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Briefing on How To Use the Federal Register
For information on briefing in New York, NY, see announcement on the inside cover of this issue.

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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.

NEW YORK, NY

WHEN: November 23, 9:00 am—12:00 pm

WHERE: National Archives—Northeast Region, 201 Varick Street, 12th Floor, New York, NY

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Free **Electronic Bulletin Board** service for Public Law numbers and Federal Register finding aids is available on 202–275–1538 or 275–0920.

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Title 3—

The President

Executive Order 12876 of November 1, 1993

Historically Black Colleges and Universities

By the authority vested in me as President by the Constitution and the laws of the United States of America, in order to advance the development of human potential, to strengthen the capacity of historically Black colleges and universities to provide quality education, and to increase opportunities to participate in and benefit from Federal programs, it is hereby ordered as follows:

Section 1. There shall be established in the Department of Education the President's Board of Advisors on Historically Black Colleges and Universities ("Board of Advisors" or "Board"), a Presidential advisory committee. The Board of Advisors shall issue an annual report to the President on participation by historically Black colleges and universities in federally sponsored programs. The Board of Advisors will also provide advice to the Secretary of Education ("Secretary") and in the annual report to the President on how to increase the private sector role in strengthening historically Black colleges and universities, with particular emphasis on enhancing institutional infrastructure and facilitating planning, development, and the use of new technologies to ensure the goal of long-term viability and enhancement of these institutions. Notwithstanding the provisions of any other Executive order, the responsibilities of the President under the Federal Advisory Committee Act, as amended (5 U.S.C. App. 2), which is applicable to the Board of Advisors, shall be performed by the Secretary, in accordance with the guidelines and procedures established by the Administrator of General Services.

Sec. 2. The members of the Board of Advisors shall be appointed by the President. The Board shall include representatives of historically Black colleges and universities, other institutions of higher education, business and financial institutions, private foundations, and secondary education.

Sec. 3. The White House Initiative on Historically Black Colleges and Universities, housed in the Department of Education, shall: (1) provide the staff, resources, and assistance for the Board of Advisors; (2) assist the Secretary in the role of liaison between the executive branch and historically Black colleges and universities; and (3) serve the Secretary in carrying out his responsibilities under this order.

Sec. 4. To carry out the purposes of this order, each executive department and each agency designated by the Secretary shall, consistent with applicable law, enter into appropriate grants, contracts, or cooperative agreements with historically Black colleges and universities. The head of each agency subject to this order shall establish an annual goal for the amount of funds to be awarded in grants, contracts, or cooperative agreements to historically Black colleges and universities. Consistent with the funds available to the agency, the goal shall be an amount above the actual amount of such awards from the previous fiscal year and shall represent a substantial effort to increase the amounts available to historically Black colleges and universities for grants, contracts, or cooperative agreements. In order to facilitate the attainment of the goals established by this section, the head of each agency subject to this order shall provide technical assistance and information to historically Black colleges and universities regarding the program activities of the agency and the preparation of applications or proposals for grants, contracts, or cooperative agreements.

Sec. 5. Each executive department and designated agency shall appoint a senior official, who is a full-time officer of the Federal Government and who is responsible for management or program administration, to report directly to the department or agency head or designated agency representative on department or agency activity under this order and to serve as liaison to the Board and White House Initiative. To the extent permitted by law and regulation, each executive department and designated agency shall provide appropriate information requested by the Board and the White House Initiative staff pursuant to this order.

Sec. 6. Each executive department and designated agency shall develop an annual plan for, and shall document, the agency's effort to increase the ability of historically Black colleges and universities to participate in federally sponsored programs. These plans shall describe the measurable objectives for proposed agency actions to fulfill this order and shall be submitted at such time and in such form as the Secretary shall designate. In consultation with participating agencies, the Secretary shall review these plans and develop, with the advice of the Board of Advisors, an integrated Annual Federal Plan for Assistance to Historically Black Colleges and Universities for consideration by the President. The Secretary shall ensure that each president of a historically Black college or university is given the opportunity to comment on the proposed Annual Federal Plan prior to consideration by the President. Each participating agency shall submit to the Secretary and the Director of the Office of Management and Budget, an Annual Performance Report that shall measure each agency's performance against the objectives set forth in its annual plan. The Director of the Office of Management and Budget shall be responsible for overseeing compliance with the Annual Federal Plan.

Sec. 7. Each year the Board of Advisors shall report to the President on the progress achieved in enhancing the role and capabilities of historically Black colleges and universities, including findings and recommendations on the Annual Performance Reports, described in Section 6, submitted by the participating agencies. The Secretary shall disseminate the annual report to appropriate members of the executive branch and make every effort to ensure that findings of the Board of Advisors are taken into account in the policies and actions of every executive agency.

Sec. 8. The Department of Education, along with other Federal departments or agencies, shall work to encourage the private sector to assist historically Black colleges and universities through increased use of such devices and activities as: (1) private sector matching funds to support increased endowments; (2) private sector task forces for institutions in need of assistance; and (3) private sector expertise to facilitate the development of more effective ways to manage finances, improve information management, strengthen facilities, and improve course offerings. These steps will be taken with the goals of enhancing the career prospects of graduates of historically Black colleges and universities and increasing the number of such graduates with degrees in science and technology.

Sec. 9. In all its recommendations, the Board of Advisors shall emphasize ways to support the long-term development plans of each historically Black college and university. The Board of Advisors shall recommend alternative sources of faculty talent, particularly in the fields of science and technology, including faculty exchanges and referrals from other institutions of higher education, private sector retirees, Federal employees and retirees, and emeritus faculty members at other institutions of higher education.

Sec. 10. The Board of Advisors, through the White House Initiative, shall provide advice on how historically Black colleges and universities can achieve greater financial security. To the maximum extent possible, the Board of Advisors shall consider how such institutions can enlist the resources and experience of the private sector to achieve such security.

Sec. 11. The Director of the Office of Personnel Management, in consultation with the Secretary and the Secretary of Labor, shall develop a program to improve recruitment and participation of graduates and undergraduate students of historically Black colleges and universities in part-time, summer and permanent positions in the Federal Government.

Sec. 12. Administration: (a) Members of the Board of Advisors shall serve without compensation, but shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the Government service, (5 U.S.C. 5701–5707).

(b) The Board of Advisors and the White House Initiative shall obtain funding for their activities from the Department of Education.

(c) The Department of Education shall provide such administrative services for the Board as may be required.

Sec. 13. Executive Order No. 12677 of April 28, 1989, is hereby revoked.

William J. Clinton

THE WHITE HOUSE,
November 1, 1993.

[FR Doc. 93–27309
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Editorial note: For the President's remarks on signing this Executive order, see the *Weekly Compilation of Presidential Documents* (vol. 29, issue 44.)

Rules and Regulations

Federal Register
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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

Commodity Credit Corporation

7 CFR Parts 1421 and 1434

RIN 0560–AC95

Price Support Programs

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: On March 18, 1993, the Commodity Credit Corporation (CCC) issued an interim rule with respect to the price support loan programs for grains and similarly handled commodities, including oilseeds (canola, mustard seed, rapeseed, safflower seed, soybeans, and sunflower seed); and honey, respectively, which are conducted by the CCC in accordance with the Agricultural Act of 1949, as amended (the 1949 Act), and other acts. This final rule provides greater clarity, enhances the administration of CCC programs by providing uniformity between CCC price support programs, eliminates obsolete provisions, and more appropriately reflects loan eligibility quality requirements for producers of the 1992 and subsequent year crops of minor oilseeds.

EFFECTIVE DATE: November 4, 1993.

FOR FURTHER INFORMATION CONTACT: Burdetta Rossow, Program Specialist, Cotton, Grain, and Rice Price Support Division, Agricultural Stabilization and Conservation Service, United States Department of Agriculture (USDA), P.O. Box 2415, Washington, DC 20013–2415; telephone 202–720–8374.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule is issued in conformance with Executive Order 12866, and has been determined not to be a "significant regulatory action." Based on information compiled by the Department, it has been determined that this final rule:

(1) Would have an effect on the economy of less than $100 million;

(2) Would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(3) Would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(4) Would not alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations of recipients thereof; and

(5) Would not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order 12866.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are Commodity Loans and Purchases—10.051.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable because the CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of these determinations.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of human environment.

Executive Order 12372

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).

Paperwork Reduction Act

Public reporting burden for the information collections contained in this regulation with respect to price support programs is 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 collections of information. In accordance with the provisions of 44 U.S.C. chapter 35, the information collections have been cleared by OMB through August 31, 1994, and assigned numbers 0560–0087 and 0560–0129.

Background

The 1949 Act sets forth the statutory authority for CCC price support programs. CCC price support programs are intended to stabilize market prices and provide interim financing and assistance to producers in the orderly marketing of eligible commodities.

This final rule amends regulations found at 7 CFR parts 1421 and 1434 to provide rules for administering CCC price support programs for the 1992 through 1995 crop years.

This final rule has been reviewed pursuant to Executive Order 12778. To the extent State and local laws are in conflict with these regulatory provisions, it is the intent of CCC that the terms of the regulations prevail. The provisions of this final rule are not retroactive. Prior to any judicial action in a court of competent jurisdiction, administrative review under 7 CFR part 780 must be exhausted.

Discussion of Comments

Two respondents commented on CCC's proposal to provide that a producer shall be considered to have divested beneficial interest in a commodity if the purchaser or intended purchaser pays the producer any payment amount which CCC determines has provided the purchaser or intended purchaser a beneficial interest in the commodity except with respect to approved cooperative marketing associations. Producers may execute an option to purchase contact and receive an advance payment in return for such option if the option to purchase contains a specific provision allowing the producer to retain title and risk of loss in the commodity until the earlier of the expiration of the option or the date CCC claims title to the commodity. Generally, respondents believe that this would eliminate an effective marketing tool producers have in getting the best price for their commodity and the elimination of this tool would result in

lower producer prices. CCC's interest is adequately protected in commodities pledged as collateral for price support loans while allowing producers and buyers of commodities to arrange for the potential sale of the commodity prior to the expiration of the loan. The interim rule did not propose to change the manner in which CCC operates these programs but merely set forth more clearly the policy of CCC which has been in place since enactment of the Food Security Act of 1985. Accordingly, in order to continue to protect CCC's interest the proposed clarifications to the provision are adopted without change.

Three respondents commented on CCC's proposal to categorize and assess like administrative actions for loan and loan deficiency payment (LDP) violations involving incorrect certification, unauthorized removal, and unauthorized disposition when a determination has been made that a violation occurred. The assessment of the proposed administrative actions allow producers to repay only the quantity involved in the violation, instead of the entire loan or LDP quantity, and still retain future farm-stored loan or LDP eligibility benefits. One of the respondents believes that there are significant differences between violations of incorrect certification and violations of unauthorized removal or disposition and believes the proposed 20 percent penalty for liquidated damages with a good faith determination for first offense violation is unjustified. One respondent believes that an exception is necessary in § 1421.16(f)(2)(ii) to prevent confusion with § 1421.17(b)(1) which provides for the designation of all storage structures that may be used for storage of loan collateral and allows for movement of loan collateral from one storage structure to another on the farm without obtaining prior written approval from the County Committee. To protect CCC's interest and the integrity of the program, CCC adopts this provision as proposed with the following exception, § 1421.16(f)(2)(ii) will be revised to read "Movement of loan collateral from one storage structure to another on the farm, except as provided for in § 1421.17(b)(1); and".

There was one respondent to CCC's proposal to provide for the producer's designation of all structures that may be used for storage of the loan collateral when requesting a loan. The producer is not required to obtain prior written approval from the County Committee before moving loan collateral from one designated structure to another designated structure on the farm. The respondent believes this provision puts an unnecessary burden on the county office inspectors to verify condition or existence of loan collateral. Implementation of this provision eliminates determinations of unauthorized removal when producers relocate grain and fail to obtain authorization from the county office before movement of the grain. Accordingly, this proposed provision is adopted without change.

There were five respondents to CCC's proposal to not allow rice of a special grade be considered eligible for loan. Federal Grain Inspection Service (FGIS) issued a proposed rule on January 11, 1993, (58 FR 3511) which would classify aromatic rice as a special grade. Generally, the respondents have no objection to the establishment of aromatic rice as a special grade but if CCC's proposal to not allow rice of a special grade to be eligible for loan is adopted, aromatic rice would be ineligible for price support benefits. CCC concurs with the respondents' suggestion that if aromatic rice is classified as a special grade by FGIS, it would be ineligible for price support under CCC's proposed provision. It is CCC's intention to extend price support to aromatic rice which is otherwise eligible for price support benefits. Accordingly, CCC will exempt aromatic rice from the price support loan restriction for rice with special grade designation and § 1421.18(b)(5)(iii) will be revised to read as follows, "The rice may not grade parboiled or glutinous or, excluding aromatic rice, be a special grade; and".

One respondent commented on CCC's overall operation with respect to making LDP's in that the interim rule did not provide a more efficient method for producers to obtain LDP's. After careful review of the comments received, CCC has determined to adopt the proposed provisions without change.

One respondent commented on CCC's proposed provisions for the honey price support program at 7 CFR part 1434. Section 1434.15 provides for producers to obtain a loan or LDP on a quantity not to exceed 100 percent of the net quantity specified on acceptable evidence of disposition. Section 1434.22 provides for the State Committee to establish a lower loan percentage. The respondent expressed concern that the variations in the loan quantity percentages across the country causes confusion among the honey producers. The respondent believes the previous system of making the loan or LDP on 90 percent of the quantity and making final settlement when final disposition evidence has been provided would be more beneficial to the producer in that the producer would not run the risk of having to repay a portion of the loan or LDP proceeds plus interest in the case of less quantity. The intent of the 100 percent certification provision is to provide producers the opportunity for maximum benefits initially and at the same time encourage accurate quantity certifications. Accordingly, this provision is adopted without change.

Sections 1421.6, 1421.16, 1421.22, 1421.23, 1421.31, 1434.21, 1434.27, and 1434.28 have been revised for clarity and to conform with the existing loan agreement.

It has also been determined that all other provisions of the interim rule should be adopted as the final rule with certain technical and grammatical corrections.

List of Subjects

7 CFR Part 1421

Grains, Loan programs/agriculture, Oilseeds, Peanuts, Price support programs, Reporting and recordkeeping requirements, Soybeans, Surety bonds, Warehouses.

7 CFR Part 1434

Honey, Loan programs/agriculture, Price support programs, Reporting and recordkeeping requirements, Warehouses.

Accordingly, 7 CFR parts 1421 and 1434 are amended as follows:

PART 1421—GRAINS AND SIMILARLY HANDLED COMMODITIES

1.The authority citation for 7 CFR part 1421 is revised to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1425, 1441z, 1444f–1, 1445b–3a, 1445c–3, 1445e, and 1446f; 15 U.S.C. 714b and 714c.

2. Section 1421.4 is amended by revising paragraph (i) to read as follows:

§ 1421.4 Eligible producers.

* * * * *

(i)(1) Two or more producers may obtain a single joint loan deficiency payment with respect to commodities which are stored in the same farm storage facility. Two or more producers may obtain individual loan deficiency payments with respect to their share of the commodity which is stored commingled in a farm storage facility with commodities owned by other producers. All producers who store a commodity in a farm storage facility in which commodities for which a loan deficiency payment has been requested shall be liable for any damage incurred by CCC with respect to incorrect certification of such commodities in accordance with § 1421.16.

(2) Two or more producers may obtain a single joint loan deficiency payment with respect to commodities which are stored in an approved or unapproved warehouse if the acceptable documentation representing an eligible commodity for which a loan deficiency payment is requested is completed jointly for such producers.

(3) Each producer who is a party to a joint loan deficiency payment will be jointly and severally responsible and liable for the breach of the obligations set forth in the loan deficiency payment documents and in the applicable regulations in this subpart.

3. Section 1421.5 is amended by:

A. Revising paragraphs (b)(1), (b)(2)(i), (b)(2)(ii), (b)(4)(ii), (c)(2) introductory text, (c)(2)(i) and (d)(2),

B. Revising paragraph (e)(3), and

C. Revising paragraphs (f) and (i) to read as follows:

§ 1421.5 General eligibility requirements.

* * * * *

(b)(1) Commodities must be tendered to CCC by an eligible producer and must be eligible, in existence, and in approved storage at the time of disbursement of loan, loan deficiency payment, or purchase agreement proceeds. The commodity must not have been sold, nor any sales option on such commodity granted, to a buyer under a contract which provides that the buyer may direct the producer to pledge the commodity to CCC as collateral for a price support loan or to obtain a loan deficiency payment. Such commodities must also be merchantable for food, feed, or other uses determined by CCC and must not contain mercurial compounds, toxin producing molds, or other substances poisonous to humans or animals.

(2) * * *

(i) With respect to barley, canola, corn, flaxseed, grain sorghum, oats, rice, rye, soybeans, sunflower seed for extraction of oil, and wheat, shall be based upon the Official United States Standards for Grain and the Official United States Standards for Rice as applied to rough rice whether or not such determinations are made on the basis of an official inspection. The costs of an official grade determination may be paid by CCC.

(ii) With respect to a crop of mustard seed, rapeseed, safflower seed, and sunflower seed used for a purpose other than to extract oil, shall be based on quality requirements established and announced by CCC, whether or not such determinations are made on the basis of an official inspection. The costs of an official quality determination may be paid by CCC. The quality requirements which are used in administering the price support program for the oilseeds in this paragraph are available in State and county ASCS offices.

* * * * *

(4) * * *

(ii) A bushel of corn shall be 56 pounds of corn;

* * * * *

(c) * * *

(2) A producer shall not be considered to have divested the beneficial interest in the commodity if the producer retains control, title, and risk of loss in the commodity, including the right to make all decisions regarding the tender of such commodity to CCC for price support, and the producer:

(i) Executes an option to purchase whether or not a payment is made by the potential buyer for such option to purchase with respect to such commodity if all other eligibility requirements are met and the option to purchase contains the following provision:

* * * * *

(d) * * *

(2) The commodity reoffered as security for the subsequent loan shall have the same maturity date as the original loan.

(e) * * *

(3) Permission to inspect, examine, and make copies of the records and other written data as deemed necessary to verify the eligibility of the producer and commodity.

(f) Producers who redeem loan collateral or receive a loan deficiency payment for a commodity in accordance with paragraph (e) of this section must provide evidence of production acceptable to CCC before the final loan availability date of the crop year for such commodity following the crop year for which the loan or loan deficiency payment was made. Production evidence includes but is not limited to:

(1) Evidence of sales,

(2) Load summary or assembly sheets,

(3) Warehouse receipts issued by a warehouse that is approved according to § 1421.8(b) or by a warehouse that is not approved, and

(4) Quantities determined by measurement at CCC's discretion.

* * * * *

(i) CCC shall limit the total loan quantity for a loan disbursement, purchase quantity for a purchase agreement or loan deficiency quantity for a loan deficiency payment disbursement based on a subsequent increase in the quantity of eligible commodity by the final loan availability date to 100 percent of the outstanding quantity of such loan, purchase agreement, or loan deficiency payment application. A producer may obtain a separate loan, loan deficiency payment, or purchase agreement before the final loan availability date for the commodity for quantities in excess of 100 percent of such quantity if such quantities are an otherwise eligible commodity.

4. Section 1421.6 is amended by revising paragraph (d)(2)(i) to read as follows:

§ 1421.6 Maturity and expiration dates.

* * * * *

(d) * * *

(2) * * *

(i) Determine the value of the settlement for such collateral in accordance with § 1421.22,

* * * * *

5. Section 1421.8 is amended by revising paragraphs (a) and (c) to read as follows:

§ 1421.8 Approved storage.

(a) Approved farm storage shall consist of a storage structure located on or off the farm (excluding public warehouses) which is determined by CCC to be under the control of the producer and to afford safe storage of the commodity pledged as collateral for a price support loan. As may be determined and announced by the Executive Vice President, CCC, approved farm storage may also include on-ground storage, temporary storage structures, or other storage arrangements.

* * * * *

(c) The approved storage requirements provided in this section may be waived by CCC if the producer requests a loan deficiency payment pursuant to the loan deficiency payment provisions contained in § 1421.29.

6. Section 1421.9 is amended by:

A. Revising paragraphs (f)(2)(iv)(A), (f)(2)(vi)(C), (f)(2)(viii)(A), (f)(2)(viii)(C), (f)(2)(viii)(G), and (f)(2)(viii)(H),

B. and C. Revising paragraph (f)(2)(viii)(I),

D. Revising paragraph (f)(2)(ix)(B),

E. Revising paragraph (f)(2)(xi)(E)(*5*),

F. and G. Revising paragraph (f)(2)(xii)(F)(*1*),

H. Revising paragraphs (f)(2)(xiii)(E)(*5*) through (*7*),

I. Revising paragraph (f)(2)(xiii)(G),

J. Revising paragraphs (f)(2)(xiv)(B)(*5*) and (*6*),

K. and L. Revising introductory text of paragraph (g)(2)(iv)(A) to read as follows:

§ 1421.9 Warehouse receipts.

* * * * *

(f) * * *

(2) * * *

(iv) * * *
(A) Grade (including special grades);
* * * * *
(vi) * * *
(C) Grade (including special grades);
* * * * *
(viii) * * *
(A) Gross weight in pounds and net bushels;
* * * * *
(C) Grade (including special grades);
* * * * *
(G) Protein content;
(H) A bulblet count, if indicated "garlicky"; and
(I) Any other grading factor when such factor (not test weight) determines the grade.
(ix) * * *
(B) Grade (including special grades);
* * * * *
(xi) * * *
(E) * * *
(5) Conspicuous admixture;
* * * * *
(xii) * * *
(F) * * *
(1) Garlic bulbs;
* * * * *
(xiii) * * *
(E) * * *
(5) Stones;
(6) Other damaged;
(7) Sprout-damaged;
* * * * *
(G) Iodine Value.
(xiv) * * *
(B) * * *
(5) Percentage of:
(i) Admixtures;
(ii) Heat damage;
(iii) Insect damage;
(iv) Black seeds;
(v) Seed size passing through a 14/64 sieve;
(vi) Sclerotinia bodies;
(vii) Total of frost damage, badly weathered damage, diseased damage, otherwise materially damage, immature;
(6) Count of:
(i) Animal filth;
(ii) Glass; and
(iii) Unknown foreign substance.
* * * * *
(g) * * *
(2) * * *
(iv) * * *
(A) For the following commodities, 1.3 times the percentage difference between the moisture content of the commodity received and the following percentages for the specified commodity:
* * * * *

7. Section 1421.12(d) is revised to read as follows:

§ 1421.12 Fees, charges, and interest.

* * * * *

(d) For each crop of soybeans, the producer, as defined in the Soybean Promotion, Research, and Consumer Information Act (7 U.S.C. 6301), shall remit to CCC an assessment which shall be determined at the time CCC acquires the commodity, and shall be at a rate equal to one-half of one percent of the amount determined in accordance with § 1421.19.

* * * * *

8. and 9. Section 1421.14(b) is revised to read as follows:

§ 1421.14 Offsets.

* * * * *

(b) If the producer is indebted to CCC or to any other agency of the United States and such indebtedness is listed on the county claim control record, amounts due the producer under the regulations in this subpart after deductions made for amounts provided in paragraph (a) of this section shall be applied as provided in part 3 of this title and part 1403 of this chapter, to such indebtedness.

10. Section 1421.15 is revised to read as follows:

§ 1421.15 Loss or damage to the commodity.

The producer is responsible for any loss in quantity or quality of the commodity placed under a farm-stored loan. CCC shall not assume any loss in quantity or quality of the loan collateral for farm-stored loans.

11. Section 1421.16 is revised to read as follows:

§ 1421.16 Personal liability of the producers.

(a) When a producer obtains a commodity loan or requests a loan deficiency payment, the producer agrees:

(1) When signing Form CCC–677, Farm Storage Note and Security Agreement that the producer will not:

(i) Provide an incorrect certification of the quantity or make any fraudulent representation for farm-stored loan, or

(ii) Remove or dispose of a quantity of commodity which is collateral for a CCC farm-stored loan without prior written approval from CCC in accordance with § 1421.20.

(2) When signing Form CCC–700, Loan Deficiency Payment Application and Certification or for cooperative marketing associations approved according to part 1425 of this chapter, Form CCC–701, Cooperative Loan Deficiency Payment Application and Certification, that the producer will not provide an incorrect certification of the quantity or make any fraudulent representation for loan deficiency payment purposes.

(3) That violation of the terms and conditions of the Form CCC–677, Form CCC–700, or Form CCC–701, as applicable, will cause harm or damage to CCC in that funds may be disbursed to the producer for a quantity of a commodity which is not actually in existence or for a quantity on which the producer is not eligible.

(b) The violations in accordance with paragraph (a) of this section are defined as follows:

(1) Incorrect certification is the certifying of a quantity of a commodity for the purpose of obtaining a farm-stored commodity loan or a loan deficiency payment in excess of the quantity eligible for such loan or loan deficiency payment or the making of any fraudulent representation with respect to obtaining loans or loan deficiency payments.

(2) Unauthorized removal is the movement of any loan quantity from the storage structure in which the commodity was stored or structures which were designated when the loan was approved to any other storage structure whether or not such structure is located on the producer's farm without prior written authorization from the County Committee in accordance with § 1421.20.

(3) Unauthorized disposition is the conversion of any loan quantity pledged as collateral for a farm-stored loan without prior written authorization from the County Committee in accordance with § 1421.20.

(c) The producer and CCC agree that it will be difficult, if not impossible, to prove the amount of damages to CCC for the violations in accordance with paragraph (b) of this section. Accordingly, if the County Committee determines that the producer has violated the terms and conditions of Form CCC–677, Form CCC–700, or Form CCC–701, as applicable, the producer shall pay to CCC as liquidated damages an amount computed by multiplying the quantity applicable to the violation by:

(1) For the first offense, if the County Committee determines the producer acted in good faith when the violation occurred, 20 percent of the loan rate applicable to the loan note or the loan deficiency payment rate;

(2) For the second offense, if the County Committee determines the producer acted in good faith when the violation occurred, 50 percent of the loan rate applicable to the loan note or the loan deficiency payment rate;

(3) For any offense other than the first or second offense including any offense for which the County Committee cannot determine the producer acted in good faith when the violation occurred, 50

percent of the loan rate applicable to the loan note or the loan deficiency payment rate.

(d) For first and second offenses, if the County Committee determines that a producer acted in good faith when the violation occurred, the County Committee shall:

(1) Require repayment of the loan principal applicable to the loan quantity incorrectly certified or the loan quantity removed or disposed or for loan deficiency payment, the loan deficiency payment rate applicable to the loan deficiency quantity incorrectly certified, and charges plus interest applicable to the amount repaid; and

(2) Assess liquidated damages in accordance with paragraph (c) of this section. If the producer fails to pay such amount within 30 calendar days from the date of notification, the County Committee shall:

(i) Cancel the applicable liquidated damages assessed in accordance with paragraph (c) of this section;

(ii) Deny future farm-stored loans and loan deficiency payments without production evidence for twenty-four months after the date the violation is discovered; and

(iii) Call the applicable farm-stored loan involved in the violation, or for loan deficiency payment, require repayment of the loan deficiency payment and charges plus interest.

(e) For cases other than the first or second offense or any offense for which the County Committee cannot determine that the producer acted in good faith when the violation occurred, the County Committee shall:

(1) Deny future farm-stored loans and loan deficiency payments without production evidence for twenty-four months after the date the violation is discovered; and

(2) Call the farm-stored loan involved in the violation, or for loan deficiency payment, require repayment of the loan deficiency payment and charges plus interest.

(f) The County Committee:

(1) May waive the administrative actions taken in accordance with paragraphs (c)(1) and (d) of this section if the County Committee determines that:

(i) The violation occurred inadvertently, accidentally, or unintentionally; or

(ii) The producer acted to prevent spoilage of the commodity.

(2) Shall not consider the following acts as inadvertent, accidental, or unintentional:

(i) Movement of loan collateral off the farm;

(ii) Movement of loan collateral from one storage structure to another on the farm, except as provided for in § 1421.17(b)(1); and

(iii) Feeding the loan collateral.

(3) Shall furnish a copy of its determination to the State Committee, and the Administrator. If the determination of the County Committee is not disapproved by either the State Committee or the Administrator of ASCS, or a designee, within 60 calendar days from the date the determination is received, such determination shall be considered to have been approved.

(g) If, for any violation in accordance with paragraph (b) of this section, the County Committee determines that CCC's interest is not or will not be protected, the County Committee shall call any or all of the producer's farm-stored loans, and deny future farm-stored loans and loan deficiency payments without production evidence for twenty-four months after the date the violation is discovered. Depending on the severity of the violation, the County Committee may deny future farm-stored loans and loan deficiency payments without production evidence for additional twelve month periods.

(h) If the County Committee determines that the producer has committed a violation in accordance with paragraph (b) of this section, the County Committee shall notify the producer in writing that:

(1) The producer has 15 calendar days to provide evidence and information regarding the circumstances which caused the violation, to the County Committee, and

(2) Administrative actions will be taken in accordance with paragraph (d) or (e) of this section.

(i) If the loan is called in accordance with this section, the producer may not repay the loan at the lower of the loan repayment rate in accordance with § 1421.25 and may not utilize the provisions of part 1470 of this chapter with respect to such loan.

(j) Producers who have been refused a farm-stored loan under provisions of this section may apply for a warehouse-stored loan.

(k)(1) If a producer:

(i) Makes any fraudulent representation in obtaining a loan, purchase agreement, or loan deficiency payment, maintaining, or settling a loan; or

(ii) Disposes or moves the loan collateral without the approval of CCC, such loan shall be payable upon demand by CCC. The producer shall be liable for:

(A) The amount of the loan, purchase agreement, or loan deficiency payment;

(B) Any additional amounts paid by CCC with respect to the loan, purchase agreement, or loan deficiency payment;

(C) All other costs which CCC would not have incurred but for the fraudulent representation, the unauthorized disposition or movement of the loan collateral; and

(D) Interest on such amounts; and

(*1*) With regard to amounts due for a loan, the payment of such amounts may not be satisfied by the forfeiture of loan collateral to CCC of commodities with a settlement value that is less than the total of such amounts; or

(*2*) By repayment of such loan at the lower loan repayment rate as prescribed in § 1421.25.

(2) Notwithstanding any provisions of the note and security agreement, if a producer has made any such fraudulent representation or if the producer has disposed of, or moved, the loan collateral without prior written approval from CCC in accordance with § 1421.20, the value of the settlement for such collateral delivered to or removed by CCC shall be determined by CCC according to § 1421.22.

(l)(1) If a producer makes any fraudulent representation with respect to obtaining a purchase agreement or delivery of a commodity in accordance with such an agreement, the producer shall be liable for the following amounts and the payment of such amounts may not be satisfied by the delivery, in accordance with such an agreement, of commodities to CCC with a settlement value that is less than the total of such amounts:

(i) The purchase amount paid to the producer by CCC;

(ii) All other costs which CCC would not have incurred but for the producer's fraudulent representation; and

(iii) Interest which has accrued with respect to such amounts.

(2) If a producer has made any such fraudulent representation, the value of the commodity shall be determined by CCC according to § 1421.22.

(m) A producer shall be personally liable for any damages resulting from a commodity delivered to or removed by CCC containing mercurial compounds, toxin producing molds, or other substances poisonous to humans or animals.

(n) If the amount disbursed under a loan or purchase agreement, or in settlement thereof, or loan deficiency payment exceeds the amount authorized by this part, the producer shall be liable for repayment of such excess and charges, plus interest.

(o) If the amount collected from the producer in satisfaction of the loan is less than the amount required in

accordance with this part, the producer shall be personally liable for repayment of the amount of such deficiency and charges, plus interest.

(p) In the case of joint loans or loan deficiency payments, the personal liability for the amounts specified in this section shall be joint and several on the part of each producer signing the note or loan deficiency payment application.

12. Section 1421.17 is amended by:

A. Revising the introductory text of paragraphs (a)(2) and (a)(3), and

B. Revising paragraphs (b)(1), (c) introductory text, (c)(1), (e), and (f) to read as follows:

§ 1421.17 Farm-stored commodities.

(a) * * *

(2) With respect to all other commodities, the State Committee may establish a loan percentage which does not exceed a percentage established by CCC or may apply quality discounts to the loan rate, each year for each commodity on a Statewide basis or for specified areas within the State. Before approving a County Committee request to establish a different loan percentage, or to apply quality discounts, the State Committee shall consider conditions in the State or areas within a State to determine if the loan percentage should be reduced below the maximum loan percentage or the quality discounts should be applied to the basic county loan rate to provide CCC with adequate protection. Loans disbursed based upon loan percentages previously lowered and loan rates adjusted for quality shall not be altered if conditions within the State or areas within the State change to substantiate removing such reductions; percentages established or loan rates adjusted for quality in accordance with this section shall apply only to new loans and not to outstanding loans. The factors to be considered by the State Committee in determining loan percentages or the necessity to apply quality discounts shall include but are not limited to:

* * * * *

(3) The loan percentages established by the State Committee may be reduced by the County Committee when authorized on an individual farm, area, or producer basis when determined to be necessary in order to provide CCC with adequate protection. The factors to be considered by the County Committee in reducing the loan percentages shall include but not be limited to:

* * * * *

(b) * * *

(1) The producer, when requesting a loan shall designate all structures that may be used for storage of the loan collateral. In such cases, the producer is not required to obtain prior written approval from the County Committee before moving loan collateral from one designated structure to another designated structure. In all other instances, if the producer intends to move loan collateral from a designated structure to another undesignated structure, the producer must request prior approval from the County Committee. Such approval shall be evidenced on Form CCC–687–1 and the eligible or ineligible commodity must be measured by a representative of the county office, at the producer's expense, before commingling; or

* * * * *

(c) Upon request by the producer before transfer, the County Committee may approve the transfer of a quantity of a commodity which is pledged as collateral for a farm-stored loan to a warehouse-stored loan at any time during the loan period.

(1) Liquidation of the farm-stored loan or part thereof shall be made through the pledge of warehouse receipts for the commodity placed under warehouse-stored loan and the immediate payment by the producer of the amount by which the warehouse-stored loan is less than the farm-stored loan or part thereof and charges plus interest. The loan quantity for the warehouse-stored loan cannot exceed 110 percent of the loan quantity for the farm-stored loan.

* * * * *

(e) The quantity of a commodity pledged as security for a farm-stored loan or for which a loan deficiency payment is requested may be determined on the basis of the quantity of the commodity which an eligible producer certifies in writing on Form CCC–666 for a loan and Form CCC–666 LDP for a loan deficiency payment is eligible to be pledged as collateral and is otherwise available for loan or loan deficiency payment purposes.

(f) If the County Committee determines, by measurement or otherwise, that the actual quantity serving as collateral for a loan is less than the loan quantity, the County Committee shall take the actions specified in § 1421.16.

13. Section 1421.18 is amended by:

A. Revising paragraphs (b)(2), (b)(5), (b)(7)(i), (b)(9)(iv), (b)(10), (b)(12)(ii), and (b)(12)(iv)(D),

B. Revising the introductory text of paragraph (b)(12)(v),

C. Revising paragraphs (b)(13)(iii) and (b)(13)(iv)(D)(3),

D. Revising the introductory text of paragraph (b)(13)(v),

E. Revising paragraphs (b)(13)(vi) and (b)(13)(vii),

F. Revising paragraph (b)(13)(viii),

G. Revising paragraph (b)(14)(iii),

H. Revising paragraphs (b)(14)(iv)(F) through (b)(14)(iv)(H),

I. Revising the introductory text of paragraph (b)(14)(v),

J. Revising paragraph (b)(14)(vi),

K. Revising paragraph (b)(15)(ii)(D)(5),

L. Revising paragraphs (b)(15)(ii)(E) through (b)(15)(ii)(G) to read as follows:

§ 1421.18 Warehouse-stored loans.

* * * * *

(b) * * *

(2) Barley must grade No. 5 or better; and

* * * * *

(5)(i) Rice must be long grain, medium grain, or short grain rough rice and must grade No. 5 or better; and

(ii) The rice must not have moisture in excess of 14.0 percent unless a supplemental certificate is provided in accordance with § 1421.9;

(iii) The rice may not grade parboiled or glutinous or, excluding aromatic rice, be a special grade; and

(iv) The rice must not grade "Infested" or "Smutty" unless a supplemental certificate is provided in accordance with § 1421.9.

* * * * *

(7)(i) Grain sorghum must grade No. 4 or better and

* * * * *

(9) * * *

(iv) The wheat must not grade "Infested" or have moisture in excess of 13.5 percent unless a supplemental certificate is provided in accordance with § 1421.9.

* * * * *

(10)(i) Canola must grade U.S. No. 2 or better except that:

(ii) The canola must contain not less than 35 percent oil content;

(iii) The canola must not grade "Infested" or have moisture in excess of 10.0 percent unless a supplemental certificate is provided in accordance with § 1421.9;

(iv) The canola must not contain in excess of 15.0 garlic bulbs per 500 grams; and

(v) The canola gross weight must be adjusted downward to reflect dockage and for the presence of any admixtures.

* * * * *

(12) * * *

(ii) The mustard seed must not grade "Musty"; "Sour"; "Heating"; "COFO";

* * * * *

(iv) * * *

(D) For conspicuous admixture, 0.5 percent;

* * * * *

(v) The mustard seed must not contain more than the following count of other material per 500 grams:

* * * * *

(13) * * *

(iii) The rapeseed must not grade "Musty"; "Sour"; "Heating"; "COFO";

(iv) * * *

(D) * * *

(3) For sclerotinia bodies, 0.1 percent;

* * * * *

(v) The rapeseed must not contain more than the following count of other material per 500 grams:

* * * * *

(vi) The rapeseed must not contain less than 45 percent erucic acid;

(vii) The rapeseed must not contain in excess of 15.0 garlic bulbs per 500 grams; and

(viii) The rapeseed gross weight must be adjusted downward to reflect dockage and for the presence of any admixtures.

(14) * * *

(iii) The safflower seed must not grade "Musty"; "Sour"; "Heating"; "COFO";

(iv) * * *

(F) For stones, 0.05 percent;

(G) For other-damaged, 3.0 percent;

(H) For sprout-damaged, 3.0 percent;

(v) The safflower seed must not contain more than the following count of other material per 600 grams:

* * * * *

(vi) The safflower seed must not contain less than 80 or more than 155 iodine value; and

* * * * *

(15) * * *

(ii) * * *

(D) * * *

(5) Sclerotinia bodies, 1.0 percent;

(E) The sunflower seed must not contain more than the following count of other material per 600 grams;

(1) For animal filth, 3;

(2) For glass, 0;

(3) For unknown foreign substance, 1;

(F) The sunflower seed must not grade "Musty"; "Sour"; "Heating"; "COFO"; and

(G) The sunflower seed gross weight must be adjusted downward to reflect undersized seed, passing through a 14/64 sieve, dockage, and for the presence of any admixtures.

14. Section 1421.19(a) is revised to read as follows:

§ 1421.19 Liquidation of loans.

(a) If a producer does not pay to CCC the total amount due in accordance with a loan, CCC shall have the right to acquire title to the loan collateral and to sell or otherwise take possession of such collateral without any further action by the producer. With respect to farm-stored loans, the producer may, as CCC determines, deliver the collateral for such loan in accordance with instructions issued by CCC. CCC will not accept delivery of any quantity of a commodity in excess of 110 percent of the outstanding farm-stored loan quantity. If a quantity in excess of 110 percent of the outstanding farm-stored loan quantity is shown on the warehouse receipt or other documents, the producer shall provide replacement warehouse receipts and delivery documents. If the warehouse receipt and such other documents applicable to the settlement are not replaced showing only the quantity eligible for delivery, CCC shall provide for such corrected documents and apply charges for such service, if any, to the producer's account as charges for settlement on the loan.

* * * * *

15. Section 1421.20 is amended by:

A. Revising the introductory text of paragraph (a), and

B. Revising paragraphs (b) and (c)(1)(ii) to read as follows:

§ 1421.20 Release of the commodity pledged as collateral for a loan.

(a) A producer, when requesting a loan shall designate specific storage structures on Form CCC–677, in accordance with § 1421.17(b)(1). The producer is not required to request prior approval before moving loan collateral between such designated structures. Movement of loan collateral to any other structures not designated on CCC–677, or the disposal of such loan collateral without prior written approval of the County Committee, shall subject the producer to the administrative actions specified in § 1421.16. A producer may at any time obtain the release, in accordance with this section, of all or any part of the commodity remaining as loan collateral by paying to CCC, with respect to the quantity of the commodity released:

* * * * *

(b) CCC may allow a producer to establish a loan repayment rate determined in accordance with § 1421.25(a)(1)(ii), (b)(2), or (d)(2) on Form CCC–681–1, Authorization for Delivery of Loan Collateral for Sale, provided the producer complies with all terms and conditions set forth on Form CCC–681–1. If a producer fails to repay a loan within the time period prescribed by CCC in accordance with the terms and conditions of Form CCC–681–1 and the commodity pledged as collateral for such loan has been delivered to a buyer in accordance with Form CCC–681–1, such producer may not repay the loan at the level that is less than the loan level determined in accordance with § 1421.25(a)(1)(ii), (b)(2), or (d)(2).

(c)(1) * * *

(ii) If CCC so announces, an amount less than the principal amount of the loan and charges plus interest under the terms and conditions specified by CCC at the time the producer redeems the commodity pledged as collateral for such loan in accordance with § 1421.25. Each partial release of the loan collateral must cover all of the commodity represented by one warehouse receipt. Warehouse receipts redeemed by repayment of the loan shall be released only to the producer. However, such receipts may be released to persons designated in a written authorization which is filed with the county office by the producer within 15 days prior to the date of repayment.

* * * * *

16. Section 1421.22 is amended by:

A. Revising paragraph (a), and

B. Revising paragraph (d) to read as follows:

§ 1421.22 Settlement.

(a) The value of the settlement for loans and purchase agreements shall be made by CCC on the following basis:

(1) With respect to nonrecourse loans and commodities purchased by CCC under purchase agreements that meet the requirements for nonrecourse loans, the schedule of premiums and discounts for the commodity:

(i) If the value of the collateral at settlement is less than the amount due, the producer shall pay to CCC the amount of such deficiency and charges, plus interest on such deficiency.

(ii) If the value of the collateral at settlement is greater than the amount due, such excess shall be retained by CCC and CCC shall have no obligation to pay such amount to any party.

(2) With respect to recourse loans and commodities purchased by CCC under purchase agreements that do not meet the requirements for nonrecourse loans, the proceeds from the sale of the commodity.

(i) If the value of the collateral at settlement is less than the amount due, the producer shall pay to CCC the amount of such deficiency and charges, plus interest on such deficiency.

(ii) If the proceeds received from the sale of the commodity are greater than the sum of the amount due plus any cost incurred by CCC in conducting the sale of the commodity, the amount of such excess shall be paid to the producer or, if applicable, to any secured creditor of the producer.

(3) If CCC sells the commodity described in paragraph (a)(1) or (a)(2) of this section in settlement of the loan,

the sales proceeds shall be applied to the amount owed CCC by the producer. The producer shall be responsible for any costs incurred by CCC in completing the sale. CCC may deduct such amount from the sales proceeds.

* * * * *

(d) A producer may be required to retain and store the commodity that is pledged as collateral for a loan for a period of 60 days after the maturity date of a loan without any cost to CCC if CCC is unable to take delivery of the commodity. If CCC is unable to take delivery of the commodity within the 60-day period after the loan maturity date, the producer shall be paid a storage payment upon delivery of the commodity to CCC. The storage payment shall be computed at the storage rate stated in the applicable CCC storage agreement for the commodity in effect at the delivery point where the producer delivers the commodity. The period for earning such storage payment shall begin the day following the expiration of the 60-day period after such maturity date and extend through the earlier of:

(1) The final date of actual delivery, or

(2) The final date for delivery as specified in the delivery instructions issued to the producer by the county office.

17. Section 1421.23 is amended by revising paragraph (c) to read as follows:

§ 1421.23 Foreclosure.

* * * * *

(c) If a farm-stored commodity removed by CCC from storage is sold, the value of the settlement for the commodity shall be determined according to § 1421.22. If a deficiency exists, the amount of the deficiency may be setoff from any payment which would otherwise be due the producer from CCC or any other agency of the United States.

18. Section 1421.25 is amended by:

A. Revising the introductory text of paragraph (a)(1), and

B. Revising paragraph (a)(1)(ii)(A) to read as follows:

§ 1421.25 Market price repayments.

(a) * * *

(1) A producer may repay a loan for a 1992 and subsequent crop of rice at a level that is the lesser of:

* * * * *

(ii) * * *

(A) The loan level determined for such crop minus the loan level determined at a national average milling yield as determined by CCC for such crop multiplied by 70 percent of the loan level determined at a national average milling yield as determined by CCC for such crop for the 1992 and subsequent crop years; or

* * * * *

19. Section 1421.29 is amended by:

A. Revising paragraph (b)(3),

B. Revising paragraph (f), and

C. Revising paragraphs (h) and (i) to read as follows:

§ 1421.29 Loan deficiency payments.

* * * * *

(b) * * *

(3) File a Form CCC–666 LDP, unless producer enters into an agreement according to § 1421.29(i), and a request for payment on Form CCC–700, or, for cooperative marketing associations approved in accordance with part 1425 of this chapter, Form CCC–701, for a quantity of an eligible commodity;

* * * * *

(f) CCC will make the loan deficiency payment in accordance with paragraph (d) of this section. Notwithstanding any provisions in this part, a loan deficiency payment may be based on 100 percent of the net eligible quantity specified on acceptable evidence of production of the commodity certified as eligible for loan deficiency payment if such production evidence is provided for such commodity. If such production evidence is provided, CCC shall limit such increase in loan deficiency payment quantity to 110 percent of the quantity certified as eligible for such payment.

* * * * *

(h) If the producer has beneficial interest in a quantity of the commodity in accordance with § 1421.5(c) on the date the commodity is harvested but will lose beneficial interest in such commodity at the time of delivery to warehouse, buyer, or processor, the producer may in such cases:

(1) File a Form CCC–666 LDP at the county office which, in accordance with part 719 of this title, is responsible for administering programs for the farm on which the commodity was produced that will include all the eligible commodity harvested, beginning on such date the CCC–666 LDP is filed through the end of the applicable announced repayment rate period for the applicable commodity. The applicable announced repayment rate period is the amount of time from the announcement of a repayment rate until the effective time of the next repayment rate announcement for the applicable commodity.

(2) Provide production evidence to the county office by the close of business the next workday following the last day of the applicable announced repayment rate period. If such production evidence is not available to the producer, the producer may provide and CCC may accept evidence of the gross weight of the applicable commodity delivered during the applicable period. In such cases, payment shall not be made until production evidence according to § 1421.5(f) is provided.

(3) File a request for payment for the eligible production delivered during the applicable period on Form CCC–700 or Form CCC–701, as applicable, when acceptable production evidence in accordance with § 1421.5(f) can be provided to the county office. The loan deficiency payment rate in accordance with § 1421.29(c) shall be the payment rate in effect on the date Form CCC–666 LDP was filed.

(i) If the producer enters into an agreement with CCC on or before the date of harvesting a quantity of an eligible commodity and the producer has the beneficial interest in such quantity as specified in accordance with § 1421.5(c) on the date the commodity was harvested, the loan deficiency payment rate applicable to such commodity would be the loan deficiency payment rate based on the date the commodity was delivered to the processor, buyer, warehouse, or cooperative. In such cases, the producer must meet all the other requirements in paragraph (b) of this section on or before the final date to apply for a loan deficiency payment in accordance with § 1421.5.

20. Section 1421.31 is revised to read as follows:

§ 1421.31 Recourse loans.

(a) CCC shall make recourse loans available to eligible producers of high moisture barley, high moisture corn, and high moisture grain sorghum. Repayment of such recourse loans shall be in accordance with the terms and conditions set forth by CCC.

(b) CCC may make recourse loans available to eligible producers with respect to commodities not specified in paragraph (a) of this section. Repayment of such recourse loans shall be in accordance with the terms and conditions set forth by CCC when the availability of such recourse loans is announced.

(c) The value of the collateral for settlements described in paragraphs (a) and (b) of this section shall be determined by CCC according to § 1421.22.

21. Section 1421.203 is revised to read as follows:

§ 1421.203 Reserve quantity.

The maximum quantity of wheat and feed grains stored under the FOR program shall be determined and announced annually by CCC. Such limitation shall be announced by the date specified in § 1421.201(b). In order to ensure that such quantities are not exceeded and to ensure regional equity, CCC may require producers to file an offer with CCC on a form prescribed by CCC which includes a statement of the quantity of grain which is pledged as collateral for a regular price support loan which such eligible producers intend to place in the FOR loan program. Such forms must be filed with the county office which disbursed such regular price support loan. If the total quantities specified on such form show that the quantity intended by such producers will likely exceed the maximum quantity, CCC may apply a uniform factor to the quantity producers intend to place in the FOR so that the maximum quantity is not exceeded. If such a form is required, producers who fail to file such form with respect to a commodity that would otherwise be eligible for entry into the FOR loan program, such grain shall not be eligible for FOR loan entry. All such forms must be filed by a producer:

(a) For wheat, by January 31 of the year following the year in which the crop is normally harvested, and

(b) For corn, grain sorghum, barley, and oats, by April 30 of the year following the year in which the crop is normally harvested.

22. Section 1421.210(b)(5)(iv) is revised to read as follows:

§ 1421.210 Commingling and replacement of wheat and feed grains.

* * * * *

(b) * * *

(5) * * *

(iv) Liquidated damages computed by multiplying the quantity not replaced by 50 percent of the loan rate applicable to the loan note.

* * * * *

23. Section 1421.214 is revised to read as follows:

§ 1421.214 Unauthorized removal and unauthorized disposition.

(a) Producers obtaining a FOR loan shall agree not to move or dispose of the collateral pledged as security for such FOR loan without obtaining prior written approval for such action from the County Committee in accordance with § 1421.20. In addition to the regulations in § 1421.16, if there are any liens or encumbrances on the commodity, waivers that fully protect the interest of CCC must be obtained even though the liens or encumbrances are satisfied from the loan proceeds and no additional liens or encumbrances shall be placed on the commodity. If such waivers cannot be obtained, CCC shall call the loan.

(b) Unauthorized removal is the movement of any loan collateral from the storage structure in which the grain was stored when the FOR loan was approved to any other storage structure which may or may not be located on the producer's farm without prior written approval from the County Committee in accordance with § 1421.20. In such cases, the regulations at § 1421.16 shall be applicable.

(c) Unauthorized disposition is the conversion of collateral under FOR loan including feeding of such collateral without prior written approval from the County Committee in accordance with § 1421 20. In such cases, the regulations at § 1421.16 shall be applicable.

PART 1434—HONEY

24. The authority citation for 7 CFR part 1434 continues to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1425a, 1446h, 4601 et seq.; 15 U.S.C. 714b and 714c.

25. Section 1434.3 is amended by revising paragraphs (a), (f), and (g) to read as follows:

§ 1434.3 Eligible producers.

(a) An eligible producer shall be a person (i.e., an individual, partnership, association, corporation, estate, trust, or other legal entity) who:

(1) Extracts honey as an owner or sharecropper;

(2) Meets the eligibility requirements prescribed in 7 CFR part 12;

(3) Shares in the risk of producing the honey; and

(4) Has a beneficial interest in the honey in accordance with § 1434.4.

* * * * *

(f)(1) Two or more eligible producers may obtain a joint loan or loan deficiency payment on eligible honey produced and extracted by them if such honey is commingled and stored in the same eligible containers. In such cases, producers may not, in lieu of obtaining a joint loan or loan deficiency payment, obtain an individual loan or loan deficiency payment on such honey.

(2) Two or more producers may obtain a joint loan or loan deficiency payment if the warehouse receipt is issued jointly to such producers. Each producer who is a party to a joint loan or loan deficiency payment will be jointly and severally responsible and liable for the breach of the obligations set forth in the loan or loan deficiency payment documents and in the applicable regulations in this part.

(g) Except as provided in § 1434.10, loans or loan deficiency payments on warehouse-stored honey may be made to a warehouseman who tenders to CCC, in the capacity as a producer, in accordance with paragraph (a) of this section, warehouse receipts issued by such warehouseman on honey where the issuance and pledge of such warehouse receipts is permitted under State law.

* * * * *

26. Section 1434.4 is amended by:

A. Revising paragraph (a),

B. Revising the introductory text of paragraph (b)(1), (b)(2), and (b)(2)(i), and

C. Revising paragraph (f) to read as follows:

§ 1434.4 Eligibility requirements.

(a) In order to obtain price support and loan deficiency payments on eligible honey, a producer must request a price support loan or loan deficiency payment no later than March 31 of the year following the year in which the honey was produced and extracted. March 31 is the final loan availability date.

(b)(1) To be eligible for price support, the beneficial interest in the honey must be in the producer tendering the honey as security for a loan or loan deficiency payment and must always have been in the producer or in such producer and a former producer whom the producer succeeded before such honey was extracted. The honey must not have been sold, nor any sales option on such honey granted, to a buyer under a contract which provides that the buyer may direct the producer to pledge the honey to CCC as collateral for a price support loan or to obtain a loan deficiency payment. Honey obtained by gift or purchase shall not be eligible to be tendered to CCC for price support. However, heirs shall be eligible for price support and loan deficiency payments as producers whether such succession occurs before or after extraction of honey, if such heirs:

* * * * *

(2) A producer shall not be considered to have divested the beneficial interest in the honey if the producer retains control, title, and risk of loss in the honey, including the right to make all decisions regarding the tender of such honey to CCC for price support, and the producer:

(i) Executes an option to purchase whether or not a payment is made by the potential buyer for such option to purchase with respect to such honey if all other eligibility requirements are met

and the option to purchase contains the following provision:

* * * * *

(f) Producers who receive a loan deficiency payment for honey in accordance with paragraph (e) of this section must provide evidence of disposition of the honey acceptable to CCC by the final loan availability date of the crop year for such commodity following the crop year the loan or loan deficiency payment was made.

* * * * *

27. and 28. Section 1434.6 is amended by revising the heading and paragraph (a) to read as follows:

§ 1434.6 Availability, disbursement, and maturity.

(a) A producer must request price support and loan deficiency payments on honey stored on the farm at the county office of the county where the honey is stored. A producer shall request price support and loan deficiency payments on honey stored in an approved warehouse at the county office of the county where the warehouse is located or at the county office of the county where the producer is headquartered. An approved cooperative marketing association must request price support and loan deficiency payments at the county office for the county in which the principal office of the cooperative is located unless the State Committee designates some other county office. In the case of an approved cooperative marketing association having operations in two or more States, requests may be made at the county office for the county in which its principal office for each such State is located.

* * * * *

29. Section 1434.7 is amended by revising paragraphs (b) and (c) to read as follows:

§ 1434.7 Eligible honey.

* * * * *

(b) Honey from the floral sources listed below and honey having similar flavor shall be eligible for price support and shall be classed as follows:

(1) Table honey means any honey having a good flavor of the predominant floral source which can be readily marketed for table use in all parts of the country. Such sources include alfalfa, apple, basswood, bird's-foot trefoil, blackberry, blueberry, brazil brush, catsclaw, Chinese tallow, clover, cotton, fireweed, gallberry, huajillo, knapweed (American), lima bean, mesquite, orange, raspberry, sage, saw palmetto, snowberry, sourwood, soybean, star thistle (barnaby's thistle), sunflower, sweet clover, tupelo, vetch, western wild buckwheat, wild alfalfa, and similar mild flavors or blends of mild-flavored honeys as determined by the Director, Cotton, Grain, and Rice Price Support Division, ASCS.

