
Property Number: 319010936
Status: Excess
Comment: 10.15 acres; subject to existing easements.

Tracts 8813, 8814
Barkley Lake
Cumberland Co: Stewart TN 37050
Location: 1½ miles East of Cumberland City.
Landholding Agency: COE
Property Number: 319010937
Status: Excess
Comment: 96 acres; subject to existing easements.

Tract 8911
Barkley Lake
Cumberland City Co: Montgomery TN 37050
Location: 4 miles east of Cumberland City.
Landholding Agency: COE
Property Number: 319010938
Status: Excess
Comment: 7.7 acres; subject to existing easements.

Tract 11503
Barkley Lake
Ashland City Co: Cheatham TN 37015
Location: 2 miles downstream from Cheatham Dam.
Landholding Agency: COE
Property Number: 319010939
Status: Excess
Comment: 1.1 acres; subject to existing easements.

Tracts 11523, 11524
Barkley Lake
Ashland City Co: Cheatham TN 37015–
Location: 2½ miles downstream from Cheatham Dam.
Landholding Agency: COE
Property Number: 319010940
Status: Excess
Comment: 19.5 acres; subject to existing easements.

Tract 6410
Barkley Lake
Bumpus Mills Co: Stewart TN 37028–
Location: 4½ miles SW. of Bumpus Mills.
Landholding Agency: COE
Property Number: 319010941
Status: Excess
Comment: 17 acres; subject to existing easements.

Tract 9707
Barkley Lake
Palmyer Co: Montgomery TN 37142–
Location: 3 miles NE of Palmyer, TN. Highway 149
Landholding Agency: COE
Property Number: 319010943
Status: Excess
Comment: 6.6 acres; subject to existing easements.

Tract 6949
Barkley Lake
Dover Co: Stewart TN 37058–
Location: 1½ miles SE of Dover, TN.
Landholding Agency: COE
Property Number: 319010944
Status: Excess
Comment: 29.67 acres; subject to existing easements.

Tracts 6005 and 6017
Barkley Lake
Dover Co: Stewart TN 37058–
Location: 3 miles south of Village of Tobaccoport.
Landholding Agency: COE
Property Number: 319011173
Status: Excess
Comment: 5 acres; subject to existing easements.

Tracts K–1191, K–1135
Old Hickory Lock and Dam
Hartsville Co: Trousdale TN 37074–
Landholding Agency: COE
Property Number: 319130007
Status: Underutilized
Comment: 92 acres (38 acres in floodway), most recent use—recreation.

Texas

Parcel #222
Lake Texoma
(See County) Co: Grayson TX
Location: C. Meyerheim survey A–829 J. Hamilton survey A–529
Landholding Agency: COE
Property Number: 319010421
Status: Excess
Comment: 52.80 acres; most recent use—recreation.

Suitable/Unavailable Properties

Buildings (by State)

Colorado

John Martin Reservoir
Project Office
Star Route
Hasty Co: Bent CO 81044–
Landholding Agency: COE
Property Number: 319010014
Status: Underutilized
Comment: 1,350 sq. ft.; one floor brick; most recent use—residence—office.

Florida

Bldgs. CN7, CN8
Ortona Lock Reservation, Okeechobee Waterway
Ortona Co: Glades FL 33471–
Location: Located off Highway 78 approximately 7 miles west of intersection with Highway 27.
Landholding Agency: COE
Property Numbers: 319010012–319010013
Status: Unutilized
Comment: 1,468 sq. ft. each; one floor wood frame; most recent use—residences; secured with alternate access.

Bldg. CN–19
Moore Haven Lock
Okeechobee Waterway
Moore Haven Co: Glades FL 33471–
Location: 1 mile east of highway 27
Landholding Agency: COE
Property Number: 319011688
Status: Unutilized
Comment: 1,281 sq. ft.; 1 story frame residence; secured area with alternate access.

Georgia

Lot 5
Lake Forrest Subdivision
Woodframe House
Hartwell Co: Hartwell GA
Landholding Agency: COE
Property Number: 319110026
Status: Excess
Comment: 896 sq. ft.; 2 story wood frame residence; off-site removal only.

Illinois

Bldgs. 1–7
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain

Landholding Agency: COE
Property Numbers: 319010001–319010007
Status: Unutilized
Comment: 900 sq. ft. each; 1 floor wood frame; most recent use—residences.

Indiana

Cagles Mill Lake
Cagles Mill Lake Dam
Poland Co: Putnam IN 47868–
Location: Midway between Indianapolis and Terre Haute, 5 miles west of Poland on SR42.
Landholding Agency: COE
Property Number: 319011046
Status: Unutilized
Comment: 1,066 sq. ft.; wood frame residence; minor rehab.

Dwelling #2
Cagles Mill Lake
Poland Co: Putnam IN 47868–
Location: 5 miles west of Polano on SR 42
Landholding Agency: COE
Property Number: 319011686
Status: Unutilized
Comment: 872 sq. ft.; 1 story wood frame residence; fair condition.

Kentucky

Kentucky River Lock and Dam 3
Pleasureville Co: Henry KY 40057–
Location: SR 421 North from Frankfort, KY. to highway 561, right on 561 approximately 3 miles to site.
Landholding Agency: COE
Property Number: 319010060
Status: Unutilized
Comment: 897 sq. ft.; 2 story wood frame; structural deficiencies.

Kentucky River Lock and Dam 3
Pleasureville Co: Henry KY 40057–
Location: SR 421 north from Frankfort, KY. to highway 561, right on 561 approximately 3 miles to site.
Landholding Agency: COE
Property Number: 319010061
Status: Unutilized
Comment: 1,060 sq. ft.; 2 story wood frame; needs rehab.

Bldgs. 1–2
Kentucky River Lock and Dam
Carrolton Co: Carroll KY 41008–
Location: Take I–71 to Carrolton, KY exit, go east on SR #227 to Highway 320, then left for about 1.5 miles to site.
Landholding Agency: COE
Property Number: 319011628–319011629
Status: Unutilized
Comment: 1,530 sq. ft. each; 2 story wood frame house; subject to periodic flooding; needs rehab.

Montana

Entry Building
Fort Peck Project
Fort Peck Co: Valley MT 59223–
Location: Highway 24 about 1.6 mile from project headquarters.
Landholding Agency: COE
Property Number: 319011539
Status: Excess
Comment: 225 sq. ft.; 1 story wood frame; needs rehab; off-site removal.

New Mexico

Bldg 2E
Conchas Lake Project Office
(See County) Co: San Miguel NM 88416–
Landholding Agency: COE
Property Number: 319011538
Status: Underutilized
Comment: 1,000 sq. ft.; 1 story adobe residence.

Pennsylvania

Conemaugh River Lake
Road #1, Box 702
Saltsburg Co: Indiana PA 15681–
Landholding Agency: COE
Property Number: 319010019
Status: Unutilized
Comment: 2,642 sq. ft.; one unit of brick/frame duplex; most recent use—residence.

Curwensville Lake
Curwensville Co: Clearfield PA 16833–
Location: Curwensville Lake Administration Area off Route 453.
Landholding Agency: COE
Property Number: 319030001
Status: Excess
Comment: 1,500 sq. ft.; 1 story wood frame; most recent use—residential; off-site use only.

Foster Joseph Sayres Dam
Damtenders Residence
Beach Creek Co: Centre PA 16822–
Location: Administrative Area of dam off Route 150
Landholding Agency: COE
Property Number: 319030002
Status: Excess
Comment: 1,262 sq. ft.; 1 story brick/concrete frame; most recent use—residential; off-site use only.

Bldg.—Cowanesque Lake
Tioga Co: Tioga PA 16946–
Location: Located on north side of Bliss Road across from Cowansesque Dam Office
Landholding Agency: COE
Property Number: 319120003
Status: Excess
Comment: 2,640 sq. ft., 1 story wood frame, most recent use—storage, off-site removal only

Virginia

Tract HH 3331–E
John H. Kerr Reservoir
Woodframe House
South Boston Co: Halifax VA
Landholding Agency: COE
Property Number: 319110027
Status: Excess
Comment: 1,040 sq. ft.; 1 story wood frame residence; off-site removal only.

Wisconsin

Former Lockmaster's Dwelling
DePere Lock
100 James Street
De Pere Co: Brown WI 54115–
Landholding Agency: COE
Property Number: 319011526
Status: Unutilized
Comment: 1,224 sq. ft.; 2 story brick/wood frame residence; needs rehab; secured area with alternate access.

Land (by State)

Georgia

E. O. Tract A
J. Strom Thurmond Dam and Reservoir
Columbia County, GA
Location: 3 miles east of GA 104 and Ridge Road intersection.
Landholding Agency: COE
Property Number: 319011516
Status: Unutilized
Comment: 17 acres; potential utilities; most recent use—forest and wildlife reserve.

E. O. Tract B
J. Strom Thurmond Dam and Reservoir
Columbia County, GA
Location: 3 miles east of GA 104 and Ridge Road intersection.
Landholding Agency: COE
Property Number: 319011517
Status: Unutilized
Comment: 88 acres; potential utilities; most recent use—forest and wildlife reserve.

E. O. Tract D
J. Strom Thurmond Dam and Reservoir
Lincoln County, GA
Location: Northwest of Forest Lake Estates on Dozier Branch.
Landholding Agency: COE
Property Number: 319011518
Status: Unutilized
Comment: 7 acres; potential utilities; most recent use—forest and wildlife reserve.

E. O. Tract F
J. Strom Thurmond Dam and Reservoir
Columbia County, GA
Location: Approximately 2 miles east of GA 104 and Keg Creek Road intersection.
Landholding Agency: COE
Property Number: 319011519
Status: Unutilized
Comment: 29 acres; potential utilities; most recent use—forest and wildlife reserve.

E. O. Tract E
J. Strom Thurmond Dam and Reservoir
Columbia County, GA
Location: Approximately 1½ miles east of GA 104 and Keg Creek Road Intersection.
Landholding Agency: COE
Property Number: 319011520
Status: Unutilized
Comment: 12 acres; potential utilities; most recent use—forest reserve and wildlife management.

E. O. Tract G
J. Strom Thurmond Dam and Reservoir
Columbia County, GA
Location: 4 miles east of GA 104 and Ridge Road Intersection.
Landholding Agency: COE
Property Number: 319011521
Status: Unutilized
Comment: 8 acres; potential utilities; most recent use—forest and wildlife reserve.

E. O. Tract H
J. Strom Thurmond Dam and Reservoir
Columbia County, GA
Location: 4 miles east of GA 104 and Ridge Road Intersection.
Landholding Agency: COE
Property Number: 319011522
Status: Unutilized
Comment: 7 acres; potential utilities; most recent use—forest and wildlife reserve.

E. O. Tract I
J. Strom Thurmond Dam and Reservoir
Columbia County, GA
Location: 4 miles east of GA 104 and Ridge Road Intersection.

Landholding Agency: COE
Property Number: 319011523
Status: Unutilized
Comment: 8 acres; potential utilities; most recent use—forest and wildlife reserve.

Kansas

Paradise Point
Public Use Area (Perry Lake)
Perry Co: Jefferson KS 66073–
Location: Upper-east reaches of the Perry Lake project, approximately 8½ miles west of Oskaloosa, 8½ miles southeast of Vally Falls.
Landholding Agency: COE
Property Number: 319011540
Status: Underutilized
Comment: 479 acres; portion in floodway/reservoir flood control area; remote location.

Grasshopper Point
Public Use Area (Perry Lake)
Perry Co: Jefferson KS 66073–
Location: Along the west shore of Perry Lake, 5 miles east (gravel road) from Meridan, 5 miles south from Ozawkie.
Landholding Agency: COE
Property Number: 319011541
Status: Underutilized
Comment: 174 acres; portion in floodway/reservoir flood control area; remote location.

Sunset Ridge
Public Use Area (Perry Lake)
Perry Co: Jefferson KS 66073–
Location: Upper-west reaches of the Perry Lake project, approximately 8 miles south from Valley Falls.
Landholding Agency: COE
Property Number: 319011542
Status: Underutilized
Comment: 279 acres; portion in floodway/reservoir flood control area; remote location.

Dragoon Access Area
Pomona Lake
Vassar Co: Osage KS 66543–
Location: Upper reaches of north shore of the Pomona Lake, approximately 10.5 miles north and east of Lundon.
Landholding Agency: COE
Property Number: 319011543
Status: Underutilized
Comment: 110 acres; portion in floodway/reservoir flood control area.

Pennsylvania

Loyalhanne Lake
RD 2
Saltsburg Co: Westmoreland PA
Location: Fronts on state route 185.
Landholding Agency: COE
Property Number: 319011002
Status: Underutilized
Comment: 15 acres; radio communication antenna located on portion of land; most recent use—park and recreation.

East Branch Clarion River Lake
Wilcox Co: Elk PA
Location: Free camping area on the right bank off entrance roadway.
Landholding Agency: COE
Property Number: 319011012
Status: Underutilized
Comment: 1 acre; most recent use—free campground.

South Carolina

E. O. Tract J
J. Strom Thurmond Dam and Reservoir
McCormick County, SC
Location: 4 miles southwest of Plum Branch SC on road to Clarks Mill Marina.
Landholding Agency: COE
Property Number: 319011514
Status: Unutilized
Comment: 57 acres; potential utilities; most recent use—forest and wildlife reserve.

E. O. Tract C
J. Strom Thurmond Dam and Reservoir
McCormick County, SC
Location: Approximately 1 mile north of US 221 and SC 28 intersection.
Landholding Agency: COE
Property Number: 319011515
Status: Unutilized
Comment: 70 acres; potential utilities; most recent use—forest and wildlife reserve.

Texas

Part of Tract A–10
Tarrant County, TX
Location: Off FM 2499 at north end of dam embankment
Landholding Agency: COE
Property Number: 319010390
Status: Excess
Comment: 0.29 acres; most recent use—parking lot.

Part of Tract 340
Joe Pool Lake
(See County) Co: Dallas TX
Landholding Agency: COE
Property Number: 319010400
Status: Unutilized
Comment: 1 acre future use—recreation.

Suitable/To Be Excess

Buildings (by State)

Kentucky

Bldg.—Markland Locks & Dam
Hwy 42, 3.5 miles downstream of Warsaw
Warsaw Co: Gallatin KY 41095–
Landholding Agency: COE
Property Number: 319130004
Status: Unutilized
Comment: 64 sq. ft., 1 story wood frame, most recent use—utility, off-site use only.

Michigan

Former C. G. Lightkeeper Sta.
Little Rapids Channel Project
St. Marys River
Sault Ste. Marie Co: Chippewa MI 49783–
Location: 3 miles east of downtown Sault Ste. Marie.
Landholding Agency: COE
Property Number: 319011573
Status: Excess
Comment: 1,411 sq. ft.; 2 story; wood frame on .62 acres; needs rehab; secured area with alternate access.

Texas

Bldg. 6–B
Brazos River Floodgates
Freeport Co: Brazoria TX 77541–
Location: 5 miles south of Freeport.
Landholding Agency: COE
Property Number: 319110030
Status: Unutilized
Comment: 1,100 sq. ft.; 2 story wood frame; needs major rehab; possible asbestos; off-site use only.

Bldg. 6–C
Colorado River Locks
109 Colorado River Locks
Matagorda Co: Matagorda TX 77547–
Landholding Agency: COE
Property Number: 319110031
Status: Unutilized
Comment: 1,100 sq. ft.; 1 story wood frame; needs rehab; off-site use only.

Land (by State)

Kansas

Parcel #1
Fall River Lake
Section 26
Greenwood County, KS
Landholding Agency: COE
Property Number: 319010065
Status: Unutilized
Comment: 155 acres; most recent use—recreation and leased cottage sites.

Parcel #2
Fall River Lake
Sections 25 and 26
Greenwood County, KS
Landholding Agency: COE
Property Number: 319010066
Status: Excess
Comment: 38.62 acres; most recent use—recreation.

Parcel #3
Fall River Lake
Section 26
Greenwood County, KS
Landholding Agency: COE
Property Number: 319010067
Status: Excess
Comment: 22.44 acres; most recent use—recreation.

Kentucky

Tract B—Markland Locks & Dam
Hwy 42, 3.5 miles downstream of Warsaw
Warsaw Co: Gallatin KY 41095–
Landholding Agency: COE
Property Number: 319130002
Status: Unutilized
Comment: 10 acres, most recent use—recreational, possible periodic flooding.

Tract A—Markland Locks & Dam
Hwy 42, 3.5 miles downstream of Warsaw
Warsaw Co: Gallatin KY 41095–
Landholding Agency: COE
Property Number: 319130003
Status: Unutilized
Comment: 8 acres, most recent use—recreational, possible periodic flooding.

Tract C—Markland Locks & Dam
Hwy 42, 3.5 miles downstream of Warsaw
Warsaw Co: Gallatin KY 41095–
Landholding Agency: COE
Property Number: 319130005
Status: Unutilized
Comment: 4 acres, most recent use—recreational, possible periodic flooding.

Massachusetts

Buffumville Dam
Flood Control Project
Gale Road
Carlton Co: Worcester MA 01540–0155

Location: Portion of tracts B–200, B–248, B–251, B–204, B–247, B–200 and B–256
Landholding Agency: COE
Property Number: 319010016
Status: Excess
Comment: 1.45 acres.

Conant Brook Dam
Flood Control Dam
Wales Road
Monson Co: Hampden MA 01057–
Location: Portion of Tract 211
Landholding Agency: COE
Property Number: 319010017
Status: Excess
Comment: 5.27 acres.

Hodges Village
Dam Flood Control Project
Old Howarth Road
Oxford Co: Worcester MA 01540–0500
Location: Portion of Tract A–108, See Project Manager at Hodges Village Dam, Oxford, MA (508) 987–2600.
Landholding Agency: COE
Property Number: 319011006
Status: Excess
Comment: 6.02 acres; 3 acres paved road, subject to utility easement.

Oklahoma

Parcel No. 100
Lake Texoma
Section 25, T7S, R5E
Enos Co: Marshall OK
Location: 1 mile northeast of Enos
Landholding Agency: COE
Property Number: 319010440
Status: Unutilized
Comment: 11.77 acres; most recent use—recreation.

Parcel No. 7
Kaw Lake
Section 27
Kay County, OK
Landholding Agency: COE
Property Number: 319010842
Status: Excess
Comment: 21 acres; potential utilities; most recent use—recreation.

Parcel No. 3
Sardis Lake
Section 21
Latimer County, OK
Landholding Agency: COE
Property Number: 319010843
Status: Excess
Comment: 2.5 acres; potential utilities; most recent use—wildlife management.

Parcel No. 4
Sardis Lake
Section 21
Latimer County, OK
Landholding Agency: COE
Property Number: 319010844
Status: Excess
Comment: 4.5 acres; potential utilities; most recent use—wildlife management.

Parcel 7
Fort Gibson Lake
Section 6
Cherokee County, OK 74434
Landholding Agency: COE
Property Number: 319010869
Status: Unutilized Comment: 16.31 acres; potential utilities; most recent use recreational and development.

Parcel 14
Fort Gibson Lake
Section 20
Cherokee County, OK 74434
Landholding Agency: COE
Property Number: 319010870
Status: Unutilized
Comment: 52.09 acres; potential utilities; subject to haying/grazing leases; most recent use—recreational.

Parcel 15
Fort Gibson Lake
Section 22
Cherokee County, OK 74434
Landholding Agency: COE
Property Number: 319010871
Status: Unutilized
Comment: 7.51 acres; potential utilities; most recent use—recreational.

Parcel 28
Fort Gibson Lake
Section 35
Mayes County, OK 74434
Landholding Agency: COE
Property Number: 319010877
Status: Unutilized
Comment: 36.59 acres; potential utilities; and intensive; most recent use—recreational.

Parcel 75
Fort Gibson Lake
Section 16
Mayes County, OK 74434
Landholding Agency: COE
Property Number: 319010887
Status: Excess
Comment: 45 acres; potential utilities; subject to haying lease and flowage easement; most recent use—recreational.

Parcel 88
Fort Gibson Lake
Section 7
Wagoner County, OK 74434
Landholding Agency: COE
Property Number: 319010899
Status: Unutilized
Comment: 14 acres; potential utilities; subject to grazing lease; most recent use—recreational.

Parcel 89
Fort Gibson Lake
Section 7
Wagoner County, OK 74434
Landholding Agency: COE
Property Number: 319010900
Status: Excess
Comment: 16 acres; potential utilities; subject to grazing lease and flowage easement; most recent use—recreational.

Parce1 95
Fort Gibson Lake
Section 33
Wagoner County, OK 74434
Landholding Agency: COE
Property Number: 319010906
Status: Unutilized
Comment: 8 acres; potential utilities; most recent use—recreational.

Parcel No. 43
Fort Gibson Lake
Section 11
Mayes County, OK 74434
Landholding Agency: COE
Property Number: 319011371
Status: Underutilized
Comment: 125 acres; potential utilities; portion subject to grazing lease and flowage easements.

Parcel No. 49
Fort Gibson Lake
Section 15
Mayes County, OK 74434
Landholding Agency: COE
Property Number: 319011377
Status: Excess
Comment: 26.94 acres; potential utilities; portion subject to grazing lease and flowage easements.

Parcel No. 61
Fort Gibson Lake
Section 13
Mayes County, OK 74434
Landholding Agency: COE
Property Number: 319011389
Status: Excess
Comment: 54 acres; potential utilities; subject to flowage easement; most recent use—recreation.

Parcel No. 99
Fort Gibson Lake
Section 21
Wagoner County, OK 74434
Landholding Agency: COE
Property Number: 319011400
Status: Excess
Comment: 5 acres; small creek on land; most recent use—recreation.

Parcel No. 102
Fort Gibson Lake
Section 33
Wagoner County, OK 74434
Landholding Agency: COE
Property Number: 319011403
Status: Excess
Comment: 7 acres; subject to grazing lease; most recent use recreation.

Parcel No. 105
Fort Gibson Lake
Section 14, 22 and 23
Wagoner County, OK 74434
Landholding Agency: COE
Property Number: 319011406
Status: Underutilized
Comment: 375 acres; portion is environmentally protected; most recent use—recreation.

Oregon

Tract 108 (Portion of)
Willow Creek Lake Project
Heppner Co: Morrow OR 77836Location:
Located up hill from the left abutment of the dam structure.
Landholding Agency: COE
Property Number: 319011687
Status: Unutilized
Comment: 2.25 acres; unimproved land; secured area with alternate access.

Pennsylvania

Tract B–202 (Portion of)
Stillwater Reservoir
Forest City Co: Susquehanna PA 18421–
Location: On the Lackawanna River, 4 miles north of Forest City.
Landholding Agency: COE
Property Number: 319010009
Status: Unutilized

Comment: 70 acres; property divided by a creek; access to majority of the land is difficult.
GSA Number: PA–P–0065.

Tennessee

Tract D–456
Cheatham Lock and Dam
Ashland Co: Cheatham TN 37015–
Location: Right downstream bank of Sycamore Creek.
Landholding Agency: COE
Property Number: 319010942
Status: Excess
Comment: 8.93 acres; subject to existing easements.

Texas

Tract J–957
Whitney Lake
Bosque Co: Bosque TX
Location: Via Avenue B within the community of Kopperl.
Landholding Agency: COE
Property Number: 319110029
Status: Unutilized
Comment: .18 acres; potential utilities; encroachments on large portion of property.

Tract J–936
Whitney Lake
Bosque Co: Bosque TX
Location: Off F. M. Highway 56 within the community of Kopperl.
Landholding Agency: COE
Property Number: 319110032
Status: Unutilized
Comment: 5.4 acres; potential utilities.

Tract F–516 O.C. Fisher Lake
Parallel with Grape Creek Road
San Angelo Co: Tom Green TX 76902–3085
Landholding Agency: COE
Property Number: 319120002
Status: Unutilized
Comment: 2.13 acres, potential limited utilities.

Unsuitable Properties

Buildings (by State)

Kentucky

Spring House
Kentucky River Lock and Dam No. 1
Highway 320
Carrollton Co: Carroll KY 41008–
Landholding Agency: COE
Property Number: 219040416
Status: Unutilized
Reason: Other
Comment: Spring House.

Building
Kentucky River Lock and Dam No. 4
1021 Kentucky Avenue
Frankfort Co: Franklin KY 40601–9999
Landholding Agency: COE
Property Number: 219040417
Status: Unutilized
Reason: Other
Comment: Coal Storage.

Building
Kentucky River Lock and Dam No. 4
1021 Kentucky Avenue
Frankfort Co: Franklin KY 40601–9999
Landholding Agency: COE
Property Number: 219040418
Status: Unutilized
Reason: Other
Comment: Coal Storage.

Barn
Kentucky River Lock and Dam No. 3
Highway 561
Pleasureville Co: Henry KY 40057–
Landholding Agency: COE
Property Number: 219040419
Status: Underutilized
Reason: Other
Comment: 110 year old barn with crumbled foundation.

Tract 111—Building
Martins Fork Lake
Smith Co: Harlan KY 40867–
Location: 13 miles southeast of Harlan on Highway 987.
Landholding Agency: COE
Property Number: 319010062
Status: Unutilized
Reason: Floodway.

Latrine
Kentucky River Lock and Dam No. 3
Highway 561
Pleasureville Co: Henry KY 40057–
Landholding Agency: COE
Property Number: 319040009
Status: Unutilized
Reason: Other
Comment: Detached Latrine.

6-Room Dwelling
Green River Lock and Dam No. 3
Rochester Co: Butler KY 42273–
Location: Off State Hwy 369, which runs off of Western Ky. Parkway
Landholding Agency: COE
Property Number: 319120010
Status: Unutilized
Reason: Floodway.

2-Car Garage
Green River Lock and Dam No. 3
Rochester Co: Butler KY 42273–
Location: Off State Hwy 369, which runs off of Western Ky. Parkway
Landholding Agency: COE
Property Number: 319120011
Status: Unutilized
Reason: Floodway.

Office and Warehouse
Green River Lock and Dam No. 3
Rochester Co: Butler KY 42273–
Location: Off State Hwy 369, which runs off of Western Ky. Parkway
Landholding Agency: COE
Property Number: 319120012
Status: Unutilized
Reason: Floodway.

2 Pit Toilets
Green River Lock and Dam No. 3
Rochester Co: Butler KY 42273–
Landholding Agency: COE
Property Number: 319120013
Status: Unutilized
Reason: Floodway.

Missouri

Building—Stockton Lake Project
Old Mill Area
Cedar County, MO 65785–
Landholding Agency: COE
Property Number: 219040414
Status: Unutilized
Reason: Floodway.

New Mexico

Cochiti Lake Project Office
Pena Blanca Co: Pena Blanca NM 87041–
Location: 30 miles from Santa Fe. 45 miles from Albuquerque.
Landholding Agency: COE
Property Number: 319011505
Status: Underutilized
Reason: Secured Area.

Tennessee

Bldg. 204
Cordell Hull Lake and Dam Project
Defeated Creek Recreation Area
Carthage Co: Smith TN 37030–
Location: US Highway 85
Landholding Agency: COE
Property Number: 319011499
Status: Unutilized
Reason: Floodway.

Tract 2618 (Portion)
Cordell Hull Lake and Dam Project
Roaring River Recreation Area
Gainesboro Co: Jackson TN 38562–
Location: TN Highway 135
Landholding Agency: COE
Property Number: 319011503
Status: Underutilized
Reason: Floodway.

Texas

Bldg. 18
Fort Point
Galveston Harbor and Channel Project
Galveston Co: Galveston TX 77550–
Landholding Agency: COE
Property Number: 319110033
Status: Unutilized
Reason: Secured Area.

Bldg. 19
Fort Point
Galveston Harbor and Channel Project
Galveston Co: Galveston TX 77550–
Landholding Agency: COE
Property Number: 319110034
Status: Unutilized
Reason: Secured Area.

Bldg. 20
Fort Point
Galveston Harbor and Channel Project
Galveston Co: Galveston TX 77550–
Landholding Agency: COE
Property Number: 319110035
Status: Unutilized
Reason: Secured Area.

Bldg. 21
Fort Point
Galveston Harbor and Channel Project
Galveston Co: Galveston TX 77550–
Landholding Agency: COE
Property Number: 319110036
Status: Unutilized
Reason: Secured Area.

Bldg. 22
Fort Point
Galveston Harbor and Channel Project
Galveston Co: Galveston TX 77550–
Landholding Agency: COE
Property Number: 319110037
Status: Unutilized
Reason: Secured Area.

Land (by State)

Kentucky

Tract 4626
Barkley Lake, Kentucky and Tennessee

Donaldson Creek Launching Area
Cadiz Co: Trigg KY 42211–
Location: 14 miles from US Highway 68.
Landholding Agency: COE
Property Number: 319010030
Status: Underutilized
Reason: Floodway.

Tract AA–2747
Wolf Creek Dam and Lake Cumberland
US HWY. 27 to Blue John Road
Burnside Co: Pulaski KY 42519–
Landholding Agency: COE
Property Number: 319010038
Status: Underutilized
Reason: Floodway.

Tract AA–2726
Wolf Creek Dam and Lake Cumberland
KY HWY. 80 to Route 769
Burnside Co: Pulaski KY 42519–
Landholding Agency: COE
Property Number: 319010039
Status: Underutilized
Reason: Floodway.

Tract 1358
Barkley Lake, Kentucky and Tennessee
Eddyville Recreation Area
Eddyville Co: Lyon KY 42038–
Location: US Highway 62 to state highway 93.
Landholding Agency: COE
Property Number: 319010043
Status: Excess
Reason: Floodway.

Red River Lake Project
Stanton Co: Powell KY 40380–
Location: Exit Mr. Parkway at the Stanton and Slade Interchange, then take SR Hand 15 north to SR 613.
Landholding Agency: COE
Property Number: 319011684
Status: Unutilized
Reason: Floodway.

Barren River Lock & Dam No. 1
Richardsville Co: Warren KY 42270–
Landholding Agency: COE
Property Number: 319120008
Status: Unutilized
Reason: Floodway.

Green River Lock & Dam No. 3
Rochester Co: Butler KY 42273–
Location: Off State Hwy. 369, which runs off of Western Ky. Parkway
Landholding Agency: COE
Property Number: 319120009
Status: Unutilized
Reason: Floodway.

Green River Lock & Dam No. 4
Woodbury Co: Butler KY 42288–
Location: Off State Hwy 403, which is off State Hwy 231
Landholding Agency: COE
Property Number: 319120014
Status: Underutilized
Reason: Floodway.

Green River Lock & Dam No. 5
Readville Co: Butler KY 42275–
Location: Off State Highway 185
Landholding Agency: COE
Property Number: 319120015
Status: Unutilized
Reason: Floodway.

Green River Lock & Dam No. 6
Brownsville Co: Edmonson KY 42210–
Location: Off State Highway 259
Landholding Agency: COE
Property Number: 319120016
Status: Underutilized
Reason: Floodway.

Vacant land west of locksite
Greenup Locks and Dam
5121 New Dam Road
Rural Co: Greenup KY 41144–
Landholding Agency: COE
Property Number: 319120017
Status: Unutilized
Reason: Floodway.

Minnesota

Parcel G
Pine River
Cross Lake Co: Crow Wing MN 56442–
Location: 3 miles from city of Cross Lake between highways 6 and 371.
Landholding Agency: COE
Property Number: 319011037
Status: Excess
Reason: Other
Comment: highway right of way.

Missouri

Stockton Public Use Area
Stockton Lake
Stockton Co: Cedar MO 65785–0632
Location: Adjacent to and east of Stockton, MO.
Landholding Agency: COE
Property Number: 319011471
Status: Underutilized
Reason: Floodway.

Smith's Fork Park
Smithville Lake
Smithville Co: Clay MO 64089–
Location: Within Smithville Lake water resource project downstream from dam, adjoins Smithville.
Landholding Agency: COE
Property Number: 319011473
Status: Underutilized
Reason: Floodway.

Old Mill Area
Stockton Lake
Stockton Co: Cedar MO 65785–0632
Location: Below Stockton Lake Dam on right bank of Outlet Channel/SAC River. Approximately 2 miles from Stockton.
Landholding Agency: COE
Property Number: 319011477
Status: Underutilized
Reason: Floodway.

Ditch 19, Item 2, Tract No. 230
St. Francis Basin Project; 2½ miles west of Malden Co: Dunklin MO
Landholding Agency: COE
Property Number: 319130001
Status: Unutilized
Reason: Floodway.

Mississippi

Parcel 1
Grenada Lake
Section 20
Grenada Co: Grenada MS 38901–0903
Landholding Agency: COE
Property Number: 319011018
Status: Underutilized
Reason: Within airport runway clear zone.

North Carolina

Land
Atlantic Intracoastal Waterway
Corrituck County, NC
Location: Near old Coinjack Bridge.
Landholding Agency: COE
Property Number: 319011537
Status: Unutilized
Reason: Floodway.

Ohio

Ohio River
New Cumberland Lock and Dam
Glasgow Co: Beaver OH
Landholding Agency: COE
Property Number: 319011560
Status: Unutilized
Reason: Floodway.

Ohio River
Pike Island Lock and Dam
RD #1, Box 33
Tiltonsville Co: Jefferson OH
Landholding Agency: COE
Property Number: 319011561
Status: Underutilized
Reason: Floodway.

Pike Island Locks and Dam
Ohio River
RD 1, Box 33
Steubenville Co: Jefferson OH 43952–
Landholding Agency: COE
Property Number: 319030012
Status: Underutilized
Reason: Floodway.

Pennsylvania

Land
Raystown Lake
Huntingdon Co: Huntingdon PA
Location: Downstream of Raystown Lake.
Landholding Agency: COE
Property Number: 219040420
Status: Excess
Reason: Other
Comment: Property Landlocked.

Conemaugh River Lake
RD #1, Box 702
Blairsville Co: Indiana PA 15681–
Location: West side of Route 217
Landholding Agency: COE
Property Number: 319011557
Status: Underutilized
Reason: Floodway.

Loyalhanna Lake
RD #2
Latrobe Co: Westmoreland PA
Landholding Agency: COE
Property Number: 319011559
Status: Unutilized
Reason: Floodway.

Loyalhanna Lake
RD #2
Saltsburg Co: Westmoreland PA
Landholding Agency: COE
Property Number: 319011562
Status: Underutilized
Reason: Floodway.

Loyalhanna Lake
RD #2
Saltsburg Co: Westmoreland PA
Landholding Agency: COE
Property Number: 319011563
Status: Unutilized
Reason: Floodway.

Lock and Dam #7
Monongahela River
Greensboro Co: Greene PA
Location: Left hand side of entrance roadway to project.

Landholding Agency: COE
Property Number: 319011564
Status: Unutilized
Reason: Floodway.

Portion of Tract 406C
Cowanesque Lake Project
Nelson Cemetery
Nelson Co: Tioga PA 16946–
Landholding Agency: COE
Property Number: 319011620
Status: Excess
Reason: Other
Comment: Cemetery.

East Branch Clarion River Lake
Wilcox Co: Elk PA
Location: Outflow access area—below dam
Landholding Agency: COE
Property Number: 319030013
Status: Underutilized
Reason: Floodway.

Land—Tioga-Hammond Lakes
Mansfield Co: Tioga PA 16933–
Location: 2 miles northeast of Mansfield on State Route 58044
Landholding Agency: COE
Property Number: 319120001
Status: Excess
Reason: Floodway.

Tennessee

McClure Bend
Cordell Hull Dam and Reservoir
Carthage Co: Smith TN 37030–
Location: Highway 85 to McClure Bend Road.
Landholding Agency: COE
Property Number: 219040412
Status: Underutilized
Reason: Floodway.

Brooks Bend
Cordell Hull Dam and Reservoir
Highway 85 to Brooks Bend Road
Gainesboro Co: Jackson TN 38562–
Location: Tracts 800, 802–806, 835–837, 900–902, 1000–1003, 1025
Landholding Agency: COE
Property Number: 219040413
Status: Underutilized
Reason: Floodway.

Cheatham Lock and Dam
Highway 12
Ashland City Co: Cheatham TN 37015–
Location: Tracts E–513, E–512–1 and E–512–2
Landholding Agency: COE
Property Number: 219040415
Status: Underutilized
Reason: Floodway.

Tract 6737
Blue Creek Recreation Area
Barkley Lake, Kentucky and Tennessee
Dover Co: Stewart TN 37058–
Location: U.S. Highway 79/TN Highway 761
Landholding Agency: COE
Property Number: 319011478
Status: Underutilized
Reason: Floodway.

Tracts 3102, 3105, and 3106
Brimstone Launching Area
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson TN 38562–
Location: Big Bottom Road
Landholding Agency: COE
Property Number: 319011479
Status: Excess
Reason: Floodway.

Tract 3507
Proctor Site
Cordell Hull Lake and Dam Project
Celina Co: Clay TN 38551–
Location: TN Highway 52
Landholding Agency: COE
Property Number: 319011480
Status: Unutilized
Reason: Floodway.

Tract 3721
Obey
Cordell Hull Lake and Dam Project
Celina Co: Clay TN 38551–
Location: TN Highway 53
Landholding Agency: COE
Property Number: 319011481
Status: Unutilized
Reason: Floodway.

Tracts 608, 609, 611 and 612
Sullivan Bend Launching Area
Cordell Hull Lake and Dam Project
Carthage Co: Smith TN 37030–
Location: Sullivan Bend Road
Landholding Agency: COE
Property Number: 319011482
Status: Underutilized
Reason: Floodway.

Tract 920
Indian Creek Camping Area
Cordell Hull Lake and Dam Project
Granville Co: Smith TN 38564–
Location: TN Highway 53
Landholding Agency: COE
Property Number: 319011483
Status: Underutilized
Reason: Floodway.

Tracts 1710, 1716 and 1703
Flynns Lick Launching Ramp
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson TN 38562–
Location: Whites Bend Road
Landholding Agency: COE
Property Number: 319011484
Status: Underutilized
Reason: Floodway.

Tract 1810
Wartrace Creek Launching Ramp
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson TN 38551–
Location: TN Highway 85
Landholding Agency: COE
Property Number: 319011485
Status: Underutilized
Reason: Floodway.

Tract 2524
Jennings Creek
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson TN 38562–
Location: TN Highway 85
Landholding Agency: COE
Property Number: 319011486
Status: Unutilized
Reason: Floodway

Tracts 2905 and 2907
Webster
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson TN 38551–
Location: Big Bottom Road
Landholding Agency: COE
Property Number: 319011487
Status: Unutilized
Reason: Floodway.

Tracts 2200 and 2201
Gainesboro Airport
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson TN 38562–
Location: Big Bottom Road
Landholding Agency: COE
Property Number: 319011488
Status: Underutilized
Reason: Within airport runway clear zone
Floodway.

Tracts 710C and 712C
Sullivan Island
Cordell Hull Lake and Dam Project
Carthage Co: Smith TN 37030–
Location: Sullivan Bend Road
Landholding Agency: COE
Property Number: 319011489
Status: Unutilized
Reason: Floodway.

Tract 2403, Hensley Creek
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson TN 38562–
Location: TN Highway 85
Landholding Agency: COE
Property Number: 319011490
Status: Unutilized
Reason: Floodway.

Tracts 2117C, 2118 and 2120
Cordell Hull Lake and Dam Project
Trace Creek
Gainesboro Co: Jackson TN 38562–
Location: Brooks Ferry Road
Landholding Agency: COE
Property Number: 319011491
Status: Unutilized
Reason: Floodway.

Tracts 424, 425 and 426
Cordell Hull Lake and Dam Project
Stone Bridge
Carthage Co: Smith TN 37030–
Location: Sullivan Bend Road
Landholding Agency: COE
Property Number: 319011492
Status: Unutilized
Reason: Floodway.

Tract 517
J. Percy Priest Dam and Reservoir
Suggs Creek Embayment
Nashville Co: Davidson TN 37214–
Location: Interstate 40 to S. Mount Juliet Road.
Landholding Agency: COE
Property Number: 319011493
Status: Underutilized
Reason: Floodway.

Tract 1811
West Fork Launching Area
Smyrna Co: Rutherford TN 37167–
Location: Florence road near Enon Springs Road
Landholding Agency: COE
Property Number: 319011494
Status: Underutilized
Reason: Floodway.

Tract 1504
J. Perry Priest Dam and Reservoir
Lamon Hill Recreation Area
Smyrna Co: Rutherford TN 37167–
Location: Lamon Road
Landholding Agency: COE
Property Number: 319011495
Status: Underutilized
Reason: Floodway.

Tract 1500
J. Perry Priest Dam and Reservoir
Pools Knob Recreation
Smyrna Co: Rutherford TN 37167–

Location: Jones Mill Road
Landholding Agency: COE
Property Number: 319011496
Status: Underutilized
Reason: Floodway.

Tracts 245, 257, and 256
J. Perry Priest Dam and Reservoir
Cook Recreation Area
Nashville Co: Davidson TN 37214–
Location: 2.2 miles south of Interstate 40 near Saunders Ferry Pike.
Landholding Agency: COE
Property Number: 319011497
Status: Underutilized
Reason: Floodway.

Tracts 107, 109 and 110
Cordell Hull Lake and Dam Project
Two Prong
Carthage Co: Smith TN 37030–
Location: US Highway 85
Landholding Agency: COE
Property Number: 319011498
Status: Unutilized
Reason: Floodway.

Tracts 2919 and 2929
Cordell Hull Lake and Dam Project
Sugar Creek
Gainesboro Co: Jackson TN 38562–
Location: Sugar Creek Road
Landholding Agency: COE
Property Number: 319011500
Status: Unutilized
Reason: Floodway.

Tracts 1218 and 1204
Cordell Hull Lake and Dam Project
Granville—Alvin Yourk Road
Granville Co: Jackson TN 38564–
Landholding Agency: COE
Property Number: 319011501
Status: Unutilized
Reason: Floodway.

Tract 2100
Cordell Hull Lake and Dam Project
Galbreaths Branch
Gainesboro Co: Jackson TN 38562–
Location: TN Highway 53
Landholding Agency: COE
Property Number: 319011502
Status: Unutilized
Reason: Floodway.

Tract 104 et. al.
Cordell Hull Lake and Dam Project
Horseshoe Bend Launching Area
Carthage Co: Smith TN 37030–
Location: Highway 70 N
Landholding Agency: COE
Property Number: 319011504
Status: Underutilized
Reason: Floodway.

Tracts 510, 511, 513 and 514
J. Percy Priest Dam and Reservoir Project
Lebanon Co: Wilson TN 37087–
Location: Vivrett Creek Launching Area, Alvin Sperry Road
Landholding Agency: COE
Property Number: 319120007
Status: Underutilized
Reason: Floodway.

Tract A–142, Old Hickory Beach
Old Hickory Blvd.
Old Hickory Co: Davidson TN 37138–
Landholding Agency: COE
Property Number: 319130008
Status: Underutilized
Reason: Floodway.

Texas

Tracts 104, 105–1, 105–2 & 116
Joe Pool Lake
Dallas County, TX
Landholding Agency: COE
Property Number: 319010397
Status: Underutilized
Reason: Floodway.

Part of Tracts 201–3, 323
Joe Pool Lake
Dallas County, TX
Landholding Agency: COE
Property Numbers: 319010398–319010399
Status: Underutilized
Reason: Floodway.

Tracts 702–3, 706
Granger Lake
Route 1, Box 172
Granger Co: Williamson TX 76530–9801
Landholding Agency: COE
Property Numbers: 319010401–319010402
Status: Unutilized
Reason: Floodway.

West Virginia

Ohio River
Pike Island Locks and Dam
Buffalo Creek
Wellsburg Co: Brooke WV
Landholding Agency: COE
Property Number: 319011529
Status: Unutilized
Reason: Floodway.

Morgantown Lock and Dam
Box 3 RD #2
Morgantown Co: Monongahelia WV 26505–
Landholding Agency: COE
Property Number: 319011530
Status: Unutilized
Reason: Floodway.

London Lock and Dam
Route 60 East
Rural Co: Kanawha WV 25126–
Location: 20 miles east of Charleston, W. Virginia.
Landholding Agency: COE
Property Number: 319011690
Status: Unutilized
Reason: Other
Comment: .03 acres; very narrow strip of land located too close to busy highway.

[FR Doc. 91–26859 Filed 11–7–91; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Wapato Irrigation Project, Washington

AGENCY: Bureau of Indian Affairs, Department of the Interior.

ACTION: Proposed Operation and Maintenance Rates.

SUMMARY: The purpose of this notice is to change the assessment rates for operating and maintaining the Wapato Irrigation Project for 1992 and subsequent years. The assessment rates are based on a prepared estimate of the cost of normal operation and maintenance of the irrigation project. Normal operation and maintenance is defined as the average per acre cost of all activities involved in delivering irrigation water, including maintaining pumps and other facilities.

EFFECTIVE DATE: Interested parties may submit written comments on or before December 9, 1991.

FOR FURTHER INFORMATION CONTACT: Portland Area Director, Portland Area Office, Bureau of Indian Affairs, 911 NE. 11th Avenue, Portland, Oregon 97232–4169, telephone FTS 429–6750; commercial (503) 231–6750.

SUPPLEMENTARY INFORMATION: This notice of proposed operation and maintenance rates and related information is published under the authority delegated to the Assistant Secretary-Indian Affairs by the Secretary of the Interior in 230 DM 1 and delegated by the Assistant Secretary-Indian Affairs to the Area Director in BIAM 3.

This notice is given in accordance with § 171.1(e) of part 171, subchapter H, chapter I, of title 25 of the Code of Federal Regulations, which provide for the Area Director to fix and announce the rates for annual operation and maintenance assessments and related information of the Wapato Irrigation Project for Calendar Year 1992 and subsequent years. This notice is pursuant to the authority contained in the Acts of August 1, 1914 (38 Stat. 587), and March 7, 1928 (45 Stat. 210).

The purpose of this notice is to announce an increase in the Wapato Project assessment rates proportionate with actual operation and maintenance costs. The assessment rates for 1992 will amount to an increase of 22% for the Wapato Satus unit, and additional works lands and no increase for the Toppenish-Simcoe & Ahtanum Units.

Wapato Irrigation Project-General

Administration

The Wapato Irrigation Project, which consists of the Ahtanum Unit, Toppenish-Simcoe Unit, and Wapato-Satus Unit within the Yakima Indian Reservation, Washington, is administered by the Bureau of Indian Affairs. The Project Engineer of the Wapato Irrigation Project is the Officer-in-Charge and is fully authorized to carry out and enforce the regulations, either directly or through employees designated by him. The general regulations are contained in Part 171, Operation and Maintenance, Title 25—Indians, Code of Federal Regulations. (42 FR 30362, June 14, 1977).

Irrigation Season

Water will be available for irrigation purposes from April 1 to September 30 of each year. These dates may be varied by 20 days depending on weather conditions and the necessity for doing maintenance work warrants doing so.

Request for Water Delivery and Changes

Requests for water delivery and changes will be made at least 24 hours in advance. Not more than one change will be made per day. Changes will be made only during the ditchrider's regular tour. Pump shut-down, regardless of duration, without the required notice will result in the delivery being closed and locked. Repeated violations of this rule will result in strict enforcement of rotation schedules.

Water users will change their sprinkler lines without shutting off more than one-half of their lines at one time. Sudden and unexpected changes in ditch flow result in operating difficulties and waste of water.

Charges for Special Services

Charges will be collected for various special services requested by the general public, water users and other organizations during the Calendar Year 1992 and subsequent years until further notice, as detailed below:

(1) Requests for Irrigation Accounts and Status Reports, Per Report	$15.00
(2) Requests for Verification of Account Delinquency Status, Per Report	10.00
(3) Requests for Splitting of Operation and Maintenance Bills (in addition to minimum billing fee) Per Bill	10.00
(4) Requests for Billing of Operation and Maintenance to Other than Owner or Lessee of Record (in addition to minimum billing fee), Per Bill	10.00
(5) Requests for Other Special Services Similar to the above, when appropriate, Per Report	10.00.
(6) Requests for elimination of lands from the Project. In the event that the elimination is approved, a portion of the fee will be used to pay the Yakima County, Recording Fee	10.00
(7) Review of subdivision plats	10.00

Ahtanum Unit

Charges

(a) The operation and maintenance rate on lands of the Ahtanum Irrigation Unit for the Calendar Year 1992 and subsequent years until further notice, is fixed at $9.00 per acre per annum for land to which water can be delivered from the project works.

(b) In addition to the foregoing charges there shall be collected a billing charge of $5 for each tract of land for which operation and maintenance bills are prepared. The bill issued for any tract will, therefore, be the basic rate per acre times the number of acres plus $5. A one acre charge shall be levied on all tracts of less than one acre.

Toppenish-Simcoe Unit

Charges

(a) The operation and maintenance rate for the lands under the Toppenish-Simcoe Irrigation Unit for the Calendar Year 1992 and subsequent years until further notice, is fixed at $9.00 per acre per annum for land for which an application for water is approved by the Project Engineer.

(b) In addition to the foregoing charges there shall be collected a billing charge of $5 for each tract of land for which operation and maintenance bills are prepared. The bills issued for any tract will, therefore, be the basic rate per acre times the number of acres plus $5. A one acre charge shall be levied on all tracts of less than one acre.

Wapato-Satus Unit

Charges

(a) The basic operation and maintenance rates on assessable lands under the Wapato-Satus Unit are fixed for the Calendar Year 1992 and subsequent years until further notice as follows:

(1) Minimum charge for all tracts	$36.00.
(2) Basic rate upon all farm units or tracts for each assessable acre except Additional Works lands	$36.00.
(3) Rate per assessable acre for all lands with a storage water rights, known as "B" lands, in addition to other charges per acre	$6.80.
(4) Basic rate upon all farm units or tracts for each assessable acre of Additional Works lands	$39.60.

(b) In addition to the foregoing charges there shall be collected a billing charge of $5 for each tract of land for which operation and maintenance bills are prepared. The bill issued for any tract will, therefore, be the basic rate per acre times the number of acres plus $5. A one acre charge shall be levied against all tracts of less than one acre.

Payments

The water charges become due on April 1 of each year and are payable on or before that date. To all assessments on lands in non-Indian ownership, and lands in Indian ownership remaining unpaid on or after July 1 following the due date shall be considered delinquent. No water shall be delivered to any of these lands until all irrigation charges have been paid.

Interest and Penalty Fees

Interest and penalty fees will be assessed, where required by-law, on all delinquent operation and maintenance assessment charges as prescribed in the Code of Federal Regulations, Title 4, Part 102, Federal Claims Collection Standards; and 42 BIAM Supplement 3, part 3.8 Debt Collection Procedures.

Assessable Lands

The assessable lands of the Wapato-Satus Unit are classified under these regulations as follows:

(a) All Indian trust (A and B) land designated as assessable by the Secretary of the Interior for which application for water is pending or on which assessments had been charged the preceding year.

(b) All Indian trust (A or B) land not designated as assessable by the Secretary of the Interior for which application for water is pending or on which assessments had been charged the preceding year.

(c) All patent in fee land covered by a water right contract, except on land that because of inadequate drainage is no longer productive. The adequacy of the drainage is determined by the Project Engineer.

(d) At the discretion of Project Engineer and upon the payment of charges, patent in fee land for which an application for a water right or modification of a water right contract is pending.

Wilford Bowker,

Acting Portland Area Director.

[FR Doc. 91-26969 Filed 11-7-91; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[NV-930-92-4212-16; N-32087]

Partial Termination of Desert Land Classification; Nevada

October 28, 1991.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action terminates a portion of desert land classification N-32087.

EFFECTIVE DATE: Termination of the classification is effective upon the publication of this document.

FOR FURTHER INFORMATION CONTACT: Vienna Wolder, BLM Nevada State Office, 850 Harvard Way, P.O. Box 12000, Reno, NV 89520, 702–785–6526.

SUPPLEMENTARY INFORMATION: Pursuant to section 7 of the Taylor Grazing Act (48 Stat. 1272), the following described portion of desert land classification N–32087 is hereby terminated:

Mount Diablo Meridian, Nevada

T. 19 N., R. 37 E.,
Sec. 28, S½SW¼;
Sec. 33, N½NW¼.

The area described contains 160 acres in Churchill County.

The classification was accomplished pursuant to the Desert Land Act (43 U.S.C. 231, as amended) and the Carey Act (43 U.S.C. 641–647, as amended). Subsequently, the Lahontan Resource Management Plan identified the above described land to be retained for management purposes; therefore, the classification is no longer considered appropriate as to those lands and is hereby terminated.

The termination of the classification is effective upon publication of this notice.

Robert G. Steele,

Deputy State Director, Operations.

[FR Doc. 91–26970 Filed 11–7–91; 8:45 am]

BILLING CODE 4310–HC–M

[NV–030–4333–12; Closure Notice NV–030–92–01]

Road Closure; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Road Closure, Notice.

SUMMARY: Notice is hereby given that the road leading south along the east side of the main ridgeline, due west of August Spring and up to the existing public lands closure on Petersen Mountain, northwest of Reno, Nevada, is closed to all vehicles. This action is in conformance with the Lahontan Resource Management Plan and is being taken in order to protect wildlife habitat and riparian meadows and to prevent soil erosion within the Petersen Mountain Natural Area.

DATES: This closure goes into effect on January 1, 1992, and will remain in effect until the Carson City District Manager determines it is no longer needed.

FOR FURTHER INFORMATION CONTACT: James M. Phillips, Lahontan Resource Area Manager, Carson City District, 1535 Hot Springs Road, suite 300, Carson City, Nevada 89706. Telephone (702) 885–6000.

SUPPLEMENTARY INFORMATION: The authority for this closure is 43 CFR 8341.2, 43 CFR 8342.3 and 43 CFR 8364.1. Any person who fails to comply with a closure order is subject to arrest and fines of up to $1000 and/or imprisonment not to exceed 12 months.

This closure applies to all motorized vehicles and non-motorized vehicles, such as mountain bikes, excluding (1) any emergency or law enforcement vehicle while being used for emergency purposes, and (2) any vehicle whose use is expressly authorized in writing by the Lahontan Resource Area Manager.

The road affected by this closure is located within the Petersen Mountain Natural Area and crosses the following lands:

Mt. Diablo Meridian

T.23N., R.18E.
Sec. 5;
Sec. 8.

A map showing the closed road is posted in the Carson City District Office.

Dated: October 28, 1991.

James W. Elliott,

Carson City District Manager.

[FR Doc. 91–26971 Filed 11–7–91; 8:45 am]

BILLING CODE 4310–HC–M

[ID–020–4760–02]

Burley District Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting for Burley District Advisory Council.

SUMMARY: Notice is hereby given that the Burley District Advisory Council will meet on December 10, 1991. The meeting will convene at 9 a.m. in the Conference Room of the Bureau of Land Management Office at 200 South Oakley Highway, Burley, Idaho.

Agenda items are: (1) Deep Creek Resource Area, Resource Management Plan startup, (2) Update on Murtaugh sanitary landfill (Hazardous Material Site) remedial investigation/feasibility study; Minidoka County sanitary landfill site closure on public lands previously administered by BLM, (ground water monitoring for possible contamination in cooperation with Bureau of Reclamation); cleanup of pesticide containers at German Lake, and unauthorized solid waste dump site on public land administered by BLM, (3) Burley District Forestry program report, (4) Recap of 1991 fire activities including rehabilitation projects, (5) Report on Burley District's Annual Work Plan and budget for the 1992 fiscal year, (6) General discussion items by Council members.

The meeting is open to the general public. The comment period for persons or organizations wishing to make oral statements to the Council will begin at 11 a.m. Anyone wishing to make an oral statement should notify the District Manager, Bureau of Land Management, Route 3, Box 1, Burley, Idaho 83318, prior to the start of the meeting. Depending upon the number of persons wishing to make statements, a per time limit may be established by the District Manager. Written statements may also be filed.

Minutes of the Council meeting will be maintained in the District Office and will be available for public inspection during regular business hours.

DATES: December 10, 1991.

ADDRESSES: Bureau of Land Management, Burley District Office, Route 3, Box 1, Burley, Idaho 83318.

FOR FURTHER INFORMATION CONTACT: Gerald L. Quinn, Burley District Manager, (208) 678–5514.

Dated: November 1, 1991.

Gerald L. Quinn,

District Manager.

[FR Doc. 91–26994 Filed 11–7–91; 8:45 am]

BILLING CODE 4310–GG–M

Salmon District Advisory Council: Meeting

AGENCY: Bureau of Land Management, Interior.

SUMMARY: The Salmon District of the Bureau of Land Management (BLM) announces a forthcoming meeting of the Salmon District Advisory Council.

DATES: The meeting will be held Wednesday November 13, 1991, at 10 a.m.

ADDRESSES: The meeting will be held at the Village Inn Restaurant, in Challis, Idaho.

SUPPLEMENTARY INFORMATION: The meeting is held in accordance with Public Laws 92.463 and 94.579. The purpose for the meeting is to discuss the Clean Water Act, the BLM River Permitting process, and current Salmon District issues.

The meeting is open to the public. Interested persons may make oral statements to the Council between 11 a.m. and 11:30 a.m. or file written statements for the Council's consideration. Anyone wishing to make an oral statement must notify the District Manager at the Salmon District Office by November 8, 1991.

Summary minutes to the meeting will be maintained in the District Office and will be available for public inspection and reproduction (during regular

business hours) within 30 days following the meeting. Notification of oral statements and requests for summary minutes should be sent to Roy S. Jackson, District Manager, Salmon District BLM, Box 430, Salmon, Idaho 83467.

Dated: October 24, 1991.

Roy S. Jackson,

District Manager

[FR Doc. 91-26972 Filed 11-7-91; 8:45 am]

BILLING CODE 4310-GG-M

[NV-930-02-4212-13; N-48090]

Realty Action; Exchange of Public Lands in Elko County, NV

The following described public lands administered by the Bureau of Land Management, including the locatable, leasable, and salable mineral estates have been examined and identified as suitable for disposal by exchange under Section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716.

Mount Diablo Meridian, Nevada

T. 40 N., R. 52 E., Section 25, Lots 1-3.

The areas described above aggregate 118.36 acres, more or less.

The patent, when issued, will contain the following reservation to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, (26 Stat. 391; 43 U.S.C. 945).

In exchange for these lands the United States will acquire the following described private lands from Van Norman Ranches, Inc.

Mount Diablo Meridian, Nevada

T. 38 N., R. 52 E.,
Sec. 12, SE¼NE¼.
T. 38 N., R. 53 E.,
Sec. 5, SW¼SE¼, 8, NE¼NW¼, 9, NW¼SE¼, 16, NE¼NE¼, NW¼SE¼, 17, SW¼SE¼.

The areas described above aggregate 280.00 acres more or less.

Acquisition of the lands will be subject to an easement over the SW¼SE¼ of section 5, T. 38 N., R. 53 E., for electric transmission line purposes granted to Sierra Pacific Power Company.

The above described lands will be subject to an appraisal to determine the value of the lands to be exchanged. If necessary, land values may be equalized through an acreage adjustment and/or a payment by the exchange proponent in accordance with 43 CFR 2201.5(c)(2).

The locatable and salable mineral estates on both offered and selected lands have been determined to have low potential for mineral development. The oil and gas and geothermal estates have been determined to be prospectively valuable on the offered and selected lands while the remaining leasable mineral estate has been determined to have no known value. To avoid creation of a split estate, the exchange would be conditioned on the acquisition of the outstanding 50.00% of the mineral estate on the offered private lands by the proponent prior to consummation of the exchange.

The purpose of this exchange is to acquire non-Federal lands which have high public values for crucial mule deer summer habitat, sage grouse habitat for nongame birds and mammals, and nesting habitat for raptors and cavity nesting birds. The exchange is consistent with the Bureau's Elko Resource Management Plan and the public interest will be well served by completing the exchange.

The grazing preference on the selected lands would be reduced by 25 AUMs as a result of this action. The grazing permittee has waived the two-year notification in regard to his grazing privileges on the selected lands.

Publication of this notice in the **Federal Register** will segregate the subject lands from all appropriations under the public land laws including the mining and mineral leasing laws. This segregation will terminate upon the issuance of patent or two years from the date of this notice or upon publication of a Termination of Segregation, whichever occurs first.

Further information concerning the exchange, including the environmental assessment, is available for review at the Bureau of Land Management, 3900 E. Idaho Street, Elko, Nevada 89801.

For a period of 45 days from the date of this notice, interested parties may submit comments to the District Manager, Elko District, at the above address. All objections will be reviewed by the Nevada State Director, who may sustain, vacate, or modify this realty action. In the absence of timely objections this realty action shall become the final determination of the Department of the Interior.

Dated: October 29, 1991.

Rodney Harris,

District Manager.

[FR Doc. 91-26973 Filed 11-7-91; 8:45 am]

BILLING CODE 4310-84-M

Fish and Wildlife Service

Availability of Draft Environmental Impact Report/Environmental Impact Statement on the Restoration of the Tidal Prism and Enhancement of Wetlands in the Tijuana Estuary

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: This notice advises the public that the Fish and Wildlife Service has completed a Draft Environmental Impact Report/Draft Environmental Impact Statement (DEIR/DEIS) for the enhancement of the tidal prism to Tijuana Estuary, San Diego County, California. A public meeting regarding the DEIR/DEIS will be held. This notice is being furnished as required by the National Environmental Policy Act (NEPA) Regulations (40 CFR 1501.7) to obtain comments and information from other agencies and the public on the issues in the DEIR/DEIS. Comments and participation in this process are solicited.

DATES: Written comments should be received within 60 days from publication of this notice. A public meeting will be conducted on November 21, 1991 by the U.S. Fish and Wildlife Service and the California Coastal Conservancy. See **ADDRESSES** below for location and time.

ADDRESSES: Comments should be addressed to: Jim King, California Coastal Conservancy, 1330 Broadway, suite 1100, Oakland, California 94612.

The public meeting on November 21, 1991, will be held from 7 p.m. to 9 p.m. at the Tijuana Estuary Visitor Center, 301 Caspian Way, Imperial Beach, California 91932.

FOR FURTHER INFORMATION CONTACT: Jim King, California Coastal Conservancy, 1330 Broadway, suite 1100, Oakland, California 94612, (510) 464-1015.

Copies of the DEIR/DEIS are available for review at:

Tijuana Estuary Visitor Center, 301 Caspian Way, Imperial Beach, California 91932
and
San Diego County Library, Imperial Beach Branch, 810 Imperial Beach Blvd., Imperial Beach, California 91932
and
Governmental Reference Library, 602 County Administration Center, 1600 Pacific Highway, San Diego, California 92101.

SUPPLEMENTARY INFORMATION: The Tijuana River National Estuarine Research Reserve (Reserve) is located in

San Diego County, California. Within the Reserve is the Tijuana Slough National Wildlife Refuge. The Fish and Wildlife Service is a member of the Management Authority for Reserve. A management plan approved by this Management Authority proposes to restore the wetlands of the Tijuana Estuary. The Fish and Wildlife Service, the State of California Department of Parks and Recreation, and the California Coastal Conservancy are to assume the responsibility to provide technical advice and funding assistance as available for restoration activities within the Reserve.

The Fish and Wildlife Service with the other interested Federal, State, and local agencies proposes to restore the tidal prism and circulation for the southern arm of the Tijuana Estuary. Without extensive restoration of the tidal prism and tidal circulation in the near future, the very saline habitats which led to the establishment of the Tijuana Slough National Wildlife Refuge and the Tijuana River National Estuarine Research Reserve could be lost.

The DEIR/DEIS under review now is a programmatic environmental document and covers the two main phases of the restoration proposal. The Model Project (first phase of restoration) consists of three parts; a 20 acre experimental marsh, widening of a critical portion of Oneonta Slough and a Connector Channel from the upper reach of Oneonta Slough to the northern end of the tidal lagoons.

The later phase of the project includes 495 acres of wetland restoration and construction of a river training structure and will be reviewed in more detail in supplemental environmental documents.

The major short-term impacts associated with this project are the loss of high saltmarsh and transition zone habitats. The major long-term impact will be the permanent loss of uplands in the estuary. The document addresses the impacts to water and wetland dependent species during construction, and during the short-term loss of habitat values. Long-term impacts to terrestrial species are also discussed. Of particular concern is my possible adverse impacts to listed, proposed, or candidate endangered species that may be found in the project area. Therefore, the document contains discussions of these possible impacts as well as means to mitigate the loss of habitat values.

The environmental review of this project is being conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4371 et seq.), NEPA Regulations (40 CFR 1500–1508), other appropriate Federal regulations and Service procedures for compliance with those regulations.

Dated: November 4, 1991.

Marvin L. Plenert,

Regional Director.

[FR Doc. 91–27068 Filed 11–7–91; 8:45 am]

BILLING CODE 4310–55–M

Minerals Management Service

North Carolina Environmental Sciences Review Panel; Notice and Agenda for Meeting

The North Carolina Environmental Sciences Review Panel will meet from 8:30 a.m. to 5 p.m. on Monday, November 25, at the Guest Quarters, 2515 Meridian Parkway, Durham, North Carolina. The agenda will include the following:

Response of Reviewers to Draft Report

a. Physical Oceanography
b. Ecology
c. Socioeconomics

Actions for Revision and Completion of Report, Report Submission and Publication, Other Business

The meeting is open to the public. Upon request, interested parties may make oral or written presentations related to the purpose of the panel. Requests should be made to Dr. Andrew Robertson, Federal Coordinator, 301–443–8933.

This notice is issued in accordance with the provisions of the Federal Advisory Committee Act, Public Law No. 92–463 5 U.S.C. Appendix 1, and the Office of Management and Budget's Circular No. A–63, Revised.

Dated: November 1, 1991.

Thomas Gernhofer,

Associate Director for Offshore Minerals Management.

[FR Doc. 91–26966 Filed 11–7–91; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

Acadia National Park, Bar Harbor, ME; Acadia National Park Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463. 86 Stat. 770, 5 U.S.C. app. 1, sec. 10), that the Acadia National Park Advisory Commission will hold a meeting on Monday, November 25, 1991.

The Commission was established pursuant to Public Law 99–420, sec. 103. The purpose of the Commission is to consult with the Secretary of the Interior, or his designee, on matters relating to the management and development of the Park, including but not limited to the acquisition of lands and interests in lands (including conservation easements on islands) and termination of rights of use and occupancy.

The meeting will convene at Acadia National Park Headquarters, Route 233, McFarland Hill, at 1 p.m. to consider the following agenda:

1. Review and approval of minutes from the meeting held September 16, 1991.
2. Donation of conservation easements to Acadia National Park.
3. Proposed agenda and date of the next Commission meeting.

The meeting is open to the public. Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made to the Superintendent at least seven days prior to the meeting.

Further information concerning these meetings may be obtained from the Superintendent, Acadia National Park, P.O. Box 177, Bar Harbor, Maine 04609, tel: (207) 288–5456.

Dated: October 31, 1991.

Gerald D. Patten,

Regional Director.

[FR Doc. 91–26974 Filed 11–7–91; 8:45 am]

BILLING CODE 4310–70–M

Cape Cod National Seashore, South Wellfleet, MA, Cape Cod National Seashore Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92.463, 86 Stat. 770, 5 U.S.C. App 1 section 10), that a meeting of the Cape Cod National Seashore Advisory Commission will be held on Friday, November 22, 1991.

The Commission was reestablished pursuant to Public Law 99–349, Amendment 24. The purpose of the Commission is to consult with the Secretary of the Interior, or his designee, with respect to matters relating to the development of the Cape Cod National Seashore, and with respect to carrying out the provisions of sections 4 and 5 of the Act establishing the Seashore.

The commission members will meet for a regular business meeting which will convene at Park Headquarters, Marconi Station, South Wellfleet, Massachusetts at 1 p.m. for the following reasons:

1. Adoption of Agenda.

2. Approval of Minutes of Previous Meeting.
3. Reports of Officers.
4. Old Business:
   (a) Boston Harbor Project.
   (b) Affordable Housing.
5. Superintendent's Report.
6. Discussion of Regional Director's Statement of Direction.
7. Discussion of Visitor Survey Questionnaire.
8. Discussion of Low Impact Uses.
9. New Business.
10. Agenda for Next Meeting.
11. Date for Next Meeting.
12. Communications/public comment.
13. Adjournment.

The business meeting is open to the public. It is expected that 15 persons will be able to attend the session in addition to the Commission members.

Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made to the park superintendent at least seven days prior to the meeting.

Further information concerning this meeting may be obtained from the Superintendent, Cape Cod National Seashore, South Wellfleet, MA 02663.

Dated: October 31, 1991.

Gerald D. Patten,

Regional Director.

[FR Doc. 91-26975 Filed 11-7-91; 8:45 am]

BILLING CODE 4310-70-M

Mississippi River Coordinating Commission; Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets the schedule for the forthcoming meeting of the Mississippi River Coordinating Commission. Notice of this meeting is required under the Federal Advisory Committee Act.

DATES: December 18, 1991; 8:30 a.m. to 12 p.m.

ADDRESSES: Radisson Hotel—St. Paul, 11 East Kellogg Boulevard, St. Paul, Minnesota.

FOR FURTHER INFORMATION CONTACT: Norman J. Reigle, Superintendent, Mississippi National River and Recreation Area, Post Office Box 65456, St. Paul, Minnesota 55165-0456 (612) 290-4160.

SUPPLEMENTARY INFORMATION: The Mississippi River Coordinating Commission was established by Public Law 100-696. November 18, 1988.

Dated: October 11, 1991.

Randall K. Baynes,

Regional Director, Midwest Region.

[FR Doc. 91-26976 Filed 11-7-91; 8:45 am]

BILLING CODE 4310-70-M

Vancouver Historical Study Commission; Meetings

AGENCY: National Park Service, Interior.

ACTION: Notice of correction of dates.

This notice corrects the dates published in the **Federal Register**, October 11, 1991, (volume 56, No. 198, page 51401) for public meetings of the Vancouver Historical Study Commission to be held in the Vancouver, Washington City Council Chambers, 210 East 13th Street, Vancouver, Washington. The four meeting dates will be held on Tuesday, January 14, 1992, Tuesday, February 11, 1992, Tuesday, March 10, 1992, and Tuesday, April 14, 1992. Commission meetings start at 1 p.m., and are planned to adjourn no later than 5 p.m.

Dated: October 30, 1991.

Charles H. Odegaard,

Regional Director.

[FR Doc. 91-26977 Filed 11-7-91; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Housing Guaranty Program; Investment Opportunity

The Agency for International Development (A.I.D.) has authorized the guaranty of a loan to the Government of Tunisia ("Borrower") as part of A.I.D.'s development assistance program. The proceeds of this loan will be used to finance shelter projects for low-income families in Tunisia. The Borrower has authorized A.I.D. to request proposals from eligible lenders. The name and address of the Borrower's representative to be contacted by interested U.S. lenders or investment bankers, the amount of the loan and project number are indicated below:

Government of Tunisia

Project: 664-HG-004—$9,400,000
Attention: Mr. Mongi Grine, Directeur General du Financement Exterieur, Banque Centrale de Tunisie, Tunis, Tunisia
Telex No.: BANCENTUN 15375, 13311
Telefax No.: 216-1-340-615
Telephone No.: 216-1-340-588, 254-000

Interested lenders should submit their bids to the Borrower's representative by Wednesday, November 19, 1991, 5 p.m. Eastern Standard Time. Bids should be open for a period of 48 hours from the bid closing date. Copies of all bids should be simultaneously sent to the following:

Mr. Fathi Kraiem or Mr. Lane Smith, RHUDO/NENA-USAID/Tunisia, c/o American Embassy, Tunis, Tunisia (Street address: 28 Rue Suffex, Notre Dame, Tunis, Tunisia)
Telex No.: 14182 USAID TN
Telefax No.: 216-1-782-464 (preferred communication)
Telephone No.: 216-1-784-300

Robert H. Freed, Agency for International Development, PRE/DP, room 3313A, NS, Washington, DC 20523-0088
Telex No.: 892703 AID WSA
Telefax No.: 202-647-1805 (preferred communication)
Telephone No.: 202-647-6909

For your information the Borrower is currently considering the following terms:

(1) *Amount:* U.S. $9.4 million.

(2) *Term:* 30 years.

(3) *Grace Period:* Ten years on repayment of principal.

(4) *Interest Rate:* Fixed interest rate. If rates are to be quoted based on a spread over an index, the lender should use as its index, the 8 ⅛ U.S. Treasury Bond due August 2021, such rate to be fixed as of 12 noon (e.s.t.) on November 19, 1991.

(5) *Fees:* Borrower agrees to pay all closing costs at closing from the proceeds of the loan. Lenders are requested to include all legal fees in their placement.

(6) *Closing Date:* Estimated 60 days from date of selection of lender.

(7) *Prepayment:* The loan shall be subject to prepayment at the option of the Borrower. The loan shall also be subject to prepayment, if required by A.I.D., because of the Borrower's commission of an Event of Default.

Selection of investment bankers and/or lenders and the terms of the loan are initially subject to the individual discretion of the Borrower and thereafter subject to approval by A.I.D. Disbursements under the loan will be subject to certain conditions required of the Borrower by A.I.D. as set forth in agreements between A.I.D. and the Borrower.

The full repayment of the loans will be guaranteed by A.I.D. The A.I.D. guaranty will be backed by the full faith and credit of the United States of America and will issued pursuant to authority in section 222 of the Foreign

Assistance Act of 1961, as amended (the "Act").

Lenders eligible to received an A.I.D. guaranty are those specified in section 238(c) of the Act. They are: (a) U.S. citizens; (2) domestic U.S. corporations, partnerships, or associations substantially beneficially owned by U.S. citizens; (3) foreign corporations whose share capital is at least 95 percent owned by U.S. citizens; and, (4) foreign partnerships or associations wholly owned by U.S. citizens.

To be eligible for an A.I.D. guaranty, the loans must be repayable in full not later than the thirtieth anniversary of the disbursement of the principal amount thereof.

Information as to the eligibility of lenders and other aspects of the A.I.D. housing guaranty program can be obtained from: Peter M. Kimm, Director, Office of Housing and Urban Programs, Agency for International Development, room 401, SA-2, Washington, DC 20523–0214, Telephone: 202/663–2530.

Dated: November 4, 1991.

Michael G. Kitay,

Assistant General Counsel, Bureau for Private Enterprise, Agency for International Development.

[FR Doc. 91–27071 Filed 11–7–91; 8:45 am]

BILLING CODE 6116–01–M

INTERSTATE COMMERCE COMMISSION

Agricultural Cooperative; Intent To Perform Interstate Transportation for Certain Nonmembers

Dated: November 5, 1991.

The following Notices were filed in accordance with section 10526(a)(5) of the Interstate Commerce Act. These rules provide that agricultural cooperatives intending to perform nonmember, nonexempt, interstate transportation must file the Notice, Form BOP 102, with the Commission within 30 days of its annual meeting each year. Any subsequent change concerning officers, directors, and location of transportation records shall require the filing of a supplemental Notice within 30 days of such change.

The name and address of the agricultural cooperative (1) and (2), the location of the records (3), and the name and address of the person to whom inquiries and correspondence should be addressed (4), are published here for interested persons. Submission of information which could have bearing upon the propriety of a filing should be directed to the Commission's Office of Compliance and Consumer Assistance, Washington, DC 20423. The Notices are in a central file, and can be examined at the office of the Secretary, Interstate commerce Commission, Washington, DC.

(1) Knouse Foods, Inc.
(2) Peach Glen, PA 17306.
(3) Peach Glen, PA 17306–1199.
(4) Arlene Jennings, Peach Glen, PA 17306.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–27009 Filed 11–7–91; 8:45 am]

BILLING CODE 7035–01–M

Intent To Engage In Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10525(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

A.1. Parent corporation, address of principal office and state of incorporation: ConAgra, Inc., One ConAgra Drive, Omaha, NE 68102–5001 (a Delaware corporation)

2. Wholly owned subsidiaries which will participate in the operations, and state of incorporation:

1 Ag-chem, Inc., (a Maryland corporation)
2 Agro B.C. Limited (a Canada corporation)
3 Agro Company of Canada Limited (a Canada corporation)
4 Agro West Ltd. (a Canada corporation)
5 Atwood Commodities, Inc. (A Nebraska corporation)
6 Atwood-Larson Company (a Minnesota corporation)
7 Balcom Chemicals, Inc. (a Colorado corporation)
8 Banquet Foods (Canada) Corporation (a Canada corporation)
9 Beatrice Cheese, Inc. (a Delaware corporation)
10 Beatrice Cheese Trucking, Inc. (a Delaware corporation)
11 Beatrice Company (a Delaware corporation)
12 Beatrice Foods Co. (a Delaware corporation)
13 Beatrice Meats, Inc. (a Delaware corporation)
14 Beatrice U.S. Food Corp. (a Delaware corporation)
15 Berger and Company (a California corporation)
16 Bergerco USA (a California corporation)
17 Berliner & Marc, Inc. (a Delaware corporation)
18 Blue Coach Foods, Inc. (a Delaware corporation)
19 Canadian Harvest Process (1986) Ltd. (a Canada corporation)
20 Caribbean Basic Food Company (a Nebraska corporation)
21 Central Valley Chemicals, Inc. (a Texas corporation)
22 ConAgra Canada Limited (a Canada corporation)
23 ConAgra Caribbean Distribution, Inc. (a Puerto Rico corporation)
24 ConAgra Fertilizer Company (a Nebraska corporation)
25 ConAgra International Fertilizer Company (a Delaware corp)
26 ConAgra International, Inc. (a Delaware corporation)
27 ConAgra Mexico, Inc. (a Delaware corporation)
28 ConAgra Pet Products company (a Delaware corporation)
29 ConAgra Poultry Company (a Delaware corporation)
30 ConAgra Transportation, Inc. (a Delaware corporation)
31 Cook Family Foods, Ltd. (a Pennsylvania corporation)
32 Country Skillet Catfish Company (a Delaware corporation)
33 County Line Cheese Co., Inc. (an Indiana corporation)
34 Cropmate company (a Delaware corporation)
35 CTC North America, Inc. (a Delaware corporation)
36 Dartec, Inc. (a Colorado corporation)
37 Dixie Ag Supply, Inc. (an Alabama corporation)
38 E.A. Miller, Inc. (a Utah corporation)
39 Eschem Canada, Inc. (a Canada corporation)
40 Estronics, Inc. (a Delaware corporation)
41 Golden Valley Microwave Foods, Inc. (a Minnesota corporation)
42 Golden Valley Microwave Foods International, Inc. (a MN corp)
43 Grower Service Corporation NY (a New York corporation)
44 GVMF Canada Inc. (a Canada corporation)
45 HACCO, Inc. (a Wisconsin corporation)
46 HACO. Inc. (an Illinois corporation)
47 Hess & Clark, Inc. (an Ohio corporation)
48 Hunt-Wesson Foods International, Ltd. (a Delaware corporation)
50 Interstate Feeders, Inc. (a Utah corporation)
51 L.L. Cheese Co., Inc. (a Delaware corporation)

52 Longmont Transportation Co., Inc., Inc. (a Colorado corporation)
53 Lamb Weston, Inc. (a Delaware corporation)
54 Loveland Industries, Inc. (a Colorado corporation)
55 Lynn Transportation Company, Inc. (a Iowa corporation)
56 Mid Valley Chemicals, Inc. (a Texas corporation)
57 Midwest Agriculture Warehouse Co. (a Nebraska corporation)
58 Miller Bros. Co. (a Utah corporation)
59 Molinos de Puerto Rico, Inc. (a Nebraska corporation)
60 Monfort Construction Company (a Delaware corporation)
61 Monfort Food Distributing Company (a Colorado corporation)
62 Monfort, Inc. (a Delaware corporation)
63 Monfort Transportation Company (a Colorado corporation)
64 Northwest Chemical Corporation (an Oregon corporation)
65 Old Capitol Popcorn company, Inc. (a Minnesota corporation)
66 Omaha Vaccine Co., Inc. (a Nebraska corporation)
67 Ostlund Chemical company (a North Dakota corporation)
68 Petrosul International Ltd. (a Canada corporation)
69 Phoenix Packaging, Inc. (a Minnesota corporation)
70 Platte Chemical Co. (a Nebraska corporation)
71 PRO-Vet Companies, Inc. (a Delaware corporation)
72 Public Grain Elevator of New Orleans, Inc. (a Louisiana corp)
73 Pueblo Chemical & Supply Co. (a Colorado corporation)
74 Ravan Products, Inc. (a Georgia corporation)
75 Richmond Fisheries (1983) Limited (a Canada corporation)
76 Scentry, Inc. (a Delaware corporation)
77 Snake River Chemicals, Inc. (an Idaho corporation)
78 Superior Barge Lines, Inc. (a Delaware corporation)
79 Swift-Eckrich, Inc. (a Delaware corporation)
80 Swissrose International, Inc. (a New Jersey corporation)
81 To-Ricos, Inc. (a Nebraska corporation)
82 Trans-Agra International, Inc. (a Wyoming corporation)
83 TransQuip Resources, Inc. (an Oklahoma corporation)
84 Transbas, Inc. (a Tennessee corporation)
85 Tri River Chemical Company, Inc. (a Washington corporation)
86 Tri State Chemicals, Inc. (a Texas corporation)
87 Tri State Delta Chemicals, Inc. (a Mississippi corporation)
88 Tropmi Import Co. (a Florida corporation)
89 UAP Canada, Inc. (a Canada corporation)
90 UAP/GA AG CHEM, Inc. (a Georgia corporation)
91 UAP Special Products, Inc. (a Nebraska corporation)
92 United Agri Products, Inc. (a Delaware corporation)
93 United Agri Products-Florida, Inc. (a Florida corporation)
94 Usen Fisheries (1983) Limited (a Canada corporation)
95 Vogel Popcorn Company (a Minnesota corporation)
96 Vogel Popcorn Company of Ohio, Inc. (a Minnesota corporation)
97 Westchem Agricultural Chemicals, Inc. (a Montana corporation)
98 Westglen Milling (1989) Limited (a Canada corporation)
99 Willow Creek Talc, Inc. (a Montana corporation)
100 Yellowstone Valley Chemicals, Inc. (a Montana corporation)

B. 1. Parent corporation and address of principal office: North East Chemical Corporation, 3301 Monroe Avenue, Cleveland, OH 44113
2. Wholly owned subsidiaries which will participate in the operations, and State of incorporation:
(i) North East Recycling Transportation, Inc. (an Ohio corporation)

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-27010 Filed 11-7-91; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31952]

American Commercial Lines, Inc.—Purchase and Lease Exemption—Certain Assets of Hines, Inc.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Pursuant to 49 U.S.C. 10505, the Commission exempts from the requirements of 49 U.S.C. 11321 the acquisition by American Commercial Lines, Inc. (ACL), through its new subsidiary, Hines American Lines (HAL), of certain assets of Hines, Inc. (Hines), a water carrier exempt from regulation under 49 U.S.C. 10542(c). ACL and its other subsidiary, American Commercial Barge Lines, Inc., are controlled by CSX Corporation (CSX), a holding company that also owns a railroad, CSX Transportation, Inc.

EFFECTIVE DATE: The exemption will be effective on November 11, 1991.

ADDRESSES: Send pleadings referring to Finance Docket No. 31952 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.
(2) Petitioners' representatives: Charles H. White, Jr., Hazel & Thomas, P.C., suite 400, 2001 Pennsylvania Avenue, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245. [TDD for hearing impaired: (202) 275-1721]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 275-1721.]

Decided: October 31, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-27011 Filed 11-7-91; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31950]

The Belt Railway Co. of Chicago—Trackage Rights Exemption—The Baltimore and Ohio Chicago Terminal Railroad Co.

The Baltimore and Ohio Chicago Terminal Railroad Company (B&OCT) has agreed to grant overhead trackage rights to The Belt Railway Company of Chicago (BRC) over a 12-mile line of railroad, known as the McCook Branch, between valuation station 600+00, at Argo, and valuation station 2034+40, at Franklin Park, in Cook County, IL. The trackage rights exemption became effective in October 4, 1991.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Woodrow M. Cunningham, The Belt Railway Company of Chicago, 6900 South Central Avenue, Chicago, IL 60638.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected pursuant to 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).

Dated: November 4, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-27012 Filed 11-7-91; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the Federal Register, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3014, Washington, DC 20210.

New General Wage Determination Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume, State, and page numbers

Volume I		
West Virginia:	WV91-14 (Nov 8, 1991)	p. All.
	WV91-15 (Nov 8, 1991)	p. All.
	WV91-16 (Nov 8, 1991)	p. All.
Volume II		
Louisiana:	LA91-14 (Nov 8, 1991)	p. All.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the Federal Register are in parentheses following the decisions being modified.

Volume I

Maryland	MD91-24 (Feb. 22, 1991).	p. All.
New Jersey:	NJ91-2 (Feb. 22, 1991).	pp. 701, 704, 707-708.
	NJ91-3 (Feb. 22, 1991).	p. 721, p. 723.
New York:	NY91-8 (Feb. 22, 1991).	pp. 857, 858-860, 867.
	NY91-17 (Feb. 22, 1991).	pp. 921, 924, 927-928.

Virginia:	VA91–17 (Feb. 22, 1991).	pp. 1281, 1282.
	VA91–18 (Feb. 22, 1991).	pp. 1285, 1286.
	VA91–50 (Feb. 22, 1991).	pp. 1357, 1358.
Volume II:		
Illinois	IL91–2 (Feb. 22, 1991).	pp. 97, 98–114b.
Indiana:	IN91–3 (Feb. 22, 1991).	p. 279.
	IN91–5 (Feb. 22, 1991).	p. 305.
	IN91–6 (Feb. 22, 1991).	pp. 315, 316.
Iowa:	IA91–5 (Feb. 22, 1991).	pp. 41, 42–44.
Louisiana:	LA91–5 (Feb. 22, 1991).	pp. 405, 414–421.
	LA91–12 (Oct. 11, 1991).	p. All.
	LA91–13 (Oct 11, 1991).	p. All.
Missouri	M091–2 (Feb. 22, 1991).	pp. 673, 674–681.
Oklahoma:	OK91–21 (Oct. 18, 1991).	p. 1012a.
	OK91–22 (Oct. 18, 1991).	p. 1012c.
Texas:	TX91–17 (Feb. 22, 1991).	p. All.
Wisconsin:	WI91–3 (Feb. 22, 1991).	pp. 1205, 1206–1208.
	WI91–8 (Feb. 22, 1991).	pp. 1225, 1226–1242.
	WI91–10 (Feb. 22, 1991).	pp. 1247, 1250–1252, 1257.
Volume III:		
Idaho:	ID91–1 (Feb. 22, 1991).	p. All.
Washington:	WA91–1 (Feb. 22, 1991).	pp. 451, 454.
	WA91–2 (Feb. 22, 1991).	pp. 477, 479.
	WA91–9 (Feb. 22, 1991).	p. All.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and Related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC., this 18th day of November, 1991.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 91–26808 Filed 11–7–91; 8:45 am]

BILLING CODE 4510–27–M

Employment and Training Administration

Aero-Motive (IAM), et al.; Investigations Regarding Certifications of Eligibility To Apply For Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 18, 1991.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 18, 1991.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 28th day of October 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Aero-Motive (IAM)	Kalamazoo, MI	10/28/91	10/14/91	26,474	Small Cord Reels, Hose Reel.
Arbor Foods, Inc. (UAW)	Toledo, OH	10/28/91	10/21/91	26,475	Dry Bulk Food Blending & Chunk Mixes.
ARCO Oil and Gas Co (Wrks)	Bakersfield, CA	10/28/91	10/17/91	26,476	Crude Oil, Natural Gas.
Argus Press, Inc. (GCIU)	Albany, NY	10/28/91	10/07/91	26,477	Printing Magazines, etc.
Armstrong Store Fixtures Corp (UE)	Pittsburgh, PA	10/28/91	10/16/91	26,478	Distribute Metal Mixtures.
Bayeux Fabric, Inc. (Wkrs)	Lincoln Pk, NJ	10/28/91	10/11/91	26,479	Curtain Fabrics.
Bayline Co., Inc. (Co)	Parsonsburg, MD	10/28/91	10/18/91	26,480	Sportwear.
Bentley Industries, Inc. (UE)	Evans City, PA	10/28/91	10/16/91	26,481	Raw Metal Fixtures.
Crest Litho, Inc. (GCIU)	Watervliet, NY	10/28/91	10/07/91	26,482	Bibles Printed and Binding.
Custom Concepts, Inc. (UE)	Gibsonia, PA	10/28/91	10/16/91	26,483	Displays & Distributes Finished Products.
Dedoes Industries, Inc. (Wkrs)	Ossineke, MI	10/28/91	10/17/91	26,484	Paint Mixing Equipment and Supplies.
E.F. Johnson Co. (Co)	Eden Prairie, MN	10/28/91	10/14/91	26,485	Sales Persons.
Encore Shoe Corporation (Co)	Chase City, VA	10/28/91	10/17/91	26,486	Leather Shoes and Boots.
General Motors, Powertrain Div. (Wkrs)	Ypsilanti, MI	10/28/91	10/10/91	26,487	Transmissions.
Golden City Trailers, Inc. (Co.)	Williston, ND	10/28/91	10/15/91	26,488	Oilfield Equipment.
Grieco Bros., Inc. (Co)	Lawrence, MA	10/28/91	10/15/91	26,489	Men's Suits.
Marianna Mills, Inc (Wkrs)	Marianna, AR	10/28/91	10/09/91	26,490	Sears Sleepwear, Nike Sweatpants, shirts.
Milk Marketing, Inc. (Wkrs)	Orrville, OH	10/28/91	09/30/91	26,491	Butter, Powdered Milk.
Quebecor Printing, Fridley Plant (Wkrs)	Fridley, MN	10/28/91	10/14/91	26,492	Prints Newspaper Supplements.
Sparta Mosaics (Wkrs)	East Sparta, OH	10/28/91	10/01/91	26,493	Floor Tile.
Teledyne-Adams (IBT)	Union, NJ	10/28/91	10/17/91	26,494	Heating Elements.
Trak Microwave Corp (Wkrs)	Tampa, FL	10/28/91	10/16/91	26,495	Microwave Components.
United Technologies Automotive (Wkrs)	Boyne City, MI	10/28/91	10/18/91	26,496	Turn Signal switches.
Westerm Atlas Intl/Atlas Wireline (Wkrs)	Magnolia, AR	10/28/91	10/09/91	26,497	Electric Wireline Services.
Workwear, Inc. (UGWA)	Palestine, TX	10/28/91	10/71/91	26,498	Workwear Clothing.

[FR Doc. 91-27023 Filed 11-7-91; 8:45am]

BILLING CODE 4510-30-M

Employment and Training Administration

[TA-W-25,690]

Tektronix, Inc., Hybrid Components Division, Beaverton, OR; Revised Determination on Reconsideration

On October 25, 1991, the Department issued a notice of affirmative determination regarding application for workers and former workers of the subject firm. The notice will soon be published in the **Federal Register.**

New information from the company indicates that a substantial amount of hybrid microcircuit production at Tektronix' Hybrid Components Operation Division (HCO) was intergrated in the production of oscilloscopes at the Tektronix plant in Vancouver, Washington. The Tektronix workers at Vancouver were certified for trade adjustment assistance under petition TA-W-24,925.

Investigation findings show that HCO is a captive corporate supplier of Tektronix producing hybrid microcircuits for internal corporate accounts.

HCO's Sales and production declined in 1990 compared to 1989 and in the first quarter of 1991 compared to the same period in 1990. Employment at HCO declined in 1990 compared to 1989 and in the first quarter of 1991 compared to the same period in 1990.

Conclusion

After careful consideration of the new facts obtained on reconsideration, it is concluded that HCO workers were adversely affected by increased imports of articles like or directly competitive with oscilloscope produced at Tektronix, Inc., Vancouver, Washington. In accordance with the provisions of the Act, I make the following revised certification for Hybrid Components Operation Division in Beaverton, Oregon.

"All workers of the Hybrid Components Division of Tektronix, Inc., who became totally or partially separated from employment on or after April 2, 1990 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974."

Signed at Washington, DC this 30th day of October 1991.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Services Unemployment Insurance Service.

[FR Doc. 91-27022 Filed 11-7-91; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Under OMB Review

AGENCY: National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the

Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Comments on this information collection must be submitted on or before December 9, 1991.

ADDRESSES: Send comments to Ms. Susan Daisey, Assistant Director, Grants Office, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., room 310, Washington, DC 20506 (202–786–0494) and Mr. Daniel Chenok, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., room 3002, Washington, DC 20503 (202–395–7316).

FOR FURTHER INFORMATION CONTACT: Ms. Susan Daisey, Assistant Director, Grants Office, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., room 310, Washington, DC 20506 (202) 786–0494 from whom copies of forms and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of the entries are grouped into new forms, revisions, extensions, or reinstatements. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what the form will be used for; (6) an estimate of the number of responses; (7) the frequency of response; (8) an estimate of the total number of hours needed to fill out the form; (9) an estimate of the total annual reporting and recordkeeping burden. None of these entries are subject to 44 U.S.C. 3504(h).

Category: Revisions

Title: Applications and Instructions Form for the Humanities Projects in Libraries and Archives Category.

Form Number: Not Applicable.

Frequency of Collections: Annual.

Respondents: Humanities researchers and institutions.

Use: Application for funding.

Estimated Number of Respondents: 74.

Frequency of Response: Once per respondent.

Estimated Hours for Respondents to Provide Information: 40 per respondent.

Estimated Total Annual Reporting and Recordkeeping Burden: 2,960 hours.

Thomas S. Kingston,

Assistant Chairman for Operations.

[FR Doc. 91–27014 Filed 11–7–91; 8:45 am]

BILLING CODE 7536–01–M

Agency Information Collection Under OMB Review

AGENCY: National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Comments on this information collection must be submitted on or before December 9, 1991.

ADDRESSES: Send comments to Ms. Susan Daisey, Assistant Director, Grants Office, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., room 310, Washington, DC 20506 (202–786–0494) and Mr. Daniel Chenok, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., room 3002 Washington, DC 20503 (202–395–7316)

FOR FURTHER INFORMATION CONTACT: Ms. Susan Daisey, Assistant Director, Grants Office, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., room 310, Washington, DC 20506 (202–786–0494 from whom copies of forms and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of the entries are grouped into new forms, revisions, extensions, or reinstatements. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what the form will be used for; (6) an estimate of the number of responses; (7) the frequency of response; (8) an estimate of the total number of hours needed to fill out the form; (9) an estimate of the total annual reporting and recordkeeping burden. None of these entries are subject to 44 U.S.C. 3504(h).

Category: Revisions

Title: Application Instructions for the Publication Subvention Category.

Form Number: Not Applicable.

Frequency of Collection: Annual.

Respondents: Non-profit and commercial publishers of works in the humanities.

Use: Application for funding.

Estimated Number of Respondents: 133 per year.

Frequency of Response: Once.

Estimated Hours for Respondents to Provide Information: 21 hours per respondent.

Estimated Total Annual Reporting and Recordkeeping Burden: 3,369 hours.

Thomas S. Kingston,

Assistant Chairman for Operations.

[FR Doc. 91–27015 Filed 11–7–91; 8:45 am]

BILLING CODE 7536–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panels for the Division of Polar Programs

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meetings.

SUPPLEMENTARY INFORMATION: The purpose of the meetings is to review and evaluate proposals and provide advice and recommendations as part of the selection process for awards. Because the proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals, the meetings are closed to the public. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Name: Special Emphasis Panel in Polar Programs.

Dates & Times: November 22, 1991 8:30am–5pm.

Location: National Science Foundation, 1800 G Street, NW., Washington, DC 20550, room 620.

Type of Meeting: Closed.

Agenda: Review and evaluate Polar Glaciology research proposals.

Contact Person: Dr. Julie M. Palais, room 620, National Science Foundation, Washington, DC 20550. Telephone (202) 357–7894.

Name: Special Emphasis Panel in Polar Programs.

Dates & Times: December 2, 1991 8:30am–5pm.

Location: National Science Foundation, 1800 G Street, NW., Washington, DC 20550, room 620.

Type of Meeting: Closed.

Agenda: Review and evaluate Polar Earth Sciences research proposals.

Contact Person: Dr. Herman B. Zimmerman, room 620, National Science Foundation, Washington, DC 20550. Telephone (202) 357–7894.

Dated: November 5, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91–27024 Filed 11–7–91; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee on Materials and Metallurgy; Revised

A portion of the ACRS Subcommittee meeting on Materials and Metallurgy scheduled to be held on Wednesday, November 6, 1991 at 7920 Norfolk Avenue, Room P–110, Bethesda, MD, will be closed to discuss Proprietary Information (5 U.S.C. 552b(c)(4)). All other items pertaining to this meeting remain the same as published previously in the **Federal Register** on Thursday, October 24, 1991 (56 FR 55143).

Further information regarding topics to be discussed, the scheduling of sessions open to the public, 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 a prepaid telephone call to the Designated Federal Official, Mr. Thomas S. Rotella (telephone 301/492–8972) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: November 4, 1991.

Gary R. Quittschreiber,

Chief Nuclear Reactors Branch.

[FR Doc. 91–27007 Filed 11–7–91; 8:45 am]

BILLING CODE 7590–01–M

Receipt of Request and Intent To Issue License Amendment Regarding Reclamation Plans for Inactive Uranium Mill

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Approval of license amendment for inactive uranium mill affecting schedules.

1. Description of Federal Action

In accordance with a memorandum of understanding (MOU) between the U.S. Environmental Protection Agency (EPA) and the U.S. Nuclear Regulatory Commission (NRC), published October 25, 1991, **FEDERAL REGISTER** Volume 56, No. 207 (56FR55434), NRC has received a request for revision of a reclamation plan timetable from Western Nuclear, Inc., for their Split Rock facility, Docket No. 40-1162, License No. SUA-056.

This request, dated October 21, 1991, justifies a change of the scheduled completion date from November 1, 1991, to January 31, 1992, for placement of the interim cover over the uranium mill tailings pile. The basis for the change as presented was a significant increase in the required amount of earthmoving over that envisioned.

The NRC staff has reviewed the proposal and intends to issue a license amendment to change the scheduled completion date to Janaury 31, 1992, effective November 20, 1991.

2. Contact

Copies of the license amendment request are availabel in the Public Document Room at 2120 L Street N.W., Washington, DC, and at the Uranium Recovery Field office, 730 Simms, suite 100, Denver, Colorado.

Comments regarding this license amendment should be addressed to the NRC, Uranium Recovery Field Office, P.O. Box 25325, Denver, Colorado, 80225, (303) 231-5800.

Dated at Denver, Colorado this 1st day of November 1991.

For the Nuclear Regulatory Commission.

Ramon E. Hall,

Director, Uranium Recovery Field Office.

[FR Doc. 91-27006 Filed 11-7-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–155]

Consumers Power Co.; Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–6 issued to Consumers Power Company (the licensee) for operation of the Big Rock Point Plant located in Charlevoix County, Michigan.

The proposed amendment would revise Technical Specification (TS) Sections 6.1.5(h), 6.2.2, 6.3.2, 7.3.5(e), and 7.5.7 to reflect actual equipment requirements during conditions in which no fuel is loaded into the reactor vessel.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) These proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated because there are no fuel bundles in the reactor. The requirements as stated in [the] Technical Specification prevent inadvertent criticalities when in Shutdown or Cold Shutdown, and shall remain applicable when there are fuel bundles in the reactor.

(2) These proposed changes [do] not create the possibility of a new or different kind of accident than previously evaluated because having an inadvertent criticality within [the] reactor vessel without fuel bundles is not of concern.

(3) These proposed changes do not involve a significant reduction in a margin of safety as defined in [the] Technical Specification bases because as a condition there must be fuel bundles present in the reactor vessel.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within thirty (30) days after the date of publication of this notice will considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document

Room, the Gelman Building, 2120 L Street, NW, Washington, DC 20555. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By December 9, 1991, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC 20555 and at the local public document room located at the North Central Michigan College, 1515 Howard Street, Petoskey, Michigan 49770. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also indentify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 325–6000 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to L.B. Marsh: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Judd L. Bacon, Esquire, Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated September 26, 1991, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC 20555 and at the local public document room

located at the North Central Michigan College, 1515 Howard Street, Petoskey, Michigan 49770.

Dated at Rockville, Maryland, this 1st day of November, 1991.

For the Nuclear Regulatory Commission.

Brian Holian,

Project Manager, Project Directorate III–1, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 91–27008 Filed 11–7–91; 8:45 am]

BILLING CODE 7590–01–M

PANAMA CANAL COMMISSION

Agency Information Collection Request Submitted to the Office of Management and Budget for Clearance

AGENCY: Panama Canal Commission.

ACTION: Notice.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1980 (Pub. L. 96–511), as amended, the Panama Canal Commission hereby gives notice that it has submitted to the Office of Management and Budget for clearance a SF 83 (Request for OMB Review) for a currently approved collection of information designated Personnel Administration Forms.

ADDRESSES: Comments may be sent to Edward H. Clarke, Desk Officer for Panama Canal Commission, Office of Information and Regulatory Affairs, room 3228, New Executive Office Building, Office of Management and Budget, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a complete copy of the collection of information or related information, contact Barbara Fuller, Office of the Secretary, Panama Canal Commission, telephone 202–634–6441.

SUPPLEMENTARY INFORMATION: *Title:* Personnel Administration Forms.

Type of Request: Revision of a currently approved collection.

Form Number(s): Various.

Needs and Uses: On January 20, 1982, OMB approved an information collection proposal submitted by the Panama Canal Commission and assigned it the control number 3207–0005. It is proposed to continue using this information collection. The information collected is needed to determine the qualifications, suitability and availability of applicants for public service permanent and temporary employment in the Panama Canal area so that U.S. Federal Government agencies can be supplied with eligibles to fill vacant positions. The information will be used by Central Examining Office employees performing examining duties; by subject matter experts on rating panels; and by agency officials making selections to fill vacancies. Collections of information made by the Central Examining Office are related to the filing or updating of application forms. Of the 12,268 respondents who complete application forms annually, 5,772 complete full applications and 6,496 merely complete forms after 12 months have elapsed to update an application already on file. The total time required for applicants for employment to respond to the information collection is estimated to be four (4) hours to complete a full application and one-half hour to complete forms which update an application already on file. In addition to the forms used for the basic application, the collection contains seven forms which are used as notices or inquiries. These forms are issued separately and have burden times ranging from five to sixty minutes. Applications for certain positions require the completion of supplemental qualifications statements to measure knowledges, skills and abilities. It is estimated that one and one-half (1½) hours is required in these cases. This was considered in arriving at the average response time of 4 hours for a full application. The total time required annually for Persons to respond to collections of information is estimated at 26,336 hours (5,772×4+6,496×.5).

Affected Public: Individuals or households.

Burden: 26,336.

Frequency: When persons apply or update applications.

Number of Respondents: 12,268.

Dated: November 4, 1991.

Joseph J. Wood,

Director, Office of Executive Administration, Senior Official for Information Resources Management.

[FR Doc. 91–26980 Filed 11–7–91; 8:45 am]

BILLING CODE 3640–04–M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Cincinnati Stock Exchange, Incorporated

November 4, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities and Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Allis-Chalmers Corp.
Common Stock, $0.01 Par Value (File No. 7–7489)

Amdura Corp.
Common Stock, $0.01 Par Value (File No. 7–7490)

First Bank System, Inc.
Cumulative Convertible Preferred, Series 1991 A, $1.00 Par Value (File No. 7–7491)

Kasler Corp.
Common Stock, No Par Value (File No. 7–7492)

Mesa, Inc.
Common Stock, $0.01 Par Value (File No. 7–7493)

NovaCare, Inc.
Common Stock, $0.01 Par Value (File No. 7–7494)

Universal Corp.
Common Stock, No Par Value (File No. 7–7495)

Epitope, Inc.
Common Stock, No Par Value (File No. 7–7496)

General Motors Corp.
Convertible A Preference, $0.10 Par Value (File No. 7–7497)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before November 27, 1991, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91–26996 Filed 11–7–91; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Incorporated

November 4, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Bet Holdings, Inc.
Class A Common Stock, $.02 Par Value (File No. 7–7484)
International Shipholding Corporation
Common Stock, $1.00 Par Value (File No. 7–7485)
Itel Corp.
$3.375 Series C Cumulative Convertible Exchangeable; Class B Preferred Stock, $1.00 Par Value (File No. 7–7486)
Jenny Craig, Inc.
Common Stock, $.000000005 Par Value (File No. 7–7487)
Morgan Stanley Emerging Markets Funds, Inc.
Common Stock, $.01 Par Value (File No. 7–7488)

These securities are listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before November 27, 1991, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91–26997 Filed 11–7–91; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Incorporated

November 4, 1991

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Morgan Stanley Emerging Markets Fund, Inc.
Common Stock, $0.01 Par Value (File No. 7–7481)
Continental Medical Systems
Common Stock, $0.01 Par Value (File No. 7–7482)
Bet Holdings
Common Stock, $0.02 Par Value (File No. 7–7483)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before November 27, 1991, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91–26998 Filed 11–7–91; 8:45am]

BILLING CODE 8010–01–M

[Rel. No. IC–18390; 82–7732]

Sci/Tech Holdings, Inc., et al.; Notice of Application

November 1, 1991.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Sci/Tech Holdings, Inc. ("Sci/Tech"), Merrill Lynch Asset Management, Inc. ("MLAM"), and Merrill Lynch Funds Distributor, Inc. ("MLFD") (together referred to as the "Applicants").

RELEVANT ACT SECTIONS: Order requested pursuant to section 6(c) for an exemption from the provisions of sections 12(d)(1), 17(d) and rule 17d–1 thereunder, pursuant to section 17(b) for an exemption from section 17(a), and pursuant to section 17(d) and rule 17d–1 thereunder approving certain transactions.

SUMMARY OF APPLICATION: Applicants seek an order to permit Sci/Tech to transfer a portion of its assets to a newly formed, wholly-owned subsidiary that is a registered open-end investment company and to distribute to Sci/Tech's shareholders the stock of the subsidiary received in exchange for such transfer of assets.

FILING DATES: The application was filed on September 5, 1991. By letter dated October 31, 1991, applicants' counsel represented that applicants will file an amendment to the application during the notice period, the substance of which is reflected herein.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 26, 1991, and should be accompanied by proof of service on the applicants, 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 who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, Box 9011, Princeton, New Jersey 08543–9011.

FOR FURTHER INFORMATION CONTACT: Felice R. Foundos, Staff Attorney, at (202) 272–2190 or Nancy M. Rappa, Branch Chief, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. Sci/Tech, a Maryland corporation, is a diversified open-end management investment company. MLAM is the investment adviser of Sci/Tech. MLAM and its wholly-owned subsidiary, Fund Asset Management, Inc., act as investment adviser to more than 50 other registered investment companies and provide investment advisory services to individual and institutional accounts. MLFD, a wholly-owned subsidiary of MLAM, acts as the distributor of Sci/Tech and for most other funds advised by MLAM.

2. Sci/Tech presently has outstanding two classes of common stock. Class A shares are sold to investors who choose to pay for sales charges at the time of purchase. Class B shares are sold to investors who choose to pay a contingent deferred sales load ("CDSL") and a distribution fee pursuant to rule 12b–1 ("distribution fee").

3. Sci/Tech's investment objective is to seek long-term capital appreciation through worldwide investment in equity securities of companies that, in the opinion of MLAM, derive or are expected to derive a substantial portion of their sales from products and services in science or technology. Sci/Tech may, however, for defensive purposes, invest in non-convertible fixed income securities, including money market securities. Sci/Tech's portfolio consists primarily of investments in companies connected in some way to the technology or health care areas.

4. Although this investment approach was intended to appeal to a broad group of investors, Sci/Tech's assets have declined dramatically since its inception. In light of the foregoing, Sci/Tech's management has proposed dividing Sci/Tech into two separate investment companies. Sci/Tech then will spin-off the new company by distributing to its shareholders shares of the new company received in exchange for the transfer of assets. Sci/Tech will invest primarily in the health care sector while the new company, Merrill Lynch Technology Fund, Inc. ("Technology Fund"), will invest primarily in the technology sector.

5. The division of Sci/Tech will occur through the following transactions. Technology Fund will be organized as a Maryland corporation and will be registered as a nondiversified, open-end investment company under the Act.[1] Technology Fund will have the same investment adviser and distributor as Sci/Tech. Like Sci/Tech, Technology Fund also will distribute its shares to the public through a dual class structure offering both Class A and Class B shares.[2] Upon receipt of the order requested herein, Sci/Tech will transfer to Technology Fund its technology oriented portfolio securities, a stated amount of any securities held by Sci/Tech for defensive purposes, and a proportionate amount of Sci/Tech's liabilities in exchange for all of the common stock of Technology Fund (other than its seed capital).[3] The net asset value per share of Technology Fund's common stock will be based on the fair value of Sci/Tech's portfolio securities and other assets minus liabilities that Technology Fund received, as computed on the day of the transaction. Sci/Tech will then make a *pro rata* distribution of the Technology Fund common stock to Sci/Tech's shareholders. Each shareholder will receive Class A or Class B shares of Technology Fund in the same proportion as that of Class A and Class B shares of Sci/Tech held by that shareholder on the day of the distribution.[4]

6. Class B shareholders of Technology Fund will receive full credit for the time during which they held Class B shares of Sci/Tech for purposes of calculating any applicable CDSL. The shareholders also will be able to exchange shares of one company for those of the other without incurring transaction costs. Thus, shareholders will be able to choose their own allocation of investments between the two investment companies.

7. Subject to shareholder approval, Technology Fund and Sci/Tech will, upon the commencement of Technology Fund's operations, have a majority of directors in common and the same investment advisory and distribution arrangements. In addition, the investment advisory fees and, with respect to Class B shares, distribution fees will be at a rate no greater than the rates presently paid by Sci/Tech. As an independent investment company, however, Technology Fund will in the future bear its own operating costs such as transfer agency fees, directors fees, custodian fees and legal and auditing expenses.

8. The expenses with respect to the transactions will be allocated fairly between Technology Fund and Sci/Tech. Sci/Tech will bear the costs of obtaining shareholder and regulatory approval and other transaction related costs. Technology Fund will bear the costs of its organization, registration under the Act, and the registration of its shares for sale under the federal securities laws and state "blue sky" laws. Costs that fall into both categories will be allocated according to each company's net assets, after giving effect to the transfer.

9. The organization and spin-off of Technology Fund will not have any material adverse tax consequences on Sci/Tech or its shareholders if the transaction is completed by November 30, 1991, the end of its present fiscal year. Applicants represent that Sci/Tech's transfer of assets to Technology Fund will be deemed a tax free exchange. However, the timing of the distribution of Technology Fund stock to Sci/Tech's shareholders could create various tax consequences for shareholders. Shareholders are taxed on dividends paid by a corporation to the extent of the corporation's current and accumulated earnings and profits ("E&P"). Distributions in excess of E&P are deemed a non-taxable return of capital to the extent of a shareholder's basis in the corporation. If Sci/Tech pays a cash dividend of all its E&P by the end of its fiscal year, the value of Technology Fund stock distributed to shareholders will be deemed a return of capital to shareholders to the extent of their adjusted basis in Sci/Tech's stock. Hence shareholders will not pay tax on the stock distribution since it is in excess of Sci/Tech's E&P. As explained more fully in the application, if transactions are not completed by the end of the fiscal year, shareholders who either purchase or sell shares of Sci/Tech between the time Technology Fund stock is distributed and the time the

[1] MLAM has agreed to provide the initial capital ($100,000) required under the Act. The number of shares received in exchange will be based on Technology Fund's net asset value per share determined at the time of the transfer of Sci/Tech's assets, described above.

[2] With regard to the rule 12b–1 plan adopted as part of the Technology Fund's Class B shares, applicants represent that Technology Fund has undertaken in its registration statement to submit such plan for approval by their public shareholders at a meeting to be held no later than sixteen months after the effective date of the registration statement.

[3] Sci/Tech's rule 12b–1 plan permits payments to be used to compensate MLFD and certain securities firms for sale and promotional activities. Such plan contains no provision requiring Sci/Tech to reimburse MLFD for any such expenses. Consequently, there would be no unreimbursed amounts to be carried over to Technology Fund. If the proposed transactions are permitted, however, when reviewing each fund's rule 12b–1 plan the directors of each company will consider the expenses incurred in selling Sci/Tech shares existing on the date of such transactions as pertaining to Sci/Tech and Technology Fund, respectively, in the same proportion that the assets retained by Sci/Tech bear to the assets transferred to Technology Fund.

[4] Technology Fund will have a dual distribution system in accordance with the terms of an exemptive order granting such relief to future investment companies advised by MLAM. *See Merrill Lynch California Municipal Bond Trust.* Investment Company Act Rel. Nos. 16503 (July 28, 1988) (notice) and 16534 (Aug. 23, 1988) (order).

cash dividend is distributed may incur unexpected tax consequences. If the transactions then cannot be completed by November 30, 1991, Sci/Tech will seek to change its fiscal year-end and effect the transactions shortly before the revised year-end, or will defer the transactions until November 1992.

10. Immediately following the completion of the above transactions, existing shareholders of Sci/Tech will, in effect, own the exact same portfolio securities and other assets as they did before, except that such ownership would be represented by shares in two separate investment companies, rather than solely by shares in Sci/Tech.

11. Sci/Tech's shareholders will have the opportunity to approve the transactions and the proposed change in Sci/Tech's investment objectives. Shareholders will receive full registration statement disclosures about Technology Fund. Technology Fund has filed with the Commission a registration statement on Form N–14 which includes a Sci/Tech proxy statement and Technology Fund's prospectus regarding the transactions. In addition, Technology Fund's registration statement on Form N–1A will be declared effective prior to Technology Fund accepting any monies from new investors, and Sci/Tech's registration statement on Form N–1A will be amended to reflect its new objective and policies. Currently, Sci/Tech has disclosed the proposed transactions in a supplement to its prospectus.

Applicants' Legal Analysis

1. The proposed transactions may be viewed as technically violating the provisions of section 12(d)(1) since at the moment of the transfer of Sci/Tech's assets, Sci/Tech will temporarily acquire greater than 3 percent of the voting stock of Technology Fund. Additionally, the value of Sci/Tech's holdings of Technology Fund securities will exceed 10 percent of Sci/Tech's assets. Similarly, Technology Fund's sale of its securities to Sci/Tech will exceed the limits of section 12(d)(1)(B). Applicants represent that the proposed transactions may be excepted from the provisions of section 12(d)(1) by subsection (D) thereof. Subsection (D) excepts from those restrictions, among other things, any securities received as a result of a plan of reorganization of any company. However, it is not clear that the proposed acquisition and spin-off of Technology Fund falls literally within the definition of a "reorganization" under section 2(a)(33) of the Act.

2. Section 17(a)(1) of the Act makes it unlawful, among other things, for an affiliated person of a registered investment company to sell any securities or other property to the registered investment company. Section 17(a)(2) of the Act makes it unlawful, among other things, for such an affiliated person to buy securities or other property from the registered company. Sci/Tech and Technology Fund may be viewed as affiliated persons under section 2(a)(3) of the Act since, for however brief a period, Sci/Tech will own 100 percent of Technology Fund's voting securities (other than seed capital). Sci/Tech and Technology Fund also may be viewed as affiliated persons of each other to the extent that they may be deemed to be under the common control of MLAM. Section 17(a)(1) would, therefore, prohibit Sci/Tech's "sale" to Technology Fund of a portion of its assets and Technology Fund's "sale" to Sci/Tech of securities issued by Technology Fund, although the latter transaction arguably may be excepted by section 17(a)(1)(B). Also, section 7(a)(2) would prohibit Technology Fund's "purchase" of Sci/Tech's assets. In light of the potential applicability of section 17(a) and the uncertainty of any available exemption by rule, applicants request relief from that section to effectuate the proposed transactions.

3. Section 17(d) of the Act and rule 27d–1 thereunder basically prohibit, among other things, transactions in which a registered investment company and any affiliated person of such a company may be deemed to be acting jointly and as principal. Applicants request an order pursuant to section 17(d) and rule 17d–1 thereunder to the extent that the participation of Sci/Tech and Technology Fund in the transactions resulting in the spinoff of Technology Fund may be deemed to constitute a prohibited joint transaction. In addition, applicants request an exemption under section 6(c) from the requirement of rule 17d–1 that applicants must receive an order of the Commission permitting any otherwise prohibited joint transactions prior to submitting the proposed transaction to Sci/Tech's shareholders for their approval.

4. Applicants submit that the requested exemption from section 12(d)(1) meets the standards set forth in section 6(c) of the Act. It is hoped that there will be greater marketing potential for two narrowly targeted investment companies resulting in asset growth for the benefit of shareholders. The proposal also provides each company with the ability to invest within its relevant sector without the need to allocate available cash between sectors thus increasing investment flexibility. Further, shareholders would have the option of concentrating their investments in the sector which they prefer. Lastly, the proposed transactions do not involve the concerns for which section 12(d)(1) was enacted. Because ownership of Technology Fund by Sci/Tech will exist for only a moment of time, there is no danger of control by one fund over another fund or of the layering of costs to shareholders of Sci/Tech.

5. Applicants also request an exemption pursuant to section 17(b) of the Act from the provisions of section 17(a) in order to engage in the above transactions. Section 17(b) authorizes the Commission to issue such an exemptive order if certain standards are met. Applicants submit that the proposed transactions satisfy those standards. The terms of the proposed transactions, including the consideration to be paid or received, are fair and reasonable and involve no element of overreaching. The proposed sale by Sci/Tech of a portion of its assets to Technology Fund in exchange for the securities of Technology Fund will be based on the fair value of those assets computed on the day of the proposed transfer. Similarly, the Technology Fund stock distributed by Sci/Tech in the spin-off of Technology Fund will be valued on the same basis. In addition, no brokerage commissions or other expenses will be incurred as a result of the proposed transactions except to the extent that transaction costs may be incurred in connection with any sales of portfolio securties made by Sci/Tech in order for Technology Fund to meet the diversification requirements of the Internal Revenue Code.

6. The proposed transactions will be consistent with the stated investment policies of Sci/Tech and Technology Fund, as fully disclosed to present and future shareholders. The proposed organization and spin-off of Technology Fund will not change the position of Sci/Tech's shareholders with respect to the underlying health care and technology or other investments that they own. Moreover, Sci/Tech's shareholders will have the opportunity to vote on the proposal.

7. Lastly, the transactions will be consistent with the general purposes of the Act. As explained above, the specific transactions are being proposed to benefit Sci/Tech and its existing shareholders, as well as future investors in both companies. The proposed transactions also comport with the policies underlying rule 17a–8 of the Act, which exempts from section 17(a) "a merger, consolidation, or purchase or

sale of substantially all of the assets involving registered companies which may be affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors, and/or common officer." While Sci/Tech and Technology Fund will be affiliated briefly (in effect, for only an instant) when Sci/Tech owns Technology Fund's stock, the only potential affiliation after the spin-off will be of the type discussed above, i.e., a commonality of investment advisers and directors. Sci/Tech's board of directors, including a majority of the directors who are not interested persons of Sci/Tech, have made the findings required by rule 17a–8, i.e., (1) that participation in the transactions is in the best interests of Sci/Tech; and (2) that the interests of existing shareholders of Sci/Tech will not be diluted as a result of its effecting the transactions. Finally, the spin-off of Technology Fund presents no greater potential for abuse than other pro rata distributions.

8. Applicants submit that the proposed transactions meet the standards for an order pursuant to section 17(d) and rule 17d–1 thereunder for much the same reasons as discussed above with respect to the request for an exemption from section 17(a). MLAM or any other affiliated person of Sci/Tech or Technology Fund will not receive additional fees solely as a result of the transactions. The expenses of the transactions will be allocated in an equitable manner as described previously. The proposed transactions will not place Sci/Tech, Technology Fund or existing shareholders of Sci/Tech in a position less advantageous than that of any other of such persons.

9. Finally, applicants request an exemption under section 6(c) from the provisions of rule 17d-1 that require an order permitting transactions subject to the rule be obtained prior to any solicitation of shareholder approval of the transactions. As explained in more detail in the application, tax considerations necessitate that the requested transactions be consummated prior to November 30, 1991. Given the notice period requirements and other factors incident to Commission review of applications filed under the Act, it is impracticable to await the granting of an order on this application prior to soliciting shareholder approval.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz

Secretary

[FR Doc. 91–26999 Filed 11–7–91; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–18391; 812–7773]

Templeton Developing Markets Trust et al.; Notice of Application

November 4, 1991.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Templeton Developing Markets Trust, Templeton Growth Fund, Inc., Templeton Smaller Companies Growth Fund, Inc., Templeton Funds, Inc., Templeton Income Trust, Templeton Tax Free Trust, Templeton Real Estate Securities Fund, Templeton Value Fund, Inc., Templeton Global Opportunities Trust, Templeton Institutional Trust, Inc. (collectively, the "Funds"); and Templeton Funds Distributor, Inc. ("TFD").

RELEVANT ACT SECTIONS: Exemption requested pursuant to section 6(c) from the provisions of sections 2(a)(32), 2(a)(35), 22(c) and 22(d) of the Act and rule 22c–1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order that would permit them to impose a contingent deferred sales charge ("CDSC") on the redemption of certain shares purchased at net asset value and to waive the CDSC in certain instances.

FILING DATE: The application was filed on August 15, 1991 and amended on October 9, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 29, 1991, and should be accompanied by proof of service on applicants, 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, NW., Washington, DC 20549. Applicants, c/o Templeton Funds Distributor, Inc., 700 Central Avenue, St. Petersburg, Florida 33701. Attention: Thomas M. Mistele, Esq.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Law Clerk, at (202) 272–3026, or Nancy M. Rappa, Branch Chief, at (202) 272–3030 (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.

APPLICANTS' REPRESENTATIONS: 1. The Funds are open-end management investment companies. Templeton Development Markets Trust, Templeton Income Trust (comprising Templeton Income Fund and Templeton Money Fund), Templeton Tax Free Trust (comprising Templeton Insured Tax Free Fund and Templeton Tax Free Money Fund), Templeton Real Estate Securities Fund, and Templeton Global Opportunities Trust are organized as Massachusetts business trusts. Templeton Growth Fund, Inc., Templeton Smaller Companies Growth Fund, Inc., Templeton Funds, Inc. (comprising Templeton World Fund and Templeton Foreign Fund), Templeton Value Fund, Inc., and Templeton Institutional Trust, Inc. (comprising Templeton Trust of Foreign Securities) are incorporated in Maryland. The Funds are registered under both the 1933 Act and the Act. Templeton, Galbraith & Hansberger Ltd. ("TGH"), a corporation organized under the laws of the Cayman Islands, and its subsidiaries provide investment management and administrative services to the Funds. The shares of the Funds are underwritten by TFD, which is an indirect wholly-owned subsidiary of TGH.