(2) Nontable honey means honey having a predominant flavor of limited acceptability for table use even though such honey may be considered suitable for table use in areas in which it is produced. Such honeys include those with a predominant flavor of aster, athel, avocado, Brazilian pepper, buckwheat (except western wild buckwheat), cabbage palmetto, Christmas berry, cranberry, dandelion, eucalyptus, goldenrod, heartsease (smartweed), horsemint, kiawe, loosestrife, macadamia, mangrove, manzanita, mint, partridge pea, rattan vine, safflower, salt cedar (Tamarix Gallica) spanish needle, spikeweed, titi, toyon, tulip popular, wild cherry, yaupon, and similarly-flavored honey or blends of such honeys as determined by the Director, Cotton, Grain, and Rice Price Support Division, ASCS.

(c) The honey must be packed in metal containers of a capacity of not less than 5 gallons or greater than 70 gallons. All containers shall meet the requirements of the Federal Food, Drug, and Cosmetic Act, as amended, and regulations issued thereunder. However, the container requirements provided in this paragraph (c) will be waived by CCC if a producer agrees to forgo obtaining a price support loan, and pursuant to the loan deficiency payment provisions contained in § 1434.26, and within a time period specified by CCC.

* * * * *

30. Section 1434.9 is amended by revising paragraphs (a)(1) and (a)(2)(i) to read as follows:

§ 1434.9 Approved storage.

(a) * * *

(1) Approved farm storage shall consist of a storage structure located on or off the farm (excluding public warehouses) which is determined by CCC to be under the control of the producer and to afford safe storage for honey pledged as collateral for a price support loan. Producers may also obtain loans on honey packed in eligible containers and stored on leased space in facilities owned by third parties in which the honey of more than one person is stored if the honey which is to be pledged as collateral for a loan and which is stored on such leased space is segregated from all other honey. Each container of the segregated quantity of honey shall be marked with the producer's name, loan number, and lot number so as to identify the honey from other honey stored in the structure.

(2) * * *

(i) A warehouse for which a CCC Honey Storage Agreement is in effect and which is approved for price support purposes, or

* * * * *

31. Sections 1434.10(a) and (e) are revised to read as follows:

§ 1434.10 Warehouse receipts.

(a) Warehouse receipts representing honey stored in an approved warehouse to be pledged as collateral for a loan or, delivered in satisfaction of a loan, or for loan deficiency payment must meet the requirements of this section, and all other provisions of this part, and CCC program documents. For warehouse-stored honey, a separate warehouse receipt must be submitted for each class, color, floral source, quality, and grade of honey tendered to CCC.

* * * * *

(e) If the warehouse receipt is issued for honey which is owned by the warehouseman either solely, jointly, or in common with others, the fact of such ownership shall be stated on the receipt. In States where the pledge of warehouse receipts issued by a warehouseman on the warehouseman's honey is invalid under State law, the warehouseman may offer the honey to CCC for loan if such warehouse is licensed and operating under the United States Warehouse Act.

* * * * *

29. Section 1434.15(c) is revised to read as follows:

§ 1434.15 Determination of quantity.

(c) Notwithstanding any provision in this section:

(1) Loans may be based on 100 percent of the net quantity specified on acceptable evidence of disposition of the honey pledged as collateral for the loan if:

(i) The producer:

(A) Is repaying the loan at the lower loan repayment rate in accordance with § 1434.24(e)(1)(ii), and the proceeds of the disbursement will be applied to the loan amount as a repayment; and

(B) Provides disposition evidence to CCC within 30 calendar days, as applicable, the expiration date of Form CCC–681–1 or date quantity for loan sold that had not been released with Form CCC–681–1; and

(ii) CCC determines that such quantity represents the quantity for the number of containers of honey pledged as collateral for the loan when the loan was disbursed.

(2) Loan deficiency payments may be based on 100 percent of the net quantity specified on acceptable evidence of disposition of the honey certified as eligible for loan deficiency payment if:

(i) The producer provides disposition evidence to CCC within 30 calendar days from date the quantity for loan deficiency payment is sold; and

(ii) CCC determines that such quantity represents the quantity for the number of containers of honey initially certified for the loan deficiency payment when such payment was made.

33. Section 1434.16(a)(1) is revised to read as follows:

§ 1434.16 Determination of quality.

(a)(1) Loans and loan deficiency payments on farm-stored honey will be made on the basis of the floral source and color of the honey as declared and certified by the producer on Form CCC–666 (Honey) (Farm Stored Honey Loan Certification and Worksheet) for loans and Form CCC–666 LDP (Loan Deficiency Payment Certification and Worksheet) for loan deficiency payments at the time the honey is pledged as collateral for a loan or at the time the loan deficiency payment application is made. The producer is also required to declare and certify on the Farm Stored Honey Loan Certification and Worksheet or Loan Deficiency Payment Certification and Worksheet the color and class (table or nontable) of the honey at the time the honey is pledged as collateral for a loan or at the time the loan deficiency payment application is made.

* * * * *

34. and 35. Section 1434.21 is amended by revising paragraph (a) to read as follows:

§ 1434.21 Personal liability of the producer.

(a) The making of any fraudulent representation by a producer in the loan documents, in obtaining a loan, loan deficiency payment, or in connection with settlement or delivery under a loan, or the unlawful disposition of any portion of the honey by the producer, shall render the producer subject to criminal prosecution under Federal law. Any such loans shall become payable and loan deficiency payments shall be refunded upon demand and, aside from any additional liability under Federal criminal and civil fraud statutes, the producer shall be personally liable for the amount of the loan or loan deficiency payment and charges, any additional amount paid to the producer in connection with the honey, and all costs which CCC would not have incurred had it not been for the producer's fraudulent representation or unlawful disposition, together with interest on any such amounts. With regard to amounts due for a loan, such producers may not repay such loan at the lower loan repayment rate as prescribed in § 1434.24(a)(2)(ii). Notwithstanding the provisions of the note and security agreement, if a producer has made any such fraudulent representation with respect to or unauthorized removal or disposition of the honey pledged as collateral for a price support loan without prior written approval from CCC, the value of the settlement for such collateral delivered to or removed by CCC shall be determined by CCC according to § 1434.27. If the unlawful disposition of the loan collateral is determined by CCC not to have been a willful conversion, the value of the honey or part thereof delivered to CCC or removed by CCC shall be the same as the settlement value for eligible honey acquired by CCC as provided in this subpart.

* * * * *

36. Section 1434.22 is amended by:

A. Revising paragraph (a),

B. Revising the introductory text of paragraph (b), and

C. Revising paragraphs (e) and (f) to read as follows:

§ 1434.22 Quantity for loans.

(a) The amount of a loan on the quantity of eligible honey either stored on the farm or packaged in eligible containers and stored identity-preserved in an approved warehouse shall be based on a percentage of the net weight of such quantity certified by the producer for farm-stored honey or such quantity specified on the warehouse receipt representing such honey which is pledged as security for the loan. Such percentage ("loan percentage"), shall be established by the State Committee, which shall not exceed a percentage established by CCC, of the certified quantity of the eligible honey stored in approved farm storage and covered by the note and security agreement.

(b) The maximum loan percentage may be lowered by the County Committee on an individual basis when determined to be necessary in order to provide CCC with adequate protection. The County Committee shall consider:

* * * * *

(e) The quantity of honey pledged as collateral for a loan on honey stored on the farm or for which a loan deficiency payment is requested is based on the quantity of honey which an eligible producer certifies in writing on Form CCC–666 (Honey) for a loan and Form CCC–666 LDP for a loan deficiency payment is eligible if the honey is in approved farm storage and is otherwise available for loan or loan deficiency payment purposes.

(f) Upon request by the producer before the transfer, the County Committee may authorize the transfer of honey pledged as collateral for a loan or part thereof for honey stored in an approved warehouse to a loan on honey stored on the farm.

(1) Quantities pledged as collateral for a loan for honey stored on the farm shall be determined by a representative of the county office before approving the loan on the honey stored on the farm.

(2) The producer must immediately repay the amount by which the loan on the honey stored on the farm is less than the loan for the honey stored in an approved warehouse and charges plus interest on the shortage.

(3) Such loans on farm-stored honey shall be made in the manner prescribed herein and the maturity date shall be the maturity date applicable to the loan which was transferred.

37. Section 1434.23 is revised to read as follows:

§ 1434.23 Incorrect certification, unauthorized removal and unauthorized disposition.

(a) When a producer obtains a loan or requests a loan deficiency payment, the producer agrees:

(1) When signing Form CCC–677, Farm Storage Note and Security Agreement that the producer will not:

(i) Provide an incorrect certification of the quantity or make any fraudulent representation, or

(ii) Remove or dispose of a quantity of honey which is collateral for a CCC farm-stored loan without prior written approval from CCC in accordance with § 1434.24.

(2) When signing Form CCC–700, Loan Deficiency Payment Application and Certification, or for cooperative marketing associations approved in accordance with part 1425 of this chapter, Form CCC–701, Cooperative Loan Deficiency Payment Application and Certification, that the producer will not provide an incorrect certification of the quantity or make any fraudulent representation for loan deficiency payment purposes.

(3) That violation of the terms and conditions of the Form CCC–677, Form CCC–700, or Form CCC–701, as applicable, will cause harm or damage to CCC in that funds may be disbursed to the producer for a quantity which is not actually in existence or for a quantity on which the producer is not eligible.

(b) The violations in accordance with paragraph (a) of this section are defined as follows:

(1) Incorrect certification is the certifying of a quantity of a commodity for the purpose of obtaining a farm-stored commodity loan or a loan

deficiency payment in excess of the quantity eligible for such loan or loan deficiency payment or the making of any fraudulent representation with respect to obtaining loans or loan deficiency payments.

(2) Unauthorized removal is the movement of any loan quantity from the storage structure in which the commodity was stored when the loan was approved to any other storage structure whether or not such structure is located on the producer's farm without prior written authorization from the County Committee in accordance with § 1434.24.

(3) Unauthorized disposition is the conversion of any loan quantity pledged as collateral for a farm-stored loan without prior written authorization from the County Committee in accordance with § 1434.24.

(c) The producer and CCC agree that it will be difficult, if not impossible, to prove the amount of damages to CCC for the violations in accordance with paragraph (b) of this section. Accordingly, if the County Committee determines that the producer has violated the terms and conditions of Form CCC–677, Form CCC–700, or Form CCC–701, as applicable, the producer shall pay to CCC as liquidated damages an amount computed by multiplying the quantity applicable to the violation by:

(1) For the first offense, if the County Committee determines the producer acted in good faith when the violation occurred, 20 percent of the loan rate applicable to the loan note or the loan deficiency payment rate;

(2) For the second offense, if the County Committee determines the producer acted in good faith when the violation occurred, 50 percent of the loan rate applicable to the loan note or the loan deficiency payment rate; and

(3) For any offense other than the first or second offense, including any offense for which the County Committee cannot determine the producer acted in good faith when the violation occurred, 50 percent of the loan rate applicable to the loan note or the loan deficiency payment rate.

(d) For first and second offenses, if the County Committee determines that a producer acted in good faith when the violation occurred, the County Committee shall:

(1) Require repayment of the loan principal applicable to the loan quantity incorrectly certified or the loan quantity removed or disposed or for loan deficiency payment, the loan deficiency payment rate applicable to the loan deficiency quantity incorrectly certified, and charges plus interest applicable to the amount repaid; and

(2) Assess liquidated damages in accordance with paragraph (c) of this section. If the producer fails to pay such amount within 30 calendar days from the date of notification, the County Committee shall:

(i) Cancel the applicable liquidated damages assessed in accordance with paragraph (c) of this section;

(ii) Deny future farm-stored loans and loan deficiency payments without production evidence for twenty-four months after the date the violation is discovered; and

(iii) Call the applicable farm-stored loan involved in the violation, or for loan deficiency payment, require repayment of the loan deficiency payment and charges plus interest.

(e) For cases other than the first or second offense or any offense for which the County Committee cannot determine that the producer acted in good faith when the violation occurred, the County Committee shall:

(1) Deny future farm-stored loans and loan deficiency payments without production evidence for twenty-four months after the date the violation is discovered; and

(2) Call the farm-stored loan involved in the violation, or for loan deficiency payment, require repayment of the loan deficiency payment and charges plus interest.

(f) The County Committee:

(1) May waive the administrative actions taken in accordance with paragraphs (c)(1) and (d) of this section if the County Committee determines that:

(i) The violation occurred inadvertently, accidentally, or unintentionally; or

(ii) The producer acted to prevent spoilage of the commodity.

(2) Shall not consider the following acts as inadvertent, accidental, or unintentional:

(i) Movement of loan collateral off the farm;

(ii) Movement of loan collateral from one storage structure to another on the farm; and

(iii) Feeding the loan collateral.

(3) Shall furnish a copy of its determination to the State Committee, and the Administrator. If the determination of the County Committee is not disapproved by either the State Committee or the Administrator of ASCS, or a designee, within 60 calendar days from the date the determination is received, such determination shall be considered to have been approved.

(g) If, for any violation in accordance with paragraph (b) of this section, the County Committee determines that CCC's interest is not or will not be protected, the County Committee shall call any or all of the producer's farm-stored loans and deny future farm-stored loans and loan deficiency payments without production evidence for twenty-four months after the date the violation is discovered. Depending on the severity of the violation, the County Committee may deny future farm-stored loans and loan deficiency payments without production evidence for additional twelve month periods.

(h) If the County Committee determines that the producer has committed a violation in accordance with paragraph (b) of this section, the County Committee shall notify the producer in writing that:

(1) The producer has 15 calendar days to provide evidence and information regarding the circumstances which caused the violation, to the County Committee, and

(2) Administrative actions will be taken in accordance with paragraph (d) or (e) of this section.

(i) If the loan is called in accordance with this section, the producer may not repay the loan at the lower of the loan repayment rate in accordance with § 1434.24(a)(2)(ii) and may not use the provisions of part 1470 of this chapter with respect to such loan.

(j) Producers who have been refused a loan for honey stored on the farm under provisions of this section may apply for a loan for honey stored in an approved warehouse.

38. Section 1434.24 is amended by revising the heading and paragraphs (a)(3), (d), and (e)(2) to read as follows:

§ 1434.24 Release of the honey pledged as collateral for a loan.

(a) * * *

(3) When the proceeds of a sale of honey are needed to repay all or part of a loan, the producer must request and obtain prior written approval of the County Committee on a form prescribed by CCC in order to remove a specified quantity of the honey from storage. Any such approval shall be subject to the terms and conditions set forth in the applicable form, copies of which may be obtained by producers at the county office. Any such approval shall not constitute a release of CCC's security interest in the commodity or release the producer from liability for any amounts due and owing to CCC with respect to the loan indebtedness if full payment of such amounts is not received by CCC. CCC may allow a producer to establish a loan repayment rate determined in accordance with § 1434.24(e)(1)(ii), on Form CCC–681–1, provided the producer complies with all terms and conditions set forth on such form. If a

producer fails to repay a loan within the time period prescribed by CCC and such commodity pledged as loan collateral has been delivered to a buyer in accordance with Form CCC–681–1, Authorization for Delivery of Loan Collateral for Sale, such producer may not repay the loan at the level that is less than the loan level determined in accordance with § 1434.24(e)(1)(ii).

* * * * *

(d) For honey stored in an approved warehouse, each partial release must cover all of the honey represented by one warehouse receipt. Warehouse receipts redeemed by the producer by repayment of the loan as provided in this paragraph (d) shall be released only to the producer. However, such warehouse receipts maybe released to persons designated in a written authorization filed with the county office by the producer within 15 days prior to the date of repayment.

(e) * * *

(2) CCC shall determine and announce the repayment levels for each crop of honey as determined by CCC.

39. Section 1434.25 is amended by revising paragraph (a)(2)(i) to read as follows:

§ 1434.25 Liquidation of loans.

(a) * * *

(2) * * *

(i) For honey stored on the farm, 110 percent of the outstanding loan quantity and shall be limited to the number of containers represented by the outstanding loan quantity on the loan. CCC may allow the delivery of honey in excess of 110 percent of the outstanding loan quantity but only to the extent that such quantity was stored in the containers containing honey pledged as collateral for the loan.

* * * * *

40. Section 1434.26 is amended by:

A. Revising paragraph (b)(3), and

B. Revising paragraph (e) to read as follows:

§ 1434.26 Loan deficiency payments.

* * * * *

(b) * * *

(3) File a Form CCC–666 LDP and a request for payment on Form CCC–700, or for approved cooperative marketing associations, Form CCC–701 for a quantity of eligible honey;

* * * * *

(e) Notwithstanding any provisions in this section, loan deficiency payments may be based on 100 percent of the net quantity specified on acceptable evidence of disposition of the honey certified as eligible for a loan deficiency payment if CCC determines that such quantity represents the quantity for the number of containers of honey initially certified for the loan deficiency payment when the payment was made.

41. Section 1434.27 is amended by revising paragraphs (a), (c), (d), and (e) to read as follows:

§ 1434.27 Settlement.

(a) The value of the settlement for eligible honey acquired by CCC under loan will be made on the basis of the quantity, floral source, class, quality, grade, and color of such honey as provided in this section. The value of the settlement of honey shall be the product of the support rate for the class, floral source, grade, and color, times the quantity acquired at the time of settlement adjusted by the applicable discounts. The support rate per pound of honey at which settlement will be made shall be the rate determined annually and available in ASCS county offices.

* * * * *

(c)(1) If ineligible honey is inadvertently accepted by CCC, and the honey can be reconditioned by and at the expense of the producer, the value of the settlement shall be determined according to paragraph (a) of this section.

(2) If ineligible honey is inadvertently accepted by CCC, and the honey cannot be reconditioned by and at the producer's expense, the value of the settlement shall be the market value as of the date of delivery as determined by CCC.

(d) If the value of the settlement of the honey is less than the amount due on the loan, or if the settlement value has been limited in accordance with § 1434.17, the amount of any deficiency and charges plus interest may be setoff from any payment which would otherwise be due the producer from CCC or any other agency of the United States.

(e) If the value of the settlement of the honey delivered to CCC exceeds the amount due on the loan (excluding interest), such excess amount shall be retained by CCC and CCC shall have no obligation to pay such amount to any party.

* * * * *

42. Section 1434.28(c) is revised to read as follows:

§ 1434.28 Foreclosure.

* * * * *

(c) If honey is removed from storage by CCC and is sold, the value of the settlement shall be determined according to § 1434.27.

43. Section 1434.32(b) is amended by revising the definitions of "Crop year", "Loan deficiency quantity", and "Loan quantity" to read as follows:

§ 1434.32 Definitions.

* * * * *

(b) * * *

Crop year. The crop year shall be the calendar year in which honey is extracted. The loan season starts April 1 and continues through March 31 of the following year.

Loan deficiency quantity. The loan deficiency quantity is the eligible quantity which was certified by the producer as eligible to be pledged as collateral for a price support loan, for which the producer elected to forgo obtaining price support.

Loan quantity. The loan quantity is the quantity on which the price support loan was disbursed shown on the note and security agreement.

* * * * *

Signed in Washington, DC on October 20, 1993.

Floy E. Payton,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 93–27040 Filed 11–3–93; 8:45 am]

BILLING CODE 3410–05–P

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 92–197–2]

Change in Disease Status of New Caledonia Because of Rinderpest and Foot-and-Mouth Disease

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are declaring New Caledonia free of rinderpest and foot-and-mouth disease (FMD). We have determined that New Caledonia, which has never had an outbreak of either disease, meets all of the criteria for being declared free of rinderpest and FMD. Although New Caledonia is a possession of France, New Caledonia meets the requirements of the regulations for receiving separate status as to rinderpest and FMD. This revision removes the prohibition on the importation into the United States, from New Caledonia, of ruminants and fresh, chilled, and frozen meat from ruminants, and relieves restrictions on the importation, from New Caledonia, of milk and milk products from ruminants. This revision also ensures that New Caledonia's animal health status will not be affected should the rinderpest and FMD status of France change.

This revision does not give New Caledonia separate status from France with respect to diseases other than rinderpest and FMD, and France is not declared to be free of hog cholera and swine vesicular disease. Therefore, the importation, from New Caledonia, of swine and fresh, chilled, and frozen meat from swine continues to be restricted because of those diseases. Similarly, certain restrictions on the importation, from New Caledonia, of ruminant meat and edible products from ruminants remain in effect because bovine spongiform encephalopathy exists in France.

EFFECTIVE DATE: November 19, 1993.

FOR FURTHER INFORMATION CONTACT: Dr. Harvey A. Kryder, Chief Staff Veterinarian, Import-Export Products Staff, National Center for Import-Export, Veterinary Services, APHIS, USDA, room 753, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7885.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as "the regulations") govern the importation into the United States of certain animals and animal products in order to prevent the introduction into the United States of various diseases, including rinderpest, foot-and-mouth disease (FMD), bovine spongiform encephalopathy (BSE), African swine fever, hog cholera, and swine vesicular disease (SVD). These are dangerous and destructive communicable diseases of ruminants and swine.

On July 8, 1993, we published in the **Federal Register** (58 FR 36624–36625, Docket No. 92–197–1) a proposal to amend the regulations by adding New Caledonia to the list in § 94.1(a)(2) of countries that are declared to be free of rinderpest and FMD.

We solicited comments concerning our proposal for a 60-day period ending on September 7, 1993. We did not receive any comments. The facts presented in the proposed rule still provide the basis for this final rule.

Therefore, based on the rationale set forth in the proposed rule, we are adopting the provisions of the proposal as a final rule without change.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**. This rule removes the prohibition on the importation into the United States, from New Caledonia, of ruminants and fresh, chilled, and frozen meat from ruminants and relieves restrictions on the importation, from New Caledonia, of milk and milk products from ruminants. We have determined that approximately 2 weeks are needed to ensure that Animal and Plant Health Inspection Service personnel at ports of entry receive official notice of this change in the regulations. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be made effective 15 days after publication in the **Federal Register**.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

We are declaring New Caledonia free of rinderpest and FMD. We have determined that New Caledonia, which has never had an outbreak of either disease, meets all of the criteria for being declared free of rinderpest and FMD. This revision removes the prohibition on the importation into the United States, from New Caledonia, of ruminants and fresh, chilled, and frozen meat from ruminants, and relieves restrictions on the importation, from New Caledonia, of milk and milk products from ruminants.

New Caledonia is a net importer of meat. No meat exports from New Caledonia were reported by the United Nations Food and Agriculture Organization (FAO) in 1989, while approximately $12.4 million worth of fresh, chilled, and frozen meat was imported into New Caledonia during the same year (FAO, "Trade Yearbook," 1990).

FAO and U.S. Department of Agriculture (USDA) production and trade data indicate that approximately 40 percent of New Caledonia's beef and veal is imported (FAO, "Trade Yearbook," 1990, and USDA, Economic Research Service, "Foreign Agricultural Trade of the United States; Calendar Year 1991 Supplement," 1992). It is unlikely, therefore, that there will be any new imports of beef or veal into the United States from New Caledonia.

New Caledonia has a game ranching industry, and this rule will allow deer meat from New Caledonia to be imported into the United States. According to the North American Deer Farmers Association, 80 percent of the commercially produced venison consumed in the United States is imported from New Zealand, where deer farming is a mature industry. Commercial venison production in the United States, where deer farming is still a new industry, complements, rather than competes with, the venison imports from New Zealand because the U.S. peak production season is opposite that of New Zealand.

New Caledonia and New Zealand share the same peak production season, so exports of venison from those two countries will be in direct competition in the U.S. market. Venison imported from New Caledonia will enter the U.S. market at the expense of producers in New Zealand, rather than at the expense of domestic producers of venison, so the impact on the U.S. deer farming industry is expected to be minimal. As demand for venison grows, the cost advantages of domestic production are likely to reduce U.S. reliance on all imports of venison.

As stated above, this revision removes restrictions on the importation of milk and milk products from ruminants into the United States from New Caledonia. The United States does not import casein from New Caledonia, and total U.S. imports of other dairy products from all Pacific island countries other than Australia and New Zealand were valued at only $2,000 in 1991 (USDA, Economic Research Service, "Foreign Agricultural Trade of the United States; Calendar Year 1991 Supplement," 1992). Therefore, we do not expect this revision to have any effect on U.S. businesses that rely on imported milk or milk products from ruminants.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State

and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 94 is amended as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), VELOGENIC VISCEROTROPIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 is revised to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, and 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331, 4332; 7 CFR 2.17, 2.51, and 371.2(d).

§ 94.1 [Amended]

2. In § 94.1, paragraph (a)(2) is amended by adding "New Caledonia," immediately after "The Netherlands,".

Done in Washington, DC, this 22nd day of October 1993.

Patricia Jensen,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–27049 Filed 11–3–93; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 341, 342, 343, 344, 345, 347, 360, 361, and 375

[Docket No. RM93–11–000; Order No. 561]

Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992

Issued October 22, 1993.

AGENCY: Federal Energy Regulatory Commission (Commission), DOE.

ACTION: Final rule.

SUMMARY: The Commission is revising its regulations of oil pipelines in order to implement the requirements of Title XVIII of the Energy Policy Act of 1992. The revisions provide a simplified and generally applicable method for regulating oil pipeline rates by use of an index for setting rate ceilings for such rates. In certain circumstances, an oil pipeline would be permitted to establish rates using traditional cost of service or other methods of ratemaking. The final rule also revises certain procedural regulations as required by the Act of 1992; abolishes the Oil Pipeline Board; and provides for the institution of alternate dispute resolution procedures for oil pipeline rate matters. The final rule changes the Commission's existing regulations concerning the tariff filing requirements of oil pipelines.

EFFECTIVE DATES: As to the changes in parts 341 and 344 and § 375.303 and as to the removal of old parts 342, 343, 345, 347, 360 and 361, this final rule shall take effect December 6, 1993. As to the addition of new parts 342 and 343 and changes to §§ 375.306, 375.307, and 375.313, this final rule will be effective January 1, 1995.

FOR FURTHER INFORMATION CONTACT: Harris S. Wood, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, Telephone: (202) 208–0696.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200, or 2400 bps, full duplex, no parity, 8 data bits, and 1 stop bit. CIPS can also be accessed at 9600 bps by dialing (202) 208–1781. The full text of this rule will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

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I. Introduction

The Federal Energy Regulatory Commission (Commission) hereby promulgates regulations pertaining to its jurisdiction over oil pipelines under the

Interstate Commerce Act (ICA),[1] to fulfill the requirements of Title XVIII of the Energy Policy Act of 1992 (Act of 1992).[2]

The Act of 1992 requires the Commission to promulgate new regulations to provide a simplified and generally applicable ratemaking methodology for oil pipelines, and to streamline procedures in oil pipeline proceedings.[3] The policy objective underlying these requirements is to simplify and expedite the Commission's regulation of oil pipeline rates. Congress made it explicit, however, that this simplification objective must be accomplished in a manner that ensures that rates are just and reasonable, for section 1801 of the Act of 1992 provides that the simplified and generally applicable ratemaking methodology must be "in accordance with section 1(5) of the Interstate Commerce Act." That section requires oil pipeline rates to be just and reasonable.

The Final Rule recognizes several ways of establishing just and reasonable rates. First, Congress, in section 1803 of the Act of 1992, has deemed many rates to be just and reasonable under the ICA, thereby forming a baseline for many future oil pipeline rates and obviating debate over the appropriateness of existing rates, many of which are based on valuation or trended original cost methodologies.

Recognizing the effect of this Congressional finding, the final rule first provides a simplified and generally applicable approach to changing just and reasonable oil pipeline rates. The simplified and generally applicable approach, adopted in this final rule, for changing oil pipeline rates is an indexing system which will establish ceiling levels for such rates.

Second, the final rule also permits cost-of-service proceedings to establish just and reasonable rates, with regard to initial rates for new service, and also with regard to changes to existing rates where appropriate. The Commission is issuing a notice of inquiry simultaneously with this final rule to explore ways to improve the collection of data on oil pipelines costs and as the first step in establishing filing requirements for cost-of-service rate filings, to facilitate these cost-of-service proceedings.

Third, the final rule retains the Commission's current policy of encouraging settlements of rate issues at any stage in our proceedings.

Finally, the final rule does not disturb current Commission practice, which permits a pipeline to seek Commission authorization to charge market-based rates. However, until the Commission makes the finding that the pipeline does not exercise significant market power, the pipeline's rates cannot exceed the applicable index ceiling level or a level justified by the pipeline's cost of service. Also, the Commission is issuing a notice of inquiry on the subject of market-based rates for oil pipeline ratemaking.

Under the indexing methodology oil pipeline rates may be adjusted pursuant to the Commission's regulations, so long as they comply with ceiling levels under the indexing system adopted here. The final rule uses the annual change in the Producer Price Index for Finished Goods (PPI–FG), minus one percent, as the appropriate index to determine annual ceiling levels for oil pipeline rates. Individual rates will be subject to these ceiling levels, which may increase or decrease, according to the index. Rates will be permitted to increase (or decrease) within the range capped by the ceiling level established pursuant to this index.

Pipelines that find that they are under-recovering costs under existing rates may, upon a threshold showing, file for an increase above the indexed ceiling level. Further, under certain circumstances, customers may challenge existing rates, even if such rates are below the applicable ceiling levels, if they reasonably believe such rates are excessive.

The Commission believes that indexing of oil pipeline rates will eliminate the need for much future cost-of-service litigation. As stated above, however, rates may be subject to cost-of-service review when an oil pipeline company claims it is significantly under-recovering its costs, or when its rates become excessive in relation to actual costs.

To ensure further that the operation of the index meets the Commission's responsibility under the ICA to ensure that rates are just and reasonable, the Commission will undertake an examination of the relationship between the annual change in the PPI–FG, minus one percent, index and the actual cost changes experienced by the oil pipeline industry every five years, beginning in the year 2000 upon the availability of the final index for calendar year 1999.

The monitoring process, combined with the continued availability of procedures to challenge proposed and existing rates, should "render the prospect of unreasonable filings sufficiently improbable * * *"[4] to justify the legality under the ICA of the approach to ratemaking adopted by the Commission.

The Commission believes that the approach adopted in this final rule fulfills the objectives of the Act of 1992, which meeting the requirements of the ICA. The approach will accomplish these purposes by simplifying and expediting the process of establishing oil pipeline rates, which is the policy objective of the Act of 1992, while at the same time ensuring that the resulting rates are just and reasonable, which is the legal requirement of the ICA.

This final rule complies fully with the requirements contained in the Act of 1992. However, the Commission has determined that it is in the public interest to continue with the process of reforming and simplifying its regulatory processes under the ICA. The Commission is continuing that effort by initiating two notices of inquiry, published elsewhere in this issue of the **Federal Register**, that are companions to this order. Comments were filed on cost-of-service and market-rate methodologies in response to the Commission's Staff Proposal and the Notice of Proposed Rulemaking. The two companion notices of inquiry on cost-of-service methodology and reporting requirements and market-power determinations will seek to build upon the record already compiled with a view toward promulgating final rules in time for implementation by January 1, 1995, the effective date of this final rule.

This final rule, following the directives contained in the Act of 1992, also adopts certain reforms to the Commission's procedures relating to oil pipeline proceedings. These reforms will help to streamline these proceedings. In addition, this final rule includes an updating of the regulations pertaining to oil pipeline tariffs.

The ratemaking approach and streamlined procedures portions of this final rule will take effect January 1, 1995. The revised tariff regulations will take effect 30 days after publication of this final rule in the **Federal Register**.

II. Reporting Requirements

The Commission estimates the public reporting burden for the collection of information under the final rule to

[1] 49 U.S.C. app. 1 (1988).

[2] 42 U.S.C.A. 7172 note (West Supp. 1993). References to the Energy Policy Act are to this note, indicating the section number of the statute.

[3] The Act of 1992 contemplates two rulemakings—one on ratemaking methodology and another on streamlined procedures—and establishes separate deadlines for their completion. These rulemakings are related, and so the Commission is addressing and completing both in this Final Rule.

[4] National Rural Telephone Association v. FCC, 988 F.2d 174, 185 (D.C. Cir. 1993).

average ten 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. The information will be collected under FERC–550, Oil Pipeline Rates: Tariff Filings. The current annual reporting burden associated with the FERC–550 information collection requirements is 6,500 hours based on an estimated 325 responses from approximately 150 respondents.

The final rule will reduce the existing reporting burden associated with FERC–550 by an estimated 1,150 hours annually—an average of ten hours per response based on an estimated 535 responses. The final rule does not change the burden estimates from those contained in the Commission's Notice of Proposed Rulemaking issued July 2, 1993 in the subject docket. These estimates have been reported previously to the Office of Management and Budget (OMB). A copy of this rule is being provided to the OMB for informational purposes only.

Send comments regarding these burden estimates or any other aspect of this collection of information, including suggestions for further reductions of this burden, to the Federal Energy Regulatory Commission, 941 North Capitol Street, NE., Washington, DC 20426 (Attention: Michael Miller, Information Services Division, (202) 208–1415, FAX (202) 208–2425); and to the Office of Information and Regulatory Affairs, Office of Management and Budget (Attention: Desk Officer for Federal Energy Regulatory Commission), Washington, DC 20503.

III. Background

A. Historical Background of Oil Pipeline Rate Regulation

Before describing the specifics of the Commission's final rule, it would be useful to review briefly the history of Federal regulation of oil pipelines.

In 1906 Congress passed the Hepburn Act,[5] which amended the ICA to include among the responsibilities of the Interstate Commerce Commission (ICC) the regulation of the rates and certain other activities of interstate oil pipelines. Specifically, oil pipelines were made common carriers,[6] were required to file for, and charge, rates that were just and reasonable and not unduly preferential,[7] and were required to file certain financial reports and follow certain accounting procedures.[8]

Many constraints commonly associated with utility-type regulation, such as review and approval of construction or acquisition, and abandonment or sale of facilities, were not imposed on oil pipelines. This has been interpreted as reflecting a Congressional intent to allow market forces freer play within the oil pipeline industry than was allowed for other common carrier industries.[9]

From enactment of the Hepburn Act until jurisdiction of oil pipelines was transferred from the ICC to the Commission in 1977, oil pipeline rates were fixed according to a cost-of-service methodology grounded upon use of a valuation rate base—a mixture of original and replacement costs.[10] Valuation ratemaking was heavily criticized in *Farmers Union I*, the first Federal judicial review of an oil pipeline rate case.

During the pendency of the appeal that culminated in *Farmers Union I*, Congress enacted the Department of Energy Organization Act of 1977,[11] which transferred Federal regulatory jurisdiction over oil pipelines from the ICC to the newly created Federal Energy Regulatory Commission. The Commission was required by this act to regulate oil pipelines under the provisions of the ICA as they existed on October 1, 1977. Thus, though the ICA was later revised and recodified,[12] the Commission continues by law to regulate oil pipelines under the ICA as it read at the time jurisdiction was transferred from the ICC to this Commission.

Because of this transfer of regulatory authority, the Commission requested and the court agreed in *Farmers Union I* to remand the rate case to the Commission. The Commission's decision on remand[13] was the first attempt to fashion a ratemaking methodology for oil pipelines that reconciled the modern day economic and competitive realities affecting oil pipelines with the regulatory directive contained in the governing statute. In Opinion No. 154, the Commission adopted a variation of the old ICC methodology, on the basis that the allowed rate levels would be so high they would rarely, if ever, be achieved in practice.[14] Opinion No. 154 was reversed and remanded by the D.C. Circuit in *Farmers Union II*.[15] The court found the Commission's opinion deficient in several respects, including the reasoning and factual documentation for its almost exclusive reliance on market forces to restrain rates. Summarizing the requirements of the ICA, the court stated:

> Most fundamentally, FERC's statutory mandate under the Interstate Commerce Act requires oil pipeline rates to be set within the "zone of reasonableness"; presumed market forces may not comprise the principal regulatory restraint. Departure from cost-based rates must be made, if at all, only when the non-cost factors are clearly identified and the substitute or supplemental ratemaking methods ensure that the resulting rate levels are justified by those factors.

Id., at p. 1530.

Following *Farmers Union II*, the Commission issued Opinion No. 154–B,[16] establishing a fairly traditional cost-of-service methodology for determining oil pipeline rates. This methodology used a trended original cost rate base, and a rate of return based upon the actual embedded debt cost and equity costs reflecting the pipeline's risks.

Adjudicated proceedings for oil pipelines, though few in number, have been long, complicated and costly, and required considerable expenditure of participants' time and resources, including that of the Commission.[17] Even after the Commission's Opinion No. 154–B methodology was adopted, the next proceeding attempting to apply

[5] 34 Stat. 584 (1906).

[6] 49 App. U.S.C. 1(1), (4), and (7).

[7] *Id.* at §§ 1(5), 2(1) and 6 (1) and (3).

[8] *Id.* at §§ 20 (1), (2), (4), and (5).

[9] See *Farmers Union Central Exchange* v. *FERC*, 584 F.2d 408, 413 (D.C. Cir., 1978), *cert. denied*, 439 U.S. 995 (1978) ("Farmers Union I"). ". . . [We] may infer a congressional intent to allow a freer play of competitive forces among oil pipeline companies than in other common carrier industries and, as such, we should be especially loath uncritically to import public utilities notions into this area without taking note of the degree of regulation and of the nature of the regulated business."

[10] The ICC also established generic rates of return for oil pipelines.

[11] 42 U.S.C. 7101.

[12] See Revised Interstate Commerce Act of 1978, 49 U.S.C. 10101.

[13] Opinion No. 154, 21 FERC ¶61,260 (1982), *reh'g denied*, 22 FERC ¶61,086 (1983).

[14] *See id.*, at p. 61,649: "Competition both actual and potential is a far more potent or price-constraining force in oil pipelining than it is in the other areas in which we work [fn. omitted]."

[15] *Farmers Union Central Exchange, Inc.* v. *FERC*, 734 F.2d 1486 (D.C. Cir., 1984), *cert. denied*, 469 U.S. 1034 (1984).

[16] Williams Pipe Line Co., 31 FERC ¶61,377 (1985) (the *Williams* case).

[17] Other than cases involving rates for the Trans-Alaska Pipeline System, there have been eight oil pipeline rate cases which have gone to hearing. The longest case was the *Williams* case, which culminated in Opinion No. 154–B, and took fourteen years to resolve, although some of the time was attributable to the transfer of jurisdiction of oil pipelines to the Commission from the Interstate Commerce Commission and to intervening remands from the court.

this methodology took four years to conclude.[18]

More recently, the Commission has authorized market-based rates for Buckeye Line Company.[19] *Buckeye* was an effort to determine if an alternative to the traditional cost-of-service ratemaking methodology could be utilized in cases where the pipeline does not exercise the power to control prices in all of its markets. The adjudication of the *Buckeye* case included an analysis of pipeline market power that was similar to that used in anti-trust cases.

A critical predicate to the utilization of a market oriented rate regulation scheme is the ability to identify and measure the competitiveness of relevant markets. The first step in this process is to define the scope of the market. In *Buckeye*, the Commission held that markets would be delineated by product and geography, and determined that this would be done on a case-by-case basis.[20] To determine whether the pipeline exercises market power in a given market, the Commission stated that it would analyze a number of considerations, including market share, market concentration, excess capacity, transportation alternatives, and potential entry.

Buckeye was also an effort to see if the Commission's ratemaking methodology could be simplified. It was determined that the market-based approach was useful in those markets where the pipeline did not possess market power. However, using an analysis similar to that used in anti-trust cases to determine whether the pipeline possessed market power is itself a costly time and resource consuming effort. Moreover, the market-based methodology is not appropriate where the pipeline possesses market power.

B. Energy Policy Act of 1992

Section 1803 of the Act of 1992 deems certain existing rates to be just and reasonable within the meaning of section 1(5) of the ICA. These are rates that were in effect for the 365-day period ending on the date of enactment of the Act of 1992, or that were in effect on the 365th day preceding enactment, and which have not been subject to a protest, a complaint, or an investigation during this 365-day period.[21] Complaints under section 13 of the ICA may be filed against these "grandfathered" rates only under one of two circumstances: first, a substantial change has occurred, since enactment, in the economic circumstances or in the nature of the services which were the basis for the rate; or, second, the complainant was under a contractual bar against filing a complaint, and the bar was in effect prior to January 1, 1991 and on the date of enactment. Further, the complainant must file its complaint within 30 days of the expiration of the contractual bar.[22] These grandfathering provisions do not prohibit any "aggrieved person" from filing a complaint alleging that a pipeline tariff provision is unduly discriminatory or unduly preferential.[23]

Sections 1801 and 1802 of the Act of 1992 require the Commission to promulgate regulations establishing a "simplified and generally applicable ratemaking methodology . . . in accordance with section 1(5) of the Interstate Commerce Act" for oil pipelines, and streamlining Commission procedures relating to oil pipeline rates "in order to avoid unnecessary costs and delays." A final rule on rulemaking methodology must be issued not later than one year after the date of enactment, or by October 24, 1993 (and the rule may not take effect before the 365th day after its issuance). A final rule on rate procedures must be issued within eighteen months of the date of enactment, or by April 24, 1994.

The Act of 1992 also directs the Commission to consider the following issues in streamlining its rate procedures:[24]

- Type of information required to be filed with a tariff;
- Availability to the public of the Commission's or the staff's analysis of the tariff filing;
- Qualifications for standing of parties who would file protests or complaints;
- The level of specificity required for protests and complaints;
- Guidelines for Commission action on the portion of the tariff subject to a protest or complaint;
- An opportunity for the pipeline to respond to an initial protest or complaint; and
- Identification of circumstances under which Commission staff may initiate an investigation.

Further, the Commission is required by the Act of 1992 to establish, "to the maximum extent practicable," appropriate alternative dispute resolution procedures for use early in pipeline rate proceedings. These procedures must include required negotiations and voluntary arbitration. The Commission was directed to consider rates proposed by the parties through these procedures upon an expedited basis.[25]

Finally, Congress explicitly excluded the Trans-Alaska Pipeline, or any pipeline delivering oil directly or indirectly to it, from the provisions of the oil pipeline regulatory reform title of the Act of 1992.[26]

The Commission concludes that the Act of 1992 does not deregulate oil pipeline rates and that the Commission must continue to ensure that oil pipeline rates are just and reasonable. Moreover, the new Act requires regulation of oil pipeline rates to be accomplished in a manner that brings a degree of simplicity, expeditiousness, and economy to the process.

C. Staff Proposal and NOPR

On March 18, 1993, the Commission made available for public comment a proposal by its Staff which encompassed alternatives for regulation of oil pipeline rates in the future. This proposal emphasized three alternative ratemaking methodologies: indexing, market-based rates, and cost-of-service ratemaking. Some 24 sets of comments were received on the Staff's proposal.

Staff proposed that the Commission adopt as a primary means of regulating oil pipeline rates an indexing methodology based on the Producer Price Index for Finished Goods, with a productivity incentive adjustment of minus one percent. Staff further proposed, as an alternative, a market-based approach if a pipeline could demonstrate, under a new streamlined approach to market delineation, that it lacked market power in markets to which it would apply such a methodology. Finally, Staff proposed that a pipeline be allowed to utilize a cost-of-service methodology as a means of establishing new just and reasonable rates in certain extraordinary cases, such as natural disasters which would require replacement of systems, where the pipeline could clearly show that the indexing methodology would not provide it the opportunity of earning a just and reasonable rate.

Staff's other proposals were directed at the procedural reforms called for by the Act of 1992 and other reforms to

[18] See ARCO Pipe Line Company, 52 FERC ¶61,055 (1990), *order on reh'g*, 53 FERC ¶61,398 (1990).

[19] Opinion No. 360, 53 FERC ¶61,473 (1990).

[20] Buckeye Pipe Line Co., L.P., Opinion No. 360–A, 55 FERC ¶61,084 at p. 61,260 (1991).

[21] Sec. 1803(a).

[22] Sec. 1803(b).

[23] Sec. 1803(c).

[24] Sec. 1802(b).

[25] Sec. 1802(e).

[26] Sec. 1804(2)(B). The Trans-Alaska Pipeline System (TAPS) will continue to be governed by the TAPS Settlement Methodology approved by the Commission by order issued October 23, 1985. Trans-Alaska Pipeline System, *et al.*, 33 FERC ¶61,064 (1985).

existing regulations which were designed to modernize those regulations.

Based on the Staff proposal and the comments received thereon, on July 2, 1993, the Commission issued a notice of proposed rulemaking (NOPR).[27] In the NOPR, the Commission proposed to use, as its primary means of regulating oil pipeline rates, an indexing scheme similar to that proposed by Staff. The Commission intended to establish thereby a "simplified and generally applicable"[28] oil pipeline ratemaking methodology consistent with its statutory mandates under the ICA and the Act of 1992. The Commission's proposal contained the following elements:

1. The adoption an indexing methodology as its general approach to regulating the level of oil pipeline rates, utilizing as the Gross Domestic Product, Implicit Price Deflator (GDP–IPD), to establish the maximum ceiling level for any given rate in a given year. The GDP–IPD is generally a higher index than the PPI–FG.

2. Under indexing, rate increase filings within the ceiling would be discretionary with the pipeline.

3. No cost of service or any other supporting information would be required to be filed with a rate increase that complied with the index.

4. A pipeline would not be precluded in an individual proceeding from demonstrating either (a) that the rate in question is to be charged in a market in which it lacks significant market power and therefore no price cap is required, or (b) that, due to extraordinary circumstances, application of the index methodology in a particular instance would not allow the pipeline to recoup its costs and therefore a cost-of-service methodology should be utilized.

5. Challenges to rate change proposals of oil pipelines that the Commission proposed to entertain would be those made through clearly defined protest and complaint procedures which would require specific showings by protestors/complainants of why a particular rate methodology is inappropriate or why particular rate changes should not be allowed.

6. The Commission proposed to revise all rate filing requirements and procedural regulations to reflect these proposals.

The Commission emphasized that it was interested not only in the comments that it would receive on this proposal but also any proposals that interested parties wished to put forth to achieve the purpose of establishing a ratemaking scheme that is "simplified and generally applicable," conform to the requirements that the rates of oil pipelines be just and reasonable under the ICA, and otherwise comport with the Act of 1992 and the ICA.

Forty-two sets of comments were received from parties representing pipelines, shippers, State commissions, consumers and trade associations.[29] Based on these comments, the Staff paper and the NOPR, the Commission has formulated this final rule.

IV. Ratemaking Methods Adopted in the Final Rule

A. Overview

Section 1801(a) of Title XVIII reads as follows:

> (a) Establishment.—Not later than 1 year after the date of enactment of this Act, the Federal Energy Regulatory Commission shall issue a final rule which establishes a simplified and generally applicable ratemaking methodology for oil pipelines in accordance with section 1(5) of part I of the Interstate Commerce Act.

It is apparent from section 1801(a) that it is the intent of the Congress that oil pipeline ratemaking must be simplified. By referencing section 1(5) of the ICA, however, Congress reaffirmed the Commission's obligation under the ICA to ensure just and reasonable rates. To accomplish these two objectives requires a rate-changing methodology that produces just and reasonable rates; that reduces the necessity and likelihood of prolonged litigation; that can be applied by pipelines and reviewed by shippers and by the Commission expeditiously; and that is usable without significant variation or modifications by most, if not all, pipelines.

The Commission believes that the approach of applying an industry-wide cap on rate changes derived by an appropriate index would achieve the above described policy objectives, as well as meet the statutory criteria of simplicity and general applicability. This is because the indexing approach allows rates to be changed without a detailed and comprehensive presentation and examination of the individual pipeline's cost of service in each case.

The index—the change in the Producer Price Index for Finished Goods minus one percent (PPI–FG minus one percent)—will be utilized to establish a ceiling on annual rate changes. Rates may be charged up to the ceiling level. Further, there will be no limit on the number of times a rate may be changed, so long as the ceiling is not violated.

As a general rule, a pipeline must utilize the indexing system to change its rates. As some commenters point out, there may be circumstances that dictate a different methodology be used for changing rates.[30] Therefore, an alternative method of changing rates will be permitted when certain defined circumstances obtain.

First, a cost-of-service showing may be utilized to change a rate whenever a pipeline can show that it has experienced uncontrollable circumstances that preclude recoupment of its costs through the indexing system.[31]

Second, whenever a pipeline can secure the agreement of all existing customers, it may file a rate change based on such a settlement.

Finally, in accordance with existing Commission precedents, the Commission will permit a pipeline to make a showing that the pipeline lacks significant market power in the markets in question, and therefore some market-based form of rate regulation is warranted as a matter of policy and justifiable as a matter of law under the ICA. Until such time as the Commission has determined that the pipeline lacks market power, the pipeline will be constrained in the rate it may charge. Until the Commission makes that finding, the rates cannot exceed the ceiling level which would be applicable under the indexing methodology. However, if the pipeline files a cost-of-service justification for the rate, it may charge such cost-based rate until the Commission makes the market power determination. Any such rates are subject to the suspension and refund powers of the Commission under the ICA.

To repeat, the cost-of-service, settlement, and market-based rate methodologies are alternatives to the generally applicable and required indexing approach. They may only be utilized to change rates when certain defined circumstances, as explained above, are shown by the pipeline to exist. The Commission's action in the final rule ameliorates the concern of Alaska, which objects to allowing the pipelines to "mix and match" rate

[27] 58 FR 37671 (July 13, 1993).

[28] *Id.*, Section 1801.

[29] Appendix A contains a list of all commentors and the designation by which they are referred in this document.

[30] See, *e.g.*, ARCO comments, pp. 1–2.

[31] Kaneb, in its comments at pp. 3–7 and 10–12, seeks assurance that pipelines have the ability to justify higher rates based on the pipeline's cost of service. In the instance of uncontrollable circumstances, the final rule provides that assurance.

methodologies.[32] Rather than allowing total discretion by the pipelines to pick and choose among the alternative methodologies, the Commission's final rule prescribes strict limitations under which the alternative methodologies may be used. Moreover, in response to the concern of CAPP about the potential divergency between costs and rates,[33] it is expected that data will be available to the public and to the Commission which will allow determinations to be made as to the reasonableness of increases produced by application of the index.[34] Furthermore, the Commission will review the appropriateness of the index in relation to industry costs every five years, beginning July 1, 2000. In this way, the Commission can ensure that the index chosen by the Commission adequately correlates with changes in industry costs.

Finally, the indexing system is a methodology for changing rates. Generally, the initial rate will be established by a cost-of-service showing. However, a pipeline may file an initial rate based upon the agreement of at least one non-affiliated shipper. The Commission will not require a cost-of-service justification for such an agreed-upon rate. An initial rate established by agreement may be protested, in which case the pipeline will be required to justify the rate based on a cost-of-service showing.

To implement this approach, this final rule provides new regulations governing the establishment of initial rates and the changing of rates pursuant to the indexing system. Further, this rule provides a new regulation for changing rates through settlement. In addition, this final rule puts into place procedures to implement these new ratemaking methodologies, along with streamlined procedures for oil pipeline proceedings. By promulgating these new regulations, the Commission has fully complied with the directives contained in the Act of 1992 to implement a simplified and generally applicable ratemaking methodology, in accordance with section 1(5) of the ICA, and to streamline its procedures relating to oil pipeline rates.

The Commission has concluded, however, that it would be in the public interest to go further in its reform of the regulation of oil pipeline rates. Thus, although the cost-of-service methodology, which will be available as an alternative to the generally applicable and required indexing system, is currently being employed by the Commission, it is clear from the Commission's experience—and from the many comments received in response to the NOPR—that reforms related to this methodology may be warranted. Further, reforms may also be required with respect to the market-based approach to setting rates.

Of necessity, however, in light of the statutory deadline for action in this rulemaking, these reforms must be undertaken in subsequent rulemakings. Therefore, the Commission is issuing notice of inquiry (NOIs) (i) to receive comments on how it can improve annual reporting; (ii) to determine whether a consensus can be formed on cost-of-service filing requirements; and (iii) to explore market-based rates for oil pipelines. It is the intent of the Commission to conclude these inquiries and subsequent rulemakings in time to allow new regulations on cost-of-service and market-based ratemaking to take effect simultaneously with the regulations promulgated in this rulemaking.[35] Thus, the end product of the Commission's efforts in this area will be an across-the-board reform and streamlining of its regulation of the ratemaking process for oil pipelines.

The Commission concurs with the commenters that a simplified cost-of-service methodology should be developed which would be available for use by pipelines in the event that uncontrollable circumstances occur which prevent the pipeline from recovering its prudently incurred costs under the indexing methodology. Further, in order for the Commission and all interested persons to have a clear understanding of pipeline costs, the Commission will consider modification of its Form No. 6 reporting requirements as a result of comments received on the concurrently issued NOI on cost of service. Cost data included in Form No. 6 can be used by an interested person to form the basis of a complaint or protest that the increase sought under any of the methodologies is not justified. The Commission believes that this use of such cost data in this manner—*i.e.*, to demonstrate that the increase in the rate proposed by the pipeline would result in an unjust and unreasonable rate—is entirely appropriate and justified. It will thus serve as a "reality check" on increases under the indexing methodology.[36]

Finally, the Commission is allowing pipelines to depart from indexing only in limited circumstances. Pipelines will be afforded the opportunity to recover prudently incurred costs which are uncontrollable, as discussed below, in conforming with the ICA. It will also allow pipelines to charge market-based rates in markets where the pipeline can demonstrate that it does not possess significant market power and its rates are therefore constrained by competition. Pipelines may also establish rates based on the unanimous support of all affected shippers. This, too, is permissible under the ICA.

B. Indexing Methodology

1. Purpose, Benefits, and Legal Justification

An indexing scheme has a number of benefits. First the hallmark of an indexing system is simplicity. Under indexing, pipelines adjust rates to just and reasonable levels for inflation-driven cost changes without the need of strict regulatory review of the pipeline's individual cost of service, thus saving regulatory manpower, time and expense. Second, an indexing scheme is a form of incentive regulation. As such, it gives greater emphasis to productive efficiency in noncompetitive markets than does traditional cost-of-service regulation.[37] Third, indexing provides shippers protection form rate increases greater than the rate of inflation.

Under an indexing system, however, some divergence between the actual cost changes experienced by individual pipelines and the rate changes permitted by the index is inevitable. This is because the indexing system utilizes average, economy-wide costs rather than pipeline-specific costs to establish rate ceilings. It is this focus on economy-wide costs that makes the methodology of indexing simplified and streamlined, because there is no need to present and examine the costs of each individual pipeline each time a rate change in compliance with the ceiling rate is proposed.

The Commission concludes that the adoption of an indexing system is entirely within its power under the ICA

[32] Alaska comments, pp. 11–14.

[33] CAPP comments, pp. 11–15.

[34] The Commission is concurrently issuing a Notice of Inquiry in Docket No. RM94–2–000, Cost-of-Service Filing and Reporting Requirements for Oil Pipelines.

[35] Crysen and PEG recommend that the Commission adopt as a simplified approach to oil pipeline ratemaking the "ABC Pipeline" developed by Staff in April 1993. Crysen comments, pp. 8–10, PEG comments, pp. 8–9. In addition, Crysen recommends that the Commission discard the Buckeye market-based methodology. These suggestions can be pursued in the NOIs that accompany this final rule.

[36] See, National Rural Telecom Association v. FCC, 988 F.2d at 178.

[37] Indexing fosters efficiency by severing the linkage under traditional cost-of-service ratemaking between a pipeline's rate changes and changes in its current operating and investment costs. This provides the pipeline with the incentive to cut costs. This provides the pipeline with the incentive to cut costs aggressively, since it is assured that it may retain a portion of the savings it generates.

and the Act of 1992, contrary to the assertions of several commenters.[38] The Commission does agree that some modifications in the methodology proposed in the NOPR are appropriate to achieve a better balance among competing interests, and the final rule has accommodated many of the comments of shippers to ensure that the rates produced by an index achieve that balance.[39]

The Commission concludes that the indexing system it has adopted is in compliance with the ICA. The inevitable divergence between the cost changes reflected in the index and the cost changes to individual pipelines is not a bar to adopting the index approach. There are several reasons for this conclusion.