2. Applicants request that any exemptive relief, to the extent a CDSC is employed under the same terms and conditions as those described below, be extended to any existing or future open-end investment company which is or may become a member of the Templeton "group of investment companies," as that term is defined in rule 11a–3 under the Act.

3. Fund shares are offered to the public at net asset value per share plus a sales commission, the amount of which varies among the Funds. In each case, the sales commission is reduced on larger sales. Applicants propose to impose no initial sales commission on investments of $1,000,000 or more, but propose to impose a CDSC on those shares if they are redeemed within 12 months after the end of the calendar month in which the purchase order was accepted. The CDSC would be equal to 1% of the lesser of (a) the net asset value of the shares at the time of purchase, or (b) the net asset value of the shares at the time of redemption. The CDSC

would be deducted from the redemption proceeds otherwise payable to the shareholder. The purpose of the CDSC is to compensate TFD for commissions advanced to dealers.

4. No CDSC will be assessed on: (a) shares representing amounts attributable to increases in the net asset value per share; (b) shares acquired through reinvestment of income dividends or capital gain distributions and shares acquired by exchange where the exchanged shares would not be assessed a CDSC upon redemption; and (c) shares held for more than 12 months from the end of the calendar month in which the purchase order was accepted. In determining whether a CDSC is payable, shares or amounts representing shares, that are not subject to a CDSC are deemed to be redeemed first, and other shares or amounts are then redeemed in the order purchased. No CDSC will be imposed on exchanges to purchase shares of another fund managed by TGH or one of its subsidiaries, and applicants will comply with rule 11a–3. No CDSC will be imposed on any shares purchased prior to the effective date of any order.

5. Under the proposed arrangement, the CDSC may be waived in the following circumstances: (a) redemptions in connection with (i) distributions to participants or beneficiaries of an employee pension, profit sharing or other trust, including a 403(b) plan account sponsored by any organized religion (the custodian of which is Templeton Funds Trust Company) ("Employee Plans"), (ii) changes in investment choices in the Employee Plans, and (iii) returns of excess contributions to these plans; (b) redemptions in connection with distributions to participants in qualified retirement plans due to death, disability or attainment of age 59½; (c) redemptions pursuant to a Fund's cash withdrawal plan; (d) redemptions by trustees or other fiduciaries of shares purchased for certain retirement plans with assets of $ million or more; (e) redemptions by trustees, directors and officers of the investment companies sponsored by TGH and its affiliates (the "TGH Group"), employees in the TGH Group, their spouses and children, and retirement plans established by the TGH Group for employees; (f) redemptions by dealers or brokers who have a sales agreement with TFD, for their own accounts, or for retirement plans for their employees or sold to registered representatives or full time employees (and their spouses) of such brokers or dealers that certify to TFD at the time of purchase that such purchase is for their own account (or for the benefit of such employees, spouses, or minor children); (g) redemptions by insurance company separate accounts, or by accounts managed by the TGH Group; (h) redemptions effected pursuant to the Fund's right to liquidate a shareholder's account if the aggregate net asset value of shares held in the account is less than the effective minimum account size; and (i) redemptions by any investment company registered under the Act or its shareholders in connection with the combination of such company with any Fund by merger, acquisition of assets, or by any other transaction.

6. In addition, pursuant to distribution plans adopted under rule 12b–1 of the Act (the "Plans"), certain of the Funds may pay a fee, in an amount that varies among the Funds, for purposes of promoting the sale of their shares. Each of the Plans is a "reimbursement" type plan, which provides for reimbursement to TFD for various types of activities, including the payment of trail fees to broker-dealers. The CDSC is completely separate and independent from the Plans. Amounts received by TFD under the Plans will not be reduced or offset by the CDSC retained by TFD. The board of directors/trustees of each Fund that has adopted a Plan, in its periodic review of the Plan, will consider the effect of the CDSC.

Applicants' Legal Analysis

1. Section 2(a)(32) of the Act defines a "redeemable security" to be a security that, upon presentation to the issuer or to a person designated by the issuer, entitles the shareholder to receive approximately his proportionate share of the issuer's current net assets. Applicants assert that the imposition of the CDSC will not prevent a redeeming shareholder from receiving his proportionate share of the current net assets of a Fund, but will merely defer the deduction of a sales load and make it contingent upon an event that may never occur. Applicants believe that imposition of the CDSC arrangement described above would not cause shares of the Funds to fall outside the definition of redeemable securities in section 2(a)(32) of the Act.

2. Section 2(a)(35) defines "sales load" to be the amount properly chargeable to sales or promotional expenses that are paid at the time the securities are purchased. Applicants submit that, but for the timing of the imposition of the charge, the proposed CDSC is within the section 2(a)(35) definition of sales load. The proposed CDSC will be paid to TFD to compensate it for its expenses related to the sale of the Funds' shares. The deferral of the sales charge, and its contingency upon an event that may not occur, does not change the basic nature of this charge, which is in every other respect a sales charge. However, applicants request an exemption from the provisions of section 2(a)(35) to the extent necessary to implement the proposed change.

3. Section 22(c) of the Act and rule 22c–1 thereunder preclude a registered investment company that issues a redeemable security from selling, redeeming, or repurchasing any such security except at a price based on the current net asset value of such security. Applicants submit that imposition of the proposed CDSC does not violate section 22(c) or rule 22c–1. When a redemption of the Fund's shares is effected, the price of the shares on redemption will be based on current net asset value. The CDSC will be deducted from the redemption proceeds at the time of redemption in arriving at the shareholder's net proceeds payable on redemption. However, to avoid any uncertainty, applicants request an exemption from section 22(c) and rule 22c–1 to the extent necessary to implement the proposed CDSC.

4. Rule 22d–1 under the Act, in substance, permits variation or elimination of sales loads to "particular classes of investors or transactions," provided that such variation or elimination is described in the investment company's registration statement. The proposed CDSC and waivers will be applied as described in each Fund's registration statement. Because the CDSC may not be a "sales load," as defined in the Act, applicants request an exemption from section 22(d) to the extent necessary or appropriate to implement the proposed CDSC and waivers as described above. Applicants believe that such an order would be consistent with the policies embodied in rule 22d–1, since the Funds intend to disclose fully these charges and waivers in their prospectuses.

Applicants' Condition

Applicants agree that the following condition may be imposed in any order of the Commission granting the requested relief:

Applicants will comply with the provisions of proposed rule 6c–10 under the Act, Investment Company Act Release No. 16619 (Nov. 2, 1988), as such rule is currently stated and as it may be reproposed, adopted, or modified in the future.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-27000 Filed 11-7-91; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Order Adjusting International Cargo Rate Flexibility Level

Policy Statement PS-109, implemented by Regulation ER-1322 of the Civil Aeronautics Board and adopted by the Department, established geographic zones of cargo pricing flexibility within which cargo rate tariffs filed by carriers would be subject to suspension only in extraordinary circumstances.

The Standard Foreign Rate Level (SFRL) for a particular market is the rate in effect on April 1, 1982, adjusted for the cost experience of the carriers in the applicable ratemaking entity. The first adjustment was effective April 1,1983. By Order 91-5-9, the Department established the currently effective SFRL adjustments. In establishing the SFRL for the six-month period beginning October 1, 1991, we have projected non-fuel costs based on the year ended June 30, 1991 data, and have determined fuel prices on the basis of the latest available experienced monthly fuel cost levels as reported to the Department.

These projections reflect the considerable decline in fuel prices that has taken place since last year's crisis in the Persian Gulf.

By Order 91-10-57 cargo rates may be adjusted by the following adjustment factors over the April 1, 1982 level:

Atlantic	1.2274
Western Hemisphere	1.0857
Pacific	1.4763

For further information contact: Keith A. Shangraw (202) 366-2439.

By the Department of Transportation: October 31, 1991.

Patrick V. Murphy,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 91-26965 Filed 11-7-91; 8:45 am]

BILLING CODE 4910-62-M

Coast Guard

[CGD 91-058]

Towing Safety Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. app. I), notice is hereby given of a meeting of the Towing Safety Advisory Committee (TSAC) and Subcommittees. A preliminary meeting of the TSAC subcommittees will be held on Thursday, December 5, 1991, in room 2415 of U.S. Coast Guard Headquarters. This meeting is scheduled to run from 1:30 p.m. to 4 p.m. Attendance is open to the public. The full Committee meeting will be held on Friday, December 6, 1991, in room 2415 of U.S. Coast Guard Headquarters. The meeting is scheduled to run from 9 a.m to 4 p.m. Attendance to this meeting is also open to the public. The agenda follows:

1. Subcommittee Reports

a. Personnel Manning and Licensing.

b. Tug-Barge Construction, Certification and Operations.

c. Personnel Safety and Workplace Standards.

d. Oil Pollution Act of 1990 Implementation.

2. Other Topics of Discussion

With advance notice, and at the discretion of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements should notify the TSAC Executive Director no later than the day before the meeting.

Written statements or materials may be submitted for presentation to the Committee at any time; however, to ensure distribution to each committee member, 20 copies of the written material should be submitted to the Executive Director by December 5, 1991. FOR FURTHER INFORMATION CONTACT: CDR Robert Letourneau, Executive Director, Towing Safety Advisory Committee, room 1300, U.S. Coast Guard Headquarters (G-MTH-2), 2100 Second Street, SW., Washington, DC 20593-0001, (202) 267-2206.

Dated: November 1, 1991.

D.H. Whitten,

Captain, U.S. Coast Guard Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 91-27021 Filed 11-7-91; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

[AC No. 120-XX]

AGENCY: Federal Aviation Administration, DOT.

ACTION: Request for comments on proposed Advisory Circular (AC)120-XX, Flight Attendant Duty Period and Rest Period Scheduling.

SUMMARY: The proposed AC provides guidance for air carriers, flight attendants, and the public about the scheduling of flight attendants for duty periods and for rest periods. The recommendations in the AC are based on information obtained from a Federal Aviation Administration study addressing U.S. industry and international practices relating to flight attendant flight, duty, and rest times.

COMMENTS INVITED: Comments are invited on all aspects of the proposed AC. Commentators must identify file number AC 120-XX.

DATES: Comments must be received on or before January 7, 1992.

ADDRESSES: Send all comments and requests for copies of the proposed AC to: Federal Aviation Administration, AFS-240, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Donell Pollard, AFS-240, at the above address, telephone (202) 267-3735 (8:30 a.m. to 5 p.m. EST).

SUPPLEMENTARY INFORMATION: The guidance material contained in this AC reflects the material to assist operators and flight attendants to develop duty and rest schedules.

Issued in Washington, DC, on November 4, 1991.

William J. White,

Acting Director, Flight Standards Service.

[FR Doc. 91-26987 Filed 11-7-91; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement; Letcher County, KY

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Letcher County, Kentucky.

FOR FURTHER INFORMATION CONTACT: Paul E. Toussaint, Division Administrator, Region 4, FHWA, 330 W. Broadway, P.O. Box 536, Frankfort, Kentucky 40602, phone: (502) 227-7321.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Kentucky Transportation Cabinet, intends to prepare an Environmental Impact Statement (EIS) for construction of highway improvements to US 119 from Partridge to Whitesburg in Letcher County, Kentucky. The existing section of highway is a substandard connecting

link in the transportation network of the area and crosses about twelve (12) miles of rugged Pine Mountain. Alternative routes, as well as alternative types of improvements (open cut, tunnel, reconstruction of the existing route, as well as the no-build alternative) will be considered. The chosen alternative will increase the capacity of the road, decrease travel time, improve safety, increase community cohesion, and increase the economic development potential of the area.

Letters describing the proposed action and soliciting comments will be sent to appropriate federal, state and local agencies and to private organizations and citizens who have previously expressed interest in this proposal. A public hearing will be held. Public notice will be given of the time and place of public meetings and hearings. The draft EIS will be available for public and agency review and comment.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

Issued on: October 29, 1991.

Dennis B. Luhrs,

Assistant Division Administrator.

[FR Doc. 91-26982 Filed 11-7-91; 8:45 am]

BILLING CODE 4910-12-M

Research and Special Programs Administration

Revision of the Emergency Response Guidebook; Public Meetings; Request for Comments

AGENCY: Research and Special Programs Administration (RSPA). (DOT)

ACTION: Notice of public meetings; request for comments.

SUMMARY: This notice advises interested persons that RSPA will conduct a series of public meetings to discuss revisions to the "1990 Emergency Response Guidebook" (DOT P 5800 5), and solicits comments on questions posed in this notice.

DATES: *Public Meetings.* Public meetings will be held on December 3, 1991, March 10, 1992, and May 19, 1992, from 9:30 a.m. to 5 p.m. in room 3200 of the Nassif Building, 400 Seventh Street, SW., Washington, DC 20590-0001 Additional meetings addressing technical issues (e.g. specific guide pages, evacuation distances) will also be held at a later date, to be determined. Any person planning to attend the public meetings should notify Gigi Corbin (DHM-51) by telephone or in writing, at least two weeks in advance of each meeting date.

Comments. Comments should be submitted on or before May 15, 1992.

ADDRESSES: Comments Written comments should be submitted to the Office of Hazardous Materials Initiatives and Training (DHM-51). Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590-000. Persons wishing to receive confirmation of the receipt of their comments should include a self-addressed stamped postcard.

FOR FURTHER INFORMATION CONTACT: Gigi Corbin, Research and Special Programs Administration (DHM-51), 400 Seventh Street SW., Washington, DC 20590-0001; (202) 366-4900.

SUPPLEMENTARY INFORMATION:

Background

The Hazardous Materials Transportation Act (HMTA) (Pub. L. 93.633) empowers the Secretary of Transportation to issue and enforce regulations deemed necessary to ensure the safe transport of hazardous materials. In addition, the HMTA directs the Secretary of Transportation to provide law enforcement and firefighting personnel with technical information and advice for meeting emergencies connected with the transportation of hazardous materials.

The "Emergency Response Guidebook" (ERG) was developed by RSPA for use by emergency services personnel and provides guidance for initial response to hazardous materials incidents. Since 1980, it has been the goal of RSPA for all emergency response vehicles, including firefighting, police and rescue squad vehicles, to carry a copy of the ERG. To accomplish this, RSPA has published four editions of the ERG and has distributed over 3.5 million copies to emergency services agencies, without charge.

RSPA is initiating the revision process for the 1993 edition of the ERG and actively solicits comments from interested parties, especially those who have used the ERG during hazardous materials incidents. Issues which have been brought to the attention of RSPA include: (1) The use of the Chemical Transportation Emergency Center (CHEMTREC) as a point of contact for emergency assistance, (2) the scope and applicability of the ERG, (3) recommended protective clothing, (4) health effects of short and/or long-term exposure to hazardous materials, (5) consistency among sources of technical information, (6) assumptions used to calculate isolation and evacuation distances, (7) creation of a new guide for water reactive materials.

Public Participation in the Revision Process

This solicitation for comments and notice of public meetings is part of an on-going public process to revise the ERG. The last page of the 1990 edition of the ERG (ERG90) contains the following statement:

> Constructive comments concerning ERG90 are solicited; in particular, comments concerning its use in handling incidents involving hazardous materials.

The ERG was developed in cooperation with representatives of other Federal agencies, state agencies, industry, and a number of private sector organizations including the Chemical Manufacturers Association. the International Association of Fire Chiefs, the International Association of Fire Fighters, the International Association of Chiefs of Police, the Fire Marshals Association of North America, the National Fire Protection Association, the Institute of Makers of Explosives, and the Association of American Railroads. Issues raised by participants were discussed. Decisions concerning the final content of the ERG were made by RSPA.

Request for comments

Comments are solicited on ERG user concerns and on the following questions. Supporting data and analyses will enhance the value of comments submitted.

1. Has the Chemical Transportation Center (CHEMTREC) provided accurate and timely assistance to emergency responders during hazardous materials incidents?

2. Has the National Response Center (NRC) provided accurate and timely assistance to emergency responders during hazardous materials incidents?

3. Have emergency responders experienced a problem of inconsistent guidance between the ERG90 and other sources of technical information? If so, in what way could the ERG be revised to reduce this inconsistency?

4. Have emergency responders experienced confusion or difficulty in understanding the scope or purpose of the ERG90? If so, in what way could the ERG be revised to reduce this difficulty?

5. Have emergency responders experienced confusion or difficulty in understanding the application of the ERG90? If so, in what way could the ERG be revised to reduce this difficulty?

6. What revisions should be made to the ERG90's Table for Initial Isolation/Evacuation Distances for Selected Hazardous Materials, or to the assumption which drive the calculation of its recommended distances?

7. Have emergency responders experienced difficulty understanding the capabilities of chemical protective clothing, and the limitations of structural firefighter's protective clothing in hazardous materials incidents? If so, in what way can the ERG90 be revised to improve understanding?

8. Has any identification number (ID No.) been incorrectly assigned to a material (Name of Material)?

9. Has any identification number/material been assigned to the "wrong" guide?

10. Are the responses on each guide appropriate for the material assigned to the guide?

11. Have emergency responders experienced difficulty with legibility of the ERG90's print style, its format or its durability?

12. Have emergency response agencies experienced difficulty in obtaining copies of ERG90 for their vehicles?

Issued in Washington. DC on November 4, 1991, under authority delegated in 49 CFR part 106, appendix A.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 91–26990 Filed 11–7–91; 8:45 am]

BILLING CODE 4910–60–M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 207
Friday, November 8, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMISSION ON NATIONAL AND COMMUNITY SERVICE

TIME AND DATE: November 15, 1991 from 9:00 a.m. to 5:30 p.m. and November 16, 1991 from 9:00 a.m. to 12:30 p.m.

PLACE: Herzfeld Auditorium, Hannon Hall, Catholic University of America, 4th Street and Michigan Avenue, N.E., Washington, D.C.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED: The Board of Directors of the Commission on National and Community Service will meet on November 15–16, 1991 to discuss the strategies, priorities and regulations to implement the National and Community Service Act of 1990. The public is invited to address the Board from 4:30 p.m. to 5:30 p.m. on November 15, 1991, with a focus on the role of the Commission, and from 9:15 to 10:15 a.m. on November 16, 1991, with a focus on the regulations and application forms set forth in the Notice of Proposed Rulemaking, to be published in the **Federal Register** on November 8, 1991. Statements may not exceed 3 minutes, although supplementary written material may be provided. Please provide at least 28 copies of any such materials, either in advance or at the meeting. To request a time slot for the public comment period, please send a request in writing to the Commission on National and Community Service, P.O. Box 22119, Washington, D.C. 20033–0199. Requests must be received no later that close of business, November 14. Any remaining time during the public comment period will be made available for other persons who submit a request to the Commission on November 15 from 4:00 p.m to 6:00 p.m. at a place in Herzfeld Auditorium to be designated at the meeting.

CONTACT PERSON FOR MORE INFORMATION: Terry Russell, General Counsel, Commission of National and Community Service, P.O. Box 22119, Washington, D.C. 20033–0119, (202) 606–4873.

Catherine Milton,

Executive Director, Commission on National and Community Service.

[FR Doc. 91–27057 Filed 11–5–91; 4:25 pm]

BILLING CODE 6820–BA–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:00 a.m. on Tuesday, November 5, 1991, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Matters relating to the probable failure of certain insured banks.

Recommendations concerning administrative enforcement proceedings.

Matters relating to certain financial institutions.

Applications for waiver of the cross-guaranty provisions of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

Personnel matter.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Vice Chairman Andrew C. Hove, Jr., concurred in by Director T. Timothy Ryan, Jr. (Office of Thrift Supervision), Judith Walter, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), and Chairman William Taylor, 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)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: November 5, 1991.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 91–27059 Filed 11–5–91; 4:45 pm]

BILLING CODE 6714–0–M

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NUMBER: 91–25803

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, October 31, 1991, 10:00 a.m., meeting Open to the Public.

The Following Items Were Added to the Agenda:

Future Meetings.

Publication of Matching Fund Submission Dates in **Fedeal Register.**

"FEDERAL REGISTER" NUMBER: 91–26468.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday November 7, 1991, 10:00 a.m., Meeting open to the Public.

The following items are added to the Agenda:

Advisory opinion 1991–29: Sundstrand Corporation, Inc. (continued from meeting of October 31, 1991)

Proposed Revisions to Bank Loan Regulations, (continued form meeting of October 31, 1991)

DATE AND TIME: Wednesday, November 13, 1991, 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (Ninth Floor).

STATUS: This meeting Will Be Open to the Public.

ITEMS TO BE DISCUSSED:

Title 26 Certification Matters
Advisory Opinion 1991–32: CEC, Inc.
Administrative Matters

DATE AND TIME: Wednesday, November 13, 1991, to be Convened After the Open Meeting

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This Meeting Will Be Closed to the Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone: (202) 219–4155.

Delores R. Harris,

Administrative Assistant.

[FR Doc. 91–27154 Filed 11–6–91; 3:17 pm]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

TIME AND DATE: 10:00 a.m., November 13, 1991.

PLACE: Hearing Room One, 1100 L Street, N.W., Washington, D.C. 20573–0001.

STATUS: Open.

MATTER(S) TO BE CONSIDERED:

1. Docket No. 91–14—*Notice of Inquiry Concerning Use and Effect of Surcharges by Common Carriers and Conferences*—Consideration of Comments.
2. Docket No. 91–20—*Exemption of Certain Marine Terminal Services Arrangements*—Consideration of Comments on Proposed Rule.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523–5725.

Joseph C. Polking,

Secretary.

[FR Doc. 91–27101 Filed 11–6–91; 12:48 pm]

BILLING CODE 6730–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, November 13, 1991.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: November 6, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91–27074 Filed 11–6–91; 10:50 am]

BILLING CODE 6210–01–M

RESOLUTION TRUST CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 9:36 a.m. on Tuesday, November 5, 1991, the Board of Directors of the Resolution Trust Corporation met in closed session to consider (1) Corporation business; (2) contracting matters; and (3) the early termination of a FSLIC Assistance Agreement.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), and seconded by Vice Chairman Andrew C. Hove, Jr., and concurred in by Chairman William Taylor, Judith A. Walter, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), and Director T. Timothy Ryan, Jr. (Director of the Office of Thrift Supervision), 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)(2), (c)(4), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b).

The meeting was held in the Board Room of the Federal Deposit Insurance Corporation Building located at 550–17th Street, NW., Washington, DC.

Dated: November 5, 1991.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Executive Secretary.

[FR Doc. 91–27066 Filed 11–6–91; 9:26 am]

BILLING CODE 6714–01–M

Corrections

Federal Register
Vol. 56, No. 217
Friday, November 8, 1991

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 THE INTERIOR

Bureau of Land Management

[AK-932-4214-10; A-060160, AA-502]

Termination of Temporary Segregative Effect and Opening of Lands; Alaska

Correction

In notice document 91-24259 appearing on page 50924 in the issue of Wednesday, October 9, 1991, make the following correction:

In the second column, under **SUPPLEMENTARY INFORMATION**, in the sixth and seventh lines, "October 31, 1991" should read "October 21, 1991".

BILLING CODE 1505-01-D

NATIONAL COMMISSION ON ACQUIRED IMMUNE DEFICIENCY SYNDROME

Meeting

Correction

In notice document 91-17746 appearing on page 34225 in the issue of Friday, July 26, 1991, in the third column, in the file line at the end of the document, "FR Doc. 91-17745" should read "FR Doc. 91-17746".

BILLING CODE 1505-01-D

NATIONAL INDIAN GAMING COMMISSION

25 CFR Chapter III

Annual Fees Payable By Class II Gaming Operations

Correction

In rule document 91-19374 beginning on page 40702 in the issue of Thursday, August 15, 1991, make the following correction:

§ 514.1 [Corrected]

On page 40710, in the second column, in § 514.1(c)(7), in *Example 3*, in the sixth line, "2%" should read "1%".

BILLING CODE 1505-01-D

NATIONAL INDIAN GAMING COMMISSION

25 CFR Part 502

Definitions Under the Indian Gaming Regulatory Act

Correction

In proposed rule document 91-26434 beginning on page 56278 in the issue of Friday, November 1, 1991, make the following correction:

§ 502.1 [Corrected]

On page 56281, in the third column, in § 502.1(l), in the last line, "class II" should read "class III".

BILLING CODE 1505-01-D

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area No. 2482]

Mississippi (With Contiguous Counties in Arkansas, Tennessee, Alabama, & Louisiana); Declaration of Disaster Loan Area

Correction

In notice document 91-6686 beginning on page 12054 in the issue of Thursday, March 21, 1991, make the following correction:

On page 12055. in the first column, in the file line at the end of the document, "FR Doc. 91–6586" should read "FR Doc. 91-6686".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-CE-58-AD; Amendment 39-8072; AD 91-23-03]

Airworthiness Directives; Avions Mudry & Cie Model CAP10B Airplanes

Correction

In rule document 91-25481 beginning on page 54782 in the issue of Wednesday, October 23, 1991, make the following correction:

On page 54782, in the second column, under **DATES**, in the first line, "December 10, 1992" should read "December 10, 1991".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

23 CFR Part 1327

[Docket No. 84-02; Notice 8]

RIN 2127-AD26

Procedures for Participating in and Receiving Data From the National Driver Register Problem Driver Pointer System

Correction

In rule document 91-19771 beginning on page 41394 in the issue of Tuesday, August 20, 1991, make the following corrections:

1. On page 41394, in the third column, in the third paragraph, in the third line, "States" was misspelled.

2. On page 41396, in the second column, in the first full paragraph, in the third line, "the" should read "The".

3. On the same page, in the third column, in the last paragraph, after "NDR" insert "Act".

4. On page 41398, in the second column, in the fifth full paragraph, in the sixth line, "transit" should read "transmit". In the last paragraph, in the first line, "States" should read "State"; and in the last line, "argues" should read "agrees".

5. On page 41400, in the second column, in the first full paragraph, "is" should read "its".

6. On page 41401, in the third column, in the third paragraph, in the seventh line, "NHTSA" should read "NPRM".

7. On page 41403, in the first column, in the fourth paragraph, in the fifth line, "is" should read "in".

§ 1327.6 [Corrected]

8. On page 41407, in § 1327.6(e)(4), in the third line, "date" should read "data".

Editorial Note: For related document, see the Rules and Regulations section in this issue of the Federal Register.

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[FI-38-91]

RIN 1545-AP73

Extension of Time for Real Estate Mortgage Investment Conduits To Provide Reporting Information

Correction

In proposed rule document 91-22850 beginning on page 49525 in the issue of Monday, September 30, 1991, make the following correction:

On page 49525, in the third column, in the first and second lines, "November 29, 1991" should read "(Insert date that is 60 days after the date a Treasury Decision based on these proposed regulations is published in the Federal Register)."

BILLING CODE 1505-01-D

federal register

Friday
November 8, 1991

Part II

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 795, et al.

Abandoned Mine Land Reclamation Fund Reauthorization Implementation; Proposed Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 795, 870, 872, 873, 874, 875, 876 and 886

RIN NO. 1029-AB49

Abandoned Mine Land Reclamation Fund Reauthorization Implementation

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the U.S. Department of the Interior (DOI) proposes to amend its abandoned mine land regulations, 30 CFR subchapter R in light of recently enacted changes to title IV of the Surface Mining Control and Reclamation Act (SMCRA) of 1977, Public Law 95–87, as amended by Public Law 101–508 (November 5, 1990).

DATES: *Written Comments:* OSM will accept written comments on the proposed rules until 5 p.m. Eastern Time, January 7, 1992.

Public Hearings: Upon request, OSM will hold a public hearing on the proposed rules in Washington, DC, St. Louis, Missouri, and Denver, Colorado, on January 6, 1992 at 9 a.m. OSM will accept requests for public hearings until 5 p.m. Eastern Time on December 6, 1991. Individuals wishing to attend but not testify at any hearing should contact the person identified under "For Further Information Contact" beforehand to verify that the hearing will be held.

ADDRESSES: *Written Comments:* Hand deliver to the Office of Surface Mining, Administrative Record, room 5131, 1100 L Street, NW., Washington, DC; or mail to the Office of Surface Mining, Administrative Record, room 5131L, 1951 Constitution Avenue, Washington, DC 20240.

Public Hearings: Department of the Interior Auditorium, 18th and C Streets, NW., Washington, DC; Brooks Towers, 2nd Floor Conference Room, 1020 15th Street, Denver, Colorado; and 1520 Market Street, St. Louis, Missouri.

Request for Public Hearings: Submit orally or in writing to the person and address specified under "**FOR FURTHER INFORMATION CONTACT.**"

FOR FURTHER INFORMATION CONTACT: D.M. Lytton, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: 202–208–5365 (Commercial) or 268–5365 (FTS).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Background
III. Discussion of the Proposed Rule
IV. Effect on State Programs
V. Procedural Matters

I. Public Comment Procedures

Written Comments

Written comments submitted on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any recommended change. Where practical, commenters should submit three copies of their comments (see "**ADDRESSES**"). Comments received after the close of the comment period (see "**DATES**") may not be considered or included in the Administrative Record for the final rule.

Public Hearings

OSM will hold public hearings on the proposed rule by request only. The times, dates, and addresses scheduled for hearings at three locations are specified previously in this notice (see "**DATES**" and "**ADDRESSES**").

Any person interested in participating at a hearing at a particular location should inform Mr. Lytton (see "**FOR FURTHER INFORMATION CONTACT**") either orally or in writing of the desired hearing location by 5 p.m. Eastern time on December 6, 1991. If no one has contacted Mr. Lytton to express an interest in participating in a hearing at a given location by that date, the hearing will not be held. If only one person expresses an interest, a public meeting rather than a hearing may be held and the results included in the Administrative Record.

If a hearing is held, it will continue until all persons wishing to testify have been heard. To assist the transcriber and ensure an accurate record, OSM requests that persons who testify at a hearing give the transcriber a written copy of their testimony. To assist OSM in preparing appropriate questions, OSM also requests that persons who plan to testify submit to OSM at the address previously specified for the submission of written comments (see "**ADDRESSES**") an advance copy of their testimony.

Availability of Copies

Copies of these proposed regulations may be obtained from the U.S. Department of the Interior, Administrative Record Room, 1100 L Street, NW., room 5131, Washington, DC 20240, Telephone 202–343–5492 or any of OSM's field offices.

II. Background

A. Summary of AML Program—Public Law 95–87

The Abandoned Mine Land Reclamation Program (AML) was established by the Surface Mining Control and Reclamation Act of 1977 (SMCRA), Public Law 95–87, 30 U.S.C. 1201 *et seq.* in response to concern over extensive environmental damage caused by past coal mining activities. In effect, the Abandoned Mine Reclamation Fund (Fund) and the program it supports is the coal industry's equivalent to the "Superfund" administered by the Environmental Protection Agency to address hazardous waste discharges.

Only areas abandoned prior to the date of enactment of SMCRA, where there is no continuing reclamation responsibility by any person under state or federal law, are eligible for reclamation under title IV. Funding of reclamation projects is subject to a priority schedule. For example, "priority 1" projects concern those which involve the protection of public health, safety, general welfare and property from extreme danger of the adverse effects of coal mining practices. "Priority 3" projects, on the other hand, concern environmental problems associated with past coal mining practices which do not necessarily constitute a public health or safety threat.

The Fund, administered by the Secretary of the Interior through the Office of Surface Mining Reclamation and Enforcement (OSM), is financed by a reclamation fee assessed on every ton of mined coal at the rate of 35 cents per ton of surface mined coal, 15 cents per ton of underground mined coal and 10 cents per ton for lignite. Expenditures from the Fund are subject to appropriation by Congress. The authority to collect the reclamation fee was due to expire on August 3, 1992, 15 years after the date of enactment of SMCRA.

The Fund is divided into the State/Tribal and Secretarial shares with each State or Indian tribe under a federally approved reclamation program (generally referred to as "program" or "primacy" States) entitled to fifty percent of the reclamation fees collected from coal operations within the State or Indian lands. Annually, these States/Tribes receive reclamation project construction grants and administrative grants from their share of the Fund. States are also authorized to use up to $3 million of their State share funds to establish State coal mine subsidence insurance programs, and deposit ten percent of their annual grants into

special interest-bearing State trust accounts for use after August 3, 1992.

The Secretarial share of the Fund is allocated among a number of Federal programs such as emergency projects (involving sudden and life-threatening situations which demand immediate attention), high-priority reclamation projects in States and Tribes without federally approved reclamation programs (referred to as "nonprogram" States), the Rural Abandoned Mine Program (RAMP) administered by the Secretary of Agriculture through the Soil Conservation Service, and the Small Operators Assistance Program (SOAP) which provides financial assistance to coal operators who produce less than 100,000 tons per year to help defray certain costs associated with the surface coal mining permitting process. Remaining funds are distributed to program States under an allocation formula. At present, 23 States and three Indian tribes have OSM approved abandoned mine reclamation programs.

Noncoal abandoned mine reclamation projects can be undertaken in only two instances. Program States and Tribes can utilize State or Tribal share monies to reclaim an abandoned noncoal mine site if the request is made by the State governor or Tribal head and the project represents a public health and safety hazard. Moreover, once a program State or Tribe certifies it has completed the reclamation of all eligible abandoned coal mine projects, it can then use the full amount of its State or Tribal share for abandoned noncoal mine land reclamation projects.

B. AML Regulations

On October 25, 1978, OSM published final regulations implementing an abandoned mine land reclamation program incorporating the provisions of title IV of the Act. The regulations establish procedures and requirements for the preparation and implementation of State, and Indian reclamation programs, consisting of reclamation plans, submission of annual projects and applications for annual grants. Additional parts of this subchapter include provisions for Federal, State, and Indian Abandoned Mine Reclamation Funds, general reclamation objectives, rights-of-entry, liens, emergency reclamation acquisitions, disposition of lands and waters, reclamation on private lands, and Indian reclamation programs.

Regulations relating to the amount and collection of fees were promulgated in 30 CFR part 837 on December 31, 1977 (42 FR 62713). This part has since been redesignated as Part 870.

On June 30, 1982, OSM published revisions to its abandoned mine land regulations in response to the Administration's request for regulatory review. These revised rules concerned the establishment and administration of the Abandoned Mine Land Reclamation Program by the States, Tribes, and Federal Government, as required by SMCRA. For more information regarding the exact nature of these revisions refer to 47 FR 28574–28604 (June 30, 1982).

C. Accomplishments of the Abandoned Mine Land Reclamation Program

From the beginning of the program through the fourth quarter of 1990, reclamation fee collections into the Abandoned Mine Land Reclamation Fund amounted to approximately $2.7 billion. The Fund also received donations, user charges and other recovered amounts such as late-payment fines. In 1990 collections from these sources totaled $1,215,371.

Since the beginning of the program, OSM has encouraged States to take over emergency project responsibility. Beginning in 1983, Arkansas and Montana assumed emergency project responsibility, followed by Illinois in 1984. During 1988–89, Kansas, Virginia, and West Virginia took over responsibility for their emergency projects, and Alabama assumed responsibility in 1990. In 1989, OSM established a new emergency program policy that provided Federal share funds, in addition to the formula-based allocation, to States with emergency programs. Since 1988, it has been OSM policy to stabilize the emergency portion of AML problems permanently, and then to refer any remaining work at the site to the State for consideration under its regular AML reclamation program. In 1990, OSM initiated 189 emergency projects, while States with emergency programs initiated 118.

Beginning with Texas in 1980, OSM has approved State reclamation programs so that currently all primacy States except Mississippi have approved AML programs. During 1988 the Navajo and Hopi Tribe programs were approved, and in 1989 the Crow Tribe received approval for its program. States and the Tribes received net grants totaling $125,706,879 in 1990. Since 1981, when the States began receiving AML administrative grants to operate their programs and construction grants to complete reclamation projects, through 1990, they have received over $1.4 billion from the Fund.

The minimum-level AML program was established by Congress in 1988 to assure funding for existing high-priority projects in States where the annual State share allocation is too small for the State to administer a program and initiate reclamation. Seven States (Arkansas, Iowa, Kansas, Maryland, Missouri, North Dakota, and Oklahoma) were eligible for minimum-level program funding during 1990 and received such grants during the year. Authorized funding of the minimum-level program was $1,500,000 for 1990. The minimum-program States received $7,951,324 of Federal share money in 1990, which included over $5,720,000 to bring these States to the minimum program level.

D. Abandoned Mine Reclamation Act of 1990

Since 1977 when the AML Fund was established, many of the scars left from past mining practices have been reclaimed. Thousands of acres have been contoured, revegetated and brought back to productive uses. Despite such accomplishments, the inventory of unreclaimed high priority public health and safety problems is still significantly high. All such problems would not have been addressed with AML funds collected through 1992, the original expiration date for fee collection.

In light of this continuing need to address high priority coal problems, Congressman Rahall introduced a bill, H.R. 2095, in the 101st Congress to extend the AML fee and adjust the allocation of AML funds. A detailed examination of this bill, as amended, can be found in H.R. Report 294, 101st Congress, 1st Session (October 18, 1989). H.R. 2095, as amended, was passed by the House of Representatives on October 23, 1989.

On October 16, 1990, the House again passed H.R. 2095 as part of H.R. 5835, the Omnibus Budget Reconciliation Act of 1990. In conference with the Senate, the text of H.R. 2095 was retained except for six modifications and one addition. They are as follows: First, the authority to collect reclamation fees was extended through September 30, 1995, rather than the year 2007. Second, a provision that provided for modified reclamation fees after 1992 in States which have certified the completion of all abandoned coal mine projects was dropped. Third, provisions that would have expanded the scope of the emergency program were deleted. Fourth, while the House bill limited the objectives of the fund to the first three priorities listed in current law, the amendments maintain the current law list of project priorities. Fifth, the requirement that the Secretary promulgate environmental standards for reclamation projects was deleted. Sixth, the bill's authorization of a new

abandoned minerals and mineral materials mine reclamation fund was dropped. Finally, an amendment relating to certain projects in certified States was adopted.

On November 5, 1990, the President signed into law the Omnibus Budget Reconciliation Act of 1990, Public Law 101–508, which included the Abandoned Mine Reclamation Act of 1990, as amended. Besides extending the authority to collect reclamation fees, the amendments to title IV contain several other significant provisions as follows:

The amendments concentrate a greater amount of resources toward combating the highest priority abandoned coal mine reclamation projects. This goal is accomplished by allocating forty percent of the Secretarial share of funds to program States and Indian Tribes until they complete all of their priority 1 & 2 abandoned coal mine reclamation projects.

The new provisions also provide additional resources to combat abandoned coal mine hazards by enabling interest to accrue to amounts in the AML Fund and by strengthening reclamation fee collection and auditing authority.

The legislation also recognizes the severe hazards to public health and safety caused by water supplies contaminated by past mining practices.

The new amendments allow States to establish comprehensive acid mine drainage programs to combat the devastating effects on land, water and quality of life in areas affected by acid mine drainage.

The new provisions allow States to address high priority coal sites abandoned after enactment of the 1977 Act. Sites which were abandoned prior to a State receiving primacy pursuant to title V of SMCRA, or which remain unreclaimed due to the insolvency of a surety company, can now be addressed with title IV funds.

The new legislation provides for a specific allocation of collected fees from which funds may be transferred annually to the Department of Agriculture to administer the Rural Abandoned Mine Program under section 406 of SMCRA.

The new legislation expands the rights of States which have certified the completion of all known coal problems to utilize State share funds for noncoal reclamation purposes, including the protection, repair, replacement, construction, or enhancement of public facilities damaged by past mining practices or which exist in communities adversely impacted by present mining.

Finally, the new legislation provides that mineral owners and purchasers be reported to OSM each quarter with the filing of the Form OSM–1.

III. Discussion of Proposed Rules

A. Organization

The regulatory revisions are intended to implement the requirements of the Act consistent with the purposes stated in section 102(h), its legislative history, and the Secretary's commitment to avoid excessive and burdensome rules. The material is organized into parts which comprise subchapter R. At the end of each part, comments received from interested parties as a result of OSM's outreach program to involve the public in the development of proposed regulations are addressed. It should also be noted that the term "allocated" as used in this preamble refers to the earmarking of funds for a specific purpose. This administrative identification in OSM records of monies in the fund for a specific purpose does not mean that such monies will be appropriated in a specific appropriation or will be available for use in the year in which it was allocated.

B. Proposed Rules

Part 795 Permanent Regulatory Program—Small Operator Assistance Program

OSM proposes to revise § 795.4 which contains a list of the information collection requirements contained in part 795 and the Office of Management and Budget (OMB) clearance number. The proposed revision would update the data contained in this section by including the estimated reporting burden per respondent for complying with the information collection requirements. The proposed revision would also provide the OSM and OMB addresses where comments regarding the information collection requirements may be sent.

OSM is proposing in paragraph 795.6(a)(2) to change the production level of 100,000 tons to 300,000 tons with respect to operator eligibility under the SOAP program. This change is nondiscretionary and has been mandated by the Abandoned Mine Land Reclamation Act of 1990.

OSM is proposing in paragraphs 795.6(a)(2)(i) and (a)(2)(ii) to change five percent to ten percent with respect to the baseline, above which ownership will play a role in determining attributed coal production. The basis for the ten percent baseline is section 507(b)(4) and regulations for determining ownership and control, as well as permit information requirements promulgated thereunder. The change would make SOAP eligibility provisions for ownership and control consistent with all other similar requirements in the permanent program rules.

Section 795.12 deals with applicant liability. OSM is proposing in paragraph 795.12(a)(2) and (a)(3) to delete 100,000 tons and add the following language "coal tonnage governing SOAP eligibility in effect at the time assistance was approved". The deletion of "100,000 tons" is mandated by the production cap increase to 300,000 tons authorized by the new amendments to SMCRA. Through the added language, OSM is attempting to define a transition phase keyed to the time an operator is approved for assistance, i.e. determined eligible, that will be needed as OSM, and subsequently the States, change their rules. OSM believes that the added phrase is reasonable and provides ample flexibility and guidance for determining the production standard against which operator liability would be reviewed. Other options for a transition exist. These could include: (1) The 300,000 ton standard, when it becomes effective, either immediately applying to all operators under a liability period or applying to operators under their next annual liability cycle; or (2) establishing an effective date of October 1, 1991, for the 300,000 ton eligibility and liability standard irrespective of the date that OSM or States promulgate final rule revisions. OSM will consider comments on alternatives other than the proposal.

OSM is proposing to remove paragraph 795.12(a)(3) which deals with transferred liability in the event a permit having been supported with SOAP assistance is sold, transferred, or assigned to another person. OSM views the existing requirement as one that is overly disruptive of legitimate and normal business practices in the coal industry. Notwithstanding this view, OSM emphasizes that sales and transfers to family members, or completed under the guise of a reorganization solely for the purpose of obtaining assistance, would continue to be liable under the provision of § 795.12. It may be difficult to determine that a company sought SOAP assistance primarily as a basis for a future transfer or sale. For this reason, OSM is interested in receiving comments on the proposed removal of § 795.12(a)(3) with respect to whether the proposed removal would significantly increase the potential for abuse in the program, or regulatory criteria that could be used to distinguish between normal business practices and those practices that will result in abuse of the SOAP.

OSM is proposing to add "Drilling and" at the beginning of § 795.9(b)(2). The objective is to clarify, consistent with section 507(c) of the Act, that drilling where it is needed to provide the rock samples for overburden analysis is an authorized service under the program. OSM believes that to link these services is both logical and technically sound. Drilling of ground observation wells is authorized currently on a case-by-case basis. To coordinate any drilling with respect to serving needs for both rock samples and ground water monitoring for baseline data would integrate several important technical components of SOAP assistance and help to create a sounder environmental analysis. It would also have the added benefit of shortening the time frame for completion of technical studies.

OSM wishes to emphasize that drilling should be used only in situations where adequate samples cannot be obtained from other sources such as existing cores or nearby freshly exposed highwalls. Furthermore, drilling is in no way meant to be explorative in nature. Exploration activities are the responsibility of the operator and the program administrator must ensure that the information on coal depth, thickness, and reserves required under existing § 795.7 is reasonably accurate before authorizing drilling.

Part 870 Abandoned Mine Reclamation Fund—Fee Collection and Coal Production Reporting

Title IV of the Surface Mining Control and Reclamation Act of 1977 (the Act) directed the Secretary of the Interior to collect per-ton reclamation fees from coal mine operators to support the reclamation and other activities listed under this Title. OSM developed a reclamation fee collection program and published rules in the **Federal Register** to assist mine operators in meeting their fee obligations, to specify management activities for fee collection, and to define a range of compliance activities that include compliance audits, debt collection, and litigation procedures.

The major components of the fee collection program are the fee collection system, the fee compliance system, and the litigation system.

Fee collection system: OSM operates and maintains the Abandoned Mine Land Fee Collection System (AMLFCS) in Denver, Colorado. The AMLFCS is an automated system which records and accounts for (1) collections and deposits of reclamation fees into the Federal depository, (2) fee payments and delinquencies, and (3) identification of collections for appropriation and use by States and Indian Tribes under OSM approved reclamation programs.

Fee compliance system: Fee compliance officers are located in the coal producing regions to insure that fees are collected through appropriate investigations and audits.

Litigation system: The Associate Solicitor, Division of Surface Mining, in concert with the Department of Justice (Justice), is responsible for litigation associated with the collection of delinquent fees. The Division initiates enforcement action through Justice to collect delinquent fees and provides legal assistance to OSM on fee-related issues.

On December 13, 1977, OSM published final rules as part 837 (42 FR 62713) setting forth procedures for payment of reclamation fees and recordkeeping requirements. On May 15, 1978, OSM published an amendment to these rules (43 FR 20793) to establish the interest rate on late payments. These rules were later renumbered in the Code of Federal Regulations as part 870.

Section 870.10—Information collection. OSM proposes to revise § 870.10 which contains a list of the information collection requirements contained in part 870 and the OMB clearance numbers. The proposed revision updates the data contained in the section by including the estimated reporting burden per respondent for complying with the information collection requirements. The proposed revision would also provide the OSM and OMB addresses where comments regarding the information collection requirements may be sent.

Section 870.12 (Reclamation fee). A new subsection 870.12(d) would be added to specify the new termination date for the payment of reclamation fees. As originally passed by Congress in 1977, the reclamation fee obligation was for a 15-year period starting in the last quarter of 1977 and extending to September 30, 1992. Congress has extended this date 3 years through the enactment of Public Law 101–508. The reclamation fee obligation now is applicable for coal produced though September 30, 1995. As noted in H.R. Report No. 294, 101st Congress, 1st Session 17–18 (1989), the extension of the reclamation fee is based in large measure on the continuing need to address high priority coal problems. Though the AML program over that last 13 years has reclaimed a significant number of acres of abandoned lands, Congress found that the "inventory of unreclaimed high priority coal mine sites is still overwhelming." *Id* at 17.

Section 870.15 (Reclamation fee payment). An editorial change is being proposed to § 870.15(b) to note that the OSM–1 form will be amended to collect additional coal production and ownership information. Public Law 101–508 requires that additional information be reported in the quarterly report filed by operators; specific requirements include identification of the permittee, the permit number, the Mine Safety and Health Act (MSHA) number, the owner of the coal, the preparation plant, tipple, or loading point for the coal, and the purchaser of the coal.

OSM is seeking comments regarding the detail to which this information must be collected so as to insure that information that is to be collected is useful. Also, as a means of achieving Congress' intent of minimizing the reporting burden, OSM is considering the establishment of thresholds (percentage of coal purchased, or percent of mineral ownership) for purposes of determining who qualifies as a reportable mineral owner and reportable purchaser, with the requirement that each Form OSM–1, when the thresholds are not met, identify at least the largest mineral owner and purchaser.

Information contained in the quarterly reports, including information updates would be maintained in a computerized data base by OSM. In enacting these new allocation requirements, Congress believed that this information would be necessary for the agency to determine the identity of entities from whom to seek payment in the event of under- or non-payment of the reclamation fees. H.R. Report. No. 294, 101st Congress, 1st Session 26 (1989).

OSM has also proposed a minor editorial change to § 870.15(c). This modification would change the title of the current Form OSM–1 from "Coal Production and Reclamation Fee Report" to "Coal Reclamation Fee Report." This is intended to more closely reflect the rules under § 870.15(b) which require operators to report tonnage of coal sold, used, or transferred as opposed to coal produced.

The SMCRA amendments require that mine operators report changes in ownership, as well as identifying purchasers, tipples, preparation plants, and loading points as part of the quarterly Form OSM–1 process. Congress stated it did not expect these new requirements to place a significant additional reporting burden on operators.

The Form OSM–1 will be revised to incorporate the new information required by the amendments. The instructions accompanying the Form OSM–1 will set forth the new data

reporting requirements, including mineral owner, purchaser, tipples, loading points, etc. As part of OSM's analysis of the new amendments for this part, the Agency conducted a study of owner/purchaser profiles in large, medium, and small coal producing companies to develop an estimate of the nature and extent of the owner/purchaser information which OSM might collect (and operators to report) as a result of the 1990 AML amendments.

OSM analyzed data from eight coal companies to determine how the amendments could impact their administrative reporting burden. The Agency gathered ownership and sales statistics for two large companies, four medium companies and two small companies in order to evaluate the potential impact of the SMCRA amendments. While the study was not based on statistical selection criteria, OSM believes that the data fairly represents the kind of owner/purchaser relationships that it would expect to encounter across the industry.

The study supports the need to establish reasonable interpretations of the terms "owner" and "purchaser" in order that the data furnished by operators to OSM is both manageable and useful. The eight companies examined represent a wide spectrum of purchaser and owner relationships. For example, during 1990, one large company in Kentucky operated its own mines, bought coal from contract miners, brokered coal representing several purchasers, and sold coal to 90 individual purchasers. Four purchasers (major public utilities) accounted for about 90 percent of its sales. The company reported 2,100,000 tons of coal sales during 1990.

In contrast, a small Colorado coal company operated a single mine. Except for one major buyer, the company sold coal on a cash basis to as many as 652 customers during a single quarter, each purchasing one ton or less. Annual sales amounted to 24,500 tons.

Another coal company located in Ohio operates eight company mines and purchases coal from seven contract miners. There are 47 permits associated with the 8 MSHA–ID's under which the company reports and pays its quarterly fees. On one permit number which OSM selected for review, there were three mineral owners registered with the regulatory authority. Similar profiles exist for other companies selected for review.

Although OSM's study was limited, the data suggests that thresholds would assure that the information collected identifies only those mineral owners and purchasers who are in a position to influence the coal operations that are reported. This would avoid a proliferation of reporting and data collection and the associated significant administrative and cost burden that would otherwise result.

On the basis of this study and other information, OSM would propose the following threshold definition of "owners" and "purchasers" for Form OSM–1.

> The name and address of any person or entity who, in a given quarter, is the owner of ( ) percent or more of the mineral estate for a given permit, and any business entity or individual who, in a given quarter, purchases. ( ) percent or more of the production from a given permit shall be reported to OSM on a quarterly basis. In the event that no single mineral owner or purchaser meets the ( ) percent rule, then the largest single mineral owner and purchaser shall be reported.

OSM suggests that the threshold value of 10 percent be incorporated into the above definition, and accordingly requests comments on this or other threshold values. Without thresholds, OSM believes that data reporting and collection would proliferate without significant benefit. However, by establishing reporting limits, OSM would not only minimize its own administrative burden and that of the operator, but it would assure the usefulness of the data by identifying only those individuals and entities who, by the significance of their ownership and/or purchasing power, may influence coal mining operations.

Sections 870.16 and 17 (Production records and Compliance authority). Although the regulations in § 870.16 have not been amended, OSM notes that provisions in Public Law 101–508 have clarified and ratified the Secretary's authority to conduct compliance audits of coal operators. Moreover, the provisions would require the Secretary to share information obtained through audits of coal operators with the Internal Revenue Service. In addition, the provisions in § 870.17 have been expanded and clarified, utilizing the authority in sections 201(c) and 412(a) of SMCRA, to cover all persons involved in a coal transaction, including without limitation, permittees, operators, brokers, purchasers, persons operating preparation plants and tipples, and any recipients of royalty payments for the coal. Section 870.17 currently provides that fee compliance officers have the authority to examine records of the second party involved in the sale or transfer of ownership of coal by the operator.

The amended section would no longer refer to the term "second party," and would specify that the Secretary or any duly authorized officer, employee, or representative of the Secretary would have access to relevant documents. Section 870.17 now only refers to fee compliance officers. The proposed language regarding duly authorized persons would make this section consistent with the language in § 870.16. Section 412(a) of SMCRA provides that the Secretary shall have the power and authority, if not granted otherwise, to engage in any work and to do all things necessary or expedient, including the promulgation of rules and regulations, to implement and administer the provisions of title IV. Section 201(c) (1) and (2) also provides broad authority.

The legislative authority to conduct audits of coal production and the payment of fees, including tipples and preparation plants as well as the authority to have access to relevant documents of any other person involved in a coal transaction, including purchasers of coal whether or not the purchase is from one who originally produced the coal, a secondary seller or an ultimate end user of the coal is a means to provide reasonable assurance that coal operators are properly reporting coal produced and subsequently sold, used, or transferred. This authority is necessary for the agency to determine the identity of entities from whom to seek payment in the event of underpayment or nonpayment of the reclamation fees. The Agency believes that the new provisions in section 402(d)(2) of SMCRA reinforce OSM's ongoing audit activities and do not mandate any specific level of tipple or preparation plant audit. OSM auditors have always verified the AML fee payment or non-payment and the accuracy of the tonnage reported. The legislative amendments confirm OSM's interpretation of its existing authority as implemented through current regulations.

In enacting these provisions, Congress sought to provide OSM the authority to verify for accuracy and completeness the representations made in the quarterly reports. H.R. Report No. 294, 101st Congress, 1st Session 26 (1989). Moreover, through these amendments Congress provided that the Secretary report any failure to pay the full amount of the reclamation fee to the federal agency responsible for ensuring compliance with provisions of section 4121 of the Internal Revenue Code. Congress believed that this sharing of information would foster greater compliance under the Black Lung Disability Trust Fund.

Part 872 Abandoned Mine Reclamation Fund

The United States Department of the Treasury established an account on its books in accordance with title IV provisions of Public Law 95–87 and Treasury's rules for a fund of this type. Section 401(a) creates the authority for the account:

> There is created on the books of the Treasury of the United States a trust fund to be known as the Abandoned Mine Reclamation Fund (hereinafter referred to as the "fund") which shall be administered by the Secretary of the Interior.

Section 401(d) delineates availability and purpose of account moneys:

> Moneys from the fund shall be available for the purposes of this Title, only when appropriated therefor, and such appropriations shall be made without fiscal year limitations.

These provisions provide the authority for a fiduciary relationship whereby Congress controls the use of fund monies for title IV purposes by the appropriation process, and the Treasury maintains the amounts collected in a special account.

Fund revenues are derived from per-ton reclamation fees and late payment interest charges, sales of acquired lands, and donations. The fees and interest charges are paid by coal mine operators and submitted with production and reclamation fee reports for payment identification and credit through a lockbox operation to OSM's Finance Center in Denver.

Collections and related transactions are controlled by Deposit Tickets (prepared by the collection officer), Debit Vouchers issued by the Federal depository for uncollected checks, and Refund Schedules for overpayment. These transactions are identified by mine operators as well as by mine and geographic location. Data from OSM approved Forms OSM–1 submitted by mine operators with their payment are coded and stored in OSM's ADP system for compliance and disbursement purposes. Net collections (per deposit tickets, debit vouchers and refund schedules) are reconciled on a monthly basis with the amounts reported by mine operators on OSM's approved forms.

All accounts are closed at the end of business on September 30, the final day of the Federal fiscal year (FY). The System is reconciled and collections are identified by State and Indian lands. Fifty percent of the FY collection is reserved for use by States and Indian Tribes to carry on approved reclamation programs. The remainder is to be allocated or expended by the Secretary of the Interior through the Director, OSM, as set forth in section 402(g) of title IV. Any errors found in prior year allocations are corrected in current allocations. This financial information is one of the inputs for budget requests to support title IV programs.

SMCRA, as originally enacted, did not authorize the investment of the AML Fund. In the new amendments to title IV, however, Congress specifically provided for the investment of the AML fund into interest-bearing accounts.

To comply with this mandate OSM is currently developing, with the assistance of the Department of the Treasury, a cash management plan providing for the investment of AML monies not required for current withdrawals.

OSM is proposing to add a new paragraph 6 to § 872.11(a) to note that interest and any other investment income from the AML Fund would be earned and credited to the Federal share of the Fund. Options for splitting the earned interest between the State and Federal shares were not proposed because it is clear from the language of the amendments and the legislative history that Congress sought to place the interest only in the Federal share. For additional information, see the response to comments at the end of this part. Section H.R. Report No. 294, 101st Congress, 1st Session 19, 20 (1989). See amended sections 402(g) of SMCRA.

Section 872.11(b) would be revised to incorporate provisions of section 402(g) of the Act as amended by the Abandoned Mine Reclamation Act of 1990. Section 872.11(b) describes the manner in which moneys deposited into the fund would be allocated by the Secretary. These funds, once appropriated by Congress, would be used to accomplish the purposes of title IV of SMCRA.

Existing paragraph (b)(1) would be removed and allocations of funds for the Small Operator Assistance Program (SOAP) would be addressed at new paragraph (b)(5) as specified at section 401(c)(11) of SMCRA. The distribution of AML funds for SOAP would be funded from the 20 percent of the funds remaining after allocation of collections to the States/Tribes in accordance with section 402(g)(2) of the Act. The distribution of funds for SOAP would be set forth in paragraph (b)(5).

Existing paragraphs (b)(2) and (b)(3) of the regulations would be revised and redesignated as paragraph (b)(1) and (b)(2). These redesignated and revised paragraphs would continue to require the allocation of 50 percent of annual fee collections to a specific State or Tribe. This would fulfill the requirements of the Act at 402(g)(1). The new amendments use the grant award date as the time from which to calculate the three year period the States and Tribes have to use allocated funds. Monies which remain unexpended by a State or Tribe after the three year period may, under certain conditions, be withdrawn and expended by the Secretary to accomplish the purposes of title IV.

Existing paragraph (b)(4) of the regulations would be redesignated as paragraph (b)(3) and revised to require that 10 percent of the monies collected and deposited annually, and 20 percent of the interest and other miscellaneous receipts to the Fund, be allocated for use by the Secretary of Agriculture for the purpose of funding the Rural Abandoned Mine Program (RAMP). Twenty percent of funds withdrawn from the State's and Tribe's unexpended grant awards under section 402(g)(1)(D) of the Act would be reprogrammed to RAMP. This requirement would be consistent with section 402(g)(2) of the Act.

A new paragraph (b)(4) would be added to the regulations to fulfill the requirement of section 402(g)(5) of SMCRA. New paragraph (b)(4) would require that 40 percent of the monies deposited in the Fund annually after making the allocations of subparagraphs (b) (1) and (2) shall be allocated for use in making additional grants to the States and Tribes. To be eligible for funds allocated under this proposed provision, a State or Tribe would not have certified under section 411(a) of SMCRA and would have priority 1 and priority 2 problems within the State or on Tribal lands. Under this proposed paragraph, the distribution of funds would be based on a formula addressing the respective State or Tribe's historical coal production prior to August 3, 1977, as a percentage of the nationwide total for eligible States and Tribes. Also, funds to be granted under this paragraph could be reduced or curtailed under two specific conditions relating to the adequacy of funding. These two conditions are: (1) If State or Tribal share funds to be granted in a given year are sufficient to address remaining eligible priority 1 or priority 2 sites, no additional funds will be provided during that year; and (2) if the costs to reclaim all remaining priority 1 or priority 2 sites exceeds the amount of State or Tribal share funds to be granted in a year pursuant to section 402(g)(1), but is less than the total amount of funds to be granted to the State or Tribe in that year under paragraphs (b) (1), (2), (3), and (4) of this section, Federal funds granted under this paragraph will be reduced to that amount required to fully fund all

remaining priority 1 or priority 2 sites after utilizing all available State share funds.

Existing paragraph (b)(5) of the regulations would be revised to list the purposes for which the Secretary may expend funds from the remaining or unallocated balance of the AML fund (not already allocated to the States, Tribes, and RAMP), in accordance with section 402(g)(3) of the Act. These purposes would include SOAP, emergency projects, nonemergency projects in nonprogram States and on Tribal lands, funding for eligible interim program and insolvent surety sites and administration of title IV of the Act.

Two million dollars is the minimum program level established at section 402(g)(8) of the Act. A new paragraph (b)(6) would also be added to the regulations to specify that not less than $2,000,000 would be distributed annually to States and Tribes having an approved abandoned mine reclamation program and eligible lands and waters pursuant to section 404, so long as an allocation of funds is necessary to achieve the priorities stated in paragraphs (1) and (2) of section 403(a) (priority 1 or 2 problems). However, annual State share funds must be utilized first, and supplemental funds granted under paragraph (b)(4) and this paragraph shall not exceed the costs of reclaiming all remaining priority 1 and 2 sites.

A new paragraph (b)(7) would be added to the regulations to specify that additional funds allocated or expended annually by the Secretary would not be deducted against funds granted annually to a State or Tribe pursuant to sections 402(g) (1), (5), or (8) of SMCRA.

Finally, the new statutory provisions in section 402(g)(3)(C) authorize the Secretary to expend monies for reclamation purposes in States or on Indian lands which do not have an approved abandoned mine land program. Section 872.11(b)(8) would implement this provision.

Comments Received During Outreach—Part 872

Comment: It appears from section 402(g)(A) that States will not be entitled to interest collected on State share funds. Therefore, in accordance with the requirements of section 402(g)(A) the rules should require OSM to first allocate the State's full share of their annual collections from the annual appropriation. The balance of the monies remaining in the appropriation would then be distributed in accordance with the requirements of section 402(g) as it relates to the Federal share distribution.

Response: Due to the uncertainty of the amount of annual collections and the level of funding ultimately appropriated by Congress for annual grants, OSM has elected not to propose a regulation which would mandate a distribution of 100% of a State's share of annual allocations. Such a proposal might jeopardize the funding levels available for other AML activities. OSM has proposed, instead, to ensure that all annual collections are allocated to the appropriate AML State or Federal accounts and that all appropriations are distributed to the States based on direction from Congress in the appropriations legislation. The amendments to title IV only mandate certain allocations of AML funds. This allocation of funds, i.e. administrative identification, however, is separate from the annual appropriation of funds and does not control how appropriated funds are specifically distributed.

Comment: OSM should clarify under section 402(g)(1)(C) that States can use the State share funds for property acquisition as allowed under the law.

Response: The amendments to title IV of SMCRA did not attempt to alter a State's ability to acquire property pursuant to section 407 of SMCRA. The preamble to the proposed regulations clarifies OSM's understanding and interpretation that section 402(g)(1)(C) would not alter the basic provisions and authority contained in title IV. Since land acquisition under section 407(c) of SMCRA is part of a reclamation effort, these activities would come within the scope of a "reclamation project construction" as used in section 402(g)(1)(C) of SMCRA.

Comment: Section 872.11(b)(5) discusses discretionary share allocations to States for additional grants. The proposal suggests that allocations would only be made for priority 1 and 2 coal problems. However, the amendment language specifies that such allocations would be made "* * * based on the amount of coal historically produced in the State * * *". These supplemental grants are to be available "* * * until the priorities stated in paragraphs (1) and (2) of section 403(a) have been achieved by such State * * *". The amendment does not say that such funds may only be expended on Priority 1 and 2 problems as suggested in the summary. I do not believe the intent of the legislation is being interpreted correctly in this case.

Response: The regulations, as proposed under section 872.11(b)(4), would authorize the use of the historic coal production allocation for reclaiming only priority 1 and 2 problem sites. OSM believes this proposal would be consistent with Congressional intent that the AML program address the highest priority coal projects first before lower priority problems are reviewed. The new amendments specifically state that such funds are to be available to a State only until all of its priority 1 and 2 problems have been addressed. If such monies could be used for lower priority problems as suggested, there would be no way to guarantee that monies would ever be used to address the most dangerous problems facing the public.

Comment: Section 872.11(b)(6) would provide for the distribution of emergency funds, and points out that expenditures would not be used to offset future allocations. This change heightens my concern about the eventual allocation mechanism for emergency program states. How will states be able to depend on an adequate source of funding to address emergency situations as they develop? Emergency program funds under the amended Act will apparently be quite limited, so a realistic and equitable allocation mechanism to the emergency program states will become extremely important. In the FY–91 allocation package, emergency program allocations, which increased greatly over FY–90, were listed without any explanation regarding the derivation of the amounts. Without a corresponding adjustment, every state receives less discretionary share money as a result.

Response: Section 410 of SMCRA authorizes the Secretary to conduct emergency reclamation activities. Although OSM has enlisted the assistance of several States in carrying out the emergency reclamation activities, OSM is still ultimately responsible for ensuring that adequate funds are available to meet this responsibility. The new amendments have not altered this basic fact. OSM is committed to meeting its responsibilities under the Act and will work closely with Congress and the States to ensure that the emergency program has the necessary funds to carry out its task.

Comment: It appears that OSM has correctly identified the balances on which interest should be paid, however, we disagree with having that credited to the Federal share only for a number of reasons. Title IV as amended at 401(e) very clearly states that interest is to be credited "to the Fund." Section 401(a) identifies the "fund" as a trust fund administered by the Secretary of the Interior with no distinctions of "Federal share" or "State share." The legislative history for these title IV amendments is inconclusive with some of it recommending that interest accrue to

the Federal government and some recommending accrual to the States. Further evidence that crediting interest to the Federal share only is inappropriate lies in the fact that 70% of the unappropriated balance is State share. We note that this proposal gives no assurance that the interest will come back to the individual states which have forgone the immediate use of AML reclamation fees. The AML Association was also one of the prime movers for making the fund interest-bearing as evidenced by a 1989 resolution. For these reasons this option should credit interest to Federal, State, and Tribal share balances.

Comment: We believe that the interest should be credited to the Federal share only and would be paid on the appropriated but unspent balance and the unappropriated balance. Section 402(g)(1) of the Act with amendments effective October 1, 1991 states that 50 percent of the reclamation fees collected annually shall be provided annually to the States/Tribes. It does not state that interest shall be included in that allocation. However, section 402(g)(2), when stating that 20 percent of the Federal share shall be allocated to RAMP, states "including that interest accruing as provided in section 401(e) * * *". It is clear from this language that the interest is to be credited to the Federal share. This is consistent with the intent of this legislation, as originally developed in H.R. 2095, that the interest generated would offset the expanded programs funded with Federal share funds, i.e. RAMP, interim reclamation, AMD fund, water supply program, minimum programs, etc. Conversely, if Congress had meant for the State/Tribal share to include interest, they would have included that language in 402(g)(1).

Response: OSM has proposed to credit the interest earned from the investment of the AML fund to the Federal share for three specific reasons. First, the specific language of the new amendments credits to the State share balances only 50% of the AML fees collected. It does not include interest. Second, the legislative history appears very clear that Congress directed the monies to go solely to the Federal share. For example, the following three excepts from the House Report accompanying H.R. 2095 (the legislation which formed the core of the title IV amendments) clearly specify how interest income is to be distributed:

> The remaining 50 percent of reclamation fees collected would continue to be dedicated to the Secretary's discretionary share of the Abandoned Mine Land Reclamation Fund for federal programs. However, the legislation provides for the Secretarial share to be augmented by interest authorized to accrue to the unappropriated balance in the entire fund.
>
> H.R. Report Number 294, 95th Congress, 1st Session 19 (1989).
>
> Under the bill, after allocation of the State and Tribal shares, the remaining amounts in the Fund (the Secretary's share of the reclamation fees plus all interest which would accrue to unappropriated balances as authorized by legislation) would be available for a number of current Federal Title IV programs.
>
> H.R. Report Number 294, 95th Congress, 1st Session 20 (1989).
>
> The Committee further notes that while interest would accrue to the entire unappropriated balance in the Fund, amounts earned from this interest would be dedicated solely to programs financed under the Secretarial share of the Fund.
>
> H.R. Report Number 294, 101st Congress, 1st Session 27 (1989).

Third, although interest income is credited to the Secretarial share, the States would ultimately be the beneficiaries since the Secretarial share is used in many instances to assist the States, i.e. emergency reclamation activities, Small Operator Assistance, and reclamation of interim program sites.

Comment: Section 872.11(b)(5) would be amended to provide for additional grants to the States for eligible priority 1 and 2 coal problems. Twenty percent of annual collections would be allocated to this purpose. Distribution would be determined from a formula based upon historical coal production prior to August 3, 1977. This section also would require that each eligible State or Tribe receive a minimum of $2,000,000 annually as long as that level of funding is necessary to complete all known priority 1 and 2 projects. Several States voiced concern with minimum program funding coming from the Secretary's 402(g)(5) portion, i.e., the "historically allocated 20% share." The amendments to title IV are silent on where funding for minimum programs is to come. The interest that will be credited to the Federal share should be used to help fund these programs through section 402(g)(3).

Response: Based on the comments received from OSM's outreach effort, there appears to be some confusion regarding the source of funds that would be used for minimum program States. The proposed regulations to title IV would be consistent with Congress' directive in section 402(g)(8) of SMCRA that the Secretary provide annually not less than $2,000,000 for expenditure in each State, so long as such funds are necessary to achieve the top two priorities stated in section 403 of SMCRA (i.e. projects relating to public health or safety). The $2,000,000 level for a minimum program State would be achieved as follows. First, OSM would ascertain whether State share funds plus mandatory historic coal production funds would equal or exceed the $2,000,000 level. If such funds equal or exceed that level, no additional funds would be required. If such funds are under that amount, the Secretary would use non-dedicated Federal share monies to make up the difference. This additional amount or "difference" would not be taken from the historic coal production allocation. If additional funds were taken from this source, it would possibly violate Congress' directive that these funds be allocated based only on a historic coal production formula. Since the granting of funds for minimum program States is mandatory, annual grants for this purpose would reduce the total amount of funds available in each appropriation for State grants. However, OSM notes that the historic coal production allocation would be granted only if there are priority 1 and 2 projects remaining to be funded. Moreover, funds allocated under this provision would never exceed the cost of reclaiming known priority 1 and 2 projects. This means that OSM would take into consideration the funding available under the State share allocation before determining the exact amount necessary to allocate from the historic coal production share. Thus, in the event a State has only a limited number of priority 1 and 2 projects remaining and such projects can be funded from monies distributed from the State share allocation, the State would no longer qualify for monies distributed from the historic coal production allocation. Moreover, since additional monies would not be required to reclaim priority 1 and 2 sites, the State would no longer qualify for minimum program funding. Since minimum program funding is provided to address the highest priority problems, OSM specifically is requesting comments on whether or not a minimum program State/Tribe should fund a priority 3 project, even when associated with a priority 1 or 2 problem, prior to completing all known priority 1 and 2 projects.

Part 873 Future Reclamation Set-Aside Program

In 1987 Congress amended section 402(g)(3) of SMCRA authorizing States to deposit up to ten percent of their annual State-share grant funds into

special trust accounts. Such funds deposited, together with any interest earned, could then be utilized by a State after August 3, 1992, to carry out the purposes of Title IV. The purpose behind the 1987 provision was to ensure that a State would have AML funds available after the expiration of the AML fee provisions to handle future reclamation problems in the State.

The new statutory amendments in Public Law 101–508 also include a future reclamation set-aside program with five specific differences. First, this new set-aside program does not supersede or transfer State funds deposited under the original set-aside program established in 1987. Funds deposited under that program can still be utilized by a State at its discretion after August 3, 1992 to carry out the purposes of title IV. Second, the new trust fund accounts have a new time-frame. Funds deposited pursuant to the amendments of 1990 may only be utilized after September 30, 1995. Third, the new trust accounts would only be utilized to reclaim eligible coal problems. The original State set-aside accounts could be used for any purpose in Title IV; thus both coal and noncoal problems could be addressed. Fourth, rather than being limited to up to ten percent of the State-share funds granted annually, the States can now deposit up to ten percent of the total State-share and historic coal production (Federal share) funds granted annually. Fifth, the State now has an option on whether to utilize funds for the future reclamation set-aside program or to deposit the monies in a special trust account for use in a State acid mine drainage program. The statute and regulations allow States to utilize available funds for either the acid mine drainage program or the future reclamation set-aside program. However, a ten percent cap is placed on the total funds available annually.

Section 873.1 (Scope). This section would provide that provisions of this Part would apply only to the granting of funds and their use by the States for coal reclamation purposes after September 30, 1995.

Section 873.12 (Future reclamation set-aside program fund criteria). This section tracks the legislative language of Congress and would limit the use of the monies to eligible coal reclamation purposes after September 30, 1995. To be eligible to receive a grant for such purposes, a State would have to first establish a special trust fund account which would limit the use and withdrawal of the funds as specified earlier.

If the conditions are met and monies are properly deposited, § 873.12(c) would specify that the monies so deposited, together with interest earned, would be considered State monies. The 1987 amendment originally establishing the special State set-aside specified that monies deposited in the special State trust accounts, as well as interest earned, would be considered State monies. Although the 1990 amendments do not contain equivalent language, OSM intends to provide the same treatment under these proposed rules because the legislative history to the 1990 Act does not evidence Congressional intent to change this feature of the set-aside.

Comments Received During Outreach—Part 873

Comment: New § 874.12(e) would provide that States may set aside up to 10% of the total amounts of grants in any year under § 872.11(b)(2) and 872.11(b)(5) into a fund for use after the expiration of the fee collection provisions of the Act (September 30, 1995). This 10% must be reduced by any amount set aside under new part 876 of these regulations. Beginning on October 1, 1991, the set aside amount can be used only for coal reclamation. It would be necessary for States to account separately to insure funds are spent in accordance with the applicable provisions. States may draw interest on this set-aside fund. Because of the modifications section 411 makes to section 403(a), States that have certified completion of coal problems should be able to use the set-aside funds under 402(g)(6) for either coal or noncoal problems after September 30, 1995. This section should also clarify that the 10% reference is to 10% of all monies granted to a State.

Response: The proposed regulations and the preceding preamble discussion clarify the issues surrounding the future reclamation set-aside program. Specifically, the original set-aside program, as established by Public Law 100–34 (1987), amending section 402(g)(3) of SMCRA, specifies that monies deposited in a special reclamation trust fund may be used by the State to carry out the purposes of title IV (this would include both coal and noncoal) after August 3, 1992. A State may establish a trust fund and allocate monies for these purposes until October 1, 1991. This is the effective date of the new amendment which establishes a totally different trust fund. Thus, after October 1, 1991, there would no longer be authority to place additional monies in the original trust fund. The original trust fund requirements would still exist, however, independent of any title IV provisions and would control how such monies could be used. According to these requirements, monies would only be available after August 3, 1992.

As mentioned above, the new amendments establish a new future set-aside trust fund. This trust fund would be utilized only for coal purposes (see section 402(g)(6))(i.e. amounts are to be expended by a State solely to achieve the priorities in section 403(a)), and funds would be available only after September 30, 1995. Some commenters have urged OSM to propose that these monies should be available for both coal and noncoal activities. OSM's proposal would be limited solely to coal, however. This limitation, OSM believes, would be consistent with the intent of Congress. As stated in H.R. Report 294:

> Provision is made for a State to deposit up to 10% of its annual state share allocations, including amounts available to the State from Secretarial share supplemental grants, into a special interest-bearing trust fund established by the State for the purpose of *undertaking abandoned coal mine reclamation projects* . . . (emphasis added).

H.R. Report 294, 101st Congress, 1st Session 28 (1989). The modifications made to Section 403(a) do not expand this authority. These modifications merely cross-reference another set of priorities which would be applicable to a State's noncoal program.

Commenters have also requested that the regulations clearly specify that the 10% reference is to 10% of all monies granted to the State. OSM's proposed regulations include this clarification by providing that a State may utilize up to 10% of the funds annually granted to a State from its State-share and the supplemental historic coal production funds.

Part 874 General Reclamation Requirements

Part 874 sets forth requirements relating to eligibility and selection of reclamation projects that are equally applicable to those reclamation activities to be carried out by OSM and to the Rural Abandoned Mine Program administrated by the Secretary of Agriculture under title IV.

SMCRA, as enacted in 1977, specified that lands and water eligible for reclamation funding are those which were mined for coal or which were affected by such mining, wastebanks, coal processing, or other coal mining processes, and abandoned or left in an inadequate reclamation status prior to the date of enactment (August 3, 1977) and for which there is no continuing reclamation responsibility under State or other Federal law.

The new amendments to title IV significantly enlarge this original eligibility criteria. Most notably, Congress has extended in two instances the eligibility criteria for reclamation funding to priority 1 or 2 problems on lands which have been mined and abandoned after August 3, 1977. The first time interval involves land mined and abandoned between August 4, 1977 and the date on which the Secretary approved a State program under section 503 of SMCRA and specifies that any funds for reclamation or abatement which are available pursuant to a bond or other form of financial guarantee or from any other source must not be sufficient to provide for adequate reclamation or abatement at the site. The second time interval would extend eligibility to lands mined and abandoned between August 3, 1977 and November 5, 1990, where the surety of the mining operator became insolvent and funds immediately available from other proceedings or sources are not sufficient to provide for adequate reclamation or abatement at the site. Both types of sites are eligible for funding under section 410 of the Act.

To be eligible for funding, lands adversely affected during either time interval as specified in subsection (d) must be both abandoned and qualify as a priority 1 or 2 problem pursuant to section 403(a) of SMCRA.

Subsection (e) would establish the eligibility criteria for States to reclaim lands adversely affected after August 3, 1977. It is similar to subsection (d), and includes the same criteria with one additional requirement. In addition to making the findings required for subsection (d), a State would also have to find in writing that the reclamation priority of the site is the same or more urgent than the reclamation priority for the lands and water adversely affected prior to August 3, 1977 and that the site qualifies as a priority 1 or 2 site.

In extending eligibility to high priority sites left abandoned after August 3, 1977, Congress noted that tens of thousands of acres of land mined since August 3, 1977 remain unreclaimed due to the less stringent standards applicable during the "interim program" period and the bankruptcies of the mining companies and their insurers. The damage to these lands has created a new generation of abandoned mine problems unforeseen by the original law. Indeed, Congress notes in its report on H.R. 2095 that the public health and safety threat posed by these acres may exceed those of eligible but lower priority pre-August 3, 1977, sites. H.R. Report No. 294, 101st Congress, 1st Session 24 (1977).

Although not part of the new amendments passed by Congress in 1990, the Secretary is utilizing his rulemaking authority granted under section 412(a) of SMCRA in proposing two additional subsections to § 874.12. Subsection (f) would provide that any monies recovered or available from other sources to reclaim sites abandoned after August 3, 1977, should be utilized either to offset the cost of the reclamation or transferred to the AML Fund. This would ensure that monies available for reclamation purposes are ultimately used for such purposes and not lost due to the intervention of Title IV activities. The operative language in the new amendments states that "available funds are insufficient to reclaim" the lands. This language addresses only availability and does not specifically state that the monies must be utilized. Subsection (e) would resolve this ambiguity by requiring that the monies either be used to reclaim the land or transferred to the AML Fund.

Subsection (g) is similar to the intent and purpose of Subsection (e) in that it would try to prevent unjust enrichment. This Subsection specifies that a person liable for reclamation expenses under a provision in Title V of SMCRA would not be relieved of his reclamation responsibilities if the lands were reclaimed under the title IV program. This would ensure that a party liable for the reclamation damages would not evade his legal and financial responsibilities to reclaim the land. Further, this subsection specifies that neither the Secretary nor a State performing reclamation on these sites would be held liable for any title V violations, whether they occur before, during or after the reclamation and that the reclamation activities need only comply with the AML Final Guidelines for Reclamation Programs and Projects (45 FR 14810–14819, March 6, 1980). These requirements should protect the public health and safety, a State project, or the Secretary from potential liability and provide the State flexibility to utilize its scarce revenues in the most efficient manner.

Section 874.13 (Reclamation objectives and priorities). This section sets forth the reclamation priorities listed in section 403(a) of the Act. The provisions in this regulation would be expanded and clarified. Subsection (a), like the original § 874.13, would specify that reclamation projects, as applicable, should be accomplished in accordance with OSM's "Final Guidelines for Reclamation Program and Projects" (45 FR 14810–14819, March 6, 1980). Subsection (b) would specify that the priority in section 403(a) of the Act be followed. Subsection (b) would also include one additional requirement not found in the original regulations. This requirement would ensure that AML Fund monies would be utilized to address the highest priority problems before lower priority problems are approached. As Congress noted in H.R. Report No. 294, accompanying H.R. 2095,

> The primary reason for H.R. 2095, as amended, is to continue reclamation fee collections for a period beyond 1992 in order to provide the resources necessary for the reclamation of abandoned coal mine lands. While the bill maintains much of the current law's basic structure, such as the Act's commitment to State primacy in dealing with abandoned mine problems, it would make a number of improvements to the existing program. Perhaps the most noteworthy is the legislation's focusing of the Fund's resources to combating the most high priority problem areas.

H.R. Report No. 294, 101st Congress, 1st Session 23 (1977).

To implement the directive that scarce AML resources be directed to the highest priority problems, OSM is proposing a new requirement in subsection 874.13(b) specifying that lower priority projects (priority 3 or below) may only be undertaken if (1) all higher priority projects contained in the AML inventory have been addressed or are in the process of being reclaimed (i.e. included in a current grant request) or (2) where such lower priority projects are undertaken in conjunction with a priority 1 or 2 site.

If a lower priority project is included as part of a higher priority project, a State would have to specifically address in its grant application its rational for the combination and analyze the relative costs involved in addressing the problems separately or jointly. The Secretary would scrutinize such discussions closely to insure that the major purpose behind the total project is the elimination of a high priority project and that the inclusion of a lower priority project is necessary due to cost savings (i.e. equipment already on site), there is a present need to address the problem to avoid greater and more costly problems in the future, or unique local or regional environmental conditions require the reclamation of the lower priority site (i.e. during rainy season a State may be unable to utilize heavy equipment needed to address higher priority projects). Additional guidance concerning the reclamation of lower priority projects in conjunction with the reclamation of higher priority projects is

found in OSM's "Final Guidelines for Reclamation Programs and Projects" (45 FR 14810–14819, March 6, 1980).

Section 874.14 (Utilities and other facilities). This section sets forth the requirements for funding water projects, including the protection, repair, replacement, construction, or enhancement of facilities relating to water treatment, supply or distribution. In the 1990 amendment to SMCRA, Congress specifically recognized the severe public health hazards that are associated with water supplies contaminated by abandoned coal mine workings. As pointed out in the Committee report accompanying H.R. 2095:

> For many areas of the Appalachian Region groundwater resources used for household water supply have been contaminated as a result of drainage from abandoned underground and surface mines. The Committee strongly believes that when abandoned mines have degraded groundwater quality or depleted groundwater quantity to such an extent that citizens no longer have an acceptable supply, an adverse impact on health, safety and the general welfare is self evident.

H.R. Report No. 294, 101st Congress, 1st Session 24 (1989).

To ensure that a proper emphasis is given to water projects which protect the public health and safety from the adverse effects of past mining, Congress enacted legislation, as part of Public Law 101–508, which would authorize States with eligible coal problems to expend up to 30 percent of the funds granted annually to the State or Tribe for the purpose of protecting, repairing, replacing, constructing, or enhancing facilities relating to water supply, including water distribution facilities and treatment plants, to replace water supplies adversely affected by past coal mining practices. Moreover, to ensure that such water projects are not unduly denied because of the existence of other water contaminants from non-AML sources or from post-August 3, 1977 mining, Congress directed that such projects would remain eligible for funding despite these other pollution sources if the States or Tribes find that the adverse effects to the water supply are due predominantly to effects of mining practices undertaken and abandoned prior to August 3, 1977.

Section 403(a) establishes the objectives of the AML Program including the prioritization of problems to be considered for reclamation. These priorities have not been significantly affected by the 1990 amendments. The first two priorities involve the protection of the public health, safety, and general welfare from the adverse effects of past coal mining. The third priority focuses upon the restoration of land, water resources, and the environment, and the fourth priority upon AML reclamation research. The fifth priority specifically addresses public facilities. While water supply systems normally would be considered a sub-category under public utilities, actions to repair, replace, or construct a water supply may qualify as a priority 1, 2, 3, or 5 problem.

AML projects which protect, repair, replace, construct, or enhance public facilities, including water supply systems adversely affected by mining practices generally would be considered a priority 5 project. The 1990 amendments did not alter the original priority listings. To qualify as a higher priority project, however, a State would have to demonstrate that a water supply system has been significantly affected or damaged by impacts associated with abandoned mine lands and that such predominate AML impacts generate health and safety problems to the users of the water supply system.

OSM will continue to scrutinize the scope of proposed water supply projects to ensure compliance with the Act. If it is not necessary to protect the public health and safety, the water supply project would still be considered a priority 5 project. To make a priority determination, OSM would look at such factors as:

(1) The extent to which the problems associated with the water supply system resulted from deterioration through aging of facilities due to lack of normal or routine maintenance or replacement (e.g. sewer lines, dam sedimentation, pumping facilities.)

(2) The degree to which the AML problems affected the water supply system. A direct causal connection between mining practices and damage done to a water supply system is not always clear. Such other factors as public use, weather, materials used, method of construction, or other pollution uses may also have contributed to the degree of damage (e.g. a water supply system may be affected by industrial, agricultural or public waste, agricultural sedimentation, or active mining).

(3) The extent to which the AML project is limited to the restoration of water service to the same number of persons originally served or adversely affected. An enhanced water supply project for a new population or service district not adversely affected by past coal mining problems would not qualify for funding. Costs associated for extending water services to communities not affected by AML problems would have to be paid for from non-AML sources.

(4) Where repair or replacement of a water supply system is incidental to abatement or reclamation of an AML problem, the project might qualify as a priority 5 project if the corrective work is necessary and it is the most cost-effective way of solving the AML problems.

As general guidance, construction or repair of a water system may be classified as either a priority 1 or 2 project if:

- The quality of the water supply is a public health hazard;
- The problems with the water supply source are predominately the result of eligible AML problems;
- Reclamation or abatement of the AML problems compared to construction of a water supply system is not cost effective or will not solve the problem; and
- The construction of the water supply system will eliminate or greatly minimize the existing danger to the public.

For those instances where the AML problem is not the predominate cause of the degraded water supply, AML funding for the project would be reduced to reflect that percentage of the project which represents the percentage damage caused by the AML problems.

To reflect the new provisions regarding the funding of water projects, OSM is proposing to promulgate a new § 874.14. Subsection (a) would provide that a State not certified under section 411(a) of the Act may expend up to 30 percent of the funds granted annually to such State or Indian tribe for the purpose of protecting, repairing, replacing, constructing, or enhancing facilities relating to water supply, including water distribution facilities and treatment plants, to replace water supplies adversely affected by past coal mining practices.

Subsection (b) would modify the eligibility standards in section 404(a) of the Act and 30 CFR 874.12(b) of the implementing regulations by stating that the water supply projects would remain eligible if the State or Indian tribe found in writing that the adverse effects to the water system processes are due predominately to effects of mining processes undertaken and abandoned prior to August 3, 1977.

Subsection (c) would set forth OSM's criteria for providing funds not only to repair or replace existing facilities but also to enhance them. These criteria are proposed under the Secretary's broad grant of authority in Section 412(a) of SMCRA and from his trust

responsibilities regarding the AML fund to ensure that its funds are used to reclaim eligible lands and water.

In order to receive monies to enhance public facilities, States would have to demonstrate and the Director concur in the finding that: (1) Monies from other sources are either not available or such other sources are contributing their fair share of construction funds, (2) there is an urgent need to undertake the project which gives it the same or higher priority than projects remaining, and (3) the enhancement of the facility is necessary to achieve the objectives set forth in Title IV of SMCRA.

Finally, a new subsection (d) would be added stating specifically that an enhancement of a facility or utility would include upgrades necessary to meet local, State, or Federal health, safety or other applicable code requirements. For example, access ramps for handicapped individuals would be eligible improvements. Enhancement would not include, however, any areal expansion of the utility or facility which is not necessary to address a specific AML problem. For example, if a water system is damaged by subsidence, a State could possibly increase the size of the replacement pipes for the water system and thereby increase the carrying capacity. The State, however, would not be allowed to extend the water system to an area or town not adversely affected by the AML problem. OSM is very concerned about the issue of "enhancement" and specifically requests comments regarding the scope of this term.

A new § 874.15 (Limited liability), reiterates the language of section 405(1) of SMCRA which mandates that no State or Indian tribe shall be liable under Federal law for any costs or damages as a result of any action or omitted action while carrying out an approved abandoned mine reclamation plan. This section, however, does not preclude liability for gross negligence or intentional misconduct by a State or Indian tribe. OSM intends to conduct discussions with the Environmental Protection Agency (EPA regarding the funding of projects which may be eligible under the Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA). At a minimum, OSM would not approve funding for any project which might affect EPA's responsibilities until EPA had been consulted.

Comments Received During Outreach—Part 874

Comment: "New § 874.12(d)(2) would establish eligibility for reclamation sites disturbed and abandoned after August 3, 1977 consistent with section 402(g)(4)(B) of SMCRA. Only priority 1 and 2 sites would be eligible. This section could address whether or not outstanding title V violations would have to be abated." States' concerns with this section are primarily with having these new sites eligible for reclamation under title IV being held to title V standards. Requiring reclamation to title V standards could raise costs beyond AML programs' resources. Civil penalty sites and bond forfeiture sites reclaimed through AML programs currently use title IV guidelines from 1989 and 1980 respectively. Requiring abatement of title V violations could be inconsistent with the priority 1 and 2 restriction if the violations do not fit those priorities. It is appropriate to vacate any remaining title V violations so questions about remaining title IV responsibility do not remain. The regulations should be very specific that AML programs will not be held liable for pre-existing title V violations. Additionally, although a tracking system may be appropriate, the system should be outside of the National Abandoned Lands Inventory because sites are not pre-1977.

Comment: The sentence of this paragraph which addresses title V should be deleted. Title V liabilities should continue to be assumed by the title V program and should not be assumed by the title IV program.

Response: Several commenters have raised concerns regarding the reclamation standards that would be applied to sites adversely affected after August 3, 1977. Since these sites represent violations of SMCRA standards, there was a concern that any reclamation efforts would have to comply with all performance requirements and reclamation standards specified in title V and that any failure to meet such standards would subject a State to potential liability.

The proposed regulation would clarify that the operator, not the AML authority, would be responsible and would remain responsible for the degraded site. Although the AML program may attempt to lessen the danger to the public, its activities would be governed only by the AML program's reclamation guidelines and not by any external title V standards. To mandate more would be to unduly hamper the effectiveness of the AML program and its ability to utilize its limited resources to their fullest benefit. In some cases this may mean that certain sites are not fully reclaimed; in other instances, only the danger to the public health and safety may be abated. Decisions regarding the scope of reclamation would be the responsibility of the reclamation authority based on public comments and discussions with the affected parties.

Although more restrictive regulations could have been proposed, such options might deter States from reclaiming title V sites due to the costs and responsibilities involved. Accordingly a less restrictive, more flexible option was proposed.

Commenters also have suggested that the proposed regulation should specify that sites adversely affected after August 3, 1977 not be made a part of the AML National Inventory. OSM does not contemplate that any post August 3, 1977 sites would be made part of the National Inventory. Since the selection of these sites is a discretionary matter with the State, OSM would track and account for these projects separately from the AML National Inventory.

Comment: Our position is that each State would determine "interim program" and "insolvent surety" reclamation standards. This, then, would allow each State the flexibility that is so necessary in given political and economic environments.

Response: Section 405(c) of SMCRA specifically provides States the exclusive responsibility to implement the provisions of its approved program. Under the proposed regulation States would retain the flexibility in such matters as the "insolvency of sureties" and the selection of eligible post-SMCRA sites.

Comment: The regulation language should state that interim program sites are those that mining occurred between August 4, 1977 and the date of State primacy. The congressional language (Section 402(g)(4)B(i)) does not state that the mining had to *end* on or before State primacy date.

Response: The proposed regulations and preamble discussion clearly provide that in order for interim program sites to be eligible all mining must have ceased and the lands left in an inadequate reclamation status between August 4, 1977 and the date of State primacy.

Comment: New § 874.12(f) would permit up to 30 percent of the funds granted under § 872.11(b)(2) and 872.11(b)(5) to be used to protect, repair, replace, construct, or enhance facilities relating to water supplies, including water distribution facilities and treatment plants. This subsection would apply to sites with adverse effects that occurred both before and after the Act was passed so long as the predominate effect occurred prior to the Act. The section would also address the meaning of "enhancement". The amount of funds available should reflect funds

"allocated" rather than "granted" in order to be consistent with the title IV amendments.

Response: The proposed regulations specify that a State may utilize up to 30 percent of the funds granted annually under section 402(g)(1) and (5) of SMCRA to protect, repair, or replace facilities relating to water supply. OSM has not adopted the proposal that the 30 percent figure be determined from monies "allocated" annually. Allocated in this sense would represent both appropriated and unappropriated monies. The language in section 403(b) of SMCRA, however, provides only that the figure should be up to 30 percent of the funds "allocated through the grants". That is, up to 30 percent of the "appropriated grant" funds.

Another commenter has requested that OSM include language in its proposed regulations that would define "enhancement" of a water system to entail at least minimal upgrading to meet current and local codes. This language has been specifically set forth in the regulation. OSM believes that such minimum upgrading obviously falls under the scope of section 403(b). Neither OSM nor the States would be allowed to construct or protect facilities through designs which did not meet applicable local and State building or water codes. To do less would be to violate State law.

Comment: "Section 874.13 would be revised to provide that problems lower than priority 1 or 2 would not be undertaken unless they are done in conjunction with a priority 1 or 2 site, and they cannot otherwise be done until all problems on the inventory are completed." This issue raises two questions affecting States' ability to undertake associated priority 3 work: (a) Could States be forced to leave priority 1 and 2 sites on their inventory and (b) Could States delete or lower the ranking of priority 1 and 2 sites without OSM approval?

Comment: We agree that this proposed language is necessary. The regulations should require that all health and safety problems be taken care of before any other problems are addressed in a State. This intent is obvious through the legislation and specifically stated in section 402(g)(4) and 402(g)(5).

Response: OSM's proposed regulation would specify that a State could only undertake low priority projects if it had completed all priority 1 and 2 work or the lower priority project was done in conjunction with a higher priority project. If the regulation is promulgated, as written, OSM could refuse to grant monies for a project unless the above requirements were met. This requirement, OSM believes, would be consistent with Congress' directive toward focusing AML resources to combating the most high priority problem areas. H.R. Report No. 294, 101st Congress, 1st Session 23 (1989).

In the past, several States have elected to skip over certain priority 1 or 2 projects in order to address a lower priority problem. This practice would no longer be allowed. If a State has a priority 1 or 2 project, all available monies would have to be utilized to address them. This would mean that a State would not be permitted to leave a priority 1 or 2 site on the inventory in order to perpetually qualify for additional monies under section 402(g)(5) or (8).

One commenter questioned whether a State could delete or lower the ranking of a project without OSM approval. The AML National Inventory is maintained by OSM and therefore any updates or deletions must be done by and with the agency's approval.

Finally, a commenter has suggested that the proposed regulation should refer to the March 1980 AML reclamation guidelines. See 45 FR 14810–14819, March 6, 1980. Reclamation projects would continue to be accomplished in accordance with the AML reclamation guidelines. These guidelines, however, would not overrule this regulatory provision requiring the selection of priority 1 or 2 projects.

Part 875 Noncoal Reclamation

Part 875 sets forth the requirements for reclamation of noncoal mined lands and water conducted under title IV of SMCRA by State and Indian Reclamation Programs. As enacted in 1977, OSM is proposing to alter the contents of several provisions and to add additional subsections to reflect Congress's new directive regarding the funding of noncoal projects. Sections 875.1 and 875.11 are not being revised. In essence Congress has created a two step or tier process for addressing noncoal problems. Prior to a State completing all of its known coal problems, Congress has limited a State's ability to do noncoal work. This is shown in § 875.12. A State desiring to implement a greatly expanded noncoal reclamation program (see §§ 875.14–19) or what could be called the second tier or level, would first have to certify that it had completed all known coal problems and the Director would have to concur in the State's finding (see § 875.13).

Section 409 of SMCRA, as enacted in 1977, authorized States and Indian tribes to undertake noncoal reclamation activities if: (a) The Governor of a State or the chairman of an Indian tribe requested funding and the State had either completed all known coal reclamation objectives or (b) if coal problems remained, the project, for which funding was requested, was necessary to protect the public health and safety. The Secretary has no independent authority to undertake noncoal reclamation activities, and only the States and Indian tribes, utilizing AML funds allocated pursuant to section 402(g)(2) (as amended in 1990—this section would now be section 402(g)(1)), could carry out such tasks.

In 1982 OSM established the eligibility criteria for noncoal projects utilizing its rulemaking authority under section 412(a) of SMCRA. Essentially, the eligibility criteria that applied to coal was also applied to noncoal. OSM had reviewed the legislative history of section 409 and concluded that Congress intended the eligibility requirements for noncoal reclamation be consistent with the statutory eligibility requirements contained in section 404 of SMCRA that applied to coal mined lands and waters. Since the source of the funds for all reclamation conducted under title IV of SMCRA comes from a fee collected from coal mine operators, less stringent requirements for noncoal reclamation cannot be logically justified in fairness to the coal mine operators. Moreover, there is no basis in the legislative history of section 409 (30 U.S.C. 1239) to justify a conclusion that Congress intended to allow funding for reclamation on noncoal mineral lands and water abandoned after August 3, 1977.

The noncoal regulations did not contain a definition of what constituted a threat to the public health and safety (i.e., in order to receive funding for a noncoal project prior to the completion of all coal problems) nor did they explicitly establish a formal procedure to follow regarding the transition from a coal reclamation program to a noncoal reclamation program.

As to the issue of what constituted a threat to the public health and safety, OSM did establish a policy providing that: (a) There must be a clearly definable threat; (b) the threat must present a danger that results in a high probability of serious physical harm to the health or safety of people; (c) the threat cannot await resolution until all coal projects have been completed; (d) the project must be necessary and appropriate to abate, control, or prevent the threat, and (e) there is no private party legally responsible under any other Federal or State law to abate, control, or prevent the threat.

Similarly, in regards to a State's transition to a noncoal program OSM established a procedure requiring a specific review of a State's finding prior to funding noncoal projects. The significant features of the procedure were: (1) coordination with the State regarding how its finding that all coal problems had been addressed; (2) notification of the public, through publication in the **Federal Register**, regarding the State's finding of the completion of all coal problems and/or specific request for comments; and (3) assuring no known coal problems are unaddressed and an agreement with the State that if eligible coal problems occur in the future, the State would give such projects its highest funding priority.

OSM has in the past provided flexibility to the States in making the finding that all known coal problems have been addressed. This was done in two specific ways. First, OSM did not order an independent analysis of the State's certification since such an analysis would not only be time consuming and costly, but it could cause an unnecessary disruption of the efficient allocation of funds to the State. (i.e., no monies would be granted to a State until a study had been completed). Second, the Secretary did not require that all coal projects actually be completed; rather, it was sufficient that all coal problems had either been addressed or were in the process of being addressed through a current grant application. Again, the rationale for not waiting until the coal projects were completed was to avoid, as much as possible, an interval where the State's administrative staff would be idle awaiting the completion of one final project. OSM believes this process was in accord with the Congressional mandate in section 405(d) granting the State "exclusive responsibility and authority to implement the provisions of its approved program."

Such flexibility, OSM believed, was warranted since it provided for the efficient utilization of funds and personnel and did not jeopardize the State's ability to address any coal problems which might have been missed or might arise in the future. In order to obtain the Secretary's concurrence that all known coal problems had been addressed, a State would have to agree to give any coal problem which might arise in the future its top funding priority. Thus, the transition from a coal program to a noncoal program did not jeopardize the fund for future coal reclamation and allowed States flexibility in how they utilized their funds and planned for the transition.

The new amendments to title IV, enacted in 1990, significantly affect how and when a State undertakes noncoal reclamation activities. There are eight major provisions.

First, prior to the completion of all coal problems, a State now can undertake only noncoal projects which protect the public health, safety, general welfare, and property from the extreme danger of the adverse effects of mining practices. In other words, a priority 1 type of project (see 403(a) of SMCRA).

Second, the new amendments specifically adopt the same eligibility requirements that are applicable to coal reclamation work.

Third, following certification by the State of the completion of all known coal problems and the Secretary's concurrence, the State may establish a noncoal reclamation program which utilizes the top three priorities applied to coal projects (extreme danger, danger, and environmental—Section 411 (c)); establishes eligibility criteria for lands and water which are similar in most respects to the criteria originally enacted in Section 404 of SMCRA in Public Law 95–87; and utilizes the same lien requirements and land acquisition authorities that would be applicable to coal.

Fourth, Congress specifically expanded the scope of funding involving projects relating to the protection, repair, replacement, or enhancement of facilities utilized by the public which are affected by coal or noncoal mining activities.

Fifth, Congress adopted language which would allow the Secretary to approve funding for projects where the Governor determined there is a need for activities or construction of specific buildings or facilities related to coal or mineral industry in States impacted by coal or minerals development.

Sixth, Congress specifically prohibited funding for projects which are designated for remedial action pursuant to the Uranium Mill Tailings Control Act of 1978 (42 U.S.C. 7901) or which have been listed for remedial action pursuant to the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. 9601).

Seventh, Congress enacted limited immunity for States and Indian tribes under any provision of Federal law for any costs or damages as a result of action taken or omitted in the course of carrying out an approved abandoned mine reclamation plan.

Eighth, Congress provided that nothing in the amendments should be construed to affect the certifications made by the States of Wyoming, Montana, and Louisiana.

To explain these eight major revisions to the noncoal reclamation authority in SMCRA, OSM has made several amendments to part 875.

OSM proposes to add a § 875.10 which would deal with the information collection requirements contained in part 875. The proposed section would contain a list of the information collection requirements contained in part 875, the OMB clearance number, the estimated reporting burden per respondent for complying with the information collection requirements and the OSM and OMB addresses where comments regarding the information collection requirements may be sent.

In § 875.12 (Eligible lands and water prior to certification) OSM is proposing to promulgate two eligibility sections. The first, § 875.12, would reflect Congress' directive to limit expenditures for noncoal projects until a State had certified that all known coal problems had been addressed. Subsection 875.12 would specifically limit funding prior to certification to lands which were mined and abandoned prior to August 3, 1977; when there is no continuing reclamation responsibility; and when the project relates to the protection of the public health, safety, general welfare, and property from extreme danger of adverse effects of noncoal mining practices (i.e. a priority 1 project—see section 403(a) of SMCRA). SMCRA as enacted in 1977 was broader in scope and had allowed States to undertake noncoal projects, prior to completing all coal projects, if the noncoal project related to the protection of the public health and safety. OSM has tried to treat States and Tribes similarly. Thus, the language in § 875.12 would provide that the Governor of a State or the equivalent head of an Indian tribe would have to request the noncoal funding. OSM specifically requests input from Indian tribes regarding the description of the appropriate official who would make the requests required by section 409.

Congress directed the limiting language of section 409 due to a perception that OSM had been lax in allowing the States to use funds for noncoal purposes prior to their certifying the completion of all known coal projects. By limiting noncoal projects to a priority 1 type problem (extreme danger), Congress intended to severely limit the use of AML monies for noncoal projects in States which had not completed all abandoned coal mine projects. H.R. Report No. 294, 101st Congress, 1st Sess. 32 (1977).

The second eligibility section (875.14) greatly expands the noncoal reclamation capabilities of the States and is only applicable after a State has met the certification requirements set out in § 875.13. This subsection is discussed after § 875.13.

Section 875.13 (Certification) sets forth the requirements necessary for a State to fully implement a noncoal reclamation program. In order to fully implement a noncoal reclamation program as set forth in section 411 of SMCRA, a Governor of a State or the equivalent head of an Indian tribe would have to certify to the Director that the State/Tribe had achieved all known coal related reclamation objectives (i.e. priorities 1 to 6). Section 875.13(a) would provide the requirements for this certification. Briefly, a State would have to provide a discussion regarding the process and rationale for its certification, along with an analysis of the public involvement process it used and any public comments. These materials would assist the Director in his concurrence finding and ensure that the State properly canvassed the public to ascertain whether, indeed, all coal problems had been addressed.

Subsection (b) describes the Director's review of the certification process. At a minimum the Director would prepare a Federal Register notice informing the public of the State's proposed certification. After a review of the public comments and any other relevant information, the Director would publish a final notice regarding his decision. If the Director concurs in the State's finding, such concurrence would be premised on the State's pledge to immediately give the highest priority to any coal problems which thereafter arise. If a coal problem does occur, the State would carry out the coal reclamation activity under the State authorities relating to coal and not pursuant to the noncoal authority in section 411 of SMCRA.

Section 875.14 (Eligibility of lands and water subsequent to certification), is the second eligibility section for noncoal. This subsection marks the beginning of the provisions relating to a State's noncoal reclamation program, a program which is only implemented after the requirements set forth in § 875.13 have been met.

The new eligibility requirements would allow funding for lands, waters, and facilities which were mined and abandoned in an inadequate reclamation status prior to August 3, 1977, and for which there is no continuing reclamation responsibility under State or other Federal laws. In determining eligibility under this subsection, for Federal lands, waters, and facilities under the jurisdiction of the Forest Service or Bureau of Land Management, in lieu of the August 3, 1977 date, the applicable dates would be August 28, 1974 and November 26, 1980, respectively. As noted in H.R. Report 294, these dates refer to the promulgation of surface management regulations for Mining Law of 1972 operations by these agencies. H.R. Report No. 294, 101st Congress, 1st Session 34 (1989).

A subsection (c) has also been included in Section 875.14 to clarify that if a coal problem does occur after certification a State would be required to address this problem utilizing State share monies no later than the next grant cycle. After certification, no Federal monies would be distributed to the State regardless of whether coal problems occur. In addition, States would be required to address the coal problems utilizing its coal authority; that is, the State plan provisions relating to sections 401 through 408 of SMCRA.

Section 875.15 (Priorities). This section would establish the reclamation priorities applicable to a State noncoal reclamation program following the certification of all known coal problems. Reclamation projects involving the restoration of lands and water adversely affected by past mineral mining, as well as projects involving the protection, repair, replacement, construction, or enhancement of utilities, such as those relating to water supply, roads and such other facilities serving the public adversely affected by mineral mining and processing practices and the construction of public facilities in communities impacted by coal or other mineral mining, would have to reflect four priorities. The first priority would be the protection of public health and safety and general welfare from the extreme danger of adverse effects of mineral mining processes. The second priority would be the protection of public health, safety, and general welfare from the adverse effects of mineral mining. The third priority would be the restoration of lands and waters previously degraded by the adverse effects. The fourth priority concerns the construction of public facilities in communities impacted by coal or mineral mining and processing practices. Where such construction is not necessary to protect the public health and safety from the adverse effects of mineral mining, such projects would be given the lowest priority.

In order to determine the proper eligibility and priority ranking of a public facility construction project in an impacted community, a finding would have to be made as to whether the construction of such a facility or utility relates to the priorities set forth in section 411(c) of SMCRA and 30 CFR 875.15 of the Secretary's implementing regulations. For example, the construction of such a project would have to lead to "the protection of public health, safety, general welfare, and property from extreme danger of adverse effects of mineral mining and processing practices" in order to constitute a "priority one" project. H.R. Report No. 294, 101st Congress, 1st Session 35 (1989).

Subsection 875.15(b) addresses the issue of "enhancement." The noncoal reclamation priorities provide for projects which protect, repair, replace, or "enhance" facilities or utilities that may be adversely affected by mining processes or practices. In order to provide some parameters involving the scope and size of "enhancement" projects, OSM is proposing the following criteria in subsection (b). The Director would, in his discretion, approve funding for projects involving the enhancement of facilities or utilities if he concurs in a finding by the State that: (1) Monies from other sources are either not available or such sources are contributing their fair share of construction funds; (2) there is an urgent need to undertake the project prior to the completion of reclamation activities which would restore the land and the environment or protect the public; and (3) the enhancement of the facility is necessary to achieve the objectives of the Act. States would be allowed to enhance facilities or utilities in order to meet local, State, or Federal public health, safety, or other applicable code requirements but would not be able to areally extend a utility or facility under Subsection (a) or (b) if it is not necessary to address an AML problem.

OSM would carefully scrutinize the scope of any project which included the "enhancement" of a facility, and would carefully consider the following factors in reaching a funding decision.

- The extent to which the problems associated with the facility resulted from deterioration through aging of the facility due to normal or routine maintenance or replacement or lack thereof.
- The degree to which the AML problems affect the facility. A direct causal connection between mining practices and damage done to a facility or utility is not always clear. OSM will therefore carefully review such other factors as public use, weather, materials used, method of construction, or other

pollution sources which may have contributed to the damage. Where it is evident that other non-AML sources have contributed to the damage, OSM would approve funding only for that percentage attributable to the AML damage; and

• The extent to which the enhancement of the facility increases services to areas not affected by AML problems or unaffected populations. Costs associated with extending services to unaffected areas or populations would not be eligible for funding.

The term "enhancement" under § 875.15(a) or (b) would also authorize funding for improvements necessary to meet public health and safety requirements but not for the areal extension of a facility or utility which is not necessary to address an AML problem. The issue on "enhancement" is similar to the discussion in § 874.14. OSM specifically requests comments concerning the scope and definition of this term.

Subsections (c), (d) and (e) have been proposed to address a new provision in SMCRA (Section 411(f)) which would allow a State to request funding notwithstanding the priorities in section 411 for a public facility if a Governor of a State determines there is a need for the construction of the public facility related to the coal or minerals industry in States impacted by coal or minerals development.

OSM is concerned that the AML Program, which is financed by a tax on coal production, not be "side tracked" from its primary mission to reclaim lands and waters damaged by coal and noncoal mining processes. Accordingly, prior to approval, projects involving the construction of facilities pursuant to section 411(f) of SMCRA would be given extensive public review (subsection (e)).

Subsection (d) would specify that each State grant application for funding under § 875.15(c) would have to include information regarding (1) the need or urgency of the activity or facility; (2) the expected impact on the mining industry in the State; (3) the availability of funding from other sources; (4) the impact on the State if the activity or facilities is not undertaken; (5) the reason why the project was selected over other projects related to the public health and safety or to the environment; (6) the extent of the public involvement in the State's decision, and (7) funding decisions made by other local, State, and Federal agencies with oversight for such facilities.

These requirements would assist the Director in determining whether a "need" exists, whether the public has been fully appraised and informed of the request, and whether other Federal and State agencies with primary responsibility for such facilities or activities have been contacted and involved in the project design and funding request.

Subsection (e) would set forth the requirements for the Director's decision. Prior to approval, the Director would have to request public review and comment and evaluate any responses. Moreover, if the Director determines that an urgent need exists, he would be authorized to approve the request at a funding level commensurate with the purposes of the Surface Mining Control and Reclamation Act of 1977.

The ability and discretion to vary the funding level should provide the Director the ability to safeguard the AML Fund and ensure that the AML taxes are not subsidizing other programs at the public's expense or safety. OSM would expect a State to fully explore funding opportunities with local, State, and Federal agencies with primary oversight of such facilities or activities before approaching OSM for funding under the AML program. These responses, if appropriate, would help substantiate the State's finding of "need" as required by SMCRA and assist the Director in deciding whether to approve the AML funding request.

Section 875.16 (Exclusion of noncoal reclamation sites). This section would set forth noncoal reclamation sites which Congress has specifically excluded from the coverage of SMCRA. Monies cannot be used for the reclamation of sites designated for remedial action pursuant to the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. 7901 *et seq.*) or the Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA) (42 U.S C. 9601 *et seq.*). OSM would interpret this provision as allowing reclamation activities to proceed on any noncoal site which is not listed on the Environmental Protection Agency's (EPA) National Priority List (NPL) pursuant to section 105 of CERCLA, 42 U.S.C. 9605(a)(8)(B). However, since EPA has been designated the lead agency in responding to hazardous waste clean up, no funding requests would be approved for eligible sites unless the State had obtained the approval of EPA. OSM intends to conduct discussions with the EPA regarding the funding of noncoal projects and procedures for obtaining EPA concurrence and approval.

Section 875.17 (Land acquisition). This section would make the land acquisition provisions set out in section 407 of SMCRA and 30 CFR parts 877 and 879 of the Secretary's regulations applicable to a State's noncoal reclamation program. This would implement the provisions set forth in section 411(g) of SMCRA.

Section 875.18 (Liens). Similarly, § 875.11 would make the lien provisions of section 408 of SMCRA and 30 CFR part 882 of the Secretary's regulations applicable to a State's noncoal reclamation program. This provision does not alter OSM's original regulations in 30 CFR part 882 which holds the lien requirements applicable to all reclamation on private land regardless of whether it was mined for coal or noncoal purposes. Monies recovered through the satisfaction of liens filed against privately owned lands will continue to be handled in accordance with 30 CFR 872.12.

Section 875.19 (Limited liability). This section reiterates the language in section 405(e) of SMCRA which provides that no State or Indian tribe shall be liable under Federal law for any costs or damages as a result of any action or omitted action while carrying out an approved abandoned mine reclamation plan. This section does not preclude liability for gross negligence or intentional misconduct.

Comments Received During Outreach—Part 875

Comment: "New § 875.14 would establish eligibility requirements for noncoal sites. It would specify that noncoal priorities would be the same as the coal priorities set out in Section 403 (1), (2) and (3) of the Act." The regulation should specify that noncoal priorities would be "in lieu of" the coal priorities. There are some differences between the coal and noncoal priorities which need to be accommodated.

Response: The proposed regulations would specify specific priorities for a State's noncoal reclamation program since such priorities and the projects which would be eligible differ to a significant degree from those specified in section 403(a).

Comment: One commenter urged OSM to specify in the regulations that new or anticipated coal projects could be funded after certification pursuant to section 411.

Response: OSM has not adopted this suggestion in a proposed regulation. It remains OSM's policy that prior to certification a state should address all coal objectives, including all lower priority projects. After certification, a State would have to give top priority to new or unanticipated coal problems that occur. The State, however, would have to show why it is a "new" or "unanticipated" project in order to gain

OSM's approval. OSM believes this policy would require States to look at all potential coal projects first prior to deciding to certify that all objectives have been met. If coal problems do occur after certification, i.e. new or unanticipated, these projects would qualify if they meet the priorities specified in Section 403(a) (coal priorities) and not the priorities in Section 411 (noncoal priorities).

Comment: "Section 874.15 would exclude sites designated for reclamation pursuant to the Uranium Mill Tailing Radiation Control Act of 1980 and those listed for action pursuant to the Comprehensive Environmental Response Compensation and Liability Act of 1980." The exact language of the amendment to title IV should be used here in referring to "remedial action" because of its special meaning under the two acts cited.

Response: One commenter has urged OSM to adopt proposed regulatory language which reflects the exact language of section 411(d). This amendment to SMCRA specifically excludes sites designated for reclamation pursuant to the Uranium Mill Tailing Radiation Control Act 1980 and those listed for action pursuant to the Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA). OSM has utilized the exact statutory language in its regulations and has further stated in the preamble that it would interpret the phrase "listed for action" pursuant to CERCLA as meaning those projects listed on the National Priority List under section 105 of CERCLA.

Comment: "Section 875.16 would provide guidance for preparing a certification of completion of noncoal sites. It would codify the process for certification and describe the criteria for Secretarial concurrence." A number of issues are raised when addressing certification. These include the difficulty, if not impossibility of identifying and completing priority 4, 5, and 6 problems, the inconsistencies between States in existing priority 3 inventories, and the inconsistency between States that have already certified and States wishing to certify in the future.

Response: Several commenters have requested that OSM clarify whether States must address priority 4, 5, and 6 problems prior to certifying. The proposed regulations provide that a State would have to certify that it has completed all known coal objectives. Consistent with past OSM policy, this would require a State to address all lower priority problems as well. Since a priority 4 project involves research and a priority 5 or 6 project involves the protection or construction of public facilities (a priority 6 involves development of land) and not the reclamation of land, such decisions are discretionary.

OSM, however, expects a State to fund such priority 4 and 5 projects if they are identified and known. OSM believes such polices would motivate States to carefully consider all forms of lower priority projects prior to requesting certification pursuant to section 411 of SMCRA.

Comment: "New § 875.17 would define the scope of public utilities adversely affected and the construction of public facilities in communities impacted by coal mining and processing. It would also provide that funds available from grants under section 402(g)(1) of the Act may be used to carry out these projects. It would also establish the priority these projects would have relative to other projects." This section should reference impacts by both coal and mineral mining and processing. Definitions of public facilities and activities are also needed. States should not be precluded from doing coal reclamation work under this section.

Response: Several commenters requested that OSM consider defining such terms as "public facilities", "enhancement," and "activities." OSM's proposed regulations have not attempted to define all terms, however, since some definitions may unduly restrict possible action by the States. OSM has instead attempted to have the State fully discuss the rationale for funding the facility project. This rationale would include (1) the specific need, (2) impact on the community and coal or mineral industry, (3) availability of funding from other sources, (4) impact on the State if the activity or facility is not funded and (5) the reason for ranking and selecting the projects prior to projects protecting the public health and safety. OSM believes that a full open discussion of the project in the public arena, both on a State and Federal level, would filter out all but the most urgent projects. Additionally, by requiring documentation, OSM has treated the issue of "enhancement" in a manner similar to that discussed for proposed regulation § 874.14 regarding the "enhancement" of water projects.

Finally, the term public utility has not been defined since the amendments also use the more expansive term "facilities serving the public".

Comment: One commenter asked what is required to support the Governor's certification of need for funding of an activity or specific public facility? Is there a special showing that a State must make to demonstrate that it is a "State impacted by coal and mineral development"?

Procedurally, how will the Secretary concur with the Governor's certification of need for an activity or specific public facility?

Response: The proposed regulations do not attempt to specifically define the term "need". This is a term that relates to specific circumstances of a State. The proposed regulations, however, would require a State to clearly set forth why the State perceives an "urgent need", why the State has proposed this project ahead of projects involving the public health and safety and why other funds are or are not being utilized.

The proposed regulations do not specifically delineate what support material is required. OSM would expect a State to fully document and support all of its conclusions and discussions; however, if further clarification is required, OSM has the authority pursuant to section 405(j) of SMCRA to request the additional information.

OSM's proposed regulations do not contemplate a special showing regarding the impact of coal or mineral development on a State. As discussed previously, impacts are hard to define and the circumstances facing each State would probably be unique to that State. OSM would expect the State, however, to fully explain the impacts on the State and why such impacts have created an urgent funding need.

The proposed regulations would require the Secretary to fully review the State's proposal and to seek public comment regarding the funding request.

Comment: One commenter asked whether the eligibility of the lien requirements for non-coal sites would be the original Act date of 1977 or the revised date of 1990?

Response: The proposed lien requirements have been placed in § 875.18 of the AML regulations to clearly provide that all noncoal projects undertaken by a State would have to meet the same lien requirements as a coal project. All noncoal projects undertaken by a State have been subject to the lien requirements in 30 CFR 882.13. Nothing in the new amendments has altered this.

Part 876 Acid Mine Drainage Treatment and Abatement Program

Because thousands of miles of Appalachian streams and numerous waterways have been degraded and the biological life significantly impaired or destroyed by acid mine drainage, Congress acknowledged a need to engage in a comprehensive abatement

and treatment program for acid mine damage through the Abandoned Mine Reclamation Act of 1990.

In response to the mandate by Congress, OSM is proposing part 876. Part 876 is an optional program for States having an approved abandoned mine land program. Up to ten percent of the funds a State receives through its annual grants, both State share and those amounts based on historical coal production, may be deposited in a special interest-bearing trust fund and used, without regard to lapsing of fund authority, for the purpose of acid mine drainage treatment and abatement projects in qualified hydrologic units. Plans for the use of this acid mine drainage treatment and abatement fund, which must be authorized by State law, are subject to approval by the Secretary.

The acid mine drainage abatement and treatment plan is encouraged to be developed in coordination with the Soil Conservation Service (SCS). The Secretary will ask SCS and the Director of the Bureau of Mines to comment on each proposed plan. The intent of this coordination is to encourage joint efforts with projects initiated by SCS under the Rural Abandoned Mine Program. This will allow States to address acid mine drainage problems on a broader basis, i.e. qualified hydrologic units, instead of a more restricted case-by-case site specific approach. Through this joint approach it is anticipated that more environmentally sound and cost effective methods will be utilized. Projects to address acid mine drainage problems in hydrologic units as defined at § 876.2 are independent of the order of priorities for projects under section 403(a) of SMCRA.

In defining qualified hydrologic unit, OSM has interpreted the statutory language to mean those lands and waters which are (1) eligible pursuant to section 404 and include any of the first three priorities as stated in section 403(a), or (2) proposed to be the subject of expenditures by the State (from amounts available from the forfeiture of bonds required under section 509 or from other State sources) to mitigate acid mine drainage. Based upon the legislative history, it was apparent that the intent was to make both categories independently eligible for funding.

Comments Received During Outreach—Part 876

Comment: "New part 876 would provide for the creation of an acid mine drainage program in States of up to 10% of the grants made under §§ 872.11(b)(2) and 872.11.(b)(5) (exclusive of those amounts set aside under § 872.12(c)). The new Part would require, and provide procedures for, submittal of plans to the Director, OSM, for approval. Such plans will provide for the abatement of the causes and treatment of the effects of acid mine drainage within qualified hydrologic units." This Part should clarify that the 10% reference is to 10% of all moneys granted to a State.

Response: The proposed regulation specifies that a State may utilize up to 10% of the funds granted annually to a State under sections 402(g)(1) (State-share) and 402(g)(5) (mandatory 20% Federal share). This language would mirror the funding criteria specified in section 402(g)(6) of SMCRA.

Section 876.10—Information collection. OSM proposes to include in part 876 a § 876.10 which would contain a list of the information collection requirements contained in part 876, the OMB clearance number, the estimated reporting burden per respondent for complying with the information collection requirements and the OSM and OMB addresses where comments regarding the information collection requirements may be sent.