First, the indexing methodology selected by the Commission in this final rule is cost-based, as further discussed below. It thus meets the fundamental requirement applicable under section 1(5) of the ICA, as enunciated by the court in *Farmer's Union II*, that costs be used as the basis for determining the justness and reasonableness of rates.

Second, the index establishes a *ceiling* on rates—it does not establish the rate itself. Some commenters are concerned about "automatic increases" in pipeline rates.[40] However, in competitive markets, pipeline rates will be constrained by competition, and in markets where the pipeline has market power, the cost basis of the index itself will provide the check required by the ICA. The courts have historically approved the approach of regulating prices, pursuant to a governing just and reasonable standard, through ceilings based on industry-wide costs. See *e.g., Permian Basin Area Rate Cases*, 390 U.S. 747 (1968); *Mobil Exploration & Producing Southeast, Inc., et al.* v. *United Distribution Cos.*, 498 U.S. 211 (1991). In the *Mobil* case, the Commission had established just and reasonable ceiling rates for the sale of "old" gas, and allowed the ceiling to escalate by the amount of an economy-wide index—there, the GDP–IPD. The Court approved.

Another recent example of judicial approbation of this approach is provided in *Environmental Action* v. *FERC*, 996 F.2d 401 (D.C. Cir. 1993), where the court upheld the Commission's adoption of a price ceiling approach to regulation of bulk power transactions between electric utilities in the face of a contention that the approach did not meet the just and reasonable standard of the Federal Power Act. In so doing, the court noted many factors that validated the price ceiling approach, including the monitoring of the individual transactions and the presence of a complaint mechanism to hear challenges against particular rates.[41] Both of these factors are present in the instant proceeding as well. Individual rates must still be filed under the ICA, and the Commission will continue to hear challenges to proposed and existing rates under the indexing system.

The court in *Environmental Action* also placed weight on the fact that the alternative approach of company-specific regulation of prices entailed extensive and expensive administrative burdens.[42] Here, the Commission is specifically directed by the Congress to streamline and expedite its rate regulation to reduce such burdens.

The Federal Communications Commission adopted a price cap ratemaking approach for the telecommunications industry.[43] Importantly, the FCC found that a price cap approach that was not tied to individual company costs was legally sustainable under the "just and reasonable" standard governing ratemaking under the Federal Communications Act of 1934. The FCC reasoned that the just and reasonable standard did not require any particular ratemaking model, simply that the end result of the model employed produced rates that were within the zone of reasonableness.

Under the FCC price cap regime, the index reflects the general rate of inflation in the economy. The index adopted by the Commission for oil pipeline ratemaking in this final rule, however, is one which, according to the only pertinent analysis available in the record, serves as a reasonable surrogate for the actual cost changes experienced by the oil pipeline industry. The FCC's price cap methodology is bolder because it employs a general inflation index to cap not specific rates, as proposed by the Commission, but revenues from baskets of services.

The FCC analogy is particularly instructive in that it was based upon the just and reasonable standard of the FCC Act. According to the Senate report on the legislation that became the FCC Act, that standard was adapted from the just and reasonable provision in the ICA. S. Rep. No. 718, 73d Cong., 2d Sess. 4 (1934).

The FCC example is also instructive in that the FCC, similar to the Commission in this rulemaking, included "fail-safe" procedures for both the regulated company and its customers to take into account unusual circumstances that required a departure from the generally applicable requirements of the price-cap scheme. For the regulated company, the procedure was an opportunity to request a waiver of the requirement that the price-cap methodology apply to the entire firm, including all of its affiliates. For customers, the procedure was a petition to challenge streamlined tariffs filed under the price cap that were believed to be "unreasonable." The reviewing court cited both these procedures as supporting the reasonableness, and thus the validity, of these aspects of the FCC's price-cap proposal.[44]

Further, *Farmers Union II* makes clear that the Commission is not tied to exclusive reliance upon company-specific costs in establishing just and reasonable rates. The Commission, stated the court, was permitted to take other factors into consideration, so long as they were clearly identified and their effect on restraining rates to just and reasonable levels was substantiated.

In regard to justifying the effects of indexing on rates, it should be understood that indexing, conceptually, merely preserves the value of just and reasonable rates in real economic terms. This is because it takes into account inflation, thus allowing the nominal level of rates to rise in order to preserve their real value in real terms.

The indexing system proposed is consistent with the just and reasonable standard contained in the ICA. It is a cost-based methodology, even though it tracks general economy-wide costs rather than specific company costs.[45]

Third, the indexing system accommodates the need to change rates rapidly to respond to competitive forces in many markets served by pipelines. This pricing flexibility will result from

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[38] See, *e.g.*, the comments of Alaska at pp. 10–14; CAPP at p. 9; NARO at p. 3; PEG at pp. 10–11; USAIR at pp. 1–2; Kerr-McGee at p. 2. Numerous commenters have argued that the Commission has authority to implement an indexing system, among them being NCFC at p. 4; Phillips at pp. 5–9; ARCO at pp. 31–34; AOPL at pp. 13–19; Buckeye at pp.11–13; Holly at pp. 4, 11–14.

[39] See, *e.g.*, comments of SIGMA at p. 4; Holly at p. 4.

[40] *E.g.*, APMC at pp. 2–6; PEG at pp. 10–11; SIGMA at p. 5.

[41] *Id.* at pp. 410–11.

[42] *Id.* at p. 409.

[43] Report and Order and Second Further Notice of Proposed Rulemaking, FCC 89–91, FCC Docket No. 87–313, 4 F.C.C. Rcd. 3379 (1989); LEC Price Cap Order, 5 F.C.C. Rcd. 6786 (1990), *aff'd, National Rural Telecom Association* v. *F.C.C.*, 988 F.2d 174 (D.C. Cir. 1993).

[44] *National Rural Telecom Association* v. *FCC*, 988 F.2d at 181, 185.

[45] See National Rural Telecom Association, Permian Basin Area Rate Cases, and Mobil, *supra*.

the facts that pipelines will be able readily to propose rate changes within the indexed ceiling level, and that challenges to changes that comply with the index will be limited. In sum, the time and expense traditionally associated with filing rate cases should be greatly reduced. This pricing flexibility is another reason cited by the courts in support of a price-cap approach to regulating rates subject to a just and reasonable statutory standard.[46] Moreover, as suggested by Kaneb, the index will be applied to individual rates, not overall revenue requirements of the pipeline.[47]

ARCO expressed concern that indexing along could be a straight jacket which might prohibit pipelines in some cases from earning a just and reasonable return.[48] The Commission is mindful that an index method alone could have such an effect in particular circumstances. A comprehensive scheme which includes at least a cost-of-service and settlement alternatives would be superior to indexing alone. The Commission is adopting an indexing program coupled with cost-of-service and settlement rate options which will ameliorate those concerns by providing some measure or flexibility to pipelines in adjusting their rates. Thus, the Commission rejects the suggestion of Alaska[49] and Chevron,[50] to the effect that pipelines should be required to adhere to one methodology of changing rates.

However, in the interests of preserving the proper balance between pipelines and shippers under the just and reasonable standard of the ICA, the Commission is also providing shippers with a procedure to challenge rate changes that, while in compliance with applicable ceilings, are substantially in excess of actual cost changes incurred by the pipeline. In addition, shipper challenges will be permitted where rates are established under one of the other rate changing methodologies.

This concept of providing "fail-safe" exceptions or mechanisms within the context of a generally applicable rule has been cited by a reviewing court with approval. In *National Rural Telecom Association*, the court stated:

> As this court has held, waiver processes are a permissible device for fine tuning regulations, particularly where, as here, the [FCC] must enact policies based on "informed prediction." So long as the underlying rules are rational * * * waiver is an appropriate method of curtailing the inevitable excesses of the agency's general rule.[51]

For the above reasons, the Commission has concluded that the indexing system it is adopting, complemented and buttressed by the exceptions and alternatives, comports with both the just and reasonable standard of the ICA and the simplification objectives of the Act of 1992, and is in the public interest.

2. Selection of an Index

The Commission has determined to utilize the change in the Producer Price Index for Finished Goods minus one percent as its index. The change in PPI–FG minus one percent, comes the closest of all the indices considered in this rulemaking to tracking the historical changes in the actual costs of the product pipeline industry.[52] An index that holds reasonable assurance of tracking the actual costs of the industry is more likely than other broader-based inflation indices to ensure that individual pipeline rates remain close to a pipeline's costs. However, to ensure that the change in PPI–FG minus one percent continues to fulfill this objective in the future, the Commission will conduct a periodic review of this index every five years. If the change in PPI–FG minus one percent becomes ineffective as a mean of tracking industry costs, the Commission will not hesitate to modify its approach to select a more accurate index.

In making this decision the Commission has given due consideration to the notion of applying a broader-based index to only that part of the rate that is arguably subject to inflation, as suggested by numerous commenters.[53] Such an approach might mitigate the tendency of such an index to produce ceiling rates substantially in excess of actual pipeline costs. However, an approach of applying the index to specific components of a rate could have perverse and unintended consequences. For example, applying the index only to operating and maintenance costs may give pipelines an incentive to direct a disproportionate amount of their spending to such costs, to the neglect of other necessary or advisable expenditures, such as investment in plant. Such a bifurcated approach would not provide an incentive to pipelines to improve the quality of service through capital improvements, since the change in rates brought about by the index would be designed to reflect increased operational and maintenance expenditures, not capital costs. Because new investment may be substantial and would not be covered by the index, many companies would have to file cost-of-service cases to recover significant increases in costs.

Significantly, this approach would be complex and difficult to administer. For example, it would likely require substantial revisions, and perhaps additions, to the Commission's regulations to identify and monitor those pipeline accounts that would be subject to the index, and those that would not. The additional administrative work this would cause, to both the Commission and the industry, would undercut the policy of the Act of 1992, which is to reduce, not increase, regulatory burdens.

Application of the index of the change in the PPI–FG minus one percent to the whole rate would, in addition to tracking economy-wide cost changes closely, obviate the need to incur the additional regulatory work and unintended consequences involved in breaking down rates to adjust some components and not adjust others.

The Commission considers the change in the PPI–FG less one percent to be the most appropriate index of those considered in this proceeding. This index is the index which, according to the evidence, is more appropriate for tracking reported pipeline costs.[54] The evidence of record supports applying this index to the total rate of the pipeline.[55]

Finally, the selection of the change in the PPI–FG minus one percent is not necessarily a choice for all time. To the contrary, the Commission believes that its responsibilities under the ICA, to both shippers and pipelines, requires monitoring of the relationship between the change in the PPI–FG minus one percent index and the actual cost changes experienced by the industry. The Commission will use the Form No. 6 information for this purpose, and will review the choice of index every 5 years.

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[46] *Environmental Action* v. *FERC, supra.*

[47] Kaneb at p. 15.

[48] ARCO at pp. 2–3, 5–6.

[49] Alaska comments, pp. 11–13.

[50] Chevron comments, p. 13.

[51] 988 F.2d at 181 [citations omitted].

[52] See Kahn Testimony attached to the Crysen comments at pp. 10–20.

[53] See, *e.g.*, CAPP at pp. 11–15; Chevron at pp. 5–10; NARO at p. 3; PEG at p. 13; NCFC at p. 4; Total at pp. 14–15; Holly at p. 4.

[54] Some have argued that, by adopting this index, shippers/consumers are sharing in "productivity gains" of the pipeline. See comments of Holly at pp. 13–14; CAPP at pp. 11–15; NARO at p. 3; SIGMA at p. 4; Total, p. 24.

[55] See Kahn, *id.* see also, Railroad Cost Recovery Procedures, 364 ICC 841, 847–8 (1981), *aff'd* Western Coal Traffic League v. U.S., 677 F.2d 915 (D.C. Cir. 1982).

3. Procedures Related to the Indexing Methodology

a. *Filing the rates.* The index would be applied to any existing[56] individual rate to establish a ceiling level, as recommended by Kaneb.[57] If the existing rate used to establish the ceiling is later adjusted by Commission order, then the ceiling level must be likewise adjusted. Further, any changed rates derived from those rates that are in effect but under investigation and thus subject to refund would be made effective subject to refund.[58]

Some commenters argue that the increased rates resulting from application of the index should not be considered just and reasonable rates.[59] Under the approach adopted in this final rule, increased rates that comply with the indexed ceiling levels will be subject to challenge through protests. However, such protests must show that the increment of the rate change produced by application of the index is substantially in excess of the individual pipeline's increase in costs. The rates may also be subject to challenge at any time by the filing of complaints pursuant to section 13(1) of the ICA. The Commission believes that an adequate balance has been struck between competing interests in this matter.

Each pipeline will establish an annual ceiling level for each of its rates. Under the economic climate that exists today, with little change in the index from year to year, it appears to the Commission that allowing changes in the index to occur annually will balance the interests of the industry with its customers in assuring some measure of rate stability.[60] Of course, a company is not required to charge the ceiling rate, and if it does not, it may adjust its rates upwards to the ceiling at any time during the year upon filing of the requisite data, discussed below, and upon giving the appropriate notice. Since this is an annual *ceiling level*, it is not necessarily the rate which will actually be charged, contrary to the assertions of PEG[61] and SIGMA on this point.[62]

The Commission will publish the final change in the PPI–FG minus one percent after the final PPI–FG is available in May of each calendar year. Pipelines then will be required to calculate the new ceiling level applicable to their rates which are subject to indexing. If the rate being charged by the pipeline exceeds the new ceiling level, the pipeline will be required to file a change of rates to reduce the rate to a level not exceeding the new ceiling level. If the new ceiling level is higher than the rate being charged, the pipeline may file to increase such rate at any time in the index year to which the new ceiling level is applicable.

The index to be applied under the indexing methodology shall be the change in the final PPI–FG, minus one percent. The annual ceiling level shall be calculated in accordance with the following example:

$$\text{New Ceiling Level} = \text{Old Ceiling Level}\left(\frac{PPI_n}{PPI_{n-1}} - 0.01\right)$$

Where:

PPI_n=Final Producer Price Index for Finished Goods for the year previous to the year of adjustment

PPI_{n-1}=Final Producer Price Index for Finished Goods for the year prior to PPI_n

Thus, assuming the ceiling level for the index year July 1, 1992 through June 30, 1993 is $0.50; that the PPI–FG for 1992 is 120; and that the PPI–FG for 1991 is 115, the New Ceiling Level for the index year July 1993 to June 1994 would be:

$$\text{New Ceiling Level}_{1993/94} = \text{Old Ceiling}_{1992/93}\left(\frac{PPI_{92}}{PPI_{91}} - 0.01\right)$$

Then:

New Ceiling Level=$0.50 (120/115 −0.01)

New Ceiling Level=$0.5167

For the first adjustment under the indexing methodology, commencing with the effective date of this rule, pipelines will apply the index which will be published by the Commission in May of 1994, to their rates on December 31, 1994. Thus, for example, pipelines shall calculate the rate ceiling applicable to their rates for the period after the effective date of this rule until July 1, 1995, using the index published by the Commission. The rate ceiling thus established may thereafter be changed as of July 1 of each year, using the published index for the previous year.

If the rate in effect is changed during the year through a method other than indexing, or if the rate in question is an initial rate established during the year, then the pipeline must defer any rate change pursuant to the indexing system to the next subsequent adjustment date—*i.e.*, the following July 1.[63] This limitation is to preserve the integrity of the annual indexing concept. The index is intended to limit the amount by which a rate may be increased on an annual basis. To allow a rate established, or changed by a method other than indexing, during the index year to be further increased by the full amount allowed by the index would be contrary to the policy that the ceiling level is established on an annual basis, to be applied during an index year. This limitation is responsive to the concern reflected in comments submitted by Alaska[64] and Chevron[65] that were critical of the notion of pipelines being able to move back and forth between indexing and an alternative ratemaking method.

ARCO and Kaneb suggest that the Commission should allow updating of the index quarterly rather than annually.[66] The Commission is not persuaded that quarterly filings by all pipelines which desire to change rates under the index system—with their attendant costs of filing, tracking, and review—is necessary to avoid the lag problem that concerns the commenters. For the time being, the Commission will allow updating of the index only on an annual basis. Should the economic climate change whereby it appears

[56] An existing rate may be one which is deemed just and reasonable under section 1803 of the Act of 1992, or one which has not been legislatively determined to be just and reasonable. The latter category of rates may therefore be challenged under the traditional standards of section 13(1) of the ICA. Under the adopted regulations, however, such rates are entitled to be indexed.

[57] Kaneb comments. p. 15.

[58] *See* Phillips comments, pp. 5–9; ARCO comments, pp. 23–26.

[59] Total comments, pp. 4–5; USAIR comments, pp. 16–18.

[60] PPI–FG minus one percent changed by 3.9 percent between 1989 and 1990, and by only 1.1 percent from 1990 to 1991. *See* U.S. Department of Commerce, Survey of Current Business. If indexing under the Rule had begun in July of 1991, the index for 1989–1990 as applied to the national average revenue per barrel delivered in 1990 (44 cents/bbl) would have resulted in a ceiling price of 45.7 cents/bbl for 1991, permitting a maximum increase in rates for 1991 of 1.7 cents/bbl. Applying the procedure again in July of 1992, one would apply the index for 1990–1991 to the 1991 ceiling rate (rather than to the actual rate as in the base year). The resulting indexed ceiling rate for 1992 would be 46.2 cents, permitting a maximum increase of 0.5 cents/bbl. By contrast, the largest year-to-year change in the PPI–FG minus one percent index was in 1973–74, reflecting largely the impact of the first oil shock. The index rose 14.4 percent in that year. If that increase had happened in 1990–91, the 1992 allowable ceiling price would have been 52.3 cents/bbl, an increase over the 1991 ceiling (45.7 cents/bbl) of 6.6 cents/bbl.

[61] PEG comments, pp. 10–11.

[62] SIGMA comments, pp. 6–8.

[63] This limitation is contained in the new regulation for making a rate change through a methodology other than indexing, or an initial rate. *See* § 342.3(d)(5).

[64] Alaska comments, pp. 11–13.

[65] Chevron comments, p. 13.

[66] ARCO comments, p. 31; Kaneb comments, pp. 13–14.

reasonable to allow more frequent updating of the index, the Commission can consider a change in the methodology at that time.

At any time during the year, a pipeline may file for and change a rate that is less than or equal to the annual ceiling level.[67] Should a pipeline file a rate below the annual ceiling level, it could file at any time during the year to increase its rates to any level up to the ceiling.

As ARCO and AOPL have indicated, the index is cumulative from year to year.[68] Thus, the index applies to the applicable ceiling rate, which is required to be calculated each year, not to the actual rate charged. A rate that is not increased to the ceiling level in a given year may nonetheless be increased to the ceiling level in the following year.[69]

If the deflationary pressures push the ceiling level below the filed rate in any year, those filed rates that exceed the new, lower ceiling must be lowered to the new ceiling by a filing within 60 days of the date of publication by the Commission of the index.

When a pipeline files changed rates in accordance with the index, it must provide the following information:

- A cover letter describing the basis for the proposed change (*i.e.*, that it is to change rates according to the index);
- The revised tariff;
- Supporting information, including a showing of the revised rate compared with the previous rate for the same movement of product, the applicable annual ceiling level, and the calculation of the applicable ceiling level done in accordance with § 342.3(d); and
- A certificate of service.

Pipelines will be prohibited from filing rates under the indexing system that exceed the applicable ceiling level. If the pipeline believes that in a particular instance the index would not yield a just and reasonable rate, it may justify a higher rate if it satisfies the standards to utilize either the cost-of-service or market-rate methodologies, or negotiates and obtains the agreement of all of its existing customers to a rate.[70]

Holly[71] and Total[72] recommend that pipelines be required to cost justify their rates every five years. The Commission believes that data available in Form No. 6 may form the basis for a complaint if the criteria of the new regulations or of the Act of 1992 are met. However, the Commission is adopting a five-year review of the index as discussed, *supra*.

CAPP argues that there should be a minimum waiting period between rate filings.[73] The Commission disagrees. Pipelines which are collecting rates below the ceiling established by the index are in effect collecting rates below the level to which they are entitled, assuming their actual costs are not substantially below that level. Before changing rates, those pipelines must nonetheless give 30 days notice, unless a shorter notice period is requested and granted pursuant to section 6(3) of the ICA. This should be sufficient time to allow customers to respond to the proposed change in rates. Furthermore, if a pipeline determines that it is faced with uncontrollable cost changes, it should be allowed to file a rate change based on its individual cost of service to attempt to collect compensatory rates. (See discussion below.)

b. *Challenges to the rates.* i. Protests declining to consider most cost-of-service challenges to proposed rate change that comply with the index is an essential feature of an index-based ratemaking methodology. As explained above, an indexing methodology tracks, and bases rate ceilings upon, changes in economy-wide, as opposed to company-specific, costs. This obviates the need for detailed examination of company-specific costs each time a rate change is proposed, and thus simplifies and expedites the rate-changing process. This simplification effect is the reason why the methodology comports with Congress' intent under the Act of 1992.

However, the Commission is mindful of the need to avoid indexed rates that increase substantially above a pipeline's actual costs. Therefore, the Commission will implement a standard for considering protests to proposed rate changes, that comply with the index, that will ensure that individual pipeline rates do not diverge substantially from the pipeline's costs. Under the indexing system, the Commission will not entertain, on the merits, a protest filed pursuant to section 15(7) of the ICA alleging simply that the proposed rate change does not reflect a change in the pipeline's actual costs of rendering the service in question. Rather, a protest must allege reasonable grounds for believing that the discrepancy between the actual cost increase to the pipeline and the proposed change in rate is so substantial that the proposed rate change is not just and reasonable within the meaning of the ICA.[74]

ii. Complaints. Complaints against rates that have been indexed will continue to be governed by the procedures set forth in section 13(1) of the ICA. The ICA currently places the burden of proof on the complainant to show that an existing rate is unjust and unreasonable. The complainant will continue to bear that burden with respect to indexed rates in a complaint proceeding.[75]

This resumption will apply to existing rates that are the product of indexing. Further, the same standard that limits challenges under section 15(7) to proposed rates will apply to challenges under section 13(1) to existing rates. The Commission would not conduct an investigation upon a complaint that was premised upon the allegation that the existing rate level, established under indexing, is too high because the pipeline had increased its rates to a greater extent than its actual costs justified. Rather, to be heard on the merits, a complaint against an existing rate that has been indexed will be required to allege reasonable grounds for believing that the discrepancy between the actual cost experienced by the pipeline and the existing rate is so substantial that the existing rate level is not just and reasonable.

The Act of 1992 "grandfathers" the large majority of existing pipeline rates. This provision, however, applies only to certain existing rates. It cannot be read fairly to encompass rates not in existence during the statutorily specified grandfathered period. Thus, increases from those rates resulting in application of the index are only *prima facie* lawful, and may be challenged through the complaint or protest procedure, as appropriate.

A complainant will simply be required to state "reasonable grounds" for believing that the rate is unlawful.

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[67] The Commission will not require a rate to equal its annual ceiling level because, in some cases, the rate may be constrained by competitive market forces.

[68] ARCO comments, pp. 29–31; AOPL comments, p. 33.

[69] The filed rate doctrine would, of course, still apply and preclude a pipeline from recouping the revenues foregone in the previous year in which the rate charged was not at the ceiling level.

[70] Subsequent changes to a rate established by the cost-of-service or negotiated-rate methods would be allowed to be made pursuant to the index.

[71] Holly comments, pp. 14–18.

[72] Total comments, pp. 24–26, 32.

[73] CAPP comments, p. 16.

[74] Some commenters maintain that this procedure shifts the burden of proof to protestants, in violation of section 15(7) of the ICA. To the contrary, the burden of proof on proposed rates will remain with the pipeline. The regulation simply sets forth in advance and with general applicability what a protestant must show to trigger an investigation of a pipeline's proposed rate. *See* § 343.2(c).

[75] Under the ICA, the burden of proof is on the pipeline only with respect to proposed rate changes. 49 U.S.C. app. 15(7)(1988). Of course, the Act of 1992 provides additional protection for certain rates in existence during the one year period ending on October 24, 1992.

Further, in response to PEG and Crysen who complain about the specificity required and the time for filing protests,[76] Form No. 6 data are available to all parties to challenge a pipeline's rate increase.[77] Inasmuch as the Commission only has thirty days under the ICA to act on whether to suspend a rate increase filing, and the Act of 1992 indicates that the Commission should allow pipelines to respond to initial protests or complaints, the Commission is constrained in the time it may allow for challenges to these filings in order to act before the rate change goes into effect. Under the circumstances, the Commission will increase the time for protests from the 10 days proposed in the NOPR, but the Commission believes that 15 days from the date of filing the rate change to challenge the rate increase should be adequate.

Moreover, the rebuttable presumption provided in the regulation adopted by the Commission protests rates that have been indexed from challenges based upon a mere divergence between the pipeline's cost of service and the level of the existing rate. This is a measure of protection that comports with the policy behind the indexing system—to allow rates to be changed in accordance with an index which tracks changes in costs of the economy as a whole, rather than the changes in costs of the individual pipeline.

C. Other Rate Changing Methodologies

1. Cost of Service

As an alternative to changing a rate via indexing, a pipeline may, under certain circumstances, elect to make a cost of service showing to justify a rate higher than the applicable ceiling under the index system. Those are circumstances which are beyond the pipeline's control and which do not permit the pipeline to recover its prudently incurred costs through the indexing system.

The Commission has adopted in this final rule a modification of the standard that was proposed in the NOPR for determining when a cost-of-service showing may be utilized. In the NOPR, the Commission proposed an extremely stringent test. The Commission proposed to allow a pipeline to utilize a cost-of-service methodology only when it could demonstrate extraordinary circumstances that were both unforeseeable and uncontrollable, and which precluded the pipeline from recovering its costs under the index system.

Many pipeline commenters argued that the test proposed by the Commission was stringent to the point of unfairness.

Lakehead argues that the test set forth in the NOPR for use of the cost-of-service methodology—substantial, unforeseen, and uncontrollable extraordinary circumstances—is too restrictive and will prevent pipelines from recovering their costs in some cases.[78]

Kaneb says the NOPR excludes from the definition of extraordinary costs many costs that are not controllable and have a substantial effect on the pipeline: fuel and power, insurance, and safety and environmental compliance.[79]

ARCO asserts that pipelines should be allowed to employ a cost-of-service method upon a showing that their costs cannot be recouped by the index because of a substantial change in the circumstances or the nature of the services they provide. There should be no requirement that a substantial change be both uncontrollable and unforeseen. For example, states ARCO, a depletion in an oil field leading to declined throughput is foreseeable but not controllable by the pipeline. ARCO says that the failure to provide pipelines with an adequate safety valve to exceed the index ceiling when necessary would undermine the public interest in a safe and adequate pipeline network.[80]

AOPL urges the Commission to recognize that a cost-based rate standard should apply when pipelines find that revenues provided under indexed rates are inadequate to sustain their operations due to changed circumstances; and when pipelines require greater ratemaking flexibility, such as when a pipeline must structure its rates to respond to competitive changes in its markets. The standard should be "substantially changed circumstances." Pipelines should be given the opportunity to show what constitutes the requisite circumstances.[81]

Portland urges the Commission to liberalize the application of the cost-based alternative to consider case-specific financial and economic circumstances of pipelines including significant changes in volumes and expenses.[82]

The Commission has decided there is merit in these comments and will permit a pipeline to depart from indexing, and make a cost-of-service showing to justify a rate higher than the applicable ceiling, when it can demonstrate that it is affected by uncontrollable circumstances that preclude it from recovering all of its prudently incurred costs under the indexing system. Thus, under this standard such circumstances as increased safety or environmental regulations may justify the use of a cost-of-service methodology. Another example would be a natural disaster that disables facilities to such an extent that replacement would be necessary at great cost to the pipeline. Such circumstances would be "uncontrollable."[83] A similar approach was adopted by the Commission in restricting gas producer ratemaking to a showing of cost of service only where "special circumstances" could be shown. This approach was affirmed by the Supreme Court in 1968. See *Permian Basin Area Rate Cases*, 390 U.S. 747 (1968).

In the NOPR, the Commission had proposed the use of a more generous index based on, the GDP–IPD. Foreseeable environmental and safety costs would not have qualified the pipeline for use of the cost-of-service methodology. Therefore, the Commission believed that the more stringent standard was warranted. Since the Commission is adopting as the index the change in the PPI–FG minus one percent, it follows that a less stringent standard should be applied for using the cost-of-service methodology.

Finally, AAPC requests that the Commission promulgate a special provision that would allow an "interim" or "developmental" rate to be increased under a cost-of-service methodology, without the necessity of meeting the criteria set forth in the new regulations.[84] The Commission declines to do so. The policy of the indexing system is to limit resort to cost-of-service showings to those instances when a pipeline faces uncontrollable circumstances. A decision to charge an interim or developmental rate, as described by AAPC, is not the product of uncontrollable circumstances. It is a voluntary business decision.

[76] PEG comments, p. 20; Crysen comments, p. 18.

[77] Commenters can address the adequacy of Form No. 6 data in the cost-of-service rulemaking instituted concurrently herewith.

[78] Lakehead comments, pp. 3–4

[79] Kaneb comments, pp. 8–10.

[80] ARCO comments, pp. 20–22.

[81] AOPL comments, pp. 44–48

[82] Portland comments, p. 2.

[83] The Commission received several comments addressing the issue of whether the cost-of-service methodology should be applied on a "stand-alone" or fully allocated basis. The Commission is proposing no change in its current practice of using fully allocated rates. *See* Williams Pipe Line Company, 31 FERC ¶ 61,377 (1985).

[84] AAPC comments, pp. 5–8.

2. Market Rates

Pipelines will continue to be allowed to make a *Buckeye*-type showing and justify charging market-based rates.

The Commission stated in the NOPR that it would not be proposing procedures to streamline market power determinations that are a necessary part of a *Buckeye* showing. The Commission reasoned that such determinations were inherently fact-specific and that it would be difficult to promulgate justifiable thresholds for identifying competitive markets that would not be subject to frequent exceptions. The exceptions would eventually swallow up the rule, and the entire effort of attempting to streamline market power adjudications will have been to little or no beneficial effect.

Several commenters were critical of the Commission's failure to propose streamlined procedures for market-power adjudications.

AOPL,[85] ARCO,[86] Exxon,[87] Sun,[88] Plantation,[89] Explorer,[90] Buckeye,[91] and Williams[92] strongly urge the Commission to reconsider market power streamlining measures. They argue that some markets are clearly competitive, and that it would be a waste of time and resources for all concerned to conduct protracted adjudicatory proceedings to measure pipeline market power in such markets. These commenters believe the Commission can and should identify threshold standards to apply in such cases.

Some commenters, however, believe that streamlined procedures for market-power determinations are inadvisable.

Alaska states that the great variation in markets makes adjudication a more workable vehicle.[93]

Chevron contends that the Commission has no authority to allow market rates to be charged without price caps. Market rates would only be sought if a pipeline wanted to charge rates above the price caps. But if there are market forces, the rates should be below the level of the price caps. Further, market power hearings are cumbersome and expensive. Therefore, it argues that the Commission should do away with the market-rate option, and rely exclusively on indexing. If the Commission decides to allow pipelines to make market-rate showings, however, it should adopt some guidelines in the form of market-screens to avoid frivolous cases that waste time and discourage shipper challenges.[94]

PEG,[95] APMC,[96] NCFC,[97] and Crysen[98] also voice concerns about attempting to streamline market power determinations. They support dropping the proposal for streamlined procedures for establishing market rates.

Taking into consideration all of these comments, the Commission has determined to allow pipelines to continue to attempt to demonstrate a lack of market power and thereafter charge rates that are market-based. Until such time as the Commission has determined that the pipeline lacks significant market power in the markets to which it seeks to charge market rates, the pipeline will be restricted to charging rates within the ceiling level which would be applicable under the indexing methodology. If the pipeline files a cost-of-service justification along with its market-power showing, it may charge whatever the cost-of-service showing would permit. The Commission retains the authority under the ICA to suspend the effectiveness of such rates to the maximum extent allowed by law and to require the pipeline to collect its increased rates subject to refund.

The Commission is initiating a notice of inquiry on market-based rates.

The Commission therefore disagrees with the position that streamlining market power determinations is not a matter that warrants further investigation. Implementation of a light-handed, market-based approach to regulating the rates of oil pipelines that face sufficient competitive pressures is clearly within the Commission's authority under the ICA, as the Commission held in *Buckeye*. *Buckeye*, however, was a long and difficult adjudication. A more streamlined way of implementing a light-handed form of regulation, when appropriate, is in the public interest if it is consistent with the policies underlying the Act of 1992.

The many comments going to the details of a streamlined approach to determining pipeline market power will be evaluated in the notice of inquiry.

3. Settlement Rate Methodology

In the NOPR, issued July 2, 1993, the Commission proposed to allow a rate agreed to between a pipeline and shippers to serve as the filed initial rate for new service.[99] Various commenters[100] suggested that the Commission also allow changes to existing rates that have been agreed upon by the pipeline and shippers to be filed and collected even though these rates may be above the ceiling level that would apply under the indexing methodology. The Commission has considered these suggestions and finds that allowing rate changes to reflect the agreement of shippers and the pipeline would further its policy of favoring settlements as a means for parties to avoid litigation and thereby lessen the regulatory burdens of all concerned.

Congress, in the Act of 1992, encouraged settlement of oil pipeline rate cases. That Act requires the Commission to consider reforms to streamline proceedings. It also directs the use of alternative dispute resolution procedures. Therefore, the existing Commission policy, of encouraging settlements, has been supplemented by Congressional policy mandate to expedite and streamline the ratemaking process for oil pipelines by lessening the need to rely on traditional adversarial processes. Accepting changes to rates which have been agreed to by all shippers furthers this policy.

Therefore, the Commission will permit changes of rates which are the product of unanimous agreement between the pipeline and all shippers using the service to which the rate applies.

When such an agreement is reached, the pipeline will file the rate according to the usual procedures under the ICA and include a verified statement to the effect that the proposed rate has been agreed to by all current shippers.

Even though the rates in this instance are the product of unanimous agreement, the Commission is still concerned that a pipeline which has market power can establish a higher rate through "negotiation." Therefore, the Commission will allow a challenge to the change in rates through a protest or complaint. Because the rate will reflect the concurrence of all customers, the Commission will require such a challenge to show the same circumstances that a challenge to an indexed rate must show—reasonable grounds for believing that there is a discrepancy between the negotiated rate and the pipeline's cost of service that is so substantial as to render the rate unjust and unreasonable within the meaning of the ICA.

[85] AOPL comments, p. 60.
[86] ARCO comments, p. 3–20.
[87] Exxon comments, p. 1.
[88] Sun comments, p. 2.
[89] Plantation comments, pp. 1–2.
[90] Explorer comments, p. 2.
[91] Buckeye comments, pp. 1–9.
[92] Williams comments, pp. 4–9.
[93] Alaska comments, p. 9.
[94] Chevron comments, pp. 10–13.
[95] PEG comments, pp. 6–7.
[96] APMC comments, p. 17.
[97] NCFC comments, p. 3.
[98] Crysen comments, pp. 16–17.
[99] *See* 58 Fed. Reg. at 37676 (July 13, 1993).
[100] *See, e.g.*, Lakehead comments, p. 3; ARCO comments, p. 27; and AOPL comments, pp. 63–64.

D. Establishment of Initial Rates

In the NOPR, issued in this proceeding on July 2, 1993, the Commission proposed to allow pipelines to establish initial rates for new service, either by an existing pipeline or a new pipeline through agreement between the pipeline and shippers. This proposal followed the suggestion of the National Council of Farmer Cooperatives contained in its comments to the Staff Proposal.

Many comments were received on the Commission's proposal in the NOPR to allow initial rates to be established by a process of negotiation between the pipeline and prospective customers. Several shipper commenters, as set forth below, expressed concern with the potential for pipelines to exercise market power in negotiating initial rates.

Alaska opposes allowing new rates to be set by negotiation. It says many pipelines and shippers are affiliated, and this fact undermines any chance that market forces will restrain the negotiated rate. Further, it argues there is no cost basis in negotiated initial rates, a problem which would be compounded by allowing the rate to be changed through an indexing methodology.[101]

Chevron says this proposal overlooks the fact that some pipelines will have market power in establishing a new rate—the regulations should therefore allow a new rate to be subject to a protest.[102]

PEG states that the Commission cannot allow monopoly pipelines to set new rates through negotiation. This abandons the consumer's interest.[103]

Long Beach says the proposed rule makes no provision for the contingency of not all parties agreeing to the negotiated rate, or the shippers being affiliates of the pipeline, or the shippers being unknown. This can be corrected by allowing a party who has not agreed to the negotiated rate to file a protest or complaint and subject the rate to a cost-of-service determination.[104]

Several commenters reflecting the pipeline point of view support the negotiated rate option, but argue that it should be discretionary.

Phillips opposes the implication in the NOPR that the only valid basis for a new rate is negotiation. It argues that, under the ICA, a pipeline has an unqualified right to file a tariff offering a service at a rate developed by the pipeline. This is because the Commission has no jurisdiction over entry and therefore cannot forbid the offering of service simply because the pipeline is unable to secure the advance agreement of shippers on the initial rate.[105]

ARCO agrees with Phillips that the negotiated rate provision should be permissive, not mandatory. The pipeline, states ARCO, should have the option of setting a new rate based upon cost of service or the market rate if it can demonstrate lack of market power.[106]

ARCO[107] and AOPL[108] state that a valid negotiated rate should reflect the agreement of current shippers, should be the result of arms-length negotiations between the pipeline and non-affiliated shippers, and should be applicable to all shippers receiving the same service.

In the regulations adopted in this final rule, the Commission has determined that initial rates can be established through a cost-of-service showing, or, in furtherance of the Commission's policy to encourage settlements, through agreement of the pipeline and potential shippers, at least one of which must not be affiliated with the pipeline. In the event there are no non-affiliated shippers, the pipeline must use a cost-of-service showing to justify its initial rate.

Upon consideration of the comments received, the Commission will allow agreed-upon rates to take effect. If there is a protest to the rate, the pipeline must justify its initial rate for service through a cost-of-service showing.

Initial rates for new service may be established by filing a rate that reflects the agreement of at least one non-affiliated shipper, as suggested by AOPL. In establishing initial rates through negotiation, the Commission is requiring the concurrence of only one non-affiliated shipper for the reason that, unlike the situation involving a change in existing rates, the pipeline would be unable to know who *all* potential shippers would be. Initial rates would of course be subject to challenge, through a protest or complaint under the ICA.

The comments reflect a concern, which the Commission believes is well taken, with allowing a pipeline that may possess market power to control prices in a market to establish an initial rate through negotiations. However, the regulation adopted adds the requirement that at least one non-affiliated prospective shipper must agree to the initial rate. This should provide some measure of protection against a pipeline exercising market power to dictate the rate it will charge. When a pipeline attempts to exercise market power to coerce an agreement, a concern expressed by Chevron and PEG, the Commission believes that adequate remedies are available through the protest and complaint procedures. In this regard, the Commission rejects the suggestion by AOPL that a negotiated initial rate should be entitled to a presumption of lawfulness. An initial rate will not be entitled to any presumption of lawfulness. This should help to ensure that the remedies of protest or complaint are adequate to ensure that an initial rate is not established through the exercise of market power.

Finally, ARCO makes two other specific suggestions regarding establishing initial rates. ARCO says the Commission should clarify that a new rate includes a rate for service to a new point, even if no construction is involved. In addition, ARCO states that the Commission should uphold any escalator clauses in rate agreements, even if the clauses provided for increases larger than the index.[109] AAPC suggests that contract escalators in initial contracts should be allowed to effect rate increases within the ceiling set by the Commission's index, and that upon expiration of these contracts, the pipeline should be allowed to bring its rates up to that ceiling.[110]

As to ARCO's request that the Commission clarify that an agreed rate for initial service need not involve construction, nothing in the new regulations precludes a rate for new service where there is no new construction. As to ARCO's suggestion that escalator clauses in such agreements should be allowed, even if the rates would exceed the indexed ceiling, the Commission believes that it is consistent with the theory behind allowing a negotiated rate to uphold escalator clauses that reflect the unanimous agreement of the current customers. It should be pointed out, however, that the remedies of protest and complaint would remain available in respect to an escalation of rates that goes beyond just and reasonable levels. The Commission will not at this time provide in its regulations a blanket approval of escalator clauses in initial rate contracts. The contract escalator provision mentioned by AAPL would not violate the indexing system so long as the rates established thereunder comply with applicable ceilings.

[101] Alaska comments, pp. 14–15.
[102] Chevron comments, p. 16.
[103] PEG comments, p. 17.
[104] Long Beach comments, pp. 7–8.
[105] Phillips comments, p. 11.
[106] ARCO comments, pp. 27–29.
[107] ARCO comments, p. 27.
[108] AOPL comments, pp. 63–64.
[109] ARCO comments, pp. 27–29.
[110] AAPC comments, pp. 5–8.

E. Trans-Alaska Pipeline System

In the Act of 1992, Congress excluded TAPS and any pipeline delivering oil directly or indirectly to TAPS from the provision of this Act for ratemaking purposes. Thus, for ratemaking purposes, TAPS and those excluded pipelines will continue to be regulated under the ratemaking standards that are currently in effect. However, it is the Commission's judgment that such exclusion was intended to apply only to the simplified and generally applicable rate methodology, not to the procedural rules that the Act of 1992 required the Commission to consider. Otherwise, the Commission would be required to enforce one set of procedural rules for TAPS and the excluded pipelines and another for all other pipelines under its jurisdiction under the ICA. This would not be consistent with Congress' intent for the Commission to streamline its procedures for oil pipelines. In other words, Part 342 of the regulations as adopted by this final rule will not apply to these pipelines.

Thus, all excluded pipelines, including TAPS, will be subject to the new rules established under Parts 341 and 343. TAPS must justify its rates in accordance with the TAPS Settlement Methodology.[111] To the extent there is a conflict between Parts 341 and 343 and the TAPS Settlement, the TAPS Settlement will control. All other excluded pipelines must justify their rates under the Opinion No. 154–B methodology.

V. Procedures for Streamlining Commission Action on Rates

Section 1802 of the Act of 1992 requires the Commission to consider certain specific procedural issues in a rule to streamline its procedures relating to oil pipeline rates. Accordingly, certain new procedures are being promulgated for the treatment of protests and complaints that will expedite consideration of rates by reducing the frequency and the scope of adjudicatory proceedings. These new procedures are discussed in section A below.

The new procedures will be incorporated into the Commission's existing practices and procedures for administering oil pipeline tariffs and resolving challenges to those tariffs. The existing practices are codified in Part 385 (Rules of Practice and Procedure) of the Commission's regulations, and govern the filing of tariffs, protests, and complaints; service upon parties; time periods for responding to pleadings; and other details of uncontested and contested proceedings.

The Commission is also making substantial revisions to the existing regulations on tariffs, which were inherited from the ICC, in order to eliminate archaic and unnecessary language.

A. New Procedures

Congress clearly intends for the Commission to expedite its handling of oil pipeline rate filings. Section 1802(b) of the Act of 1992 specifies the procedural issues set forth below for consideration in promulgating new regulations to streamline its process. The Commission has carefully evaluated two rounds of comments on these new procedures and, in compliance with the explicit direction of section 1802(a) to consider certain specific procedural reforms, the Commission has determined to adopt certain reforms.

These reforms are explained in detail below. In sum, procedures for filing rate changes under the generally applicable indexing system will require pipelines to file only that information which is necessary to show compliance with the applicable rate ceiling. The likelihood of investigations being conducted on non-meritorious challenges will be reduced and the scope of investigations that are justified will be confined to the allegations raised.

1. Identification of Information to Accompany a Tariff Filing

As stated above, pipelines will be required to file minimal information with rate filings under the new indexing and negotiated rates methodologies. In regard to rates filed under the cost-of-service and market-rate methodologies, the filing requirements will for now remain the same as under current practice. However, as stated above, the Commission intends to promulgate new regulations pertaining to the cost-of-service filings and perhaps to market rate filings.

The Commission received many comments that were critical of the notion of a minimal information requirement for filings under the indexing system.

Alaska wants the Commission to require a pipeline to file basic cost-of-service data with new rates, or shortly after the new rates are filed. It argues that without this requirement challenges cannot be fully developed and specific and filed within 10 days of the tariff filing, as required by the NOPR. It supports PEG's proposal to require pipelines to supply simplified cost of service information and an allocation justification. This would avoid unnecessary discovery, and eliminate unnecessary litigation. Alaska states that the Commission should adopt a procedure similar to that used under the TAPS Settlement Agreement, which includes annual filings of rates, and advance filing of supporting data, followed by an informal negotiations process.[112]

Chevron advocates requiring a pipeline to provide the supporting data when it files for a rate increase under indexing, much like the top sheets submitted by gas pipelines. Also, the pipeline should be required to give 60 days notice, and shippers should be allowed 30 days to file protests.[113]

PEG asserts that outside parties that wish to be heard will be severely handicapped by having less than 10 days to file a detailed answer to a filing that is neither noticed nor public, and which contains no information on which to make specific, detailed answers.[114] PEG states that there should be advance notice by the Commission and the pipeline to the public of a proposed rate increase and sufficient information filed by the pipeline in advance so that all affected, including staff, can be heard.[115]

Crysen says pipelines are not currently required to file any information with a changed tariff, but merely to announce it. As a result, shippers are "flying blind". Pipelines should be required to file with the Commission and serve on shippers a detailed explanation of a rate increase, 60 days before the proposed effective date. Pipelines should thus be required to file the same type of information that natural gas pipelines must file.[116]

CA argues that the Commission should require all pipelines to submit annual information that conforms to information provided to the Commission by natural gas pipelines.[117]

Detailed cost data are unnecessary with respect to rate changes proposed under the indexing system. Rate changes under indexing are not required to be justified by the actual cost changes experienced by the individual pipeline filing the rate. The indexing system is predicated upon cost changes in the economy as a whole, not to individual pipelines.

However, the Commission discerns merit in the observations of Chevron, Crysen, PEG, and NCFC that it would be unfair to require the filing of a fact-

[111] *See* Trans-Alaska Pipeline Company, 33 FERC ¶61,064 (1985).

[112] Alaska comments, pp. 16–20.

[113] Chevron comments, pp. 14–15.

[114] PEG comments, pp. 20–21.

[115] *Id.*, p. 14.

[116] Crysen comments, pp. 17–18.

[117] CA comments, p. 5.

specific protest to a rate filing under the indexing system, particularly in view of the limited information required to be contained in the filing, even though Form No. 6 data are available to protestants. Thus, as explained further in the section below on specificity of protests and complaints, the Commission has revised the NOPR proposal, and adopted a regulation that simply requires that a protestant state "reasonable grounds" for believing that a proposed rate change under indexing substantially exceeds the pipeline's actual cost increases. This is a much more lenient threshold for a protest than was proposed in the NOPR.

The Commission does not agree, however, with the comments of Chevron and Crysen that a longer than 30-day notice period should be required for rate changes. Such a notice period would substantially undercut the rate-changing flexibility that is one of the goals of the indexing approach.

In *National Rural Telecom Association* v. *FCC*, the court upheld the adoption of similar streamlined rate filing procedures under a rate cap regulatory regime, ruling that the rate cap could be relied upon to provide the primary means of protection against excessive rates.[118]

Finally, AOPL recommends that the Commission provide additional guidance with respect to tariff filings seeking cost-of-service or market-based regulation, or containing negotiated rates. AOPL's call for additional guidance on the informational requirements for cost-of-service and market-rate filings is also well taken, and will be addressed in the companion rulemakings.

2. Availability to the Public of Staff Analysis of Tariff Filings

The NOPR did not propose any new regulation on public access to staff analysis of tariff filings. First, in those instances when no protest or complaint is lodged against a tariff there would be no need for making staff analysis available. Second, in those instances when a protest or complaint is lodged but an investigation is not initiated by the Commission based upon the pipeline's response the reasons for such action would be set forth in the Commission's order. The Commission believes this would be sufficient to meet any public need or right to know of the basis for the Commission action. Finally, when an oil pipeline tariff is subject to investigatory proceedings or has been set for hearing, the usual rules of discovery found in §§ 385.401, *et seq.*, of the Commission's regulations would apply.

No comments were filed which opposed the above-described reasoning. Therefore, the Commission has determined to adopt no new regulations on this point.

3. Standing of Parties to File Protests

In the NOPR the Commission proposed a general rule to restrict standing to shippers. In addition, the Commission proposed to grant standing to customers of customers, if their economic interest in the proposed rate was substantial. Finally, the NOPR's proposal would limit standing to competitors to those cases in which the allegation being raised concerned alleged anti-competitive behavior.

Many comments were received urging the Commission to craft a standing requirement that includes a particular category of persons. Standing was urged for producers (IPAA,[119] Long Beach,[120] CAPP [121]), trade associations (CAPP,[122] NARO,[123] NCFC,[124] IPAA [125]), agencies (Long Beach [126]), and consumers and consumer groups (PEG [127]).

The Commission has decided to continue to use its permissive rule for interventions found in § 385.214, but to adopt a "substantial economic interest" test for determining the standing of parties to file protests against proposed rates. This will ensure that all persons will have the opportunity to be heard in regard to a proposed rate increase, but only those who have a substantial economic stake in the rates can protest and trigger an investigation. This is analogous to the procedure used in federal courts in which only persons that are aggrieved may bring an action but others may be heard as *amicus curiae*.

The Commission has determined that application of a generic test based upon economic interest is preferable to the approach indicated in the NOPR of basing standing upon classifications, such as customer, customer of customer, and competitor. The key factor in determining standing should be the magnitude of the economic stake of the person seeking standing to challenge a proposed rate.

The Commission is not adopting language explicitly granting trade associations and other groups standing to file protests. The Commission believes that the policy of the Act of 1992 would be furthered by restricting the ability to initiate investigations of proposed rates to those who have a substantial economic interest in those rates. Organizations such as trade associations, consumer groups, and government agencies, will have standing to bring protests if they can meet the substantial economic interest test. Otherwise, they will continue to have the right to participate in proceedings by filing for intervention.

It should be noted that the requirement for standing promulgated herein applies only to the filing of protests. The ICA provides that "any person" may bring a complaint against an existing rate or practice under section 13(1) of the ICA. The Commission will not attempt to define a class of persons eligible to file complaints.

4. Level of Specificity for Protests and Complaints

The Commission had proposed in the NOPR to require parties challenging rates under indexing to set forth specific facts for alleging the rates were unlawful.

Some commenters criticized this requirement. NCFC states that a protester should be given at least 30 days to file a challenge, given the fact that it must allege specific facts.[128]

Alaska maintains that the requirements that protests be supported by specific facts and filed within 10 days of the tariff are "onerous and impractical." The practical effect of this, and other obstacles such as the cursory information the pipeline is allowed to file with its tariff and the presumption of lawfulness of a rate increase within the index, is to shift the burden of proof to justify a rate change to the challenger in violation of section 15(7) of the ICA.[129]

Long Beach claims that it is unfair to require those who would challenge a rate under the cost-of-service, initial rate, or market-based rate methodologies to aver "specific facts." The challengers may not have access to the cost and throughput information necessary to meet this requirement. This requirement shifts the burden to challengers and may preclude meritorious claims against rates whose basis is known only to the pipeline. More stringent pleading requirements for challengers are appropriate once the rate has been determined to be just and reasonable and is subject to indexing, where all

[118] 988 F.2d at 185.

[119] IPAA comments, p. 3.

[120] Long Beach comments, pp. 5–6.

[121] CAPP comments, p. 21.

[122] CAPP comments, p. 21.

[123] NARO comments, p. 3.

[124] NCFC comments, p. 6.

[125] IPAA comments, p. 3.

[126] Long Beach comments, pp. 5–6.

[127] PEG comments, p. 18.

[128] NCFC comments, p. 5.

[129] Alaska comments, pp. 16–20.

parties have access to the relevant calculations.[130]

On the other hand, AOPL strongly supports and cites to its comments on Staff proposal at pp. 79–81 for the legal basis for specificity requirements.[131]

The Commission has concluded that a requirement that a protestant or complainant allege specific facts is, in light of the lack of data provided by the pipeline under indexing, inappropriate. Thus, the regulations state that a challenge, under either section 15(7) or section 13(1) of the ICA, must allege "reasonable grounds" for believing that the rate is outside the zone of reasonableness. This requirement is fair. It must be presumed that one who files a challenge to a rate has some reasonable basis for believing it is unlawful. The new regulation simply requires an articulation of that basis. In addition, challenges of rates have at their disposal the data on pipelines contained in Form No. 6. Moreover, a rulemaking process is being initiated to examine improvements of this Form. In addition, the Commission is increasing the time for filing protests of rate changes from 10 days to 15 days.

Contrary to the comments filed by Alaska, the Commission's adopted procedures will not shift the burden of proof to protestants. These procedures merely specify, in advance and with general applicability, what showing pipelines must make to put forth a *prima facie* case justifying a rate change under the indexing system, and what showing a protestant must make to rebut that case. There is no shifting of the ultimate burden on the pipeline to justify a rate change.

5. Guidelines for Commission Action on the Portion of the Tariff or Rate Filing Subject to Protest or Complaint.

In the NOPR, the Commission proposed to confine its investigations and remedial actions (if any) to the disputed rate or practice, and no others. Thus, protests and complaints raising certain specific issues would not be the basis for triggering a system-wide inquiry or going into issues not raised. Limiting the scope of investigatory proceedings in this manner, reasoned the NOPR, was important in achieving Congress' objectives of increasing the efficiency and economy of the Commission's regulation of oil pipelines.

Two commenters argued that this requirement was not appropriate. Alaska claims that this requirement, if applied strictly, could actually have the opposite of its intended effect because challengers would raise every conceivable claim to protect their rights.[132] Chevron opposes restricting the inquiry to those issues raised in the protest or complaint, saying it is the Commission's duty to investigate wrongdoing and that many times such wrongdoing is not discovered until after the investigation commences.[133]

The Commission has concluded that it is reasonable and appropriate to request that one challenging a rate specify the grounds for that challenge. A protest or complaint should not, in other words, be a device for triggering a "fishing expedition." The Act of 1992 evinces an intent to limit the scope of proceedings to the issues raised.

As the Commission stated in the NOPR, there will be room for interpretation of this restraint on the scope of proceedings. Relevancy is often subject to debate. Under this new regulation, it will be the task of the Commission in the suspension order, or the presiding judge to make the proper rulings to ensure that proceedings remain focused on the issues raised. Similarly, if a proceeding is initiated to investigate matters raised in a protest and the protest is subsequently withdrawn, then the proceeding should be terminated. Section 343.3(d) of the new regulation provides for this result.[134]

6. Opportunity for Pipeline to Respond to Protest or Complaint

In the NOPR the Commission proposed the following procedures:

> Protests to a rate filing must be filed no later than ten days after such filing; the pipeline would be permitted to respond to any protest within five days of the date of filing of the protest, and to any complaint within 30 days (as currently provided in § 385.213 of the Commission's rules). This proposal contemplates that the Commission would examine the pipeline's response to a protest or complaint to make a determination as to whether to commence a formal investigation of the tariff. If the Commission were to determine that formal investigation is not warranted, the protest or complaint would be dismissed. If the Commission were to determine that a formal investigation is warranted, then the matter would proceed to the next stage * * * The determination of whether to initiate a formal investigation of a tariff filing will be made within the 30-day statutory notice period.