Part 886 State Reclamation Grants

OSM is also proposing to add a new provision to § 886.16(a). This provision would establish a grant condition requiring States, prior to contract award, to ensure that a successful bidder for a project funded by the grant is not precluded under § 773.15(b)(1) from receiving a permit or conditional permit to conduct surface coal mining operations. To satisfy this condition, the State would have to check OSM's automated Applicant/Violator System for each contract to be awarded, and verify such information with OSM. This proposed action is taken under the broad grant of authority in sections 201(c) and 412(a) of SMCRA which empower the Secretary to administer the program for controlling surface mining and to do all things necessary or expedient, including the promulgation of regulations, to implement the provisions of title IV. By making those who are listed as violators or linked to violators through ownership or control ineligible for AML contracts, OSM intends to pursue a vigorous enforcement program. Those who are responsible for prior violations of SMCRA should not be allowed to share in the utilization of public funds unless the party listed enters into an agreement with the agency having jurisdiction over the violation or linkage to resolve the violation or linkage, or has instituted a good faith administrative or judicial appeal to contest the linkage or violation. With the assistance of the States, OSM believes that this provision would enhance the collection efforts in both the title IV and title V programs without adversely impacting their administrative burden.

In § 886.23(b)(2), a new paragraph (b)(2)(iv) has been added to incorporate the reporting requirement under State and Tribe reclamation grants, that regularly, but no less than annually, States and Tribes are required to submit to OSM completed OSM–76 forms (Problem Area Description Forms) for all completed coal and noncoal projects. Instructions for completing and processing the completed OSM–76 forms are available in the National Abandoned Mine Lands Inventory Problem Area Description Manual. This requirement is necessary so that the Secretary may provide an updated inventory of abandoned mine land problems to Congress on an annual basis as required by section 403(C) of the Act. Also, the information is necessary to track and report on accomplishments of the AML Program. For the purposes of updating the National Inventory, completed projects are defined as (1) those AML construction projects funded through an approved reclamation grant and (2) those construction projects where on-the-ground reclamation has been completed and the cost figures represent final funding on the project. In proposing this rule, OSM acknowledges that because of the nature of grant funded projects, preliminary cost figures given prior to grant closeout may be revised at a later time.

Comments Received During Outreach—Section 886.23(b)(2)

Comment: "New part 878 would be added to provide for an inventory of eligible lands and waters pursuant to section 404 of the Act. Only priority one and two sites need to be included in this inventory. It would be updated annually. A process for adding sites to the inventory would be included." This part should be restricted to coal sites only and not include interim program sites. If a review committee process is proposed, it needs to include an ability for States to appeal committee decisions.

Response: OSM's proposed regulations would restrict the National Abandoned Mine Land Inventory to pre-August 3, 1977 sites. These sites must be reclaimed by the State. The selection of post-August 3, 1977, affected sites is a discretionary decision by the State, and is not mandated by the new amendments. OSM would point out, however, that a State would have to reclaim all priority 1 and 2 sites,

including eligible post August 3, 1977, sites, prior to reclaiming lower priority sites. Moreover, a State which seeks to certify the completion of all coal objectives must demonstrate that all eligible priority 1 and 2 post SMCRA sites have been reclaimed.

The proposed regulations do not propose specific regulations regarding the updating of the AML inventory. OSM's policies have been discussed previously with the States and are specifically set forth in OSM policy directives.

IV. Effect on State Programs

Each State having within its borders coal mined lands eligible for reclamation under title IV of SMCRA may submit to the Secretary a State Reclamation Plan demonstrating its capability for administering an abandoned mine reclamation program. Title IV provides that the Secretary may approve the plan once the State has an approved regulatory program under title V of SMCRA. If the Secretary determines that a State has developed and submitted a program for reclamation and has the necessary State legislation to implement the provisions of title IV, the Secretary shall grant the State exclusive responsibility and authority to implement the provisions of the approved plan. Section 405 of SMCRA (30 U.S.C. 1235) contains the requirements for State reclamation plans. The Secretary has adopted regulations that specify the content requirements of a State reclamation plan and the criteria for plan approval (30 CFR part 884). As of March 1, 1991, the Secretary has approved reclamation programs for 23 States and 3 Indian tribes.

An approved State or Tribal AMLR plan can be amended under the provisions of 30 CFR 884.15. Under these provisions, if the amendment or revision changes the objectives, scope, or major policies followed by the States in the conduct of its reclamation program, the Director would follow the procedures set out in 30 CFR 884.14 in approving an amendment or revisions of a State reclamation plan.

The amendments to title IV of SMCRA provide additional authorities for reclamation activities. States wishing to utilize these new provisions would be required to amend their AML programs following the procedures set forth in 30 CFR 884.15 before OSM would be authorized to approve funding for projects which would not have qualified under this approved program. In some instances this authority already exists. For example, States have the authority to undertake high priority water projects. To be funded prior to revisions of a State AML Plan, however, a State would have to meet the original eligibility requirements, and based on the new amendments to SMCRA, water projects could not represent over 30 percent of the funds granted annually to that State or Indian tribe.

In other instances, States will need new legislative authority to undertake certain projects. For example, if a State wishes to fund certain public facility construction projects pursuant to the authority in section 411 of SMCRA, the State would be required to submit and have approved as an AML Plan amendment its new legislative authority as well as any pertinent discussion, consistent with OSM's regulations for implementing those provisions. Only after a State's AML Plan is properly amended under the procedures set forth in 30 CFR 884.15 would OSM be authorized to fund projects requiring the new authority in title IV.

OSM intends to work closely with the States regarding the required AML Plan amendments to ensure that all amendments are developed consistent with the mandates of title IV and the Secretary's implementing regulations and that the amendments are processed in the most efficient and expeditious manner.

V. Procedural Matters

Federal Paperwork Reduction Act

The collections of information contained in this rule have been submitted to the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.* The collection of this information will not be required until it has been approved by the Office of Management and Budget.

The public reporting burden for the revised OSM–1 Form is estimated to average 16 minutes. The public reporting burden for the information collection requirements contained in part 875 and part 876 are estimated to average 32 hours and 1,040 hours, respectively. The estimated burdens include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing the burden to the Office of Surface Mining Reclamation and Enforcement, Information Collection Clearance Officer, 1951 Constitution Ave., room 5415 L, Washington, DC 20240 and the Office of Management and Budget, Paperwork Reduction Project (1029), Washington, DC 20503.

Author

The principal author of this rule is D.M. Lytton, Division of Abandoned Mine Land Reclamation, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: 202–208–5365 (commercial) or 268–5365 (FTS).

Executive Order 12291 and Regulatory Flexibility Act

The Department of the Interior has determined that this document is not a major rule under the criteria of Executive Order 12291 (February 17, 1981) and that it will not have a significant effect on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

National Environmental Policy Act

OSM has prepared a draft environmental assessment (EA), and has made a tentative finding that the proposed rule would not significantly effect the quality of the environment under Section 102 (2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). The draft EA is on file in the OSM Administrative Record at the address specified previously (see "**ADDRESSES**"). An EA of the final rule will be completed and a final finding made on the significance of any impacts prior to promulgation of the final rule.

List of Subjects

30 CFR Part 795

Grant programs-natural resources, Reporting and recordkeeping requirements, Small businesses, Surface mining, Technical assistance, Underground mining.

30 CFR Part 870

Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 872

Indian-lands, Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 873

Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 874

Indian-lands, Surface mining, Underground mining.

30 CFR Part 875

Indians-lands, Surface mining, Underground mining.

30 CFR Part 876

Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 886

Grant programs-natural resources, Reporting and recordkeeping requirements, Surface mining, Underground mining.

Accordingly, it is proposed to amend 30 CFR parts 795, 870, 872, 873, 874, 875, 876, and 886 as set forth below.

Dated: July 23, 1991.

David O'Neal,

Assistant Secretary for Land and Minerals Management.

PART 795—PERMANENT REGULATORY PROGRAM—SMALL OPERATORS ASSISTANCE PROGRAM

1. The authority citation for part 795 continues to read as follows:

Authority: Sec. 201, 501, 502, and 507, Pub. L. 95–87, 91 Stat. 445 (30 U.S.C. 1201 *et seq.*).

2. Section 795.4 is revised to read as follows:

§ 795.4 Information collection.

The collections of information contained in §§ 795.7, 795.8, 795.9 and 795.10 have been approved by Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1029–0061. The information will be used to determine if the applicants meet the requirements of the Small Operator Assistance Program. The obligation to respond is required to obtain a benefit in accordance with Public Law 95–87. Public reporting burden for this information is estimated to average 22 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspects of this collection of information, including suggestions for reducing the burden, to the Office of Surface Mining Reclamation and Enforcement, Information Collection Clearance Officer, 1951 Constitution Avenue NW., room 5415 L, Washington, DC 20240 and the Office of Management and Budget, Paperwork Reduction Project (1029–0061), Washington, DC 20503.

3. Section 795.6 is amended by revising the introductory text of paragraph (a)(2), paragraphs (a)(2) (i) and (ii) to read as follows:

§ 795.6 Eligibility for assistance.

(a) * * *

(2) Establishes that his or her probable total actual and attributed production from all locations during any consecutive 12-month period either during the term of his or her permit or during the first 5 years after issuance of his or her permit, whichever period is shorter, will not exceed 300,000 tons. Production from the following operations shall be attributed to the applicant—

(i) The pro rata share, based upon percentage of ownership of applicant, of coal produced by operations in which the applicant owns more than a 10 percent interest;

(ii) The pro rata share, based upon percentage of ownership of applicant, of coal produced in other operations by persons who own more than 10 percent of the applicant's operation;

* * * * *

4. Section 795.9 is amended by revising paragraph (b)(2) to read as follows:

§ 795.9 Program services and data requirements.

* * * * *

(b) * * *

(2) The statement of the results of drilling and test borings or core samplings for the proposed permit area in accordance with §§ 780.22(b) and 784.22(b) and any other applicable provisions of this chapter.

* * * * *

5. Section 795.12 is amended by revising paragraph (a)(2) and removing paragraph (a)(3) to read as follows:

§ 795.12 Applicant liability.

(a) * * *

(2) The program administrator finds that the applicant's actual and attributed annual production of coal for all locations exceeds coal tonnage governing SOAP eligibility in effect at the time assistance was approved during any consecutive 12-month period either during the term of the permit for which assistance is provided or during the first 5 years after issuance of the permit, whichever is shorter.

* * * * *

PART 870—ABANDONED MINE RECLAMATION FUND—FEE COLLECTION AND COAL PRODUCTION REPORTING

6. The authority citation for part 870 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, as amended; and Pub. L. 100.34.

7. Section 870.10 is revised to read as follows:

§ 870.10 Information collection.

The recordkeeping requirements contained in § 870.18 have been approved by Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1029–0090. The collection of information contained in the OSM–1 Form have been approved by Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1029–0063. The information will be used by the regulatory authority to determine whether coal mine operators are reporting accurate production figures and paying proper fees. The obligation to respond is mandatory in accordance with Public Law 95–87. Public reporting burden for this collection of information is estimated to average 2 hours for recordkeeping (1029–0090) and 16 minutes per response (1029–0063), including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspects of this collection of information, including suggestions for reducing the burden, to the Office of Surface Mining Reclamation and Enforcement, Information Collection Clearance Officer, 1951 Constitution Avenue NW., room 5415 L, Washington, DC 20240 and the Office of Management and Budget, Paperwork Reduction Project (1029–0063) or (1029–0090), Washington, DC 20503.

8. Sections 870.12 is amended by adding paragraphs (d) to read as follows:

§ 870.12 Reclamation fee.

* * * * *

(d) The reclamation fee shall be paid after the end of each calendar quarter beginning with the calendar quarter starting October 1, 1977 and ending September 30, 1995.

9. Section 870.15 is amended by revising paragraph (b) and the last sentence of paragraph (c) to read as follows:

§ 870.15 Reclamation fee payment.

* * * * *

(b) Each operator shall use mine report Form OSM–1 (or any approved successor form) to report tonnage of coal sold, used or transferred, as well as other information pertinent to the sale and ownership of the coal, during the applicable calendar quarter.

(c) * * * All operators who receive a Coal Sales and Reclamation Fee Report (Form OSM 1), including those with zero sales, uses, or transfers, must submit a completed Form OSM–1, as well as any fee payment due.

* * * * *

10. Section 870.17 is revised to read as follows:

§ 870.17 Compliance authority.

The Secretary or any duly designated officer, employee, or representative of the Secretary may conduct such audits of coal sales, transfers, and use, and the payment of AML fees as may be necessary to ensure compliance with the provisions of SMCRA, and for such purposes shall, at all reasonable times, upon request, have access to, and may copy, all books, papers, and other documents of any person involved in a coal transaction, including without limitation, permittees, operators, brokers, purchasers, persons operating preparation plants and tipples, and any recipients of royalty payments for the coal.

PART 872—ABANDONED MINE RECLAMATION FUNDS

11. The authority citation for part 872 is revised to read as follows:

Authority: 30 U.S.C. 1201, *et seq.* as amended.

12. Section 872.11 is amended by adding new paragraph (a)(6); and revising paragraph (b) to read as follows:

§ 872.11 Abandoned Mine Reclamation Fund.

(a) * * *

(6) Interest and any other income earned from investment of the Fund. Such interest and other income shall be credited only to the Federal share.

(b) * * *

(1) An amount equal to 50 percent of the reclamation fees collected from within a State shall be allocated at the end of the fiscal year in which they are collected for use in that State under an approved State Reclamation Plan. Reclamation fees collected from Indian lands shall not be included in the calculation of amounts to be allocated to a State. If a State advises OSM in writing that it does not intend to submit a State reclamation plan, no monies shall be allocated to that State. Amounts granted to a State that have not been expended within three years from the date of grant award shall be available to the Director for other purposes under paragraph (b)(5) of this section. Such funds may be withdrawn from the State if the Director finds in writing—

(i) That the amounts involved are not necessary to carry out the approved reclamation activities; or

(ii) That failure to expend is a result of avoidable delays in conducting approved reclamation activities.

(2) An amount equal to 50 percent of the reclamation fees collected from Indian lands shall be allocated to the Indian tribe or tribes having an interest in those lands at the end of the fiscal year in which they are collected for use by that tribe under an approved Indian reclamation plan. If an Indian tribe advises OSM in writing that it does not intend to submit an Indian reclamation plan, no monies shall be allocated to that tribe. Amounts granted to Indian tribes that have not been expended within three years from the date of grant award shall be available to the Director for other purposes under paragraph (b)(5) of this section. Such funds may be withdrawn from the Indian tribes if the Director finds in writing—

(i) That the amounts involved are not necessary to carry out the approved reclamation activities; or

(ii) That failure to expend is a result of avoidable delays in conducting approved reclamation activities.

(3) An amount equal to 10 percent of the monies collected and deposited in the Fund annually, as well as 20 percent of the interest and other miscellaneous receipts to the Fund, shall be allocated for use by the Secretary of Agriculture to carry out the Rural Abandoned Mine Program.

(4) An amount equal to 40 percent of the monies deposited in the Fund annually after making the allocations referred to in paragraphs (b)(1) and (2) of this section shall be allocated for use by the Secretary to supplement annual grants to States and Indian tribes. States and Indian tribes eligible for supplemental grants under this provision are those that have not certified under section 411(a) of SMCRA and have priority 1 or 2 problem areas, as set forth in section 403(a) of SMCRA. The allocation of such fund by the Secretary to eligible States and Tribes shall be through a formula based on the amount of coal historically produced in the State or from the Indian lands concerned prior to August 3, 1977. Provided, however, funds to be granted to specific States or Tribes under this paragraph may be reduced or curtailed under the following two conditions:

(i) If State or Tribal share funds to be granted in a year are sufficient to address all remaining eligible priority 1 or 2 sites in the State or on Indian lands, no additional funds under this paragraph will be provided during that year; or

(ii) If the costs to reclaim all remaining priority 1 or 2 sites in a specific State or on a specific Tribe's land exceeds the amount of State or Tribal share funds to be granted in a year to that State or Indian tribe pursuant to section 402(g)(1) of SMCRA, but is less than the total amount of funds to be granted to the State or Indian tribe in that year utilizing State and Federal funds under paragraphs (b) (1), (2), (3), and (4) of this section, the Federal funds granted under this paragraph will be reduced to that amount needed to fully fund all remaining priority 1 or 2 sites after utilizing all available State share funds.

(5) Amounts available in the Fund which are not allocated in paragraphs (b) (1), (2), (3), and (4) of this section are authorized to be expended by the Secretary for any of the following:

(i) The Small Operator Assistance Program under section 507(c) of the Act (not more than $10,000,000 annually).

(ii) Emergency projects under State, Tribal, and Federal programs under Section 410 of the Act.

(iii) Nonemergency projects in nonprogram States and on Tribal lands which do not have an approved abandoned mine reclamation program pursuant to section 405 of the Act.

(iv) Administration of the Abandoned Mine Land Reclamation Program by the Secretary.

(v) Projects authorized under section 402(g)(4)(B) in nonprogram States.

(6) If the distribution of funds is necessary to achieve the priorities stated in paragraphs 403(a) (1) and (2) of SMCRA, the Secretary, subject to the provision below, shall grant annually not less than $2,000,000 for expenditure in each State and Indian tribe having an approved abandoned mine land program, provided however, that annual State share funds are utilized first, and that supplemental funds granted under this paragraph and paragraph (b)(4) of this section shall not exceed the costs of reclaiming all remaining priority 1 or 2 sites in a State or on Tribal land.

(7) Funds allocated or expended annually by the Secretary under Sections 402(g) (2), (3), or (4) of SMCRA for any State or Indian tribe shall not be deducted against funds to be granted annually to a State or Indian tribe under

the authority of Sections 402(g) (1), (5) or (8) of SMCRA.

(8) The Secretary shall expend funds pursuant to the authority in section 402(g)(3)(C) only in States or on Indian lands which have no abandoned mine reclamation program.

* * * * *

13. Part 873 is added to read as follow:

PART 873—FUTURE RECLAMATION SET-ASIDE PROGRAM

Sec.
873.1 Scope.
873.11 Applicability.
873.12 Future set-aside program criteria.

Authority: Public Law 95–87, (30 U.S.C. 1201 *et seq.*), and Public Law 101–508

§ 873.1 Scope.

This part provides requirements for the award of grants to States for the establishment of special trust accounts which will provide funds for coal reclamation purposes after September 30, 1995.

§ 873.11 Applicability.

The provisions of this part apply to the granting, pursuant to section 402(g)(6) of SMCRA, of funds and their use by the States for coal reclamation purposes after September 30, 1995.

§ 873.12 Future set-aside program criteria.

(a) Any State may receive and retain without regard to the 3 year limitation referred to in section 402(g)(1)(D) of the Act, 30 U.S.C. 1232, up to 10 percent of the total of the grant funds made annually to such State, if such amounts are deposited into either a special fund established under State law pursuant to which such amounts (together with all interest earned on such amounts) are expended by the State solely to achieve the priorities stated in section 403(a) of the Act, 30 U.S.C. 1233, after September 30, 1995 or an acid mine drainage abatement and treatment fund pursuant to 30 CFR part 876.

(b) Prior to receiving a grant pursuant to this part, a State must:

(1) Establish a special fund account providing for the earning of interest on fund balances; and

(2) Specify that monies in the account may only be used after September 30, 1995, by the designated State agency to achieve the priorities stated in section 403(a) of the Act, 30 U.S.C. 1233.

(c) After the conditions specified in paragraphs (a) and (b) of this section are met, a grant may be approved and monies deposited into the special fund account. The monies granted, together with any interest earned, shall be considered State monies.

Part 874—GENERAL RECLAMATION REQUIREMENTS

14. Part 874 is amended by revising the authority citation to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, as amended.

15. Section 874.12 is amended by adding paragraphs (d), (e), (f), and (g) to read as follows:

§ 874.12 Eligible coal lands and water.

* * * * *

(d) Notwithstanding paragraphs (a), (b), (c) of this section, coal lands and waters in a State damaged and abandoned after August 3, 1977, by coal mining process are also eligible for funding if the Secretary finds in writing that:

(1) They were mined for coal or affected by coal mining processes; and

(2) The mining occurred and the site was left in either an unreclaimed or inadequately reclaimed condition between August 4, 1977 and ending on or before the date on which the Secretary approved a State program pursuant to section 503 of the Act (30 U.S.C. 1253) for a State in which the site is located and that any funds for reclamation or abatement which are available pursuant to a bond or other form of financial guarantee or from any other source are not sufficient to provide for adequate reclamation or abatement at the site; or

(3) The mining occurred and the site was left in either an unreclaimed or inadequately reclaimed condition between August 4, 1977 and ending on November 5, 1990, and that the surety of the mining operator became insolvent during such period and as of November 5, 1990, funds immediately available from proceedings relating to such insolvency or from any financial guarantee or other source are not sufficient to provide for adequate reclamation or abatement at the site, and

(4) The site qualifies as a priority one or two site pursuant to section 403(a) (1) and (2) of the Act. Priority will be given to those sites which are in the immediate vicinity of a residential area or which have an adverse economic impact upon a community.

(e) Any State may expend funds made available under paragraphs 402(g) (1) and (5) of the Act (30 U.S.C. 1232(g) (1) and (5)) for reclamation and abatement of any site eligible under paragraph (d) of this section, if the State with the concurrence of the Secretary, makes the findings required in paragraph (d) of this section and determines that the reclamation priority of the site is the same or more urgent than the reclamation priority for the lands and water eligible pursuant to paragraphs (a), (b) or (c) of this section which qualify as a priority (1) or (2) site under section 403 of the Act (30 U.S.C. 1233).

(f) Monies available from sources outside the Abandoned Mine Reclamation Fund or which are ultimately recovered from responsible parties involving lands eligible pursuant to paragraphs (d) and (e) of this section, shall either be used to offset the cost of the reclamation or transferred to the Abandoned Mine Reclamation Fund if not required for further reclamation activities at the site.

(g) Reclamation undertaken pursuant to findings made under paragraphs (d) and (e) of this section shall not relieve any responsible party for the costs of the reclamation which may be assessed under title V of this Act. Furthermore, neither the Secretary nor a State performing reclamation under paragraph (d) or (e) of this section shall be held liable for any violations of any performance standards or reclamation requirements specified in title V of the Act nor shall a reclamation activity undertaken on such lands or waters be held to any standards set forth in title V of the Act. All reclamation performed by the Secretary should be accomplished in accordance with OSM's "Final Guidelines for Reclamation Programs and Projects" available for inspection at the Office of Surface Mining, Administrative Record, 1100 L Street NW., Room 5131, Washington, DC 20240.

16. Section 874.13 is revised to read as follows:

§ 874.13 Reclamation objectives and priorities.

(a) Reclamation projects should be accomplished in accordance with OSM's "Final Guidelines for Reclamation Programs and Projects".

(b) Reclamation projects shall follow the priorities of section 403 of the Act (30 U.S.C. 1233). Projects lower than a priority two may not be undertaken until all known higher priority coal projects have either been accomplished, are in the process of being reclaimed, or have been approved for funding by the Secretary, except in those instances where such lower priority projects may be undertaken in conjunction with a priority one or two site in accordance with OSM's "Final Guidelines for Reclamation Programs and Projects".

17. Section 874.14 is added to read as follows:

§ 874.14 Utilities and other facilities.

(a) Any State or Indian tribe not certified under Section 411(a) of the Act,

30 U.S.C. 1241(a), may expend up to 30 percent of the funds granted annually to such State or Indian tribe for the purpose of protecting, repairing, replacing, constructing, or enhancing facilities relating to water supply, including water distribution facilities and treatment plants, to replace water supplies adversely affected by coal mining practices.

(b) If the adverse effect on water supplies referred to in this subsection occurred both prior to and after August 3, 1977, the project shall remain eligible, notwithstanding the criteria specified in 30 CFR 874.12(b), if the State or Indian tribe finds in writing, as part of its eligibility opinion, that such adverse affects are due predominately to effects of mining processes undertaken and abandoned prior to August 3, 1977.

(c) OSM may approve, in its discretion, projects involving the construction or enhancement of water facilities if the State or Indian tribe submits documentation from applicable local, State, and Federal agencies with oversight for such utilities or facilities concerning what funding resources are available and why this specific project is not being fully funded by their agency and the Director concurs in a State or Indian tribe finding that:

(1) Monies from other sources are either not available or such sources are contributing their fair share of construction funds,

(2) There is an urgent need to undertake the project which gives it the same or higher priority than projects remaining on the State's or Indian tribe's coal site inventory, and

(3) The enhancement of the facility is necessary to achieve the objectives of this title.

(d) Enhancement of facilities or utilities under this section shall include upgrading necessary to meet any local, State, or Federal public health or safety requirement. Enhancement shall not include, however, any areal expansion of a utility or facility not necessary to address a specific abandoned mine land problem.

18. Section 874.15 is added to read as follows:

§ 874.15 Limited liability.

No State or Indian tribe shall be liable under any provision of Federal law for any costs or damages as a result of action taken or omitted in the course of carrying out an approved State or Indian tribe abandoned mine reclamation plan. This section shall not preclude liability for costs or damages as a result of gross negligence or intentional misconduct by the State or Indian tribe. For purposes of the preceding sentence, reckless, willful, or wanton misconduct shall constitute gross negligence.

PART 875—NONCOAL RECLAMATION

19. Part 875 is revised to read as follows:

Sec.
875.1 Scope.
875.10 Information collection.
875.11 Applicability.
875.12 Eligible lands and water prior to certification.
875.13 Certification of completion of coal sites.
875.14 Eligible lands and water subsequent to certification.
875.15 Reclamation priorities for noncoal program.
875.16 Exclusion of noncoal reclamation sites.
875.17 Land acquisition authority—noncoal.
875.18 Lien requirements.
875.19 Limited liability.

Authority: 30 U.S.C. 1201 *et seq.*, as amended.

§ 875.1 Scope.

This part establishes land and water eligibility requirements and for non-coal reclamation.

§ 875.10 Information collection.

The collections of information contained in §§ 875.13(a) and 875.15(d) have been approved by Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1029-____. The information will be used to determine if noncoal reclamation is being accomplished according to legislative mandate. The obligation to respond is required to obtain a benefit in accordance with Public Law 95-87.

Public reporting burden for this information is estimated to average 32 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspects of this collection of information, including suggestions for reducing the burden, to the Office of Surface Mining Reclamation and Enforcement, Information Collection Clearance Officer, 1951 Constitution Avenue NW, room 5415 L, Washington, DC 20240 and the Office of Management and Budget, Paperwork Reduction Project (1029-____), Washington, DC 20503.

§ 875.11 Applicability.

The provisions of this part apply to all reclamation projects on lands or water mined or affected by mining of minerals and materials other than coal and are to be carried out with money from the Fund and administered by a State or Indian tribe under an approved reclamation program according to part 884 of this chapter.

§ 875.12 Eligible lands and water prior to certification.

Noncoal lands and water are eligible for reclamation if—

(a) They were mined or affected by mining processes;

(b) They were mined prior to August 3, 1977, and left or abandoned in either an unreclaimed or inadequately reclaimed condition;

(c) There is no continuing responsibility for reclamation by the operator, permittee, or agent of the permittee under statutes of the State or Federal Government or the State as a result of bond forfeiture, which will render lands or water ineligible only if the amount forfeited is sufficient to pay the total cost of the necessary reclamation or, in cases where the forfeited bond is insufficient to pay the total cost of reclamation, additional monies from the Fund may be sought under parts 886 or 888 of this chapter;

(d) The reclamation has been requested by the Governor of the State or equivalent head of the Tribe; and

(e) The reclamation is necessary to protect the public health, safety, general welfare, and property from extreme danger of adverse effects of noncoal mining practices.

§ 875.13 Certification of completion of coal sites.

(a) The Governor of a State, or the equivalent head of an Indian tribe, with a previously approved abandoned mine reclamation program may submit to the Secretary a certification of completion expressing the finding that the State/Tribe has achieved all existing known coal related reclamation objectives for eligible lands and waters pursuant to section 404 of Public Law 95-87 (30 U.S.C. 1239), or has instituted the necessary processes to reclaim any remaining coal related problems. In addition to the above finding, the certification of completion shall also contain:

(1) A description of both the rationale and the process utilized to arrive at the above finding for the completion of all coal related reclamation pursuant to section 403(a) (1) through (6).

(2) A brief summary and resolution of all relevant public comments concerning coal related impacts, problems, and reclamation projects received by the State/Tribe prior to preparation of the certification of completion.

(3) A State/Tribe agreement to acknowledge and give top priority to any coal related problem(s) that may occur after submission of the certification of completion and during the life of the approved abandoned mine reclamation program.

(4) A description of the State/Tribe ability or provisions to fund all potential coal related problems that may occur after submission of the certification of completion and during the life of the approved abandoned mine reclamation program.

(b) After review and verification of the information contained in the certification of completion, the Director shall prepare and provide notice in the Federal Register an opportunity for public comment. After receipt and evaluation of all public comments and a determination by the Director that the certification is correct, the Director shall concur with the certification and provide such final notice in the Federal Register. This concurrence is based upon the State's or Indian tribe's commitment to give top priority to any coal problem which is hereafter found or occurs.

(c) Following the concurrence by the Director, a State/Tribe may implement a noncoal reclamation program pursuant to provisions in section 411 of SMCRA.

§ 875.14 Eligible lands and water subsequent to certification.

Following certification by the State/Tribe of the completion of all known coal projects and the Director's concurrence in such certification, eligible noncoal lands, waters, and facilities shall be those:

(a) Which were mined or processed for minerals or which were affected by such mining or processing, and abandoned or left in an inadequate reclamation status prior to August 3, 1977. In determining the eligibility under this subsection of Federal lands, waters, and facilities under the jurisdiction of the Forest Service or Bureau of Land Management, in lieu of the August 3, 1977, date the applicable date shall be August 28, 1974, and November 26, 1980, respectively; and

(b) For which there is no continuing reclamation responsibility under State or other Federal laws.

(c) If eligible coal problems occur after certification under § 875.13, a State/Tribe must address the coal problem utilizing State/Tribe share funds no later than the next grant cycle, subject to the availability of funds distributed to the State/Tribe in that cycle. The coal project would be subject to the coal provisions specified in Sections 401 through 408 of SMCRA.

§ 875.15 Reclamation priorities for noncoal program.

(a) This paragraph applies to reclamation projects involving the restoration of lands and water adversely affected by past mineral mining; projects involving the protection, repair, replacement, construction, or enhancement of utilities (such as those relating to water supply, roads, and such other facilities serving the public adversely affected by mineral mining and processing practices); and the construction of public facilities in communities impacted by coal or other mineral mining and processing practices. Following certification pursuant to § 875.13, the projects and construction of public facilities identified in the preceding sentence shall reflect the following priorities in the order stated:

(1) The protection of public health, safety, general welfare and property from the extreme danger of adverse effects of mineral mining and processing practices.

(2) The protection of public health, safety, and general welfare from the adverse effects of mineral mining and processing practices.

(3) The restoration of land and water resources and the environment previously degraded by the adverse effects of mineral mining and processing practices; and

(4) The construction of public facilities in communities impacted by coal or other mineral mining and processing practices where such construction is not necessary to protect the public health and safety from the adverse effects of mineral mining or to restore the environment previously degraded by mineral mining.

(b) OSM may approve, in its discretion, projects involving the enhancement or construction of public utilities and facilities serving the public if the State/Tribe submits documentation from applicable local, State, and Federal agencies with oversight for such utilities or facilities concerning what funding resources are available and why this specific project is not being fully funded by their agency, and the Director concurs in a State/Tribe finding that:

(1) Monies from other sources are either not available or such sources are contributing their fair share of construction funds,

(2) There is an urgent need to undertake the project prior to the completion of other reclamation activities, and

(3) The enhancement of the facility is necessary to achieve the objectives of the Act. Enhancement of facilities or utilities shall include upgrading necessary to meet local, State, or Federal public health or safety requirements. Enhancement shall not include, however, any areal expansion of a utility or facility not necessary to address a specific abandoned mine land problem.

(c) Notwithstanding the requirements specified in paragraph (a) of this section, where the Governor of a State or the equivalent head of an Indian tribe determines there is a need for activities or construction of specific public facilities related to the coal or minerals industry in States impacted by coal or minerals development, submits a grant application as required by paragraph (d) of this section and the Director concurs in such need, as set forth in paragraph (e) of this section, the Director may grant funds made available under section 402(g)(1) of the Act, 30 U.S.C. 1232, to carry out such activities or construction.

(d) To qualify for funding pursuant to the authority in paragraph (c) of this section, a State or Indian tribe must submit a grant application which specifically sets forth:

(1) The need or urgency for the activity or the construction of the public facility;

(2) The expected impact the project will have on the coal or minerals industry in the State or Indian tribe;

(3) The availability of funding from other sources and if other funding is provided, its percentage of the total costs involved;

(4) Documentation from other local, State, and Federal agencies with oversight for such utilities or facilities regarding what funding resources they have available and why this specific project is not being fully funded by their agency;

(5) The impact on the State or Indian tribe, the public, and the minerals industry if the activity or facility is not funded;

(6) The reason why this project should be selected before a higher priority project than one relating to the protection of the public health and safety or the environment from the damages caused by past mining activities; and

(7) An analysis and review of the procedures used by the State or Indian tribe to notify and involve the public in this funding request and a copy of all comments received and their resolution by the State or Indian tribe.

(e) After review of the information contained in the application, the Director shall prepare a Federal Register notice regarding the State's or Indian

tribe's submission and provide for public comment. After receipt and evaluation of the comments and a determination that the funding meets the requirements of these regulations and is in the best interests of the State or Indian tribe AHL program, the Director may:

(1) Approve the request for funding the activity or construction at a cost commensurate with its benefits towards achieving the purposes of the Surface Mining Control and Reclamation Act of 1977;

(2) Direct benefits to the AML Program; and

(3) Notify the public of the decision in a **Federal Register** notice.

§ 875.16 Exclusion of noncoal reclamation sites.

Money from the Fund shall not be used for the reclamation of sites and areas designated for remedial action pursuant to the Uranium Hill Tailings Radiation Control Act of 1978 (42 U.S.C. 7901 *et seq.*) or which have been listed for remedial action pursuant to the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. 9601 *et seq.*).

§ 875.17 Land acquisition authority—noncoal.

The requirements specified in parts 877 (Rights of Entry) and 879 (Acquisition, Management and Disposition of Lands and Water) are hereby incorporated and are made applicable to a State's or Indian tribe's noncoal program except that for purposes of this section, the references to coal shall not apply.

§ 875.18 Lien requirements.

The lien requirements found in Part 882—Reclamation on Private Land of these regulations are herein incorporated by reference and made applicable to a State's or Indian tribe's noncoal reclamation program under section 411 of the Act.

§ 875.19 Limited liability.

No State or Indian tribe shall be liable under any provision of Federal law for any costs or damages as a result of action taken or omitted in the course of carrying out an approved State/Tribe abandoned mine reclamation plan. This section shall not preclude liability for costs or damages as a result of gross negligence or intentional misconduct by the State or Indian tribe. For purposes of the preceding sentence, reckless, willful, or wanton misconduct shall constitute gross negligence.

20. Part 876 is added to read as follows:

PART 876—ACID MINE DRAINAGE TREATMENT AND ABATEMENT PROGRAM

Sec.
876.1 Scope.
876.2 Definitions.
876.3 Eligibility.
876.4 Plan content.
876.5 Plan approval.
876.10 Information collection.

Authority: 30 U.S.C. 1201 *et seq.*, as amended.

§ 876.1 Scope.

This part establishes the requirements and procedures for the preparation, submission and approval of State Acid Mine Drainage Treatment and Abatement Programs.

§ 876.2 Definitions.

As used in this part, *qualified hydrologic unit* means a hydrologic unit—

(a) In which the water quality has been significantly affected by acid mine drainage from coal mining practices in a manner which adversely impacts biological resources; and

(b) Which contains lands and waters which are—

(1) Eligible pursuant to Section 404 and include any of the first three priorities stated in Section 403(a); or

(2) Proposed to be the subject of the expenditures by the State (from amounts available from the forfeiture of a bond required under Section 509 or from other State sources) to mitigate acid mine drainage.

§ 876.3 Eligibility.

(a) Any State having an approved abandoned mine land program may receive and retain, without regard to the 3 year limitation, up to 10 percent of the total of the grants made annually based on State-share and historical coal production funds to such State for the purpose of abandoned mine land reclamation if such amounts are deposited into either—

(1) A special trust fund established under State law pursuant to which such amounts (together with all interest earned on such amounts) are expended by the State solely to achieve the priorities stated in Section 403(a) after September 30, 1995; or

(2) An acid mine drainage abatement and treatment fund established under State law.

(b) Any State may establish under State law an acid mine drainage abatement and treatment fund from which amounts (together with all interest earned on such amounts) are expended by the State to implement, in consultation with the Soil Conservation Service, acid mine drainage abatement and treatment plans approved by the Secretary.

§ 876.4 Plan content.

Such plans shall provide for the comprehensive abatement of the causes and treatment of the effects of acid mine drainage within qualified hydrologic units affected by coal mining practices. The plan shall include, but shall not be limited to, each of the following:

(a) An identification of the qualified hydrologic unit;

(b) The extent to which acid mine drainage is affecting the water quality and biological resources within the hydrologic unit;

(c) An identification of the sources of acid mine drainage within the hydrologic unit;

(d) An identification of individual projects and the measures proposed to be undertaken to abate and treat the causes or effects of acid mine drainage within the hydrologic unit;

(e) The cost of undertaking the proposed abatement and treatment measures;

(f) An identification of existing and proposed sources of funding for such measures; and

(g) An analysis of the cost-effectiveness and environmental benefits of abatement and treatment measures.

§ 876.5 Plan approval.

The Director may approve any plan under this paragraph only after determining that such plan meets the requirements of Section 876.4. In conducting an analysis of the items referred to in § 876.4 (d), (e), and (g) the Director shall obtain the comments of the Director of the Bureau of Mines. In approving plans under this paragraph, the Director shall give a priority to those plans which will be implemented in coordination with measures undertaken by the Secretary of Agriculture under the Rural Abandoned Mine Program.

§ 876.10 Information collection.

The collection of information contained in § 876.4 has been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1029-____. The information will be used to determine if the State's Acid Mine Drainage Abatement and Treatment Programs are being established according to legislative mandate. The obligation to respond is required to obtain a benefit in accordance with Public Law 95-87.

Public reporting burden for this information is estimated to average 1,040 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspects of this collection of information, including suggestions for reducing the burden, to the Office of Surface Mining Reclamation and Enforcement, Information Collection Clearance Officer, 1951 Constitution Avenue, room 5415 L, Washington, DC 20240 and the Office of Management and Budget, Paperwork Reduction Project (1029–00), Washington, DC 20503.

PART 886—STATE RECLAMATION GRANTS

21. The authority citation for part 886 is revised to read as follows:

Authority: Public Law 95–87; 30 U.S.C. 1201 *et seq.*, Public Law 101–508.

22. Section 886.16 is amended by removing the word "and" at the end of paragraph (a)(3), replacing the period at the end of paragraph (a)(4) with "; and" and by adding paragraph (a)(5) to read as follows:

§ 886.16 Grant agreements.

(a) * * *

(5) A condition which provides:

The State shall assure that at the time of contract award, every successful bidder for a project under this grant is not precluded under 30 CFR 773.15(b)(1) from receiving a permit or conditional permit to conduct surface coal mining operations. To satisfy this condition, the State shall check OSM's automated Applicant/Violator System for each contract to be awarded, and verify such information with OSM.

23. A new paragraph (b)(2)(iv) is added to § 886.23 to read as follows:

§ 886.23 Reports.

* * * * *

(b) * * *

(2) * * *

(iv) For any project, a completed Form OSM–76.

[FR Doc. 91–26539 Filed 11–7–91; 8:45 am]

BILLING CODE 4310–05–M

federal register

Friday
November 8, 1991

Part III

Commission on National and Community Service

45 CFR Chapter XXV

National and Community Service Grant Programs; Proposed Rule

COMMISSION ON NATIONAL AND COMMUNITY SERVICE

45 CFR Chapter XXV

National and Community Service Grant Programs

AGENCY: Commission on National and Community Service.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission on National and Community Service is issuing this Notice of Proposed Rulemaking concerning the programs authorized by the National and Community Service Act of 1990. These programs are intended to promote national and community service among the citizens of the United States to help meet human, educational, environmental and public safety needs, particularly those related to poverty. This proposed rulemaking is intended to govern the awarding of grants under the programs authorized by the National and Community Service Act, to delineate the requirements that must be met by recipients of funds, and to describe the activities that may be conducted under these programs.

DATES: Comments must be submitted on or before December 9, 1991.

ADDRESSES: Comments on these regulations and application forms may be mailed to: The Commission on National and Community Service, P.O. Box 33119, Washington DC 20033–0119. Comments may also be delivered to the Commission on National and Community Service between 9 a.m. and 5:30 p.m., Fourth Floor, 529 14th St., NW., Washington DC. Comments received may also be inspected at the Commission between 10 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Anyone wishing further information concerning this notice should contact: Terry Russell at 202–606–4873.

SUPPLEMENTARY INFORMATION:

Program Summary

This proposed rule implements the National and Community Service Act of 1990, which provides funding for four major programs, and five smaller programs, all administered by the Commission on National and Community Service. The purposes of the Act are:

1. To renew the ethic of civic responsibility in the United States;

2. To encourage citizens, regardless of age, income or ability, to engage in full-time or part-time service to the Nation;

3. To involve youth in programs that will benefit the Nation and improve their own lives;

4. To enable young adults to make a sustained commitment to service by removing barriers created by high education costs, loan indebtedness and the cost of housing;

5. To build on the network of existing Federal, State, and local programs and agencies;

6. To involve participants in activities that would not otherwise be performed by paid workers;

7. To generate additional volunteer service hours to help meet human, educational, environmental and public safety needs, particularly those relating to poverty;

We add to these seven goals, three additional purposes that are implicit in the Act:

1. To encourage institutions to volunteer their resources and energies and encourage service among their members, employees, and affiliates;

2. To identify successful and promising community service initiatives and disseminate information about them; and

3. To discover and encourage new leaders, especially youth leaders, and to develop individuals and institutions that demonstrate that a successful life includes serving others.

The four major programs funded by the Act are:

1. Serve-America, which funds school- and community-based programs to involve school-age youth in service projects. In fiscal year 1992, $16.875 million will be available for this program.

2. Higher Education Innovative Projects for Community Service, which funds student service programs and teacher training in service-learning sponsored by higher education institutions or public and nonprofit agencies working with higher education institutions. In fiscal year 1992, $5.625 million will be available for this program.

3. American Conservation and Youth Service Corps Programs, which funds full-time year-round and summer youth service and conservation corps programs for teenagers and young adults. In fiscal year 1992, $22.5 million will be available for this program.

4. National and Community Service Program, which funds State-sponsored full-time, part-time and special senior service programs for individuals age 17 and older. In fiscal year 1992, $22.5 million will be available for this program.

In addition to these four programs, the Commission is required to fund at least three of the following programs:

1. Governors, Innovative Service Program, which provides funding to States for volunteer service programs.

2. Peace Corps/VISTA Training Program, which provides funds for Peace Corps or ACTION to establish training programs similar to the Reserve Officer Training Corps (ROTC) on college campuses for up to 50 Peace Corps or VISTA volunteers.

3. Rural Youth Service Demonstration Project, which authorizes the Commission to establish demonstration projects for youth in rural areas.

4. Assistance for Head Start, which authorizes the Commission to make grants to Foster Grandparent program grantees to enable senior citizens to volunteer in Head Start centers.

5. Employer-based Retiree Volunteer Program, which authorizes the Commission to make grants to public and private nonprofit organizations to bring together retirees, their former employers, and community agencies to develop employer-based retiree volunteer programs.

In fiscal year 1992, the Commission will allocate a portion of $5.5 million to fund three of the above five programs. Remaining funds may be used for regional clearinghouses, training, technical assistance, and evaluation. Comments are welcome on use of the $5.5 million, including priorities for funding among the above five programs.

Presidential Awards

Section 190(g) of the Act authorizes the President, acting through the Commission, to make awards for service to:

1. Individuals demonstrating outstanding community service including school-based services;

2. Outstanding service learning and community service programs; and

3. Outstanding teachers in service-learning programs.

The Commission seeks advice on the award program. For example, a program might be created which recognizes "Community Building" by individuals who have brought together diverse individuals, groups and organizations to create opportunities for young people to serve. Another example might involve creation of an award program similar to the Presidential Physical Fitness Awards that will recognize outstanding community service among youth throughout communities. Youth might receive a patch and recognition certificate. Awards may be made in each Congressional district and at the State level.

Regulations

In general, the National and Community Service Act provides a great deal of detail in defining program requirements. However, the Act allows for administrative discretion in several important areas. The proposed regulations incorporate the following principles:

1. State flexibility. Where it is possible to allow States and other localities discretion in program design, the regulations have opted for State flexibility rather than Federal mandates.

2. Maximizing impact. In order to best achieve the legislation's goal of increasing the number of citizens engaged in service, the regulations encourage the design of programs that will serve as a catalyst for involving additional individuals—including individuals formally participating in the programs and non-participant volunteers—in community service.

3. Encouraging coordinated, State-level efforts. To minimize the need for a large Federal bureaucracy, the proposed regulations incorporate the legislation's preference for State-level, coordinated efforts.

4. Building State and local partnerships. The regulations encourage joint efforts among diverse individuals and organizations to achieve the goals of the Act.

5. Simplifying administrative requirements and minimizing paperwork. Where possible, the regulations attempt to minimize the burden on applicants, and thereby, to encourage organizations not accustomed to seeking Federal funds to participate.

There are seven major parts to the proposed regulations. Part 2500 states the purposes of the Act, provides definitions, describes the requirement for a consolidated State application and State Comprehensive Service Plan, and encourages the creation of State Advisory Boards. Parts 2501 through 2505 cover the particular programs that are administered by the Commission. Part 2506 sets out the administrative requirements that are common to these programs. Not included in this package are the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, Administrative Requirements for Grants and Cooperative Agreements to other than State and Local Governments, regulations to implement the nondiscrimination provisions of the Act, and regulations for the Privacy Act, Freedom of Information Act, Sunshine Act, Government-wide Debarment and Suspension, and Government-wide Requirements for Drug-Free Workplace. These regulations will be promulgated at a later date.

2500 General Requirements

Section 2500.1 Purposes and Goals

The regulations list the seven purposes of the Act, and then add three additional purposes that are implicit in the Act.

Section 2500.2 Definitions

In order to provide greater clarity, the proposed regulations add several definitions to those included in the statute. The term "local applicant" is defined to include any eligible applicant other than a State or Indian Tribe. This definition would, for example, include institutions of higher education, local educational agencies, nonprofit organizations, and local governments. The term "non-participant volunteer" is defined as an individual who is not a participant enrolled in a program but who assists a program funded under this Act by providing volunteer services. For example, a student participating in a Serve-America program would be considered a "participant," while a parent who volunteers to supervise students in a service project would be considered a "non-participant volunteer." Similarly, a corps member of a youth corps that receives funding under the American Conservation and Youth Service Corps program would be considered a "participant," while a senior citizen who volunteers to serve as a mentor to the corps members would be considered a "non-participant volunteer."

Section 2500.3 Consolidated Applications

States are eligible to receive funds under any or all of the four major programs, while eligibility of local applicants—local governments, local educational agencies, higher education institutions, and nonprofit organizations—varies by program. In order to receive funds, a State must submit, under a single cover, an application for one or more of the four major grant programs. The State plan will be evaluated as a whole and each part will also be evaluated so it is possible that a State will not receive funds for all the programs for which it applies. A State may, for example, apply to operate programs under two of the programs authorized under the Act, but might receive funds for only one of the two programs. Once a grant is awarded to a State, a State may not shift funds from one program to another, and must use its grant for the program or programs designated in the application and the grant award.

If a State applies to the Commission for a grant, local applicants within that State are not eligible to apply directly to the Commission as a general rule. The exception to this rule is that higher education institutions are eligible to receive funding under part 2502 of this chapter even if the State in which they are located also applies for funding under this part. Higher education institutions are encouraged, however, to seek the endorsement of their State to be included in their application, or to work with the State so that the institution's proposed program can be incorporated in the State's Comprehensive Service Plan, discussed below. The Commission intends to send a letter to State governors, in addition to issuing a notice in the **Federal Register**, advising them of the date by which they must notify the Commission of their intention to file a State application. States that fail to notify the Commission by the deadline will be ineligible to receive funding from the Commission for that fiscal year. The Commission will then publish a notice in the **Federal Register** advising that local applicants in that State are eligible to apply directly to the Commission.

Section 2500.3(d) Comprehensive Service Plan

Each State applicant must submit a Comprehensive Service Plan. The plan should include a description of efforts to achieve the goals of the Act and the regulations. Funding provided under this Act should supplement an applicant's larger strategy for involving individuals in service. Therefore, the description should not be limited to activities that may receive National and Community Service Act funds, but should include information regarding the applicant's overall strategy for expanding commitment to service, including activities funded through other Federal, State, local or private-sector funding sources, and those that require no funding.

The plan also should include a description of the interrelationship among programs proposed to be funded under the Act and a description of any joint planning effort and partnerships undertaken to develop the plan (such as the involvement of public and private organizations, youth, and low-income communities, and the appointment of a State Advisory Board).

The regulations provide that a program's inclusion in a State Comprehensive Service Plan may be taken into consideration in funding

decisions for several of the individual programs.

Section 2500.4 State Advisory Board

In order to receive funds, States are strongly encouraged to establish a bipartisan and nonpartisan State Advisory Board, composed of State agencies, youth and low-income individuals, and representatives of a variety of local and community-based organizations, labor, business, educators, parents, and volunteer organizations. The regulations recommend that the Board assist in the development of the State Comprehensive Service Plan, coordination of programs, dissemination of information, recruitment of participants, development of materials and activities related to the programs, and development of an evaluation plan.

2501 Serve-America: Programs for Students and Out-of-School Youth

Section 2501.1 Eligibility to Receive Grants

States and Indian Tribes are eligible to receive funds under the Serve-America program, and the legislation assumes that it is both efficient and effective for the Commission to work with States rather than with the many thousands of potential local applicants. However, the statute also contemplates that local applicants may apply directly to the Commission when the State is not participating. The regulations clarify that local applicants may apply directly to the Commission for funding only when the State does not apply. In order to ensure that local applicants have sufficient notice to prepare an application in the event that the State does not intend to apply for funds under this Part, the Commission requires that States submit, by a specific date, a written notice expressing their intention to apply for funding under this Part and indicating who local applicants within the State may contact for information regarding funding from the State. If the State declines to contact the Commission by the specified date, the State may be barred from applying and local applicants in the State would be eligible to apply directly to the Commission for a portion of the State's share of funds.

In order to be eligible to receive funds from the Commission or the State, a local applicant must form a partnership. The partnership must be reflected in a written agreement specifying the responsibilities of each partner with respect to the development and operation of the proposed program. To implement, operate, or expand a school-based service-learning program, the partnership must include a local educational agency and a public or private nonprofit organization that will make service opportunities available. To implement, operate, or expand a youth community service program, the partnership must include two public or private nonprofit organizations: one that works with disadvantaged youth and one that will make service opportunities available. Finally, to implement, operate, or expand an adult volunteer or partnership program, the partnership must include a local education agency and a public or private nonprofit organization or private for-profit business. In each of the three types of programs, either partner (except a for-profit business) may take the lead in developing and submitting the application.

Sections 2501.2 and 2501.3 General Application Provisions and Procedures

State applications must be developed by the State Educational Agency. The content of the applications is as specified in the statute, with the addition of information designed to determine the number of individuals, both participants and non-participant volunteers, who will become involved in service as a result of the program.

Section 2501.5 State Serve-America Plan

Participating States must submit a plan covering a period of up to three years describing their proposed program. Alternatively, a State may submit a plan covering a period of up to one year for a planning grant for planning and building State capacity (which may be accomplished through grants and contracts with qualified organizations) to implement statewide, school-aged service-learning programs.

Section 2501.6 Local Serve-America Proposal

The regulations specify information that must be included in a local Serve-America proposal to be submitted by local applicants to the Commission if the State is not applying for funds, or to the State Educational Agency. States may, at their option, modify the requirements of the proposal to suit their own needs. States are not required to conduct a formal grant competition to determine which local applicants will receive funding, but are cautioned that they must use an appropriate distribution process that involves a broad-based group of local public and private organizations and individuals, and that results in a fair allocation of funds, and meets the requirements of the Act. The Commission will take careful note of the process proposed for sub-State allocation of funds, and reserves the right to require States to revise their proposals.

Section 2501.7 Distribution of Funds

The statute provides that if $20 million or more is available for subtitle B of the Act, funds should be distributed by formula to States. If less than $20 million is available, the Commission may make competitive grants to States.

Section 2501.8 Approval

The proposed regulations state that the Commission will approve applications that comply with the provisions of the Act. The Commission may, at its discretion, assist applicants to bring their applications into compliance.

Section 2501.10 Planning Grants

States have the option of applying for a planning grant worth 25 percent of its formula allocation *or* applying for an operating grant, 10 percent of which may be used for planning activities, but not both.

Section 2501.11 Term of Grant

State grants are for a term of up to three years. In order to preserve the ability of States not applying in the first year to apply in years subsequent to the first grant competition, the regulations provide that grants made by the Commission to local applicants will be for a term of up to one year.

Section 2501.15 Participation of Children and Teachers from Private Schools

Local educational agencies and States receiving grants to involve students in community service or to train teachers are required to allow for the equitable participation of students and teachers in private schools in the school district or State. Additionally, the regulations correct mistaken references to the "Secretary" in the statute by substituting the "Commission."

Section 2501.16 Priority for Funding

In addition to criteria included in the statute to determine priority for funding, the regulations provide that applicants demonstrating the ability to achieve the goals of the Act and that are part of a State Comprehensive Service Plan will also receive priority for funding.

2502 Higher Education Innovative Projects for Community Service

Section 2502.2 Eligibility for Grants

The statute and regulations allow for the funding of institutions of higher education, consortia of institutions of higher education, and public or private nonprofit agencies applying in consortia with institutions of higher education. Even if a State, working in consortia with one or more institutions of higher education, chooses to apply for higher education funds, universities and colleges within the State may nonetheless also apply directly to the Commission for funds.

Section 2502.2 Application

In addition to a description of the program, the regulations require applicants to provide information designed to determine the number of individuals who will become involved in service as a result of the program and to specify the membership of any local advisory committee. Although the appointment of a committee is optional, applicants may wish to consider gaining greater community support and input by working with a broad-based advisory committee. Such a committee should include a substantial percentage of student participants, as well as individuals representative of the community being served. The regulations also requires applicants to indicate whether the proposed program is part of a State's Comprehensive Service Plan or is endorsed by the State.

Section 2502.5 Criteria for Evaluating Applications.

The statute provided no criteria for ranking applications. The Commission has determined that the formula specified in Subtitle B applies only to the Serve-America program and not the Higher Education program, as it is a State level formula and the Higher Education program clearly indicates that institutions of higher education are eligible to receive funding directly from the Commission. The regulations therefore include eight criteria to be used to rank applications.

Section 2502.7 Reservation of Funds

Although the statute does not specify a limitation on the amount that may be spent for administration, the regulations include a five percent cap on administrative expenses. This figure is consistent with the statutory limitations in the Serve-America and American Conservation and Youth Service Corps programs.

2503 American Conservation and Youth Service Corps Programs

Section 2503.1 Purpose

The purpose of the program is to provide grants for the creation or expansion of full-time or summer youth service or conservation corps programs. Funds may be used to expand an existing program, but cannot be used to supplant existing funds for any program. The Commission interprets the term "expand" broadly to mean the addition of new participants, an increase in the number of hours or weeks during which the program operates, the involvement of an existing program in new types of service, or the improvement of an existing program consistent with the purposes and requirements of the Act. The Commission interprets the term "full-time" to mean a corps operating 30 or more hours per week for more than six months of the year.

Sections 2503.2 and 2503.3 Eligibility and Allocation of Funds

States and Indian tribes are eligible to compete for grants. Local applicants should be aware that State grantees are required to use a portion of funds for local applicants within the State. Local applicants—local governments and public or private nonprofit agencies with experience in youth programs—are eligible to apply directly to the Commission only if the State in which they are located does not apply. In order to provide sufficient notice to local applicants, States will be required to notify the Commission regarding their intention to apply by a specific date or lose their ability to submit an application for fiscal year 1992 funding. The eligibility of local applicants to apply directly to the Commission will be published in the **Federal Register.**

Section 2503.4 Selection Criteria

In addition to five criteria specified in the statute, the regulations provide that inclusion of the proposed program in a State Comprehensive Service Plan and the demonstrated ability to achieve the goals of the Act will also be taken into account in determining which proposals are funded.

Sections 2503.6 and 2503.7 State Application

States may apply to operate a program directly, and are required to describe the proposed program in the application. All States that are funded will be required to conduct a grant program that allows for a portion of the State grant to be used to fund proposals by local applicants. The Commission does not intend to require that States conduct a formal grant competition, but does expect the State will undertake a fair and inclusive process that involves a broad based group of local public and private organizations and individuals, to allocate the funds. This process must be described in the application. In addition to information specified in the statute, the regulations ask applicants to include a description of any local advisory committee that includes broad representation from the community.

Section 2503.22 Term of Grant

State grants are for a term of up to three years. In order to preserve the ability of States not applying in the first year to apply in future years, the term of grant for local applicants applying directly to the Commission is up to one year.

Section 2503.23 Use of Volunteers

Program agencies are encouraged to work with non-participant volunteers in a variety of ways and may use funds to facilitate the involvement of these volunteers as specified in the regulations. For example, a corps program might have periodic volunteer days in which corps members work alongside nonparticipant volunteers—friends, parents, siblings, or senior citizens; involve older volunteers as mentors to the participants; or use participants to coordinate service projects involving non-participant volunteers.

Section 2503.25 Living Allowance

The regulations allow program-agencies discretion to set the level of the living allowance to be provided to participants at a level no greater than 100 percent of the poverty line for a family of two. The present guidelines place this amount at $8,880. In providing this discretion, the Commission expects that agencies will set the living allowance at a level that will enable participants from low-income families to participate, taking into account the cost of living in the area, the age of participants, whether the program is year-round or summer, and the number of hours the participant is serving. Programs may pay a living allowance greater than the maximum set by the regulations, but may not use funding from this program for that purpose. If a program provides room and board to the participant, it may count a reasonable portion of the cost from the living allowance, in accordance with the limitations in § 2503.25(b)(1). Finally, programs are encouraged to provide health insurance to participants in addition to providing first aid and

emergency medical care required in § 2503.26(a)(1).

Section 2503.26 Health and Safety Standards

The statute requires the Commission to issue health and safety standards and procedures consistent with Federal, State and local standards. However, due to the wide variety of activities and sites and the local nature of the program, the draft regulations require that program agencies meet the existing Federal, State, and local health and safety standards that would otherwise apply if the participants engaging in the activity were regular employees of the program.

2504 Full-Time and Part-Time National and Community Service

Section 2504.2 Eligibility to Receive Grants

Only States and Indian Tribes are eligible to receive funding under this part. However, States may contract with any public or private nonprofit organization to carry out the programs funded under this part.

Section 2504.7 Reservation of Funds

States may not spend more than five percent of funds received through this part on administrative costs. Administrative costs are those defined in Subpart G of this Chapter, and do not, for example, include program staff salaries and benefits. However, the Commission does expect most funds will be used for costs associated with participants, including the living allowance and post-service benefit.

Section 2504.10 Value of Post-Service Benefits.

The Commission will provide a post-service benefit to full-time and part-time participants. The total amount of funds needed for the Commission's share of the benefit should be included in the grant request. The State is expected to administer the post-service benefits for the Commission, and to ensure that they are used only for the purposes specified in the regulations. The State share of the post service benefits must be paid out of non-Federal funds, but need not be from appropriated State dollars. For example, the State may solicit private donations or use tuition waivers to cover the cost of the State share.

Section 2504.13 Criteria for Evaluating Applications

The statute specifies four criteria for evaluating applications. The regulations add to these criteria items regarding the degree of bipartisan, nonpartisan and broad-based support for the programs, the inclusions of the program in the State's Comprehensive Service Plan, the demonstrated ability to achieve the goals of the Act, and the program's preparation of participants to serve as mentors for future volunteer service leadership.

Section 2504.14 Program Training

The statute requires that each participant receive three weeks of training provided by the Commission in cooperation with the State. After grants are awarded, the Commission will contact States receiving grants to arrange the training, which may take place at the program site. States may be asked to administer the training program in consultation with the Commission. The three weeks of training might not be full-time, but may take place on three consecutive weekends or through another arrangement to be determined by the Commission in agreement with the State.

2505 Innovative and Demonstration Programs

Section 2505.1 General

If funds are available, the Commission will fund at least three of the small programs in this section. Because 90 percent of funds are earmarked for the four major programs, only a limited amount of funding may be used for these five programs. As a result, they will be small and, in general, should serve as model programs that could be replicated. Although the statute provides limited direction for ranking proposals under this part, the regulations set priorities for funding in each of these programs except the Peace Corps/VISTA training program. If necessary, regulations for a Peace Corps or VISTA training program will be issued by the Peace Corps or the agency ACTION.

2506 Administrative Requirements

Nondiscrimination

Proposed regulations governing the nondiscrimination provisions of the legislation will be issued at a later date. However, prospective applicants should take note that all grantees will be subject to the following requirements, specified in section 175 of the statute:

(a) In General. An individual with responsibility for the operation of a project that receives assistance under this Act shall not discriminate against a participant or member of the staff of such project on the basis of race, color, national origin, sex, age, disability, or political affiliation of such member.

(b) Federal Financial Assistance.—Any assistance provided under this Act shall constitute Federal financial assistance for purposes of title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975.

(c) Religious: Discrimination.—(1) In General.—Except as provided in paragraph (2), an individual with responsibility for the operation of a project that receives assistance under this Act shall not discriminate on the basis of religion against a participant or a member of the project staff who is paid with funds received under this Act.

(2) Exception—Paragraph (1) shall not apply to the employment, with assistance provided under this Act, of any member of the staff of a project that receives assistance under this Act who was employed with the organization operating the project on the date the grant under this Act was awarded.

Grantees are also advised that the programs must show good faith efforts to comply with the requirements of the Americans with Disabilities Act, and should budget adequately to cover any cost associated with accommodating participants with disabilities.

Application Forms

Since they are in draft form, the applications should not be used to apply for funds. They are being reviewed by the Office of Management and Budget. We estimate that it will take ten hours to fill out each of the forms. If you have comments on the forms, please send them to the Commission on National and Community Service, as well as to the U.S. Office of Management and Budget, Attention: Daniel J. Chenok, New Executive Office Building, room 3002, Washington, DC 20503.

As required by the Regulatory Flexibility Act, it is hereby certified that this proposed rule will not have a significant impact on small business entities.

List of Subjects

45 CFR Part 2500

Grant programs—Social programs, Organization and functions.

45 CFR Part 2501

Grant programs—Social programs, Elementary and secondary education.

45 CFR Part 2502

Grant programs—Social programs, Colleges and Universities.

45 CFR Part 2503

Grant programs—Social programs, Youth.

45 CFR Part 2504

Grant programs—Social programs, Community development block grants, Community action programs.

45 CFR Part 2505

Grant programs—Social programs, Community development.

45 CFR Part 2506

Grant programs—Social programs, Grants administration.

For the reasons set forth in this preamble, the Commission on National and Community Service proposes to establish a new chapter XXV, consisting of parts 2500–2506, in title 45 of the Code of Federal Regulations to read as follows:

CHAPTER XXV—COMMISSION ON NATIONAL AND COMMUNITY SERVICE

Part
2500—General.
2501—Serve-America: programs for students and out-of-school youth.
2502—Higher Education Program: innovative projects for community service.
2503—American Conservation and Youth Corps Programs.
2504—National and Community Service Programs.
2505—Innovative and Demonstration Programs.
2506—Administrative Requirements.

PART 2500—GENERAL

Sec.
2500.1 Purposes and goals.
2500.2 Definitions.
2500.3 Consolidated applications.
2500.4 State advisory board.

Authority: 42 U.S.C. 12501 *et seq.*

§ 2500.1 Purposes and goals.

The purposes and goals of this chapter are:

(a) To renew the ethic of civic responsibility in the United States;

(b) To encourage citizens, regardless of age, income or ability, to engage in full-time or part-time service to the Nation;

(c) To involve youth in programs that will benefit the Nation and improve their own lives;

(d) To enable young adults to make a sustained commitment to service by removing barriers created by high education costs, loan indebtedness and the cost of housing;

(e) To build on the network of existing Federal, State, and local programs and agencies;

(f) To involve participants in activities that would not otherwise be performed by paid workers;

(g) To generate additional volunteer service hours to help meet human, educational, environmental and public safety needs, particularly those relating to poverty;

(h) To encourage institutions to volunteer their resources and energies and encourage service among their members, employees, and affiliates;

(i) To identify successful and promising community service initiatives and disseminate information about them; and

(j) To discover and encourage new leaders, especially youth leaders, and to develop individuals and institutions that demonstrate that a successful life includes serving others.

§ 2550.2 Definitions.

(a) As used in this chapter:

(1) *Act* means the National and Community Service Act of 1990 (Pub. L. 101–610, as amended)

(2) *Administrative costs or expenses* means those costs directly associated with overall program administration, but not those costs relating directly to service delivery or the supervision of volunteers.

(3) *Adult volunteer* means:

(i) An individual who is beyond the age of compulsory schooling, including an older American, an individual with a disability, and a parent;

(ii) An employee of a private business;

(iii) An employee of a public or nonprofit agency; or

(iv) Any other individual working without financial remuneration in an educational institution to assist students or out-of-school youth.

(4) *Commission* means the Commission on National and Community Service established under section 190 of the Act.

(5) *Community-based agency* means a private nonprofit organization that is representative of a community or a significant segment of a community and that is engaged in meeting human, educational, or environmental community needs, including churches and other religious entities and community action agencies.

(6) *Crew Supervisor* means the adult staffperson who is responsible for supervising a crew of participants, including the crew leader.

(7) *Economically Disadvantaged* with respect to youths has the same meaning given such term in section 4(8) of the Job Training Partnership Act (29 U.S.C. 1503(8)).

(8) *Elementary School* means a day or residential school which provides elementary education, as determined under State law.

(9) *Indian* means a person who is a member of an Indian tribe.

(10) *Indian Lands* means any real property owned by an Indian tribe, any real property held in trust by the United States for Indian tribes, and any real property held by Indian tribes that is subject to restrictions on alienation imposed by the United States.

(11) *Indian Tribe* means an Indian tribe, band, nation, or other organized group or community, including Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) that is recognized by the United States as Indians because of their status as Indians.

(12) *Institution of Higher Education* has the same meaning given such term in section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1141(a)).

(13) *Local Applicant* means any eligible applicant other than a State or Indian tribe.

(14) *Local Educational Agency* has the same meaning given such term in section 1201(g) of the Higher Education Act of 1965 (20 U.S.C. 1141(g)).

(15) *Local Government Agency* means a public agency that is engaged in meeting human, social, educational, or environmental needs.

(16) *Non-Participant Volunteer* means an individual who is not a participant enrolled in a program but who assists a program funded under this Chapter by providing volunteer services.

(17) *Out-Of-School Youth* means an individual who:

(i) Has not attained the age of 27;

(ii) Has not completed college or the equivalent thereof; and

(iii) Is not enrolled in an elementary or secondary school or institution of higher education.

(18) *Participant* means an individual enrolled in a program that receives assistance under this Chapter. Participants shall not be considered employees of the program.

(19) *Partnership Program* means a program through which adult volunteers, public or private agencies, institutions of higher education, or businesses assist a local educational agency.

(20) *Placement* means the matching of a participant with a specific project.

(21) *Program* means an activity carried out with assistance provided under this Chapter.

(22) *Program Agency* means:

(i) A Federal or State agency designated to manage a youth corps program;

(ii) The governing body of an Indian tribe that administers a youth corps program; or

(iii) A local applicant administering a youth corps program.

(23) *Project* means an activity that results in a specific identifiable service or product that otherwise would not be done with existing funds, and that does not duplicate the routine services or functions of the employer to whom participants are assigned.

(24) *Public Lands* means any lands or waters (or interest therein) owned or administered by the United States or by an agency or instrumentality of a State or local government.

(25) *Secondary School* means a day or residential school which provides secondary education, as determined under State law, except that it does not include any education provided beyond grade 12.

(26) *Service-Learning* means a method:

(i) Under which students learn and develop through active participation in thoughtfully organized service experiences that meet actual community needs and that are coordinated in collaboration with the school and community;

(ii) That is integrated into the students' academic curriculum or provides structured time for a student to think, talk, or write about what the student did and saw during the actual service activity;

(iii) That provides students with opportunities to use newly acquired skills and knowledge in real-life situations in their own communities; and

(iv) That enhances what is taught in school by extending student learning beyond the classroom and into the community and helps to foster the development of a sense of caring for others.

(27) *Service Opportunity* means a program or project, including service-learning program or project, that enables participants to perform meaningful and constructive service in agencies, institutions, and situations where the application of human talent and dedication may help to meet human, educational, linguistic, and environmental community needs, especially those relating to poverty.

(28) *Special Senior Service Participant* means an individual who is age 60 or over and willing to work full-time or part-time in conjunction with a full-time national service program.

(29) *Sponsoring Organization* means an organization, eligible to receive assistance under this Chapter, that has been selected to provide a placement for a participant.

(30) *State* means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and Palau, until such time as the Compact of Free Association is ratified.

(31) *State Educational Agency* has the same meaning given such term in section 1471(23) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2891(23)).

(32) *Student* means an individual who is enrolled in an elementary or secondary school or institution of higher education on a full- or part-time basis.

(33) *Summer Program* means a youth corps program authorized under this Chapter that is limited to the months of June, July, and August.

(34) *Youth Corps Program* means a program, such as a conservation corps or youth service corps program, that offers full-time, productive work (to be financed through stipends) with visible community benefits in a natural resource or human service setting and that gives participants a mix of work experience, basic and life skills, education, training, and support services.

(b) Authority To Make State Grants. The Commission may, in accordance with the provisions of this Chapter, make grants to States, Indian Tribes, and local applicants, to enable them to carry out programs under parts 2501, 2502, 2503, 2504, and 2505 of this chapter.

§ 2500.3 Consolidated applications.

(a) *General.* The Commission shall not award more than one grant during each fiscal year to each State under this chapter. The grant will be designated for use in accordance with one or more parts of this chapter.

(b) *Number of Applications.* A State may apply for a grant to operate one or more of the programs described in parts 2501 through 2505 of this chapter and shall consolidate all of its applications for the conduct of programs under parts 2501 through 2505 into a single application that meets the requirements of this chapter.

(c) *Multiple Use.* A grant awarded to a State may be used by the State in accordance with the applications consolidated, submitted, and approved under the parts. A State may, for example, apply to operate programs under two of the programs authorized under this chapter, but may receive funds for only one of the two programs. States may not shift funds from one program to another, and must use its grant for the program or programs designated in the application and the grant award.

(d) *Comprehensive Service Plan.* All applications submitted by States shall include a service plan that includes information about the programs proposed to be conducted with funds under this Chapter, as well as related efforts not proposed to be funded. The plan shall describe:

(1) Critical human, educational, environmental, and public safety problems, particularly those needs relating to low income communities and people, which will be addressed through institutions and individuals volunteering their time, energies and services through community service projects and initiatives;

(2) Efforts to generate additional volunteer service hours each year and to encourage additional individuals to volunteer their time and energies in community service efforts to address these problems;

(3) Efforts to discover and encourage new leaders, especially youth, and develop individuals and institutions that serve as strong examples of a commitment to serving others and to convince all Americans that a successful life includes serving others;

(4) Efforts to encourage young people to serve in programs that will benefit the Nation, and to eliminate barriers to full- and part-time service, especially for low-income individuals;

(5) Efforts to build on the existing organizational framework of Federal, State, and local programs and agencies to expand service-opportunities;

(6) Efforts to encourage institutions, such as government, business, nonprofit organizations, and religious and educational institutions, to volunteer their resources and energies, and encourage and facilitate volunteer and community service among their members, employees, affiliates and others involved with the institution;

(7) The interrelationship among programs proposed to be funded under the Act;

(8) Joint planning efforts and partnerships undertaken to develop this plan, including any involvement of local public and private organizations, youth, low-income communities and people, and State Advisory Board; and

(9) Such other information as specified by the State.

§ 2500.4 State advisory board.

(a) *Formation of a State Advisory Board.*

Each State that applies for assistance under this part is encouraged to established a bipartisan and nonpartisan State Advisory Board of National and Community Service.

(b) *Membership in a State Advisory Board.* (1) The chief executive officer of a State that applies for assistance under

this Part shall appoint members to a State Advisory Board of National and Community Service from among:

(i) Representatives of State agencies administering community service, youth service, and job training programs;

(ii) Youth and low-income individuals;

(iii) Representatives of labor, business, agencies, working with youth, community based organizations such as community action agencies, students, teachers, older American Volunteer Programs as established under title II of the Domestic Volunteer Service Act of 1973, full-time youth service corps programs, school-based community service programs, higher education institutions, local educational agencies, volunteer public safety organizations, educational partnership programs, and other organizations working with volunteers; and

(2) To the extent possible, the membership of the Advisory Board shall be balanced according to race, ethnicity, age, gender, and political party, and shall include individuals with disabilities.

(c) *Duties of the Board.* A State Advisory Board shall assist the State agency administering a program under this Chapter in:

(1) Developing the Comprehensive Service Plan described in § 2501.2(d);

(2) Coordinating programs receiving assistance under this part and related programs within the State;

(3) Disseminating information concerning service programs that receive assistance under this chapter;

(4) Recruiting participants for projects that receive assistance under this chapter;

(5) Developing programs, training methods, curriculum materials, and other materials and activities related to programs receiving assistance under this chapter; and

(6) Developing an evaluation plan for the proposed program regarding its effectiveness and the achievement of proposed goals and predicted outcomes.

PART 2501—SERVE-AMERICA: PROGRAMS FOR STUDENTS AND OUT-OF-SCHOOL YOUTH

Sec.

2501.1 Eligibility to receive grants.

General Application Provisions and Procedures

2501.2 State application.
2501.3 Local application.
2501.4 Assurances.
2501.5 State Serve-America Plan.
2501.6 Local Serve-America Proposal.
2501.7 Distribution of funds.
2501.8 Approval.
2501.9 Uses of funds.
2501.10 Planning grants.
2501.11 Term of grant.
2501.12 Federal share.
2501.13 Reservation of funds.
2501.14 Authorized uses of funds.
2501.15 Participation of children and teachers from private schools.
2501.16 Priority for funding.

Authority: 42 U.S.C. 12501 et seq.

§ 2501.1 Eligibility to receive grants.

(a) States and Indian Tribes whose applications are approved by the Commission are eligible to receive Serve-America operating or planning grants.

(b) Local applicants meeting the requirements in paragraph (c) of this section are eligible to receive Serve-America grants to conduct activities described in § 2501.9 (b), (c), and (d):

(1) From the State in which they are located, subject to the approval of the State Educational Agency; or

(2) In the case of a local applicant located in a State that has not submitted an application for a Serve-America operating or planning grant, directly from the Commission.

(c) Eligibility for Serve-America grants.

(1) To implement, operate, or expand a school-based service-learning program described in § 2501.9(b) of this part, a local applicant must be:

(i) A local educational agency working in partnership with one or more public or private non-profit organizations that will make service opportunities available for participants; or

(ii) A public or private nonprofit organization that will make service opportunities available for participants, working in partnership with one or more local educational agencies;

(2) To implement, operate, or expand a community service program described in § 2501.9(c) of this part, a local applicant must be:

(i) A public or private nonprofit organization that works with disadvantaged youth working in partnership with one or more public or private nonprofit organizations that will make service opportunities available for participants; or

(ii) A public or private nonprofit organization that will make service opportunities available working in partnership with one or more public or private nonprofit organizations that work with disadvantaged youth;

(3) To implement, operate, or expand an adult volunteer or partnership program described in § 2501.9(d) of this part, a local applicant must be:

(i) A local educational agency working in partnership with one or more public or private nonprofit organizations or private for-profit businesses; or

(ii) A public or private nonprofit organization working in partnership with one or more local educational agencies;

(4) For the purposes of this section, the term "partnership" means pursuant to a written agreement specifying the responsibilities of each partner with respect to the development and operation of the program proposed to be conducted under this part.

General Application Provisions and Procedures

§ 2501.2 State application.

(a) An application for Serve-America funds may be made by the State, acting through the State Educational Agency. The application must contain:

(1) The amount of funds requested for each fiscal year during the period covered by the State plan;

(2) An assurance that the State will comply with the requirements of this chapter;

(3) A budget of expenditures, which provides an estimate of the use and distribution of ServeAmerica funds during the period covered by the application consistent with the provisions of § 2501.13 of this part;

(4) An assurance that the State will ensure compliance with the Drug-Free Workplace Requirements for Federal Grant Recipients under section 5153 through 5158 of the Anti-Drug Abuse Act of 1988 (41 U.S.C. 702–707);

(5) The Serve-America plan, as required in § 2501.13 of this part;

(6) The number of individuals currently involved in community service as participants in programs proposed to receive funds under this part;

(7) The number of additional participants and non-participant volunteers expected to become involved in community service under the program (if applicable);

(8) A description of how non-participant volunteers will assist the program; and

(9) Such other information as specified by the Commission.

(b) Applications must be submitted annually at such time and in such manner as prescribed by the Commission.

§ 2501.3 Local application.

An application for Serve-America funds made by local applicants eligible for grants under § 2501.12(b)(2) of this part must contain:

(a) The amount of funds requested for the period covered by the application;

(b) An assurance that the local applicant will comply with the requirements of this chapter;

(c) A budget of expenditures, which provides an estimate of the use of Serve-America funds during the period covered by the application;

(d) An assurance that the applicant will ensure compliance with the Drug-Free Workplace Requirements for Federal Grant Recipients under sections 5153 through 5158 of the Anti-Drug Abuse Act of 1988 (41 U.S.C. 702–707);

(e) A local Serve-America proposal, as required in § 2501.6 of this part;

(f) A copy of a written agreement between the partners stating that the proposed program was jointly developed by the parties and that the program will be jointly executed by the parties; and

(g) The number of individuals currently involved in community service as participants in programs proposed to receive funds under this part;

(h) The number of additional participants and nonparticipant volunteers expected to become involved in community service under. the program (if applicable);

(i) A description of how non-participant volunteers will assist the program; and

(j) Such other information as specified by the Commission or the State Educational Agency.

§ 2501.4 Assurances.

(a) The State Serve-America plan must include assurances that:

(1) The State will ensure that local applicants are funded in accordance with the provisions of this Chapter;

(2) The State will keep such records and provide such information to the Commission as may be required for fiscal audits and program evaluation; and

(3) The State will assure that local applicants comply with the requirements of this chapter.

(b) The local Serve-America proposal must include assurances that:

(1) The local applicant will assure compliance with the requirements of this chapter;

(2) Prior to the placement of a participant, the program will consult with any local labor organization representing employees in the area who are engaged in the same or similar work as that proposed to be carried out by such program;

(3) An assurance that the applicant will develop an age-appropriate learning component for participants in the program that shall include a chance for participants to reflect on service experiences and expected learning outcomes; and

(4) Assurances that participants in the program will be provided with information concerning VISTA, the Peace Corps (as established by the Peace Corps Act (22 U.S.C. 2501 *et seq.*)), chapter 30 of title 38, United States Code, chapter 106 of title 10, United States Code, full-time Youth Service Corps and National Service programs receiving assistance under this title, and other service options and their benefits (such as student loan deferment and forgiveness) as appropriate.

§ 2501.5 State Serve-America Plan.

(a) A State Serve-America Plan for an operating grant must cover a period of not more than three years and must contain a description of the manner in which:

(1) Local applicants will be ranked by the State according to the criteria described in § 2501.16 of this part and in a manner that ensures the equitable treatment of local applications submitted by both local educational agencies and community-based organizations;

(2) Service programs within the State will be coordinated with each other and with other Federally assisted education programs, training programs, and other appropriate programs that serve youth;

(3) Cooperative efforts among local educational agencies, local government agencies, community-based agencies, businesses, and State agencies to develop and provide service opportunities, including those that involve the participation of urban, suburban, and rural youth working together, will be encouraged;

(4) Economically and educationally disadvantaged youths, including individuals with disabilities, youth with limited basic skills or learning disabilities, youth in foster care who are becoming too old for foster care, youth of limited English proficiency, and homeless youth are assured of service opportunities;

(5) Service programs that receive assistance under this part will be evaluated;

(6) Programs that receive assistance under this part will serve urban and rural areas and any tribal areas that exist within such State;

(7) Training and technical assistance will be provided to local grantees by qualified and experienced individuals employed by the State or through grant or contract with experienced content specialist and youth service resources organizations;

(8) Non-Federal assistance will be used to expand service opportunities for students and out-of-school youth;

(9) Information and outreach services will be disseminated and utilized to ensure the involvement of a broad range of organizations, particularly community-based organizations; and

(10) The State will give special consideration to providing assistance to projects that will provide academic credit to participants or are integrated into the academic program of the school.

(b) A State Serve-America Plan for a planning grant must cover a period of not more than one year, describe activities mentioned in § 2501.9(a) of this part proposed to be conducted under the plan, including a description of activities proposed to be accomplished through grants and contracts with qualified organizations and individuals.

§ 2501.6 Local Serve-America Proposal.

(a) A local Serve-America Proposal must: (1) Establish and specify the membership and role of an advisory committee. Representatives of community-based agencies including community action agencies, service recipients, youth-serving agencies, youth, parents, teachers, administrators, agencies that serve older adults, school board members, labor, business, and individuals with disabilities, if any such entities exist in the community, shall be offered the opportunity to serve on the committee;

(2) Describe the goals of the program which shall include goals that are qualifiable, measurable, and demonstrate any benefits that flow from the program to the participants and the community;

(3) Describe service opportunities to be provided under the program that shall include evidence that participants will make a sustained commitment to the service project;

(4) Describe the manner in which the participants in the program will be recruited, including any special efforts that will be utilized to recruit out-of-school youth with the assistance of community-based agencies;

(5) Describe the manner in which participants in the program were or will be involved in the design and operation of the program;

(6) Describe the qualifications, and responsibilities of the coordinator of the program assisted under this part;

(7) Describe preservice and inservice training for supervisors, teachers, and participants in the program;

(8) Describe the manner in which exemplary service will be recognized;

(9) Describe any potential resources that will permit continuation of the program, if needed, after the assistance received under this part has ended; and

(10) Disclose whether the program plans include preventing and treating

school-age drug and alcohol abuse and dependency.

(b) If the local applicant intends to operate a program described in § 2501.9 (b) or (c) of this part, the local Serve-America proposal submitted by the applicant must include:

(1) A disclosure of whether or not the participants will receive academic credit for participation in the program and whether the program is integrated into the academic program of the school;

(2) The target levels of participants in the program and the target levels for the hours of service that such participants will provide individually and as a group;

(3) The proportion of expected participants in the program who are educationally or economically disadvantaged, including participants with disabilities;

(4) The ages or grade levels of expected participants in the program; and

(5) Other relevant demographic information concerning such expected participants.

(c) If the local applicant intends to operate a program described in § 2501.9(d) of this part, the local Serve-America proposal must describe the students who will be assisted through such a program, including the ages and grade levels of such students.

§ 2501.7 Distribution of funds.

(a) If less than $20,000,000 is made available in each fiscal year to carry out this part, the Commission in consultation with the Secretary of Education will award operating or planning grants to States and Indian Tribes, and to eligible local applicants in States that have not applied for funding under this part, on a competitive basis, taking into account the degree to which the proposed plan meets the requirements of this Chapter and the priorities in § 2501.16 of this part.

(b) If $20,000,000 or more is made available to carry out this part, the Commission in consultation with the Secretary of Education will:

(1) Reserve not more than 1 percent for payments to Indian Tribes, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands and Palau, until such time as the Compact of Free Association is ratified to be allotted in accordance with their respective needs;

(2) Allot the remaining funds as follows: (i) From 50 percent of such remainder the Commission shall allot to each State an amount which bears the same ratio to 50 percent of such remainder as the population of the State bears to the school-aged population of all States.

(ii) From 50 percent of such remainder the Commission shall allot to each State an amount which bears the same ratio to 50 percent of such remainder as allocations to the State for the previous fiscal year's appropriation under the basic grant of chapter 1 of title 1 of the Elementary and Secondary Education Act of 1965 bears to such allocations to all States.

(iii) For purposes of this paragraph: (A) The term "school-age population" means the population aged 5 through 17, inclusive;

(B) The term "State" includes the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

(3) For any year in which a State is solely carrying out planning activities pursuant to a grant described in § 2501.10 of this part, a State may be paid not more than 25 percent of its allotment under paragraph (b)(2) of this section;

(4) If any State does not have an application approved under § 2501.8 of this part, the Commission may use the allotment the State would otherwise have received under paragraph (b)(3) of this section to make grants to eligible local applicants located within the State using the priority criteria described in § 2501.16 of this part; and

(5) Funds remaining after the requirements of paragraphs (b) (1) through (5) of this section have been carried out will be reallotted to States having approved applications under § 2501.8 of this part based on the formula described in paragraph (b)(3) of this section.

§ 2501.8 Approval.

If § 2501.7(b) of this part applies, the Commission shall approve applications submitted by States, Indian Tribes, and to eligible local applicants in States that have not applied for funding, that comply with the provisions of this Chapter. The Commission may, at its discretion, assist applicants in bringing their applications into compliance.

§ 2501.9 Uses of funds.

Grantees may use funds provided under this part for:

(a) Planning and building State capacity (which may be accomplished through grants and contracts with qualified organizations) for implementing statewide, school-aged service-learning programs, including:

(1) Pre-service and in-service training for teachers, supervisors, and personnel from community organizations in which service opportunities will be provided that will be conducted by qualified individuals or organizations that have experience in service-learning programs;

(2) Developing service-learning curricula, including age-appropriate learning components for students to analyze and apply their service experiences;

(3) Forming local partnerships to develop school-based community service programs in accordance with this subpart;

(4) Devising appropriate methods for research and evaluation of the educational value of youth service opportunities and the effect of youth service programs on communities;

(5) Establishing effective outreach and dissemination to ensure the broadest possible involvement of non-profit community based organizations and youth-service agencies with demonstrated effectiveness in their communities; and

(6) Integrating service-learning into academic curricula.

(b) The implementation, operation, or expansion of schoolbased service-learning programs.

(c) The implementation, operation, or expansion of community service programs for school dropouts, out-of-school youth and other youths.

(d) The implementation, operation, or expansion of programs involving adult volunteers in schools, or partnerships of schools and public or private organizations, to improve the education of at-risk students, school dropouts, and out-of-school youth.

§ 2501.10 Planning grants.

The Commission may make planning grants to States or Indian Tribes to conduct activities described in § 2501.4(a) of this part. Such grants will be in an amount described in § 2501.7(b)(4) of this part, or, if § 2501.7(a) of this part applies, in an amount determined by the Commission to be sufficient to conduct the proposed activities.

§ 2501.11 Term of grant.

(a) Grants to States and Indian Tribes, other than planning grants, shall be for a term of not more than three years, subject to annual appropriations and approval of the application required in § 2501.7 of this part.

(b) Grants made directly to local applicants by the Commission shall be for a term of not more than one year.

(c) Planning grants shall be for a term of not more than one year.

§ 2501.12 Federal share.

(a) The Federal share of a grant for a project under this part may not exceed:

(1) 90 percent of the total cost of a project for the first year for which the

project receives assistance under this part;

(2) 80 percent of the total cost of a project for the second year for which the project receives assistance under this part; and

(3) 70 percent of the total cost of a project for the third year for which the project receives assistance under this part.

(b) The non-Federal share of the costs of the project may be in cash or in kind, subject to the provisions of subpart G of part 2506 of this chapter.

(c) If a grantee is unable to pay the non-Federal share of the costs of the project due to lack of resources, the grantee may request a waiver of the requirements of paragraph (a) of this section. A request for a waiver must be in writing to the Commission and will be approved if the Commission determines that such a waiver would be equitable due to a lack of resources at the State or local level.

§ 2501.13 Reservation of funds.

A State receiving a Serve-America grant other than a planning grant shall use:

(a) Not more than 5 percent of such funds for administrative costs for any fiscal year;

(b) Not more than 10 percent of such funds to build capacity through training, technical assistance, curriculum development, and coordination activities, described in § 2501.9(a) of this part;

(c) Not less than 60 percent of such funds to carry out school-based service learning programs described in § 2501.9(b) of this part;

(d) Not less than 15 percent of such funds to carry out community-based service programs described in § 2501.9(c) of this part; and

(e) Not more than 10 percent of such funds to carry out adult volunteer and partnership programs described in § 2501.9(d) of this part.

§ 2501.14 Authorized uses of funds.

(a) Grants made under this part may be used for the supervision of participating students, program administration, training, reasonable transportation costs, insurance, evaluations, and for other reasonable expenses.

(b) Grants made available under this part may not be used to pay any stipend, allowance, or other financial support to any participant, except reimbursement for transportation, meals, and other reasonable out-of-pocket expenses directly related to participation in a program assisted under this part.

§ 2501.15 Participation of children and teachers from private schools.

To the extent consistent with the number of children in the State or in the school district of a local educational agency receiving funds under this part who are enrolled in private nonprofit elementary and secondary schools, such State or agency shall (after consultation with appropriate private school representatives) make provision:

(a) For the inclusion of services and arrangements for the benefit of such children so as to assure the equitable participation of such children in the programs or projects implemented to carry out the purposes and provide the benefits described in this part;

(b) Where applicable, for the training of the teachers of such children so as to assure the equitable participation of such teachers in the programs of projects implemented to carry out the purposes and provide the benefits described in this part; and

(c) If a State or local educational agency or institution of higher education is prohibited by law from providing for the participation of children or teachers from private nonprofit schools as required by paragraph (a) of this section, or if the Commission determines that a State or local educational agency substantially fails or is unwilling to provide for such participation on an equitable basis, the Commission shall waive such requirements and shall arrange for the provision of services to such children and teachers. Such waivers shall be subject to consultation, withholding, notice, and judicial review requirements in accordance with section 1017 of the Elementary and Secondary Education Act of 1965.

§ 2501.16 Priority for funding.

(a) In providing assistance under this part, the State educational agency, or the Commission if § 2501.1(b)(2) of this part applies, shall give priority for funds described in § 2501.9 (b) and (c) of this part to applications that describe programs that:

(1) Involve participants in the design and operation of the program;

(2) Are in the greatest need of assistance, such as programs targeting low-income areas;

(3) Involve students from both public and private elementary and secondary schools or individuals of different ages, races, sexes, ethnic groups, disabilities, and economic backgrounds serving together;

(4) Are integrated into the academic program;

(5) Involve a focus on substance abuse prevention or school drop-out prevention;

(6) Demonstrate the ability to achieve goals of this chapter; and

(7) Are part of a State Comprehensive Service Plan.

(b) In the case of an adult volunteer and partnership program (as described in § 2501.9(d) of this part) the State shall give priority to applications that contain a description of programs:

(1) That involve older Americans or parents as adult volunteers;

(2) That involve a partnership between an educational institution and a private business in the community;

(3) That include a focus on substance abuse prevention, school drop-out prevention, or nutrition; or

(4) That will improve basic skill and reduce illiteracy.

PART 2502—HIGHER EDUCATION PROGRAM: INNOVATIVE PROJECTS FOR COMMUNITY SERVICE

Sec.

2502.1 General.
2502.2 Eligibility for grants.
2502.3 Types of grants.
2502.4 Application.
2502.5 Criteria for evaluating applications.
2502.6 Federal share.
2502.7 Reservation of funds.
2502.8 Term of grant.

Authority: 42 U.S.C. 12501 *et seq.*

§ 2502.1 General.

The purpose of this part is to support innovative projects to encourage students to participate in community service activities.

§ 2502.2 Eligibility for grants.

The following are eligible for grants under this Part:

(a) Institutions of higher education;

(b) Consortia of institutions of higher education; and

(c) Public or private nonprofit agencies and organizations, including States, in consortia with institutions of higher education.

§ 2502.3 Types of grants.

The Commission in consultation with the Secretary of Education may make grants under this Part for the following purposes:

(a) To enable institutions to create or expand community service activities for students attending that institution;

(b) To encourage student-initiated and student-designed community service projects;

(c) To facilitate the integration of community service into academic curricula, so that students can obtain credit for their community service;

(d) To encourage students to participate in community service

activities that will engender a sense of social responsibility and commitment to the community;

(e) To encourage students to assist in the teaching of individuals with limited basic skills or an inability to read and write; and

(f) To provide for the training of teachers, prospective teachers, related education personnel, and community leaders in the skills necessary to develop, supervise, and organize community service activities, taking into consideration the particular needs of a community and the ability of the grantee to actively involve a major part of the community in, and substantially benefit the community by, the proposed community service activities.

§ 2502.4 Application.

(a) To receive a grant under this part, an eligible applicant shall prepare and submit to the Commission an application that, includes the following information:

(1) A description of the proposed program to be established with assistance provided under the grant;

(2) A description of the human, educational, environmental or public safety service that participants will perform and the community need that will be addressed under such program;

(3) A description of whether or not students will receive academic credit for community service activities under the program and whether the program is integrated into the academic curriculum;

(4) A description of the procedure for training supervisors and participants and supervising and organizing participants in such proposed program;

(5) A description of the procedures to ensure that the proposed program provides participants with an opportunity to reflect on their service experiences;

(6) A description of the budget for the program and the amount of funds requested for each fiscal year during the period covered by the application;

(7) Assurances that in the program, prior to the placement of a participant the applicant will consult with any local labor organization representing employees in the area who are engaged in the same or similar work as that proposed to be carried out by such project;

(8) The number of individuals currently involved in community service as participants in programs proposed to receive funds under this part;

(9) The number of additional participants and non-participant volunteers expected to become involved in community service under the program (if applicable);

(10) A description of how non-participant volunteers will assist the program;

(11) Whether or not the proposed program is part of a State Comprehensive Service Plan or endorsed by the State, even if the application for funding under this part is not being submitted by the State;

(12) A description of any local advisory committee that includes broad representation from the community; and

(13) Any additional information that the Commission may require.

(b) The Commission will announce in the **Federal Register** the availability of funds under this part, including the time and manner for submission and review of applications.

§ 2502.5 Criteria for evaluating applications.

Applications for grants under this part will be evaluated based on the following:

(a) The ability of the proposed program to advance the purposes in § 2502.3 of this part, in such a way as to infuse students with the ethic of voluntary community service;

(b) The degree to which the proposed program represents an innovative approach;

(c) The quality of the proposed program and evaluation plan;

(d) The demonstrated ability to effect the goals of this Chapter;

(e) The extent to which participants are involved in the design of service projects;

(f) The agreement of the institution of higher education to integrate the program into the educational experience;

(g) The likelihood of effective campus-wide involvement, including faculty, staff, administration, and students, or community-wide impact outside the campus; and

(h) The ability of the program to continue past the expiration of the grant.

§ 2502.6 Federal share.

(a) The Federal share of each grant awarded under this part shall not exceed 50 percent of the cost of the community service activities carried out with each such grants;

(b) The non-Federal share of each grant may be in cash or in kind (fairly evaluated), consistent with the terms of subpart G of part 2506.

§ 2502.7 Reservation of funds.

Not more than five percent of funds for administrative costs for any fiscal year.

§ 2502.8 Term of grant.

Grants may be for up to three years, subject to annual review and availability of appropriations.

PART 2503—AMERICAN CONSERVATION AND YOUTH CORPS PROGRAMS

Sec.

2503.1 Purpose.
2503.2 Eligibility.
2503.3 Allocation of funds.
2503.4 Selection criteria.
2503.5 Amount of awards.
2503.6 General content of the State application.
2503.7 Specific content of the State application to operate a program directly.
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Allowable Program Activities

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2503.26 Miscellaneous duties and authorities of program agencies.
2503.27 Health and safety standards.
2503.28 Federal and state employee status.

Authority: 42 U.S.C. 12501 et seq.

§ 2503.1 Purpose.

The purpose of this program is to provide grants for the creation or expansion of full-time or summer youth service or conservation corps programs.

§ 2503.2 Eligibility.

States, Indian Tribes, local governments, and public and private nonprofit organizations are eligible to receive awards under this program. In addition, the Commission may make awards to, or enter into other appropriate arrangements with, the Secretary of Agriculture, the Secretary of the Interior, or the Director of ACTION to carry out this program.

§ 2503.3 Allocation of funds.

(a) The Commission will make awards on a competitive basis to States and Indian Tribes using the selection criteria

and amount of award determination procedures specified in §§ 2503.4 and 2503.5.

(1) If a State does not apply for a grant, the Commission may award grants directly to local governments and public or private non-profit agencies with experience in youth programs within the State;

(2) Under these circumstances, if more than one local applicant in the State applies for funds, the Commission will allocate funds among the local applicants in the State in a manner determined by the Commission;

(3) An Indian Tribe is treated the same as a State for purposes of making grants under this part. The Commission shall reserve an amount not to exceed one percent of the amounts available in each fiscal year to make grants to Indian Tribes; and

(4) The Commission shall reserve an amount not to exceed five percent of the amounts made available in each fiscal year to make grants for Federal disaster relief programs.

§ 2503.4 Selection criteria.

(a) The Commission will consider making an award to any applicant that meets the criteria specified in this part. The Commission will give preference to programs that:

(1) Will provide long-term benefits to the public;

(2) Will instill a work ethic and a sense of public service in the participants;

(3) Will be labor intensive, and involve youth operating in crews;

(4) Can be planned and initiated promptly;

(5) Will enhance skills development and educational level and opportunities for the participants;

(6) Demonstrate the ability to achieve the goals of this chapter; and

(7) Are part of a State Comprehensive Service Plan.

(b) In addition, the Commission shall ensure the equitable treatment of both urban and rural areas, and shall fund an equal number of service and conservation corps programs.

(c) Further, in reviewing applications that propose to carry out activities on public lands or Indian lands, the Commission shall consult with the Department of the Interior.

§ 2503.5 Amount of awards.

The Commission, in determining the amount of a grant to be awarded under this program, shall consider:

(a) The number of participants to be served;

(b) The youth unemployment rate, as measured by the U.S. Department of Labor, in the State; and

(c) The type of activity proposed to be carried out. State Application Process.

§ 2503.6 General content of the State application.

(a) All applications submitted to the Commission by the States, under this process, shall include:

(1) A description of any youth corps program the State proposes to operate directly;

(2) A description of any grant program the State proposes to conduct;

(3) The number of individuals currently involved in community service as participants in programs proposed to receive funds under this part;

(4) The number of additional participants and non-participant volunteers expected to become involved in community service under the program (if applicable);

(5) A description of how non-participant volunteers will assist the program;

(6) The amount of funds required for each fiscal year during the period covered by the application;

(7) An assurance that the State will comply with the requirements of this Chapter;

(8) A budget of expenditures;

(9) An assurance that the State will ensure compliance with the Drug-Free Workplace Requirements for Federal Grant Recipients under sections 5153 through 5158 of the Anti-Drug Abuse Act of 1988 (41 U.S.C. 702–707); and

(10) Such other information as specified by the Commission.

(b) A State may operate a program directly with funds provided under this part only if it also uses a portion of such funds to establish and implement a program to make State and local applicants within the State consistent with the requirements of § 2503.8.

§ 2503.7 Specific content of the State application to operate a program directly.

Each application submitted by a State to operate a youth corps program directly shall include:

(a) A comprehensive description of the objectives and performance goals for the program to be conducted, a plan for managing and funding the program, and a description of the types and duration of training and work experience to be provided by such program;

(b) A plan for certifying the training skills acquired by participants and awarding academic credit to participants for competencies developed through training programs or work experience;

(c) An age-appropriate learning component for participants that includes procedures that permit participants to reflect on their service experience;

(d) An estimate of the number of participants and crew leaders necessary for the proposed program, the length of time that the services of such participants and crew leaders will be required, the support services needed for participants and crew leaders, and a plan for recruiting participants, including educationally and economically disadvantaged youth, youth with limited basic skills or learning disabilities, youth with disabilities, homeless youth, youth who are in foster care who are becoming too old for foster care, and youth of limited English proficiency;

(e) A list of requirements to be imposed on the sponsoring organizations of participants in the program, including giving preference to a sponsoring organization that invests in a program receiving assistance under this part (cash contribution or free training to participants), shall be given preference over a sponsoring organization that does not make such an investment;

(f) A description of the manner of appointment and training of sufficient supervisory staff (including participants who have displayed exceptional leadership qualities), to provide for other central elements of a youth corps, such as crew structure and a youth development component;

(g) A description of a plan to ensure the on-site presence of knowledgeable and competent supervisory personnel at program facilities;

(h) A description of the facilities, quarters and board (in the case of residential facilities), limited and emergency medical care, transportation from administrative facilities to work sites, accommodations for individuals with disabilities, and other appropriate services, supplies, and equipment that will be provided by such applicant;

(i) A description of the basic standards of work requirements, health, nutrition, sanitation, and safety, and the manner that such standards shall be enforced;

(j) A description of a plan to assign participants to facilities as near to the homes of such participants as is reasonable and practicable;

(k) An assurance that, prior to the placement of a participant, the program agency will consult with any local labor organization representing employees in the area who are engaged in the same or similar work as that proposed to be carried out by such program;

(l) A description of formal social counseling arrangements to be made available to the participant;

(m) A strategy for ensuring that individuals do not drop out of school for the purpose of participating in a youth corps program;

(n) A plan for ensuring that post-service education and training benefits are used solely for the purposes designated in this part;

(o) A description of any local advisory committee that includes youth and a broad representation from the community; and

(p) Such other information as the Commission will require.

§ 2503.8 Specific content of the State Application to conduct a grant program.

Each application submitted by a State to conduct a grant program for the benefit of entities within a State shall, include a description of the manner in which:

(a) The State will determine which local applicants receive funding;

(b) Service programs within the State will be coordinated;

(c) Economically and educationally disadvantaged youth, including youth with disabilities, youth with limited basic skills or learning disabilities, youth with limited English proficiency, homeless youth, youth with disabilities, and youth in foster care who are becoming too old for foster care, will be recruited;

(d) Projects that receive assistance will be evaluated concerning performance;

(e) The State will encourage cooperation among programs that receive assistance under this part and the appropriate State job training coordinating council established under the Job Training and Partnership Act (29 U.S.C. 1501 *et. seq.*);

(f) Such State will certify the training skills acquired by each participant and the credit provided to each participant for competencies developed through training programs or work experience obtained under programs that receive assistance under this part;

(g) Prior to the placement of a participant under this part, the State will ensure that program agencies consult with each local labor organization representing employees in the area who are engaged in the same or similar work that is proposed to be carried out by such program; and

(h) Programs will be evaluated.

Local Application Process

§ 2503.9 Procedures governing application to a State to operate a program.

When the State receives an award from the Commission to conduct a grant program, the State will define the contents and procedures to be followed when local applicants are applying to the State to operate a project through a grant from the State. In defining the contents of the application and the procedures to be followed, the State must assure that all applicable requirements contained in these regulations are being met.

§ 2503.10 Procedures for submitting application to the Commission.

The Commission may, at its discretion, consider applications from eligible local applicants in those situations where a State does not apply for a grant.

§ 2503.11 Contents of an application being provided directly to the Commission.

In those situations where a State does not apply for a grant from the Commission, and a local applicant chooses to apply directly to the Commission, the contents of the application from a local applicant shall be the same as those specified in § 2503.7.

§ 2503.12 Term of grant.

(a) Grants to States and Indian Tribes, other than planning grants, shall be for a term of not more than three years.

(b) Grants made by the Commission directly to local applicants shall be for a term of not more than one year.

Allowable Program Activities

§ 2503.13 Conservation Corps Activities.

Projects that receive assistance for conservation corps activities may carry out activities that focus on:

(a) Conservation, rehabilitation, and the improvement of wildlife habitat, rangelands, parks, and recreational areas;

(b) Urban and rural revitalization, historical and cultural site preservation, and reforestation of both urban and rural areas;

(c) Fish culture, wildlife habitat maintenance and improvement, and other fishery assistance;

(d) Road and trail maintenance and improvement;

(e) Erosion, flood, drought, and storm damage assistance and controls;

(f) Stream, lake, waterfront harbor, and port improvement;

(g) Wetlands protection and pollution control;

(h) Insect, disease, rodent, and fire prevention and control;

(i) The improvement of abandoned railroad beds and rights-of-way;

(j) Energy conservation projects, renewable resource enhancement, and recovery of biomass;

(k) Reclamation and improvement of strip-mined land;

(l) Forestry, nursery, and cultural operations; and

(m) Making public facilities accessible to individuals with disabilities.

§ 2503.14 Youth service corps activities.

Projects that receive assistance for youth service corps activities may carry out activities that include participant service in the following:

(a) State, local, and regional governmental agencies;

(b) Nursing homes, hospices, senior centers, hospitals, local libraries, parks, recreational facilities, child and adult day care centers, programs serving individuals with disabilities, and schools;

(c) Law enforcement agencies, and penal and prohibition systems;

(d) Private nonprofit organizations that primarily focus on social service, such as community action agencies;

(e) Activities that focus on the rehabilitation or improvement of public facilities and neighborhood improvements, literacy training that benefits educationally disadvantaged individuals, weatherization of and basic repairs to low-income housing including housing occupied by older adults, energy conservation (including solar energy techniques), removal of architectural barriers to access by individuals with disabilities to public facilities, activities that focus on drug and alcohol abuse education, prevention and treatment, and conservation, maintenance, or restoration of natural resources on publicly held lands; and

(f) Other nonpartisan civic activities and services that are of a substantial social benefit in meeting unmet human, educational or environmental needs (particularly related to poverty), in the community where volunteer services are to be performed.

§ 2503.15 Combined eligible activities.

Projects may also carry out activities that encompass the focuses and service described in §§ 2503.13 and 2503.14.

§ 2503.16 Ineligible service categories.

The eligible activities described in §§ 2503.13, 2503.14, and 2503.15 shall not be conducted by any:

(a) Business organized for profit;

(b) Labor union;

(c) Partisan political organization;

(d) Organization engaged in religious activities, unless such activities do not involve the use of funds provided under this part by program participants and program staff to give religious instruction, conduct worship services, or engage in any form of proselytization; or

(e) Domestic or personal service company or organization.

Administrative and Other Program Requirements

§ 2503.17 Administrative and other expenses.

(a) States may not use more than five percent of the amounts made available for administrative costs.

(b) In addition, a program agency may not:

(1) Use more than five percent of the amount of assistance for administrative costs;

(2) Use more than ten percent of funds for the purchase of major capital equipment (sec. 122(c)(1) of the Act);

(3) Use less than ten percent of funds for pre-service and in-service training and educational materials and services for participants; or

(4) Use more than two percent of funds for joint projects with senior citizens organizations.

§ 2503.18 Public lands or Indian lands.

To be eligible to receive assistance, a program must carry out activities on public lands or Indian lands, or result in a public benefit. A program carried out with assistance for conservation, rehabilitation, or improvement of any public lands or Indian lands shall be consistent with:

(a) The provisions of law and policies relating to the management and administration of such lands, and all other applicable provisions of law;

(b) All management, operational, and other plans and documents that govern the administration of such lands; and

(c) Any land or water conservation program (or any related program) administered in any State under the authority of any Federal program is encouraged to use services available under this Part to carry out its program.

§ 2503.19 Training and education services.

(a) *Assessment of Skills:* Each program agency shall assess the educational level of participants at the time of their entrance in to the program, using any available records or simplified assessment means or methodology and shall, where appropriate, refer such participants for testing for specific learning disabilities.

(b) *Enhancement of Skills:* Each program agency shall, through the programs and activities administered under this Part, enhance the educational skills of participants.

(c) *Provision of Pre-Service and In-Service Training and Education:* (1) Each program agency shall use not less than 10 percent of the funds received under this Part to provide pre-service and in-service training and educational materials and services for participants in such a program. Program participants shall be provided with information concerning the benefits to the community that result from the activities undertaken by such participants.

(2) A program agency may enter into arrangements with academic institutions or education providers to evaluate the basic skills of participants and to make academic study available to participants to enable such participants to upgrade literacy skills, to obtain high school diplomas or the equivalent of such diplomas, to obtain college degrees, or to enhance employable skills. Such academic institutions or education providers may include:

(i) Local education agencies;

(ii) Community colleges;

(iii) 4-year colleges;

(iv) Area vocational-technical schools; and

(v) Community based organizations.

(3) Career and education guidance and counseling shall be provided to a participant during a period of the in-service training as described in this Part. Each graduating participant shall be provided with counseling with respect to additional study, job skills training or employment and shall be provided job placement assistance where appropriate; and

(4) A program agency shall give priority to participants who have not obtained a high school diploma or the equivalent of such diploma, in providing service.

(d) *Standards and Procedures.* Appropriate State and local officials shall certify that standards and procedures with respect to the awarding of academic credit and the certification of educational attainment in programs conducted under paragraph (c) of this section are consistent with the requirements of applicable State and local law and regulations. These standards and procedures shall provide that an individual serving in a program that receives assistance:

(1) Must participate in a program to earn a high school diploma or the equivalent (non-high school graduates); and

(2) May arrange to receive academic credit in recognition of the education and skills obtained from service satisfactorily completed.

§ 2503.20 Matching requirement.

The Federal share of the cost of activities for which a grant is made to a State or local applicant under this program shall not exceed 75 percent of the total cost of such activities. Part 2506 describes the requirements with respect to the cost sharing funds being provided by a State or local applicant. Further the State or local applicant must demonstrate to the Commission's satisfaction that the effectiveness of the project will be enhanced by the use of Federal funds.

§ 2503.21 Age, citizenship, and other criteria for enrollment.

(a) *Age and Citizenship.* (1) Except as provided in paragraph (c) of this section, enrollment in projects that receive assistance under this program shall be limited to individuals who, at the time of enrollment, are:

(i) Not less than 16 years nor more than 25 years of age, except that summer programs may include individuals not less than 15 years of age nor more than 21 years of age at the time of the enrollment of such individuals; and

(ii) Citizens or nationals of the United States or lawful permanent resident aliens of the United States.

(2) A program agency may limit enrollment to any age group within the range specified above.

(b) *Participation of Disadvantaged Youth.* Programs that receive assistance shall ensure that educationally and economically disadvantaged youth, including youth in foster care who are becoming too old for foster care, youth with disabilities, youth with limited English proficiency, youth with limited basic skills or learning disabilities, and homeless youth, are offered opportunities to enroll.

(c) *Special Corps Members.* Program agencies may enroll a limited number of special corps members over age 25 so that the corps may draw on their special skills to fulfill the purposes of this Chapter. Projects are encouraged to consider senior citizens as special corps members.

§ 2503.22 Joint projects with senior citizens' organizations.

Program agencies shall use not more than 2 percent of amounts received to conduct joint projects with senior citizens' organizations to enable senior citizens to serve as mentors for youth participants.

§ 2503.23 Use of volunteers.

Program agencies may use volunteer services for purposes of assisting projects and may expend funds made

available to provide for services or costs incidental to the utilization of such volunteers, including transportation, supplies, lodging, recruiting, training, and supervision. The use of volunteer services may not result in the displacement of any participant.

§ 2503.24 Post-service benefits.

Program agencies shall provide post-service education and training benefits (such as scholarships and grants) for each participant in an amount that is not in excess of $100 per week, or in excess of $5,000 per year, whichever is less.

§ 2503.25 Living allowance and other benefits.

(a) *Full-time service allowance.*

(1) Each participant in a full-time youth corps program that receives assistance under this Part shall receive a living allowance of not more than 100 percent of the poverty line for a family of two as defined in the same section. Program agencies have the flexibility to establish the amount of living allowance in accordance with this Part.

(2) Notwithstanding this paragraph, a program agency may provide participants with additional amounts for living expenses that are made available from non-federal sources.

(b) *Adjustment to allowance.* A program agency may deduct, from the amounts required to be provided to a participant, a reasonable portion of the costs of the rates for any room and board that is provided for such participant at a residential facility. Such deducted funds shall be deposited into rollover accounts that shall be used solely to defray the costs of room and board for participants. In addition, the program agency shall establish the amount of the deductions and rates for any room and board after evaluating the costs of providing these services to the participant.

(c) *Allowance for quarters.* For purposes of section 5911 of title 5, United States Code, relating to allowances for quarters, a participant or crew leader shall be considered an employee of the United States within the meaning of the term "employee" as defined in paragraph (a)(3) of this section.

(d) *No requirement for a reduction in existing benefits.* A program in existence as of November 16, 1990, is not required to decrease any stipends, salaries, or living allowances provided to participants in such program as a result of any of the above requirements, so long as the amount of any such stipends, salaries, or living allowances that is in excess of the levels specified above are paid from non-Federal sources.

(e) *Health insurance.* In addition to a living allowance, program agencies are encouraged to provide health insurance to each participant in a full-time youth corps program who does not otherwise have access to health insurance.

§ 2503.26 Miscellaneous duties and authorities of program agencies.

(a) *Responsibilities to participant.* A program agency may provide facilities, quarters, and board and shall provide limited and emergency medical care, transportation from administrative facilities to work sites, accommodations for individuals with disabilities, and other appropriate services, supplies, and equipment to each participant.

(b) *Operation of maintenance agreements.* Program agencies may enter into contracts and other appropriate arrangements with local government agencies and nonprofit organizations for the operation or management of any projects or facilities under the program.

(c) *Coordination.* Program agencies shall coordinate their projects with related Federal, State, local, and private activities. The Commission has the same responsibility.

(d) *Limitation on placement.* No participant shall perform any specific activity for more than a six-month period. No participant shall remain enrolled in programs assisted under this subtitle for more than 24 months.

§ 2503.27 Health and safety standards.

(a) Program agencies shall establish and meet standards and enforcement procedures concerning the health and safety of participants for all projects, consistent with Federal, State, and local health and safety standards.

(b) Due to the wide variety of eligible activities and locations in which these activities may be performed, the Commission will not set separate standards for these programs. The Commission requires that program agencies meet the existing Federal, State, and local health and safety standards that would otherwise be applicable to the particular location of the project and the activity being performed if the activity were performed by regular employees of the program.

§ 2503.28 Federal and state employee status.

(a) *General Responsibility.* Participants and crew leaders shall be responsible to, or be a responsibility of, the program agency administering the program on which such participants, crew leaders, and volunteers work.

(b) *General Treatment as a Non-Federal Employee.* Except as otherwise provided under paragraph (c) and (d) of this section, a participant or crew leader in a program that receives assistance shall not be considered a Federal employee and shall not be subject to the provisions of law relating to Federal employment.

(c) *Work-Related Injury.* A participant or crew leader serving in a program that receives assistance shall be considered an employee of the United States, within the meaning of the term "employee" as defined in section 8101 of title 5, United States Code, for the purposes of subchapter I of chapter 81 of title 5, United States Code, relating to the compensation of Federal employees for work injuries. The provision of that subchapter shall apply, except:

(1) The term "performance of duty," as used in such subchapter, shall not include an act of a participant or crew leader while absent from the assigned post of duty of such participant or crew leader, except while participating in an activity authorized by or under the direction and supervision of a program agency, (including an activity while on pass or during travel to or from such post of duty);

(2) Compensation for disability shall not begin to accrue until the day following the date that the employment of the injured participant or crew leader is terminated; and

(3) In computing compensation benefits for disability or death, the annual rate of pay of a full-time participant shall be deemed to be such entry salary for a grade GS–5 employee, and the annual rate of pay of a participant enrolled for a period of summer service shall be deemed to be 25 percent of such entry salary.

(d) *Tort Claims Procedure.* For purposes of chapter 171 of title 28, United States Code, relating to tort claims procedure, a participant or crew leader assigned to a youth corps program for which a grant has been made to, or other appropriate arrangement entered into with, the Secretary of Agriculture, Secretary of the Interior, or the Director of ACTION, shall be considered an employee of the United States within the meaning of the term "employee of the government" as defined in 28 U.S.C. 2671.

PART 2504—NATIONAL AND COMMUNITY SERVICE PROGRAMS

Sec.

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Authority: 42 U.S.C. 12501 *et seq.*

§ 2504.1 General.

The Commission will make grants for the creation of full- and part-time national and community service programs.

§ 2504.2 Eligibility to receive grants.

States and Indian Tribes are eligible to receive grants under this Part. For the purposes of this Part, the definition of State includes Indian Tribes.

§ 2504.3 Eligibility to participate in a program funded under this part.

(a) Part-Time:

(1) An individual may serve in a part-time national service program under this Part if the individual:

(i) Is 17 years of age or older; and

(ii) Is a citizen of the United States or lawfully admitted for permanent residence.

(2) In selecting applicants for a part-time program, States must give priority to applicants who are currently employed.

(b) An individual may serve in a full-time national service program under this Part if the individual:

(1) Is 17 years of age or older;

(2) Has received a high school diploma or the equivalent of such diploma, or agrees to achieve a high school diploma or the equivalent of such while participating in the program; and

(3) Is a citizen of the United States or lawfully admitted for permanent residence.

(c) An individual may serve as a special senior service participant under this part if the individual:

(1) Is 60 years of age or older; and

(2) Meets any additional eligibility criteria for special senior service participation established by the Commission.

§ 2504.4 State application.

(a) An application for funds under this part made by a State, must contain:

(1) The amount of funds requested for each fiscal year during the period covered by the State plan;

(2) An assurance that the State will comply with the requirements of this Act and this part;

(3) A budget of estimated expenditures;

(4) The amount of Federal, State, and local public funds expended for services of the type assisted under this Act in the previous fiscal year;

(5) The State plan, as required by § 2504.6 of this part;

(6) The number of individuals currently involved in community service part-time or fulltime as participants in programs proposed to receive funds under this part;

(7) The number of additional part-time, full-time, and special senior service participants and nonparticipant volunteers expected to become involved in community service under the program (if applicable);

(8) Describe how non-participant volunteers will assist the program; and

(9) Such other information as specified by the Commission.

(b) Applications must be submitted annually at such time and in such manner as prescribed by the Commission.

§ 2504.5 Assurances.

The State plan must include assurances that:

(a) The State will keep such records and provide such information to the Commission as may be required for fiscal audits and program evaluation;

(b) The State will ensure that the uses of post-service benefits described in § 2504.9 of this part are limited to the uses specified in § 2504.10 of this part;

(c) Prior to the placement of a participant, the State will consult with any local labor organization representing employees in the area who are engaged in the same or similar work as that proposed to be carried out by such program;

(d) Prior to the placement of a participant, the State will consult with employees at the proposed project site who are engaged in the same or similar work as that proposed to be carried out by such program;

(e) The State will ensure that any entity carrying out program functions pursuant to grant or contract will comply with the provisions of the Act and part;

(f) The State will provide to each participant enrolled in a full-time program in-service educational services and materials to enable such participant to obtain a high school diploma or the equivalent of such diploma;

(g) The State will cooperate in arranging and conducting the three-week training provided to participants by the Commission; and

(h) The State will comply with the requirements of the Drug-Free Workplace Requirements for Federal Grant Recipients under section 5153 through 5158 of the Anti-Drug Abuse Act of 1988 (41 U.S.C. 401–707).

§ 2504.6 State plan.

The State plan must include the following information:

(a) A description of the State administrative plan for the implementation of a program with assistance provided under this Part, including such functions, if any, that will be carried out by public or private nonprofit organizations pursuant to a grant or contract;

(b) A description of the manner in which an ethnically and economically diverse group of participants, including economically and educationally disadvantaged individuals, college-bound youth, individuals with disabilities, youth in foster care who are becoming too old for foster care, and employed individuals, shall be recruited and selected for participation in a program receiving assistance under this part;

(c) Whether the program will enroll individuals who have completed undergraduate education or specialized post-secondary training and whose training and skills enable them to provide needed services in the State;

(d) A description of the procedures for training supervisors and participants in skills relevant to the work to be conducted and for supervising and organizing participants in such program;

(e) A description of the procedures to ensure that the program provides participants with an opportunity to reflect on their service experience;

(f) A plan for providing full-time participants with educational services required in § 2504.5(f) of this part;

(g) A description of the geographical areas within the State in which the program would be operated to provide the optimum match between the need for services and the anticipated supply of participants;

(h) A description of the plan for placing the participants in teams or making individual placements in the programs;

(i) A description of the anticipated number of full-and part-time participants and special senior service members in such program;

(j) A plan for the recruitment and selection of sponsoring organizations that will receive participants under the programs that receive assistance under this part;

(k) A description of the procedures for matching the participants with the sponsoring organizations;

(l) A description of the procedures to be used to assure that sponsoring organizations that are not matched with participants shall be provided with information concerning the VISTA program and the programs established under title II of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 5001 *et seq.);*

(m) The budget for the program, including anticipated public and private funding;

(n) A plan for evaluating the program and assurances that the State will fully cooperate with any evaluation undertaken by the Commission;

(o) The assurances required in § 2504.5 of this Part; and

(p) Any other information required by the Commission.

§ 2504.7 Reservation of funds.

Not more than five percent of funds received under this part shall be used for administrative costs for any fiscal year.

§ 2504.8 Types of service.

A participant in a program that receives assistance under this Part shall perform national service to meet unmet educational, human, environmental, and public safety needs especially those needs relating to poverty.

§ 2504.9 Terms of service.

(a)(1) An individual performing part-time national service under this Part shall agree to perform community service for not less than 3 years unless the individual is unable to complete the term of service for reasons provided in paragraph (b) of this section.

(2) An individual performing full-time national service under this Part shall agree to perform community service for not less than 1 year nor more than 2 years, at the discretion of such individual, unless the individual is unable to complete the term of service for reasons provided in paragraph (b) of this section.

(3) A special senior service participant performing national service under this Part shall serve for any period of time as determined by the State.

(b) If the State releases a participant from completing a term of service in a program receiving assistance under this Part for compelling personal circumstances as demonstrated by the participant, or if the program in which the participant serves does not receive continual funding for any reason, the State may provide such participant with that portion of the financial assistance described in paragraph (a) of this section that corresponds to the quantity of the service obligation completed by such individual.