Two comments suggested that the five day period for filing answers to protests needed modification. Phillips notes that five days is a very short time to respond to a protest, but recognizes that the Commission needs to examine both pleadings and decide whether to initiate an investigation within 30 days of the rate filing. This time crunch, suggests Phillips, would be lessened for the pipeline and the Commission by requiring protests to be upon the pipeline by telefax, thus giving the pipeline five full days (not reduced by mail time).[135]

AOPL suggests that delivery of the protest be by overnight mail or by hand delivery.[136]

Taking into account these comments, the regulation adopted by the Commission adds the following procedure. If a pipeline requests in a separate letter accompanying its rate filing a telefax transmittal of any protest, then a copy of the protest must be telefaxed to the pipeline at the same time it is filed with the Commission. The letter requesting this procedure must include the telefax number and a contact person. If no such request is made by the pipeline, the protest would simply be served in the customary manner.

7. Complaints Against "Grandfathered" Rates

The Act of 1992 provides that complaints against otherwise grandfathered rates may be filed under certain circumstances: a substantial change has occurred since enactment in either the economic circumstances or the nature of the services which were a basis for the rate; the complainant was contractually barred from challenging the rate prior to enactment; or the rate was unduly discriminatory or preferential.[137]

Because of the difficulty, if not impossibility of adequately enumerating in advance the specific factual allegations that would cause the Commission to entertain a complaint against rates statutorily deemed to be just and reasonable, the Commission did not propose to do so in the NOPR. This is the position of the Commission in this final rule. Thus, no regulations are promulgated on this issue.

The Commission received two comments pertinent to this area.

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[130] Long Beach comments, pp. 6–7.

[131] AOPL comments, p. 69.

[132] Alaska comments, p. 19.

[133] Chevron comments, pp. 18–19.

[134] The termination of a proceeding by the withdrawal of a protest will not preclude the Commission from initiating an investigation on its own based on the record developed as a result of the protest, if the Commission determines an independent investigation is warranted. (See below in section 8).

[135] Phillips comments, p. 23.

[136] AOPL comments, p. 70.

[137] Sec. 1803 (b) and (c) of the Act of 1992, 42 U.S.C.A. § 7172 note. Procedurally, such a complaint would be filed under § 385.206 of the Commission's existing regulations.

CAPP says the Commission should provide for a reasonable period (one year from enactment of the rule) to challenge grandfathered rates.[138]

Chevron requests that the Commission clarify that the restriction under section 1803(b) of the Act of 1992 on refunds only applies to grandfathered rates under that section.[139]

CAPP's suggestion is contrary to the statute. Grandfathered rates may only be challenged under the circumstances under section 1803 of the Act of 1992. If those circumstances are met, the rates may be challenged at any time. If those circumstances are not met, the rates may not be challenged.

In regard to Chevron's comment, the Commission believes the statute is clear on this point and that no new regulation is necessary to supplement it.

8. Staff-Initiated Investigations

Section 1802(b) of the Act of 1992 requires the Commission to consider adopting a regulation defining the specific circumstances under which staff may initiate a "protest" (*i.e.*, an investigation).

The Commission has not adopted the NOPR's proposal to prohibit all investigations initiated by the Commission. PEG asserts that the NOPR would silence Commission staff, who cannot raise issues as to illegal actions of pipelines.[140] NCFC says staff should be allowed to initiate and participate in investigations because shippers often need this assistance.[141] Similar comments were also filed by Chevron.

The opposing point of view was articulated by Phillips [142] and AOPL.[143] They both assert it was the intent of Congress in the Act of 1992 to prohibit staff-initiated investigations of rates.

Upon consideration of this issue, and the comments received, the Commission has determined that it will not promulgate an explicit bar to Commission-initiated rate investigations. As explained in the next section, the Commission is eliminating the Oil Pipeline Board. The Board has exercised delegated authority to suspend oil pipeline tariff filings. With the Board's elimination, that authority will now reside exclusively with the Commission. It will not be delegated at this time.

The decision not to adopt an absolute bar is premised primarily upon the Commission's responsibilities under the ICA, in particular, its obligation to ensure that pipeline rates are just and reasonable. The Commission believes that it would be inconsistent with these responsibilities to rule out in all cases the possibility of an agency-initiated rate investigation.

Nonetheless, while the Commission believes it is advisable to retain the authority to investigate a rate on its own motion, it should make clear that it does not contemplate invoking such authority except in the most unusual circumstances. The policy of streamlining and expediting the regulation of oil pipelines, as reflected in the Act of 1992, supports the notion of relying primarily upon the affected parties to bring challenges to rates.

9. Elimination of Oil Pipeline Board and Delegation of Authority to Office Directors

Section 375.306(a) of the current regulations authorizes the Oil Pipeline Board (Board) to exercise the Commission's power under section 15(7) of the ICA to institute investigations of proposed tariff changes. This authority includes suspending a tariff filing on the Board's own motion.

The Commission will adopt the proposal contained in the NOPR to eliminate the Board and instead reserve to itself the authority to suspend tariffs, while delegating to Staff Office Directors certain of the other duties currently delegated to the Board.

The Chief Accountant or the Chief Accountant's designee will be authorized to pass upon applications to increase the size, add to or combine property units of oil pipeline companies, and sign all correspondence on behalf of the Commission relating to Form No. 6. In addition, the Chief Accountant will be delegated authority to issue interpretations and pass upon matters arising under the Uniform System of Accounts and related issues. These are authorities which the Chief Accountant has historically exercised over natural gas and electric utility companies subject to the Commission's jurisdiction. Since these delegations essentially conform the authority of the Chief Accountant to the authority already exercised over natural gas and electric utility companies, these delegations will be made effective thirty days from publication of this final rule in the **Federal Register**.

The Director of the Office of Pipeline and Producer Regulation or the Director's designee will be delegated authority to accept any uncontested item which has been filed consistent with Commission regulations and policy; reject any filing which patently fails to comply with applicable statutory requirements and with all applicable Commission rules, regulations and orders for which a waiver has not been granted; authorize, prescribe or revise the rates for depreciation of carrier property; and refer any matter to the Commission which the Director believes should be acted upon by the Commission. These delegations are similar to those which have been granted the Director with respect to the Commission's jurisdiction over natural gas companies.

The Commission has been performing depreciation studies to establish revised depreciation rates for oil pipelines. The Commission has determined that this task unnecessarily burdens the Commission's resources. Under the Commission's regulations, performing depreciation studies is the responsibility of the pipelines. (See, 18 CFR Part 352, General Instruction 1–8). In the future, pipelines will be required to perform such studies.

The specific requirements for such studies will be addressed in the accompanying investigation into cost-of-service filing and reporting requirements.

The Executive Director will be delegated authority to grant or deny petitions for waiver of annual charges. This delegation is consistent with the other authority the Executive Director now has.

Some duties currently delegated to the Board will not need to be re-delegated. For example, the granting of special permission to place tariffs in effect on less than 30 days notice and "Fourth Section" waivers—*i.e.*, from the provisions of section 4 of the ICA which would allow a pipeline to charge a greater amount for a shorter distance over the same line or route in the same direction, or to charge any greater compensation as a through rate than the aggregate of the intermediate rates—would be granted automatically under revised § 341.14 and § 341.15.

The Board was initially established at the Commission pursuant to section 17(2) of the ICA. Under section 17(2) the Commission has the authority to rescind its delegation to the Board at any time. While section 17(2) does not specifically provide for delegation to Office Directors, it does not bar such delegation, particularly in light of the specific language of sections 401(g) and 402(b) of the DOE Organization Act, which gives the Commission the power to delegate and which transferred the functions and authority related to oil

[138] CAPP comments, pp. 9–10.
[139] Chevron comments, pp. 71–18.
[140] PEG comments, p. 21.
[141] NCFC comments, pp. 6–7.
[142] Phillips comments, p. 18.
[143] AOPL comments, p. 71.

pipeline regulation from the ICC to the Commission.

The termination of the Board and the transfer of the additional delegated authorities to the Director of the Office of Pipeline and Producer Regulation and the Executive Director will take effect on January 1, 1995. These actions are part of the Commission's streamlining of its oil pipeline procedures under the Act of 1992.

B. Revisions to Existing Procedures

1. Tariff Filing Requirements

The Commission has never significantly altered the tariff regulations it inherited from the ICC.[144] Some of these regulations have remained essentially unchanged for over 60 years.[145] The Commission will revise the regulations contained in parts 341 through 345, 347, 360, 361 and § 375.303 of title 18 of the Code of Federal Regulations. The Commission will make these revised regulations effective 30 days after issuance and publication of the final rule in the **Federal Register**.[146] The changes to the existing filing requirements should significantly reduce the burden of the preparation and filing of oil pipeline tariffs. In particular:

- Separate special permission applications would no longer be filed; rather, the request would be made concurrently with the tariff filing. The special permission would be deemed to be granted unless specifically denied within 30 days of the date of the tariff filing.
- Current regulations prohibit the withdrawal of pending tariffs. The revised regulations would permit pending tariff filings to be withdrawn prior to their proposed effective date.
- Format requirements would be revised and simplified to account for technological advances.
- The requirements to file concurrences and powers of attorney with the Commission would be eliminated.
- Requirements related to oil pipeline valuations would be eliminated in their entirety.

Finally, the Commission will require a full 30 days' notice for newly-constructed-pipeline rate filings.

The Commission received some specific suggestions regarding the proposed revision of the tariff regulations from AOPL and ARCO.

AOPL's comments contain a section-by-section analysis of the proposed regulations contained in part 341, and a marked-up version to reflect its proposals.[147] Many of the comments of AOPL were also reflected in the comments of ARCO. The final rule reflects those AOPL suggested modifications that clarified the intent of the regulations, such as AOPL's suggested modifications in § 341(b)(10), concerning loose leaf tariffs.

Other suggested changes, which would limit the meaning of the regulations or would be redundant, were not adopted.

ARCO says proposed § 341.8 adds a number of items to the list that must be included in tariffs. These items were not previously required and would require amendment to all existing tariffs, and increase the volume of future filings. For example, the new rule would require a change in the tariff each time the pipeline changed its specification for the chemical composition of crude oil. The Commission, contends ARCO, has neither the time nor the expertise to review the amount of tariff filings this change would require. Further, many of the items, including prorationing policy, are arguably not within the authority of the Commission to require to be included in the tariff. The statute only requires publication of matters affecting the rate, charge or fare, not extraneous matters.[148]

ARCO is critical of several other specific aspects of the tariff regulations proposed in the NOPR. It indicates that proposed § 341.0(a)(1) should be restricted, and that tariff justifications should be sent only to current shippers. It states that proposed § 341.0(b)(6) can be read to require tariff postings in all pipeline offices. According to ARCO, § 341.3(b)(7) should be clarified to allow the charging of volume rates. ARCO also criticizes § 341.3(b)(8), saying that a pipeline should not be required to show the specific route for a service, only the origin and destination points. The 30-day period provided under § 341.6(d)(5) should be subject to extension, according to ARCO. Finally, ARCO states that § 341.10 is confusing and should be deleted.[149]

As to the comments of ARCO about the additional requirements specified in part 341, the Commission believes that it is in the public interest for the Commission, and the interested public, to have ready access to information concerning pipeline operations. This policy is reflected in the ICA. This policy has not been reversed in the Act of 1992. However, these informational requirements are subject to a rule of reason. Thus, for example, it is not true that a revised tariff would necessarily be filed each time the chemical make-up of a product transported was altered even slightly.

ARCO's comment that some voluminous documents should be allowed to be referenced rather than included with the posted tariff is not inconsistent with the language of the regulation, so long as the referenced document is readily available. The Commission will not, however, restrict the list of subscribers. This would be contrary to the spirit of the notice requirements of the ICA. The Commission responds to the other comments of ARCO as follows:

The comment that § 341.0(b)(6) would require the posting of tariffs at all offices is incorrect. The section requires such posting only at "principal" pipeline offices.

The Commission discerns no need to clarify that § 341.3(b)(7) does not preclude volume rates—this section merely states the requirements for clearly describing the rates.

The proposed requirement for showing the actual route for the service in question is modified. As an alternative to exact designation of routing, carriers may state that the rates apply via all routes utilized by the carrier except as otherwise specifically provided in the tariff.

A good-cause exception to the 30-day notice period in § 341.6(d)(5) is adopted.

The Commission has clarified § 341.10. It will therefore be retained.

2. Revised Accounting Requirements

In the NOPR in this proceeding, the Commission did not propose to modify the regulations relating to the Uniform System of Accounts except for a minor technical change to Instruction 3–2 which specifies the minimum amount for capitalization of property acquisitions.[150] The Commission proposed that the minimum amount be raised from $500 to $2,500.

No comments were received on the proposed change. Subsequent to the issuance of the NOPR, the Commission has received applications from pipelines for waiver of the minimum amount that are less than and greater than the proposed $2,500. Under the circumstances, the Commission is not

[144] The ICC's regulations were transferred from 49 CFR (containing ICC regulations) to 18 CFR (containing FERC regulations) by a 1984 rulemaking. *See* Regulations Preambles 1982–85, FERC Stats. and Regs. ¶ 30,552 (1984).

[145] In 1928, the ICC issued "Tariff Circular No. 20," which contained many of the filing provisions still extant in the regulations adopted by the FERC.

[146] Other changes would be incorporated into the revised filing requirements effective with the implementation of the revised rate methodologies.

[147] AOPL comments, pp. 71–88 and Appendix A.

[148] ARCO comments, pp. 39–42.

[149] ARCO comments, pp. 39–42.

[150] 18 C.F.R. Part 352, Instruction 3–2 (1993).

satisfied that the proposed revision to the minimum amount is appropriate at this time. Rather, a more appropriate course of action will be to consider the minimum amount specified in Instruction 3–2 as part of an overall examination of the requirements of the Uniform System of Accounts following the issuance of the final rule, when the need for any changes can be better evaluated.

C. Alternative Dispute Resolution

Further evidencing Congress' goal to reduce the time and expense associated with the regulation of oil pipeline rates, section 1802(e) of the Act of 1992 requires that the Commission, to the maximum extent practicable, establish alternative dispute resolution (ADR) procedures, including "required negotiations and voluntary arbitration," for use early in a contested rate proceeding.[151] Any rates derived from implementation of ADR must be considered on an "expedited basis."[152]

The Administrative Dispute Resolution Act of 1990 ("ADRA") [153] amends the Administrative Procedure Act[154] by adding a new subchapter to provide explicit statutory authorization allowing federal agencies to use ADR techniques in lieu of litigation to resolve a dispute in the agency's administrative programs when all the participants to the dispute voluntary agree to its use. ADR methods include the use of a neutral, an individual who functions to aid the participants in resolving the controversy. The ADRA provides that ADR methods may include, but are not limited to, settlement negotiations, conciliation, facilitation, mediation, factfinding, minitrials, and arbitration, or any combination of these, as described below:

Conciliation is an informal process in which the third party tries to bring the parties to agreement by lowering tensions, improving communications, interpreting issues, providing technical assistance, exploring potential solutions and bringing about a negotiated settlement, either informally or, in a subsequent step, through formal mediation. Conciliation is frequently used in volatile conflicts and in disputes where the parties are unable, unwilling or unprepared to come to the table to negotiate their differences.[155]

Facilitation is a collaborative process used to help a group of individuals or parties with divergent views reach a goal or complete a task to the mutual satisfaction of the participants. The facilitator functions as a neutral process expert and avoids making substantive contributions. The facilitator's task is to help bring the parties to consensus on a number of complex issues.[156]

Mediation is a structured process in which the mediator assists the disputants to reach a negotiated settlement of their differences. Mediation is usually a voluntary process that results in a signed agreement which defines the future behavior of the parties. The mediator uses a variety of skills and techniques to help the parties reach a settlement but is not empowered to render a decision.[157]

Factfinding is a process used from time to time primarily in public sector collective bargaining. The Fact Finder, drawing on both information provided by the parties and additional research, recommends a resolution of each outstanding issue. It is typically nonbinding and paves the way for further negotiations and mediation.[158]

The *minitrial* is a privately-developed method of helping to bring about a negotiated settlement in lieu of corporate litigation. A typical minitrial might entail a period of limited discovery after which attorneys present their best case before managers with the authority to settle and a neutral advisor who may be a retired judge or other lawyer. The managers then enter settlement negotiations. They may call on the neutral advisor if they wish to obtain an opinion on how a court might decide the matter.[159] The neutral may also be called upon to mediate the dispute.

Arbitration is a relatively formal process in which parties jointly select the decisionmaker to whom they turn over the decisionmaking. The arbitrator, after hearing each side, issues a decision following the procedures agreed to in advance. The ADRA provides for a binding arbitration with limitations that protect the agency's statutory authority. The ADRA's arbitration provision is separately described and fully discussed below.

It is the policy of the Commission to conclude its administrative proceedings as fairly, effectively, efficiently, and expeditiously as possible. To that end, the Commission has long had in place flexible settlement regulations that encourage and promote the use of settlement negotiations and other means to resolve disputes. The Commission now has the opportunity to further develop and refine its policies to achieve less costly, less contentious, and more timely decisions in its oil pipeline rate proceedings. Under the existing framework for the review and determination of its proceedings, the Commission intends to foster the effective and sound use of innovative ADR procedures pursuant to the guidelines established in the ADRA.

Consistent with the Congressional mandate contained in both the Act of 1992 and the ADRA, the Commission encourages participants in its oil pipeline proceedings to consider the use of ADR procedures to assist them in resolving any differences among them. ADR techniques are informal procedures based on the informed consent of all the participants. Flexibility is the mainstay of ADR.

All commenters on this favored use of ADR and the proposed regulations. Phillips [160] and ARCO [160], however, expressed concern with the provision that allows imposition of a judgment against a party determined to have refused to negotiate in good faith. The Commission does not believe that this concern is well founded. Whether a refusal to negotiate is based upon good faith will, of course, depend upon the circumstances of the particular case. The standard does not require parties to reach an agreement; it simply requires that they negotiate, unless they have valid reasons not to. This is not an onerous requirement.

1. Required Negotiation

The Act of 1992 provides that the Commission shall include "required negotiations" in its ADR procedures. In this connection, with respect to all pipeline rates which are suspended, the Commission will send all protested oil pipeline rate filings to a settlement judge for consideration of appropriate disposition of the protest and final action to be taken on the rate filing at the time the Commission issues a suspension order. The settlement judge would be required to convene a conference of all interested parties within a short period of time. Parties to the proceeding would be required to participate in the resolution of these issues. The settlement judge would, as necessary and appropriate, and as may be guided by Commission requirements in the individual proceedings, submit status reports on whether settlement efforts should continue or whether formal hearing procedures should commence. The Commission would, in appropriate cases, provide time limits on the settlement judge.

PEG [162], NCFC [163], CA [164], SIGMA, [165] and Holly [166] request that the

[151] Section 1802(e).

[152] *Id.*

[153] 5 U.S.C. 571–83, as amended by Pub. L. 102–354, 106 Stat. 944 (August 26, 1992).

[154] 5 U.S.C. 551–557 (1988).

[155] Administrative Conference of the U.S., Sourcebook: Federal Agency Use of Alternative Means of Dispute Resolution (Office of the Chairman, 1987) (Sourcebook) at 44.

[156] *Id.* at 45.

[157] *Id.*

[158] *Id.*

[159] *Id.*

[160] Phillips comments, pp. 23–24.

[161] ARCO comments, p. 39.

[162] PEG comments, pp. 14–15.

[163] NCFC comments, p. 6.

[164] CA comments, p. 12.

[165] SIGMA comments, pp. 5–6.

[166] Holly comments, pp. 22–23.

Commission allow or even compel the pipelines to submit to ADR procedures prior to the filing of a rate change. These suggestions have not been explicitly included in the regulations. The pre-filing negotiation process is allowable under both the current and the new regulations, and therefore no explicit regulation is necessary.[167]

Alaska [168] and Holly [169] stress the necessity of having access to cost information at the beginning of the ADR procedure. The Commission agrees that sharing of information is useful in settling disputes. The Commission encourages this result.

2. Arbitration

The ADRA establishes procedures for binding arbitration proceedings. To the extent participants wish to use a different arbitration procedure, they should feel free to propose one.

a. *Applicability to Commission Proceedings.* Section 1802(e) of the Act of 1992 requires the Commission to provide voluntary arbitration procedures for rate matters involving oil pipelines. The Commission believes that the form of binding arbitration provided in the ADRA should be among those ADR techniques available to participants.

b. *Authorization.* Participants may at any time submit a proposal to use binding arbitration to resolve all or part of any oil pipeline rate matter in controversy before the Commission. A proposal to use binding arbitration would follow the procedures to be developed consistent with the ADRA and the Commission's responsibilities under the Act of 1992. The proposal would be submitted in writing. To ensure that the use of arbitration is truly voluntary on all sides, the Commission would not require any person to consent to an arbitration proposal as a condition of receiving a contract or benefit. Similarly, no company regulated by the Commission may impose such a condition. Further, an arbitration proposal would be required to have the express consent of all interested parties.

Any agreement to arbitrate would be enforceable under the Arbitration Act.[170] The Senate Report accompanying the ADRA states that the purpose of section 589 of the ADRA is to coordinate and clarify the relationship between the ADRA and the existing Arbitration Act, and stresses that the existing Arbitration Act applies to enforcement of arbitration agreements reached pursuant to the ADRA.[171]

c. Arbitrator. Participants in an arbitration proceeding would be entitled to select the arbitrator or arbitrators. The particular procedure to be used in selecting an arbitrator is not provided; however, the arbitrator is required to meet the requirements of a neutral. An arbitrator, like a neutral as described in proposed § 342.9(e), may be a permanent or temporary officer or employee of the Federal Government (including an administrative law judge), or any other individual acceptable to the participants. The arbitrator must have no official, financial or personal conflict of interest with respect to the issues in controversy, unless the participants waive this restriction. The arbitrator's duties would include conducting hearings, administering oaths, issuing subpoenas to compel attendance of witnesses and production of evidence at hearing. The arbitrator would be expressly authorized to make decisions on rate matters subject to arbitration. As the Senate Report to the ADRA explains:

> This section is intended to provide arbitrators with the appropriate authority and flexibility to conduct arbitral proceedings in an informal and efficient manner and to keep the arbitral proceedings from becoming, in essence, full-blown litigation proceedings. An arbitrator should not use the authority granted in this section to indulge in or permit excessive discovery. Instead, the arbitrator should make appropriate use of the authority provided in this section to gather the necessary materials and information to conduct a fair, effective and expeditious inquiry.
>
> The section also limits arbitrators to the subpoena authority granted by the Arbitration Act and to the agency sponsoring the arbitral proceeding. This language is intended to ensure that the same practices and body of law apply to all arbitrations of disputes with federal agencies, whether initiated under the ADR subchapter in Title 5 or the Arbitration Act in Title 9. It is also intended to ensure that federal agencies do not gain, as a consequence of this Act, any subpoena powers that they do not already possess.[172]

d. *Rules of Conduct.* The Commission will incorporate into its rules the provisions in section 589 of the ADRA that establish basic rules for the conduct of binding arbitration proceedings, including hearing. The arbitrator would set the time and place for the hearing and notify the participants. A record would be prepared, if desired, and evidence presented. The hearing would be conducted expeditiously and informally. The arbitrator could exclude evidence that is irrelevant, immaterial, unduly repetitious or privileged. According to the Senate Report to the ADRA, this common arbitral standard ensures informal and expeditious proceedings. [173] *Ex parte* communications would be prohibited, allowing the arbitrator to impose sanctions for a violation of this prohibition. The arbitrator would be required to issue an award within 30 days of the close of the hearing, unless the participants and arbitrator agree otherwise.

e. *Arbitration Awards.* The ADRA provides standards for the issuance and appeal of arbitral awards. The Commission proposes to adopt those standards. The award should be in writing and include a brief, informal discussion of the factual and legal basis for the award. The prevailing participants should file the award with the Commission and serve all participants. The award would become final 30 days after it is served on all participants; however, the Commission, upon motion or otherwise, could extend this period for one additional 30-day period upon notice of the extension to all participants.

A final award would be binding on the participants and may be enforced under the provisions of the Arbitration Act, as amended by the ADRA. Under the ADRA, a non-party will be able to seek to have an award vacated by courts. The ADRA amended section 10 of the Arbitration Act to provide that a person who was not a party to an arbitration proceeding may obtain judicial review of the award upon a showing that the appealing person has been adversely affected or aggrieved. In addition, that person must demonstrate, pursuant to the amended Arbitration Act, that the use of arbitration or the award is clearly inconsistent with the six factors in the ADRA that govern the determination to use ADR in a proceeding.

f. *Vacating an Award.* As provided in the ADRA, the Commission would establish procedures for the Commission to vacate an award. Any person could request, within 10 days of the filing of an award, that the Commission vacate the award and require that person to provide notice of

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[167] If advanced negotiations result in an agreement on rates, that agreement may be filed as a negotiated rate under the new regulations.

[168] Alaska comments, pp. 23–24.

[169] Holly comments, pp. 22–23.

[170] 9 U.S.C. 1 (1982). Section 4 of the Arbitration Act provides that:

> [A] party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written agreement for arbitration may petition any United States district court which, save for such agreement, would have jurisdiction under title 28, in a civil action or in admiralty of the subject matter of a suit arising out of the controversy between the parties, for an order directing that such arbitration proceed in the manner provided for in such agreement.

[171] S. Rep. No. 543, 101st Cong., 2d Sess. at 13 (1990).

[172] *Id.*

[173] *Id.*

the request to all participants. Responses to such a request must be filed within 10 days after the request is filed. The Commission, upon request or otherwise, would be able to vacate an arbitration award before the award becomes final. To do so, it must issue a written order to that effect.

The Commission's review of an arbitration award would be based on the statutory standard that applies to the issues resolved, and depends, therefore, on the type of issues involved. The Commission would adopt the ADRA's provision that the award need only discuss informally the factual and legal bases for the award. If the participants wish to require that an award include formal findings of fact and conclusions of law, they may do so by adopting a different standard.

If the Commission vacates an arbitration award, a party to the arbitration proceeding would be able to petition the Commission for an award of the attorney fees and expenses incurred in connection with the arbitration proceeding. The Commission could award the petitioning party those fees and expenses that would not have been incurred in the absence of the arbitration proceeding, unless the Commission finds that special circumstances make the award unjust.

A decision by the Commission to vacate an arbitration award would not be subject to judicial review. Moreover, such a decision would not be subject to rehearing. In this case, rehearing would not be provided because the Commission itself would be acting on the request to vacate so there is no occasion to be reviewing staff action.

VI. Environmental Analysis

Commission regulations require that an environmental assessment or an environmental impact statement be prepared for Commission action that may have a significant adverse effect on the human environment.[174] The Commission categorically excludes certain actions from this requirement as not having a significant effect on the human environment.[175] No environmental consideration is necessary for the promulgation of a rule that does not substantially change the effect of the regulation being amended, or that involves the gathering, analysis, and dissemination of information, or the review of oil pipeline rate filings.[176] Because this final rule involves only these matters, no environmental consideration is necessary.

VII. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act[177] generally requires the Commission to describe the impact that a rule would have on small entities or to certify that the rule will not have a significant economic impact on a substantial number of small entities. An analysis is not required if a rule will not have such an impact.[178]

Pursuant to section 605(b), the Commission certifies that the rules and amendments will not have a significant impact on a substantial number of small entities.

VIII. Information Collection Requirements

Office of Management and Budget (OMB) regulations require OMB to approve certain information collection requirements imposed by agency rules.[179] These rules and amendments contain no new information collection requirements, rather the rule revises and reduces the reporting requirements under existing FERC–550, Oil Pipeline Rates: Tariff Filings (1902–0089).

The information collection requirements in this rule have not changed from those proposed in the NOPR issued in this docket on July 2, 1993. Therefore, this rule does not have to be submitted to OMB for review. A copy will be sent to OMB for informational purposes only.

The Commission uses the data collected under FERC–550 to investigate the rates charged by oil pipeline companies subject to its jurisdiction, determine the reasonableness of rates, and prescribe just and reasonable rates.

Because of the proposed revisions and expected reduction in public reporting burden under FERC–550, the Commission is submitting a copy of the rule to OMB for its information. Interested persons may obtain information on these reporting requirements by contacting the Federal Energy Regulatory Commission, 941 North Capitol Street NE., Washington, DC 20426 (Attention: Michael Miller, Information Services Divisions, (202) 208–1415, FAX (202) 208–2425); and to the Office of Information and Regulatory Affairs, Office of Management and Budget (Attention: Desk Officer for Federal Energy Regulatory Commission), Washington, DC 20503.

IX. Effective Dates

As to the changes in parts 341 and 344 and § 375.303 and as to the removal of old parts 342, 343, 345, 347, 360, and 361, the final rule shall take effect December 6, 1993. As to the addition of new parts 342 and 343 and the changes to §§ 375.306, 375.307, and 375.313, the final rule will be effective January 1, 1995.

List of Subjects

18 CFR Part 341

Maritime carriers, Pipelines, Reporting and recordkeeping requirements.

18 CFR Parts 342, 343, 344, 345, 347, 360 and 361

Pipelines, Reporting and recordkeeping requirements.

18 CFR Part 375

Authority delegations (Government agencies), Seals and insignia, Sunshine Act.

By the Commission.

Commissioner Hoecker concurred in part and dissented in part with a separate statement to be issued later.

Commissioner Massey dissented with a separate statement attached.

Lois D. Cashell,

Secretary.

In consideration of the foregoing and under the authority of 42 U.S.C. 7172, parts 341, 342, 343, 344, 345, 347, 360, 361, and 375, chapter I, title 18, Code of Federal Regulations, are amended as set forth below.

The following regulations will be effective December 6, 1993.

1. Part 341 is revised to read as follows:

PART 341—OIL PIPELINE TARIFFS: OIL PIPELINE COMPANIES SUBJECT TO SECTION 6 OF THE INTERSTATE COMMERCE ACT

Sec.

341.0 Definitions; application.
341.1 Means of filing.
341.2 Filing requirements.
341.3 Form of tariff.
341.4 Filing requirements for amendments to tariffs.
341.5 Cancellation of tariffs.
341.6 Adoption rule.
341.7 Concurrences.
341.8 Terminal and other services.
341.9 Index of tariffs.
341.10 Application of rates to intermediate points.
341.11 Rejection of tariff publications and other filed materials.
341.12 Informal submissions.
341.13 Withdrawal of proposed tariff publications.
341.14 Special permission.

[174] Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987); FERC Stats. and Regs., Regulations Preambles 1986–1990, ¶ 30,783 (1987).

[175] 18 CFR 380.4.

[176] 18 CFR 380.4(a).

[177] 5 U.S.C. 601–612.

[178] 5 U.S.C. 605(b).

[179] 5 CFR 1320.13.

Sec.
341.15 Long and short haul or aggregate of intermediate rates.

Authority: 42 U.S.C. 7101–7352; 49 U.S.C. 1–27.

§ 341.0 Definitions; application.

(a) *Definitions.* (1) *Carrier* means an oil pipeline subject to the Commission's jurisdiction under the Interstate Commerce Act.

(2) *Concurrence* means the agreement of a carrier to participate in the joint rates or regulations published by another carrier.

(3) *Local rate* means a rate for service over the lines or routes of only one carrier.

(4) *Local tariffs* means tariffs which contain only local rates.

(5) *Joint rate* means a rate that applies for service over the lines or routes of two or more carriers made by an agreement between the carriers, effected by a concurrence or power of attorney.

(6) *Joint tariffs* means tariffs which contain only joint rates.

(7) *Posting* or *post* means making a copy of a carrier's tariff available during regular business hours for public inspection in a convenient form and place at the carrier's principal office and other offices of the carrier where business is conducted with affected shippers.

(8) *Proportional rates* means rates published to apply only to traffic having a prior transportation movement, a subsequent transportation movement, or both.

(9) *Rule* means any regulation or condition of service stated in the tariff which affects any rate or service provided by the carrier.

(10) *Subscriber* means a shipper or a person who regularly is furnished a copy of a particular tariff publication (including reissues and amendments) by the publishing carrier or agent.

(11) *Tariff publication* means all parts of a filed tariff, including revised pages and supplements.

(12) *Through rates* means the total rates from point of origin to destination. They may be local rates, joint rates, or a combination of separately established rates.

(b) *General application.* (1) Each carrier must publish, post, and file with the Commission tariff publications which contain in clear, complete, and specific form all the rules and regulations governing the rates and charges for services performed in accordance with the tariff. Tariffs must be published in a format that ensures the tariffs are readable and that their terms and conditions are easy to understand and apply.

(2) The Commission may reject, or may require modification, correction, or reissuance of, any tariff publication or other document not in compliance with the law.

(3) All tariffs filed on or after December 6, 1993 must conform to the regulations of this part. Tariffs which are on file as of that date will not have to be reissued solely to conform to this part.

(4) Each carrier must post and maintain a complete and current set of all proposed, current, and suspended tariff publications which it has issued or to which it is a party. The carrier must identify in its posted tariff files any tariff publication under suspension and investigation. Each carrier must afford inquirers reasonable opportunity to examine its posted tariff files.

§ 341.1 Means of filing.

Filings of tariff publications and related materials must be made with the Secretary of the Commission. Filings made by mail must be addressed to the Federal Energy Regulatory Commission, with the envelope clearly marked as containing "Oil Pipeline Tariffs."

§ 341.2 Filing requirements.

(a) *Number of copies.* (1) Carriers must file three copies of each tariff publication and a letter of transmittal.

(2) Carriers must provide a copy of the tariff publication and any tariff justification to each shipper and subscriber. Carriers must provide these copies by first-class mail or by other means of transmission agreed upon in writing, on or before the same day the tariff publication is transmitted to the Commission for filing.

(b) *Notice period.* All tariff publications (except for suspension supplements, adoption notices, adoption supplements, and tariff indexes) must be filed with the Commission and posted not less than 30, nor more than 60, days prior to the proposed effective date, unless a different notice period is authorized by the Commission. The notice period shall begin the first full day after the tariff publication is filed with the Commission and shall end on the last day prior to the tariff publication effective date.

(c) *Transmittal letter.*—(1) *Contents.* Letters of transmittal must describe the filing and explain any changes to the carrier's rates, rules, terms or conditions of service; state if a waiver is being requested, and specify the statute, section, regulation, policy or order requested to be waived; and identify the tariffs or supplement numbers and the proposed effective date of the tariff publication.

(2) *Certification.* Letters of transmittal must certify that the filing has been sent to each subscriber of the tariff publication by first-class mail or other agreed-upon means. If there are no subscribers, letters of transmittal must so certify.

(3) *Acknowledgement.* Carriers requesting acknowledgement of the receipt of a filing must submit a duplicate copy of the letter of transmittal marked "Receipt requested." The request must include a postage paid, self-addressed return envelope. The Commission will return one copy of the letter of transmittal showing the date of receipt.

§ 341.3 Form of tariff.

(a) *Form, size, and type.* (1) All tariff publications must be in book, pamphlet, or loose-leaf form, 8½ by 11 inches in size, and plainly printed and legible. Erasures or alterations in writing will not be permitted in tariff publications filed with the Commission or posted by the carrier.

(2) All tariff publications must have a margin of ⅝ of an inch on the binding edge.

(b) *Contents of tariff.* All tariff publications must contain the following information in the following order:

(1) *Title page.* The title page of each tariff must contain the following information:

(i) The FERC tariff number designation, in the upper right hand corner, numbered consecutively, and the FERC tariff number designation of the tariff that is canceled, if any, under it;

(ii) The corporate name of the carrier;

(iii) The type of rates, *e.g.*, local, joint, or proportional, and the commodity to which the tariff applies, *e.g.*, crude, petroleum product, or jet fuel;

(iv) Governing tariffs, *e.g.*, separate "rules and regulations" tariffs, if any;

(v) The specific Commission order pursuant to which the tariff is issued;

(vi) The issue date, which must be shown on the lower left side, and the effective date, which must be shown on the lower right side;

(vii) The expiration date, if applicable;

(viii) The name of the issuing officer or duly appointed official issuing the tariff, the complete street and mailing address of the carrier, and the name and phone number of the individual responsible for compiling the tariff publication.

(2) *Table of contents.* Tariffs of more than nine pages in length must contain a table of contents. A table of contents

is optional for tariffs which are less than 10 pages in length.

(3) *A list of carriers participating in joint tariffs.*

(4) *Index of Commodities.*

(5) *Explanatory statements.* These statements must explain the proper application of rates and rules.

(6) *Rules governing tariff publications.* (i) All rules affecting the rates or the services provided for in the tariff publication must be included. A special rule affecting a particular item or rate must be referred to specifically in that item or in connection with that rate.

(ii) Each rule must be given a separate item number, (*e.g.*, Item No. 1), and the title of each rule must be shown in distinctive type.

(iii) Except as provided in § 341.10, tariffs may not include any rules that substitute for any rates named in the tariff or found in any other tariff. Rules may not provide that traffic of any nature will be "transported only by special agreement" or any other provision of similar meaning.

(iv) Rules may be separately published in a general rules tariff when it is not desirable or practicable to include the governing rules in the rate tariff. Rate tariffs that do not contain rules must make specific reference, by FERC Tariff number, to the governing general rules tariff.

(v) When joint rate tariffs refer to a separate governing rules tariff, such separate tariff must be concurred in by all joint carriers.

(7) *Statement of rates.* Rates must be stated explicitly in cents, or in dollars and cents, per barrel or other specified unit. The names or designations of the places from and to which the rates apply must be arranged in a simple and systematic manner. Any related services performed by the carrier in connection with the rates must be clearly identified and explained. Duplicative or conflicting rates for the same service are prohibited.

(8) *Routing.* Routing over which the rates apply must be stated so that the actual routes may be ascertained. This may be accomplished by stating that the rates apply via all routes of the carrier except as otherwise specifically stated in the tariff.

(9) *Explanation of abbreviations and reference marks.* Reference marks, abbreviations, and note references must be explained at the end of each tariff publication. U.S. Postal Service state abbreviations and other commonly used abbreviations need not be explained.

(10) *Changes to be indicated in tariff or supplement.* (i) All tariff publications must identify where changes have been made in existing rates or charges, rules, regulations or practices, or classifications. One of the following letter designations or uniform symbols must be used to designate the change:

Description	Option 1	Option 2
Increase	↑	[I]
Decrease	↓	[D]
Change in wording only	▲	[W]
Cancel	■	[C]
Reissued item	□	[R]
Unchanged rate	●	[U]
New	√	[N]

(ii) Reissued items must include in the square or brackets the number of the tariff supplement where the item was first issued or amended. If the letter designation is used, the number of the supplement must be shown together with the letter. The references must be explained at the end of the tariff. For example: "[R2] Reissued from Supplement No. 2, effective [*specify date*]."

(iii) The symbols and letter designations contained in paragraph (b)(10)(i) of this section must not be used for any other purpose.

(iv) When the same change is made in all or in substantially all rates in a tariff, a tariff supplement, or a tariff or tariff supplement page, that fact and the nature of the change must be indicated in distinctive type at the top of the title page of the issue, or at the top of each page, as appropriate. For example: "All rates in this issue are increased," or "All rates on this page are reduced unless otherwise indicated."

(v) When a tariff publication that cancels a previous tariff publication does not include points of origin or destination, or rates, rules, or routes that were contained in the prior tariff publication, the new tariff publication must indicate the cancellation. If such omissions effect changes in charges or services, that fact must be indicated by the use of the symbols prescribed in paragraph (b)(10)(i) of this section.

(11) Tariff publications must be consecutively numbered.

(c) *Loose-leaf tariffs.* (1) Pages of loose-leaf tariffs must be consecutively numbered. Each page must show at the top of the page the name of the issuing carrier, the page number, and the FERC tariff number. Each page must show at the bottom of the page the issue date, the effective date, the name of the issuing officer or duly appointed official issuing the tariff, the complete street and mailing address of the carrier, and the name and phone number of the individual responsible for compiling the tariff publication.

(2) Changes and additions to loose-leaf tariffs must be made by reprinting the page upon which the change or addition is made, and designating the changed page as a revised page. For example: "First revised page 1 cancels Original page 1," or "Second revised page 2 cancels First revised page 2." When a revised title page is issued, the following notation must be shown:

Original tariff effective [*specify date*].

(3) When changes and additions require additional pages, the additional pages must be given the same number with a letter suffix. For example: "Original page 4–A," or "Original page 4–B." When, for example, "Original page 4–A" is changed, it must be done by issuing "First revised page 4–A," which must cancel "Original page 4–A."

(4) When a revised page is issued which omits rates or rules published on the page which it cancels, and such rates or rules are published on another page, the revised page must refer to the page on which the rates or rules will be found. Subsequently revised pages of the same number must omit the reference insofar as that particular matter is concerned.

(5) Additional pages to a loose-leaf tariff must be numbered beginning with the next successive page number after the last page and must be designated as "Original page —."

(6) The loose-leaf tariff page that follows the title page is known as a "check sheet" and must be designated as "Original page 1." When the original tariff is filed, the check sheet must show the number of pages contained in the tariff. For example: "Pages 1 to 150, inclusive, of this tariff are effective as of the date shown." When pages are revised or added to the tariff, or when supplements are issued, the check sheet must be revised to list all currently effective revised pages and supplements. The list in numerical order of all added original and revised pages must follow the statement: "Original and revised pages and supplements as named below contain all changes from the original tariff that are in effect on the date hereof." For example:

Page	Number of revision except as indicated.
3	5th.
5A	Original.
10	8th.
151	Original.

(7) The only loose-leaf tariff supplements that may be issued are adoption supplements, suspension supplements, and cancellation supplements.

§ 341.4 Filing requirements for amendments to tariffs.

(a) *Supplements to tariffs.* (1) Supplements are limited to one effective supplement per tariff, except for cancellation, postponement, adoption, correction, and suspension supplements.

(2) Item numbers that are canceled or amended must be identified and brought forward with the item title in the current supplement. Reissued items from prior supplements must be brought forward in the current supplement and referenced with the symbols in § 341.3(b)(10)(i). Cancellation of an item by supplement must be made by bringing forward the item number with an added capital letter suffix in alphabetical sequence. For example: "Item 445–A cancels Item 445." If a canceled, withdrawn, or expired item is subsequently reissued, it must be republished under the same item number with the next letter suffix.

(b) *Cancellation supplements.* Cancellation supplements must be filed when tariffs are canceled without reissue.

(c) *Postponement supplements.* Supplements postponing the effective date of pending tariff filings must be filed prior to the proposed effective date of the filing. A postponement supplement may not postpone the effective date for more than 30 days.

(d) *Adoption supplements.* A supplement adopting the tariff of another carrier must be filed to provide the notice required in § 341.6.

(e) *Correction supplements.* Correction supplements must be filed to correct typographical or clerical errors. Three correction supplements are permitted per tariff.

(f) *Suspension supplements.* A suspension supplement must be filed for each suspended tariff or suspended part of a tariff within 15 days of the issuance of a suspension order. The suspension supplement must be served on subscribers. The supplement must include the date it is issued, a reproduction of the ordering paragraphs of the suspension order, a statement that the tariff or portion of the tariff was suspended until the date stated in the suspension order, a reference to the docket number under which the suspension order was issued; and a statement that the previous tariff publication remains in effect.

§ 341.5 Cancellation of tariffs.

Carriers must cancel prior tariffs when the tariffs are reissued. When a tariff is canceled in whole or in part by a supplement, the supplement must show where the rates will be found thereafter or what rates will thereafter apply. If the service in connection with the tariff is no longer in interstate commerce, the tariff publication must so state.

§ 341.6 Adoption rule.

(a) *Change in name of carrier or ownership of property.* The carrier must notify the Commission when there is:

(1) A change in the legal name of the carrier;

(2) A transfer of all of the carrier's properties; or

(3) A change in ownership of only a portion of the carrier's property.

(b) *Notification.* The carrier must provide notice of these occurrences by tariff publication, filed as soon as possible but no later than 30 days following such occurrence. The filing of adoption notices and adoption supplements requires no notice period.

(c) *Complete adoption.* (1) When a carrier changes its legal name, or when ownership of all a carrier's properties is transferred, the adopting carrier must file and post an adoption notice, numbered in its own FERC Tariff series, reading as follows:

The [*legal name of adopting carrier*] hereby adopts and makes its own all tariff publications of [*name of adopted carrier*], effective [*date*].

(2) The adopting carrier must concurrently file a consecutively numbered supplement to each of the adopted carrier's tariffs covered by the adoption notice, reading as follows:

Effective [*date shown on adoption notice*] this tariff publication became the tariff of the [*legal name of adopting carrier*] as per its adoption notice FERC No. [*number*].

(3) The supplements issued under this section may contain no other matter, and must refer to § 341.6.

(4) The adopting carrier must transfer into its FERC Tariff series the rates applying locally on the adopted lines. The transfer must be made within 30 days of the filing of the adoption notices and supplements. The adopting carrier must give 30 days notice as provided for in § 341.2(b).

(d) *Partial adoption.* (1) When the ownership of a portion of a carrier's properties is transferred to another carrier the adopting carrier must file and post an adoption notice, numbered in its own FERC Tariff series, containing the statement as follows:

The [*legal name of adopting carrier*] hereby adopts and makes its own, the tariffs of [*legal name of former owner*] for transportation movements [*describe by FERC tariff number, origin, and destination points*], effective [*date of adoption*].

(2) When a point on the transferred portion of a carrier's properties will continue to remain a point on the former owner's line, a reference must be provided in connection with the name of that point, explaining the common junction point.

(3) The former owner must immediately file a consecutively numbered supplement to each of its tariffs covered by the adoption notice, reading as follows:

Effective [*date of adoption notice*] this tariff became the tariff of [*legal name of adopting carrier*] for transportation movements [*identify origin and destination points*], effective [*date of adoption*], as per its adoption notice FERC No. [*number*].

(4) The adoption supplements issued under this section may contain no other matter, and must refer to § 341.6.

(5) Rates applying locally on the transferred portion must be transferred into the FERC Tariff series of the adopting carrier within 30 days of the filing of the adoption notices and supplements. The adopting carrier must file and post its tariff publication as provided for in § 341.2(b). Where rates are transferred from tariffs of the former owner to tariffs of the adopting carrier, the adopting carrier must establish the rates in its tariffs and the former owner must cancel the corresponding rates in its tariffs effective on the same date. The former owner must reference the FERC Tariff number of the adopting carrier for rates applying thereafter.

§ 341.7 Concurrences.

Concurrences must be maintained at carriers' offices and produced upon request. Cancellations or changes to concurrences affecting FERC tariffs must be shown in those tariffs.

§ 341.8 Terminal and other services.

Carriers must publish in their tariffs rules governing such matters as prorationing of capacity, demurrage, odorization, carrier liability, quality bank, reconsignment, in-transit transfers, storage, loading and unloading, gathering, terminalling, batching, blending, commingling, and connection policy, and all other charges, services, allowances, absorptions and rules which in any way increase or decrease the amount to be paid on any shipment or which increase or decrease the value of service to the shipper.

§ 341.9 Index of tariffs.

(a) *In general.* Each carrier must publish as a separate tariff publication under its FERC Tariff numbering system, a complete index of all effective tariffs to which it is a party, either as initial, intermediate, or delivering

carrier. The index must be arranged in sections as indicated in paragraphs (b), (c), and (d) of this section and must show as to each tariff:

(1) The FERC Tariff number;

(2) The full name of the issuing carrier or agent;

(3) The type of tariff or description of the traffic to which it applies, including origin and destination points; and

(4) Whether the tariff contains rates for transportation by mode other than pipeline.

(b) *The first section.* The first section of a tariff index must contain a list of all tariffs in which the carrier is an initial carrier. The list must be arranged alphabetically and organized within the following categories, in order:

(1) Specific commodity tariffs;

(2) General commodity tariffs; and

(3) Miscellaneous tariffs, such as rules and services.

(c) *The second section.* The second section of a tariff index must contain a list of all tariffs in which the carrier is a delivering carrier, arranged in the manner described in the first section of the tariff index. This section must also include those tariffs in which the carrier is an intermediate carrier.

(d) *The third section.* The third section of a tariff index must contain a complete list of the FERC Tariff numbers of the carrier's own effective tariffs arranged in numerical order.

(e) *Supplements.* The index must be kept current by supplements numbered consecutively. The supplements may be issued quarterly. At a minimum, the index must be reissued every four years.

(f) *Title page.* The title page of each index and supplement must contain the issue date.

§ 341.10 Application of rates to intermediate points.

(a) *Applicability.* (1) A carrier may provide in its tariff that existing rates between points named in the tariff will be applied to transportation movements from intermediate origin points not named in the tariff to named destination points, and from named origin points to intermediate destination points not named in the tariff.

(2) A carrier must file a tariff publication applicable to the transportation movements within 30 days of the start of the service if the intermediate point is to be used on a continuous basis for more than 30 days.

(b) *Intermediate point commodity rate regulations.*—(1) *Intermediate origin points.* The rate for service provided to a published destination point from an origin point not specifically named in the tariff, but located intermediate to published origin and destination points, must be the same as the published rate from the next more distant origin point. Application of this provision is subject to the following:

(i) If branch or diverging lines create two or more "next more distant" points, the carrier must apply the rate which results in the lowest charge.

(ii) If the intermediate point is located between two published origin points, the carrier must apply the rate which results in the higher charge.

(iii) If the intermediate point is between more than two published origin points due to branch or diverging lines, the carrier must eliminate all such points except that from which the lowest charge is applicable.

(iv) If there is in any other tariff a commodity rate from the proposed intermediate origin point that is applicable to the same movement, the carrier should not apply this rule from such intermediate point.

(2) *Intermediate destination points.* The rate for service provided from a published origin point to a destination point not specifically named in the tariff, but located intermediate to published origin and destination points, must be the same as the published rate to the next more distant destination point. Application of this provision is subject to the following:

(i) If branch or diverging lines create two or more "next more distant" points, the carrier must apply the rate which results in the lowest charge.

(ii) If the intermediate point is located between two published destination points, the carrier must apply the rate which results in the higher charge.

(iii) If the intermediate point is between more than two published destination points due to branch or diverging lines, the carrier must eliminate all such points except that from which the lowest charge is applicable.

(iv) If there is in any other tariff a commodity rate to the proposed intermediate destination point that is applicable to the same movement, the carrier should not apply the provisions of this rule to such intermediate point.

(3) *Intermediate origin and destination points.* Both paragraphs (b)(1) and (b)(2) of this section may apply in connection with the same rate. In this instance, both regulations should be used to establish rates from intermediate points of origin to intermediate points of destination.

§ 341.11 Rejection of tariff publications and other filed materials.

(a) *Basis for rejection.* The Commission may reject tariff publications or any other material submitted for filing that fail to comply with the requirements set forth in this part or violate any statute, or any regulation, policy or order of the Commission.

(b) *Numbering and notating tariff publications.* The FERC Tariff number assigned to a tariff publication that has been rejected may not be used again. The tariff publication filed in its place must bear the following notation:

Issued in lieu of *[identify the rejected tariff publication]*, rejected by the Commission.

§ 341.12 Informal submissions.

Carriers may informally submit tariff publications or related material for suggestions of Staff prior to the filing of the tariff publications with the Commission.

§ 341.13 Withdrawal of proposed tariff publications.

(a) *Proposed tariff publications.* A proposed tariff publication which is not yet effective may be withdrawn at any time by notice to the Commission, made by a letter addressed to the Secretary of the Commission with a certification that all subscribers have been notified by copy of such withdrawal.

(b) *Tariff publications that are subject to investigation.* A tariff publication that has been permitted to become effective subject to investigation may be withdrawn at any time by notice to the Commission, made by a letter addressed to the Secretary. Such letter must include a copy of the previous tariff publication to be reinstated upon withdrawal of the tariff publication under investigation. The letter must also include a certification that all subscribers have been notified by copy of such notice of withdrawal. Such withdrawal shall be effective immediately upon the submission of the notice, unless a specific effective date is set forth in the notice, and must have the following effects:

(1) Any proceeding with respect to such tariff publication shall be terminated;

(2) The previous tariff rate shall be reinstated; and

(3) Any amounts collected under the withdrawn tariff publication which are in excess of the previous tariff rate shall be refunded within 30 days of the withdrawal with interest as calculated by § 340.1 of this chapter.

(c) *Numbering and notating tariff publications.* The FERC Tariff number assigned to a tariff publication which has been withdrawn may not be used again. The tariff publication filed in its place must bear the following notation:

Issued in lieu of *[identify the withdrawn tariff publication]* which was withdrawn.

§ 341.14 Special permission.

(a) *Procedure.* Applications for waiver of the notice and tariff requirements of section 6(3) of the interstate Commerce Act must be filed by the carrier concurrently with the tariff publication being proposed. The letter of transmittal must identify the filing as requesting a waiver under section 6(3) of the Interstate Commerce Act. The application must state in detail any unusual circumstance or emergency situation that supports the requested waiver. If the application requests permission to make changes in joint tariffs, it must state that it is made on behalf of all carriers party to the proposed change. Tariff publications issued on short notice must contain the following statement on the Title Pages:

Issued on *[insert number]* days notice under authority of 18 CFR 341.14. This tariff publication is conditionally accepted subject to refund pending a 30 day review period.

(b) *Conditional acceptance subject to refund.* To permit short-notice filings to become effective as requested, the tariff publications filed concurrently with special permission requests for short (less than 30 days) notice will be deemed conditionally accepted for filing, subject to refund, until the Commission has had a full 30-day review period in which to process the filing. Refunds will be collected with interest as calculated according to § 340.1 of this chapter. The refund obligation will automatically terminate with no refunds due at the end of the full 30-day notice period absent an order to the contrary issued by the Commission.

(c) *Granting Automatic Permission.* The special permission requested will be deemed automatically granted at the end of the full 30-day notice period absent an order denying such request.

§ 341.15 Long and short haul or aggregate of intermediate rates.

(a) *Requests for relief from section 4.* Carriers may file requests for relief from the provisions of section 4 of the Interstate Commerce Act in order to charge a greater amount for a shorter distance over the same line or route in the same direction, or to charge greater compensation as a through rate than the aggregate of the intermediate rates. Such request will be deemed granted unless the Commission denies the request within 30 days of the filing.

(b) *Information required to be filed.* A request for section 4 relief must contain the following information:

(1) The names of the carriers for which the relief is being requested.

(2) The FERC tariff numbers which contain the rates or charges referred to in the application, and identification of all the particular and related rates in question delineating origin and destination points.

(3) An accurate and complete statement giving the basis and reasoning why section 4 relief is necessary.

(4) A statement that the lower rates for longer than for shorter hauls over the same line or route are reasonably compensatory.

(5) A map showing the pipelines and origin and destination points in question and other pertinent information.

(c) *Filing tariff publications concurrent with application.* Applications for section 4 relief must be filed concurrently with the tariff publication filing establishing those rates. The transmittal letter must identify the filing as requesting section 4 relief.

(d) *Tariff statement.* Tariff publications filed containing such rates shall plainly state on the title page of the tariff publication that the rates contained therein contravene section 4 of the Interstate Commerce Act.

(e) *Rounding through rates.* When a carrier aggregates intermediate rates to make up through rates, it may round the resulting through rate to the nearest 0.5 whole cent.

PART 342—[REMOVED AND RESERVED]

2. Part 342 is removed and reserved.

PART 343—[REMOVED AND RESERVED]

3. Part 343 is removed and reserved.

4. Part 344 is revised to read as follows:

PART 344—FILING QUOTATIONS FOR U.S. GOVERNMENT SHIPMENTS AT REDUCED RATES

Sec.

344.1 Applicability.
344.2 Manner of submitting quotations.

Authority: 42 U.S. 7101–7352; 49 U.S.C. 1–27.