(c)(1) A participant performing part-time national service under this part shall serve for:

(i) 2 weekends each month and 2 weeks during the year; or

(ii) An average of 9 hours per week each year in increments determined by the State;

(2) A participant performing full-time national service under this part shall serve for not less than 40 hours per week each year of service.

(3) A special senior service participant performing national service under this part shall serve either part- or full-time as permitted by the State.

§ 2504.10 Value of post service benefits.

(a)(1) The Commission, through the State, will annually provide to each part-time participant a non-transferrable post-service benefit equal in value to $1,000 for each year of service that such participant provides to the program. Funds for this benefit shall be included in the budget for the program and reflected in the grant request.

(2)(i) The State shall annually provide to each part-time participant from non-federal public or private funds a non-transferrable post-service benefit that is equal in value to $1,000 for each year of service that such participant provides to the program.

(ii) A State may apply for a waiver to reduce the amount of the post-service benefit to an amount that is equal to not less than the average annual tuition and required fees at four year public institutions of higher education within such State. Such waivers will be granted if the Commission determines that such waiver would be equitable due to lack of resources in the State.

(b)(1) The Commission, through the State, shall annually provide to each full-time participant from non-federal public or private funds a non-transferrable post-service benefit that is equal in value to $2,500 for each year of service that such participant provides to the program. Funds for this benefit shall be included in the budget for the program and reflected in the grant request.

(2)(i) The State shall annually provide from non-federal public or private funds to each full-time participant a non-transferrable post-service benefit that is equal in value to $2,500 for each year of service that such participant provides to the program.

(ii) A State may apply for a waiver to reduce the amount of the post-service benefit to an amount that is equal to not less than the average annual tuition, required fees, and room and board costs at four year public institutions of higher education within such State. Such waiver will be granted if the Commission determines that such waiver would be equitable due to a lack of resources in the State.

(c) Nothing in this part shall be construed to prevent a State from using funds made available from non-Federal sources to increase the amount of post-service benefits to an amount in excess of that described in this part.

(d) A special senior service participant shall be ineligible to receive post-service benefits under this part.

(e) The Commission will increase the value of post-service benefits provided under this part in each fiscal year based on the increase in the costs associated with attending a four year institution of higher education during that fiscal year. The Commission will determine such increases in costs based on information made available by the Bureau of Labor Statistics and the National Center for Education Statistics.

§ 2504.11 Uses of post-service benefits.

(a) A post-service benefit for a part-time participant provided under § 2504.10(a) of this part shall only be used for:

(1) Payment of a student loan from Federal or non-Federal sources;

(2) Down-payment or closing costs associated with purchasing a first home; or

(3) Tuition at an institution of higher education on a full-time basis, or to pay the expenses incurred in the full-time participation in an apprenticeship program approved by the appropriate State agency.

(b) A post-service benefit for a full-time participant provided under § 2504.10(b) of this part shall only be used for:

(1) Payment of a student loan from Federal or non-Federal sources; or

(2) Tuition, room and board, books and fees, and other costs associated with attendance (pursuant to section 472 of the Higher Education Act of 1965 (20 U.S.C. 108711)) at an institution of higher education on a full-time basis, or to pay the expenses incurred in the full-time participation in an apprenticeship program approved by the appropriate State agency.

§ 2504.12 Living allowance.

(a)(1) Each participant in a full-time youth corps program that receives assistance under this Part shall receive a living allowance of not more than 100 percent of the poverty line for a family of two as defined in the same section. Program agencies have the flexibility to

establish the amount of living allowance in accordance with this Part.

(2) Notwithstanding paragraph (a)(1) of this section, a program agency may provide participants with additional amounts that are made available from non-Federal sources.

(b) Nothing in this section shall be construed to require a program in existence on the date of enactment of this Act to decrease any stipends, salaries, or living allowances provided to participants under such program.

(c) In addition to the living allowances provided under paragraph (a) of this section, grantees are encouraged to provide health insurance to each participant in a full-time national service program who does not otherwise have access to health insurance.

(d)(1) Each full-time special senior service participant shall receive a living allowance equal to the living allowance provided to full-time participants under paragraph (a) of this section and such other assistance as the Commission considers necessary and appropriate for a special senior service participant to carry out the service obligation of such participant.

(2) Each part-time special senior service participant shall receive a living allowance equal to a share of such allowance offered to a full-time special senior service participant under paragraph (d)(1) of this section, that has been prorated according to the number of hours such part-time participant serves in the program, and such other assistance as the Commission considers necessary and appropriate for a special senior service participant to carry out the service obligation of such participant.

§ 2504.13 Criteria for evaluating applications.

(a) In determining whether to award a grant to a State the Commission will consider:

(1) The ability of the proposed program of such State to serve as an effective model for a large-scale national service program;

(2) The quality of the application of such State, including the plan of such State for training, recruitment, placement, evaluation, and data collection;

(3) The extent that the proposed program builds on existing programs;

(4) The expediency with which the State proposes to make the program operational;

(5) The degree of bipartisan, nonpartisan and broadbased support for the program within the State or the State's passage of legislation specifically authorizing the program;

(6) The inclusion of the proposed program in a State Comprehensive Service Plan;

(7) The demonstrated ability to achieve the goals of this Chapter; and

(8) The program's preparation of participants to serve as mentors and for future volunteer service leadership after leaving the program.

(b) In addition, the Commission shall ensure that programs receiving assistance under this part are geographically diverse and include programs in both urban and rural areas.

§ 2504.14 Program training.

(a) Each participant shall receive three weeks of training provided by the Commission in cooperation with the State.

(b) Each training session described above will:

(1) Orient each participant in the nature, philosophy, and purpose of the program; and

(2) Build an ethic of community service, and the assigned program task of each participant by providing:

(i) General training in citizenship and civic and community service; and

(ii) If feasible, specialized training for the type of service that each participant will perform.

(c) The State may provide additional training as the State determines necessary.

(d) Each sponsoring agency will also train participants in skills relevant to the work to be conducted.

PART 2505—INNOVATIVE AND DEMONSTRATION PROGRAMS

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Authority: 42 U.S.C. 12501 et seq

Subpart A—General

§ 2505.1 Limitation on grants.

Given the availability of funds, the Commission shall make grants for no fewer than three programs, as specified in subparts under this Part.

Subpart B—Governors' Innovative Service Programs

§ 2505.10 Purpose.

This program is to support the creation of innovative volunteer and community service programs by providing assistance for certain service and demonstration activities as well as support functions such as training, technical assistance, and evaluation.

§ 2505.11 Projects to be funded.

The Commission may provide assistance through a general grant to States to support one or more of the following activities:

(a) Enhancements to existing volunteer and community service programs;

(b) Demonstration programs;

(c) Research concerning, and evaluation of service programs;

(d) Coordination of service programs;

(e) Technical assistance;

(f) Training and staff development; and

(g) Collection and dissemination of information concerning service programs.

§ 2505.12 Application contents.

Applications proposing to perform activities under paragraphs (a) and (b) of this section must contain:

(a) A description of the proposed program;

(b) A description of the human, educational, environmental or public safety service that participants will perform and the State or community need that will be addressed;

(c) A description of the target population of participants and how they will be recruited;

(d) A description of the procedures for training supervisors and participants and for supervising and organizing participants;

(e) A description of the procedures to ensure that the proposed program provides participants with an opportunity to reflect on their service experiences;

(f) An assurance that, prior to the placement of a participant in the program, the applicant will consult with any local labor organization representing employees in the area who are engaged in the same or similar work as that proposed to be carried out by the program;

(g) The number of individuals currently involved in community service as participants in programs proposed to receive funds under this part;

(h) The number of additional participants and nonparticipant volunteers expected to become involved in community service under the program (if applicable);

(i) A description of how non-participant volunteers will assist the program;

(j) An assurance that, prior to the placement of a participant in the program, the applicant will consult with employees at the proposed program site who are engaged in the same or similar work as that proposed to be carried out by the program;

(k) A description of the budget of the program;

(l) The amount of funds requested for each fiscal year during the period covered by the application;

(m) An assurance that the State will comply with requirements of the Act and this part;

(n) An assurance that the State will ensure compliance with the Drug-Free Workplace Requirements for Federal Grant Recipients under section 5153 through 5158 of the Anti-Drug Abuse Act of 1988 (41 U.S.C. 702–707); and

(o) Such other information as specified by the Commission.

§ 2505.13 Selection criteria.

The Commission makes awards under this program on the basis of the criteria specified below. The Commission determines the following in evaluating applications:

(a) Ability of the proposed program to serve as an effective model, including demonstrating the effectiveness of results;

(b) Quality of the plan of operation and staffing, including the quality of the management plan, adequacy of the proposed budget in relation to objectives, evaluation plan, and qualifications and capability of any staff assigned to the project;

(c) Extent to which the proposed program builds on existing programs, including both expanding services and improving their quality;

(d) The demonstrated innovation of the program in responding to one or more of the following needs: human, educational, environmental, and public safety;

(e) The demonstrated ability to achieve the goals of this Chapter; and

(f) Inclusion in a State Comprehensive Service Plan.

Subpart C—Peace Corps and VISTA Training Programs

§ 2505.20 Purpose.

The purpose of this demonstration program is to provide certain training and education benefits for potential VISTA and Peace Corps volunteers.

§ 2505.21 Eligibility.

The Commission may make grants to, or enter into other appropriate arrangements with, the Director of the Peace Corps and/or the Director of ACTION to carry out this program. The Director of the Peace Corps and/or the Director of ACTION are responsible, either directly or by way of grant, contract, or other arrangement, to carry out the provisions specified in sections 161, 162, and 163 of Public Law 101–610. Any regulation determined necessary to govern the implementation of these provisions will be issued by the Director of ACTION and/or the Director of the Peace Corps.

Subpart D—Rural Youth Service Demonstration Project

§ 2505.30 Purpose.

The purpose of this program is to support demonstration projects in rural areas involving youth volunteers.

§ 2505.31 Designation of rural areas.

For the purposes of this subpart, a rural area is:

(a) Open country which is not part of or associated with an urban area;

(b) Any town, village, city or place, including the immediately adjacent densely settled area, which is not part of or associated with an urban area and which:

(1) Has a population not in excess of 10,000 if it is rural in character; or

(2) Has a population in excess of 10,000 but not in excess of 20,000 and is not contained within a Metropolitan Statistical Area.

§ 2505.32 Eligibility.

For the purposes of this subpart, States, local governments, and public and private non-profit organizations are eligible to receive awards as specified in the Federal Register announcing the availability of funds for this program.

§ 2505.33 Projects to be funded.

The Commission will support demonstration projects providing education, human, environmental, and public safety service performed by students, school dropouts, and out-of-school youth, in rural areas, including services for the elderly, assisted living services for the elderly and individuals with disabilities, and services targeted at the needs of low-income individuals in the community.

§ 2505.34 Allowable uses of funds.

Grantees may use funds provided under this program to support and operate the demonstration project. Funds may not be used to pay any stipend, allowance, or other financial support except reimbursement for transportation, meals, and other reasonable out-of-pocket expenses directly related to volunteer participation in a program.

§ 2505.35 Selection criteria.

The Commission makes awards under this program on the basis of the criteria specified below. The Commission shall determine the following in evaluating applications:

(a) The quality of the plan of operation and staffing, including the quality of the management plan, adequacy of the proposed budget in relation to the objectives, evaluation plan, and qualifications and capability of any staff assigned to the project;

(b) The ability of the proposed program to address the particular needs of assisted individuals in rural areas;

(c) The innovativeness of the program; and

(d) The demonstrated ability to achieve the goals of this chapter.

Subpart E—Assistance for Head Start

§ 2505.40 Purpose.

The purpose of this program is to increase the number of low-income individuals who provide services under the Foster Grandparent program to children who participate in Head Start programs.

§ 2505.41 Eligibility.

Only those organizations which have a grant from ACTION, the Federal Domestic Volunteer Agency, to operate a Foster Grandparent program, are eligible to receive awards.

§ 2505.42 Applicable requirements.

Grantees' activities under this program are limited to the support of

children who participate in Head Start programs.

§ 2505.43 Relationship with ACTION.

The Commission, at its discretion and with the concurrence of the Director of ACTION, may enter into an agreement to issue awards under this program through ACTION. If this agreement is applicable in any given year, the terms of the agreement will define the award process, and eligible applicants will be informed of the process through the notice of funding availability.

§ 2505.44 Selection criteria.

The Commission shall make grants under this program on the basis of the criteria specified below. The Commission shall consider the following in evaluating applications:

(a) The effectiveness of the project in addressing the needs of children enrolled in Head Start programs;

(b) The quality of the plan of operation and staffing, including the quality of the management plan, adequacy of the proposed budget in relation to objectives, and qualifications and capability of any staff assigned to the program;

(c) The demonstrated innovativeness of the program;

(d) The percentage of children in need not currently served by the program in the community;

(e) The unavailability of alternate funding sources to applicants; and

(f) The demonstrated ability to achieve the goals of this chapter.

Subpart F—Employer-based Retiree Volunteer Programs

§ 2505.50 Purpose.

The purpose of the program is to provide support to bring together retirees, their former employers, and community agencies to develop employer-based retiree volunteer programs.

§ 2505.51 Eligibility.

Public and private non-profit organizations are eligible to receive awards.

§ 2505.52 Projects to be funded.

The Commission will support projects involving retirees, their former employers, and community agencies engaged in volunteer activities.

§ 2505.53 Allowable uses of funds.

Funds may not be used to pay any stipend, allowance, or other financial support for participants except reimbursement for transportation, meals, and other reasonable out-of-pocket expenses directly related to volunteer participation in a program.

§ 2505.54 Selection criteria.

The Commission makes awards under this program on the basis of the criteria specified below. The Commission shall consider the following in evaluating applications:

(a) The effectiveness of the program in addressing the needs of the community;

(b) The quality of the plan of operation and staffing, including the quality of the management plan, adequacy of the proposed budget in relation to objectives, and qualifications and capability of any staff assigned to the project;

(c) The demonstrated innovation of the program;

(d) The effectiveness of the program in involving retirees, their former employers, and community organizations in working together to address the needs of the local community; and

(e) The demonstrated ability to achieve the goals of this Chapter.

PART 2506—ADMINISTRATIVE REQUIREMENTS

Subpart A—Program Specific Requirements

Sec.

2506.1 Reporting specific requirements.
2506.2 Supplementation, nonduplication, and nondisplacement.
2506.3 Suspension or termination of payments.
2506.4 Grievance procedure.
2506.5 Prohibition on use of funds for certain purposes.
2506.6 Standards of conduct.
2506.7 Treatment of benefits.
2506.8 Program evaluation.
2506.9 Treatment of stipend for living expenses.

Authority: 42 U.S.C. 12501 et seq.

Subpart A—Program Specific Requirements

§ 2506.1 Reporting specific requirements.

(a) *Requirement for State reports.* (1) Each State receiving assistance under this chapter shall prepare and submit, to the Commission, an annual report concerning the use of Federal funds under this chapter and the status of national and community service programs in the State; and

(2) The report shall include information demonstrating compliance with the provisions of this chapter, including §§ 2501.5(a)(9) and 2506.3, and any additional information requested by the Commission.

(b) *Requirement for Reports from Local Grantees.* In order to meet the requirement in § 2506.1(a), each State may require local grantees to supply such information as is necessary, including a comparison of actual accomplishments with the goals established for the program, the number of participants, the number of service hours generated, and the existence of any problems, delays, or adverse conditions that have affected or will affect the attainment of program goals. In addition, local grantees may be asked to provide information to the State demonstrating compliance with the provisions of the chapter.

(c) *Availability of report.* Reports submitted to the Commission by the States shall be made available to the public upon request.

§ 2506.2 Supplementation, nonduplication, and nondisplacement.

(a) *Supplementation.* (1) Recipients of funds under the Act are advised that such funds are to be used only to supplement, not supplant, State and local public funds expended for services of the type assisted under this Chapter in the previous fiscal year.

(2) Paragraph (a) of this section shall be satisfied, with respect to a particular program, if the aggregate expenditure for such program for the fiscal year in which services are to be provided will not be less than the aggregate expenditure for such program in the previous fiscal year, excluding the amount of Federal assistance provided and any other amounts used to pay the remainder of the costs of programs assisted under this title.

(b) *Nonduplication.* (1) In general, funds may be used only for a program that does not duplicate, and is in addition to, an activity performed by paid employees in the locality being served by the program; this requirement shall not be construed to bar the replication of an exemplary volunteer or community service program; and

(2) Assistance made available under this part shall not be provided to a private nonprofit entity to conduct activities that are the same or substantially equivalent to activities provided by a State or local government agency that such entity resides in, unless the requirements of paragraph (b) of this section are met.

(c) *Nondisplacement.* Further, an employer shall not displace an employee or position, including partial displacement such as reduction in hours, wages, or employment benefits, as a result of the assistance use by the employer of a participant in a program funded under this chapter. A service opportunity may not infringe in any manner on the promotional opportunity

of an employed individual. Services may not be performed that would supplant the hiring of employed workers or would otherwise be performed by an employee, including an employed worker who recently resigned or was discharged; an employee who is subject to a reduction in force; an employee who is on leave (terminal, temporary, vacation, emergency, or sick); or an employee who is on strike or who is being locked out.

§ 2506.3 Suspension or termination of payments.

(a) *General.* The Commission, may in accordance with the provisions of this Chapter, suspend or terminate payments under a grant or contract awarded under the Act whenever the Commission determines there is a material failure, or threat of failure, to comply with the applicable terms and conditions of the grant or contract or to protect the fiduciary interests of the government.

(b) *Summary action.* In emergency situations, the Commission may summarily suspend a grant or contract for not more than 30 days. Examples of emergency situations that would allow such action are serious risk to persons or property; violations of Federal, State, or local criminal statutes; or material violations of the grant or contract that are sufficiently serious that they outweigh the general policy in favor of advance notice and opportunity to show cause.

(c) *Suspension or termination notice.* The Commission shall notify a recipient by letter or telegram that the Commission intends to suspend or terminate assistance either in whole or in part unless the recipient shows good cause why such assistance should not be suspended. In this communication, the grounds and the effective date for the proposed suspension or termination shall be described. The recipient shall be given at least 7 calendar days to submit written material in opposition to the proposed action.

(d) *Hearings.* The recipient may request a hearing on a proposed suspension or termination. With 5 days notice to the recipient, the Commission may authorize the conduct of a hearing or other meeting, at a location convenient to the recipient, to consider the proposed suspension or termination. A transcript or recording shall be made of such a hearing or meeting and it shall be available for inspection by any individual.

(e) *Decision.* The Commission's decision on suspension or termination of a grant or contract shall be final and shall be delivered by letter or telegram.

§ 2506.4 Grievance procedure.

(a) *General.* State and local applicants that receive assistance under this chapter shall establish and maintain a procedure to adjudicate grievances from participants, labor organizations, and other interested individuals concerning programs that receive assistance under this part. Such grievances may include proposed placements of participants in projects receiving assistance.

(b) *Deadline for grievances.* Except for a grievance that alleges fraud or criminal activity, a grievance shall be made not later than 1 year after the date of an alleged occurrence.

(c) *Deadline for hearing and decision.* If a hearing is held on a grievance, it shall be conducted no later than 30 days from the date of the filing of the grievance. A decision shall be made not later than 60 days from the date of the filing of the grievance.

(d) *Arbitration.* When there is an adverse decision on a grievance, or 60 days after the filing of a grievance if no decision has been reached, the party filing the grievance shall submit the grievance to binding arbitration before a qualified arbiter who is jointly selected and independent of the interested parties. Any resulting proceedings shall be held no later than 45 days after the request for arbitration, with a decision made not later than 30 days after the date of the proceeding. The cost of arbitration shall be divided evenly between the parties to the arbitration.

(e) *Proposed placement.* If a grievance is filed regarding a proposed placement of a participant in a program that receives assistance under this Part, such placement shall not be made unless it is consistent with the resolution of the grievance in accordance with the requirements of this chapter.

(f) *Remedies.* Remedies for a grievance filed under this chapter include suspension or termination of payments for assistance under the Act, and prohibition of a placement of a participant described in paragraph (e) of this section.

§ 2506.5 Prohibition on use of funds for certain purposes.

(a) *Prohibited uses.* No assistance made available under a grant under this Chapter shall be used to provide religious instruction, conduct worship services, or engage in any form of proselytization.

(b) *Political activity.* Assistance provided under this chapter shall not be used by program participants and program staff to:

(1) Assist, promote, or deter union organizing; or

(2) Finance, directly or indirectly, any activity designed to influence the outcome of an election to Federal office or the outcome of an election to a State or local public office.

(c) *Contracts or collective bargaining agreements.* A project that receives assistance under this chapter shall not impair existing contracts for services or collective bargaining agreements.

§ 2506.6 Standards of conduct.

Programs that receive assistance under this chapter shall establish and stringently enforce standards of conduct at the program site to promote proper moral and disciplinary conditions.

§ 2506.7 Treatment of benefits.

Living allowances and post-service benefits provided to individuals participating in programs under this Act shall not be considered as income for the purposes of determining eligibility for and the amount of income transfer and in-kind aid furnished under any Federal or federally assisted program based on need, other than programs under the Social Security Act.

§ 2506.8 Program evaluation.

(a) *General.* The Commission has broad responsibility for the continuing evaluation of programs receiving assistance under this chapter. In turn, program participants, States, and local grantees have the responsibility to provide information to the Commission as required by the Commission in order to evaluate programs and projects funded under this chapter. State and local grantees may be required to assist in the selection of, and collection of information about, control groups of individuals who are not selected to participate in funded programs. As appropriate, the Commission shall keep confidential the information acquired from such evaluations.

(b) *Standards for the evaluation of program effectiveness.* (1) All funded programs will be evaluated based on their effectiveness in achieving any or all of the goals of the Act.

(2) Specific evaluation standards for each of these broad goals will be established by the Commission and made available to funded programs and the public.

(c) *Program objectives.* Programs receiving funds under part 2504 will be evaluated to determine their effectiveness in:

(1) Recruiting and enrolling diverse participants in such programs based on economic background, race, ethnicity, age, marital status, education levels, and disability;

(2) Promoting the educational achievement of each participant based on earning a high school diploma or its equivalent and the future enrollment and completion of increasingly higher levels of education;

(3) Encouraging each participant to engage in public and community service after completion of the program based on career choices and service in other service programs such as VISTA, the Peace Corps, the military, and part-time volunteer service;

(4) Promoting positive attitudes among each participant regarding the participant's role in solving community problems, ability to improve the lives of others, sense of responsibilities as a citizen and community member, and other factors;

(5) Enabling participants to finance a lesser portion of their higher education through student loans;

(6) Providing services and projects that benefit the community;

(7) Supplying additional volunteer assistance to community agencies without overloading such agencies with more volunteers than can be utilized effectively;

(8) Providing service and activities that could not otherwise be performed by employed workers and that will not supplant the hiring of, or result in the displacement of, employed workers or impair the existing contracts of such workers; and

(9) Attracting a greater number of citizens to public service, including service in the active and reserve components of the Armed Forces, the National Guard, the Peace Corps, VISTA, and the Older American Volunteer Programs.

§ 2506.9 Treatment of stipend for living expenses.

Living allowances received under this part shall not be considered in the determination of expected family contribution or independent student status under subpart 1 of part A of title IV, and part F of title IV, of the Higher Education Act of 1965.

BILLING CODE 6820-BA-M

Note: These forms will not appear in the Code of Federal Regulations.

NOTE: This is a draft form which may be revised after we receive comments. DO NOT use as an application.

COMMISSION ON NATIONAL AND COMMUNITY SERVICE

STATE GRANTS PROGRAMS

Background

In 1990, Congress passed and the President signed legislation creating the COMMISSION ON NATIONAL AND COMMUNITY SERVICE. The COMMISSION was empowered to make grants in support of the goals set forth in the legislation. Those goals are:

- To renew the ethic of civic responsibility in the United States;
- To encourage citizens, regardless of age, income or ability, to engage in full-time or part-time service to the Nation;
- To involve youth in programs that will benefit the Nation and improve their own lives;
- To enable young adults to make a sustained commitment to service by removing barriers created by high education costs, loan indebtedness and the cost of housing;
- To build on the network of existing Federal, State, and local programs and agencies;
- To involve participants in activities that would not otherwise be performed by paid workers;
- To generate additional volunteer service hours to help meet human, educational, environmental and public safety needs, particularly those relating to poverty;
- To encourage institutions to volunteer their resources and energies and encourage service among their members, employees, and affiliates;
- To identify successful and promising community service initiatives and disseminate information about them; and
- To discover and encourage new leaders, especially youth, and to develop individuals and institutions that demonstrate that a successful life includes serving others.

The COMMISSION will award grants to States for (a) Serve-America, (b) Higher Education Innovative Projects, (c) Conservation and Youth Service Corps, and (d) National and Community Service. Grants will also be made directly to institutions of higher education and, under certain circumstances, to local applicants for Serve-America and Conservation and Youth Corps programs. Applications for these other competitions are available from the COMMISSION.

Programs

Among its several charges, the COMMISSION is directed to support programs in the following areas:

I. **Serve-America:** funds operating and planning grants for school and community-based programs to involve students from kindergarten through high school, and out-of-school youth up to age 27, in service projects; and to increase the number of adults who volunteer in schools.

II. **Higher Education Innovative Projects for Community Service:** funds service programs and teacher training in service-learning by higher education institutions or agencies working with higher educations.

III. **Conservation Corps and Youth Service Corps:** funds full-time or summer youth service or conservation corps programs for teenagers and young adults.

IV. **National and Community Service Programs:** funds State-sponsored full-time and part-time and special senior service programs for individuals age 17 and older.

Consolidated Application

States are eligible to receive funds under any or all of the four major programs, while eligibility of local applicants -- local governments, local educational agencies, higher education institutions, and non-profit organizations -- varies by program. In order to receive funds, a State must submit, under a single cover, an application for one or more of the four major grant programs. The State plan will be evaluated as a whole and each part will also be evaluated so it is possible that a State will not receive funds for all of the programs for which it applies. Once a grant is awarded to a State, a State may not shift funds from one program to another, and must use its grant for the program or programs designated in the application and the grant award.

The four programs covered by this application are intended to provide support to enhance opportunities for Americans of all ages to volunteer their services for the benefit of others and to encourage innovative approaches. The application process is designed to give maximum flexibility to States for program design, to encourage state-level coordination and to build State and local partnerships.

Eligibility

States and Indian Tribes may submit applications for the Serve-America, American Conservation and Youth Service Corps and National and Community Service programs. States or Indian Tribes may apply for higher education programs only in consortia with institutions of higher education. The term "State" includes each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and Palau, until such time as the Compact of Free Association is ratified.

Definitions

For the purposes of this grant program, applicants should understand that the term "service-learning" means a method under which students learn and develop through active participation in thoughtfully organized service experiences that meet actual community needs and that are coordinated in collaboration with the school and community; that is integrated into the students' academic curriculum or provides structured time for a student to think, talk, or write about what the student did and saw during the actual service activity; that provides students with opportunities to use newly acquired skills and knowledge in real-life situations in their own communities; and that enhances what is taught in schools by extending student learning beyond the classroom and into the community and helps to foster the development of a sense of caring for others. The term "service opportunity" means a program or project, including a service learning program or project, that enables students to perform meaningful and constructive service in agencies, institutions, and situations where the application of human talent and dedication may help to meet human, educational, linguistic, and environmental community needs, especially those relating to poverty.

The term "**Youth Corps Program**" means a program, such as a conservation corps or youth service program, that offers full-time, productive work (to be financed through stipends) with visible community benefits in a natural resource or human service setting that gives participants a mix of work experience, basic and life skills, education, training, and support services. The term "**summer program**" means a youth corps program that is limited to the months of June, July and August. "**Partnership program**" means a program through which adult volunteers, public or private agencies, institutions of higher education, or businesses assist a local educational agency.

Other definitions can be found in the regulations governing this competition.

State Advisory Board

In order to receive funds, States are strongly encouraged to establish a bipartisan and nonpartisan State Advisory Board, composed of representatives of State agencies, youth and low-income individuals, and a variety of local and community-based organizations. The Act and the regulations recommend that the Board assist in the development of the State comprehensive service plan, coordination of programs, dissemination of information, recruitment of participants, development of materials and activities related to the programs, and development of an evaluation plan.

Size and Number of Grants

I. **Serve America:** For fiscal year 1992, $16.9 million is available for this program to be allocated through a funding formula that is based on the school-age population of States and the amount of funds States receive under the Chapter 1 basic grant. The range of grants to States is expected to fall between $25,000 and $1.5 million.

II. **Higher Education Innovative Projects for Community Service:** For fiscal year 1992, $5.6 million is available for this program. The size and number of grants will be based on the number and quality of proposals received, and the number of institutions involved in the consortia.

III. **Conservation Corps and Youth Service Corps:** For fiscal year 1992, $22.5 million is available for this program. The size and number of grants will be based on the number and quality of proposals received, and might range as low as $25,000 or as high as $1.5 million.

IV. **National and Community Service Programs:** For fiscal year 1992, $22.5 million is available for this program. The size and number of grants will be based on the number and quality of proposals received. We anticipate making no more than 10 grants, with the average grant in the range of $1 million to $4 million.

Term of Grants

All grants to States and Indian tribes are for up to three years, except planning grants under the Serve-America program, which are for up to one year.

Non-Federal Match

I. Serve-America: 10% in the first year.
20% in the second year.
30% in the third year.

II. Higher Education: 50% each year.

III. Conservation and Youth Service Corps: 25% each year.

IV. National and Community Service: 50% of post-service benefit for participants.

Review Process

While staff will screen proposals, and present recommendations to the Board, all funding decisions will be made by the Board of Directors of the COMMISSION.

General State Information

1. Each State must submit a cover sheet with the following information:

   -- Name of State
   -- Lead agency submitting consolidated application
   -- Name, address and phone number of contact person
   -- Programs included in consolidated application

2. All State applicants for one or more of the four specific programs must include in their application a **Comprehensive Service Plan** that includes information about the programs proposed to be conducted with funds under the National and Community Service Act, as well as related efforts not proposed to be funded. The intention of the Comprehensive Service Plan requirement is to ensure that applicants understand how their efforts are part of a larger effort to promote service. Each Plan should be no longer than fifteen (15) typed and doubled-spaced pages and must describe in a narrative:

   (1) Critical human, educational, environmental, and public safety problems, particularly those needs relating to poverty, which will be addressed through institutions and individuals volunteering their time, energies and services through community service projects and initiatives;

   (2) Efforts to generate additional volunteer service hours each year and to encourage additional individuals to volunteer their time and energies in community service efforts to address these problems;

   (3) Efforts to discover and encourage new leaders, especially youth, and develop individuals and institutions that serve as strong examples of a commitment to serving others and to convince all Americans that a successful life includes serving others;

   (4) Efforts to encourage young people to serve in programs that will benefit the Nation, and to eliminate barriers to full- and part-time service, especially for low-income individuals;

   (5) Efforts to build on the existing organizational framework of Federal, State, and local programs and agencies to expand service opportunities;

   (6) Efforts to encourage institutions, such as government, business, nonprofit organizations, and religious and educational institutions, to volunteer their resources and energies, and encourage and facilitate volunteer and community service among their members, employees, affiliates and others involved with the institution;

   (7) The interrelationship among programs proposed to be funded under the Act;

   (8) Joint planning efforts and partnerships undertaken to develop this plan, including any involvement of local public and private organizations, youth, low-income communities, and State Advisory Board; and

   (9) Such other information as specified by the State

   An appendix to the plan should be included to list the members of any State Advisory Board and their affiliations.

Proposal Content For <u>each</u> program covered by the State's consolidated application, include the following:

1. **Title Page:** Use attached form or a facsimile to cover each proposal copy. Please include a brief abstract in the space provided, in addition to the requirements that follow.

2. **Abstract:** Attach a one-page, double-spaced abstract following the Title page. This is a key element and should include statements about: (1) the problems being addressed; (2) the proposed activities; and (3) the project's intended outcomes.

3. **Institutional and Personnel Information.** Applicants should submit background information on the participating agencies which is relevant to a full understanding of the proposed project. Please attach a description of the capabilities and experience of key project staff.

4. **Budget.** Use the attached form or a suitable facsimile to prepare a complete budget, including details of expenditures for salary, travel, etc. Indirect costs may not be assessed . Also, provide a narrative budget statement explaining: (1) the basis used to estimate certain costs (professional personnel, consultants, travel), and any other costs that may appear unusual; (2) how the major cost items relate to the proposed project activities; and (3) the cost of the project's evaluation components. In the case of proposals requesting more than one year of funding a budget page for the additional years should be provided. You must submit a separate budget for each program for which you are applying. The amount shown on the Title Page, however, should be the total requested from the COMMISSION. Please note that there is a required non-federal matching contribution (described above) which must be shown on the budget page. Indicate the source. Also note that "administrative costs" are limited to five percent of the total. Administrative costs are those directly associated with overall program administration, but not those costs directly related to the delivery of service or the supervision of volunteers.

5. **Program Narrative.** Attach the required narratives for each program for which funding is sought.

Submission Procedures

To qualify for funding consideration, all applicants must submit a proposal on or before March 16, 1992.

The announced closing date and procedures for timely submission will be strictly observed.

Applicants should also note that the closing date applies to both the date the application is mailed and the hand-delivered date.

Proposals Sent by Mail:
Proposals sent by mail to the following address must be postmarked no later than March 16, 1992. First class mail should be used. A mailed application meets the requirement if it is mailed on or before the pertinent closing date and the required proof of mailing is provided. Proof of mailing may consist of one of the following: (a) a legibly dated U.S. Postal Service postmark; (b) a legible receipt with the date of mailing stamped by the U.S. Postal Service; (c) a dated shipping label, invoice, or receipt from a commercial carrier; or (d) any other proof of mailing acceptable to the COMMISSION.

If an application is sent through the U.S. Postal Service, the COMMISSION will not accept either of the following as proof of mailing: (1) a private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service. All applicants will receive acknowledgement notices upon receipt of proposals.

Mailing Address
Commission on National and Community Service
P.O. Box 33119
Washington, D.C. 20033-0119

Hand-delivered Proposals:
Hand-delivered proposals will be accepted daily between the hours of 9:00 a.m. and 4:30 p.m., Eastern Standard time except Saturdays, Sundays, or Federal holidays, at _____. Proposals will not be accepted after 4:30 p.m. on March 16, 1992.

No faxed proposals will be accepted.

Number of Copies of Proposals:
All applicants must submit ONE (1) SIGNED ORIGINAL AND TWO (2) COPIES OF PROPOSALS. Each proposal copy must be covered with a Title Page, (attached) or a facsimile. Applicants are also requested to submit three (3) additional completed copies of the Title Page.

I. SERVE AMERICA:

Criteria for Funding

States submitting applications that comply with the provisions of the Serve-America program and the regulations will be considered for funding according to program formula.

Required Narrative

While there is not a standard outline, the State Serve-America Plan should cover a period of not more than three years, and describe, in not more than twenty (20) typed, double-spaced pages:

1. The manner in which funds will be allocated by the State, including:

   (a) Planning and capacity building activities that will be undertaken by the State;

   (b) How local applicants for operating grants for school-based, community-based, and adult volunteer and partnership programs will be ranked:

   -- according to criteria found in the regulations;

   -- in a manner that ensures the equitable treatment of local educational agencies and community-based organizations;

   -- to ensure that programs will serve urban and rural areas and any tribal areas that exist within such State; and

   -- giving special consideration to providing assistance to projects that will provide academic credit to participants, are consistent with the principles of service-learning, or are integrated into the educational program of the school.

2. Efforts to be undertaken by the State to involve diverse organizations and participants, and coordinate service programs within the State, including:

   (a) How information and outreach services will be disseminated and utilized to ensure the involvement of a broad range of organizations, particularly community-based organizations;

   (b) How service programs within the State will be coordinated with each other and with other Federally assisted education programs, training programs, and other appropriate programs that serve youth;

   (c) How the State will encourage cooperative efforts among local educational agencies, local government agencies, community-based agencies, businesses, and State agencies to develop and provide service opportunities, including those that involve the participation of urban, suburban, and rural youth working together; and

   (d) How economically and educationally disadvantaged youths, including individuals with disabilities, youth with limited basic skills or learning disabilities, youth in foster care who are becoming too old for foster care, youth of limited English proficiency, and homeless youth are assured of service opportunities.

3. Efforts undertaken by the State, in addition to the funding of local service programs, to increase involvement of students and out-of-school youth in community service, including:

or contract with experienced content specialist and youth service resources organizations; and

(b) The use of non-Federal assistance to expand service opportunities for students and out-of-school youth.

4. The plan for evaluation of funded programs, including:

(a) Anticipated outcomes of the programs; and

(b) How progress toward those outcomes will be measured and programs will be evaluated.

Planning Grants

States and Indian Tribes not applying for operating grants may apply for a planning grant worth twenty-five percent (25%) of their formula allocation. Applicants for planning grants must include a narrative of not more than five (5) typed, double-spaced pages, that covers a period of not more than one year and describes activities proposed to be conducted with planning funds, including those activities that will be carried out through grant or contract with qualified organizations and individuals. Eligible activities include:

(1) Pre-service and in-service training for teachers, supervisors, and personnel from community organizations in which service opportunities will be provided that will be conducted by qualified individuals or organizations that have experience in service-learning programs;

(2) Developing service-learning curricula, including age-appropriate learning components for students to analyze and apply their service experiences consistent with the principles of service-learning;

(3) Forming local partnerships to develop school-based community service programs in accordance with this Act:

(4) Devising appropriate methods for research and evaluation of the educational value of youth service opportunities, service-learning, and the effect of youth service programs on communities;

(5) Establishing effective outreach and dissemination to ensure the broadest possible involvement of non-profit community based organizations and youth-service agencies with demonstrated effectiveness in their communities; and

(6) Integration of service-learning into academic curricula.

II. HIGHER EDUCATION:

Criteria for Ranking

Applicants for support under this program will be judged on the following criteria:

1) The ability of the proposed program to advance the purposes of the Higher Education Innovative Projects for Community Service program in such a way as to infuse students with the ethic of voluntary community service;

2) The degree to which the proposed program represents an innovative approach that shows potential for replication by other organizations;

3) The quality of the proposed program and evaluation plan, including its feasibility as measured by the applicant's understanding of the problem or need; the adequacy of resources; the qualifications of key personnel; the relevance of the applicant's prior experience; and the applicant's and the community's commitment to the project;

4) The demonstrated ability to effect the goals of the Act;

5) The extent to which participants are involved in the design of service projects;

6) The agreement of the institution of higher education to integrate the program into the educational experience;

7) The likelihood of effective campus-wide involvement, including faculty, staff, administration, and students, or community-wide impact outside of the campus; and

8) The ability of the program to continue past the expiration of the grant.

Every proposal will be compared to all others in an attempt to find the proposals that best meet the above criteria.

Required Narrative

While there is not a standard outline, the narrative should provide, in approximately ten (10) double-spaced pages, a project narrative that includes:

1. A description of the proposed project to be established with assistance provided under the grant, including:

   (a) the procedure for training supervisors and participants, and supervising and organizing participants;

   (b) roles for students, faculty, administration, and staff in the design and operation of the project;

   (c) how non-participant volunteers who are not students enrolled in the project will assist the project;

   (d) the membership of any local advisory committee that includes broad representation from the community, or other involvement of the community intended to benefit from the project in the design and operation of the program;

   (e) procedures to ensure that the proposed project provides participants with an opportunity to reflect on their service experiences and is consistent with the principles of service-learning; and

   (f) whether students will receive academic credit for community service activities under the project and whether the project is integrated into the academic curriculum.

2. A description of the expected impact of the project, including:

   (a) the human, educational, environmental or public safety service that participants will perform and the community need that will be addressed;

   (b) the number and characteristics of individuals -- including student participants and non-participant volunteers who are not students enrolled in the program -- expected to become involved in service as a result of the project and the number of hours they are expected to perform service;

   (c) expected community-wide impact outside the campus;

   (d) ways in which the project is expected to benefit student participants, including changes in goals, attitudes and educational achievement; and

   (e) the ability of the project to continue after the expiration of the grant.

3. A description of the plan for evaluating the project.

The following additional points should be useful:

- In the most successful projects, both community organizations and the people they serve have considerable input. The educational institution and the main funding source must feel their goals are being met, but they must not try to determine unilaterally what a community needs. Proposals should make clear how intended beneficiaries' input will be ensured.

- If academic credit is to be awarded as part of the community service activity, evidence should be provided that it will be given in accordance with established institutional policies and that it will be closely linked to or be part of regular academic work.

- Evaluation should focus on a number of issues. In addition to assessing whether there has been an increase in the number of students doing community service, the evaluation should attempt to look at the impact that service will have on the community being served.

III. CONSERVATION CORPS AND YOUTH SERVICE CORPS:

Criteria for Ranking

The Commission will consider making an award to any applicant that meets the criteria specified in the regulations, and will give preference to programs that:

- Will provide long-term benefits to the public;
- Will instill a work ethic and a sense of public service in the participants;
- Will be labor intensive, and involve youth operating in crews;
- Can be planned and initiated promptly;
- Will enhance skills development and educational level and opportunities for the participants;
- Demonstrate the ability to effect the goals of the Act and the regulations; and
- Are part of a State Comprehensive Service Plan.

Required Narrative

Each State must use a portion of its grant funds to assist local conservation or youth service corps programs within the State. Therefore, each State submitting an application must include a narrative of not more than ten (10) typed, double-spaced pages, describing the manner in which:

1. The State will determine which local applicants receive funding;
2. Service programs within the State will be coordinated;
3. Economically and educationally disadvantaged youth, including youth with disabilities, youth with limited basic skills or learning disabilities, youth with limited English proficiency, homeless youth, youth with disabilities, and youth in foster care who are becoming too old for foster care, will be recruited;
4. The State will encourage cooperation among programs that receive assistance under this program and the appropriate State job training coordinating council established under the Job Training and Partnership Act (29 U.S.C. 1501 et. seq.);
5. The State will certify the training skills acquired by each participant and the credit provided to each participant for competencies developed through training programs or work experience obtained under programs that receive assistance;
6. Prior to the placement of a participant, the State will ensure that program agencies consult with each local labor organization representing employees in the area who are engaged in the same or similar work that is proposed to be carried out by such program; and
7. Programs will be evaluated.

Additional Narrative for States Proposing to Operate Program Directly

States may also use funds to operate a conservation or youth service corps program directly. Each State or Indian tribe proposing to operate a program directly must include a narrative that covers a period of up to three years and describes, in not more than twenty (20) typed, double-spaced pages:

1. Objectives and performance goals, both short-term and long-term, including the problem or need to be addressed, number of participants and non-participant volunteers to become involved in service, number of hours of service to be provided, and changes in goals, attitudes, and educational achievement of participants.

2. A program plan, including:

   -- A plan for managing and funding the program, and schedule for implementation;

   -- A description of any local advisory committee that includes youth and a broad representation from the community;

   -- The number of crew leaders for the program and the manner of appointment and training of sufficient supervisory staff (including participants who have displayed exceptional leadership qualities), to provide for other central elements of a youth corps, such as crew structure and a youth development component;

   -- The number of individuals who participated in the program in the previous year; the estimated number of participants who will participate in the program in each year for which funding is sought; a plan for recruiting participants, including educationally and economically disadvantaged youth, youth with limited basic skills or learning disabilities, youth with disabilities, homeless youth, youth who are in foster care who are becoming too old for foster care, and youth of limited English proficiency; a strategy for ensuring that individuals do not drop out of school for the purpose of participating in a youth corps program; and the period of enrollment;

   -- The number of non-participant volunteers expected to become involved in community service under the program and how they will assist the program;

   -- The type of service that participants and non-participant volunteers will perform;

   -- The amount of the living allowance, and the facilities, quarters and board (in the case of residential facilities), limited and emergency medical care, transportation from administrative facilities to work sites, accommodations for individuals with disabilities, formal social counseling, support services including child care, and other appropriate services, supplies, and equipment that will be provided to participants and crew leaders;

   -- Requirements to be imposed on the sponsoring organizations providing service opportunities, including giving preference to a sponsoring organization that invests in a program (cash contribution or free training to participants), over a sponsoring organization that does not make such an investment;

   -- The types and duration of training and work experience to be provided by such program; a plan for certifying the training skills acquired by participants and awarding academic credit to participants for competencies developed through training programs or work experience; a plan to ensure the on-site presence of knowledgeable and competent supervisory personnel

at program facilities; workplace standards for health, nutrition, sanitation, and safety, and the manner in which those will be enforced; and a plan to assign participants to facilities as near to the homes of the participants as is reasonable and practicable;

-- An age-appropriate learning component for participants that includes procedures that permit participants to reflect on their service experience; and

-- The post-service benefits that will be provided to participants and a plan for ensuring that post-service education and training benefits are used solely for education and training.

3. A plan for evaluating the program.

IV. NATIONAL AND COMMUNITY SERVICE PROGRAM:

Criteria for Ranking — In determining whether to award a grant to a State, the COMMISSION will consider:

- The ability of the proposed program to serve as an effective model for a large-scale national service program;
- The quality of the application, including the plan for training, recruitment, placement, evaluation and data collection;
- The extent that the proposed program builds on existing programs;
- The expediency with which the State proposes to make the program operational;
- The degree of bipartisan, nonpartisan and broad-based support for the program within the State or the State's passage of legislation specifically authorizing the program;
- The inclusion of the proposed program in a State Comprehensive Service Plan; and
- The demonstrated ability to effect the goals of the Act and the regulations; and
- The program's preparation of participants to serve as mentors and for future volunteer service leadership after leaving the program.

Required Narrative — While there is not a standard outline, the State Plan should cover a period of not more than three years, and describe, in not more than twenty (20) typed, double-spaced pages:

1. Anticipated outcomes, both short-term and long-term, including the problem or need to be addressed, number of full-time, part-time, and special senior service participants and non-participant volunteers expected to become involved in service, number of hours of service to be provided, and anticipated changes in goals, attitudes, and educational achievement of participants.
2. The implementation plan, including the functions that will be carried out by public or private nonprofit organizations pursuant to a grant or contract; the degree to which the program builds on existing organizations in the State; the timetable for implementation; and evidence of broad-based bipartisan and nonpartisan statewide support.
3. The recruitment plan, including the number and characteristics of participants expected to be recruited; a description of the manner in which an ethnically and economically diverse group of participants, including economically and educationally disadvantaged individuals, college-bound youth, individuals with disabilities, youth in foster care who are becoming too old for foster care, and employed individuals, will be recruited and selected for participation; and whether the program will enroll individuals who have completed undergraduate education or specialized post-secondary training and whose training and skills enable them to provide needed services in the State;
4. Procedures for training supervisors and participants in skills relevant to the work to be conducted and for supervising and organizing participants in such program;
5. The type of service participants will provide and how participants will be matched and placed in service opportunities, including a description of the geographical areas within the State in which the program would be operated to provide the optimum match between the need for services and the anticipated

supply of participants; a plan for placing the participants in teams or making individual placements in the programs; a plan for the recruitment and selection of sponsoring organizations that make service opportunities available; and the procedures to be used to assure that sponsoring organizations that are not matched with participants shall be provided with information concerning the VISTA program and the Older American Volunteer Programs established under Title II of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 5001 et seq.).

6. Procedures to ensure that the program provides participants with an opportunity to reflect on their service experiences; a plan to prepare participants to serve as mentors and for future volunteer service leadership after leaving the program; and a plan for providing full-time participants with educational services required by the Act.

7. An evaluation plan.

NOTE: This is a draft form which may be revised after we receive comments. DO NOT use as an application.

COMMISSION ON NATIONAL AND COMMUNITY SERVICE:

SERVE-AMERICA PROGRAMS
Operating Grants

LOCAL APPLICANTS

Background

In 1990, Congress passed and the President signed legislation creating the COMMISSION ON NATIONAL AND COMMUNITY SERVICE. The COMMISSION was empowered to make grants in support of the goals set forth in the legislation. Those goals are:

- To renew the ethic of civic responsibility in the United States;
- To encourage citizens, regardless of age, income or ability, to engage in full-time or part-time service to the Nation;
- To involve youth in programs that will benefit the Nation and improve their own lives;
- To enable young adults to make a sustained commitment to service by removing barriers created by high education costs, loan indebtedness and the cost of housing;
- To build on the network of existing Federal, State, and local programs and agencies;
- To involve participants in activities that would not otherwise be performed by paid workers;
- To generate additional volunteer service hours to help meet human, educational, environmental and public safety needs, particularly those relating to poverty;
- To encourage institutions to volunteer their resources and energies and encourage service among their members, employees, and affiliates;
- To identify successful and promising community service initiatives and disseminate information about them; and
- To discover and encourage new leaders, especially youth, and to develop individuals and institutions that demonstrate that a successful life includes serving others.

The COMMISSION will award grants to States for (a) Serve-America, (b) Higher Education Innovative Projects, (c) Conservation and Youth Service Corps, and (d) National and Community Service. Grants will also be made directly to institutions of higher education and, under certain circumstances, to local applicants for Serve-America and Conservation and Youth Corps programs. Applications for these other competitions are available from the COMMISSION.

Program to be Funded

Among its several charges, the COMMISSION is directed to support Serve-America programs which fund school and community-based programs to involve school age youth from kindergarten through high school and out-of-school youth in service projects.

The Serve-America program covered by this application is intended to provide support to enhance opportunities for all Americans of school age to volunteer their services for the benefit of others and to increase the number of adults who volunteer in schools. The application process is designed to give maximum flexibility to applicants for program design, to encourage State-level coordination, and to build State and local partnerships.

Eligibility

Local applicants may apply directly to the COMMISSION only if the State in which they are located does not apply.

Eligibility for Serve-America grants:

(1) To implement, operate, or expand a school-based service-learning program, a local applicant must be:

(a) A local educational agency working in partnership with one or more public or private nonprofit organizations that will make service opportunities available for participants; or

(b) A public or private nonprofit organization that will make service opportunities available for participants, working in partnership with one or more local educational agencies.

(2) To implement, operate, or expand a community service program, a local applicant must be:

(a) A public or private nonprofit organization that works with disadvantaged youth working in partnership with one or more public or private nonprofit organizations that will make service opportunities available for participants; or

(b) A public or private nonprofit organization that will make service opportunities available working in partnership with one or more public or private nonprofit organizations that work with disadvantaged youth.

(3) To implement, operate, or expand an adult volunteer or partnership program, a local applicant must be:

(a) A local educational agency working in partnership with one or more public or private nonprofit organizations or private for-profit businesses; or

(b) A public or private nonprofit organization working in partnership with one or more local educational agencies.

(4) For the purposes of this section, the term "partnership" means pursuant to a written agreement specifying the responsibilities of each partner with respect to the development and operation of the program proposed to be conducted.

Definitions

For the purposes of this grant program, applicants should understand that the term "service-learning" means a method under which students learn and develop through active participation in thoughtfully organized service experiences that meet actual community needs and that are coordinated in collaboration with the school and community; that is integrated into the students' academic curriculum or provides

structured time for a student to think, talk, or write about what the student did and saw during the actual service activity; that provides students with opportunities to use newly acquired skills and knowledge in real-life situations in their own communities; and that enhances what is taught in schools by extending student learning beyond the classroom and into the community and helps to foster the development of a sense of caring for others. The term "**service opportunity**" means a program or project, including a service-learning program or project, that enables students to perform meaningful and constructive service in agencies, institutions, and situations where the application of human talent and dedication may help to meet human, educational, linguistic, and environmental community needs, especially those relating to poverty. "**Partnership program**" means a program through which adult volunteers, public or private agencies, institutions of higher education, or businesses assist a local educational agency.

Other definitions can be found in the regulations governing this competition.

Size and Number of Grants

In fiscal year 1992, $16.9 million is available for this program. The number of grants and their size will depend on the number and quality of State and local applications received.

Duration of Grants

All grants made by the COMMISSION to local applicants are one-year grants.

Non-Federal Match

Non-Federal Match: 10% in the first year

The non-Federal share of the costs of the project may be in cash or in-kind, consistent with the regulations. If a grantee is unable to pay the non-Federal share of the costs of the project due to lack of resources, the grantee may request a waiver. The request must be in writing to the COMMISSION.

Criteria for Ranking

Priority will be given to programs that:

1. Involve participants in the design and operation of the program;
2. Are in the greatest need of assistance, such as programs targeting low-income areas;
3. Involve students from both public and private elementary and secondary schools or individuals of different ages, races, sexes, ethnic groups, disabilities, and economic backgrounds serving together;
4. Are integrated into the educational program;
5. Involve a focus on substance abuse prevention or school drop-out prevention;
6. Demonstrate the ability to achieve the goals of the Act and the regulations.

Specifically, in the case of adult volunteer and partnership programs, priority will be given to applications that:

1. Involve older Americans or parents as adult volunteers;
2. Involve a partnership between an educational institution and a private business in the community;
3. Include a focus on substance abuse prevention, school drop-out prevention, or nutrition; or
4. Will improve basic skills and reduce illiteracy.

Review Process

All funding decisions will be made by the Board of Directors of the COMMISSION. Staff will screen proposals and present recommendations to the Board. Local applications will be compared to other local applications within the same state.

Proposal Content All applicants are urged to develop proposals that are concise and clearly written. Listed below are requested components for final proposals.

1. **Title Page:** Use attached form or a facsimile to cover each proposal copy. Additional instructions are printed on the reverse side of the Title Page. Please include a brief abstract in the space provided, in addition to the requirements that follow.

2. **Abstract:** Attach a one-page, double-spaced abstract following the Title Page. The Abstract should include statements about: (1) the problem being addressed; (2) the proposed activities; and (3) the project's intended outcomes.

3. **Institutional and Personnel Information:** Applicants may at their discretion submit background information on their institutions or agencies which is relevant to a full understanding of the significance and feasibility of the proposed project. Please attach descriptions of relevant capabilities and experience of the key project staff.

4. **Budget:** Use the attached form or a suitable facsimile to prepare a complete, standard budget including details of expenditures for salary, travel, etc. Indirect costs may not be assessed. Also, provide a narrative budget statement explaining: (1) the basis used to estimate certain costs (professional personnel, consultants, travel), and any other costs that may appear unusual; (2) how the major cost items relate to the proposed project activities; and (3) the cost of the project's evaluation components. In the case of proposals requesting more than one year of funding, a simplified budget page for the additional year should be provided. The legislation establishing this program requires a match for federal funds. Please indicate the source of matching funds in the budget narrative. Also note that "administrative costs" are limited to 5 percent of the total. Administrative Costs are those costs directly associated with overall program administration, but not those costs directly related to the delivery of service or the supervision of volunteers.

5. **Narrative:** While there is not a standard outline, proposals should provide, in approximately ten (10) double-spaced pages, a narrative which includes:

   - a description of program goals, including goals that are quantifiable, measurable, and demonstrate benefits that flow from the program to the participants and the community.

   - a description of the proposed program, including:

     - a description of the human, educational, environmental, or public safety service that participants will perform; the community need that will be addressed; and the service opportunities that will be provided;

     - a description of the population that will be the recipient of service provided through the program;

     - the membership and role of the local advisory committee (representatives of community-based agencies including community action agencies, service recipients, youth-serving agencies, youth, parents, teachers, administrators, agencies that serve older adults, school board members, labor, business, and individuals with disabilities shall be offered the opportunity to serve on the committee);

- the qualifications and responsibilities of the coordinator of the program;

- The number and ages of individuals currently involved in applicant's community service program and the number and ages of additional participants expected to become involved. Include the percentage of participants who are educationally or economically disadvantaged, or disabled.

- the number of hours participants will serve individually and as a group;

- the number of non-participant volunteers expected to become involved in service through the program, and how they will assist the program;

- how participants in the program were or will be involved in the design and operation of the program;

- how participants will be recruited, including special efforts to recruit out-of-school youth with the assistance of community-based organizations;

- pre-service and in-service training for teachers, supervisors and participants, and procedures for supervising and organizing participants;

- how participants will be provided with an opportunity to reflect on their service experiences consistent with service-learning principles, and whether they will receive academic credit for community service activities;

- how exemplary service will be recognized; and

- potential resources that will permit continuation of the program, if needed, after the assistance received under this program has ended.

A description of the evaluation plan.

The following additional points should be useful:

- In the most successful projects, both the community organizations and the people they serve have considerable input. The local agency and the main funding source must feel their goals are being met, but they must not try to determine unilaterally what a community needs. Proposals should make clear how intended beneficiaries' input will be ensured.

- If academic credit is to be awarded as part of the community service activity, evidence should be provided that it will be given in accordance with established institutional policies and that it will be closely linked to or be part of regular academic work.

- Evaluation should focus on a number of issues. In addition to assessing whether there has been an increase in the number of persons doing community service, the evaluation should attempt to look at the impact that service will have on the community.

Submission Procedures

To qualify for funding consideration, all applicants must submit a proposal on or before March 16. 1992.

The announced closing date and procedures for timely submission will be strictly observed.

Applicants should also note that the closing date applies to both the date the application is mailed and the hand-delivered date.

Proposals Sent by Mail:
Proposals sent by mail to the following address must be postmarked no later than March 16, 1992. First class mail should be used. A mailed application meets the requirement if it is mailed on or before the pertinent closing date and the required proof of mailing is provided. Proof of mailing may consist of one of the following: (a) a legibly dated U.S. Postal Service postmark; (b) a legible receipt with the date of mailing stamped by the U.S. Postal Service; (c) a dated shipping label, invoice, or receipt from a commercial carrier; or (d) any other proof of mailing acceptable to the COMMISSION.

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Mailing Address
Commission on National and Community Service
P.O. Box 33119
Washington, D.C. 20033-0119

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Hand-delivered proposals will be accepted daily between the hours of 9:00 a.m. and 4:30 p.m., Washington, D.C. time except Saturdays, Sundays, or Federal holidays, at _____. Proposals will not be accepted after 4:30 p.m. on March 16, 1992.

Number of Copies of Proposals:
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NOTE: This is a draft form which may be revised after we receive comments. DO NOT use as an application

COMMISSION ON NATIONAL AND COMMUNITY SERVICE

HIGHER EDUCATION INNOVATIVE PROJECTS FOR COMMUNITY SERVICE

Background

In 1990, Congress passed and the President signed legislation creating the COMMISSION ON NATIONAL AND COMMUNITY SERVICE. The COMMISSION was empowered to make grants in support of the goals set forth in the legislation. Those goals are:

- To renew the ethic of civic responsibility in the United States;
- To encourage citizens, regardless of age, income or ability, to engage in full-time or part-time service to the Nation;
- To involve youth in programs that will benefit the Nation and improve their own lives;
- To enable young adults to make a sustained commitment to service by removing barriers created by high education costs, loan indebtedness and the cost of housing;
- To build on the network of existing Federal, State, and local programs and agencies;
- To involve participants in activities that would not otherwise be performed by paid workers;
- To generate additional volunteer service hours to help meet human, educational, environmental and public safety needs, particularly those relating to poverty;
- To encourage institutions to volunteer their resources and energies and encourage service among their members, employees, and affiliates;
- To identify successful and promising community service initiatives and disseminate information about them; and
- To discover and encourage new leaders, especially youth, and to develop individuals and institutions that demonstrate that a successful life includes serving others.

The COMMISSION will award grants to States for (a) Serve-America, (b) Higher Education Innovative Projects, (c) Conservation and Youth Service Corps, and (d) National and Community Service. Grants will also be made directly to institutions of higher education and, under certain circumstances, to local applicants for Serve-America and Conservation and Youth Corps programs. Applications for these other competitions are available from the COMMISSION.

Program to be Funded

Among its several charges, the COMMISSION is authorized to support innovative projects sponsored by higher educational institutions to encourage students to participate in community service activities. Specifically, the COMMISSION will make grants that are directed at the following purposes:

- to enable the institution to create or expand community service activities for students attending that institution;
- to encourage student-initiated and student-designed community service projects;
- to facilitate the integration of community service into educational programs;
- to encourage students to participate in community service activities that will engender a sense of social responsibility and commitment to the community;
- to encourage students to assist in the teaching of individuals with limited basic skills or an inability to read and write; and
- to provide for the training of teachers, prospective teachers, related educational personnel, and community leaders in the skills necessary to develop, supervise, and organize community service activities, consistent with the principles of service-learning, and that take into consideration the particular needs of a community and that involve participants in the development of proposed service activities.

Eligibility

Under this program grants may be awarded to institutions of higher education; to consortia of institutions of higher education; and to public or private nonprofit agencies and organizations, including States in consortia with institutions of higher education.

Definitions

For purposes of this grant program, applicants should understand that the term "service-learning" means a method under which students learn and develop through active participation in thoughtfully organized service experiences that meet actual community needs and that are coordinated in collaboration with the school and community; that is integrated into the students' academic curriculum or provides structured time for a student to think, talk, or write about what the student did and saw during the actual service activity; that provides students with opportunities to use newly acquired skills and knowledge in real-life situations in their own communities; and that enhances what is taught in schools by extending student learning beyond the classroom and into the community and helps to foster the development of a sense of caring for others. The term "service opportunity" means a program or project, including a service-learning program or project, that enables students to perform meaningful and constructive service in agencies, institutions, and situations where the application of human talent and dedication may help to meet human, educational, linguistic, and environmental community needs, especially those relating to poverty.

Other definitions can be found in the regulations governing this competition.