§ 344.1 Applicability.

The provisions of this part will apply to quotations or tenders made by all pipeline common carriers to the United States Government, or any agency or department thereof, for the transportation, storage, or handling of petroleum and petroleum products at reduced rates as permitted by section 22 of the Interstate Commerce Act. Excepted are filings which involve information, the disclosure of which would endanger the national security.

§ 344.2 Manner of submitting quotations.

(a) *Copies.* Exact copies of the quotation or tender must be submitted to the Commission concurrently with the submittal of the quotation or tender to the Federal department or agency for whose account the quotation or tender is offered or the proposed services are to be rendered.

(b) *Filing in duplicate.* All quotations or tenders must be filed in duplicate. One of these copies must be signed and both copies must clearly indicate the name and official title of the officer executing the document.

(c) *Filing procedure.* Both copies must be filed with a letter of transmittal which prominently indicates that the filing is in accordance with section 22 of the Interstate Commerce Act. The filing must be filed with the Secretary of the Commission. The envelope must be marked as containing "Oil Pipeline Tariffs—Section 22 Quotations." A carrier which requests a receipt for the accompanying documentation must submit the letter of transmittal in duplicate and include a postage-paid, self-addressed envelope. One copy showing date of receipt by the Commission will be returned.

(d) *Numbering.* The copies of quotations or tenders which are filed with the Commission by each carrier must be numbered consecutively.

(e) *Supersession of a quotation or tender.* A quotation or tender which supersedes a prior quotation or tender must, by a statement shown immediately under the number of the new document, cancel the prior document number.

PART 345—[REMOVED]

5. Part 345 is removed.

PART 347—[REMOVED]

6. Part 347 is removed.

SUBCHAPTER S—VALUATION, INTERSTATE COMMERCE ACT

6a. The note following the subchapter S heading is amended by removing "Parts 360 through 362" and adding in its place "part 362".

PART 360—[REMOVED]

7. Part 360 is removed.

PART 361—[REMOVED]

8. Part 361 is removed.

PART 375—THE COMMISSION

9. The authority citation for part 375 continues to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 791–828r, 791a note, 2601–2645; 42 U.S.C. 7107–7532.

10. In § 375.303, the introductory text and paragraphs (a), (b), (c), (d) introductory text, and (d)(1) are revised and paragraphs (j) and (k) are added to read as follows:

§ 375.303 Delegations to the Chief Accountant

The Commission authorizes the Chief Accountant or the Chief Accountant's designee to:

(a) Issue interpretations of the Uniform System of Accounts for public utilities, licensees, natural gas companies and oil pipeline companies.

(b) Pass upon any proposed accounting matters submitted by or on behalf of public utilities, licensees, natural gas companies, and oil pipeline companies, that require Commission approval under the Uniform System of Accounts, except that if the proposed accounting matters involve unusually large transactions or unique or controversial features, the Chief Accountant must present the matters to the Commission for consideration.

(c) Pass upon applications to increase the size or combine property units of public utilities, licensees, natural gas companies and oil pipeline companies.

(d) Sign all correspondence on behalf of the Commission:

(1) Relating to Annual Report Nos. 1, 1F, 2, 2A, and 6; and

* * * * *

(j) Deny or grant, in whole or part, requests for waiver of the requirements for special or periodic reports under § 357.2 of this chapter, Annual Report of Oil Pipeline Companies.

(k) Deny or grant, in whole or part, requests for waiver of the requirements of parts 352 and 356 of this chapter, except if the matters involve unusually large transactions or unique or controversial features, the Chief Accountant must present the matters to the Commission for consideration.

The following regulations will be effective January 1, 1995.

1. Part 342 is added to read as follows:

PART 342—OIL PIPELINE RATE METHODOLOGIES AND PROCEDURES

Sec.

342.0 Applicability.
342.1 General rule.
342.2 Establishing initial rates.
342.3 Indexing.
342.4 Other rate changing methodologies.

Authority: 5 U.S.C. 571–83; 42 U.S.C. 7101–7532; 49 App. U.S.C. 1–85; 42 U.S.C. 7172 note.

§ 342.0 Applicability.

(a) Except as provided in paragraph (b) of this section, rate changes by oil pipelines shall be governed by this part.

(b) *Exception for the Trans-Alaska Pipeline.* This part shall not apply to the Trans-Alaska Pipeline authorized by the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1651, *et seq.*) or to any pipeline delivering oil directly or indirectly to the Trans-Alaska Pipeline.

§ 342.1 General rule.

Each carrier subject to the jurisdiction of the Commission under the Interstate Commerce Act:

(a) Must establish its initial rates subject to such Act pursuant to § 342.2; and

(b) Must make any change in existing rates pursuant to § 342.3 or § 342.4, whichever is applicable, unless directed otherwise by the Commission.

§ 342.2 Establishing initial rates.

A carrier must justify an initial rate for new service by:

(a) Filing cost, revenue, and throughput data supporting such rate; or

(b) Filing a sworn affidavit that the rate is agreed to by at least one non-affiliated person who intends to use the service in question, *provided* that if a protest to the initial rate is filed, the carrier must comply with paragraph (a) of this section.

§ 342.3 Indexing.

(a) *Rate changes.* A rate charged by a carrier may be changed, at any time, to a level which does not exceed the ceiling level established by paragraph (d) of this section, upon compliance with the applicable filing and notice requirements and with paragraph (b) of this section. A filing under this section proposing to change a rate that is under investigation and subject to refund, must take effect subject to refund.

(b) *Information required to be filed with rate changes.* The pipeline must comply with part 341 of this chapter. In addition, the transmittal letter required in § 341.2(c) of this chapter must specify the rate schedule to be changed, the proposed new rate, the prior rate, and the applicable ceiling level for the movement. No other rate information is required to accompany the proposed rate change.

(c) *Index year.* The index year is the period from July 1 to June 30.

(d) *Derivation of the ceiling level.* (1) A carrier must compute the ceiling level for each index year by multiplying the previous index year's ceiling level by the most recent index published by the Commission. The index will be published by the Commission prior to June 1 of each year.

(2) The index published by the Commission will be based on the change in the final Producer Price Index for Finished Goods (PPI–FG), seasonally adjusted, as published by the U.S. Department of Labor, Bureau of Labor Statistics, for the two calendar years immediately preceding the index year. The index will be calculated by dividing the PPI–FG for the calendar year immediately preceding the index year, by the previous calendar year's PPI–FG, and then subtracting 0.01.

(3) A carrier must compute the ceiling level each index year without regard to the actual rates filed pursuant to this section.

(4) For purposes of computing the ceiling level for the period January 1, 1995 through June 30, 1995, a carrier must use the rate in effect on December 31, 1994 as the previous index year's ceiling level in the computation in paragraph (d)(1) of this section. If the rate in effect on December 31, 1994 is subsequently lowered by Commission order pursuant to the Interstate Commerce Act, the ceiling level based on such rate must be recomputed, in accordance with paragraph (d)(1) of this section, using the rate established by such Commission order in lieu of the rate in effect on December 31, 1994.

(5) When an initial rate, or rate changed by a method other than indexing, takes effect during the index year, such rate will constitute the applicable ceiling level for that index year. If such rate is subsequently lowered by Commission order pursuant to the Interstate Commerce Act, the ceiling level based on such rate must be recomputed, in accordance with paragraph (d)(1) of this section, using the rate established by such Commission order as the ceiling level for the index year which includes the effective date of the rate established by such Commission order.

(e) *Rate decreases.* If the ceiling level computed pursuant to paragraph (d) of this section is below the filed rate of a carrier, that rate must be reduced to bring it into compliance with the new ceiling level. The rate decrease must be accomplished by filing a revised tariff publication with the Commission to be effective July 1 of the index year to which the reduced ceiling level applies.

§ 342.4 Other rate changing methodologies.

(a) *Cost-of-service rates.* A carrier may change a rate pursuant to this section if it shows that it has been affected by uncontrollable circumstances such that the applicable ceiling level determined in § 342.3 would preclude the carrier from being able to charge a just and

reasonable rate within the meaning of the Interstate Commerce Act. A carrier must substantiate a claim of uncontrollable circumstances, and substantiate the costs incurred. A carrier that makes such a showing may change the rate in question, based upon the cost of providing the service covered by the rate, without regard to the applicable ceiling level under § 342.3.

(b) *Market-based rates.* A carrier may attempt to show that it lacks significant market power in the market in which it proposes to charge market-based rates. Until the carrier establishes that it lacks market power, these rates will be subject to the applicable ceiling level under § 342.3.

(c) *Settlement rates.* A carrier may change a rate without regard to the ceiling level under § 342.3 if the proposed change has been agreed to, in writing, by each person who, on the day of the filing of the proposed rate change, is using the service covered by the rate. A filing pursuant to this section must contain a verified statement by the carrier that the proposed rate change has been agreed to by all current shippers.

2. Part 343 is added to read as follows:

PART 343—PROCEDURAL RULES APPLICABLE TO OIL PIPELINE PROCEEDINGS

Sec.

343.0 Applicability.
343.1 Definitions.
343.2 Requirements for filing interventions, protests and complaints.
343.3 Filing of protests and responses.
343.4 Procedure on complaints.
343.5 Alternative dispute resolution in oil pipeline rate proceedings.

Authority: 5 U.S.C. 571–83; 42 U.S.C. 7101–7532; 49 App. U.S.C. 1–85; 42 U.S.C. 7172 note.

§ 343.0 Applicability.

(a) *General rule.* The Commission's Rules of Practice and Procedure in part 385 of this chapter will govern procedural matters in oil pipeline proceedings under part 342 of this chapter and under the Interstate Commerce Act, except to the extent specified in this part.

§ 343.1 Definitions.

For purposes of this part, the following definitions apply:

(a) *Alternative means of dispute resolution* means any procedure that is used, in lieu of an adjudication, to resolve oil pipeline issues in controversy, including but not limited to, settlement negotiations, conciliation, facilitation, mediation, factfinding, minitrials, and arbitration, or any combination thereof.

(b) *Award* means any decision by an arbitrator resolving the issues in controversy.

(c) *Complaint* means a filing challenging an existing rate or practice under section 13(1) of the Interstate Commerce Act.

(d) *Dispute resolution communication* means any oral or written communication prepared for the purposes of a dispute resolution proceeding, including any memoranda, notes or work product of the neutral, parties or non-party participant. A written agreement to enter into a dispute resolution proceeding, or a final written agreement or arbitral award reached as a result of a dispute resolution proceeding, is not a dispute resolution communication.

(e) *Dispute resolution proceeding* means any alternative means of dispute resolution that is used to resolve an issue in controversy in which a neutral party may be appointed and specified parties participate.

(f) *In confidence* means information is provided:

(1) With the expressed intent of the source that it is not to be disclosed; or

(2) Under circumstances that create a reasonable expectation on behalf of the source that the information will not be disclosed.

(g) *Issue in controversy* means an issue which is, or is anticipated to be, material to a decision in a proceeding before the Commission and which is the subject of disagreement between participants, who would be substantially affected by the decision, or between the Commission and any such participants.

(h) *Neutral* means an individual who, with respect to an issue in controversy, functions specifically to aid the parties in resolving the controversy.

(i) *Protest* means a filing, under section 15(7) of the Interstate Commerce Act, challenging a tariff publication.

§ 343.2 Requirements for filing interventions, protests and complaints.

(a) *Interventions.* Section 385.214 of this chapter applies to oil pipeline proceedings.

(b) *Standing to file protest.* Only persons with a substantial economic interest in the tariff filing may file a protest to a tariff filing pursuant to the Interstate Commerce Act. Along with the protest, a verified statement that the protestor has a substantial economic interest in the tariff filing in question must be filed.

(c) *Other requirements for filing protests or complaints—(1) Rates established under § 342.3 of this chapter.* A protest or complaint filed against a rate proposed or established pursuant to § 342.3 of this chapter must allege reasonable grounds for asserting that the rate violates the applicable ceiling level, or that the rate increase is so substantially in excess of the actual cost increases incurred by the carrier that the rate is unjust and unreasonable, or that the rate decrease is so substantially less than the actual cost decrease incurred by the carrier that the rate is unjust and unreasonable.

(2) *Rates established under § 342.4(c) of this chapter.* A protest or complaint filed against a rate proposed or established under § 342.4(c) of this chapter must allege reasonable grounds for asserting that the rate is so substantially in excess of the actual cost increases incurred by the carrier that the rate is unjust and unreasonable.

(3) *Non-rate matters.* A protest or complaint filed against a carrier's operations or practices, other than rates, must allege reasonable grounds for asserting that the operations or practices violate a provision of the Interstate Commerce Act, or of the Commission's regulations.

(4) A protest or complaint that does not meet the requirements of paragraph (b) (1), (2), or (3) of this section, whichever is applicable, will be dismissed.

§ 343.3 Filing of protests and responses.

(a) *Protests.* Any protest pursuant to section 15(7) of the Interstate Commerce Act must be filed not later than 15 days after the filing of a tariff publication. If the carrier submits a separate letter with the filing, providing a telefax number and contact person, and requesting all protests to be telefaxed to the carrier by a protestant, any protest must be so telefaxed to the pipeline at the time the protest is filed with the Commission.

(b) *Responses.* The carrier may file a response to a protest no later than 5 days from the filing of the protest.

(c) *Commission action.* Commission action, including any hearings or other proceedings, on a protest will be limited to the issues raised in such protest. If a filing is protested, before the effective date of the tariff publication or within 30 days of the tariff filing, whichever is later, the Commission will determine whether to suspend the tariff and initiate a formal investigation.

(d) *Termination of investigation.* Withdrawal of the protest, or protests, that caused the initiation of an investigation automatically terminates the investigation.

§ 343.4 Procedure on complaints.

(a) *Responses.* The carrier must file a response to a complaint filed pursuant

to section 13(1) of the Interstate Commerce Act no later than 30 days after the filing of such complaint.

(b) *Commission Action.* Commission action, including any hearings or other proceedings, on a complaint will be limited to the issues raised in the complaint.

§ 343.5 Alternative dispute resolution in oil pipeline rate proceedings.

In addition to the provisions in §§ 385.601 through 385.603 of this chapter pertaining to settlement of cases before the Commission, the following provisions are applicable to alternative dispute resolution in oil pipeline rate proceedings.

(a) *Conferences.* The Commission or other decisional authority, upon motion or otherwise, may convene a conference of the participants in a proceeding at any time for any purpose related to the conduct or disposition of the proceeding, including submission and consideration of offers of settlement or the use of alternative dispute resolution procedures.

(b) *Required Negotiation.* The Commission or other decisional authority may require parties to enter into good faith negotiations to settle oil pipeline rate matters. The Commission will refer all protested rate filings to a settlement judge pursuant to § 385.603 of this chapter for recommended resolution. Failure to participate in such negotiations in good faith is a ground for decision against the party so failing to participate on any issue that is the subject of negotiation by other parties.

(c) *Alternative Dispute Resolution.* (1) Participants may, subject to the limitations of paragraph (c)(2) of this section, request the use of alternative means of dispute resolution to resolve all or part of any pending matter if the participants agree.

(2) The Commission will consider not permitting the use of an alternative dispute resolution proceeding if:

(i) A definitive or authoritative resolution of the matter is required for precedential purposes;

(ii) The matter involves or may bear upon significant questions of policy that require additional procedures before a final resolution may be made, and the proceeding would not likely serve to develop a recommended policy;

(iii) Maintaining established policies is of special importance;

(iv) The matter significantly affects persons or organizations who are not parties to the proceeding;

(v) A full public record of the proceeding is important, and a dispute resolution proceeding cannot provide a record; or

(vi) The Commission must maintain continuing jurisdiction over the matter with authority to alter the disposition of the matter in the light of changed circumstances, and a dispute resolution proceeding would interfere with the Commission's fulfilling that requirement.

(3) If one or more of the factors outlined in paragraph (c)(2) of this section is present, alternative dispute resolution may nevertheless be used if the alternative dispute resolution proceeding can be structured to avoid the identified factor or if other concerns significantly outweigh the identified factor.

(4) Settlement agreements reached through the use of alternative dispute resolution will be subject to the provisions of § 385.602 of this chapter, unless the decisional authority, upon motion or otherwise, orders a different procedure.

(d) *Neutrals.* (1) A neutral may be a permanent or temporary officer or employee of the Federal Government (including an administrative law judge), or any other individual who is acceptable to the participants to a dispute resolution proceeding. A neutral must have no official, financial, or personal conflict of interest with respect to the issues in controversy, except that a neutral who is not a government employee may serve if the interest is fully disclosed in writing to all participants and all participants agree that the neutral may serve.

(2) A neutral serves at the will of the participants, unless otherwise provided.

(3) Neutrals may be selected from among the Commission's administrative law judges, from rosters kept by the Federal Mediation and Conciliation Service, the Administrative Conference of the United States, the American Arbitration Association, or from any other source.

(e) *Submission of proposal to use alternative dispute resolution.* (1) The participants may at any time submit a written proposal to use alternative means of dispute resolution to resolve all or part of any matter in controversy, or anticipated to be in controversy, before the Commission.

(2) For matters set for hearing, a proposal to use alternative means of dispute resolution must be filed with the presiding administrative law judge.

(3) For all other matters, a proposal to use alternative means of dispute resolution may be filed with the Secretary for consideration by the appropriate decisional authority.

(4) Notwithstanding paragraphs (e) (2) and (3) of this section, any proposal involving binding arbitration must be filed with the Secretary for consideration by the Commission.

(5) The appropriate decisional authority will issue an order, approving or denying a proposal to use alternative means of dispute resolution. Denial of a proposal to use alternative dispute resolution will be in the form of an order and will identify the specific reasons for the denial. A proposal to use alternative dispute resolution is deemed approved unless an order denying approval is issued within 30 days after the proposal is filed.

(6) Any request to modify a previously-approved alternative dispute resolution proposal must follow the same procedure as provided in paragraphs (e) (1) through (5) of this section.

(f) *Contents of proposal.* A proposal to use alternative means of dispute resolution must be in writing and include:

(1) A general identification of the issues in controversy intended to be resolved by the proposed alternative dispute resolution method;

(2) A description of the alternative dispute resolution method to be used;

(3) The signatures of all participants or evidence otherwise indicating the consent of all participants; and

(4) A certificate of service.

(g) *Monitoring the alternative dispute resolution proceeding.* The decisional authority may order reports on the status of the alternative dispute resolution proceeding at any time.

(h) *Termination of alternative dispute resolution proceeding.* The decisional authority, upon motion or otherwise, may terminate any alternative dispute resolution proceeding by issuing an order to that effect.

(i) *Confidentiality in dispute resolution proceedings.* (1) A neutral in a dispute resolution proceeding may not disclose, either voluntarily or through discovery or compulsory process, any information concerning any dispute resolution communication or any communication provided in confidence to the neutral, unless:

(i) All participants in the dispute resolution proceeding and the neutral consent in writing;

(ii) The dispute resolution communication has already been made public;

(iii) The dispute resolution communication is required by statute to be made public, except that a neutral should make the communication public only if no other person is reasonably available to disclose the communication; or

(iv) A court determines that the disclosure is necessary to:

(A) Prevent a manifest injustice;

(B) Help establish a violation of law; or

(C) Prevent harm to the public health or safety of sufficient magnitude in the particular case to outweigh the integrity of dispute resolution proceedings in general by reducing the confidence of participants in future cases that their communications will remain confidential.

(2) A participant in a dispute resolution proceeding must not disclose, either voluntarily or through discovery or compulsory process, any information concerning any dispute resolution communication, unless:

(i) All participants to the dispute resolution proceeding consent in writing;

(ii) The dispute resolution communication has already been made public;

(iii) The dispute resolution communication is required by statute to be made public;

(iv) A court determines that the disclosure is necessary to:

(A) Prevent a manifest injustice;

(B) Help establish a violation of law; or

(C) Prevent harm to the public health and safety, of sufficient magnitude in the particular case to outweigh the integrity of dispute resolution proceedings in general by reducing the confidence of participants in future cases that their communications will remain confidential; or

(v) The dispute resolution communication is relevant to determining the existence or meaning of an agreement or award that resulted from the dispute resolution proceeding or to the enforcement of the agreement or award.

(3) Any dispute resolution communication that is disclosed in violation of paragraphs (i) (1) or (2) of this section will not be admissible in any proceeding relating to the issues in controversy with respect to which the communication was made.

(4) The participants may agree to alternative confidential procedures for disclosures by a neutral. The participants must inform the neutral in writing before the commencement of the dispute resolution proceeding of any modifications to the provisions of paragraph (i)(1) of this section that will govern the confidentiality of the dispute resolution proceeding. If the participants do not so inform the neutral, paragraphs (i) (1) and (2) of this section will apply.

(5) If a demand for disclosure, by way of discovery request or other legal process, is made upon a neutral regarding a dispute resolution communication, the neutral will make reasonable efforts to notify the participants of the demand. Any participant who receives the notice, and within 15 calendar days does not offer to defend a refusal of the neutral to disclose the requested information, waives any objection to the disclosure.

(6) Nothing prevents the discovery or admissibility of any evidence that is otherwise discoverable, merely because the evidence was presented in the course of a dispute resolution proceeding.

(7) Paragraphs (i) (1) and (2) of this section will have no effect on the information and data that are necessary to document an agreement reached or order issued pursuant to a dispute resolution proceeding.

(8) Paragraphs (i) (1) and (2) of this section will not prevent the gathering of information for research and educational purposes, in cooperation with other agencies, governmental entities, or dispute resolution programs, so long as the participants and the specific issues in controversy are not identifiable.

(9) Paragraphs (i) (1) and (2) of this section will not prevent use of a dispute resolution communication to resolve a dispute between the neutral in a dispute resolution proceeding and a participant in the proceeding, so long as the communication is disclosed only to the extent necessary to resolve the dispute.

(j) *Arbitration*—(1) *In general.* (i) The participants in any pipeline proceeding may at any time submit a written proposal to use binding arbitration under the provisions of this section to resolve all or part of any matter in controversy, or anticipated to be in controversy, before the Commission.

(ii) No person may be required to consent to arbitration as a condition of entering into a contract or obtaining a benefit. All interested parties must expressly consent to arbitration under this section.

(iii) An agreement to arbitrate a matter pursuant to this section will be enforceable pursuant to the Arbitration Act (9 U.S.C. 4), and no action will be dismissed nor will relief be denied on the grounds that the matter is against the United States or that the United States is an indispensable party.

(iv) An arbitration proceeding under this section may be monitored and terminated.

(v) The participants to an arbitration proceeding are entitled to select the arbitrator. The arbitrator must be a neutral.

(2) *General duties of arbitrator.* An arbitrator to whom a dispute is referred under this section may:

(i) Regulate the course of and conduct arbitral hearings;

(ii) Administer oaths and affirmations;

(iii) Compel the attendance of witnesses and the production of evidence to the extent the Commission is authorized by law to do so; and

(iv) Make awards.

(3) *Hearings.* (i) The arbitrator will set a time and place for the hearing on the dispute and must notify the participants not less than 5 days before the hearing.

(ii) The arbitrator may, with the consent of the participants conduct all or part of the hearing by telephone, television, computer, or other electronic means, if each participant has an opportunity to participate.

(iii) Any participant that wants a record of the hearing must:

(A) Prepare the record;

(B) Notify the other participants and the arbitrator of the preparation of the record;

(C) Furnish copies to all identified participants and the arbitrator; and

(D) Pay all costs for the record, unless the participants agree otherwise or the arbitrator determines that the costs should be apportioned.

(iv) Participants to the arbitration are entitled to be heard, to present evidence material to the controversy, and to cross-examine witnesses appearing at the hearing.

(v) The arbitrator may receive any oral or documentary evidence, except that irrelevant, immaterial, unduly repetitious, or privileged evidence may be excluded by the arbitrator.

(vi) The hearing must be conducted expeditiously and in an informal manner.

(vii) The arbitrator will interpret and apply relevant statutory and regulatory requirements, legal precedents, and policy directives.

(4) *Communications with arbitrator.* No interested person will make or knowingly cause to be made to the arbitrator an unauthorized off-the-record communication relevant to the merits of the proceeding, unless the participants agree otherwise. If a communication is made in violation of this prohibition, the arbitrator will ensure that a memorandum of the communication is prepared and made a part of the record, and that an opportunity for rebuttal is allowed. Upon receipt of such communication, the arbitrator may require the offending participant to show cause why the claim of the participant should not be resolved against the participant as a result of the improper conduct.

(5) *Awards.* (i) The arbitrator will make the award within 30 days after the close of the hearing or the date of the filing of any briefs authorized by the arbitrator, whichever date is later, unless the participants and the arbitrator agree to some other time limit.

(ii) The award in an oil pipeline rate arbitration proceeding will include a brief, informal discussion of the factual and legal basis for the award.

(iii) The prevailing participants must file the award with the Commission, along with proof of service on all participants.

(iv) The award in an arbitration proceeding will become final 30 days after it is filed, unless the award is vacated. The Commission, upon motion or otherwise, may extend the 30-day period for one addition 30-day period by issuing a notice of the extension before the end of the first 30-day period.

(v) A final award is binding on the participants to the arbitration proceeding, and may be enforced pursuant to the Arbitration Act (9 U.S.C. 9–13). No action brought to enforce an award will be dismissed nor will relief be denied on the grounds that the matter is against the United States or that the United States is an indispensable party.

(vi) An award may not serve as an estoppel in any other proceeding for any issue that was resolved in the proceeding. The award also may not be used as precedent or otherwise considered in any factually unrelated proceeding or in any other arbitration proceeding.

(6) *Vacating awards.* (i) Within 10 days after the award is filed, any person may file a request with the Commission to vacate an arbitration award and must serve the request to vacate on all participants. Responses to such a request are due 10 days after the request is filed.

(ii) Upon request or otherwise, the Commission may vacate any award issued under this rule before the award becomes final by issuing an order to that effect, in which case the award will be null and void.

(iii) Section 385.2202 of this chapter regarding separation of functions applies with respect to a decision to vacate an arbitration award.

(iv) If the Commission vacates an award, a party to the arbitration may, within 30 days of the action, petition the Commission for an award of attorney fees and expenses incurred in connection with the arbitration proceeding. The Commission will award the petitioning party those fees and expenses that would not have been incurred in the absence of the arbitration proceeding, unless the Commission finds that special circumstances make the award unjust.

(v) An arbitration award vacated under this paragraph will not be admissible in any proceeding relating to the issues in controversy with respect to which the award was made.

PART 375—THE COMMISSION

3. The authority citation for part 375 continues to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 791–828r, 791a note, 2601–2645; 42 U.S.C. 7107-7532.

§ 375.30 [Removed and reserved]

4. Section 375.306 is removed and reserved.

5. In § 375.307, the introductory text is revised and paragraph (g) is added to read as follows:

§ 375.307 Delegation to the Director of the Office of Pipeline and Producer Regulation.

The Commission authorizes the Director or the Director's designee to:

* * * * *

(g) Take the following actions relating to the regulation of oil pipelines under the Interstate Commerce Act:

(1) Accept any uncontested item which has been filed consistent with Commission regulations and policy;

(2) Reject any filing which patently fails to comply with applicable statutory requirements and with all applicable Commission rules, regulations and orders for which a waiver has not been granted;

(3) Prescribe for carriers the classes of property for which depreciation charges may be properly included under operating expenses, review the fully documented depreciation studies filed by the carriers, and authorize or revise the depreciation rates reflected in the depreciation study with respect to each of the designated classes of property; and

(4) Refer any matter to the Commission which the Director believes should be acted upon by the Commission.

6. In § 375.313, paragraph (i) is added to read as follows:

§ 375.313 Delegation to the Executive Director.

* * * * *

(i) Grant or deny petition for waiver of annual charges for oil pipelines.

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

Appendix A—Comments Received on Docket No. RM93–11–000

Commenter

Air Transport Association (ATA)
Alaska, State of (Alaska)
Alberta Petroleum Marketing Commission (APMC)
All American Pipeline Company (AAPC)
Amoco Corporation (Amoco)
ARCO Pipe Line Company, *et al.* (ARCO)
Association of Oil Pipelines (AOPL)
Badger Pipeline Company, *et al.* (Badger)
Buckeye Pipe Line Co., L.P. (Buckeye)
Canadian Association of Petroleum Marketers (CAPP)
Chevron USA Products Company (Chevron)
Citizen Action (CA)
Colonial Pipeline Company (Colonial)
Conoco Pipeline Company (Conoco)
Consumers Power Company (Consumers Power)
Crysen Refining Company, *et al.* (Crysen)
Explorer Pipeline Company (Explorer)
EXXON Pipeline Company (EXXON)
Holly Corporation (Holly)
Independent Gasoline Marketers of America, Society of (SIGMA)
Independent Petroleum Association of America (IPAA)
Kaneb Pipe Line Operating Partnership, L.P. (Kaneb)
Kerr-McGee Refining Corporation (Kerr-McGee)
Lakehead Pipe Line Company, L.P. (Lakehead)
Long Beach, City of (Long Beach)
MAPCO Natural Gas Liquids Inc. (MAPCO)
Marathon Pipeline Company (Marathon)
National Association of Manufacturers (NAM)
National Association of Royalty Owners, Inc. (NARO)
National Council of Farmer Cooperatives (NCFC)
Petrochemical Energy Group (PEG)
Phillips Pipe Line Company (Phillips)
Plantation Pipe Line Company (Plantation)
Portland Pipe Line Corporation (Portland)
Santa Fe Pacific Pipeline Partners, L.P. (SFPP)
Shell Pipe Line Corporation (Shell)
Sun Pipe Line Company (Sun)
TE Products Pipeline Company, L.P. (TE)
Total Petroleum, Inc. (Total)
Transok, Inc., *et al.* (Transok)
USAir, Inc. (USAIR)
Williams Pipe Line Company (Williams)

Revisions to the Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992, Docket No. RM93–11–000.

Issued October 22, 1993.

MASSEY, Commissioner, *dissenting:*

I do not believe that the Congressional mandate for the Commission to adopt a simplified and generally applicable ratemaking methodology requires the use of an indexing system. Nor do I believe that an indexing system will ensure just and reasonable rates. I would have preferred the centerpiece of this rule to be a simplified and generally applicable cost of service methodology. For these reasons, which will be amplified in a more detailed statement I will issue within the next few days, I must respectfully dissent.

William L. Massey,

Commissioner.

[FR Doc. 93–26626 Filed 11–3–93; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Parts 905 and 970

[Docket No. R–93–1689; FR–3528–F–01]

RIN 2577–AB54

Public and Indian Housing Program—Demolition or Disposition of Public and Indian Housing Projects—Required and Permitted PHA/IHA Actions Prior to Approval

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule.

SUMMARY: Existing regulations require that a PHA or IHA not take any action intended to further the demolition or disposition of a public or Indian housing project or a portion of a public or Indian housing project without obtaining HUD approval. This final rule clarifies that until such time as HUD approval may be obtained, the PHA or IHA must prevent further deterioration of the physical condition of the project, other than deterioration incident to normal use, and is responsible under the Annual Contributions Contracts (ACC) to continue providing emergency repair services and routine maintenance for occupied projects.

EFFECTIVE DATE: December 6, 1993.

FOR FURTHER INFORMATION CONTACT: Janice Rattley, Director, Office of Construction, Rehabilitation and Management; telephone (202) 708–1800.

Dominic Nessi, Director, Office of Native American Programs; telephone (202) 708–1015.

The telecommunications device for deaf persons (TDD) for both offices is available at (202) 708–0850. (The telephone numbers provided are not toll-free telephone numbers.)

The mailing address for both contacts is: Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

SUPPLEMENTARY INFORMATION: Section 121 of the Housing and Community Development Act of 1987 (Pub. L. 100–242, approved February 5, 1988) ("1987 Act") amended section 18 of the United States Housing Act of 1937 (42 U.S.C. 1437p) ("1937 Act")—the statutory provision governing the demolition and disposition of public and Indian housing.[1] On August 17, 1988, the Department published an interim rule (53 FR 30984) which implemented the 1987 Act amendments insofar as public and Indian housing projects are concerned and became effective on October 6, 1988. The provisions of this rule are at 24 CFR part 970 for public housing and 24 CFR part 905, subpart M, for Indian housing.

Section 18(d) of the 1937 Act, as added by the 1987 Act, prohibits PHAs/IHAs from taking "any action to demolish or dispose of a public [or Indian] housing project [or portion thereof] without obtaining the approval of the Secretary and satisfying the conditions specified in subsections (a) and (b) of section 18." Section 970.12 of the interim regulation restated section 18(d) and required a PHA, pending HUD approval of a demolition application, to "continue to meet its ACC obligations to maintain and operate the property as housing for lower income families."[2] Section 905.921(c) states in part that "until such time as HUD approval may be obtained, * * * the IHA shall continue to meet its ACC obligations to maintain and operate the property as housing for low-income families."

A number of issues were raised by public comments received on the August 17, 1988 interim rule. This final rule addresses the issue raised regarding actions of a PHA/IHA intended to further the demolition or disposition of a public or Indian housing project or a portion of a public or Indian housing project without obtaining HUD approval under the provisions of 24 CFR parts 905 or 970. Other issues raised in the public comments received will be addressed in a separate final rule.

A public commenter to the August 17, 1988 interim rule maintained that § 970.12 should be revised to permit PHAs to take certain actions that might appear to be in furtherance of demolition but are instead undertaken solely to provide more effective security to residents and reduce operating costs. As an example, the commenter cited the potential need to "consolidate" residents in units that offer good housing and effective security, while vacating and securing other units that are unsuitable for occupancy.

The commenter misunderstands the scope of § 970.12, which has as a key element whether the PHA (or IHA) has an intent by its actions to demolish or dispose of units. Neither section 18(d), nor § 970.12, applies to failures by PHAs [or § 905.921(c) in the case of IHAs] to maintain their projects in decent, safe, and sanitary condition, in compliance with their ACC obligations. Rather, section 18(d) is concerned with PHA/IHA failures to maintain and rent units as part of a strategy for their subsequent demolition or disposition.

While section 18(d) does not define what constitutes "action to demolish or dispose," the cited language does contemplate the existence of a nexus between the "action" and the demolition or disposition of a project. Accordingly, the "action" of failing to maintain units, standing alone, would not be prohibited by section 18(d), unless the "action" was connected with the eventual planned demolition, that is, the razing of a project, which, under section 18(a), requires HUD approval.[3] The necessary connection would be present when a PHA/IHA failed to maintain a project as part of a plan to demolish the project.

The legislative history indicates that PHAs/IHAs would not be held strictly liable under 18(d) for lack of maintenance or other failures to maintain a project due, for example, to a shortage of funds, or for other reasons not associated with an intent to raze or dispose of the project. Section 18(d) was enacted specifically to address and respond to the holding in *Edwards* v. *District of Columbia*, 821 F.2d 651 (D.C. Cir. 1987). In that case, plaintiffs charged the PHA with violating section 18, by allowing a project to deteriorate further and by keeping units vacant, while the PHA application for approval of demolition was pending before HUD. The Court of Appeals, however, rejected the plaintiffs' claims, finding instead that PHAs were not prohibited from "circumvent[ing] the carefully crafted prerequisites of * * * [Section 18] in order to pave the way for demolishing units in a federally funded housing project * * *" *Edwards*, 821 F.2d at 658. In response to *Edwards*, Congress enacted section 18(d), to prevent PHAs/IHAs from intentionally evading the statutory application and approval requirements of the demolition statute.

[1] Section 201(b)(1) of the U.S. Housing Act of 1937 [42 U.S.C. 1437aa] extends coverage of section 18 to IHAs.

[2] Section 572 of the National Affordable Housing Act, 42 U.S.C. 8011, changed the term "lower income families" to " low-income families" wherever it appeared in the U.S. Housing Act of 1937. [The term "lower income housing" was also replaced with the term "low-income housing."]

[3] As used in section 18, "demolition" does not occur merely because a project or units in a project have substantially deteriorated. See 24 CFR 970.3, which defines "demolition" as "razing." Accordingly, because demolition occurs only when a building is razed, the statute and HUD's implementing regulation do not contain a prohibition on actions short of demolition (e.g., deterioration of the sort sometimes described as "de facto" or "constructive" demolition.)

HUD's interpretation of section 18(d) thus contains an intent provision.

In the absence of HUD's regulatory interpretation, district courts have varied in their interpretation of section 18(d), with some finding that it did not contain an intent requirement. *See Henry Horner Mothers Guild*, No. 91 C 3316 (N.D. Ill., May 26, 1993); *Tinsley* v. *Kemp*, 750 F. Supp. 1001 (W.D. Mo. 1991); *Concerned Tenants Ass'n of Father Panik Village* v. *Pierce*, 685 F. Supp. 316 (D. Conn. 1988). *But see, Dessin* v. *Housing Authority of Fort Myers*, 783 F. Supp. 587 (M.D. Fla., 1990); *Gomez* v. *Housing Authority of the City of El Paso*, 805 F. Supp. 1363 (W.D. Tex. 1992). No court of appeals has interpreted section 18(d). While some district courts have equated unintentional or constructive demolition with intentional demolition, this conclusion is by no means dictated by the statute, since Congress has never indicated, either in section 18 generally, or in enacting section 18(d), that it intended to rigidly prohibit any PHA/IHA failure to maintain projects for reasons unrelated to a contemplated razing (or sale) of a project. Indeed, PHAs/IHAs are, and have been, required to maintain their projects in a "decent, safe and sanitary" manner under their ACCs executed with HUD. It would be superfluous and illogical to assume that in enacting section 18(d), Congress intended to duplicate existing obligations by PHAs/IHAs. Moreover, if section 18(d) were interpreted as barring a PHA/IHA from letting a project deteriorate to a physical state where it is unusable for housing (i.e., "constructive demolition"), it would essentially nullify the need for section 18(a), which contemplates that buildings would reach such a state in order for HUD to approve a demolition application. Accordingly, HUD is well within its authority in interpreting section 18(d) in a manner consistent with the plain language of section 18(d) and with *Edwards*, and in so doing, rejecting the conclusive reasoning of some district courts.

Finally, even assuming that section 18(d) does not explicitly dictate whether an intent standard applies to PHA/IHA failures to maintain, the section is ambiguous, and under settled canons of statutory construction, HUD has the discretion to interpret it to contain that standard. Doing so would not be inconsistent with Congress' underlying purpose in the statute, to insure that PHAs/IHAs comply with, and not circumvent, the procedural and substantive requirements governing demolition applications.

Section 18(d) and §§ 970.12 and 905.921(c), thus, apply only where a PHA/IHA is failing to comply with its ACC maintenance obligations in furtherance of a decision to demolish or dispose of all or part of a project. Of course, unlike the *Edwards* case, in which a PHA conducted demolition activities after submitting an application for demolition, a PHA/IHA may not always announce that it has formed an intention to demolish units that it administers. In such instances, the task of determining the requisite "intent" to demolish or dispose is similar to determining "intent" to discriminate; i.e., whether, from the totality of the facts, the eventual demolition or disposition of the units was a "motivating factor" behind the PHA's/IHA's failure to maintain and rent public/Indian housing units.

In order to clarify its scope, § 970.12 and § 905.921(c) are being revised to prohibit PHAs and IHAs from taking actions "intended" to further the demolition or disposition of a public or Indian housing project without requisite HUD approval.

The "intent" requirement resolves another question, apparently contemplated by the commenter, as to whether steps by a PHA/IHA to secure, and not rent, units while awaiting HUD approval of funds for modernization to repair them would violate §§ 970.12 or 905.921(c). Such an action would constitute an "action to demolish" within the meaning of section 18(d) only if the PHA/IHA is failing to maintain and rent units in furtherance of its intent to demolish or dispose of them. Submission of an application or plans to use funding to repair the units (e.g., submission of a CIAP application or inclusion in the Comprehensive Plan for the Comprehensive Grant Program) may constitute evidence tending to show that the PHA/IHA intends to maintain and operate those units as low income housing, once the needed repairs were completed.

Finally, the commenter questioned how PHAs, that had determined that public housing units were not "viable" (suggesting, apparently, that the PHA had determined they should be demolished), may obtain funds from HUD to "rehabilitate" the units since HUD does not provide such funding if the units are not considered viable. Again, the commenter misunderstands the scope of section 18(d). Neither that statute, nor secs. 970.12 or 905.921(c), require the illogical result that PHAs or IHAs that have decided to demolish or dispose of units must expend scarce resources on substantial rehabilitation of those units pending HUD approval of a demolition application. However, the PHA/IHA is responsible under the ACC to continue providing emergency repair services and routine maintenance for occupied projects to prevent further deterioration while the Section 18 demolition application is pending before HUD.

The interim regulation, which required PHAs/IHAs to *"continue* to meet [their] ACC obligations to maintain and operate [their] property[ies] as housing for low income families" (emphasis added), was intended to make clear to PHAs/IHAs that they may not discontinue compliance with their ACC obligations simply because they had decided that a project should be demolished or disposed of. The regulation assumed that, at the time the PHAs/IHAs decided to demolish or dispose of units, they were in compliance with their ACCs. However, if at the time a PHA/IHA decided to demolish or dispose of units, it was not in compliance with its ACC, and consequently the project it wished to demolish or dispose of was in disrepair, needed extensive rehabilitation, and was not fully occupied, or was boarded up, neither section 18(d) nor §§ 970.12 or 905.921(c) imposes a requirement, separate and distinct from the PHA's/IHA's ACC obligations, that the PHA/IHA rehabilitate and rent all units in the project. Rather, the statute and regulation require the PHA/IHA prospectively to prevent further deterioration in the physical condition of the project until HUD approves a demolition or disposition application. While the PHA's/IHA's maintenance obligations under §§ 970.12/905.921(c) do not necessarily coincide with those in the ACC, the regulation is not intended to alter or affect a PHA's/IHA's underlying contractual obligations under its ACC, nor excuse any previous breach of an ACC by the PHA/IHA or provide a defense in an action by HUD to enforce the ACC. Similarly, nothing in the regulation is intended to excuse PHAs/IHAs from complying with any covenant to repair in a lease with an individual resident.

Of course, even if a PHA/IHA "intends" to demolish or dispose of a project, nothing in section 18(d), or §§ 970.12 or 905.921(c), requires PHAs/IHAs to leave residents in units that present a threat to their health and safety, if the units cannot be repaired expeditiously while the resident is in place. Whether such units should be repaired, once vacated, is a question of judgment as to what actions must be taken to "preserve" the condition of the project, pending HUD approval of an application for its demolition.

Technical Correction

On June 24, 1992 (57 FR 28240), the Department published in the **Federal Register**, a final rule that represented a revised consolidated regulation for the Indian Housing program. This rule corrects a typographical error in the designation of a paragraph in § 905.921.

Other Matters

Environmental Review

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, room 10276, 451 Seventh Street, SW., Washington, DC 20410.

Executive Order 12866

This rule was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866 on Regulatory Planning and Review, issued by the President on September 30, 1993, and was approved without changes.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this rule does not have "federalism implications" because it does not have substantial direct effects on the States (including their political subdivisions), or on the distribution of power and responsibilities among the various levels of government. This rule pertains to certain PHAs (including IHAs) that are subject to Annual Contributions Contracts (ACCs) under the U.S. Housing Act of 1937 and the requirements that they must meet in compliance with the regulations on demolition and disposition of public and Indian housing.

Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, *the Family*, has determined that this rule does not have potential significant impact on family formation, maintenance, and general well-being because it merely clarifies a criteria regarding demolition and disposition of public and Indian housing.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule does have a significant economic impact on a substantial number of small entities because the 1987 Act provides for substantial contributions of funds by the Federal government to assist in bearing the costs associated with the policy changes reflected in the rule. This cost sharing is, of course, available both to large and small PHAs/IHAs whose demolition and disposition decisions are affected by the rule.

Semi-Annual Agenda of Regulations

This rule was listed as item number 1653 in the Department's Semiannual Agenda of Regulations published on October 25, 1993 (58 FR 56402, 56452) in accordance with Executive Order 12866 and the Regulatory Flexibility Act.

List of Subjects

24 CFR Part 905

Aged, Energy conservation, Grant programs—housing and community development, Grant programs—Indians, Indians, Individuals with disabilities, Lead poisoning, Loan programs—housing and community development, Loan programs—Indians, Low and Moderate income housing, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 970

Grant programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

Accordingly, 24 CFR parts 905 and 970 are amended as follows:

PART 905—INDIAN HOUSING PROGRAMS

1. The authority citation for part 905 continues to read as follows:

Authority: 25 U.S.C. 450e(b); 42 U.S.C. 1437a–1, 1437aa, 1437bb, 1437c, 1437cc, 1437d(c)(4)(D), 1437ee; and U.S.C. 3535(d).

2. In § 905.921, paragraph (b), *"Type of actions."*, is redesignated as paragraph (c), *"Type of actions."*; and paragraph (c) is revised to read as follows:

§ 905.921 Purpose and applicability.

* * * * *

(c) *Type of actions.* An IHA may not take any action intended to further the demolition or disposition of an Indian housing project or a portion of an Indian housing project without obtaining HUD approval under this part. Until such time as HUD approval may be obtained, the IHA must prevent further deterioration of the physical condition of the project, other than deterioration incident to normal use, and is responsible under the ACC to continue providing emergency repair services and routine maintenance for occupied projects. HUD approval under this part is not required, however, for planning activities, analysis, or consultations, such as project viability studies, comprehensive modernization planning or comprehensive occupancy planning.

PART 970—PUBLIC HOUSING PROGRAM—DEMOLITION OR DISPOSITION OF PUBLIC HOUSING PROJECTS

3. The authority citation for part 970 is revised to read as follows:

Authority: 42 U.S.C. 1437p and 3535(d).

4. Section 970.12 is revised to read as follows:

§ 970.12 Required and permitted actions prior to approval.

A PHA may not take any action intended to further the demolition or disposition of a public housing project or a portion of a public housing project without obtaining HUD approval under this part. Until such time as HUD approval may be obtained, the PHA must prevent further deterioration of the physical condition of the project, other than deterioration incident to normal use, and is responsible under the ACC to continue providing emergency repair services and routine maintenance for occupied projects. HUD approval under this part is not required, however, for planning activities, analysis, or consultations, such as project viability studies, comprehensive modernization planning or comprehensive occupancy planning.

Dated: October 20, 1993.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 93–27012 Filed 11–3–93; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8495]

RIN 1545–A061

Passive Activity Loss Limitations—Developer Rule

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations relating to the limitations on passive activity losses and credits. The final regulations clarify the treatment of tenant solicitation (lease-up services) for purposes of applying the income recharacterization rules that are part of these limitations. The final regulations affect taxpayers who develop, rent out, and then sell certain property less than 12 months after the rental starts.

DATES: These regulations are effective November 4, 1993.

These regulations apply to tax years ending after May 10, 1992.

FOR FURTHER INFORMATION CONTACT: Martin Schaffer, (202) 622–3080 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains final regulations under §§ 1.469–2T (f)(5) (ii), (iii), and (iv) of the temporary regulations. Section 1.469–2T(f)(5) was first issued by TD 8175, 53 FR 5686 (February 25, 1988), and was amended by TD 8253, 54 FR 20527 (May 12, 1989), and TD 8318, 55 FR 48107 (November 19, 1990). Section 1.469–2T(f)(5)(i) was adopted as final by TD 8417, 57 FR 20747 (May 15, 1992).

No written comments and no requests for a public hearing were received in response to the cross reference notice of proposed rulemaking (PS–071–89) published November 19, 1990, 55 FR 48135.

This document also amends the temporary regulations to provide cross references to the final regulations.

Explanation of Provisions

The preamble to the temporary regulations explains the final regulations.

Effective Date

The final regulations are effective for tax years ending after May 10, 1992 (see § 1.469–11(a)(1) of the regulations).

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking for these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Martin Schaffer of the Office of Assistant Chief Counsel (Passthroughs & Special Industries), Internal Revenue Service. However, other persons from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.469–0 is amended by:

1. Revising the entries for designated § 1.469–2, paragraphs (f)(5) (ii) through (iv).

2. Revising the entries for designated § 1.469–2T, paragraphs (f)(5) (ii) through (iv).

3. The revisions read as follows:

§ 1.469–0 Table of contents.

* * * * *

§ 1.469–2 Passive activity loss.

* * * * *

(f) * * *

(5) * * *

(ii) Commencement of use.

(iii) Services performed for the purpose of enhancing the value of property.

(iv) Examples.

* * * * *

§ 1.469–2T Passive activity loss (temporary).

* * * * *

(f) * * *

(5) * * *

(ii) Commencement of use [Reserved].

(iii) Services performed for the purpose of enhancing the value of property [Reserved].

(iv) Examples [Reserved].

* * * * *

Par. 3. Section 1.469–2 is amended by revising paragraphs (f)(5) (ii) through (iv) to read as follows:

§ 1.469–2 Passive activity loss.

* * * * *

(f) * * *

(5) * * *

(ii) *Commencement of use*—(A) *In general.* For purposes of paragraph (f)(5)(i)(B) of this section, a taxpayer's use of an item of property in an activity involving the rental of the property commences on the first date on which—

(*1*) The taxpayer owns an interest in the property;

(*2*) Substantially all of the property is rented (or is held out for rent and is in a state of readiness for rental); and

(*3*) No significant value-enhancing services (within the meaning of paragraph (f)(5)(ii)(B) of this section) remain to be performed.

(B) *Value-enhancing services.* For purposes of this paragraph (f)(5)(ii), the term value-enhancing services means the services described in paragraphs (f)(5) (i)(C) and (iii) of this section, except that the term does not include lease-up. Thus, in cases in which this paragraph (f)(5) applies solely because substantial lease-up remains to be performed (see paragraph (f)(5)(iii)(C) of this section), the twelve month period described in paragraph (f)(5)(i)(B) of this section will begin when the taxpayer acquires an interest in the property if substantially all of the property is held out for rent and is in a state of readiness for rental on that date.

(iii) *Services performed for the purpose of enhancing the value of property.* For purposes of paragraph (f)(5)(i)(C) of this section, services that are treated as performed for the purpose of enhancing the value of an item of property include but are not limited to—

(A) Construction;

(B) Renovation; and

(C) Lease-up (unless more than 50 percent of the property is leased on the date that the taxpayer acquires an interest in the property).

(iv) *Examples.* The following examples illustrate the application of this paragraph (f)(5):

Example 1. (i) A, a calendar year individual, is a partner in P, a calendar year partnership, which develops real estate. In 1993, P acquires an interest in undeveloped land and arranges for the financing and construction of an office building on the land. Construction is completed in February

1995, and substantially all of the building is either rented or held out for rent and in a state of readiness for rental beginning on March 1, 1995. Twenty percent of the building is leased as of March 1, 1995.

(ii) P rents the building (or holds it out for rent) for the remainder of 1995 and all of 1996, and sells the building on February 1, 1997, pursuant to a contract entered into on January 15, 1996. P did not hold the building (or any other buildings) for sale to customers in the ordinary course of P's trade or business (see paragraph (c)(2)(v) of this section). A's distributive share of P's taxable losses from the rental of the building is $50,000 for 1995 and $30,000 for 1996. All of A's losses from the rental of the building are disallowed under 1.469–1(a)(1)(i) (relating to the disallowance of the passive activity loss for the taxable year). A's distributive share of P's gain from the sale of the building is $150,000. A has no other gross income or deductions from the activity of renting the building.

(iii) The real estate development activity that A holds through P in 1993, 1994, and 1995 involves the performance of services (e.g., construction) for the purpose of enhancing the value of the building. Accordingly, an amount equal to A's net rental activity income from the building may be treated as gross income that is not from a passive activity if A's use of the building in an activity involving the rental of the building commenced less that 12 months before the date of the disposition of the building. In this case, the date of the disposition of the building is January 15, 1996, the date of the binding contract for its sale.

(iv)(A) A taxpayer's use of an item of property in an activity involving the rental of the property commences on the first date on which—

(*1*) The taxpayer owns an interest in the item of property;

(*2*) Substantially all of the property is rented (or is held out for rent and is in a state of readiness for rental); and

(*3*) No significant value-enhancing services (within the meaning of paragraph (f)(5)(ii)(B) of this section) remain to be performed.

(B) In this case, A's use of the building in an activity involving the rental of the building commenced on March 1, 1995, less than 12 months before January 15, 1996, the date of disposition. Accordingly, if A materially (or significantly) participated in the real estate development activity in 1993, 1994, or 1995 (without regard to whether A materially participated in the activity in more than one of those years), an amount of A's gross rental activity income from the building for 1997 equal to A's net rental activity income from the building for 1997 is treated under this paragraph (f)(5) as gross income that is not from a passive activity. Under paragraph (f)(9)(iv) of this section, A's net rental activity income from the building for 1997 is $70,000 ($150,000 distributive share of gain from the disposition of the building minus $80,000 of reasonably allocable passive activity deductions).

Example 2. (i) X, a calendar year taxpayer subject to section 469, acquires a building on February 1, 1994, when the building is 25 percent leased. During 1994, X rents the building (or holds it out for rent) and materially participates in an activity that involves the lease-up of the building. X's activities do not otherwise involve the performance of construction or other services for the purpose of enhancing the value of the building, and X does not hold the building (or any other building) for sale to customers in the ordinary course of X's trade or business. X sells the building on December 1, 1994.

(ii) (A) Under paragraph (f)(5)(iii)(C) of this section, lease-up is considered a service performed for the purpose of enhancing the value of property unless more than 50 percent of the property is leased on the date the taxpayer acquires an interest in the property. Under paragraph (f)(5)(ii)(B) of this section, however, lease-up is not considered a value-enhancing service for purposes of determining when the taxpayer commences using an item of property in an activity involving the rental of the property. Accordingly, X's acquisition of the building constitutes a commencement of X's use of the building in a rental activity, because February 1, 1994, is the first date on which—

(*1*) The taxpayer owns an interest in the item of property;

(*2*) Substantially all of the property is held out for rent; and

(*3*) No significant value-enhancing services (within the meaning of paragraph (f)(5)(ii)(B) of this section) remain to be performed.

(B) In this case, X disposes of the property within 12 months of the date X commenced using the building in a rental activity. Accordingly, an amount of X's gross rental activity income for 1994 equal to X's net rental activity income from the building for 1994 is treated under this paragraph (f)(5) as gain that is not from a passive activity.

Example 3. The facts are the same as in Example 2, except that at the time X acquires the building it is 60 percent leased. Under paragraph (f)(5)(iii)(C) of this section, lease-up is not considered a service performed for the purpose of enhancing the value of property if more than 50 percent of the property is leased on the date the taxpayer acquires an interest in the property. Therefore, additional lease-up performed by X is not taken into account under this paragraph (f)(5). Since X's activities do not otherwise involve the performance of services for the purpose of enhancing the value of the building, none of X's gross rental activity income from the building will be treated as income that is not from a passive activity under this paragraph (f)(5).

* * * * *

Par. 5. Section 1.469–2T is amended by revising paragraphs (f)(5)(ii) through (iv) to read as follows:

§ 1.469–2T Passive activity loss (temporary).

* * * * *

(f) * * *

(5) * * *

(ii) *Commencement.* [Reserved] See § 1.469–2(f)(5)(ii) for rules relating to this paragraph (f)(5)(ii).

(iii) *Services performed for the purpose of enhancing the value of property.* [Reserved] See 1.469–2(f)(5)(iii) for rules relating to this paragraph (f)(5)(iii).

(iv) *Examples.* [Reserved] See § 1.469–2(f)(5)(iv) for examples relating to this paragraph (f)(5)(iv).

* * * * *

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: October 13, 1993.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 93–27002 Filed 11–3–93; 8:45 am]

BILLING CODE 4830–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 43

[CC Docket No. 92–296; FCC 93–452]

Simplification of the Depreciation Prescription Process

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Federal Communications Commission has adopted a Report and Order streamlining its depreciation prescription process for local exchange carriers [LECs] regulated under its price cap regulatory scheme and for AT&T. The Report and Order changes the depreciation prescription filing requirements LECs and AT&T are subject to under the Commission's Rules. The rule change is intended to lessen the depreciation prescription burden on price cap LECs and AT&T in light of regulatory and market changes without sacrificing protection for consumers.

EFFECTIVE DATE: January 1, 1994.

FOR FURTHER INFORMATION CONTACT: Fatina K. Franklin, Common Carrier Bureau, Accounting and Audits Division, (202) 632–7500 or Sonja J. Rifken, (202) 254–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order in Simplification of the Depreciation Prescription Process, CC Docket No. 92–296, FCC 93–452, adopted September 23, 1993 and released October 20, 1993. 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. St., NW., Washington, DC. The full text will be published in the FCC Record and may also be purchased from the Commission's copy contractor, International Transcription Services, room 246, 1919 M Street, NW., Washington, DC 20554.

Public reporting burden for this collection of information is estimated to average 10,000 hours per response,[1] including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden to the Federal Communications Commission, Office of Managing Director, Paperwork Reduction Project (3060–0168), Washington, DC 20554 and to the Office of Management and Budget, Paperwork Reduction Project (3060–0168), Washington, DC 20503.

SUMMARY:

1. On December 10, 1992, this Commission adopted a Notice of Proposed Rulemaking seeking comment on four distinct proposals to simplify the depreciation prescription process.[2] We also asked whether, under any of the proposed options, we should remove one step, the determination of future net salvage, from that same process to attain even more simplification. We currently prescribe depreciation rates for 33 LECs, AT&T, and Alascom. By this Order, we adopt two of those depreciation simplification plans. We adopt a modified form of the proposed basic factor range option for the local exchange carriers [LECs] regulated under our price cap regulatory scheme and a modified form of the price cap carrier option for AT&T.[3] However, at this time, we will not adopt any of the simplification proposals for Alascom or LECs currently regulated under a rate of return regulatory scheme. We also conclude that we will not now adopt a change in the determination of future net salvage.

2. In the Notice, we listed a number of factors that led us to open this docket. We recognized that regulatory, technological, and market changes may have dated the current depreciation prescription process. We hoped to achieve three goals in this proceeding: Simplification of the process, administrative savings and flexibility, while continuing to ensure just and reasonable tariffed rates to consumers. We therefore sought comment on four distinct depreciation simplification options: The basic factor range option, the range of rates option, the depreciation schedule option, and the price cap carrier option. Each option was designed to simplify and to make less burdensome the depreciation prescription process.

3. For LEC depreciation simplification, the commenters were predictably divided: The state commissions, consumer groups, and MCI urged the Commission to take a measured step like the basic factor range option, while the LECs urged the Commission to take a more dramatic step like the price cap carrier option. We received less comment on AT&T generally, but did have some implicit and explicit support for adopting the price cap carrier option for AT&T. Comments on implementation issues for the options were not so clearly delineated among parties, but a general consensus among state commissions and consumer groups was to continue a tighter rein on the LECs than the LECs believed was warranted.

4. Our careful consideration of the record and our own knowledge and experience in these matters have led us to conclude that streamlining the depreciation prescription process for price cap LECs will benefit those LECs, consumers, and this Commission by reducing administrative burdens associated with this process. However, we are unable to conclude that the LECs are yet in a position that justifies a depreciation prescription process as flexible and streamlined as the price cap carrier option. We therefore adopt a basic factor range approach for price cap LECs in the depreciation prescription process. In reaching our conclusion, we viewed depreciation reform on a regulatory spectrum. As circumstances for the LECs change, we will revisit this issue to consider whether LECs should be farther along that spectrum.

5. However, based on the record before us and our own knowledge and experience, we believe the basic factor range approach as proposed must be modified. Under the basic factor range approach we adopt today, we will: (1) Over time, establish ranges for all accounts, to the extent feasible and as soon as possible; (2) establish ranges for two of the basic factors comprising the depreciation rate formula: The projection life and future net salvage estimates; (3) allow price cap LECs a certain degree of flexibility to select basic factors from within the established ranges; and (4) require price cap LECs to continue to submit the same analyses as now required for accounts for which no ranges have been set (non-range accounts) and accounts for which the carrier's basic factors do not fall within the ranges.

6. We will not adopt any of the proposed simplification options today for the two rate of return LECs for which we prescribe depreciation rates. We find that, because of the direct relationship between depreciation expenses and rates to consumers and the general competitive position of these LECs, we must maintain our current process. While we are cognizant of the burden this process places on these carriers, we believe that, in balancing ratepayers' and carriers's interest, careful scrutiny of all data supporting such carriers' proposed depreciation rates continues to be necessary. Again, should regulatory and/or market circumstances change, we would revisit our decision.

7. Careful consideration of the record and our own experience and knowledge also lead us to conclude that an even more streamlined and flexible depreciation prescription process is reasonable for AT&T, given its regulatory scheme and competitive position. Therefore, we adopt the price cap career option, modified to require some information submissions, for AT&T. We believe the additional information that we will require will aid us in our continuing evaluation of AT&T's price cap plan. Thus, under the price cap carrier approach we adopt for AT&T, we will require AT&T to provide; (1) Generation data; (2) a summary of basic factors underlying proposed rates by account; and (3) a short narrative supporting those basic factors, including forecasted retirements and additions, and recent annual retirements, salvage, and cost of removal.

8. We will not adopt any depreciation simplification for Alacom at this time. The Alaska interexchange market is currently in transition, as evidenced by the Alaska Joint Board's recent tentative recommendation regarding the Alaska interexchange market structure. We find that we cannot evaluate the appropriateness of any of our options until there is a final recommendation in that proceeding. Thus, we will defer depreciation simplification for Alascom.

9. Finally, we must address the issue of whether we plan to eliminate the future net salvage determination from the depreciation prescription process and consider it in current period accounting. We conclude that we will not change the accounting of salvage amounts based on the record before us. The record is mixed, and is replete with suggestions that there be further study

[1] This estimate reflects the current burden hours response. A new estimate will be determined once the Commission adopts an Order implementing the decision set forth in this Order. Although this Order will result in a reduction of burden hours, the reduction cannot be determined until implementation of the decision is completed.

[2] Simplification of the Depreciation Prescription Process, Notice of Proposed Rulemaking, 58 FR 530 (1993).

[3] In so doing, we amend § 43.43 of the Commission's Rules to reflect the changes we adopt herein. 47 CFR 43.43.

of issues, such as whether current period accounting of salvage amount is consistent with GAAP, to determine if the change could and should be made. We find that delaying this simplification proceeding for further study of an accounting change is unwarranted. Therefore, we will continue to determine the future net salvage value in the depreciation process at this time.

10. Accordingly, *it is ordered*, Pursuant to sections 1, 4(i), 4(j), 220, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 220(b), and 403, that 43.43 of the Commission's Rules is amended, 47 CFR 43.43, to reflect the changes to our depreciation prescription process as described herein.

11. *It is further ordered*, That pursuant to Section 1.427(a) of the Commission's Rules, 47 CFR 1.427(a), the amendment to § 43.43 of the Commission's Rules, 47 CFR 43.43, shall be effective no later than January 1, 1994.

List of Subjects in 47 CFR Part 43

Communications Common Carriers, Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Part 43 of title 47 CFR is amended as follows:

PART 43—REPORTS OF COMMUNICATION COMMON CARRIERS AND CERTAIN AFFILIATES

1. The authority citation for part 43 continues to read as follows:

Authority: Sec. 4, 48 Stat. 1006, as amended; 47 U.S.C. 154, unless otherwise noted. Interpret or apply secs. 211, 219, 220, 48 Stat. 1073, 1077, as amended; 47 U.S.C. 211, 219, 220.

2. Section 43.43 is amended by revising paragraph (c) to read as follows:

§ 43.43 Reports of proposed changes in depreciation rates.

* * * * *

(c) *Except* as specified in paragraphs (c)(1) and (c)(2) of this section, when the change in the depreciation rate proposed for any class or subclass of plant (other than one occasioned solely by a shift in the relative investment in the several subclasses of the class of plant) amounts to twenty percent (20%) or more of the rate currently applied thereto, or when the proposed change will produce an increase or decrease of one percent (1%) or more of the aggregate depreciation charges for all depreciable plant (based on the amounts determined in compliance with paragraph (b)(2) of this section) the carrier shall supplement the data required by paragraph (b) of this section with copies of the underlying studies, including calculations and charts, developed by the carrier to support service-life and net-salvage estimates. If a carrier must submit data of a repetitive nature to comply with this requirement, the carrier need only submit a fully illustrative portion thereof.

(1) A Local Exchange Carrier regulated under price caps, pursuant to §§ 61.41 through 61.49 of this chapter, is not required to submit the supplemental information described in paragraph (c) introductory text of this section for a specific account if: The carrier's currently prescribed depreciation rate for the specific account is derived from basic factors that fall within the basic factor ranges established for that same account; and the carrier's proposed depreciation rate for the specific account would also be derived from basic factors that fall within the basic factor ranges for the same account.

(2) Interexchange carriers regulated under price caps, pursuant to §§ 61.41 through 61.49 of this chapter, are exempted from submitting the supplemental information as described in paragraph (c) introductory text. They shall instead submit: Generation data, a summary of basic factors underlying proposed rates by account and a short narrative supporting those basic factors, including: Company plans of forecasted retirements and additions; and recent annual retirements, salvage and cost of removal.

* * * * *

[FR Doc. 93–27080 Filed 11–3–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 93–111; RM–8204]

Radio Broadcasting Services; Reedsport, OR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Colleen E. and Rodney B. Fafara, substitutes Channel 258C3 for Channel 258A at Reedsport, Oregon, and modifies Station KRBZ's construction permit to specify operation on the higher class channel. See 58 FR 26088, April 30, 1993. Channel 258C3 can be allotted to Reedsport in compliance with the Commission's minimum distance separation requirements with a site restriction of 2.5 kilometers (1.6 miles) south, at coordinates North Latitude 43–40–40 and West Longitude 124–06–36, to accommodate petitioner's desired transmitter site. With this action, this proceeding is terminated.

EFFECTIVE DATE: December 13, 1993.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93–111, adopted October 7, 1993, and released October 27, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oregon, is amended by removing Channel 258A and adding Channel 258C3 at Reedsport.

Federal Communications Commission.

Victoria M. McCauley,

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

[FR Doc. 93–27082 Filed 11–3–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 80

[DA 93–1202]

Permit Type Acceptance of a 406.025 MHz Emergency Position Indicating Radio Beacon

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Order provides a waiver of the Rules to permit type acceptance of a 406.025 MHz EPIRB which does not comply with current technical requirements for type acceptance. This

action was in response to a request from Graseby Nova, Ltd. It will improve operational characteristics of the device, and thus improve emergency communications.

EFFECTIVE DATE: October 4, 1993.

FOR FURTHER INFORMATION CONTACT: Sean White, Federal Communications Commission, Washington, DC 20554 (202) 632–7175.

SUPPLEMENTARY INFORMATION:

Order

Adopted: October 4, 1993.

Released: October 12, 1993.

In the Matter of Request for waiver of the requirements in Section 80.1061(a) of the Rules to permit type acceptance of a 406.025 MHz emergency position-indicating radio beacon.

By the Chief, Private Radio Bureau.

1. Graseby Nova, Ltd. (Graseby), a manufacturer of emergency position-indicating radio beacons operating on 406.025 MHz (406 MHz EPIRBs), requests a waiver of § 80.1061(a) of the Rules, 47 CFR 80.1061(a), to permit type acceptance of a 406 MHz EPIRB which does not comply with current technical requirements for type acceptance. This action grants the requested waiver.

2. Section 80.1061(a) of the Rules requires that 406 MHz EPIRBs "must meet all the technical and performance standards contained in the Radio Technical Commission for Maritime Services document titled 'RTCM Recommended Standards for 406 MHz Satellite * * * EPIRBs' (RTCM Standard) * * *."[1] Graseby requests a waiver of the requirement that 406 MHz EPIRBs have OFF/ON switches and the requirement for certain language on a label. Such a waiver would allow Graseby to submit its 406 MHz EPIRB for type acceptance for use in the United States. The United States Coast Guard (Coast Guard), the organization primarily responsible for maritime safety in the United States, supports Graseby's request.

3. Presently, the RTCM Standard requires every 406 MHz EPIRB to have a switch with two modes: OFF, the transmitter is deactivated; and ON, the transmitter is activated. Graseby's Model RT–260M 406 MHz EPIRB, however, is activated by a two position switch whose settings are "ON" and "AUTO." In the ON mode, the transmitter is activated; in the AUTO mode, the transmitter will be automatically activated if the 406 MHz EPIRB is released from its mounting and exposed to sea water. According to Graseby, this design responds to several past incidents where 406 MHz EPIRBs have been automatically released from their mountings in emergencies, but have not transmitted because the switch was in the OFF position.[2]

4. Further, the design modification in the Graseby 406 MHz EPIRB appears to improve the operational characteristics of the device, and thus improves emergency communications. This modification complies with the latest draft of RTCM's update to the technical standards for 406 MHz EPIRBs,[3] anticipating the standards which likely will apply to 406 MHz EPIRBs in the future. The Coast Guard's support of the waiver adds considerable weight to Graseby's request.

5. The current technical standards for 406 MHz EPIRBs also require the casing labels to bear, *inter alia*, the caption "THIS TRANSMITTER IS AUTHORIZED FOR USE ONLY DURING SITUATIONS OF GRAVE AND IMMINENT DANGER."[4] Graseby also asks for a waiver to replace this caption with a caption reading "NOT TO BE OPERATED EXCEPT IN AN EMERGENCY. IMPROPER USE CARRIES A SEVERE PENALTY."[5] In support of this request Graseby points out that RTCM's latest review draft of technical standards provides for use of an equivalent warning.[6]

6. We find Graseby's alternative caption acceptable. It is at least as clear and authoritative as the RTCM caption, and the addition of the penalty clause may enhance the prohibitive effect of the caption. Again the request is consistent with the latest draft of the RTCM standards and supported by the Coast Guard.

7. Accordingly, IT IS ORDERED, pursuant to the authority contained in sections 0.331 and 1.3 of the Commission's Rules, 47 CFR 0.331 and 1.3, that Section 80.1061(a) of the Commission's Rules, 47 CFR 80.1061(a), IS WAIVED to the extent that Graseby Nova, Ltd. may submit for type acceptance EPIRBs with the departures from the RTCM Standard for 406 MHz EPIRBs concerning OFF/ON switches and labelling requirements described above. In all other particulars, EPIRBs submitted for type acceptance by Graseby Nova, Ltd. must conform to the standards of the Commission's Rules.

Federal Communications Commission.

Ralph A. Haller,

Chief, Private Radio Bureau.

[FR Doc. 93–27085 Filed 11–3–93; 8:45 am]

BILLING CODE 6712–01–M

[1] Radio Technical Commission for Maritime Services (RTCM), RTCM Paper 215–87/SC 110–89, RTCM Recommended Standards for 406 MHz Satellite Emergency Position-Indicating Radiobeacons (EPIRBs) ¶ 2.3.1.2. (1987) (hereafter RTCM Standard).

[2] Fax to George Dillon, FCC, from Peter Stanier, Graseby Nova, Ltd. (Graseby) at 1 (April 16, 1993).

[3] The draft of the updated RTCM standard requires "AUTO" and "ON" settings like the settings in Graseby's 406 MHz EPIRB. RTCM, *RTCM Paper 75–93/SC110–237: Recommended Standards for 406 MHz Satellite EPIRBs.* ¶ 2.3.1.2. (June 1993) (hereafter RTCM Paper 75–93).

[4] RTCM Standard ¶ 2.4.3.2.4. (1987).

[5] Fax to George Dillon, FCC, from Peter Stanier, Graseby, at 2 (April 16, 1993).

[6] *RTCM Paper 75–93* ¶ 2.4.3.2.2. (June 1993).

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1807, 1834, 1852, and 1870

Interim Changes to NASA FAR Supplement Streamlining the Major System Acquisition Process by Eliminating the Requirement for a Formal Solicitation Between Each Phase of the Procurement

AGENCY: Office of Procurement, Procurement Policy Division, National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments.

SUMMARY: NASA has revised the NASA FAR Supplement to provide for selection/down-selection between phases of a Major System Acquisition utilizing a streamline approach that eliminates the current NASA requirement to provide a new, formal solicitation for each phase of the acquisition.

DATES: This interim rule is effective November 4, 1993. Comments are due no later than December 20, 1993.

ADDRESSES: Comments should be addressed to Tom O'Toole, NASA Headquarters, Office of Procurement, Procurement Policy Division (Code HP), Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Tom O'Toole, Telephone: (202) 358–0478.

SUPPLEMENTARY INFORMATION:

Background

To streamline the Major System Acquisition process, and in particular to avoid major time lapses between phases, NASA has revised NASA FAR Supplement parts 1807, 1834, 1852, and 1870 to eliminate the requirement for a new, formal solicitation between each phase of a major system procurement. Under these procedures, each phase of the acquisition is synopsized in the Commerce Business Daily (CBD). The original synopsis must state the Government's intent to conduct a

competition for the major system, with down-selection from among the successful contractors of the preceding phase. Proposals from other prospective offerors will be considered, and these offerors will be given all of the solicitation information necessary to compete for the next phase (e.g., the initial phase solicitation, the preceding phase contracts, the preceding phase system performance and design requirements, and all proposal preparation instructions and evaluation criteria). However, these other prospective offerors would be required to demonstrate their design and/or concept to the same level of maturity as the preceding phase contractors. An interim rule was published in the **Federal Register** on July 13, 1992 (57 FR 30909–30911). This interim rule was published to correct an unnecessarily conservative interpretation of the Competition in Contracting Act (CICA) reflected in the NASA FAR Supplement that required the issuance of a new, formal solicitation for each phase of a major system acquisition. The July 13, 1992 interim rule revised the NASA policy to permit issuance of a single solicitation for all phases of a major system acquisition. However, the interim rule also stipulated that, as a condition for issuing a single solicitation for all phases, the initial phase contracts must include a requirement for delivery of subsequent phase proposals. Public comments received on the interim rule addressed the competition and data rights issues associated with this requirement. NASA reviewed these comments and agreement that this requirement was not only procedurally complicated but was also in conflict with the full and open competition requirement in CICA. Accordingly, the interim rule has been revised and is issued with immediate implementation to ensure agency compliance with CICA. The revised interim rule prohibits any direct charge of preparation costs for a subsequent phase proposal and also prohibits establishment of a contract requirement for subsequent phase proposals. In addition, the revised interim rule incorporates solicitation and contract classes in part 1852, and a new NASA FAR Supplement subpart, 1870.5, NASA Major System Acquisition Phased Procurement Guidance. It also makes editorial changes to further clarify the policy and ensure its consistency with interim operating instructions.

Availability of NASA FAR Supplement

The NASA FAR Supplement, of which this proposed coverage will become a part, is codified in 48 CFR, chapter 18, and is available in its entirety on a subscription basis from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. Cite GPO Subscription Stock Number 933–003–00000–1. It is not distributed to the public, either in whole or in part, directly by NASA.

Impact

NASA certifies that this regulation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. et seq.). This rule does not impose any reporting or recordkeeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 48 CFR Parts 1807, 1834, 1852, 1870

Government procurement.

Tom Luedtke,

Acting Deputy, Associate Administrator for Procurement.

1. The authority citation for 48 CFR parts 1807, 1834, 1852, and 1870 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1807 ACQUISITION PLANNING

1807.170–1 [Amended]

2. Section 1807.170–1 is amended by revising paragraph (a) to read as follows:

1807.170–1 Procurement plans requiring approval by NASA headquarters.

(a) Procurement plans shall describe the procurement, including options and later phases of the same program or project (for example, Phase C/D of a multiple phase major system acquisition). A single procurement plan may be used for all phases of a phased procurement provided the plan includes a full description of each phase in accordance with 1807.170–1 (b), (c), and (d), and no significant changes occur after plan approval to invalidate the description of the phases. If such significant changes do occur, the procurement plan shall be amended and approved at the same level as the original plan. Approval of the procurement plan and/or any amendments does not constitute authorization to proceed with the phases of a major system acquisition (see part 1834). Separate authorization must be obtained for each phase in accordance with the procedures of NMI 7120.4, "Management of Major System Programs and Projects".

* * * * *

PART 1834—MAJOR SYSTEM ACQUISITION

3. Part 1834 is revised to read as follows:

1834.000 Scope.

NASA's implementation of OMB Circular No. A–109, Major Systems Acquisitions, and FAR part 34 is contained in this part, subpart 1870.5, and in NASA Management Instruction (NMI) 7120.4, "Management of Major System Programs and Projects". This part addresses the procedures for the competitive acquisition of major systems. Subpart 1870.5 incorporates the NASA Major System Acquisition Phased Procurement Guidance.

1834.001 Definitions.

(a) *Down-selection.* In a phased procurement, the process of selecting contractors for phases subsequent to the initial phase from among the preceding phase contractors.

(b) *Major system.* Any system that: is directed at and critical to fulfilling an agency mission; entails the allocation of relatively large amount of resources; or warrants special management attention. Designation of a system as "major" is made in accordance with NASA Management Instruction (NMI) 7120.4, "Management of Major System Programs and Projects".

(c) *Phased procurement.* A program comprised of several distinct steps or phases (e.g., preliminary analysis, definition, design, and development) where the realization of program objectives requires a planned, sequential acquisition of each step or phase. The phases in a phased procurement may be acquired separately, in combination, or through a down-selection strategy.

(d) *Progressive competition.* A type of down-selection strategy for a phased procurement. In this method, a single solicitation is issued for all phases of the program. The initial phase contracts are awarded, and the contractors for subsequent phases are expected to be chosen through a down-selection from among the preceding phase contractors. In each phase, progressively fewer contracts are awarded until a single contractor is chosen for the final phase. Normally, all down-selections are accomplished without issuance of a new, formal solicitation.

1834.005–1 Competition.

(a) In procurements subject to the provisions of OMB Circular No. A–109 and NMI 7120.4, or other similar phased procurements, it is NASA policy to ensure competition in the selection of contractors for award in each phase of the process not performed in-house.

(b) There are five phases in the life cycle of a NASA major system acquisition:

(1) Phase A, Preliminary Analysis, involves the analysis of alternate overall project concepts for accomplishing a proposed agency technical objective or mission.

(2) Phase B, Definition, involves the detailed study, comparative analysis, and preliminary system design of selected Phase A concepts.

(3) Phase C, design, involves the detailed system design (with mock-ups and test articles of critical systems and subsystems) of the systems design concept determined to provide the best overall system for the Government.

(4) Phase D, Development, involves final detailed design, fabrication, certification, and delivery of an operational system that meets program requirements.

(5) Phase E, Operations, involves operation and use of the system in its intended environment, continuing until the system leaves the agency inventory. This phase includes any system modifications and upgrades.

(c) The preferred approach in NASA for the acquisition of the phases of a Major System is the following:

(1) Phase A is accomplished primarily through in-house studies.

(2) Phases B, C, and D are acquired through a phased procurement process in which two or more Phase B contracts are awarded competitively and then a down-selection is made among these contractors to determine the single combined Phase C/D awardee.

(3) Phase E is normally acquired separately.

(d) Each phase of a major system acquisition not performed in-house must be synopsized in accordance with FAR 5.201 and must include all the information required by FAR 5.207. When the phased procurement process identified in 1834.005(c)(2) is used, the synopsis for the initial competitive phase, normally Phase B, should also state the following:

(1) The Government plans to conduct a phased procurement involving a competitive down-selection process. (Include a description of the process and the phases involved).

(2) Subsequent competitions for identified follow-on phases will build on the results of previous phases.

(3) The award criteria for subsequent phases will include demonstrated completion of specified previous phase requirements.

(4) The Government expects that only the initial phase contractors will be capable of successfully competing for the subsequent phase(s). Proposals for the subsequent phase(s) will be automatically requested from these contractors.

(5) The Government intends to issue (or not issue) a new, formal solicitation(s) for subsequent phase(s). (If new solicitations are not planned, the acquisition must be identified as a "progressive competition" (see 1834.001(d), and the mechanism for providing pertinent subsequent phase proposal information (e.g., statements of work, specifications, proposal preparation instructions, and evaluation factors for award) must be described).

(6) Each subsequent phase of the acquisition will be synopsized in the CBD.

(7) Notwithstanding the expectation that only the initial phase contractors will be capable of successfully competing for the subsequent phase(s), proposals from all responsible sources submitted by the specified due date will be considered by the agency. In order to contend for subsequent phase awards, however, such prospective offerors must demonstrate a design maturity equivalent to that of the prior phase contractors. Failure to fully and completely demonstrate the appropriate level of design maturity may render the proposal unacceptable with no further consideration for contract award.

(e) In addition to the information in 1834.005–1(d), the synopsis for the subsequent phases, normally a combined C/D, must identify the current phase contractors.

(f) To streamline the major system acquisition process, the preferred approach for NASA phased procurements is the "progressive competition" down-selection technique in which new, formal solicitations are not issued for phases subsequent to the initial phase. Subsequent phase proposals are requested by less formal means, normally by a letter accompanied by the appropriate proposal preparation and evaluation information.

(g) When using the progressive competition technique, if a prospective offeror other than one of the preceding phase contractors responds to the synopsis for a subsequent phase and indicates an intention to submit a proposal, the contracting officer shall provide to that offeror all the material furnished to the preceding phase contractors necessary to submit a proposal. This information includes the preceding phase solicitation, contracts, and system performance and design requirements, as well as all proposal preparation instructions and evaluation factors. In addition, the prospective offerors must be advised of all requirements necessary for demonstration of a design maturity equivalent to that to the preceding phase contractors.

(h) Although a key feature of the progressive competition technique is that a formal solicitation is issued for the initial phase only, a new, formal solicitation may nonetheless be required for subsequent phases. When the Government requirements or evaluation procedures change so significantly after release of the initial phase solicitation that a substantial portion of the information provided in the initial phase synopsis, solicitation, or contracts is invalidated, a new solicitation shall be issued for the next phase.

(i) Whether or not down-selection procedures are used, contracts awarded in phased procurements shall not include requirements for submission of subsequent phase proposals. Instead, proposals shall be requested through a solicitation or other appropriate mechanism (e.g., by letter when using the progressive competition technique). Priced options for preparation of subsequent phase proposals are prohibited.

(j) With one exception, both the initial and subsequent phase(s) of a major system acquisition down-selection process are considered to be full and open competition if the procedures in paragraphs (d) through (i) of this subpart are followed. If only one contractor successfully completed a given phase and no other offers are solicited for the subsequent phase, award of the subsequent phase may be made only if justified by one of the exceptions in FAR 6.302 or one of the exclusions in FAR 6.2, and only after compliance with the synopsis requirements of FAR 5.202 and 5.205, when appropriate.

(k) If offers for a subsequent phase are solicited from multiple sources (including but not necessarily limited to prior phase contractors), but only one proposal is received, the award for the subsequent phase shall be reported as a "noncompetitive procurement using competitive procedures" (see 1804.671–4(r)).

(l) Time gaps between phases should be minimized in all major system phased procurements. Accordingly, early synopsis of subsequent phase competition is encouraged. Also, when sufficient programmatic and technical information is available to all potential offerors, proposal evaluation and source selection activities need not be delayed until completion of a given phase. When appropriate, these activities should commence as early as practicable during the period of performance of a phase to

ensure the expeditious award of the succeeding phase.

1834.005–170 Contract clauses.

(a) The contracting officer shall insert the clause at 1852.234–70, Phased Procurement Using Down-Selection Procedures, in solicitations and contracts for phased procurements using down-selection procedures other than the progressive competition technique described in 1834.005–1 (f) through (h). The clause shall be included in the solicitation for each phase and in all contracts except that for the final phase.

(b) The contracting officer shall insert the clause at 1852.234–71, Phased Procurement Using Progressive Competition Down-Selection Procedures, in solicitations and contracts for phased procurements using the progressive competition technique described in 1834.005–1 (f) through (h). The clause shall be included in the initial phase solicitation and all contracts except that for the final phase.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1852.234–70, 1852.234–71 [Added]

4. Part 1852 is amended by adding sections 1852.234–70 and 1852.234–71 to read as follows:

1852.234–70 Phased procurement using down-selection procedures.

As prescribed in 1834.005–170(a), insert the following clause in solicitations and contracts for phased procurements using down-selection procedures other than the progressive competition technique. Phase identifications should be modified as appropriate:

Phased Procurement Using Down-Selection Procedures (DATE)

(a) This solicitation is for the acquisition of _____[Insert Program titles]. This system is a major system as defined by Office of Management and Budget Circular A–109 and NASA Management Instruction (NMI) 7120.4. The acquisition will be conducted as two-phased procurement using a competitive down-selection technique between phases. In this technique, two or more contractors will be selected for Phase B. It is expected that the contractor for Phase C/D will be chosen from among these contractors after a competitive down-selection.

(b) Phase B is for the _____[Insert purpose of phase]. NASA anticipates awarding two or more contracts for this phase. A subsequent single award will be made for Phase C/D in which the contractor will _____[insert general phase C/D goals].

(c) The competition for Phase C/D will be based in the results of Phase B, and the award criteria for C/D will include successful completion of Phase B requirements.

(d) NASA will issue a separate, formal solicitation for Phase C/D, and all information required for preparation of Phase C/D proposals, including the final evaluation factors, will be provided at that time.

(e) Phase C/D will be synopsized in the Commerce Business Daily (CBD) in accordance with FAR 5.201 and 5.203 unless one of the exceptions in FAR 5.202 applies. Notwithstanding NASA's expectation that only the Phase B contractors will be capable of successfully competing for Phase C/D, all proposals will be considered. Any other responsible source may indicate its desire to submit a proposal by responding to the Phase C/D synopsis, and NASA will provide that source a solicitation.

(f) To be considered for Phase C/D award, however, offerors must demonstrate a design maturity equivalent to that of the Phase B contractors, such demonstration to include the following Phase B deliverables upon which Phase C/D award will be based: _____(Insert the specific Phase B deliverables). Failure to fully and completely demonstrate the appropriate level of design maturity may render the proposal unacceptable with no further consideration for contract award.

(g) The following draft Phase C/D evaluation factors are provided for your information. Please note that these evaluation factors are not final, and NASA reserves the right to change them at any time up to and including the date upon which Phase C/D proposals are solicited.

[Insert draft Phase C/D evaluation factors (and subfactors and elements, if available), including demonstration of successful completion of Phase B requirements.]

(h) Although NASA intends to select the Phase C/D contractor from among the Phase B contractors and will automatically request Phase C/D proposals from only these contractors, submission of the Phase C/D proposal is not a requirement of the Phase B contract. Accordingly, the costs of preparing these proposals shall not be a direct charge to the Phase B contract or any other Government contract.

(i) The anticipated schedule for conducting this phased procurement is provided for your information. These dates are projections only and are not intended to commit NASA to complete a particular action at a given time. [Insert dates below].

Phase B award—
Phase C/D synopsis—
Phase C/D proposal requested—
Phase C/D proposal receipt—
Phase C/D award—

(End of clause)

1852.234–71 Phased procurement using progressive competition down-selection procedures.

As prescribed in 1834.005–170(b), insert the following clause in solicitations and contracts for phased procurements using progressive competition down-selection procedures. Phase identifications should be modified as appropriate.

Phased Procurement Using Progressive Competitive Down-Selection Procedures (DATE)

(a) This solicitation is for the acquisition of _____ [Insert Program title]. This system is a major system as defined by Office of Management and Budget Circular A–109 and NASA Management Instruction (NMI) 7120.4. The acquisition will be conducted as a two-phased procurement using a progressive competition down-selection technique between phases. In this technique, two or more contractors will be selected for Phase B. It is expected that the contractor for Phase C/D will be chosen from among these contractors after a competitive down-selection.

(b) Phase B is for the _____ [Insert purpose of phase]. NASA anticipates awarding two or more contracts for this phase. A subsequent single award will be made for Phase C/D in which the contractor will _____ [insert general phase C/D goals].

(c) The competition for Phase C/D will be based on the results of Phase B, and the award criteria for C/D will include successful completion of Phase B requirements.

(d) NASA does not intend to issue a separate, formal solicitation for Phase C/D. Instead, Phase C/D proposals will be requested from the Phase B contractors by means of _____ [Indicate method of requesting proposals, e.g., by a letter]. All information required for preparation of Phase C/D proposals, including the final evaluation criteria and factors, will be provided at that time.

(e) Phase C/D will be synopsized in the Commerce Business Daily (CBD) in accordance with FAR 5.201 and 5.203 unless one of the exceptions in FAR 5.202 applies. Notwithstanding NASA's expectation that only the Phase B contractors will be capable of successfully competing for Phase C/D, all proposals will be considered. Any other responsible source may indicate its desire to submit a proposal by responding to the Phase C/D synopsis, and NASA will provide that source all the material furnished to the Phase B contractors that is necessary to submit a proposal.

(f) To be considered for Phase C/D award, however, offerors must demonstrate a design maturity equivalent to that of the Phase B contractors, such demonstration to include the following Phase B deliverables upon which Phase C/D award will be based: _____(Insert the specific Phase B deliverables). Failure to fully and completely demonstrate the appropriate level of design maturity may render the proposal unacceptable with no further consideration for contract award.

(g) The following draft Phase C/D evaluation factors are provided for your information. Please note that these evaluation factors are not final, and NASA reserves the right to change them at any time up to and including the date upon which Phase C/D proposals are requested. Any such changes in evaluation factors will not necessitate issuance of a new, formal solicitation for Phase C/D.

[Insert draft Phase C/D evaluation factors (and subfactors and elements, if available),

including demonstration of successful completion of Phase B requirements.]

(h) Although NASA intends to select the Phase C/D contractor from among the Phase B contractors and will automatically request Phase C/D proposals from only these contractors, submission of the Phase C/D proposal is not a requirement of the Phase B contract. Accordingly, the costs of preparing these proposals shall not be a direct charge to the Phase B contract or any other Government contract.

(i) The anticipated schedule for conducting this phased procurement is provided for your information. These dates are projections only and are not intended to commit NASA to complete a particular action at a given time. [Insert dates below].

Phase B award—
Phase C/D synopsis—
Phase C/D proposal requested—
Phase C/D proposal receipt—
Phase C/D award—

(End of clause)

PART 1870—NASA SUPPLEMENTARY REGULATIONS

1870.5 [Added]

5. and 6. Part 1870 is amended by adding subpart 1870.5, consisting of sections 1870.501, 1870.502, 1870.503, and Appendix I to 1870.503, to read as follows:

Subpart 1870.5—NASA Major System Acquisition Phased Procurement Guidance

1870.501 Purpose.
1870.502 Regulations.
1870.503 Major system acquisition procedures.
Appendix I to 1870.503 NASA procedures for conducting major system acquisitions.

Subpart 1870.5—NASA Major System Acquisition Phased Procurement Guidance

1870.501 Purpose.

Major system acquisitions are among NASA's largest and most visible efforts, often requiring the investment of significant Government and contractor resources. These procurements may cover several distinct program phases over a number of years. In most cases, major system acquisitions are accomplished through a phased procurement process involving competitive down-selection techniques. In this process, multiple contracts are awarded during the initial phase and a down-selection is made from among those contractors to determine succeeding phase contractors. Eventually, a single contractor will be chosen for the final phase. Because of the importance and complexity of major systems, it is imperative that the procedures for their acquisition be efficient and effective.

1870.502 Regulations.

The basic regulations governing major system acquisitions are OMB Circular No. A–109, NASA Management Instruction (NMI) 7120.4 ("Management of Major System Program and Projects"), and NASA FAR Supplement (NFS) 1834. In addition to these documents, detailed guidance on the planning and conduct of major system acquisitions appears at 1870.503. This last guidance is designed for use by procurement personnel and other individuals who participate in the major system acquisition process. It will also help the public understand NASA's major system acquisition policies and procedures.

1870.503 Major system acquisition procedures.

(a) Major system acquisition procedures are prescribed in Appendix I to this section 1870.503.

(b) NASA may reprint appendix I as a separate document, provided the following conditions are met:

(1) The issuance date ("cover date") of the procedures shall be the date of the NFS version from which the text is extracted.

(2) With the exception of availability, distribution, and other special prefatory notices, any subsequent modification in the text shall be preceded by a change to NFS 1870.503, appendix I.

(3) The following notice shall be included in the prefatory material of the document:

Important Notice

These procedures are a separately bound, verbatim version of NASA FAR Supplement (NFS) (48 CFR 1870.503) Section 1870.503, Appendix I. Reference to other parts of the Federal Acquisition Regulation (FAR) and the NFS will be required for complete coverage of all procurement aspects. NASA reserves the right to make changes to NFS 1870.503, Appendix I without issuing a new edition of these procedures. In the event of apparent conflict between these procedures and the NFS, the NFS shall govern.

Appendix I to 1870.503—NASA Procedures for Conducting Major System Acquisitions

1. Introduction

(a) The acquisition of major systems presents a complex challenge for NASA. These acquisitions are among the agency's largest and often require the investment of significant Government and contractor resources over a number of years. These acquisitions are often accomplished in several distinct phases, from preliminary analysis through definition, design, development, and operation. The broad scope of programmatic activity in a major system acquisition demands an effective and efficient acquisition strategy.

(b) There are several approaches to accomplishing these multi-phase major system acquisitions ranging from separate acquisition of each phase to competitive down-selection of combined phases. The preferred technique in NASA is use of a competitive down-selection strategy, and the preferred variation of this strategy is the "progressive competition" approach. In a progressive competition down-selection, a single formal solicitation is issued for all phases, multiple contracts are awarded for the initial phase, and a down-selection from among these contractors is conducted to determine the succeeding phase contractors. Progressive competition procedures, when properly planned and executed, facilitate the realization of the desirable goals of effective and efficient acquisition of major systems, preservation of full an open competition throughout the process, and acquisition streamlining.

(c) This appendix describes the procedures to follow when using the progressive competition technique. Although this appendix addresses progressive competition, many of these procedures are applicable to other phased procurement strategies, and unless specifically prohibited herein, should be considered for use and adapted to accommodate the particulars of these other strategies. For example, the general guidance on the synopsis requirements and acquisition planning applies to all phased procurements, and most of the down-selection procedures apply to all down-selection strategies, not just progressive competitions. Some changes in these procedures may need to be made to recognize inherent differences in strategies, such as the use of new, formal solicitation for each phase of alternative down-selection strategies.

2. Definitions

(a) *Down-selection.* In a phased procurement, the process of selecting contractors for phases subsequent to the initial phase from among the preceding phase contractors.

(b) *Major system.* Any system that: is directed at and critical to fulfilling an agency mission; entails the allocation of relatively large resources; or warrants special management attention. Designation of a system as "major" must be approved in accordance with NASA Management Instruction (NMI) 7120.4, "Management of Major System Programs and Projects".

(c) *Phased procurement.* A program comprised of several distinct steps or phases (e.g., preliminary analysis, definition, design, and development) where the realization of program objectives requires a planned, sequential acquisition of each step or phase. The phases in a phased procurement may be acquired separately, in combination, or through a down-selection strategy.

(d) *Progressive competition.* A type of down-selection strategy for a phased procurement. In this method, a single solicitation is issued for all phases of the program. The initial phase contracts are awarded, and the contractors for subsequent phases are chosen through a down-selection

from among the preceding phase contractors. In each phase, progressively fewer contracts are awarded until a single contractor is chosen for the final phase. Normally, all down-selections are accomplished without issuance of a new, formal solicitation.

3. Phases of a Major System Acquisition

(a) As described in NMI 7120.4, there are five phases in the life cycle of a major system acquisition, three of which are normally included in a phased procurement: Phase B, Definition; Phase C, Design; and Phase D, Development. The most common approach in NASA for acquiring these phases involves two steps: (1) two (or more) competitively awarded Phase B contracts; and (2) down-selection from among the Phase B contractors to a single Phase C/D contractor. To be relevant to the predominant agency practice, the procedures in this appendix address this model. However, the focus on this model does not preclude adaptation of these procedures to suit other phase combinations.

(b) For a detailed description of the phases of a major system acquisition and their interrelationships, consult NMI 7120.4.

4. Planning a Progressive Competition

(a) Choice of the appropriate procurement strategy for a major system acquisition is accomplished through careful analysis of many factors. The decision to proceed with each phase separately or to use the progressive competition technique must consider, among other things, the number of viable alternative system concept approaches, the risks associated with those approaches, funding, schedule, requirements maturity, and the extent to which an offeror's ability to perform successfully in subsequent phases is tied to successful performance in prior phases.

(b) To be a candidate for a progressive competition, all considerations must play together. Of paramount importance is the need for a clear understanding and expression of program requirements and goals. Also, the planning considerations must carefully address and justify the number and content of the phases, the acquisition schedule and funding for each phase, the number of contractors for each phase, the timing of the down-selection decision, and the planned contract types for each phase.

(c) Certain factors may clearly dictate that the progressive competition technique should not be used. For example, if it is likely that NASA may introduce a design concept independent of those explored by the Phase B contractors, it is also likely that a new, formal solicitation is necessary for Phase C/D and all potential offerors should be solicited. In this circumstance, progressive competition is inappropriate. Also, if there is no direct link between successful performance in the preceding phase and successful performance in the subsequent phase, progressive competition is also inappropriate. In both of these cases, the major system acquisition phases should be procured separately without a down-selection between phases.

(d) It cannot be overemphasized that the success of a progressive competition is directly dependent on thorough planning before initiation. Progressive competition should not be used as a rationale for initiating an acquisition that is poorly planned, not well thought out, or merely a way to meet budget or schedule pressures. The need for clear technical requirements and program goals is in no way diminished by use of progressive competition. Where requirements and goals are not clear, the progressive competition approach shall not be used.

(e) The rationale for use of progressive competition technique shall be thoroughly justified in the procurement plan or Acquisition Strategy Meeting (ASM) minutes. Because the Phase B solicitation will also lead to Phase C/D award, the decision to use the progressive competition strategy must be made prior to initiation of the Phase B procurement. Accordingly, both phases must be addressed in the initial acquisition strategy planning and documented in the procurement plan or ASM minutes.

5. Progressive Competition Synopsis Requirements

(a) Because of the importance of major system acquisitions, early identification of these programs to industry is encouraged. The research and development (R&D) advance notice described in FAR 5.205 is an effective tool to announce the program and identify the maximum number of qualified potential offerors. Although not required by regulation, use of R&D advance notices on major system acquisitions is strongly recommended.

(b) To ensure that a progressive competition provides for the maximum effective competition and complies with statutory and regulatory requirements for full and open competition, each phase must be synopsized unless one of the exceptions in FAR 5.202 applies. Based on the NASA model of acquiring Phases B and C/D, this means that a separate synopsis must be issued prior to releasing the solicitation for Phase B and again prior to requesting Phase C/D proposals from the Phase B contractors. Each synopsis must contain the information required by FAR 5.207 and NFS 1834.005–1(d).

(c) Although a new, formal solicitation is normally not issued for Phase C/D under a progressive competition, the synopsis publication periods specified in FAR 5.203 still apply to the Phase C/D synopsis. In this case, the synopsis must be published at least 15 days before formally requesting the Phase C/D proposals from the Phase B contractors and at least 45 days prior to the Phase C/D proposal due date.

(d) Notwithstanding the requirement to synopsize Phase C/D, in most cases there will not be any potential offerors for Phase C/D other than the Phase B contractors. However, proposals from other prospective offerors must be considered, and these offerors must be given all of the information necessary to compete for the next phase (e.g.: The previously issued solicitation; the preceding phase contracts; the preceding phase system performance and design requirements; all proposal preparation instructions; and evaluation factors, subfactors, and elements). To avoid schedule disruptions, early publication of the Phase C/D synopsis is strongly encouraged. Potential offerors other than the Phase B contractors cannot be summarily dismissed solely because the program schedule did not anticipate their involvement.

(e) The following is a sample synopsis for Phase B of a progressive competition.

A-Presolicitation Notice: _____ (PROGRAM NAME). NASA plans to conduct a progressive competition to define, design, develop, and produce the _____ (PROGRAM NAME). This effort will be a full and open competition and will be acquired in two distinct phases—Phase B, Definition, requiring preliminary system design of _____(PROGRAM NAME) and Phase C/D, Design and Development, requiring the detailed design, fabrication and delivery of _____(PROGRAM NAME). Two or more Phase B awards are anticipated leading to a single Phase C/D award. A progressive competition strategy will be used with down-selection of sources between Phases B and C/D. To be eligible for Phase B award, offerors must demonstrate the experience and capability, or ability to acquire the capability, to perform both Phases B and C/D. The competition for Phase C/D will build on the results of Phase B, and the award criteria for Phase C/D will include successful completion of specified Phase B requirements. Accordingly, NASA anticipates that only the Phase B contractors will be capable of successfully competing for Phase C/D. NASA will synopsize the Phase C/D competition in accordance with FAR 5.201 and 5.203, but does not plan to issue a new, formal solicitation. Instead, proposals will be requested from the Phase B contractors by _____(INDICATE METHOD OF REQUESTING PROPOSALS, E.G., A LETTER) that will include detailed proposal preparation instructions and evaluation criteria. Although a new, formal solicitation will not be issued, any responsible source may submit a proposal for Phase C/D, and these proposals will be considered by the agency. Prospective offerors for Phase C/D other than the Phase B contractors will be provided all the material furnished to the preceding phase contractors necessary to submit a proposal. To be considered for Phase C/D award, offerors must demonstrate a design maturity equivalent to that of the Phase B contractors, such demonstration to include any Phase B deliverables upon which Phase C/D award may be based. Failure to fully and completely demonstrate the appropriate level of design maturity may render the proposal unacceptable with no further consideration for contract award. NASA anticipates releasing the solicitation for Phase B on or about _____(DATE OF RFP RELEASE). Detailed Phase B requirements are _____ (GIVE A SPECIFIC DESCRIPTION OF PHASE B REQUIREMENTS). It is anticipated that Phase C/D will consist of _____(GIVE ANTICIPATED PHASE C/D REQUIREMENTS). For further information, contact _____(NASA POINT OF CONTACT).

(f) The following is a sample synopsis for Phase C/D of a progressive competition.

A-Presolicitation Notice: _____ (PROGRAM NAME). NASA is conducting a

progressive competition to define, design, develop, and produce the _____ (PROGRAM NAME). This effort is a full and open competition and is being acquired in two distinct phases—Phase B, Definition, requiring preliminary system design of _____(PROGRAM NAME) and Phase C/D, Design and Development, requiring the detailed design, fabrication and delivery of _____(PROGRAM NAME). The Phase B solicitation was described in the _____ (CITE DATE) Commerce Business Daily. Phase B contracts were awarded to _____ (CITE CONTRACTORS) on _____(CITE AWARD DATE). A progressive competition strategy will be used with down-selection of sources from Phase B to determine the single Phase C/D contractor. The competition for Phase C/D will build on the results of Phase B, and the award criteria for Phase C/D includes successful completion of the Phase B requirements identified below. Accordingly, NASA anticipates that only the Phase B contractors will be capable of successfully competing for Phase C/D. A new, formal solicitation will not be issued for Phase C/D. Instead, proposals will be requested from the Phase B contractors by _____(INDICATE METHOD OF REQUESTING PROPOSALS, E.G., A LETTER) that will include detailed proposal preparation instructions and evaluation criteria. However, any responsible source may submit a proposal for Phase C/D, and these proposals will be considered by the agency. Prospective offerors for Phase C/D other than the Phase B contractors will be provided all the material furnished to the preceding phase contractors necessary to submit a proposal. To be considered for Phase C/D award, offerors must demonstrate a design maturity equivalent to that of the Phase B contractors, such demonstration to include the following Phase B deliverables upon which Phase C/D award will be based: _____(CITE SPECIFIC PHASE B DELIVERABLES). Failure to fully and completely demonstrate the appropriate level of design maturity may render the proposal unacceptable with no further consideration for contract award. NASA anticipates requesting Phase C/D on or about _____ (DATE) and proposals will be due _____ (CITE NUMBER) days thereafter. Detailed Phase C/D requirements are _____(GIVE A SPECIFIC DESCRIPTION OF PHASE C/D REQUIREMENTS). For further information, contact _____(CITE NASA POINT OF CONTACT).

6. Progressive Competition Solicitation

(a) One of the major benefits of the progressive competition technique is that, in most circumstances, only one solicitation is used. This single solicitation not only covers the initial phase, but also all subsequent phases. That is, the solicitation for Phase B also satisfies the requirement for soliciting Phase C/D. Eliminating the need for a new, formal solicitation after the initial phase streamlines the process and should result in schedule economies. However, these savings will not be realized without proper planning. The potential for gaps between phases will still exist unless the Phase C/D down-selection is initiated during Phase B performance, allowing enough time to complete evaluation, make selection, and negotiate and award the Phase C/D contract not later than the conclusion of Phase B.

(b) Only phased procurements using the progressive competition technique can acquire all phases of the procurement through a single formal solicitation. All other phased procurements must issue new, formal solicitations for each phase. However, merely calling a major system acquisition a progressive competition does not in itself mean that the formal initial phase solicitation is sufficient to cover all subsequent phases. Under a progressive competition, a clause substantially the same as that in 1852.234–71 must be included in the Phase B solicitation and contracts. (The clause at 1852.234–70 should be used for other types of down-selection strategies). This clause may be modified to suit the particulars of a given procurement, but it must include the information in 1834.005–170 (a) and (b) as a minimum. Failure to include any of this information may call into question the integrity of progressive competition procedures and require a new, formal solicitation for Phase C/D.

(c) Because of the significant dollar value of major system acquisitions, formal Source Evaluation Board (SEB) procedures must be used for all phases of the procurement, unless one of the exceptions in 1815.613–71(a) applies. Accordingly, a separate set of evaluation factors must be developed for each phase in a progressive competition. For the most part, these factors are developed the same way for a progressive competition as for any other NASA competitive procurement. However, there is one element inherent in the very nature of the progressive competition technique, or any other competitive down-selection strategy, that must be reflected in the evaluation factors for such procurements. Since these competitive down-selection strategies anticipate that one of the Phase B contractors will also be the Phase C/D contractor, the Phase B offerors must clearly demonstrate the ability to perform the subsequent phases. Accordingly, the evaluation factors for the Phase B award must specifically include the evaluation of the Phase B offerors' abilities to perform not only Phase B but also Phase C/D.

(d) Although a new, formal solicitation is normally not issued subsequent to the initial phase when using the progressive competition technique, this practice is not absolute in all cases. If the Government requirements or evaluation procedures change so significantly after award of the initial phase contracts such that a substantial portion of the information provided in the initial phase synopsis, solicitation, or contracts is invalidated, a new, formal solicitation for subsequent phases is required. To ensure that schedules are not compromised or the benefits of phased procurements diminished, contracting officers, beginning at phase B award, should carefully monitor the degree to which the acquisition particulars may be changing. If it appears that the procurement circumstances have changed significantly, the contracting officer should take immediate action to begin generation of a formal solicitation for the next phase of the procurement.

7. Progressive Competition Initial Contracts

(a) In general, the Phase B contracts awarded in a progressive competition will look much like any other NASA contract for similar design efforts. There are certain features, however, that must be included (or must not be included) in these contracts to accommodate and authorize the continued use of this technique in the subsequent down-selection. One feature that must be included in the Phase B contracts is the clause that explains the progressive competition techniques and the plans for the down-selection. As stated in paragraph 6(b) of this appendix, a clause substantially the same as that in 1852.234–71 must be included in the Phase B contracts when using the progressive competition technique and 1852.234–70 when using other down-selection strategies.

(b) An important feature of these clauses is the paragraph indicating that the Phase C/D proposals are not a contract requirement and the costs of preparing these proposals shall not be a direct charge to the Phase B contract or any other Government contract. To be consistent with this paragraph, the Phase B contracts shall not include any requirement for delivery of Phase C/D proposals nor shall they include a remuneration mechanism for the proposals. Options for such proposal activities, priced or unpriced, are prohibited.

(c) The rationale for these prohibitions is twofold. First, making the Phase C/D proposals a contract requirement can cause significant and contentious data rights problems over which party owns the data in the proposal. Unless this issue is clearly resolved, contractors may be reluctant to provide unique or innovative information, fearing that it may be appropriated and given to a competitor. The technical objectives of the procurement would then be compromised. Second, by requiring Phase C/D proposals and paying for them, an outside offeror may successfully protest that the Phase B contractors were given an unfair competitive advantage for Phase C/D. The procurement may then no longer be considered full and open competition.

(d) In addition to including the specific contract clause discussed above, the Phase B contracts should be carefully structured to allow down-selection at a discrete performance milestone such as a significant design review or at contract completion. Such advance planning will not only avoid gaps between phases but will also eliminate unnecessary duplication of effort or the need to terminate the remaining Phase B efforts of an unsuccessful Phase C/D offeror. It is critical to remember, however, that determination of the appropriate contract structure is not made based solely on schedule or contract considerations. Rather, it is also driven by, and reflective of, programmatic technical content and objectives.

(e) For example, if the acquisition strategy calls for formal completion of Phase B effort at Preliminary Design Review (PDR), but it is not financially practical or technically necessary (for Phase C/D selection and performance purposes) to carry all Phase B contractors through PDR, the Phase B contracts should be structured with a basic

period of performance through a significant, discrete milestone before PDR with a priced option for the effort from that milestone through PDR. The down-selection would be planned for the earlier milestone, the PDR option exercised for only the winner of the down-selection, and formal Phase C/D performance initiated at completion of the PDR option. In this scenario, the earlier milestone must be carefully chosen to ensure successful accomplishment of both program technical objectives and all activities leading to completion of the down-selection process. That is, design maturity at that point must be sufficient to accommodate an informed down-selection decision leading to successful accomplishment of Phase C/D.

(f) In other program strategies, it may be both affordable and technically desirable to have all the Phase B contractors complete PDR. In these cases, the contract should be structured as a basic effort through PDR, down-selection made at that point, and Phase C/D performance beginning thereafter.

(g) Regardless of the contract structure that is appropriate given the program objectives, the schedule leading to down-selection must also be carefully crafted and followed. This schedule must allow ample time for synopsizing the Phase C/D down-selection, responding to any other offeror's intention to submit a proposal, generation of whatever information is necessary for Phase C/D proposals (e.g., final technical requirements, proposal preparation instructions, and evaluation factors), submission and evaluation of the proposals, negotiation, and award. In some cases, the earliest of these activities will commence shortly after Phase B award. However, unless these activities are planned and executed in reasonable time periods to accommodate timely Phase C/D award, many of the benefits associated with the progressive competition technique, or any other down-selection strategy, will go unrealized.

8. Requesting Phase C/D Proposals

(a) Although a new, formal solicitation is normally not issued for Phase C/D when using the progressive competition technique, Phase C/D proposals must be formally requested and the offerors given all information necessary to submit a proposal. The preferred approach for requesting Phase C/D proposals is by letter. This letter shall include the following:

(1) A specific due date for the Phase C/D proposals along with a statement that FAR 52.215–10, Late Submissions, Modifications, and Withdrawals of Proposals, applies to this proposal due date.

(2) Complete instructions for proposal preparation, including page limitations, if any.

(3) Final evaluation factors.

(4) Any statement of work, specification, or other contract requirements that have changed since the Phase B solicitation.

(5) All required clause changes applicable to new work effective since Phase B contract award.

(6) Any representations or certifications, if required.

(7) Any other required contract updates. (E.g., Phase C/D small and small disadvantaged subcontracting goals.)