Size and Number of Grants

For fiscal year 1992, there is $5.6 million available for this program. The number of grants will be determined by the number and quality of applications. The anticipated range is $25,000 to $250,000 per institution. Larger grants are available for consortia.

Duration of Grants

All grants made by the COMMISSION are one-year grants which can be part of a two or three year plan. Continuation applications must be submitted for each subsequent year. Funding will depend on satisfactory progress of the project and the level of appropriations to the COMMISSION.

Non-Federal Match

A matching contribution of at least 50 percent is required. The non-Federal share may be in cash or in kind, consistent with the regulations.

Criteria for Ranking

Applicants for support under this program will be judged on the following criteria:

1) The ability of the proposed program to advance the purposes of the Higher Education Innovative Projects for Community Service program in such a way as to infuse students with the ethic of voluntary community service;

2) The degree to which the proposed program represents an innovative approach that shows potential for replication by other organizations;

3) The quality of the proposed program and evaluation plan, including its feasibility as measured by the applicant's understanding of the problem or need; the adequacy of resources; the qualifications of key personnel; the relevance of the applicant's prior experience; and the applicant's and the community's commitment to the project;

4) The demonstrated ability to effect the goals of the Act and the regulations;

5) The extent to which participants are involved in the design of service projects;

6) The agreement of the institution of higher education to integrate the program into the educational experience;

7) The likelihood of effective campus-wide involvement, including faculty, staff, administration, and students, or community-wide impact outside of the campus; and

8) The ability of the program to continue past the expiration of the grant.

Review Process

All funding decisions will be made by the Board of Directors of the COMMISSION. Staff will screen proposals and present recommendations to the Board. Every proposal will be compared to all others in an attempt to find the proposals that best meet the above criteria.

Proposal Content All applicants are urged to develop proposals that are concise and clearly written. Listed below are requested components for final proposals.

1. **Title Page:** Use attached form or a facsimile to cover each proposal copy. Additional instructions are printed on the reverse side of the Title Page. Please include a brief abstract in the space provided, in addition to the requirements which follow.

2. **Abstract:** Attach a one-page, double-spaced abstract following the Title Page describing: (1) the problems being addressed; (2) the proposed activities; and (3) the project's intended outcomes.

3. **Institutional and Personnel Information:** Applicants should submit background information on their institutions or agencies which is relevant to a full understanding of the proposed project. Please attach descriptions of relevant capabilities and experience for key project staff.

4. **Budget:** Use the attached form or a suitable facsimile to prepare a complete budget including details of expenditures for salary, travel, etc. Indirect costs may not be assessed. Also, provide a narrative budget statement explaining: (1) the basis used to estimate certain costs (personnel, consultants, travel), and any other costs that may appear unusual; (2) how the major cost items relate to the proposed project activities; and (3) the cost of the project's evaluation components. In the case of proposals requesting more than 1 year of funding a simplified budget page for the additional year should be provided. The legislation establishing this program requires a one-to-one match for Federal funds. Please indicate the source of matching funds in the budget narrative. Also note that "administrative costs" are limited to five percent of the total. Administrative are those costs directly associated with overall program administration, but not those costs directly related to the delivery of service or the supervision of volunteers.

5. **Narrative:** While there is not a standard outline, applicants should provide, in approximately ten (10) double-spaced pages, a project narrative that includes:

   - A description of the proposed project to be established with assistance provided under the grant, including

     - the procedure for training supervisors and participants, and for supervising and organizing participants;

     - roles for students, faculty, administration, and staff in the design and operation of the project;

     - how non-participant volunteers, who are not students enrolled in the project, will assist the project;

     - the membership of any local advisory committee that includes broad representation from the community, or other involvement of the community intended to benefit from the project in the design and operation of the program;

     - procedures to ensure that the proposed project is consistent with the principles of service-learning and provides participants with an opportunity to reflect on their service experiences; and

     - whether students will receive academic credit for community service activities under the project and whether the project is integrated into the academic curriculum.

- A description of the expected impact of the project, including:
  - the human, educational, environmental or public safety service that participants will perform and the community need that will be addressed;
  - the number and characteristics of individuals -- including student participants and nonparticipant volunteers who are not students enrolled in the program -- expected to become involved in service as a result of the project and the number of hours they are expected to perform service;
  - expected community-wide impact outside the campus;
  - ways in which the project is expected to benefit student participants, including changes in goals, attitudes and educational achievement; and
  - the ability of the project to continue after the expiration of the grant.
- A description of the plan for evaluating the project.

If the proposed project is part of a State Comprehensive Service Plan or endorsed by the State, please include that information in the program narrative. Applicants are invited to include a letter of endorsement from the State.

- The following additional points should be useful:
  - In the most successful projects, both community organizations and the people they serve have considerable input. The educational institution and the main funding source must feel their goals are being met, but they must not try to determine unilaterally what a community needs. Proposals should make clear how intended beneficiaries' input will be ensured.
  - If academic credit is to be awarded as part of the community service activity, evidence should be provided that it will be given in accordance with established institutional policies and that it will be closely linked to or be part of regular academic work.
  - Evaluation should focus on a number of issues. In addition to assessing whether there has been an increase in the number of students doing community service, the evaluation should attempt to look at the impact that service will have on the community being served.

Submission Procedures

To qualify for funding consideration, all applicants must submit a proposal on or before March 16, 1992.

The announced closing date and procedures for timely submission will be strictly observed.

Applicants should also note that the closing date applies to both the date the application is mailed and the hand-delivered date.

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No faxed proposals will be accepted.

Number of Copies of Proposals:
All applicants must submit ONE (1) SIGNED ORIGINAL AND TWO (2) COPIES OF PROPOSALS. Each proposal copy must be covered with a Title Page, (attached) or a facsimile. Applicants are also requested to submit three (3) additional completed copies of the Title Page.

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COMMISSION ON NATIONAL AND COMMUNITY SERVICE:

CONSERVATION AND YOUTH SERVICE CORPS PROGRAMS

LOCAL APPLICANTS

Background

In 1990, Congress passed and the President signed legislation creating the COMMISSION ON NATIONAL AND COMMUNITY SERVICE. The COMMISSION was empowered to make grants in support of the goals set forth in the legislation. Those goals are:

- To renew the ethic of civic responsibility in the United States;
- To encourage citizens, regardless of age, income or ability, to engage in full-time or part-time service to the Nation;
- To involve youth in programs that will benefit the Nation and improve their own lives;
- To enable young adults to make a sustained commitment to service by removing barriers created by high education costs, loan indebtedness and the cost of housing;
- To build on the network of existing Federal, State, and local programs and agencies;
- To involve participants in activities that would not otherwise be performed by paid workers;
- To generate additional volunteer service hours to help meet human, educational, environmental and public safety needs, particularly those relating to poverty;
- To encourage institutions to volunteer their resources and energies and encourage service among their members, employees, and affiliates;
- To identify successful and promising community service initiatives and disseminate information about them; and;
- To discover and encourage new leaders, especially youth, and to develop individuals and institutions that demonstrate that a successful life includes serving others.

The COMMISSION will award grants to States for (a) Serve-America, (b) Higher Education Innovative Projects, (c) Conservation and Youth Service Corps, and (d) National and Community Service. Grants will also be made directly to institutions of higher education and, under certain circumstances, to local applicants for Serve-America and Conservation and Youth Service Corps programs. Applications for these other competitions are available from the COMMISSION.

Program to be Funded

Among its several charges, the COMMISSION is directed to fund full-time or summer youth service or conservation corps programs for teenagers and young adults. The Conservation and Youth Service Corps program covered by this application is intended to provide grants for the creation or expansion of full-time or summer youth service or conservation corps programs. The application process is designed to give maximum flexibility to applicants for program design, to encourage State-level coordination and to build State and local partnerships.

Eligibility Public and private nonprofit organizations may apply directly to the COMMISSION if the State in which they are located does not apply.

Definitions For the purposes of this grant program, applicants should understand that the term **"Youth Corps Program"** means a program, such as a conservation corps or youth service corps program, that offers full-time, productive work (to be financed through stipends) with visible community benefits in a natural resource or human service setting and that gives participants a mix of work experience, basic and life skills, education, training, and support services. The term **"summer program"** means a youth corps program that is limited to the months of June, July and August.

Other definitions can be found in the regulations governing this competition.

Size and Number of Grants In fiscal year 1992, $22.5 million is available for this program. The number of grants and their size will depend on the number and quality of State and local applications received, and may range between $25,000 and $1.5 million.

Duration of Grants Grants to local applicants are limited to one year.

Non-Federal Match A matching contribution of at least 25 percent is required. The non-Federal share may be in cash or in-kind, consistent with the regulations.

Criteria for Ranking Priority will be given to programs that:

(1) Will provide long-term benefits to the public;

(2) Will instill a work ethic and a sense of public service in the participants;

(3) Will be labor intensive, and involve youth operating in crews;

(4) Can be planned and initiated promptly;

(5) Will enhance skills development and educational level and opportunities for the participants;

(6) Demonstrate the ability to achieve the goals of this Act and the regulations; and

In addition, the Commission will ensure the equitable treatment of both urban and rural areas, and will fund an equal number of service and conservation corps programs.

Review Process All funding decisions will be made be the Board of Directors of the COMMISSION. Staff will screen proposals and present recommendations to the Board. Every proposal will be compared to all others in an attempt to find the proposals that best meet the above criteria.

Proposal Content

All applicants are urged to develop proposals that are concise and clearly written. Listed below are the required components for proposals.

1. **Title Page:** Use attached form or a facsimile to cover each proposal copy. Please indicate a brief abstract in the space provided in addition to the requirements that follow.

2. **Abstract:** Attach a one-page, double-spaced abstract following the Title page describing (1) the problems being addressed; (2) the proposed activities; and (3) the program's intended outcomes.

3. **Institutional and Personnel Information:** Applicants should submit background information on their institutions or agencies which is relevant to a full understanding of the proposed project. Please attach descriptions of relevant capabilities and experience of the key project staff.

4. **Budget:** Use the attached form or a facsimile to prepare a complete budget, including details of expenditures for salary, travel, etc. Indirect costs may not be assessed. Also, provide a narrative budget statement explaining: (1) the basis used to estimate certain costs (professional personnel, consultants, travel), and any other costs that may appear unusual; (2) how the major cost items relate to the proposed project activities; and (3) the cost of the project's evaluation components. The legislation establishing this program requires a 25% match of non-Federal funds. Please indicate the source of matching funds in the budget narrative. Also note that "administrative costs" are limited to five percent of the total. Administrative costs are those directly associated with overall program administration, but not those costs directly related to the delivery of service or the supervision of volunteers.

5. **Narrative:** Each local applicant proposing to operate a program directly must include a narrative that covers a period of up to one year and describes, in not more than twenty (20) typed, double-spaced pages:

   - Objectives and performance goals, both short-term and long-term, including the problem or need to be addressed, number of participants and non-participant volunteers to become involved in service, number of hours of service to be provided, and changes in goals, attitudes, and educational achievement of participants.

   - A program plan, including:

     -- a plan for managing and funding the program, and timetable for implementation;

     -- a description of any local advisory committee that includes youth and broad representation from the community;

     -- the number of crew leaders for the program and the manner of appointment and training of sufficient supervisory staff (including participants who have displayed exceptional leadership qualities), to provide for other central elements of a youth corps, such as crew structure and a youth development component;

     -- the number of individuals who participated in the program in the previous year; the estimated number of participants who will participate in the program in each year for which funding is sought; a plan for recruiting participants, including educationally and economically disadvantaged youth, youth with limited basic skills or learning disabilities, youth with disabilities, homeless youth, youth

who are in foster care who are becoming too old for foster care, and youth with limited English proficiency; a strategy for ensuring that individuals do not drop out of school for the purpose of participating in a youth corps program; and the period of enrollment;

-- the number of non-participant volunteers expected to become involved in community service under the program and how they will assist the program;

-- the type of service participants and non-participant volunteers will perform;

-- the amount of the living allowance, and the facilities, quarters and board (in the case of residential facilities), limited and emergency medical care, transportation from administrative facilities to work sites, accommodations for individuals with disabilities, formal social counseling, support services including child care, and other appropriate services, supplies, and equipment that will be provided to participants and crew leaders;

-- requirements to be imposed on the sponsoring organizations of participants in the program, including giving preference to a sponsoring organization that invests in a program (cash contribution or free training to participants), over a sponsoring organization that does not make such an investment;

-- the types and duration of training and work experience to be provided; a plan for certifying the training skills acquired by participants and awarding academic credit to participants for competencies developed through training programs or work experience; a plan to ensure the on-site presence of knowledgeable and competent supervisory personnel at program facilities; workplace standards for health, nutrition, sanitation, and safety, and the manner in which such standards shall be enforced; and a plan to assign participants to facilities as near to the homes of participants as is reasonable and practicable;

-- an age-appropriate learning component for participants that includes procedures that permit participants to reflect on their service experience; and

-- the post-service benefits that will be provided to participants and a plan for ensuring that post-service education and training benefits are used solely for education and training.

- A plan for evaluating the program.

Submission Procedure

To qualify for funding consideration, all applicants must submit a proposal on or before March 16, 1992.

The announced closing date and procedures for timely submission will be strictly observed.

Applicants should also note that the closing date applies to both the date the application is mailed and the hand-delivered date.

Proposals Sent by Mail:

Proposals sent by mail to the following address must be postmarked no later than March 16, 1992. First class mail should be used. A mailed application meets the requirement if it is mailed on or before the pertinent closing date and the required proof of mailing is provided. Proof of mailing may consist of one of the following: (a) a legibly dated U.S. Postal Service postmark; (b) a legible receipt with the date of mailing stamped by the U.S. Postal Service; (c) a dated shipping label, invoice, or receipt from a commercial carrier; or (d) any other proof of mailing acceptable to the COMMISSION.

If an application is sent through the U.S. Postal Service, the COMMISSION will not accept either of the following as proof of mailing: (1) a private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service. All applicants will receive acknowledgement notices upon receipt of proposals.

Mailing Address
Commission on National and Community Service
P.O. Box 33119
Washington, D.C. 20033-0119

Hand-delivered Proposals:
Hand-delivered proposals will be accepted daily between the hours of 9:00 a.m. and 4:30 p.m., Eastern Standard Time except Saturdays, Sundays, or Federal holidays, at _____. Proposals will not be accepted after 4:30 p.m. on March 16, 1992.

No faxed proposals will be accepted.

Number of Copies of Proposals:
All applicants must submit ONE (1) SIGNED ORIGINAL AND TWO (2) COPIES OF PROPOSALS. Each proposal copy must be covered with a Title Page, (attached) or a facsimile. Applicants are also requested to submit three (3) additional completed copies of the Title Page.

TITLE PAGE

COMMISSION ON NATIONAL AND COMMUNITY SERVICE

This application should be sent to:

COMMISSION ON NATIONAL
& COMMUNITY SERVICE
P.O. BOX 33119
WASHINGTON, D.C. 20033-0119

1. Application No. (office use)

2. Employer Identification No.
IRS Tax Exempt Number:

Application for:
- ☐ Serve-America
- ☐ Higher Education
- ☐ American Conservation and Youth Service Corps
- ☐ National and Community Service

3. Legal Applicant:

Legal Applicant Name

Address (Complete)

Congressional District(s)

4. Project Director:

Name and Title

Address (Complete)

Telephone: _____ _____
Area Code Number

Fax (if any): _____ _____
Area Code Number

5. Federal Funds Requested:

1st Year Only _____

2nd Year (If Applicable) _____

3rd Year (If Applicable) _____

Total Amount: _____

6. Institutional Information (if applicable)

Type of Control
- ☐ Public
- ☐ Private, Non-Profit

Highest Degree Level
- ☐ 2 Year
- ☐ 4 Year
- ☐ Graduate
- ☐ Non Degree Granting

7. Duration of Project:
Starting Date
Ending Date
Total No. of Months

8. Number of individuals who participated in community service during the last year and how calculated:

9. Population expected to participate in this project:

10. Economic characteristics of population being served:

11. Proposal Title:

12. Brief Abstract of Proposal (Do not leave this blank)

13. Certification By Authorizing Official

The applicant certifies to the best of his/her knowledge and belief that the data in this application are true and correct and that the filing of the application has been duly authorized by the governing body of the applicant and the applicant will comply with the assurances required of applicants if the assistance is approved.

Name _____ Title _____ Phone _____

Signature _____ Date _____

INSTRUCTIONS FOR COMPLETING TITLE PAGE

ITEM 1. APPLICATION NO.: LEAVE BLANK--FOR OFFICE USE ONLY

ITEM 2. EMPLOYER IDENTIFICATION NO.: Enter the unique 9-digit number assigned to your organization for reporting to the Internal Revenue Service. It is also called a Federal identification number, and can be obtained from your budget office. NOTE: No grant can be awarded without an Employer Identification Number. If you do not have one, you should initiate the process to obtain one by calling the Internal Revenue Service. Also include your organization's I.R.S. Tax exempt number.

ITEM 3 LEGAL APPLICANT: Enter the name and complete mailing address of the institution or agency that will serve as the legal applicant (fiscal agent). When more than one institution or agency is involved, enter the name of the one that will be responsible for budget control. Acknowledgment of grant awards is sent to this address. Remember to complete this section fully.

ITEM 4. PROJECT DIRECTOR: Enter the name and complete mailing address of the designated Project Director. If no one has been selected, so indicate and enter the name of the person who can be contacted to discuss the programmatic aspects of the project. NOTE: Name and address listed here will be used to mail proposal status notifications. Do not forget to include the phone number. Both this address and the Legal Applicant address should be detailed. Remember to complete this section fully.

ITEM 5. FEDERAL FUNDS REQUESTED: Enter the amount of Federal funds being requested from the COMMISSION for the first year. If applicable, enter the estimated amount to be requested for a second year and third year of funding. Under "total" enter the cumulative amount requested for the life of the project.

ITEM 6. INSTITUTIONAL INFORMATION: Check the boxes that indicates the type of control of the legal applicant. If the applicant is an institution of higher education, check the box that indicates the highest degree level granted by the legal applicant.

ITEM 7. DURATION OF PROJECT: Enter the beginning date of the project (no earlier than July 1, 1992) Enter the ending date and the total number of months covered.

ITEM 8. NUMBER OF INDIVIDUALS WHO PARTICIPATED IN COMMUNITY SERVICE DURING PREVIOUS YEAR. Please indicate how many individuals participated in community service in the previous year through the program proposed for funding or, if a new program is being proposed, through other programs sponsored by the applicant. Provide a one-sentence explanation of how this figure is calculated.

ITEM 9. POPULATION EXPECTED TO PARTICIPATE IN THE PROJECT: Please be concise, but include both the approximate number and their general characteristics (e.g., "30 sophomores," "200 medical students"). Include only those individuals who will be considered "participants" as defined in the regulations.

ITEM 10. ECONOMIC CHARACTERISTICS: Provide a brief description of the population being served, including the percentage that lives below the poverty line.

ITEM 11. PROPOSAL TITLE: Self-explanatory.

ITEM 12. BRIEF ABSTRACT OF PROPOSAL: This should be concise and confined to the space provided, but in no case should you leave this blank.

ITEM 13. CERTIFICATION BY AUTHORIZING OFFICIAL: Enter the name, title, and phone number of the official who has the authority both to commit the organization to accept Federal funding and to execute the proposed project. Submit the original ink-signed copy of the authorizing official's signature. DO NOT FORGET TO HAVE THIS FORM SIGNED.

Public reporting burden for this collection of information is estimated to average 10 hours, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

BUDGET

BUDGET ITEM	Year 1	Year 2	Year 3
A. Direct Costs:			
1. Salaries & Wages (Professional and Clerical)	$		
2. Employee Benefits			
3. Travel			
4. Equipment (Purchase)			
5. Materials & Supplies			
6. Consultants or Contracts			
7. Other (Equipment rental, Printing, etc.)			
TOTAL Requested from the Commission (This Figure Should Appear on the Title Page)	$		
INSTITUTIONAL SUPPORT (Project costs not requested from the Commission)	$		
OTHER FEDERAL FUNDS (specify source)	$		
OTHER NON-FEDERAL FUNDS	$		

Certification Regarding Drug-Free Workplace Requirements Grantees Other Than Individuals

This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988, 34 CFR Part 85, Subpart F. The regulations, published in the January 31,1989 Federal Register, require certification by grantees, prior to award, that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the agency determines to award the grant. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or government-wide suspension or debarment (see 34 CFR Part 85, Section 85.615 and 85.620).

The grantee certifies that it will provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing a drug-free awareness program to inform employees about--
  (1) The dangers of drug abuse in the workplace;
  (2) The grantee's policy of maintaining a drug-free workplace;
  (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
  (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will
  (1) Abide by the terms of the statement; and
  (2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

(e) Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;

(f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted--
  (1) Taking appropriate personnel action against such an employee, up to and including termination; or
  (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b, (c),(d), (e) and (f).

Organization Name Project Name

Name and Title of Authorized Representative

Signature Date

Certification Regarding Debarment, Suspension, and Other Responsibility Matters Primary Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, Section 85.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211).

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction or records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1) (b) of this certification; and

(d) Have not within a three-year period preceding this application proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Name and Title Of Authorized Representative

Signature Date

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the COMMISSION'S determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the COMMISSION determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the COMMISSION may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the COMMISSION to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction, "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the COMMISSION for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the COMMISSION.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the COMMISSION, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to check the Nonprocurement List.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Assurances Required of Applicants for the National and Community Service Grant Programs

Specific assurances are required of applicants for the National and Community Service Grant Program. Assurances fall into two categories: (1) assurances required of all applicants; (2) assurances required of applicants for particular programs.

By signing the application, the duly authorized representative of the applicant certifies that the applicant will comply with the assurances pertinent to all applicants and to programs for which the applicant is applying:

Assurances Required of All Applicants

The applicant will comply with the requirements of the National and Community Service Grant Program as specified in Public Law 101-610, as amended and the regulations issued thereunder.

The applicant will ensure compliance with the Drug-Free Workplace Requirements for Federal Grant Recipients under sections 5153 through 5158 of the Anti-Drug Abuse Act of 1988 (41 U.S.C. 702-707).

Assurances Required of Applicants for Serve-America: Programs for Students and Out-of-School Youth

State Applicants Must Assure:

1. The State will ensure that local applicants are funded in accordance with the provisions of the National and Community Service Grant Program as specified in Public Law 101-610, as amended, and the regulations issued thereunder.

2. The State will assure that local applicants comply with the requirements of the National and Community Service Grant Program as specified in Public Law 101-610, as amended, and the regulations issued thereunder.

3. The State will keep such records and provide such information to the COMMISSION as may be required for fiscal audits and program evaluation.

4. The State will cooperate with any evaluation undertaken by the COMMISSION.

Local Applicants Must Assure:

1. Prior to placement of a participant, the program will consult with any local labor organization representing employees in the area who are engaged in the same or similar work as that proposed to be carried out by such program.

2. If the local applicant plans to run a program to implement, operate, or expand school-based service-learning programs; or to implement, operate, or expand community service programs for school dropouts, out-of-school youth and other youth, then the local applicant assures:

   a. that the Applicant will develop an age-appropriate learning component for participants in the program that shall include a chance for participants to reflect on service experiences and expected learning outcomes.

   b. that participants in the program will be provided with information concerning VISTA, the Peace Corps (as established by the Peace Corps Act (22 U.S.C. 2501 et seq.)). All Volunteer F.E.A.P. (chapter 30 of title 38, United States Code); Educational Assistance for Enlisted Members of the Selected Reserve of the Ready Reserve (chapter 106 of title 10, United States Code), full-time American Conservation and Youth Service Corps and National and Community Service programs receiving assistance under this Act, and other services options and their benefits (such as student loan deferment and forgiveness) as appropriate;

Assurances Required of Applicants for Higher Education Innovative Projects for Community Service

Prior to the placement of a participant, the applicant will consult with any local labor organization representing employees in the area who are engaged in the same or similar work as that proposed to be carried out by such program.

Assurances Required of Applicants for American Conservation and Youth Service Corps

1. Prior to the placement of a participant, the State will ensure that program agencies consult with any local labor organization representing employees in the area who are engaged in the same or similar work as that proposed to be carried out by such program .

2. Prior to placement of a participant, the program agency will consult with any local labor organization representing employees in the area who are engaged in the same or similar work as that proposed to be carried out by the program.

3. Appropriate State and local officials shall certify that standards and procedures with respect to the awarding of academic credit and the certification of educational attainment in programs conducted under subsection 127(c) of the Act are consistent with the requirements of applicable State and local laws and regulations. These standards and procedures shall provide that an individual serving in a program that receives assistance: (a) must participate in a program to earn a high school diploma or the equivalent (non-high school graduates); and (b) may arrange to receive academic credit in recognition of the education and skills obtained from service satisfactorily completed.

Assurances Required of Applicants for National and Community Service

1. The State will keep such records and provide such information to the COMMISSION as may be required for fiscal audits and program evaluation.

2. The State will ensure that the uses of post-service benefits provided under this program for part-time participants are limited to:

   a. Payment of a student loan from Federal or non-Federal sources;

   b. A down-payment or closing costs associated with purchasing a first home; or

   c. Tuition at an institution of higher education on a full-time basis, or to pay the expenses incurred in the full-time participation in an apprenticeship program approved by the appropriate State agency.

3. The State will ensure that the uses of post-service benefits provided under this program for full-time participants are limited to:

   a. Payment of a student loan from Federal or non-Federal sources; or

   b. Tuition, room and board, books and fees, and other costs associated with attendance [pursuant to section 472 of the Higher Education Act of 1965 (20 U.S.C. 108711)] at an institution of higher education on a full-time basis, or to pay the expenses incurred in the full-time participation in an apprenticeship program approved by the appropriate State agency.

4. Prior to placement of a participant, the State will consult with any local labor organization representing employees in the area who are engaged in the same or similar work as that proposed to be carried out by such program.

5. Prior to placement of a participant, the State will consult with any employees at the proposed project site who are engaged in the same or similar work as that proposed to be carried out by such program.

6. The State will ensure that any entity carrying out program functions pursuant to grant or contract under this Act, will comply with the provisions of this Act and part and the regulations issued thereunder.

7. The State will provide to each participant enrolled in a full-time program in-service educational services and materials to enable such participant to obtain a high school diploma or the equivalent of such diploma.

8. The State will cooperate in arranging and conducting the three-week training provided to participants by the COMMISSION.

OMB Approval No. 0348-0040

ASSURANCES -- NON-CONSTRUCTION PROGRAMS

Note: Certain of the assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency.

Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 CFR 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), which prohibits discrimination on the basis of disability (d) The Age Discrimination Act of 1975, as amended (42 U.S.C. 6101-6107), which prohibits discrimination on the basis of age (e) The Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290dd-3 and 290ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the National and Community Service Act of 1990; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or Federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C 276a and 276a-77), the Copeland Act (40 U.S.C 276c and 18 U.S.C. 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), regarding labor standards for Federally assisted construction sub-agreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires the recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved state management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C 1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm-blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residential structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all requirements of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. 1210).

19. Will comply with applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

THIS CHECKLIST IS TO ASSIST YOU IN PREPARING YOUR APPLICATION PACKAGE

☐ Title page has been completed according to the instructions on the back of the sample title page.

☐ Title page has been signed and dated by an authorized official and original has been included in package to mail.

☐ Each proposal copy has been stapled or otherwise fastened (not in binders or folders) with a title page on top of each copy.

Include in Your Proposal Package

☐ One (1) original plus two (2) copies. Each of the three copies includes the following:
- ☐ a title page
- ☐ an abstract (one page maximum)
- ☐ a narrative
- ☐ budget forms and narratives
- ☐ personnel information
- ☐ certifications
- ☐ Comprehensive State Plan (if required)

☐ 3 extra copies of the completed title page.

ADDRESS

COMMISSION ON NATIONAL AND COMMUNITY SERVICE
P.O. Box 33119
Washington, D.C. 20033-0119

Remember:

Proposals must be postmarked or hand delivered (by 4:30 p.m.) no later than March 16, 1992

Please indicate on the outside of the envelope the name of the grant or grants for which you are applying.

BILLING CODE 6820-BA-C

Catherine Milton,
Executive Director, Commission on National and Community Service.

Date: October 31, 1991.

[FR Doc. 91-26676 Filed 11-7-91; 8:45 am]
BILLING CODE 6820-BA-M

federal register

Friday
November 8, 1991

Part IV

Environmental Protection Agency

California State Nonroad Engine and Vehicle Pollution Control Standards; Authorization of State Standards; California Primary Use Determination; Opportunity for Written Comments; Notice

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4027-7]

California State Nonroad Engine and Vehicle Pollution Control Standards; Authorization of State Standards; California Primary Use Determination; Opportunity for Written Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of an opportunity to submit written comments.

SUMMARY: EPA published on September 6, 1991, a Notice of Proposed Rulemaking (NPRM) [1] that set forth requirements and procedures for EPA authorization of California adoption and enforcement of standards and other requirements relating to the control of emissions from nonroad vehicles or engines under section 209(e) of the Act. In conjunction with the NPRM, EPA also published a Proposed Authorization Decision [2] in response to a request from CARB that EPA authorize CARB to adopt regulations for exhaust emission standards and test procedures for utility and lawn and garden equipment engines for 1994 and subsequent calendar years. Under EPA's proposed rule, CARB would make a determination regarding the primary use of utility and lawn and garden equipment to ascertain whether such equipment falls within the scope of EPA's proposed definitions of preempted equipment.

This notice announces that EPA has received from the California Air Resources Board (CARB) a primary use determination regarding utility and lawn and garden equipment and that EPA requests comments on any aspect of the determination. This notice also announces that EPA requests comments regarding the consistency analysis under section 209(b) of the Act as applied to CARB's proposed standards for utility and lawn and garden equipment engines.

DATES: Written comments on this notice will be accepted until November 25, 1991.

ADDRESSES: Written comments should be submitted (in duplicate if possible) to: Air Docket Nos. A–91–18 and A–19–01, U.S. Environmental Protection Agency (LE–131), 401 M Street, SW., Washington, DC 20460 and to: Director, Manufacturers Operations Division (EN–340F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Copies of material relevant to the proposed rule (Docket A–91–18) and the authorization request (Docket A–91–01) will be available for public inspection during the working hours of 8:30 a.m. to 12 p.m. and 1:30 p.m. to 3:30 p.m., Monday through Friday, at: U.S. Environmental Protection Agency, Air Docket (LE–131), room M1500, First Floor Waterside Mall, 401 M Street, SW., Washington, DC 20460 (Telephone (202) 260–7548). A reasonable fee will be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Janice Raburn, Attorney/Advisor, Manufacturers Operations Division (EN–340F), U.S. Environmental Protection Agency, Washington, DC 20460, Telephone: (202) 260–8657.

SUPPLEMENTARY INFORMATION:

I. Background

A. CARB Primary Use Determination

EPA published a Notice of Proposed Rulemaking (NPRM) as authorized under section 209(e) of the Clean Air Act (Act) on September 6, 1991 (56 FR 45866). The proposed rule set forth requirements and procedures for EPA authorization of California adoption and enforcement of standards and other requirements relating to the control of emissions from nonroad vehicles or engines under section 209(e) of the Act.

In December 1990 the California Air Resources Board (CARB) requested that EPA, pursuant to section 209(e) of the Act, authorize CARB to adopt regulations for exhaust emission standards and test procedures for utility and lawn and garden equipment engines for 1984 and subsequent calendar years. As this was the first authorization request pursuant to section 209(e), EPA published a Proposed Decision of the Administrator based on the criteria discussed in the NPRM (56 FR 45873). A public hearing was held regarding the NPRM and the Proposed Decision on September 20, 1991.

In the NPRM, EPA proposed, *inter alia*, definitions of "farm equipment" and "construction equipment." For equipment that is used for many applications ("multiple use") equipment, EPA proposed a "primary use" test that assesses whether such equipment is primarily used as farm or construction equipment. Under EPA's proposed rule, CARB would make a determination regarding the primary use of utility and lawn and garden equipment to ascertain whether such equipment falls within the scope of EPA's proposed definitions of "farm equipment" and "construction equipment." EPA would then review CARB's determination under an arbitrary and capricious standard of review, the review required by section 209(e).

EPA received this determination letter from CARB on October 15, 1991 and a supplemental letter on October 25, 1991 and is publishing the two determination letters at the end of this notice and offering an opportunity for written comments on any aspect of CARB's determination. (The attachments to the October 15 letter are an October 16, 1990, Public Hearing Notice and Staff Report for CARB's Utility and Lawn and Garden Equipment Engines. These documents are in Docket No. A–91–01, II. B., items 2 and 3. The attachment to the October 25 letter is with the letter in Docket No. A–91–18, IV.B.2.)

B. "Consistency" Criterion

In the Proposed Authorization Decision (56 FR 45873), EPA proposed that "consistent with this section" in section 209(e)(2)(A)(iii) means consistent with section 209(a) and section 209(e)(1). It was proposed in the comments and testimony at the September 20, 1991 public hearing that consistency with section 209 should also include section 209(b). As a result of these comments and testimony, EPA requests comments regarding "consistency" under section 209(b) as applied to CARB's proposed standards for utility and lawn and garden equipment engines.

Under section 209(b)(1)(C) the Administrator shall not grant California a motor vehicle waiver if he finds that California standards and accompanying enforcement procedures are not consistent with section 202(a) of the Act. EPA has interpreted this criterion in previous motor vehicle waiver decisions. First, California's standards are not consistent with section 202(a) if there is inadequate lead time to permit the development of technology necessary to meet those requirements, giving appropriate consideration to the cost of compliance within that time frame. Second, California's accompanying enforcement procedures would be inconsistent with section 202(a) if the Federal and California test procedures were inconsistent; that is, manufacturers would be unable to meet both the state and the federal test requirements with one test vehicle.

EPA requests comments regarding the "consistency" analysis under section 209(b) as applied to CARB's proposed standards for utility and lawn and garden equipment engines.

II. Public Participation

EPA requests comments on any aspect of CARB's primary use determination. EPA also requests comments regarding

[1] 56 FR 45866.

[2] 56 FR 45873.

the consistency (as interpreted under section 209(b)) of CARB's proposed standards and test procedures for utility and lawn and garden equipment engines for 1994 and subsequent calendar years. All comments should be directed to the Director, Manufacturers Operations Division (see "Addresses)." Written comments on this notice will be accepted until November 25, 1991.

Persons with comments containing proprietary information must distinguish such information from other comments to the greatest possible extent and label it as "Confidential Business Information." To ensure that proprietary information is not inadvertently placed in the docket, submissions containing such information should be sent directly to the contact person listed above and not to the public docket. If a person making comments wants EPA to base the final rule in part on a submission labeled as confidential business information, then a non-confidential version of the document which summarizes the key data or information should be placed in the public docket. Information covered by a claim of confidentiality will be disclosed by EPA only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies the submission when it is received by EPA, it may be made available to the public without further notice to the person making comments.

Dated: October 30, 1991.

[CARB determination (two letters) attached]

Michael Shapiro,

Acting Assistant Administrator for Air and Radiation.

Mr. Richard Wilson, Director
Manufacturers Operations Division (EN–340F)
U.S. Environmental Protection Agency
401 M Street, SW., room 901WT
Washington, DC 20460
October 15, 1991.

Dear Mr. Wilson:

The California Air Resources Board (ARB or Board) has reviewed the United States Environmental Protection Agency's (EPA) Notice of Proposed Rulemaking (NPRM) for the Waiver for California State Nonroad Engine and Vehicle Pollution Control Standards; Authorization of Standards; Proposed Decision of the Administrator; Opportunity for Public Hearing. In the NPRM, EPA has proposed a "primary-use test" to assess whether specific types of nonroad equipment fall within the scope of the farm and construction preemptions set forth in section 209(e)(1) of the Clean Air Act, as amended (CAA). Under that test, EPA has proposed that manufacturers present the ARB with national sales data and that the state agency would then make an initial determination as to whether the equipment falls within the preemption. The ARB would base its determination on whether 51 percent or more of the units sold in an equipment category were used in farm or construction applications. Although the NPRM defines the meeting of farm and construction equipment, the ARB has been left with the discretion to define the scope of equipment categories.

The ARB has reviewed the NPRM and has provided oral comment to EPA at the September 20, 1991 hearing on the proposed rulemaking. The ARB will provide EPA with more detailed comments in writing prior to October 20, 1991. In general, the ARB believes that the scope of the proposed farm and construction preemption, as intended by Congress, is narrower than that proposed by EPA. Specifically, the ARB believes that Congress intended the preemption to apply to engines exclusively or, at a minimum, primarily used in those industries. At a very minimum, the ARB believes that the primary-use test should utilize a 75 percent cutoff instead of the proposed 51 percent cutoff. The ARB believes that the 75 percent cutoff would be more reflective of the Congressional intent to limit the preemption to farm and construction equipment actually used in those industries and would avoid any confusion as to what types of engines should be preempted.[1] Additionally, the ARB believes that the definitions of farm and construction equipment should be more narrowly defined by restricting the breadth of the term "commercial" to vehicles or equipment unsuitable for home use or residential or public landscaping or groundskeeping. (See Federal Implementation Plan for the California South Coast Air Quality Management District [September 5, 1990, 55 FR 36458, at 36529].)

The ARB has further commented on its concerns with EPA's proposal that national sales data be used by the ARB in making its determination under the primary-use test. At the hearing on the NPRM, the ARB commented that it did not consider such data to be the most appropriate data available for making the primary-use determination. First, in applying the preemption to California, California sales and population data are most relevant. In the opinion of the ARB, national sales data do not accurately reflect California sales. Second, the means of collecting the most recent national sales data through manufacturers or their representatives as suggested by EPA is not feasible or practical in the short time frame that the ARB has been given to make its determination.[2] In view of the expedited nature of this determination and EPA's specific request that the determination be based on sales data, the ARB will use the best sales data available which is California residential and commercial sales data on utility equipment for the last three years.

The sales data contained in the Notice of Public Hearing to Consider Regulations Regarding the California Exhaust Emission Standards and Test Procedures for 1994 and Subsequent Model Utility and Lawn and Garden Equipment Engines (Notice), Mail-out #90–64, which was obtained by Booz, Allen and Hamilton (BAH), the contractor employed by the ARB to analyze the data, separated equipment into residential and commercial end-users. Commercial usage encompasses all sectors of the economy, including farm, construction, manufacturing, wholesale, retail, transportation, and service. No data was collected or submitted to the ARB or BAH that further divided commercial end-users into industrial sectors such as farm and construction. The division into two classes of use—residential and commercial—was comparable to the data submitted to the ARB and BAH by manufacturers and their associations.

The equipment categories defined in the Notice are the categories of equipment on which this determination will be based. The utility and lawn and garden equipment categories are based on the best available data. (See Technical Staff Document which was attached to the Notice.) The Department of the Census Reports, as well as manufacturers and associations in their submissions of data to the Board, have constructed similar categories for the utility and lawn and garden equipment that are under consideration here. Table 1 below shows the California sales data for the last three years:

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[1] Irrespective of the percentage used, the ARB does not believe that the engines used in lawn and garden and utility equipment, as defined by the regulation approved for adoption by the Board, fall within the scope of the preemption as intended by Congress. Congress expressly limited the preemption to only new engines under 175 horsepower used in construction and farm equipment. It appears clear that Congress wanted to limit the scope of the preemption to only those engines that were to be used exclusively in construction and farm activities and not to preclude California from regulating nonroad engines that were designed for or used in residential and commercial industries other than farm and construction. Therefore, the ARB suggests that the EPA not consider the smaller single and dual cylinder, air cooled engines like those found in utility equipment within the preemption. These engines are quite different in design and usage than the engines used exclusively in farm and construction activities.

[2] Moreover, the ARB does not believe that sales data is the best indicator of use in California, because sales vary from year to year. Rather, it believes that in-use population data more accurately reflects actual equipment populations in California because it depicts a more balanced overview of the users of the equipment. The in-use population data is based on annual U.S. sales, percentage shipped to California, and an equipment life span of between seven and ten years. Sales data does not take into consideration the shortened equipment life or attrition rates associated with commercial equipment and only shows who purchased the equipment, not who uses it.

TABLE 1.—HOME VERSUS COMMERCIAL AVERAGE CA UTILITY EQUIPMENT SALES

[For last three years]

Equipment	Commercial sales	Residential sales	% commercial	% residential
WB Mowers	41,664	305,536	12	88
R Mowers F	681	12,947	5	95
R Mowers R	185	3,518	5	95
G Tractor	275	5,233	5	95
Tillers	5,747	8,620	40	60
Snowthrow	800	7,205	10	90
Gen Utility	59,976	19,992	75	25
Shred-Grind	1,729	2,594	40	60
Special Turf	3,117	0	100	0
4st blow-vac	339	508	40	60
4st edg-trim	4,215	6,323	40	60
2st edg/trim	34,790	197,143	15	85
2st blow-vac	11,678	66,173	15	85
Chain Saws	30,350	91,050	25	75
Total Units	528,918	4,114.990		

By making the logical assumption that residential utility equipment is purchased by consumers for use around their homes and not in commercial activities, a determination based on the primary-use test can be made. As can be seen in Table 1, all but two equipment categories—general utility and specialized turf care—are sold primarily (more than 51 percent) to residential users. Therefore, the following equipment categories are not within the scope of the preemption: mowers, garden tractors, snow throwers, shredders/grinders, blowers/vacuums, edgers/trimmers, and chainsaws.

Specialized Turf Care Category

The specialized turf care equipment, even though it is 100 percent commercial in sales, should not be preempted because it represents a typical lawn and garden equipment and does not fall within the EPA's farm or construction equipment definition. Turf care equipment although used by professional landscapers and groundskeepers, performs the same functions as a mower. The turf care equipment is used at golf courses, parks, and cemeteries, not construction and farm sites. If the term "commercial" is limited as proposed to equipment unsuitable for use at home or in residential or public landscaping or groundskeeping, turf care equipment clearly falls outside the preemption.

The General Utility Category

The general utility category is the other category in which at least 51 percent of the equipment is purchased commercial enterprises, as the term commercial is defined by the sales data. The category includes equipment such as generator sets, pumps, compressors, sprayers, special purpose saws, grinders, vibrators/finishers, and refrigeration units. As shown in Table 1, the sales for the last three years indicate that 75 percent of all sales were to commercial users and 25 percent were to residential users.[3]

Of the equipment categories set forth in Table 1, the general utility category was the most difficult category to analyze. BAH chose to group a considerable amount of equipment under the general utility category because insufficient data was available to split the equipment into smaller equipment classifications. The general utility category includes engines and equipment that are similar in nature and do not fit in any other utility category; they have engines that can be found in a variety of equipment and do not have enough unique applications to be counted separately.

The general utility category idea was formed more than 10 years ago, and was discussed in a 1983 ARB status report.[4] The category was developed when sales data for specific applications did not match engine sales data. This made it apparent that certain equipment was not able to be categorized under the existing categories. Since there were no specific categories for the equipment, the miscellaneous "general utility" category was created to account for the diverse and unclassified engines.

As stated, more than 25 percent of all sales of equipment in the general utility category are to residential users. Clearly, if the definition of commercial farm and construction equipment were limited to equipment unsuitable for home or residential use, the above equipment would not fall within the preemption since nearly one-fourth of all sales are for home or residential use. Moreover, if EPA were to agree with the ARB that in-use population is the more appropriate data to be used for the determination, the total commercial population amounts only 56 percent of all general utility equipment. By evaluating the types of commercial usage, staff believes that it is not unreasonable to conclude that at least 6 percent of the total in-use population do not perform operations with the purchased equipment in the construction and farm industries. For example, the ARB believes that commercial enterprises such as auto repair shops, house painting, lawn and garden landscapers, hospitals, truckers and large numbers of manufacturing, wholesale, and retail operations use utility equipment to power equipment in day to day operations or to provide emergency services such as pumps or generator sets. The staff believes that if the percentage of commercial users were readjusted to exclude the non-farm and construction users in the commercial general utility category, the general utility category would fall under the 51 percent primary use level and would not be preempted. Finally, the ARB would like to stress that the very same engines that are used in the equipment of the general utility category are used in the other nonpreempted lawn and garden categories (e.g. lawnmowers and tillers). It would be unreasonable to preempt California from regulating the engines used in the general utility equipment since manufacturers will be producing, and have available, the lower emitting engines for the nonpreempted categories. Accordingly, the cost to manufacturers should not be significant, and in fact the per unit cost of the lower emitting engines should be reduced as a result of greater use.

The ARB believes that its estimates are representative of the in-use population and the commercial and residential ownership representation. If you require further information from the ARB or would like to discuss any of these issues, please contact Mr. Robert Cross, Assistant Chief, Mobile Source Division, at (818) 575–6807, or Mr. Michael Kenny, General Counsel, Office of Legal Affairs, at (916) 322–2884.

Attachments

Sincerely,

James D. Boyd,

Executive Officer.

Mr. Richard Wilson, Director
Manufacturers Operations Division (EN–340F)
U.S. Environmental Protection Agency

[3] In-use population data indicates that 56 percent of the in-use population is owned and operated by commercial users and 44 percent of the population is owned and operated by residential users. (See Exhibit 2–8, at page 21 of the Technical Support Document attached as Attachment C to the Notice.) There is a lower commercial percentage of in-use equipment because equipment used commercially tends to have a shorter life expectancy and therefore needs to be replaced more often than residentially used equipment.

[4] Mail-out #83–29, Status Report: Emissions Inventory on Non-Farm (MS–1), Farm (MS–2), and lawn and garden (Utility) (ms–3) Equipment, July, 1983.

401 M Street, SW., room 901WT
Washington, DC 20460

Dear Mr. Wilson:

The California Air Resources Board (ARB or Board) would like to supplement its letter of October 15, 1991 by providing herewith additional data reflecting in-use population for all equipment categories that were identified in the earlier letter. The ARB further requests that the above data be used to support its determination that the equipment categories do not fall within the preemption as defined by the Environmental Protection Agency ("EPA").

Below, Table 1 shows the California in-use residential and commercial populations as presented in the Notice of Public Hearing to Consider Regulations Regarding the California Exhaust Emission Standards and Test Procedures for 1994 and Subsequent Model Utility and Lawn and Garden Equipment Engines (Notice), Mail-out #90–64.

TABLE 1.—RESIDENTIAL AND COMMERCIAL IN-USE POPULATION 1989 BASELINE

Equipment	Commercial pop	Residential pop	% commercial	% residential
WB Mowers	109,500	2,039,028	5	95
R Mowers F	2,312	70,740	3	97
R Mowers R	584	23,693	3	97
G Tractor	1,027	38,175	3	97
Tillers	37,788	81,598	32	68
Snowthrow	4,220	37,982	10	90
Gen Utility	168,792	134,308	56	44
Shred-Grind	7,590	13,219	36	64
Special Turf	11,889	0	100	0
4st blow-vac	895	2,744	25	75
4st edg-trim	11,242	41,737	21	79
2st edg-trim	97,932	843,225	10	90
2st blow-vac	33,190	312,374	10	90
Chain Saws	41,879	476,169	8	92
Total Units	528,918	4,114,990		

As with the sales data that was presented in the October 15 letter, it should be assumed that residential utility equipment is purchased by consumers for use around their homes and not used in commerical activities. The data reflects that 12 of the 14 categories are used predominantly for residential purposes. The only exceptions are the general utility and specialized turf care categories. This is the same result that was reached in our initial determination letter when using sales data. Accordingly, under the "primarily used in" test, California should not be preempted from regulating the 12 categories of equipment that are owned and operated predominantly by residential users.

Although specialized turf equipment is owned and operated primarily by commercial users, the category should not fall under the preemption for the reasons set forth in the October 15 letter. As stated in the letter, it represents typical lawn and garden equipment and does not fall within the EPA's farm or construction equipment definition. Turf care equipment although used by professional landscapers and groundskeepers, performs that same functions as a mower.

As shown in Table 1, 56 percent of the owners and operators of general utility equipment are commercial users. Irrespective, the ARB believes that the equipment category should fall outside of the preemption. As stated in the initial letter, commercial population consists of all commercial sectors of the economy (i.e., manufacturing, wholesale, retail, service, etc.) and not just the farm and construction sectors. The ARB believes that an evaluation of the various commercial owner/operations, should reveal that at least 6 percent of them do not perform operations with the purchased equipment in the construction or farm industries. For example, the ARB believes that commercial enterprises such as auto repair shops, house painting, lawn and garden landscapers, hospitals, truckers and large numbers of manufacturing, wholesale, and retail operations use utility equipment to power equipment in day to day operations or to provide emergency services such as pumps or back-up power. Additionally, census information from the United States Department of Commerce indicates that as of 1987, the date of the latest census, farm and construction sales and receipts comprise approximately 12 percent of all commercial revenues for the United States.[1]

As the ARB stated in its October 15 letter, it believes that if the percentage of commercial users were readjusted to exclude the non-farm and construction users in the commercial general utility category, the general utility category would fall under the 51 percent primary use level and would not be preempted.

If you require further information from the ARB or would like to discuss any of these issues, please contact Mr. Robert Cross, Assistant Chief, Mobile Source Division at (818) 575–6807, or Mr. Michael Kenny, Chief Council, Office of Legal Affairs at (916) 322–2884.

Sincerely,

Tom Cackette for James D. Boyd,

Executive Officer.

[FR Doc. 91–26647 Filed 11–7–91; 8:45 am]

BILLING CODE 6560–50–M

[1] Total sales and receipts for agricultural and forestry services in 1987 were approximately $17,669,000,000 and for construction enterprises $232,372,000,000. Total sales and receipts for all industries were $1,994,808,000,000. (See 1987 Economic Census, MB87–1, Survey of Minority-Owned Business Enterprises, Black, U.S. Department of Commerce, Bureau of the Census, page 62, Table 10, which is attached hereto.)

federal register

Friday
November 8, 1991

Part V

Department of Transportation

Office of the Secretary

Present and Possible Capabilities of Alcohol Breath Test Devices; Public Meeting and Request for Information; Notice

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Notice No. 90-19, Docket No. 46574]

RIN No. 2105-AB52

Public Meeting and Request for Information on the Present and Possible Capabilities of Alcohol Breath Test Devices

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of public meeting and request for information on the present and possible capabilities of Alcohol Breath Test Devices.

SUMMARY: On November 18, 1991, DOT will conduct a public meeting on alcohol breath test devices that may be helpful in implementing the mandate in the Omnibus Transportation Employee Testing Act of 1991 to develop alcohol testing rules for several transportation industries. This notice also solicits from the public, on a voluntary basis, information and data in response to specific questions concerning methods and practices involved in using breath devices to test individuals for alcohol.

DATES: Public Meeting: November 18, 1991 at 9:30 a.m.

ADDRESSES: The Public Meeting will be held in room 10234, 400 7th Street, SW., Washington, DC. Please send all written information to Documentary Services Division, C-55, Department of Transportation, room 4107, Docket 46574, 400 Seventh Street, SW., Washington, DC 20590. Written information received by November 18, 1991, will have the best opportunity for consideration prior to issuance of an NPRM. Persons submitting information should identify the regulatory docket or notice number. In order to provide a copy for each modal administration's docket and to facilitate the Department's review, we request that an original and seven additional copies of the information be submitted.

FOR FURTHER INFORMATION CONTACT: Gwyneth Radloff, Office of the General Counsel, Department of Transportation, (202) 366-9305, 400 7th Street SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: The Omnibus Transportation Employee Testing Act of 1991 (the Act), enacted October 28, 1991, directs the Secretary of Transportation to prescribe within 12 months regulations establishing an alcohol and drug testing program for several transportation industries. The Act authorizes the use of test breath devices for this program. The Department is expeditiously developing a notice of proposed rulemaking (NPRM) on alcohol testing for the transportation industry.

Notice of Public Meeting and Request for Information

The Department believes that additional information about the capabilities of breath testing devices will assist in the development of the NPRM. Therefore, the Department of Transportation is inviting breath test equipment manufacturers to provide information and answer questions about their equipment at a public meeting at 9:30 a.m. on November 18, 1991 in Room 10234 of the Nassif Building, 400 7th Street, SW., Washington, DC. Others who wish to speak at the meeting should notify Gwyneth Radloff by November 15, 1991 at (202) 366-9305. Seating is restricted to approximately 100 people. Those who cannot be seated can later request a summary of the meeting. In addition, DOT welcomes written comments on this issue; however, comments must be submitted to the docket by November 18, 1991, in order to ensure consideration prior to issuance of the NPRM.

The Department of Transportation is particularly interested in data and information regarding the following specific questions:

(1) Given (a) the variety of field situations we have in the transportation industry, and (b) the fact that an immediate result is available, attempts to tamper with or refusal to acknowledge the test result may be a problem. What mechanical capabilities do various breath test devices have to verify the identity of the individual tested and the validity of the test result?

Even with procedural safeguards, we are concerned about the integrity of a breath test in the various situations, for example:

1. *Tampering:* An employer with a single employee may want to ignore a positive result to keep his or her business operating to the detriment of public safety. Alternatively, an employer may insist that a result is positive in order to get rid of an employee. In either case, the tester could destroy the employee's test results and blow into the device instead.

2. *Indentification of Testee:* An employee faced with a positive result and the possible loss of his/her job may insist that he/she never blew into a breath test device; e.g., that he or she completed the form and then the employer/tester breathed into the device.

(2) How do add-ons to satisfy the questions raised in (1) affect costs?

Issued in Washington, DC on November 6, 1991.

Samuel K. Skinner,

Secretary of the Department of Transportation.

[FR Doc. 91-27203 Filed 11-7-91; 9:40 am]

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Vol. 56, No. 217

Friday, November 8, 1991

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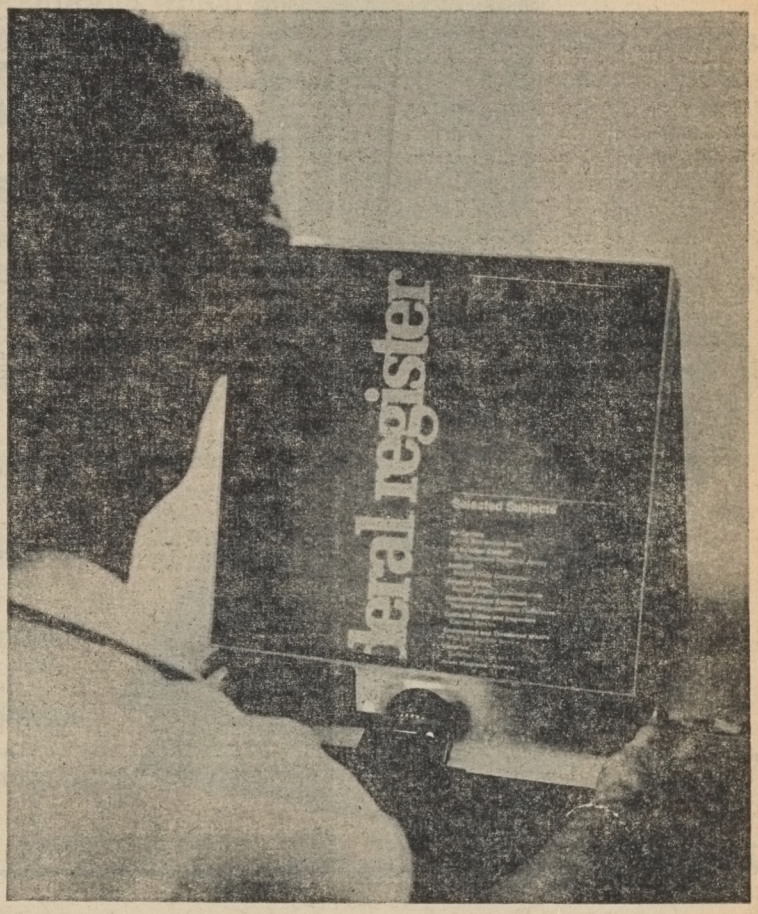
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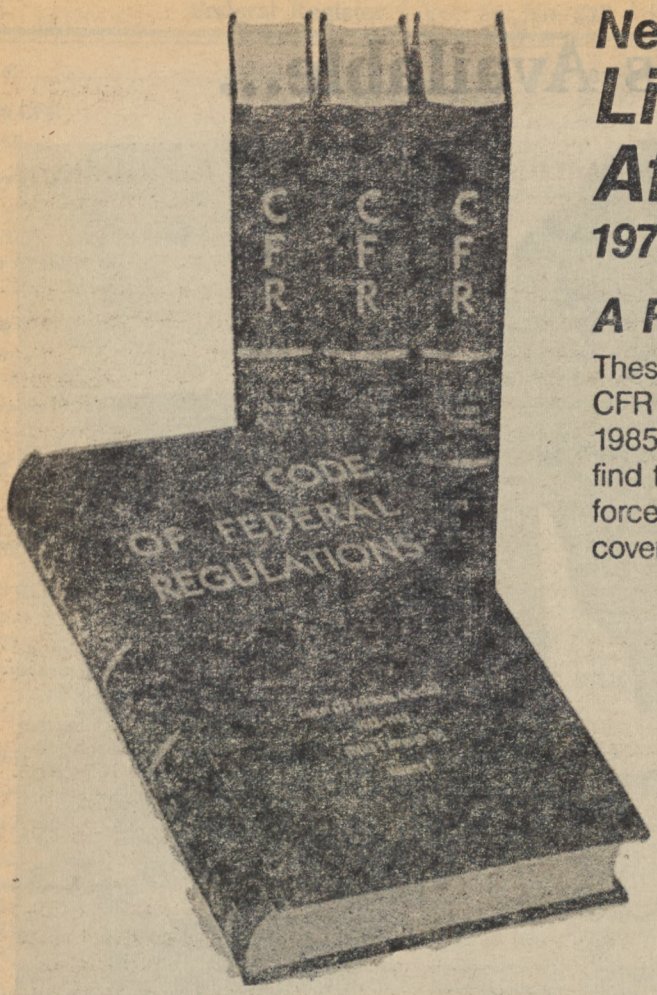
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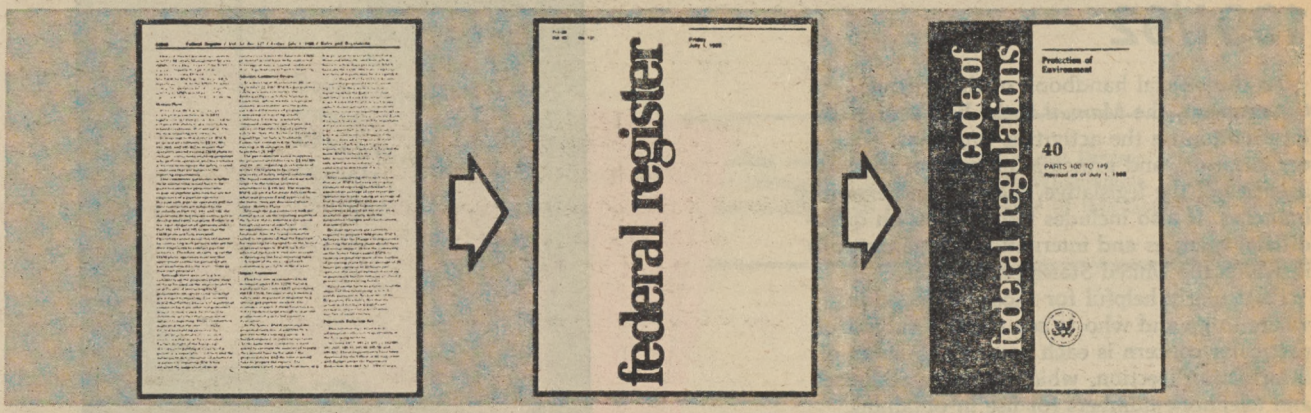
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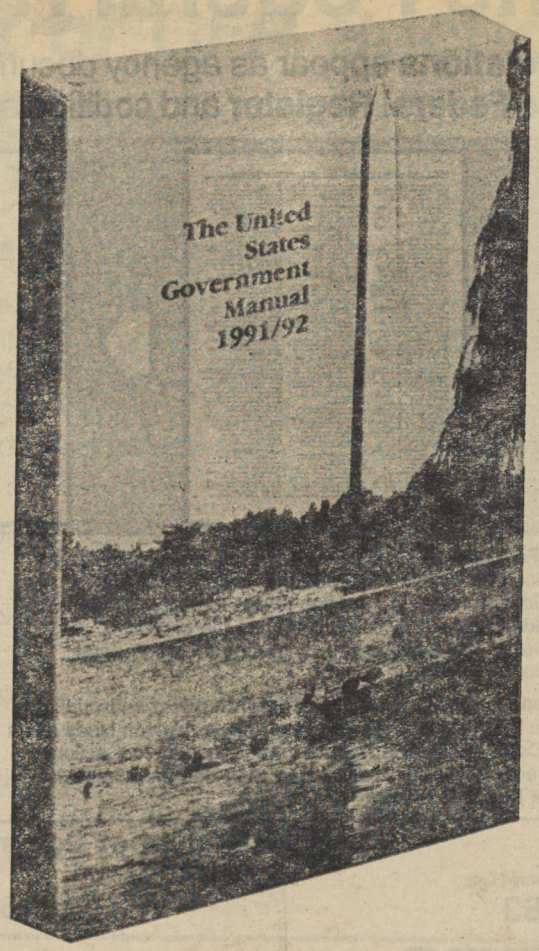
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