(b) Although the exception and not the rule, there are circumstances in which a new, formal solicitation must be issued for Phase C/D. Significant changes in paragraphs 8(a)(3) and (4) of this appendix, in particular, require a careful assessment as to whether a new solicitation should be issued. Determining the significance of changes is often subjective and difficult, however. These determinations should only be made after coordinated consultation among procurement, legal, and technical personnel. Some cases will be particularly clouded, and no clear resolution of the magnitude of the changes can be made. In these instances, the issue should be resolved on the side of caution and a new, formal solicitation issued.

9. Phase C/D Award

(a) As stated in paragraph 6(c) of this appendix, evaluation of Phase C/D proposals will normally be accomplished in accordance with formal SEB procedures. Phase C/D award may be made by either a new contract, or by a new work supplemental agreement to the existing Phase B contracts.

(b) Keep in mind that, no matter what is included in the original solicitation or Phase B contracts regarding the progressive competition technique, or any other alternative down-selection strategy, the Phase C/D effort is new work and not an in-scope change under the "Changes" clause, or any other clause, of the Phase B contract. If a supplemental agreement is used to implement Phase C/D, it shall cite the applicable "Phased Procurement" clause (either 1852.234–70 or 1852.234–71) included in the Phase B contracts as authority for award.

(c) Whether a new contract or new work supplemental agreement is used, the document must incorporate all applicable statutory and regulatory requirements (e.g., contract clauses) in effect as of its issuance. The Phase C/D award date is controlling and not the date of the Phase B awards.

(d) In addition, regardless of the time of Phase C/D award or the contract vehicle used to effect it, the Phase C/D period of performance should commence only upon completion of Phase B tasks.

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OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

48 CFR Part 9903

Cost Accounting Standards Board; Applicability and Thresholds for Cost Accounting Standards Coverage

AGENCY: Cost Accounting Standards Board, Office of Federal Procurement Policy, OMB.

ACTION: Final rule.

SUMMARY: The Office of Federal Procurement Policy, Cost Accounting Standards Board, is revising applicability, thresholds and procedures for the application of the Cost Accounting Standards (CAS) to negotiated government contracts. This rulemaking is authorized pursuant to section 26 of the Office of Federal Procurement Policy Act. The Board is taking action on this topic in order to adjust CAS applicability requirements and dollar thresholds to levels reflecting experience with price inflation since the thresholds were last promulgated by the previous Board on September 12, 1977. The Board is also changing the criteria for determining which Standards apply at different threshold levels and the concept of what constitutes modified coverage, and, the criteria that trigger full CAS coverage.

EFFECTIVE DATE: November 4, 1993.

FOR FURTHER INFORMATION CONTACT: Richard C. Loeb, Executive Secretary, Cost Accounting Standards Board (telephone: 202–395–3254).

SUPPLEMENTARY INFORMATION:

A. Background

On September 12, 1977, the prior Cost Accounting Standards Board (CASB) promulgated rules that exempted certain types of government contractors from the full impact of the application of the Cost Accounting Standards (CAS) to all of their otherwise CAS covered contracts and subcontracts. The regulation issued by the prior CASB, formerly part 332 of that Board's rules (4 CFR 332), entitled "Modified Contract Coverage," was designed to partially address the problem of application of CAS to smaller government contractors, as well as the application of CAS to those contractors for whom government business represented only a relatively small share of total sales volume. The impetus for the development of the concept of modified CAS coverage was the concern expressed at the time, the some business firms (principally smaller firms and non-government segments of major contractors) were avoiding bidding on government contracts because of the perceived burdens associated with the administration of CAS requirements. See Preamble A to CAS Part 332, 42 FR 45625, Sept. 12, 1977.

The previous requirement for modified CAS coverage appearing at 48 CFR 9903.201–2, entitled "Types of CAS coverage" provided:

(b) *Modified coverage.* (1) Modified coverage requires only that the contractor comply with Standard 9904.401, Consistency in Estimating, Accumulating and Reporting Costs, and Standard 9904.402, Consistency in Allocating Costs Incurred for the Same

Purpose. Modified, rather than full, CAS coverage may be applied to a covered contract of less than $10 million awarded to a business unit that received less than $10 million in CAS-covered contracts in the immediately preceding cost accounting period if the sum of such awards was less than 10 percent of the business unit's total sales during that period * * *

Additional provisions of this section, as well as § 9903.202 of the Board's rules, entitled "Disclosure requirements," provided that certain business units that were subject to modified coverage must still file Disclosure Statements (normally required only for contractors subject to full coverage) if the business unit is a part of a larger company that has other business units that are subject to full CAS coverage. See 57 FR 14157 (Apr. 17, 1992).

The regulations providing for modified CAS coverage were originally effective on March 10, 1978. In the intervening 15 years, the dollar threshold for modified CAS coverage had not been adjusted. However, prices as measured by the consumer price index have been adjusted by over 100% during this period. Presumably the issues giving rise to the development of the concept of modified CAS coverage in 1977 have been further highlighted during this time frame. The $10 million threshold, once considered to be the mark at which a contractor had sufficient "covered" contracts to be subject to full CAS coverage, has been eroded by the effects of inflation. This dollar threshold no longer serves as an appropriate size standard that represents a fair demarcation applicable to CAS covered contractors.

The Board is now promulgating what it believes to be appropriate adjustments in the threshold for application of modified CAS coverage to covered contractors. In so doing, the CASB has been considering two principal issues: (1) The adjustment should properly reflect the effects of inflation, and (2) the adjustment should protect the interests of the Government while lessening the need to impose administrative burdens associated with CAS coverage on affected contractors.

Summary of Amendments

The Board's rule provides for a full CAS coverage threshold of $25 million (actual inflation experience rounded to the nearest five million dollar increment). This represents an increase of two-and-one-half times the previous threshold, and approximates inflation experience as measured by the consumer price index from the last quarter of calendar year 1977 through the last quarter of 1992.

In the Board's judgment, its internal study (which is based upon data available in the Federal Procurement Data System) has indicated that this threshold should provide adequate protection to the Government in the form of cumulative contract dollars remaining subject to full CAS coverage, while significantly reducing the number of contractors that will be required to comply with the full scope of the Standards and the requirement for submission of a Disclosure Statement. The results of the Board's study have also established that this increase in the threshold applicable to modified CAS coverage should result in an approximately 45–50% decrease in the number of contractors (or contractor business segments) subject to full CAS coverage, while the corresponding reduction in CAS-covered dollars will be only 5–6% from previous levels. These results would appear to indicate that a substantial reduction in the administrative requirements associated with full CAS coverage will be achieved for a significant number of contractors, and contractor segments, with only a relatively small decrease in the cumulative dollar value of contracts that are subject to the full scope of CAS coverage.

The Board is also increasing the dollar threshold associated with the so-called "trigger contract" in order to further decrease the administrative requirements associated with the application of full CAS coverage. Pursuant to this rule, the "trigger contract" will be that contract dollar threshold ($1 million) associated with the initiation of full CAS coverage, for a particular contractor, based on the award of a single negotiated government contract. Under rules previously in effect (see 4 CFR 331.30(b)(7) and 332, also 48 CFR 30.201–1(b)(7) and 30.201–2(b)), the trigger contract threshold was a single negotiated government contract exceeding $500,000. Once awarded a negotiated government contract of at least this dollar magnitude in a single cost accounting period, a government contractor's segment or business unit was subject to some form of CAS coverage (either full or modified) for all subsequently awarded negotiated contracts exceeding $100,000. Public Law 100–679 raised the threshold for individual CAS contract coverage to $500,000 (see CAS recodification, 57 FR 14148, Apr. 17, 1992), which had the effect of eliminating the $500,000 trigger concept. Without an amendment, the minimum individual CAS contract threshold and the initiating CAS "trigger contract" threshold are currently one and the same. Although the Board has reestablished the "trigger contract" concept in this rule, it has limited its application exclusively to full CAS coverage. Therefore, the application of modified CAS coverage to an individual contract or subcontract will be determined without reference to the triggering contract mechanism applicable to full CAS coverage.

B. Additional Amendments

During the past year, information came to the Board's attention, that indicated a need for redefining the concept of modified CAS coverage. Based on this information, the Board became concerned that some government contractors, particularly those who do work for certain civilian procurement agencies, may be including specifically identifiable unallowable costs in indirect cost pools which are reflected in the billings submitted to, and reimbursements received from Federal Government contracting agencies. Conformance with the requirements of CAS 9904.405 would restrict this practice. Therefore, the Board is adding CAS 9904.405 to the modified CAS coverage requirements. In the Board's view, it is fundamental that Government contractors, engaged in cost-based contracting, be able to comply with this basic cost accounting concept in the pricing and administration of contracts of any dollar value. In addition, the Board has determined that the inclusion of CAS 9904.406, "Cost Accounting Period," in the coverage criteria for modified CAS will significantly reduce the opportunity for selection of inconsistent cost accounting periods with respect to the costing and pricing of contracts. The Board believes that the principle enunciated in Standard 9904.406 is so basic as to be a reasonable requirement for all government contracts priced on the basis of cost. The Board also believes that CAS 9904.406 provides a form of protection to contractors in that it prohibits the use of inappropriate and/or inconsistent cost accounting periods in order to minimize indirect contract costs. As was noted in both the preamble to the Advance Notice of Proposed Rulemaking on this topic (see 57 FR 47438), and the preamble to the Notice of Proposed Rulemaking (see 58 FR 18363) the Board has been considering methods by which to achieve a greater degree of balance between those who would urge it to raise and/or tighten certain CAS applicability thresholds, and those who have argued that these same thresholds should not be revised. The Board's

consideration of this issue has led to this rule that applies the requirements of CAS 9904.401, 9904.402, 9904.405 and 9904.406 to all otherwise non-exempt awards exceeding $500,000. This now constitutes the definition of modified CAS coverage.

In addition, through this rule, the Board is hereby eliminating the alternative "10 percent or more" sales test criterion for the initiation of full CAS coverage. The Board has taken this step in order to clarify and simplify the rules with respect to the initiation of full CAS coverage. The elimination of the percent of sales test also precludes the possibility that two contractors with the same amount of covered contracts would be subject to two different levels of coverage.

The approach to the issue of full and modified CAS coverage that is being promulgated by the Board seeks to balance cost versus benefits through an adjustment in CAS thresholds that would extend the applicability of a new definition of modified CAS coverage, while providing for higher cumulative contract dollar value thresholds applicable for so-called full CAS coverage.

The Board has also determined that the exemption paragraph appearing at § 9904.201–1(b)(15) should be expanded to eliminate the requirement for a separate Cost Accounting Standards Board waiver in circumstances where the relevant procuring agency has determined to waive the requirement for submission of certified cost or pricing data. The Board believes that adequate safeguards exist within the procuring agencies with respect to this issue so as to preclude the need for the approval of individual CAS contract waivers by the Board. The elimination of this requirement should significantly ease the administrative burdens (for both the Government and contractors/subcontractors) associated with obtaining CAS coverage exemptions in those instances where the agency has already waived the requirements of the Truth in Negotiations Act, Public Law 87–653.

Finally the Board has determined to adjust the requirements for disclosure by certain otherwise modified CAS-covered business segments that are required to disclose their cost accounting practices because they are affiliated with other business segments that are subject to full CAS coverage. The Board's final rule adopts a combined $10 million and 30% sales test for determining whether disclosure is required for these otherwise modified CAS-covered business units.

C. Paperwork Reduction Act

The Paperwork Reduction Act, Public Law 96–511, does not apply to this rule, because this rule imposes no paperwork burden on offerors, affected contractors and subcontractors, or members of the public which requires the approval of OMB under 44 U.S.C. 3501, *et seq.* The purpose of this rule is to decrease the burdens (including paperwork) associated with the administration of the Cost Accounting Standards by covered government contractors and subcontractors.

D. Executive Order 12866 and the Regulatory Flexibility Act

This rule serves to eliminate certain administrative requirements associated with the administration of the Cost Accounting Standards by covered government contractors and subcontractors. The economic impact on contractors and subcontractors is therefore expected to be minor. As a result, the Chairman has determined that this is not a "major rule" under the provisions of Executive Order 12866, and that a regulatory impact analysis is not required. Furthermore, this rule will not have a significant effect on a substantial number of small entitities because small businesses are exempt from the application of the Cost Accounting Standards. Therefore, this rule does not require a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980.

E. Public Comments

This final rule is based upon the Board's Notice of Proposed Rulemaking made available for public comment in the **Federal Register** on April 9, 1993, 58 FR 18363. Thirty sets of comments were received, including twenty-five timely comments, and five late comments. The major comments received and the Board's actions taken in response thereto are summarized below:

Comment: Nineteen commenters supported the NPRM's proposal for an increased "full" CAS coverage threshold, and thirteen commenters supported elimination of the alternative "10 percent of sales" test for the initiation of full CAS coverage. Three commenters supported the addition of CAS 9904.405 to the definition of "modified" CAS coverage, and six commenters supported adding CAS 9904.406 to this definition as well. An additional seven commenters supported the Board's elimination of the need for a separate CAS waiver when an agency had already granted a waiver from the requirement to submit certified cost or pricing data pursuant to the provisions of the Truth in Negotiations Act, Public Law 87–653. Finally, three commenters supported the Board's proposed $1 million trigger contract for the application of full CAS coverage.

Response: The Board thanks the commenters for their supportive comments.

Comment: Four commenters recommended that the Board revise the rule to include counting only "net awards" in determining whether certain CAS thresholds are met.

Response: The Board does not agree with the commenters. As the Board understands the commenters' position, "net awards" refers to the total obligated value of the contract at the time of award, excluding as-yet-to-be-obligated incremental funding, and the potential value of contract options. The Board believes that CAS applicability thresholds are met when the total dollar value of the contract (including as-yet-to-be-provided incremental funding and the potential value of contract options) exceeds the appropriate thresholds. Because this appeared to be a recurring issue among some contractors, the Board is amending the definition of "net awards" in order to make it clear that incrementally-funded contracts and the potential value of contract options are to be included in determining a contractor's or subcontractor's CAS eligibility status. The Board believes that it is the value of the pricing proposal or action that gives rise to CAS applicability.

Comment: One commenter (the Department of Defense Office of Inspector General) strongly opposed increasing the dollar threshold (previously $10 million) associated with the initiation of full CAS coverage. This commenter continues to believe that the $10 million threshold was of sufficient magnitude that the requirements for full CAS coverage (including the submission of a Disclosure Statement) should continue to apply without modification. This commenter, as well as one other, also supported elimination of the "trigger contract" concept. This commenter believes that previous thresholds associated with the administration of CAS requirements (with the exception of the "10 percent of sales test") do not impose hardships or burdens on industry.

Response: The Board does not agree with all aspects of this comment. The Board continues to believe that the effects of inflation over the past fifteen years should be considered in determining CAS applicability thresholds. Moreover, the Board notes that its proposal results in an

approximately 45–50% decrease in the number of contractors subject to "full" CAS coverage, while reducing the coverage of covered contract dollars by only 5–6%. In the Board's view, this will allow both contractors and administering Government agencies to better focus available resources on contracts of significant dollar value.

Comment: Two commenters, representing government contractors, endorsed a proposal to raise the "full" CAS coverage threshold to between $30–$50 million. Nine similar commenters also endorsed the reinstitution of the "trigger contract" concept, but believed that it should be applied to modified, as well as, full CAS coverage. Another two commenters recommended that the trigger contract concept be reinstated at a threshold of $2.5 million. Eight commenters further recommended the elimination of the requirement for the filling of disclosure statements for modified CAS-covered business segments that are affiliated with another business segment that is subject to full CAS coverage. Thirteen commenters opposed inclusion of CAS 9904.405 in the definition of modified coverage, and five commenters opposed including CAS 9904.406.

Response: The Board believes that CAS requirements and disclosure thresholds should generally be adjusted in accordance with inflationary experience. It does not consider the commenters proposed higher levels appropriate given the statutory objectives of the Board and the substantial amounts of public spending involved in covered contracts. In response to commenters' concerns previously made known to the Board after issuance of both its ANPRM and NPRM on this subject, the Board is reinstituting the "trigger contract" concept with respect to the initiation of full CAS coverage. The new trigger contract threshold is $1 million. The Board is also adjusting the requirements for the filing of disclosure statements for certain modified CAS-covered business segments that are affiliated with another business segment that is subject to full CAS coverage. The Board respectfully disagrees with the commenters recommendations that CAS 9904.405 and 9904.406 be excluded from the definition of modified coverage. The Board continues to have serious reservations concerning administration of cost-based contract pricing and/or reimbursement arrangements with contractors that are unable to comply with these very fundamental cost accounting concepts and/or practices.

Comment: One commenter recommended that the Board exempt from all CAS coverage, contracts that are awarded to "commercial companies."

Response: The Board continues to believe that the requirements of the Cost Accounting Standards should generally be applied to negotiated contracts that exceed certain dollar thresholds as determined by the Board, in which contract cost or price is determined through the submission of cost or pricing data. The Board does not agree that the mere existence of competition at some level of the procurement process, e.g., technical competition, should give rise to an exemption from application of the Standards, if the element of adequate price competition, as applied to the instant procurement action, is not present. The Board is amending its rules in order to modify the CAS exemption paragraph appearing at 9903.201–1(b)(15). This will serve to eliminate the requirement for a separate Cost Accounting Standards Board waiver in circumstances where the relevant procuring agency has determined to waive the requirement for submission of certified cost or pricing data. The Board believes that this amendment should assist commercial companies in cases where they would ordinarily be subject to TINA, but the requirement for submission of certified cost or pricing data has been waived by the relevant procuring agency.

List of Subjects in 48 CFR Part 9903

Cost accounting standards, Government procurement.

Allan V. Burman,

Administrator for Federal Procurement Policy and Chairman, Cost Accounting Standards Board.

For the reasons set forth in this preamble, chapter 99 of title 48 of the Code of Federal Regulations is amended as set forth below:

1. The authority citation for part 9903 of chapter 99 of title 48 continues to read as follows:

Authority: Pub. L. 100–679, 102 Stat. 4056, 41 U.S.C. 422.

PART 9903—CONTRACT COVERAGE

Subpart 9903.2—CAS Program Requirements

2. Section 9903.201–1 is amended by revising paragraph (b) introductory text and paragraph (b) to read as follows:

9903.201–1 CAS applicability.

* * * * *

(b) The following categories of contracts and subcontracts are exempt from all CAS requirements:

* * * * *

(15) Firm-fixed-price contracts and subcontracts awarded without submission of any cost data.

3. Section 9903.201–2 is amended by revising paragraphs (a) (1) and (2); removing paragraph (a)(3); and revising paragraph (b) (1) and (2) and paragraph (d) to read as follows:

9903.201–2 Types of CAS coverage.

(a) * * *

(1) Receive a single CAS-covered contract award of $25 million or more; or

(2) Received $25 million or more in net CAS-covered awards during its preceding cost accounting period, of which, at least one award exceed $1 million.

(b) *Modified coverage.* (1) Modified CAS coverage requires only that the contractor comply with Standard 9904.401, Consistency in Estimating, Accumulating, and Reporting Costs, Standard 9904.402, Consistency in Allocating Costs Incurred for the Same Purpose, Standard 9904.405, Accounting for Unallowable Costs and Standard 9904.406, Cost Accounting Standard—Cost Accounting Period. Modified, rather, than full, CAS coverage may be applied to a covered contract of less than $25 million awarded to a business unit that received less than $25 million in net CAS-covered awards in the immediately preceding cost accounting period. It also applies to covered contracts of business units that received more than $25 million in net CAS covered awards in the immediately preceding cost accounting period, wherein no single contract award exceeded $1 million.

(2) If any one contract is awarded with modified CAS coverage, all CAS-covered contracts awarded to the business unit during that cost accounting period must also have modified coverage with the following exception: if the business unit receives a single CAS-covered contract award of $25 million or more, that contract must be subject to full CAS coverage. Thereafter, any covered contract awarded in the same cost accounting period must also be subject to full CAS coverage.

* * * * *

(d) *Subcontracts.* Subcontract awards subject to CAS require the same type of CAS coverage as would prime contracts awarded to the same business unit. In measuring total net CAS-covered awards for a year, a transfer by one segment to another shall be deemed to be a subcontract award by the transferor.

* * * * *

4. Section 9903.201–3 is amended by revising the clause heading and

introductory text; by revising paragraphs (c) (1) and (3) in Part I of the clause; by removing Part II; by redesignating Parts III and IV as Parts II and III respectively; and revising newly designated Part II to read as follows:

9903.201–3 Solicitation provisions.

* * * * *

Cost Accounting Standards Notices and Certification (November 1993)

Note: This notice does not apply to small businesses or foreign governments.

This notice is in three parts, identified by Roman numerals I through III.

Offerors shall examine each part and provide the requested information in order to determine Cost Accounting Standards (CAS) requirements applicable to any resultant contract.

I. Disclosure Statement—Cost Accounting Practices and Certification

* * * * *

(c) Check the appropriate box below:

☐ (1) Certificate of Concurrent Submission of Disclosure Statement.

The offeror hereby certifies that, as a part of the offer, copies of the Disclosure Statement have been submitted as follows: (i) Original and one copy to the cognizant Administrative Contracting Officer (ACO), and (ii) One copy to the cognizant contract auditor.

(Disclosure must be on Form No. CASB DS–1. Forms may be obtained from the cognizant ACO or from the looseleaf version of the Federal Acquisition Regulation.)

Date of Disclosure Statement:

Name and Address of Cognizant ACO where filed:

The offeror further certifies that practices used in estimating costs in pricing this proposal are consistent with the cost accounting practices disclosed in the Disclosure Statement.

☐ (2) * * *

☐ (3) Certificate of Monetary Exemption.

The offeror hereby certifies that the offeror, together with all divisions, subsidiaries, and affiliates under common control, did not receive net awards of negotiated prime contracts and subcontracts subject to CAS totaling more than $25 million (of which at least one award exceeded $1 million) in the cost accounting period immediately preceding the period in which this proposal was submitted. The offeror further certifies that if such status changes before an award resulting from this proposal, the offeror will advise the Contracting Officer immediately.

* * * * *

II. Cost Accounting Standards—Eligibility for Modified Contract Coverage

If the offeror is eligible to use the modified provisions of 9903.201–2(b) and elects to do so, the offeror shall indicate by checking the box below. Checking the box below shall mean that the resultant contract is subject to the Disclosure and Consistency of Cost Accounting Practices clause in lieu of the Cost Accounting Standards clause.

☐ The offeror hereby claims an exemption from the Cost Accounting Standards clause under the provisions of 9903.201–2(b) and certifies that the offeror is eligible for use of the Disclosure and Consistency of Cost Accounting Practices clause because during the cost accounting period immediately preceding the period in which this proposal was submitted, the offeror received less than $25 million in awards of CAS-covered prime contracts and subcontractors, or the offeror did not receive a single CAS-covered award exceeding $1 million. The offeror further certifies that if such status changes before an award resulting from this proposal, the offeror will advise the Contracting Officer immediately.

Caution: An offeror may not claim the above eligibility for modified contract coverage if this proposal is expected to result in the award of a CAS-covered contract of $25 million or more or if, during its current cost accounting period, the offeror has been awarded a single CAS-covered prime contract or subcontract of $25 million or more.

* * * *

5. Section 9903.201–4 is amended by revising paragraph (c)(1) to read as follows:

9903.201–4 Contract clauses.

* * * * *

(c) *Disclosure and Consistency of Cost Accounting Practices.* (1) The contracting officer shall insert the clause set forth below, Disclosure and Consistency of Cost Accounting Practices, in negotiated contracts when the contract amount is over $500,000 but less than $25 million, and the offeror certifies it is eligible for and elects to use modified CAS coverage (see 9903.201–2, unless the clause prescribed in paragraph (d) of this subsection is used).

* * * * *

9903.202 Disclosure requirements.

6. Section 9903.202–1 is amended by revising paragraphs (b) (1) and (2) paragraph (c) to read as follows:

9903.202–1 General requirements.

* * * * *

(b) * * *

(1) Any business unit that is selected to receive a CAS-covered contract or subcontract of $25 million or more shall submit a Disclosure Statement before award.

(2) Any company which, together with its segments, received net awards of negotiated prime contracts and subcontracts subject to CAS totaling more than $25 million in its most recent cost accounting period, of which, at least one award exceeded $1 million, must submit a Disclosure Statement before award of its first CAS-covered contract in the immediately following cost accounting period. However, if the first CAS-covered contract is received within 90 days of the start of the cost accounting period, the contractor is not required to file until the end of 90 days.

(c) When a Disclosure Statement is required, a separate Disclosure Statement must be submitted for each segment whose costs included in the total price of any CAS-covered contract or subcontract exceed $500,000, unless (i) The contract or subcontract is of the type or value exempted by 9903.201–1 or (ii) In the most recently completed cost accounting period the segment's CAS-covered awards are less than 30 percent of total segment sales for the period and less than $10 million.

* * * * *

Subpart 9903.3—CAS Rules and Regulations

7. Section 9903.301 is amended by revising the definition for Net Awards to read as follows:

§ 9903.301 Definitions.

* * * * *

Net awards, as used in this chapter, means the total value of negotiated CAS-covered prime contract and subcontract awards, including the potential value of contract options, received during the reporting period minus cancellations, terminations, and other related credit transactions.

* * * * *

[FR Doc. 93–27111 Filed 11–3–93; 8:45 am]

BILLING CODE 3110–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 921185–3021; I.D. 110193A]

Groundfish of the Bering Sea and Aleutian Islands Area

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

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for Atka mackerel in the Central Aleutian District (statistical area 542) of the Aleutian Islands subarea in the Bering Sea and Aleutian Islands area (BSAI). This action is necessary to prevent exceeding the Atka mackerel total allowable catch (TAC) in the Central Aleutian District.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), November 1, 1993, until 12 midnight, A.l.t., December 31, 1993.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, Fisheries Management Division, NMFS, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the BSAI (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

The Atka mackerel TAC specified for the Central Aleutian District was established by a revision to the final 1993 initial specifications of groundfish in the BSAI (58 FR 37660, July 13, 1993) and later augmented from the reserve (58 FR 50856, September 29, 1993) to 27,000 metric tons (mt). The directed fishery in the Central Aleutian District opened on August 11, 1993 (58 FR 43297, August 16, 1993).

The Director of the Alaska Region, NMFS (Regional Director), has determined, in accordance with § 675.20(a)(8), that the Atka mackerel TAC in the Central Aleutian District soon will be reached. Therefore, the Regional Director has established a directed fishing allowance of 26,500 mt, with consideration that 500 mt will be taken as incidental catch in directed fishing for other species in the Central Aleutian District. The Regional Director has determined that the directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Atka mackerel in the Central Aleutian District, effective from 12 noon, A.l.t., November 1, 1993, until 12 midnight, A.l.t., December 31, 1993.

Directed fishing standards for applicable gear types may be found in the regulations at § 675.20(h).

Classification

This action is taken under § 675.20.

List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

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

Dated: November 1, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–27075 Filed 11–1–93; 2:15 pm]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 58, No. 212
Thursday, November 4, 1993

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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 73

RIN 3150–AE81

Protection Against Malevolent Use of Vehicles at Nuclear Power Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its physical protection regulations for operating nuclear power reactors. The proposed amendment would modify the design basis threat for radiological sabotage to include use of a land vehicle by adversaries for transporting personnel, hand-carried equipment, and/or explosives. The Commission believes this action is prudent based on an evaluation of an intrusion incident at the Three Mile Island nuclear power station and the bombing at the World Trade Center. The objective of the proposed rule is to enhance reactor safety by precluding the malevolent use of a vehicle to gain unauthorized proximity to a vital area barrier. Further, the proposed rule would enhance reactor safety by protecting vital equipment from damage by detonation of an explosive charge at the point of vehicle denial.

DATES: Comment period expires January 3, 1994. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Mail written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch.

Deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:45 am and 4:15 pm Federal workdays.

A proposed environmental assessment and finding of no significant impact on which the determination is based, proposed regulatory analysis, proposed backfit analysis, and proposed regulatory guide are available for inspection at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the environmental assessment and finding of no significant impact are available from Carrie Brown, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 504–2382. Single copies of the regulatory and backfit analyses are available from Robert J. Dube, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 504–2912. Single copies of the regulatory guide are available from Ann Beranek, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–3519.

FOR FURTHER INFORMATION CONTACT: Priscilla A. Dwyer, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC, telephone (301) 504–2478.

SUPPLEMENTARY INFORMATION:

Background

In the development of its physical protection programs, NRC uses the concept of a design basis threat to assure adequate protection. The design basis threat is a hypothetical threat that is not intended to represent a real threat. The design basis threat serves three purposes:

(1) It provides a standard with which to measure changes in the real threat environment,

(2) It is used to develop regulatory requirements, and

(3) It provides a standard for evaluation of implemented safeguards programs.

The intent of the design basis threat for power reactors is to provide a physical protection system that protects against radiological sabotage.

To assure adequacy of the design basis threat, NRC continually monitors and evaluates the threat environment worldwide. The Commission is also briefed periodically by agencies such as the Central Intelligence Agency and the Federal Bureau of Investigation to keep abreast of domestic and foreign intelligence concerning threat. The bombing at the World Trade Center demonstrated that a large explosive device could be assembled, delivered to a public area, and detonated in the United States without advance intelligence.

The unauthorized intrusion at the Three Mile Island nuclear power station demonstrated that a vehicle could be used to gain quick access to the protected area at a nuclear power plant. In light of these incidents, NRC held a public meeting on May 10, 1993, to obtain additional information from the public, affected licensees, and other interested parties concerning the need for any changes to the design basis threat for radiological sabotage.

Discussion

Findings. NRC has concluded that there is no indication of an actual vehicle threat against the domestic commercial nuclear industry. However, based on recent events, NRC believes that a vehicle intrusion or bomb threat to a nuclear power plant could develop without warning in the future. To maintain a prudent margin between the current threat estimate (low) and the design basis threat (higher) NRC is proposing to amend 10 CFR part 73 to modify the design basis threat for radiological sabotage to include protection against the malevolent use of vehicles at nuclear power plants.

Description of Proposed Amendments. NRC proposes to amend 10 CFR 73.1 to explicitly include use of a four-wheel drive land vehicle by adversaries for the transport of personnel, hand-carried equipment, and/or explosives. Proposed criteria specifying vehicle and explosive characteristics are exempted from public disclosure as Safeguards Information and have been previously provided to personnel of affected licensees authorized access to Safeguards Information pursuant to 10 CFR 73.21 on a need-to-know basis. Four provisions would be added to amend 10 CFR 73.55. The first provision, 10 CFR 73.55(c)(7), would include new regulatory requirements to establish measures to protect a reactor from use of a land vehicle to gain proximity to vital areas. The vital areas contain equipment, systems, devices, or material the failure or destruction or release of which could directly or indirectly endanger the public health and safety by exposure to radiation. The second provision, 10 CFR 73.55(c)(8), would propose a process for licensees to assess whether the protective measures

established in accordance with 10 CFR 73.55(c)(7) protect against a vehicle bomb consistent with design goals and criteria specified by the Commission. Licensees whose vehicle denial measures do not fully satisfy the design goals for protection against a vehicle bomb would have the option to establish additional measures to meet the design goals or propose other additional measures that give substantial protection against a land vehicle bomb. The third provision, 10 CFR 73.55(c)(9), describes proposed implementation schedules and information that would be required to be submitted to the Commission. In order to protect certain documents, required by amendments to 10 CFR 73.55, as Safeguards Information, 10 CFR 73.21 would also be amended. The fourth provision, 10 CFR 73.55(c)(10), treats applicants for a license to operate a nuclear power reactor.

Regulatory Approach. The NRC proposes that licensees establish measures to protect vital equipment within power reactor vital areas from:

(1) Access by persons transported by a land vehicle and

(2) Damage from the detonation of a vehicle bomb in the vicinity of the vital area.

The NRC would emphasize the protection of vital equipment by requiring licensees to establish measures to protect against the use of a land vehicle to gain proximity to vital areas of a facility. The NRC would require each licensee to establish a barrier system to prevent land vehicle proximity to vital areas of the plant. The NRC would allow for use of natural features such as cliffs and natural waterways or artificial features such as buildings and canals to be included as part of the barrier system. In establishing a system of physical barriers to protect against access of a land vehicle to vital areas, the licensee would also protect the facility against a vehicle transporting a bomb which could detonate at or near the point of the vehicle barrier.

The licensee would be required to determine if measures established to protect against vehicle proximity to vital areas of the facility also protect against the threat of a land vehicle bomb as defined by the design goals and criteria set by the Commission. Essentially, the licensee would need to protect vital or alternative equipment needed to shut down the reactor and maintain the reactor in a shutdown condition. In evaluating the protection of vital equipment, the licensee could consider protection provided by structures near the equipment, assigning credit for alternative equipment not damaged by the assumed explosion, and damage control measures.

Most sites would likely meet the Commission's design goals for protection against a vehicle bomb by establishing protective measures against vehicle intrusion in the vicinity of existing protected area boundaries. The licensee would have two options if its evaluation shows that these protective measures do not fully meet the design goals and criteria for protecting against a land vehicle bomb. It may implement additional measures that would fully meet the design goals and criteria such as moving vehicle barriers further away from vital areas or equipment, installing blast shields, or modifying plant systems and equipment. Alternatively, the licensee may propose to the Commission additional measures other than ones needed to fully meet the design goals and criteria, provided this approach provides substantial protection against a vehicle bomb and that it can be demonstrated that the costs of measures to fully meet the design goals and criteria are not justified by the added protection that would be provided.

Guidance. The staff prepared a regulatory guide containing preliminary information for licensees in initial assessments of protective measures against vehicle intrusions and approaches to assess whether the Commission's design goals and criteria are met by measures taken to protect against vehicle intrusion. The regulatory guide is titled DG–5006, "Protection Against Malevolent Use of Vehicles at Nuclear Power Plants." Additional guidance is available in NUREG/CR–5246, "A Methodology to Assist in Contingency Planning for Protection of Nuclear Power Plants Against Land Vehicle Bombs." NRC has also arranged for the United States Army Corps of Engineers to write a NUREG-series report that would be available to the licensees through the Commission in time for publication of the final rule. This NUREG report would include simple methods for the licensee to select barriers and perform an analysis of existing structures and equipment to demonstrate their ability to withstand the effects of an explosive blast.

Public Comment. The Commission is issuing this proposed rule with a 30-day public comment period. The Commission notes that some of the issues associated with a design basis threat modification have been previously discussed in a public meeting. Interested parties who previously submitted comments at the time of the public meeting need not resubmit their comments. Previously submitted comments will be addressed during the review of the comments submitted on this proposed rule.

The Commission wishes to receive comments on the need to revise the design basis threat and on the proposed implementation schedule for the rule, particularly on the availability of active vehicle denial systems for purchase.

Implementation. The proposed rule would likely be implemented through 10 CFR 50.54(p) (no decrease in effectiveness of security plan), or 10 CFR 50.54(p) coupled with 10 CFR 50.59 (no change to the technical specifications incorporated in the license or an unreviewed safety issue) changes. Each licensee would be required to submit to the NRC within 90 days from the effective date of the rule a summary description of the proposed vehicle intrusion control measures and the results of its evaluation comparing the measures to protect against vehicle intrusion with the design goals and criteria for protecting against a land vehicle bomb. A licensee proposing measures, as alternatives to those needed to fully meet the Commission's criteria for protecting against a vehicle bomb, would be required to submit details of their analyses, including justification that substantial protection was provided and that the cost of measures needed to fully meet the design goals and criteria are not justified by the added protection that would be provided. Proposals by licensees to use alternative measures would be handled as 10 CFR 50.90 amendments. Licensees would be required to implement their measures within 360 days of the rule effective date.

Once implemented, the control measures required to meet these regulations supersede contingency requirements initiated in response to Generic Letter 89–07, "Power Reactor Safeguards Contingency Planning for Surface Vehicle Bombs," dated April 28, 1989. However, licensees whose vehicle control measures do not fully meet the NRC's design goals and measures may choose to maintain vehicle bomb contingency planning as one element of proposed alternative measures.

Safeguards Information. The Commission cautions licensees not to submit any data that is protected as Safeguards Information as part of their comments on the proposed rule.

Enforcement. Violation of these proposed rules, if codified, may subject a person to the criminal penalties in section 223 of the Atomic Energy Act of 1954, as amended.

Decommissioning Reactors. The rule would apply to licensees who are either

in the process of decommissioning or plan to decommission in the near future and do not have a possession-only license. Those licensees would need to be evaluated individually to determine if full or partial exemption from the new rule is appropriate.

Electronic Submittals. Comments may be submitted, in addition to the original paper copy, by copy of the letter in electronic format on IBM personal computer MS–DOS compatible 3.5- or 5.25-inch double-side, double density (DS/DD) or high density (HD) diskettes. Data files should be submitted in WordPerfect 5.0 or 5.1, unformatted ASCII code, or if formatted text is required, IBM Revisable-Form-Text Document Context Architecture (RFT/DCA) format.

Finding of No Significant Environmental Impact: Availability

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51, that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and therefore an environmental impact statement is not required. The proposed rule involves installation of vehicle barriers at operating power reactor sites and an evaluation of these barriers by the licensee to determine whether they provide adequate protection against a land vehicle bomb under design goals and criteria established by the Commission. Implementation of these amendments would not involve release of or exposure to radioactivity from the site. The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the environmental assessment and the finding of no significant impact are available from Carrie Brown, U.S. Nuclear Regulatory Commission, Washington, DC, telephone (301) 504–2382.

Paperwork Reduction Act Statement

This proposed rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) This rule has been submitted to the Office of Management and Budget for review and approval of the information collection requirements.

The public reporting burden for this collection of information is estimated to average 497 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Information and Records Management Branch (MNBB–7714), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–3019, (3150–0002), Office of Management and Budget, Washington, DC 20503.

Regulatory Analysis

The Commission has prepared a draft regulatory analysis on this proposed regulation. The analysis examines the cost and benefits of the alternatives considered by the Commission. The draft analysis is available for inspection in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the draft analysis may be obtained from Robert J. Dube, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 504–2912.

The Commission requests public comment on the draft regulatory analysis. Comments on the draft analysis may be submitted to the NRC as indicated under the **ADDRESSES** heading.

Regulatory Flexibility Certification

Based on the information available at this stage of the rulemaking proceeding and in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Commission certifies that, if promulgated, this rule will not have a significant economic impact upon a substantial number of small entities. The proposed rule affects only licensees authorized to operate a nuclear power reactor. The utilities that operate these nuclear power reactors do not fall within the scope of the definition of "small entities" as given in the Regulatory Flexibility Act or the Small Business Size Standards promulgated in regulations issued by the Small Business Administration (13 CFR part 121).

Backfit Analysis

As required by 10 CFR 50.109, the Commission has completed a backfit analysis for the proposed rule. The Commission has determined, based on this analysis, that backfitting to comply with the requirements of this proposed rule will provide a substantial increase in protection to public health and safety or the common defense and security at a cost which is justified by the substantial increase. The backfit analysis on which this determination is based is available for inspection at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the backfit analysis are available from Robert J. Dube, U.S. Nuclear Regulatory Commission, Washington, DC, telephone (301) 504–2912. It should be noted that the conclusions reached are based on best available data. The proposed rule contains a provision for affected licensees to conduct site-specific analyses if they so choose.

List of Subjects in 10 CFR Part 73

Criminal penalties, Hazardous materials transportation, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to part 73.

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

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

Authority: Secs. 53, 161, 68 Stat. 930, 948, as amended, sec. 147, 94 Stat. 780 (42 U.S.C. 2073, 2167, 2201); sec. 201, as amended, 204, 88 Stat. 1242, as amended, 1245 (42 U.S.C. 5841, 5844).

Section 73.1 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 73.37(f) also issued under sec. 301, Pub. L. 96–295, 94 Stat. 789 (42 U.S.C. 5841 note). Section 73.21 is issued under sec. 606, Pub. L. 99–399, 100 Stat. 876 (42 U.S.C. 2169).

2. In § 73.1, the introductory text of paragraph (a) is revised and a new paragraph (a)(1)(i)(E) is added to read as follows:

§ 73.1 Purpose and scope.

(a) *Purpose.* This part prescribes requirements for the establishment and maintenance of a physical protection system which will have capabilities for the protection of special nuclear material at fixed sites and in transit and in plants in which special nuclear material is used. The following design basis threats, where referenced in ensuing sections of this part, shall be used to design safeguards systems to protect against acts of radiological sabotage and to prevent the theft of special nuclear material. Licensees subject to the provisions of § 73.20, § 73.50, or § 73.60 are exempt from § 73.1(a)(1)(i)(E).

(1) * * *
(i) * * *
(E) A four-wheel drive land vehicle used for the transport of personnel, hand-carried equipment, and/or explosives, and
* * * * *

3. In § 73.21, a new paragraph (b)(1)(xiii) is added to read as follows:

§ 73.21 Requirements for the protection of safeguards information.

* * * * *
(b) * * *
(1) * * *
(xiii) Information required by the Commission pursuant to 10 CFR 73.55 (c)(8) (9), and (10).
* * * * *

4. In § 73.55, new paragraphs (c)(7), (8), (9), and (10) are added to read as follow:

§ 73.55 Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage.

* * * * *
(c) * * *
(7) Vehicle control measures, including vehicle barrier systems, must be established to protect against use of a land vehicle, as specified by the Commission, as a means of transportation to gain unauthorized proximity to vital areas.
(8) Each licensee shall compare the vehicle control measures established in accordance with 10 CFR 73.55(c)(7) to the Commission's design goals and criteria for protection against a land vehicle bomb. Each licensee shall either:
(i) Confirm to the Commission that the vehicle control measures meet the design goals and criteria specified; or
(ii) Propose alternative measures, in addition to the measures established in accordance with 10 CFR 73.55(c)(7), describe the level of protection that these measures would provide against a land vehicle bomb, and compare the costs of the alternative measures with the costs of measures necessary to fully meet the design goals and criteria. The Commission will approve the proposed alternative measures if they provide substantial protection against a land vehicle bomb and it is determined by an analysis, using the essential elements of 10 CFR 50.109, that the costs of fully meeting the design goals and criteria are not justified by the added protection that would be provided.
(9) Each licensee authorized to operate a nuclear power reactor shall:
(i) By (insert 90 days from effective date of rule) submit to the Commission a summary description of the proposed vehicle control measures as required by 10 CFR 73.55(c)(7) and the results of the vehicle bomb comparison as required by 10 CFR 73.55(c)(8). For licensees who choose to propose alternative measures as provided for in 10 CFR 73.55(c)(8), the submittal must include the analysis and justification for the proposed alternatives;
(ii) By (insert 360 days from final rule effective date), fully implement the required vehicle control measures, including site-specific alternative measures as approved by the Commission;
(iii) Protect as Safeguards Information, information required by the Commission pursuant to 10 CFR 73.55(c)(8) and (9); and
(iv) Retain, in accordance with 10 CFR 73.70, all comparisons and analyses prepared pursuant to 10 CFR 73.55(c)(7) and (8).
(10) Each applicant for a license to operate a nuclear power reactor pursuant to 10 CFR 50.21(b) or 10 CFR 50.22 of this chapter, whose application was submitted prior to (insert effective date of rule), shall incorporate the required vehicle control program into the site Physical Security Plan and implement it by the date of receipt of the operating license.

Dated at Rockville, Maryland this 29th day of October 1993.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 93–27137 Filed 11–3–93; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–NM–154–AD]

Airworthiness Directives; McDonnell Douglas Model DC–10–30 and –40 Series Airplanes and KC–10A (Military) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–10 series airplanes and KC–10A (military) airplanes. This proposal would require modification of the cavity vent drain tube assembly at the center wing lower auxiliary fuel tank cavity. This proposal is prompted by a report that the cavity vent tube, if not properly grounded, could act as an electrical path in the event of a lightning strike. The actions specified by the proposed AD are intended to prevent arcing in the tank cavity and possible resulting fire.

DATES: Comments must be received by January 3, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–154–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846–1771, Attention: Business Unit Manager, Technical Publications—Technical Administrative Support, C1–L5B. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office (ACO), 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Raymond Vakili, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5262; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this

proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–154–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–154–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

Recently, during certification testing of the lightning protection system on a McDonnell Douglas Model MD–11 series airplane, it was discovered that the cavity vent drain tube assembly in the center wing lower auxiliary fuel tank, if not properly grounded, could act as an electrical path in the event of a lightning strike. Subsequently, a lightning strike could travel up the vent tube. This condition, if not corrected, could result in arcing in the tank cavity and possible resulting fire.

To date, none of the affected airplanes have experienced a lightning strike in this area. However, the cavity vent drain tube assembly located in the center wing lower auxiliary fuel tank of certain Model DC–10–30 and –40 series airplanes and KC–10A (military) airplanes is similar to that of Model MD–11 series airplanes. Therefore, those airplanes may be subject to the same potential unsafe condition identified in the Model MD–11. (The FAA plans similar rulemaking to address this unsafe condition on Model MD–11 series airplanes.)

The FAA has reviewed and approved McDonnell Douglas DC–10 Service Bulletin 28–204, dated August 5, 1993, that describes procedures for modification of the cavity vent drain tube assembly located in the center wing lower auxiliary fuel tank. The modification involves removal of a section of metallic tubing and installation of a section of non-metallic tubing into the cavity vent drain tube assembly and grounding the outlet to structure. This modification will prevent the possibility of a lightning strike traveling up the cavity vent tube and arcing into the fuel tank cavity.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require modification of the cavity vent drain tube assembly located in the center wing lower auxiliary fuel tank. The actions would be required to be accomplished in accordance with the service bulletin described previously.

There are approximately 294 McDonnell Douglas Model DC–10–30 and –40 series airplanes and KC–10A (military) airplanes of the affected design in the worldwide fleet. The FAA estimates that 127 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3.5 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $120 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $39,687.50, or $312.50 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 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 airworthiness directive:

McDonnell Douglas: Docket 93–NM–154–AD.

Applicability: McDonnell Douglas Model DC–10–30 and –40 series airplanes, and KC–10A (military) airplanes; as listed in McDonnell Douglas DC–10 Service Bulletin 28–204, dated August 5, 1993; certificated in any category.

Compliance: Required as indicated, unless accomplished previously. To prevent arcing in the tank cavity and possible resulting fire, accomplish the following:

(a) Within 12 months after the effective date of this AD, modify the cavity vent drain tube assembly at the center wing lower auxiliary fuel tank cavity in accordance with McDonnell Douglas DC–10 Service Bulletin 28–204, dated August 5, 1993.

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

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

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

Issued in Renton, Washington, on October 29, 1993.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–27074 Filed 11–3–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 93–NM–162–AD]

Airworthiness Directives; McDonnell Douglas Model MD–11 and MD–11F Series Airplanes

AGENCY: Federal Aviation Administraion, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is appliable to certain McDonnell Douglas Model MD–11 and MD–11F series airplanes. This proposal would require modification of the cavity vent drain tube assembly at the center wing lower auxiliary fuel tank cavity. This proposal is prompted by a report that the cavity vent tube, if not properly grounded, could act as an electrical path in the event of a lightning strike. The actions specified by the proposed AD are intended to prevent arcing in the tank cavity and possible resulting fire.

DATES: Comments must be received by January 3, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–162–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846–1771, Attention: Business Unit Manager, Technical Publications—Technical Administrative Support, C1–L5B. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office (ACO), 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Raymond Vakili, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5262; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–162–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–162–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

Recently, during certification testing of the lightning protection system on a McDonnell Douglas Model MD–11 series airplane, it was discovered that the cavity vent drain tube assembly in the center wing lower auxiliary fuel tank, if not properly grounded, could act as an electrical path in the event of a lightning strike. Subsequently, a lightning strike could travel up the vent tube. This condition, if not corrected, could result in arcing in the tank cavity and possible resulting fire.

The FAA has reviewed and approved McDonnell Douglas MD–11 Service Bulletin 28–42, dated August 12, 1993, that describes procedures for modification of the cavity vent drain tube assembly located in the center wing lower auxiliary fuel tank. The modification involves removal of a section of metallic tubing and installation of a section of non-metallic tubing into the cavity vent drain tube assembly and grounding the outlet to structure. This modification will prevent the possibility of a lightning strike traveling up the cavity vent tube and arcing into the fuel tank cavity.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require modification of the cavity vent drain tube assembly located in the center wing lower auxiliary fuel tank. The actions would be required to be accomplished in accordance with the service bulletin described previously.

There are approximately 73 McDonnell Douglas Model MD–11 and MD–11F series airplanes of the affected design in the worldwide fleet. The FAA estimates that 29 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $120 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $8,265, or $285 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulation as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 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 airworthiness directive:

McDonnell Douglas: Docket 93–NM–162–AD.

Applicability: Model MD–11 and MD–11F series airplanes; as listed in McDonnell Douglas MD–11 Service Bulletin 28–42, dated August 12, 1993; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent arcing in the tank cavity and possible resulting fire, accomplish the following:

(a) Within 12 months after the effective date of this AD, modify the cavity vent drain tube assembly at the center wing lower auxiliary fuel tank cavity in accordance with McDonnell Douglas MD–11 Service Bulletin 28–42, dated August 12, 1993.

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

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

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

Issued in Renton, Washington, on October 29, 1993.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–27073 Filed 11–3–93; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 307

Regulations Under the Comprehensive Smokeless Tobacco Health Education Act of 1986

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: On November 4, 1986, pursuant to the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4401–4408) ("the Smokeless Tobacco Act" or "the Act") the Commission issued final regulations, (16 CFR part 307), becoming effective February 27, 1987, implementing the requirements for displaying and rotating health warnings on smokeless tobacco packaging and advertising. In a **Federal Register** Notice of Proposed Rulemaking on July 31, 1989, the Commission proposed a method for the display of warning labels on utilitarian items and invited comments. In a **Federal Register** Notice of Final Rulemaking published on March 20, 1991, the Commission issued a final rule amending the previous regulations by deleting the exemption for utilitarian objects for personal use. Among other things, the final rule outlined a method for displaying and rotating the health warnings on utilitarian items. The effective date of the final amended regulations was April 19, 1991.

On May 14, 1991, the Coalition on Smoking OR Health petitioned the Commission to enforce the Smokeless Tobacco Act to require smokeless tobacco health warnings on sponsored racing cars, banners, flags and other related objects bearing smokeless tobacco product brand names, logos, or selling messages.

The Commission now is proposing to amend the current regulation to expressly provide that sponsored racing vehicles and other event-related objects that display the brand name, logo, or selling message of smokeless tobacco products are advertising subject to the health warning requirements of the Smokeless Tobacco Act and the regulations. The amendments propose a method for displaying and rotating the required health warnings on the objects encompassed by this amendment.

All persons are hereby notified of the opportunity to submit written data, views, and arguments concerning the requirements for the rotation of health warnings on sponsored racing vehicles and related objects that display advertising for smokeless tobacco products.

DATES: Written comments will be accepted on or before December 3, 1993.

ADDRESSES: Send comments to Secretary, Federal Trade Commission, 6th & Pennsylvania Ave. NW., Washington, DC 20580. Submissions should be marked "Proposed Amendments to Smokeless Tobacco Regulations."

FOR FURTHER INFORMATION CONTACT: Judith P. Wilkenfeld, (202) 326–3150; Phillip Priesman (202) 326–2484; Division of Advertising Practices, Federal Trade Commission, 6th & Pennsylvania Ave. NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

Section A—Background

In 1986, the Congress passed the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. 4401–4408). The Smokeless Tobacco Act made it unlawful for the manufacturers, packagers or importers of smokeless tobacco products to advertise or cause to be advertised (with the exception of outdoor billboard advertising) any smokeless tobacco product unless the advertising bears certain health warnings.

Specifically, the Smokeless Tobacco Act mandates that one of the following three health warnings appear in the labeling and advertising of smokeless tobacco products:

WARNING: THIS PRODUCT MAY CAUSE MOUTH CANCER

WARNING: THIS PRODUCT MAY CAUSE GUM DISEASE AND TOOTH LOSS

WARNING: THIS PRODUCT IS NOT A SAFE ALTERNATIVE TO CIGARETTES

The Act also provides that the warnings be displayed in a conspicuous and prominent place, in conspicuous and legible type in contrast with all other printed material. The Act specifies a circle and arrow format for the warning statement in advertising, and requires the three warnings to be rotated in advertising every four months. The Act directs the Commission to issue regulations as to the size, color, typeface, placement and rotation of the warnings on packaging and advertisements. In addition, the Act requires the marketers of smokeless tobacco products to submit to the Commission for approval plans for complying with the display and rotational requirements.

On November 4, 1986, the Commission issued final regulations, (16 CFR part 307), becoming effective February 27, 1987, implementing the requirements for displaying health warnings on smokeless tobacco packaging and advertising. The Commission's initial regulations exempted utilitarian objects (items sold or given by manufacturers, importers, and distributors to consumers for their personal use that display the brand name, logo, or selling message of a smokeless tobacco product) from the requirement that all advertising display the warning labels. The exemption for utilitarian items was challenged in court, and the United States Court of Appeals for the District of Columbia ultimately ordered the Commission to delete the exemption. (*Public Citizen, et al.* v. *Federal Trade Commission*, 869 F.2d 1541 (D.C. Cir., 1989), *aff'g.* 688 F. Supp. 667 (D.D.C. 1988)). In a Federal

Register Notice of Proposed Rulemaking on July 31, 1989, the Commission proposed a method for the display of warning labels on utilitarian items and invited comments. In a **Federal Register** Notice of Final Rulemaking published on March 20, 1991, the Commission issued a final rule amending the previous regulations by deleting the exemption for utilitarian objects for personal use and, among other things, outlining a method for displaying and rotating the health warnings on utilitarian items. The effective date of the final amended regulations was April 19, 1991.

Among the comments received during the utilitarian items amendment rulemaking, several groups urged the Commission to broaden the definition of utilitarian items to include sponsored racing cars. (Comm'n Public Docket No. 215–72). However, the Commission declined to include racing vehicles in the amended definition of utilitarian items. The Commission, in the **Federal Register** Notice promulgating the final amendment for utilitarian items, stated, "the question of whether racing cars are required to carry warnings and, if so, the size and location of that warning must be answered under the existing statute and regulation." (56 FR 11653, 11654 (1991)). In a footnote to this quotation, the Commission added that in promulgating the original regulations, it had acknowledged that banners at sporting events could constitute advertising under certain circumstances, but that it had not yet had the opportunity to address this issue.

On May 14, 1991, the Coalition on Smoking OR Health petitioned the Commission to enforce the Smokeless Tobacco Act to require smokeless tobacco health warnings on sponsored racing cars, banners, flags and other related objects bearing smokeless tobacco product brand names, logos, or selling messages.

In consideration of the petition, the Commission tentatively has concluded that sponsored racing vehicles and other event-related objects that display the brand name or selling message of smokeless tobacco products are promoting sales to the public and, therefore, constitute advertising subject to the health warning requirements of the Smokeless Tobacco Act and the regulations.[1] Based on this conclusion, the Commission is hereby proposing to amend the rule specifically to provide that such vehicles and objects comply with the Act and the regulations. In addition, this notice proposes a method for displaying and rotating the required health warnings on the objects encompassed by this amendment and seeks comment on its proposed amendment to the regulations.

Section B discusses the proposed amended regulations under the Smokeless Tobacco Act.

Section B—Discussion of the Proposed Amendments to the Regulations

Amendment to Rule 3 (16 CFR 307.3) To Include Definitions of "Sponsored Racing Vehicles" and "Event"

Section 307.3 contains the definitions of the terms used in the regulations. The Commission proposes amending § 307.3 to add subsections (o) and (p). Subsection (o) provides a proposed definition for sponsored racing vehicles and other event-related objects as "racing vehicles and other event-related objects (including, but not limited to banners; flags; balloons; signs; safety devices; uniforms; costumes; vehicles; concession booths; state backdrops, clothes and props; and tickets) that display the brand name, logo, or selling message of any smokeless tobacco product."

Subsection (p) provides a proposed definition for the term event as "any type of gathering for public entertainment with or without an audience, including, but not limited to, any athletic or sporting activity (such as tractor pulls and monster truck events, racing, rodeo, wrestling, or fishing) or musical, artistic, or nightclub activity."

The Commission seeks comment on the proposal to define the items identified in subsections (o) and (p) as advertising subject to the Smokeless Tobacco Act and the regulations. Considering the language of the Smokeless Tobacco Act and the legislative history, are there legal arguments supporting the conclusion that these items are not advertising subject to the Act?

Amendment to Rule 9 (16 CFR 307.9) To Encompass Sponsored Racing Vehicles and Other Event-Related Objects.

Section 307.9 now sets out the requirements for displaying the warning statements on utilitarian items. The Commission proposes amending this section to extend the same general requirements to sponsored racing vehicles and other event-related objects. The proposed amendments include new examples pertinent to applying these requirements to racing vehicles.

The Commission is interested in knowing the measurements of the surface areas of the various sponsored racing vehicles and other event-related objects covered by this proposed rule amendment. The Commission also is interested in receiving comments on its proposal to apply the size requirements for the warning statement in print and utilitarian items advertising to sponsored racing vehicles and other event-related objects. Because the largest advertising display area for which warning sizes are provided under § 307.7 of the regulations is for all areas "over 80 square feet," the Commission is particularly interested in knowing which, if any, sponsored racing vehicles or equipment, or other event-related objects may have surface areas that exceed 80 square feet. The Commission seeks the dimensions of such larger objects, wherever possible.

Amendment to Rule 12 (16 CFR 307.12) To Provide a Safe Harbor for the Rotation of Warning Statements on Sponsored Racing Vehicles and Other Event-Related Objects

This section describes the requirements for the rotation, display and dissemination of warning statements in smokeless tobacco advertising. Currently, subsection (a) first reiterates the substance of section 3(c)(2) of the Smokeless Tobacco Act that requires smokeless tobacco companies to rotate the three warnings every 4 months for each brand. Subsection (a) expressly provides that any rotational system may take into account the practical constraints imposed by the production and distribution of advertising. The Commission is not proposing any amendments to subsection (a).

Subsection (b) provides, for the most part, a non-exclusive list of the ways that plans may satisfy the Smokeless Tobacco Act, and emphasizes that there may be more than one method of compliance. The Commission proposes to amend subsection (b) to give an example of a satisfactory plan for sponsored racing vehicles and other event-related objects. Under the proposed modification, an acceptable plan for rotation would provide that a new warning label be displayed, after an initial four-month period, each time more than 25 percent of the advertising display area of the car or other event-related object is repainted, replaced, or refurbished. Each time a new warning is displayed a four-month period commences wherein no further changes to the wording of the warning would be required. However, any time the advertising display area changed sufficiently to require a new warning label size, the size change would be required. The Commission is interested

[1] See e.g., *Public Citizen* v. *FTC*, 869 F.2d 1541, 1544 (D.C. Cir. 1989); see also, e.g., *Bolger* v. *Youngs Drug Products*, 463 U.S. 60 (1983).

in receiving comments regarding this method and suggestions for other appropriate methods to ensure that the warnings are rotated on sponsored racing vehicles and other event-related objects that advertise smokeless tobacco products in accordance with the Act and these regulations.

Subsection (c) of § 307.12 currently requires the submission to the Commission of samples of advertising as part of the company's compliance plan. The Commission proposes to amend subsection (c) to allow submission of photographs of sponsored racing vehicles and other event-related objects, where, due to costs or size, an actual physical example is impractical to provide or would prove burdensome to the Commission.

Section C—Invitation To Comment

Before adopting these proposed amendments as final, consideration will be given to any written comments timely submitted to the Secretary to the Commission. Comments will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552) and Commission regulations, on normal business days between the hours of 8:30 a.m. and 5 p.m. at the Public Reference Section, room 130, Federal Trade Commission, 6th & Pennsylvania Avenue NW., Washington, DC 20580.

Section D—Paperwork Reduction

The proposed clarification that the requirements of the Smokeless Tobacco Act apply to sponsored racing vehicles and other event-related objects will not affect the information collection requirements (as defined by the rules implementing the Paperwork Reduction Act) contained in the smokeless tobacco regulations. The required health warning labels are the "public disclosure of information originally supplied by the Federal Government to the recipient for th[at] purpose," and, therefore, are not within the scope of the Paperwork Reduction Act. 5 CFR 1320.7(c)(2) (1988). The Commission is proposing an amendment to the reporting requirement (redesignated § 307.12) in order to give guidance on options for rotating the warnings on sponsored racing vehicles and other event-related objects. This provision does involve the "collection of information" as defined by 5 CFR 1320.7(c)(1) (1988).

The original requirement for the submission of plans by marketers of smokeless tobacco products was submitted to, and approved by, the Office of Management and Budget. OMB Control No. 3084–0082. The Commission is requesting that OMB approve the proposed amended requirement and extend the current clearance accordingly. The supporting statement accompanying that request recommends that the current burden estimate of 2000 hours be continued. Some fourteen firms possibly could be submitting amended plans under the rule, although far fewer actually are involved in event-related advertising. The plans for the rotation of warning labels on sponsored racing cars and event-related objects are estimated to require an average of less than 100 hours each to prepare. However, the Commission also is seeking public comment on the paperwork burden that the proposed amendments may impose to ensure that no additional burden has been overlooked.

Section E—Regulatory Flexibility Act

When the smokeless tobacco regulations were first issued, the FTC certified that the Regulatory Flexibility Act requirement for regulatory analysis was not applicable because the regulations did not appear to have a significant economic impact on a substantial number of small entities. 51 FR 40005, 40014 (1986). The Commission noted that the economic costs are primarily statutorily imposed and the Commission's regulations add few, if any, independent additional costs. In its subsequent Notice of Proposed Rulemaking for utilitarian items, the Commission noted that the proposed amendments did not change the regulations sufficiently to alter its previous "no impact" determination. However, in order to ensure that no substantial impact was being overlooked, the Commission requested public comment on the effect of the proposed regulations on costs, profitability, competitiveness, and employment in small entities. 54 FR 31541, 31543 (1989). Based on the comments received in response to that request, staff was unable to determine whether a substantial number of small entities would be significantly affected by the proposed regulation. Consequently, staff requested and the Commission reopened the comment period to receive more specific information on the impact of the proposed amendments on small businesses. 55 FR 9142, 9143 Questions 2 and 3 (1990). In its Notice of Final Rulemaking the Commission found that it could not conclude that a substantial number of small entities would be affected by the proposed amendments. 56 FR 11661. The Commission found that, while the rule amendment for utilitarian items may have a significant impact on some firms, that impact is likely to be short-term. Nonetheless, the Commission took the comments of the small businesses and their representatives into account and accordingly made several responsive changes in the final rule. The Commission is following a similar initial course of action in this proposed rule amendment. In order to ensure, however, that no substantial impact is being overlooked, public comment is requested on the effect of the proposed regulations on costs, profitability, competitiveness, and employment in small business entities. After the receipt of public comments, it will be decided whether the preparation of a final regulatory flexibility analysis is warranted.

In light of the above, it is certified that the proposed amendments do not change the regulations in a manner sufficient to alter its original determination of no impact. A certification to that effect has been filed with the Small Business Administration.

Section F—Effective Date

The provisions of the Smokeless Tobacco Act that required the display of health warnings in the labeling and advertising of smokeless tobacco products became effective on February 27, 1987, and the portions of the regulation that concerned the submission of plans for the rotation, display and distribution of the warning statements became effective on December 19, 1986. The effective date for the regulations that implemented the display requirements on utilitarian objects was April 19, 1991. However, those utilitarian objects already produced at the time of publication were permitted to be distributed for up to 12 months after the effective date. The proposed effective date for these regulations, which implement the display requirements on sponsored racing vehicles and other event-related objects, would be the date the final rule is published. However, the Commission proposes that the portions of this amendment to the regulation that concern the submission of plans for the rotation, display and distribution of the warning statements would become effective 60 days after the date the final rule is published.

Section G—Questions

The Commission is seeking comments on aspects of the proposed amendments to the regulations. Without limiting the scope of issues on which it is seeking comment, the Commission is

particularly interested in receiving comments on the following questions:

Question 1. Proposed amendments to § 307.9 would extend the existing size requirements for warning statements on print and utilitarian items to sponsored racing vehicles and other event-related objects. The proposed definition of the display area of an advertisement for sponsored racing vehicles and other event-related objects would track that for utilitarian items. The proposed requirements for placement and proximity of warning statements on utilitarian items would be extended to sponsored racing cars and other event-related objects.

A. Given the many different sizes and shapes of racing vehicles, racing-related equipment (including tractor-trailers for transporting the racing vehicles), and other event-related objects, the Commission requests further information on their various advertising display areas to assist it in determining with greater specificity the size of the warning statements proposed to be required on these objects. In particular, the Commission is interested in knowing which, if any, objects potentially covered by this amendment have advertising display areas potentially exceeding 80 square feet.

B. Would the application of the warning size requirements for print and utilitarian items advertising to the objects covered by this amendment ensure that the warning statements on sponsored racing vehicles and other event-related objects are conspicuous? If not, what method would provide for greater certainty?

Question 2. The Smokeless Tobacco Act and the regulations require smokeless tobacco companies to rotate the three warnings every four months for each brand. Section 307.12 of the regulations currently provides a non-exclusive list of the ways that plans may satisfy the Act, emphasizing that there may be more than one method of compliance, and expressly providing that any plan may take into account practical constraints on the production and distribution of advertising. The Commission proposes to amend subsection (b) of § 307.12 to provide one possible satisfactory plan for rotation of warning statements on sponsored racing vehicles and other event-related objects.

A. Would the method of rotating warnings proposed for sponsored racing vehicles and other event-related objects ensure the rotation of warnings in accordance with the Act and these regulations.

B. Are there other methods that would be appropriate for companies to utilize in rotating the warnings in accordance with the Act and these regulations?

Question 3. What is the likely effect of the proposed regulations on costs, profitability, competitiveness, and employment in small business entities?

Question 4. The Smokeless Tobacco Act requires smokeless tobacco companies to submit plans to the Commission which specify the method they will use to rotate, display and distribute the required health warning statements on their packaging and advertising. By expressly providing that the warning label requirements of the Smokeless Tobacco Act apply to racing cars and other event-related objects, the proposed amendments would, by extension, require any smokeless tobacco company wishing to advertise in that manner to submit plans to the Commission providing for the display and rotation of such warning labels. What paperwork burdens would be imposed by the proposed amendments?

Question 5. Are there possible regulatory alternatives to the proposed regulations that would reduce the economic impact and yet fully implement the mandate of the Smokeless Tobacco Act?

Question 6. Considering the language of the Smokeless Tobacco Act, its legislative history and court decisions addressing the question of what constitutes "advertising" or "commercial speech," what facts exist, if any, to suggest that "sponsored racing vehicles" and "event," as defined in subsections (o) and (p), are not advertising subject to the Act?

List of Subjects in 16 CFR Part 307

Health warnings, Smokeless tobacco, Trade practices.

Accordingly, it is proposed that part 307 of 16 CFR be amended as follows:

PART 307—REGULATIONS UNDER THE COMPREHENSIVE SMOKELESS TOBACCO HEALTH EDUCATION ACT OF 1986

1. The authority for part 307 continues to read as follows:

Authority: 15 U.S.C. 4401 *et seq.*

2. Section 307.3 is amended by adding paragraphs (o) and (p) as follows:

§ 307.3 Terms defined.

* * * * *

(o) *Sponsored racing vehicles and other event-related objects* means racing vehicles and other event-related objects (including but not limited to banners; flags; balloons; signs; safety devices; uniforms; costumes; vehicles; concession stands; stage backdrops, clothes and props; tickets) that display the brand name, logo, or selling message of any smokeless tobacco product.

(p) *Event* means any type of gathering for public entertainment with or without an audience, including, but not limited to, any athletic or sporting activity (such as tractor pulls and monster truck events, racing, rodeo, wrestling or fishing) or musical, artistic, or nightclub activity.

3. The heading and paragraphs (a), (b), and (c) of § 307.9 are revised to read as follows:

§ 307.9 Requirements for disclosure on utilitarian objects and on sponsored racing vehicles and other event-related objects.

(a) In the case of advertisements for smokeless tobacco products on utilitarian objects and sponsored racing vehicles and other event-related objects, the warning statements required by the Act and these regulations must be in a conspicuous and legible type in contrast with all other printed material on the object and must appear within the circle and arrow format. The proportions of the circle and arrow shall be deemed to be conspicuous if in accordance with those set forward in § 307.7(b). The required warning statement shall be deemed conspicuous if it conforms to the requirements and proportions as set forth in §§ 307.7(c) and 307.7(d). For purposes of determining the size of the warning statement, the display area for an advertisement on a utilitarian object and on a sponsored racing vehicle or other event-related object shall be the visible area on which the brand name, logo or selling message appears. For example, the display area for a t-shirt with a brand name, logo or selling message on the front or back is the entire front or back of the shirt, excluding any sleeves. For a t-shirt with a brand name, logo or selling message on the sleeve, the display area is the sleeve. For a sponsored racing vehicle with a brand name, logo, or selling message on the door of a car, the display area is the entire visible side of the car, including fenders but excluding windows. For a sponsored racing vehicle with a logo, brand name or selling message on the front hood of a car, the display area is the entire front of the car, including the front grille, but excluding the window. However, in no case must the diameter of the circle exceed the longest line displayed in the brand name, logo, or selling message. The Commission considers a logo to include any brand specific characteristics of a smokeless tobacco product, including but not limited to any recognizable pattern of colors or symbols associated with a particular

brand. Thus, if an entire sponsored racing vehicle is painted in a recognizable pattern of color or colors that are associated with a particular brand of smokeless tobacco product, all such painted surfaces would be considered the advertising display area.

(b) The warning statement required by the Act and these regulations must be printed, embossed, embroidered, painted, or otherwise affixed to the utilitarian object or to the sponsored racing vehicle or other event-related object with a permanence and durability that is comparable to the permanence and durability of the brand name, logo, or selling message. For example, if a product brand name or logo is embroidered on a hat, and a legible warning cannot be embroidered in the proper size due to technological limitations, the warning may be affixed to the hat by another method, so long as its permanence and durability is comparable to that of the brand name, logo, or selling message.

(c) The warning statement required by this Act and these regulations must be in a conspicuous and prominent location on the object. A conspicuous and prominent location on the object is one that is proximate to and on the same surface as the smokeless brand name, logo, or selling message, and is visible when the brand name, logo, or selling message is visible. If the brand name, logo, or selling message is displayed in more than one location on the utilitarian object, or on the sponsored racing vehicle or other event-related object, the warning must appear proximate to each brand name, logo, or selling message. In the alternative, the warning may appear only once on the object; in that case however, that advertising display area consists of the aggregate of all the surface areas on which any brand names, logos, selling messages, or brand-specific characteristics appear.

* * * * *

4. Paragraphs (b)(2) and (c) of § 307.12 are amended by adding the following sentences at the end of the respective paragraphs:

§ 307.12 Rotation, display, and dissemination of warning statements in smokeless tobacco advertising.

* * * * *

(b) * * * (2)* * * A satisfactory plan for rotation of warning statements on sponsored racing vehicles and other event-related objects could provide that a new warning label will be displayed, after an initial four-month period, each time more than 25 percent of the display area of the car or other event-related object is repainted, replaced, or refurbished. The initial warning shall be determined according to the date the brand name, logo, or selling message is first affixed to the vehicle or object. Each time a new warning is displayed, a four-month period will commence wherein no further changes to the wording of the warning would be required. However, any other time that changes occur which would require a new warning label size, a new warning label is required whether or not 25 percent of the display area is repainted, replaced, or refinished.

(c) * * * Submission of photographs of sponsored racing vehicles and other event-related objects is required, where, due to costs or size, an actual physical example is impractical to provide or would present a burden for the Commission.

* * * * *

By direction of the Commission.

Donald S. Clark,

Secretary.

Statement of Commissioner Deborah K. Owen on Proposed Rulemaking Under the Comprehensive Smokeless Tobacco Health Education Act of 1986

I support the issuance of proposed regulations under the comprehensive Smokeless Tobacco Health Education Act of 1986 with respect to sponsored racing vehicles and other event-related objects. However, I am concerned that some practical problems may be presented by the specific requirements in the proposed rule for calculating the size of the advertising display area on racing vehicles, and by the circumstances triggering the rotation of warning statements. I am hopeful that detailed public comment by affected parties will address these issues, and thereby assist the Commission in fashioning rules that will achieve the goals of the Act, without imposing any unnecessary burdens.

[FR Doc. 93–27091 Filed 11–3–93; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Chapter I

[Docket No. RM94–1–000]

Market-Based Ratemaking for Oil Pipelines; Inquiry

October 22, 1993.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of inquiry.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is inquiring about market-based rates for oil pipelines. The Commission is inviting comment on a number of issues in order to achieve a consensus on the standards to be used in determining whether a pipeline lacks significant market power.

The Commission is not proposing new regulations at this time.

DATES: Initial comments are due on or before January 3, 1994, and reply comments are due no later than February 2, 1994.

ADDRESSES: An original and 14 copies of written comments must be filed. All filings should refer to Docket No. RM94–1–000 and should be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Jeffrey A. Braunstein, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. (202) 208–2114.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the text of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1379. To access CIPS, set your communications software to use 300, 1200, or 2400 bps, full duplex, no parity, 8 data bits, and 1 stop bit. CIPS can also be accessed at 9600 bps by dialing (202) 208–1781. The full text of this rule will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, located in room 3104, 941 North Capitol Street NE., Washington, DC 20426.

Introduction

The Federal Energy Regulatory Commission (Commission) is promulgating regulations (the Final Rule) [1] pertaining to its jurisdiction over oil pipelines under the Interstate

[1] Revisions to Oil Pipeline Regulations Pursuant to Energy Policy Act of 1992, Docket No. RM93–11–000, published elsewhere in this issue of the **Federal Register**.

Commerce Act (ICA),[2] to fulfill the requirements of Title XVIII of the Energy Policy Act of 1992 (Act of 1992).[3]

In the Final Rule, the Commission is adopting a simplified and generally applicable ratemaking methodology for oil pipeline proceedings. This methodology is an indexing system to establish ceilings on oil pipeline rates. The Commission's ratemaking approach will also permit, under certain defined circumstances, the use of two alternative methodologies. These are the use of a cost-to-service methodology and the use of settlement rates. In addition, in the Final Rule, the Commission is continuing its policy of allowing oil pipelines to show that they lack market power in their markets. Therefore, the Commission is interested in reviewing its current approach to market-based rates for oil pipelines that are determined to lack market power in one or more of their markets.

The Commission is inviting comment on a number of issues set forth later in this notice to inform its decision making better and in hopes of developing a consensus on the standards to be used in determining whether a pipeline lacks significant market power. The Commission will then be able to determine an appropriate policy with respect to market-based ratemaking and, if appropriate, develop a notice of proposed rulemaking and thereafter a final rule that will become effective on January 1, 1995, the effective date of the Commission's indexing system adopted in the Final Rule.

Discussion

In *Buckeye Pipe Line Co.*,[4] the Commission adopted a bifurcated approach to oil pipeline proceedings to enable a pipeline in Phase I to demonstrate that it does not have market power in the relevant markets and is, therefore, entitled to "light-handed" regulation in those markets.[5] The Final Rule continues to permit a pipeline to attempt to show that it lacks significant market power in the markets in which it proposes to charge market-based rates, so that the Final Rule's indexing requirement will not apply. The Commission, however, wishes to give the public opportunity to comment on a full range of ratemaking issues, including the appropriateness of market-based rates in the oil pipeline environment and, if the approach continues to be useful, how market determinations should be made or expedited.

One important issue with respect to market-based rates is to determine the appropriate ratemaking approach to use in connection with rates for markets in which the pipeline has shown that it lacks market power. For example, should those rates be considered just and reasonable in the absence of a constraint, such as a rate cap.

The Commission is also concerned about the pipeline's burden with respect to showing it lacks significant market power. The Commission described this burden in *Buckeye Pipe Line Co.*[6] as follows:

> Such a showing [of a reduced need for regulatory oversight] would involve demonstrating that it lacks significant market power in the relevant markets. In making such a showing, an oil pipeline would need to show, for instance, that its shippers have alternative ways to ship their product, that buyers have alternative means of obtaining supplies, or the existence of other constraining factors which would restrain its prices to ensure that they are just and reasonable. From such a showing, the Commission could conclude that market-oriented ratemaking would meet the objectives of the ICA and find a substantial evidentiary predicate on which to determine that competition in relevant markets will operate as a meaningful constraint on the involved pipeline.[7]

However, both the *Buckeye* proceeding and the recent *Williams Pipe Line Company*[8] proceeding indicate that a market power proceeding is long, costly, and difficult. It is beyond doubt a simplified and streamlined approach would be in the public interest and be consistent with the policies underlying the Act of 1992.

The Commission's Staff proposal for revisions to the oil pipeline regulations pursuant to the Act of 1992, issued March 18, 1993, included a suggested approach for simplifying and streamlining market power determinations in connection with determining whether pipelines are able to exercise significant market power.[9] However, the notice of proposed rulemaking (NOPR) did not include such an approach. In the NOPR, the Commission reasoned that market power determinations were inherently fact-specific and that it would be difficult to promulgate defensible thresholds for identifying competitive markets. Those thresholds would, therefore, by necessity be subject to frequent exceptions in individual cases. The exceptions would eventually overwhelm the rule, and the entire effort of attempting to streamline market power adjudications will have been to little or no effect.

Many comments filed in response to the NOPR were critical of this reasoning.[10] The commenters argued that there are markets served by pipelines that are clearly competitive under any reasonable test of market power. They stated that it would be an unnecessary consumption of time and effort, for the industry and the Commission, to go through protracted hearings in regard to such markets. Therefore, these commenters urged the Commission to consider the promulgation of certain threshold tests for market power in order to identify those markets in which pipelines clearly do not possess the ability to control prices.

Upon consideration of these comments, the Commission has determined to include in this notice of inquiry the subject of streamlining market power determinations. The Commission is persuaded that an attempt to identify procedures for expediting the adjudication of market-rate proceedings may be justified. The Commission believes that some threshold standards may be devised that could command consensus support, among pipelines, customers and the interested public. If consensus can be found, it would be in the public interest to promulgate and implement such standards, for their application would certainly expedite some portion of the Commission's ratemaking responsibilities. The aim of this part of the inquiry is to determine whether general agreement can be reached on which to base a rule and on the substance of any rule.

Therefore, as part of this notice of inquiry, the Commission seeks comments on ways of streamlining market power cases. For background, the commenters should consult *Buckeye*, the March 18, 1993 Staff proposal in Docket No. RM93–11–000, and the *Williams Pipe Line Company* proceeding, which will be a vehicle for

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[2] 49 U.S.C. app. 1 (1988).

[3] 42 U.S.C.A. 7172 note (West Supp. 1993).

[4] 44 FERC ¶61,066 (1988) (Order Granting Interlocutory Appeals); 53 FERC ¶61,473 (1990) (Opinion and Order on Initial Decision).

[5] The Commission was to use Phase II to determine how to set just and reasonable rates for the markets not qualifying for "light-handed" regulation. Now, those rates would be set pursuant to the Final Rule.

[6] 44 FERC ¶61,066 (1988).

[7] *Id.* at p. 61,186.

[8] Docket No. IS90–21–002, *et al.*

[9] Proposal For Revisions to Oil Pipeline Regulations Pursuant to the Energy Act of 1992 (Washington, DC), March 1993. Notice of the Availability of the Staff proposal was given in Docket No. RM93–11–000, Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992, 58 FR 15816 (March 24, 1993).

[10] *E.g.*, Association of Oil Pipe Lines, ARCO Pipe Line Company, and Williams Pipe Line Company.

the Commission to provide guidance. The Commission's aim is to find out whether general agreement can be reached about the pertinent yardsticks to use in analyzing market power.

The Commission intends that any Final Rule developed as a result of this notice of inquiry will become effective on January 1, 1995, the effective date of the Commission's indexing system adopted in the Final Rule. This will enable a pipeline to use the streamlined approach adopted as a result of this notice to show that it lacks significant market power in the markets in which it proposes market-based rates.

Commenters should first address the following issues:

- Should the Commission continue to permit pipelines to seek market-based rates on a showing that they do not have market power in the relevant markets?
- If so, what should be the appropriate ratemaking approach to apply in those markets? Should rates based on a determination the pipeline lacks significant market power nonetheless be subject to constraints (as for example rate caps) and, if so, what is an appropriate constraint?
- Should the implementation of market-based rates for a given pipeline be for a limited duration, as in *Buckeye*? Would the ICA permit a market-based rate methodology to be utilized for a given pipeline for an indefinite period, with the only check on continuing market competitiveness provided through the complaint process?

Commenters should also focus on the following general issues:

- The advisability, feasibility, and legality of utilizing threshold tests of market power to identify those markets which are clearly competitive.
- Whether one threshold test or more than one test should be adopted. If more than one test is adopted, should a pipeline be required to meet all the tests, or only one of them?
- Should the threshold tests of market power be used to establish rebuttable or irrebuttable presumptions. Would the adoption of a test that establishes an irrebuttable presumption be lawful under the ICA?

Commenters should also focus on the following market power issues:

- Should the extent of the market be determined by the Department of Justice/Federal Trade Commission *Merger Guidelines* approach of a "small but significant and nontransitory" percentage price increase by a "hypothetical monopolist"? If so, what should this percentage be and what should it be applied to, the price of transportation or the price of the delivered product?
- Should the Commission examine only destination markets or both origin markets and destination markets?
- Should the Commission examine point-to-point traffic or all services or destinations for a particular point?
- Should an oil pipeline be analyzed as delivering one product or more than one product? What multiple products should be analyzed (*i.e.*, should jet fuel be evaluated separately from other products)?
- Are BEAs appropriate for defining geographic markets? [11]
- Is the Herfindahl-Hirschman Index (HHI) appropriate for determining market concentration screens? If so, what should the screen be? [12] Should the screen be rebuttable?
- Should HHI market shares be measured in terms of deliveries or capacity?
- How should capacity be measured, particularly when a pipeline's throughput capacity may be much larger than any single delivery point's capacity?
- What other forms of transport and competition should be included in the HHI calculations? Other pipelines, including private pipelines and those passing through the geographic market but without terminals? Pipelines passing near the geographic market? Barges? Trucks? Refineries within the geographic market? Potential Competition?
- What other factors, if any, should bear on competition? Market share? Potential entry? Exchanges? Excess capacity? Competition with vertically integrated companies? Buyer power? Profitability?
- How should those other factors be incorporated into the market power analysis?
- Should the Commission use some other way than the HHI index to measure market power?
- Commenters should also focus on the following procedural issues:
- What documentation should the pipeline be required to present with its filing for market-based rates?
- What should a protestant be required to allege in protesting an initial filing for market-based rates? In a protest or complaint with respect to markets previously determined to be competitive?

The Commission seeks specific comments on these and other issues. Commenters are also encouraged to provide specific proposals.

[11] BEA refers to the United States Department of Commerce, Bureau of Economic Analysis Areas.

[12] Since it appears this way in the *Merger Guidelines*, the most commonly used version defines the HHI as 10,000 times the sum of the squared market shares.

Conferences

As part of the rulemaking process, the Commission may convene one or more conferences with interested members of the public in order to assist its effort in identifying ways to streamlining the market-rate methodology. The Commission may also use other means in this effort.[13] In particular, the Commission is interested in discovering whether a consensus can be developed on such procedures, including the threshold tests for market power.

The Commission will announce the time and place for any conferences at a later date.

Comments

The Commission invites interested persons to submit written comments and reply comments on the matters discussed in this notice. An original and 14 copies of the written comments must be filed with the Commission no later than January 3, 1994 for initial comments, and no later than February 2, 1994 for reply comments. Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, and should refer to Docket No. RM94–1–000 Commenters should comment by quoting the issue and then responding to it.

Written comments will be placed in the public file of the Commission and will be available for inspection at the Commission's Public Reference Room, at 825 North Capitol St., NE., Washington, DC 20426, during regular business hours.

By direction of the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 93–26624 Filed 11–3–93; 8:45 am]

BILLING CODE 6717–01–M

[13] For example, to develop consensus standards for natural gas pipeline electronic bulletin boards, working groups, composed of representatives of all affected interests, were used. *See* Standards for Electronic Bulletin Boards Required Under Part 284 of the Commission's Regulations, 58 FR 41647 (Aug. 5, 1993), IV FERC Stats & Regs. Proposed Regulations ¶ 32,500 (July 29, 1993). The Commission may consider establishing a negotiated rulemaking in accordance with the Negotiated Rulemaking Act of 1990. 5 U.S.C.A 561–570 (West Supp. 1993).

18 CFR Part 284

[Docket No. RM93–4–000]

Standards for Electronic Bulletin Boards Required Under Part 284 of the Commission's Regulations

October 29, 1993.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of informal conference.

SUMMARY: The Federal Energy Regulatory Commission (Commission) will be holding an informal conference on Tuesday, November 16, 1993. The purpose of the conference is to review the progress of the Working Groups since the Commission's Notice of Proposed Rule Making in this docket. (58 FR 41647, Aug. 5, 1993).

DATES: Tuesday, November 16, 1993, beginning at 9 a.m.

ADDRESSES: Federal Energy Regulatory Commission, Hearing Room 1, 810 First Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:

Marvin Rosenberg, Office of Economic Policy, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208–1283

Brooks Carter, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208–0666

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the Federal Register, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3104, 941 North Capitol Street NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200 or 2400 bps, full duplex, no parity, 8 data bits, and 1 stop bit. CIPS can also be accessed at 9600 bps by dialing (202) 208–1781. The full text of this notice will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

Take notice that Commission staff will convene an informal conference on Tuesday, November 16, 1993. The purpose of the conference is to review the progress of the Working Groups since the Commission's Notice of Proposed Rule Making in this docket.

The conference will begin at 9 a.m. on November 16, 1993. It will be held at: Federal Energy Regulatory Commission, Hearing Room 1, 810 First Street, NE., Washington, DC 20426.

All interested persons are invited to attend. For additional information contact Marvin Rosenberg at (202) 208–1283 or Brooks Carter at (202) 208–0666.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–27057 Filed 11–3–93; 8:45 am]

BILLING CODE 6717–01–M

18 CFR Parts 341 and 352

[Docket No. RM94–2–000]

Cost-of-Service Filing and Reporting Requirements for Oil Pipelines; Notice of Inquiry

October 22, 1993.

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Notice of inquiry.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is inquiring about the appropriate information to be included by oil pipelines with their cost-of-service rate filings and whether it is necessary to revise the information reported by oil pipelines in their FERC Form No. 6, Annual Report of Oil Pipeline Companies (Form No. 6). The Commission is inviting comment on several issues relating to the appropriate information to be submitted with a cost-of-service rate filing and to be reported in Form No. 6.

The Commission is not proposing new regulations or to amend Form No. 6 at this time.

DATES: Initial comments are due on or before January 3, 1994, and reply comments are due no later than February 2, 1994.

ADDRESSES: An original and 14 copies of written comments must be filed. All filings should refer to Docket No. RM94–2–000 and should be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Jeffrey A. Braunstein, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208–2114.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the Federal Register, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the text of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1379. To access CIPS, set your communications software to use 300, 1200, or 2400 bps, full duplex, no parity, 8 data bits, and 1 stop bit. CIPS can also be accessed at 9600 bps by dialing (202) 208–1781. The full text of this rule will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, located in room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

Introduction

The Federal Energy Regulatory Commission (Commission) has determined that it would be in the public interest, and, in particular, in furtherance of the simplification and streamlining policies contained in the Energy Policy Act of 1992 (Act of 1992),[1] to inquire about the appropriate information to be included by oil pipelines with their cost-of-service rate filings and whether it is necessary to revise the information reported by oil pipelines in their FERC Form No. 6, Annual Report of Oil Pipeline Companies (Form No. 6).

The Commission is not proposing new cost-of-service rate filing regulations at this time. Rather, the Commission is inviting comment on what action would be appropriate in order to develop a notice of proposed rulemaking and thereafter a final rule with respect to cost-of-service rate filings that will be supported by a consensus of the oil pipeline industry and its customers and will become effective on January 1, 1995, the effective date of the Commission's indexing system adopted in the Final Rule on Revisions to Oil Pipeline Regulations Pursuant to Energy Policy Act of 1992, Docket No. RM93–11–000

[1] 42 U.S.C.A 7172 note (West Supp. 1993).

(Final Rule) published elsewhere in this issue of the **Federal Register**. The Commission also is not proposing to amend Form No. 6 at this time nor has it determined whether Form No. 6 should be amended. Rather, the Commission's inquiry is about whether Form No. 6 now supplies adequate information with respect to pipeline costs or whether it should be revised to be more useful to pipeline customers and to the Commission.

Background

In accordance with the Act of 1992, the Commission has promulgated a Final Rule adopting a simplified and generally applicable ratemaking methodology and streamlined procedures for oil pipeline proceedings. The simplified and generally applicable methodology adopted by the Commission in the Final Rule is an indexing system to establish ceiling on oil pipeline rates. In addition, the Commission has adopted certain reforms to its procedural regulations in order to expedite the regulatory process under the Interstate Commerce Act (ICA).

However, the Commission's ratemaking approach will permit pipelines to use, under certain defined circumstances a cost-of-service methodology. In addition, the Final Rule provides that a pipeline may establish an initial rate for new service by using a cost-of-service methodology. Further, the Final Rule permits persons to protest a proposed rate or file a complaint with respect to a rate established by indexing, if the protestant alleges reasonable grounds for asserting that the rate increase is so substantially in excess of the actual cost increases incurred by the carrier that the rate is unjust and unreasonable.

The Need For a Change in Filing and Reporting Requirements

The Commission currently employs a cost-of-service methodology for determining oil pipeline rates. This methodology is based on the Commission's Opinion No. 154–B and subsequent related opinions.[2] It employs traditional full cost-of-service ratemaking except that return on equity is determined using the trended original cost methodology. The Commission is proposing no change in the current ratemaking method for oil pipelines when a cost-of-service methodology is invoked.

At present, oil pipelines are not required to submit data in support of their rate filings. This is in contrast to the supporting information required of natural gas companies under section 154.63 of the Commission's regulations[3] and by public utilities under section 35.13 of the Commission's regulations.[4] As stated above, the Commission believes it is time to require oil pipeline to submit appropriate information with their cost-of-service rate filings.

The Commission believes requiring cost-of-service rate filing information is necessary because pipeline shippers need to have access to accurate and up-to-date cost data to appropriately analyze a pipeline's rates filed under the cost-of-service alternative to determine whether those rates should be challenged. Shippers will thus be able to avoid the filing of non-meritorious challenges.

In a related matter, in the Final Rule, the Commission is changing the process through which it revises a pipeline's depreciation rates. At present, the Commission's staff performs a depreciation study, including proposed changed depreciation rates. The Commission is requiring that the pipelines compile and file their own depreciation studies. Such a change comports with General Instruction 1–8 of the Commission's Uniform Systems of Accounts Prescribed For Oil Pipelines Subject to the Provisions of the ICA.[5] That instruction requires that the pipelines perform depreciation studies. In addition, this change appears appropriate to conserve limited staff resources. The Commission is inquiring about whether it should establish additional requirements with respect to the information pipelines must file in a depreciation study and, if so, what information should be required.

The Commission is also inquiring about whether it is necessary to revise Form No. 6. The Commission's current reporting requirements for Form No. 6 were established by Order No. 260 issued September 21, 1982.[6] That order revised Form P, Annual Report of Carriers by Pipeline,[7] by redesignating it as Form No. 6. In creating Form No. 6, the Commission deleted some schedules previously included in Form P.[8] No substantive changes have been made to the Form No. 6 reporting requirements since Order No. 260 was issued. Much of the information reported in the Form 6 is taken from pipeline accounting records that are maintained in accordance with the Commission's Uniform System of Accounts for Oil Pipeline Companies. The Uniform System of Accounts comports in most major respects with generally accepted accounting principles as is designed to facilitate general purpose financial reporting. The information reported however may not be sufficient, in and of itself, to evaluate pipeline rates that are determined under the Final Rule. In view of the Final Rule, it may now be appropriate to add to or to eliminate from or to modify existing Form No. 6 reporting requirements.

The Commission is inquiring about the need to revise Form No. 6 because pipeline shippers need to have access to accurate and up-to-date cost data in order to determine whether they should challenge rates established by indexing. Shippers may want to use Form No. 6 because, under indexing, the pipeline is required only to proffer, in its filing, a mathematical calculation showing that the proposed rate change is in compliance with the applicable rate ceiling. Obviously, this very limited information is of scant use to the person seeking to challenge a rate. In addition, the Commission needs to have accurate and up-to-date cost information to review the appropriateness of the index. As stated in the Final Rule, in that connection, the Commission will monitor the effectiveness of the chosen index to track industry costs by conducting an examination of the index and industry costs every five years, beginning in the year 2000 upon availability of the final index for calendar year 1999. It is beyond doubt that an accurate index in line with reality is needed to ensure that pipeline rates are just and reasonable.

In sum, a specified set of data to support a cost-of-service rate filing and an appropriate Form No. 6 will assist the Commission in ensuring that oil pipeline rates are just and reasonable. As stated above, the Commission intends to proceed with a NOPR and final rule, with respect to cost-of-service rate filings. A purpose here is to

[2] Williams Pipe Line Co., Opinion No. 154–B, 31 FERC ¶ 61,377 (1985); Opinion No. 154–C, 33 FERC ¶ 61,327 (1985). *See also* ARCO Pipe Line Co., Opinion No. 351, 52 FERC ¶ 61,055 (1990); Opinion No. 351–A, 53 FERC ¶ 61,398 (1990).

[3] 18 CFR 154.63 (1993).

[4] 18 CFR 35.13 (1993).

[5] 18 CFR 352, General Instruction 1–8 (1993).

[6] Revision of Annual Report of Carriers by Pipeline Form P, 47 FR 42327 (Sept 27, 1982), FERC Stats. & Regs. [Regulations Preambles 1982–1985] ¶ 30,397 (September 21, 1982).

[7] Form P was originally developed by the Interstate Commerce Commission (ICC) to collect information on an annual basis to enable it to carry out its regulation of oil pipeline companies under the ICA.

[8] Many of the schedules in Form P were modeled after schedules in annual reports that, were filed by other common carriers subject to the ICC's jurisdiction other that oil pipeline companies and, therefore, some of the information collected on Form P was unnecessary for the Commission's regulation of oil pipeline companies.

determine if there is consensus, or to start the process of developing a consensus, about the requirements of those filings and to obtain views about the need to update Form No. 6. As part of the rulemaking process, the Commission may, if desirable, hold technical conferences or other procedures to develop a consensus on the appropriate filing requirements for oil pipeline and to determine if it should revise Form No. 6 and, if so, how.[9]

The Commission intends that any final rule on cost-of-service rate filing requirements developed as a result of this notice of inquiry will become effective on January 1, 1995, the effective date of the Commission's indexing system adopted in the Final Rule. This will enable a pipeline and its customers to be able to use the information required by the final rule to file or challenge rates on the basis of that information.

Issues To Be Addressed

Commenters are requested to address the following issues concerning the appropriate information to be submitted with a cost-of-service rate filing and to be reported in Form No. 6:

1. Cost-of-Service Filing Requirements

- What would be appropriate cost-of-service information to enable review of the pipeline's overall revenue requirement?
- Are there ways to simplify and streamline the Opinion No. 154–B methodology to aid review of the pipeline's overall revenue requirement?
- What information is appropriate for review of a pipeline's particular point-to-point rates? Point-to-point throughput? Cost allocation method? Costs allocated?
- Should the Commission establish additional requirements with respect to the information pipelines must file in a depreciation study? If so, what information should be required?

2. Annual Reporting

- Should Form No. 6 be revised to include the appropriate information to support a cost-of-service rate filing?
- Should such a revised Form No. 6 be the basis of a cost-of-service rate filing?
- Should Form No. 6 be revised to enable the Commission to review the accuracy of the index or should the Commission develop another data source?
- What existing Form No. 6 reporting requirements (*e.g.*, data or cost elements, schedules or instructions) should be eliminated or modified?

Comments

The Commission invites interested persons to submit written comments and reply comments on the matters discussed in this notice. An original and 14 copies of the written comments must be filed with the Commission no later than January 3, 1994 for initial comments, and no later than February 2, 1994 for reply comments. Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, and should refer to Docket No. RM94–2–000. Commenters should comment by quoting the issue and then responding to it.

Written comments will be placed in the public file of the Commission and will be available for inspection at the Commission's Public Reference Room, at 825 North Capitol St., NE., Washington, DC 20426, during regular business hours.

By direction of the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 93–26625 Filed 11–3–93; 8:45 am]

BILLING CODE 6717–01–M

[9] The Commission's technical conference held on January 22, 1992, with representatives from all segments of the natural gas industry in connection with the NOPR leading to Order No. 636, was very helpful. Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation Under Part 284 of the Commission's Regulations, 57 FR 385 (Jan. 6, 1992). The Commission used working groups, composed of representatives of all affected interests, to develop consensus standards for the natural gas electronic bulletin board rulemaking. *See* Standards for Electronic Bulletin Boards Required Under Part 284 of the Commission's Regulations, 58 FR 41647 (Aug. 5, 1993), IV FERC Stats. & Regs. Proposed Regulations ¶ 32,500 (July 29, 1993). The Commission may consider establishing a negotiated rulemaking in accordance with the Negotiated Rulemaking Act of 1990. 5 U.S.C.A. 561–570 (West Supp. 1993).

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

Schedules of Controlled Substances; Temporary Placement of 4-Bromo-2,5-Dimethoxyphenethylamine Into Schedule I

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of intent.

SUMMARY: The Administrator of the Drug Enforcement Administration (DEA) is issuing this notice of intent to temporarily place 4-bromo-2,5-dimethoxyphenethylamine into Schedule I of the Controlled Substances Act (CSA) pursuant to the temporary scheduling provisions of the CSA. This intended action is based on a finding by the DEA Administrator that the placement of 4-bromo-2,5-dimethoxyphenethylamine into Schedule I of the CSA is necessary to avoid an imminent hazard to the public safety. Finalization of this action will impose the criminal sanctions and regulatory controls of a Schedule I substance on the manufacture, distribution, and possession of 4-bromo-2,5-dimethoxyphenethylamine.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537. Telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION: The Comprehensive Crime Control Act of 1984 (Pub. L. 98–473), which was signed into law on October 12, 1984, amended section 201 of the Controlled Substances Act (CSA) (21 U.S.C. 811) to give the Attorney General the authority to temporarily place a substance into Schedule I of the CSA if he finds that such action is necessary to avoid an imminent hazard to the public safety. A substance may be temporarily scheduled under the emergency provision of the CSA if that substance is not listed in any other schedule under section 202 of the CSA (21 U.S.C. 812) or if there is no approval or exemption in effect under 21 U.S.C. 355 for the substance. The Attorney General has delegated his authority under 21 U.S.C. 811 to the Administrator of DEA (28 CFR 0.100). In making a finding that placing a substance temporarily into Schedule I of the CSA is necessary to avoid an imminent hazard to the public safety, the Administrator is required to consider three of the eight factors set forth in section 201(c) of the CSA (21 U.S.C. 811(c)). These factors are as follows: (4) History and current pattern of abuse; (5) The scope, duration and significance of abuse; and (6) What, if any, risk there is to the public health.

4-Bromo-2,5-dimethoxyphenethylamine or 2-(4-bromo-2,5-dimethoxyphenyl)-1-aminoethane is structurally similar to the Schedule I phenylisopropylamine hallucinogens, 4-methyl-2,5-dimethoxyamphetamine (STP or DOM) and 4-bromo-2,5-dimethoxyamphetamine (DOB). Like DOM and DOB, 4-bromo-2,5-dimethoxyphenethylamine displays high affinity for central serotonin receptors and in drug discrimination studies using rats trained to

discriminate either DOM or R(-)DOB from saline, stimulus generalization occurred in both groups of animals. These data suggest that 4-bromo-2,5-dimethoxyphenethylamine is a psychoactive substance capable of producing hallucinogenic effects similar, though not identical, to DOM and DOB. Data in human subjects indicate that 4-bromo-2,5-dimethoxyphenethylamine is orally active at 0.1–0.2 mg/kg producing an intoxication with considerable euphoria and sensory enhancement which lasts for 6 to 8 hours. Higher doses have been reported to produce intense and frightening hallucinations.

DEA first encountered 4-bromo-2,5-dimethoxyphenethylamine in Texas in 1979. Since that time, several other exhibits of 4-bromo-2,5-dimethoxyphenethylamine have been analyzed by DEA and state forensic laboratories in California, Arizona, Louisiana, Pennsylvania, Iowa, and Florida. Clandestine laboratories producing 4-bromo-2,5-dimethoxyphenethylamine were seized in California in 1986 and in Arizona in 1992. It has been represented as 3,4-methylenedioxymethamphetamine (MDMA) and has been sold in sugar cubes as LSD. More recently, it has been promoted as an aphrodisiac and distributed under the brand name of NEXUS whose purported active ingredient is brominated cathinine. DEA has recently seized several thousand dosage units of this product which had been produced outside the United States.

The above data show that the continued, uncontrolled clandestine production, distribution and abuse of 4-bromo-2,5-dimethoxyphenethylamine pose an imminent hazard to the public safety. DEA is not aware of any commercial manufacturer or supplier of 4-bromo-2,5-dimethoxyphenethylamine in the United States. DEA is also not aware of any recognized therapeutic use of this substance in the United States.

In accordance with the provisions of section 201(h) of the CSA (21 U.S.C. 811(h)) and 28 CFR 0.100 the Administrator has considered the available data and the three factors required for a determination to temporarily schedule 4-bromo-2,5-dimethoxyphenethylamine under the CSA and finds that placement of 4-bromo-2,5-dimethoxyphenethylamine into Schedule I of the CSA is necessary to avoid an imminent hazard to the public safety.

As required by section 201(h)(4) of the CSA (21 U.S.C. 811(h)(4)), the Administrator has notified the Assistant Secretary for Health, delegate of the Secretary of Health and Human Services, of his intention to temporarily place 4-bromo-2,5-dimethoxyphenethylamine into Schedule I of the CSA. Comments submitted by the Assistant Secretary for Health in response to this notification including whether there is an exemption or approval in effect for 4-bromo-2,5-dimethoxyphenethylamine under the Federal Food, Drug and Cosmetic Act, shall be taken into consideration before a final order is published. Because the Administrator finds that it is necessary to temporarily place 4-bromo-2,5-dimethoxyphenethylamine into Schedule I to avoid an imminent hazard to the public safety, the final order, if issued, will be effective on the date of publication of the **Federal Register**. Further, it is the intention of the Administrator to issue such a final order as soon as possible after the expiration of thirty days from the date of publication of this notice and the date that notification was transmitted to the Assistant Secretary for Health.

The Administrator of the DEA hereby certifies that this notice of intent will have no significant impact upon entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 801 *et seq.*

The temporary scheduling of 4-bromo-2,5-dimethoxyphenethylamine is not a major rule for the purposes of Executive Order (E.O.) 12291 of February 17, 1981. It has been determined that drug scheduling matters are not subject to review by the Office of Management and Budget (OMB) pursuant to the provisions of E.O. 12291. Accordingly, this proposed emergency scheduling action is not subject to provisions of E.O. 12778 which are contingent upon review by OMB. This regulation both responds to an emergency situation posing an imminent danger to the public safety, and is essential to a criminal law enforcement function of the United States.

This action has been analyzed in accordance with the principles and criteria in E.O. 12291, and it has been determined that the temporary placement of 4-bromo-2,5-dimethoxyphenethylamine into Schedule I of the CSA does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 21 CFR Part 1308

Adminsitrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs, Reporting and recordkeeping requirements.

Under the authority vested in the Attorney General by Section 201(h) of the CSA (21 U.S.C. 811(h)), and delegated to the Administrator of the DEA by Department of Justice regulations (28 CFR 0.100), the Administrator hereby intends to order that 21 CFR part 1308 be amended as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

1. The authority citation for 21 CFR part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871b, unless otherwise noted.

2. Section 1308.11 is to be amended by adding paragraph (g)(5) to read as follows:

§ 1308.11 Schedule I.

* * * * *

(g) * * *

(5) 4-bromo-2,5-dimethoxyphenethylamine, its optical isomers, salts and salts of isomers.....7392.

Some other names: 2-(4-bromo-2,5-dimethoxyphenyl)-1-aminoethane; alpha-desmethyl DOB; 2-CB.

* * * * *

Dated: October 29, 1993.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 93–27100 Filed 11–3–93; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 31

[IA–60–92]

RIN 1545–AS08

Reporting and Deposit of Employment Tax Liabilities

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed amendments to the regulations relating to both the reporting and depositing of Federal employment taxes. The proposed amendments are intended to simplify the current reporting system by removing all "nonpayroll" withheld taxes from reporting on Form 941, Employer's Quarterly Federal Tax Return (or Form 941E, Quarterly Return of Withheld Federal Income Tax and Medicare Tax). The proposed amendments affect all

taxpayers that have "nonpayroll" withheld tax liabilities currently reported quarterly on Form 941 (or 941E). This document also provides a notice of a public hearing on these proposed regulations.

DATES: Written comments must be received by December 1, 1993. Outlines of oral comments to be presented at the public hearing scheduled for 10 a.m. on December 2, 1993, must be received by November 26, 1993.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (IA–60–92), room 5228, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, comments and outlines may be hand delivered to: CC:DOM:CORP:R (IA–60–92), room 5228, Internal Revenue Service, 1111 Constitution Ave. NW., Washington, DC 20224. The public hearing will be held in room 2615, Internal Revenue Building, 1111 Constitution Ave. NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Vincent G. Surabian, telephone (202) 622–6232 (not a toll-free number); concerning the hearing and submissions, Carol Savage, telephone (202) 622–8452 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, PC:FP, Washington, DC 20224.

The collection of information in this regulation is in § 31.6011(a)–4 of the Regulations on Employment Taxes and Collection of Income Tax at Source. This information is required by the Internal Revenue Service to help reconcile certain income tax amounts withheld by persons required to do so with the amounts claimed as withholding credits by the income recipients. The likely respondents are individuals, state and local governments, farms, business or other for-profit institutions, federal agencies, nonprofit institutions, and small businesses or organizations.

The burden for the reporting requirement contained in § 31.6011(a)–4 is reflected in the burden of Form 945.

Background

Section 31.6011(a)–4 of the Regulations on Employment Taxes and Collection of Income Tax at Source was adopted on January 13, 1959, and has been amended on numerous occasions since that date.

Sections 31.6302–1 through 31.6302–3 were adopted on September 24, 1992, effective for payments made after December 31, 1992. Previously, §§ 31.6302(c)–1 and 31.6302(c)–2 set forth the deposit requirements for employment taxes (including railroad retirement taxes).

Explanation of Provisions

Under existing rules, taxpayers use the same form—Form 941 (or Form 941E)—to report both nonpayroll taxes (such as amounts withheld on annuities) and payroll taxes. Reporting both types of taxes on the same form makes it difficult for taxpayers with separate departments for payroll disbursements and for other disbursements to reconcile amounts to be deposited. To eliminate this problem, the proposed regulations would require both the separate reporting and depositing of the two types of taxes.

Under the proposed regulations, taxes currently reported quarterly on Form 941 would continue to be reported on that form unless they are nonpayroll withheld taxes. Nonpayroll withheld taxes, however, would be reported annually on new Form 945, Annual Return of Withheld Federal Income Tax. The proposed regulations would define nonpayroll withheld taxes as amounts withheld under (1) section 3402(q), relating to withholding on certain gambling winnings, (2) section 3402 with respect to amounts paid as retirement pay for service in the Armed Forces of the United States, (3) section 3402(o)(1)(B), relating to withholding on certain annuities, (4) section 3405, relating to withholding on pensions, annuities, IRAs, and certain other deferred income, and (5) section 3406, relating to backup withholding with respect to reportable payments.

The proposed regulations would require any taxpayer required to file a Form 945 for one calendar year, to continue filing a Form 945 for each subsequent year, whether or not there is a liability for the subsequent year, until the taxpayer files a final return in accordance with the regulations. This is consistent with the requirement that a Form 941 be filed for each quarter, whether or not there is a liability for that quarter. An annual Form 945 is required, regardless of tax liability, because the Internal Revenue Service cannot assume that no tax is due simply because no return has been filed. Thus, the annual filing requirement helps preserve the integrity of the tax system for nonpayroll withheld taxes.

The proposed regulations would also amend the Federal employment tax deposit rules to reflect the change in reporting. Under the proposed regulations, taxes reported on Form 945 are deposited separately from taxes reported on Form 941. Form 8109, Federal Tax Deposit Coupon, will be revised to reflect these changes.

Deposits of taxes reported on Form 945 will be made in accordance with rules that generally parallel the existing employment tax deposit regulations. Under the proposed amendments, deposits of taxes reported on Form 945 are made under either a monthly or a semi-weekly rule. For calendar years 1994 and 1995, a taxpayer's status as a monthly or semi-weekly depositor for taxes reported on Form 945 will generally be the same as the taxpayer's depositor status on January 1, 1994, for taxes reported on Form 941.

Beginning with calendar year 1996, however, a taxpayer's depositor status for taxes reported on Form 945 will be determined annually based on a lookback to the amount of taxes reported on Form 945 for the second preceding calendar year (the "lookback period"). For example, for calendar year 1996 a taxpayer's depositor status will depend on the amount of taxes reported on Form 945 for calendar year 1994. If the taxpayer reported nonpayroll withheld tax liabilities of $50,000 or less on the Form 945 for the lookback period, the taxpayer is a monthly depositor for the calendar year. If the taxpayer reported nonpayroll withheld tax liabilities in excess of $50,000 on Form 945 for the lookback period, the taxpayer is a semi-weekly depositor for the calendar year. New taxpayers are considered to have a nonpayroll withheld tax liability of zero for any calendar year in which the taxpayer did not exist.

For calendar year 1994 and all subsequent years, if the amount of accumulated nonpayroll withheld taxes equals or exceeds $100,000 for any day within a deposit period (monthly or semi-weekly), the taxpayer is subject to the One-Day rule of § 31.6302–1(c)(3) of the regulations for such amount. A taxpayer that is a monthly depositor when the taxpayer becomes subject to the One-Day rule immediately becomes a semi-weekly depositor for the

remainder of that calendar year and for the succeeding calendar year.

Proposed Effective Date

The regulations are proposed to be effective with respect to payments made after December 31, 1993.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, a copy of this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed amendments are adopted as final regulations, consideration will be given to any written comments that are timely submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying in their entirety. A public hearing has been scheduled for December 2, 1993. Because of access restrictions, visitors will not be admitted beyond the building lobby more than 15 minutes before the hearing starts.

The rules of § 601.601(a)(3) apply to the hearing.

Persons that want to present oral comments at the hearing must submit by November 26, 1993, an outline of the topics to be discussed and the time to be devoted to each topic. A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these proposed regulations is Vincent G. Surabian, Office of the Assistant Chief Counsel (Income Tax & Accounting), Internal Revenue Service. However, other personnel from the IRS and Treasury Department have participated in the development of the proposed regulations.

List of Subjects in 26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 31 is proposed to be amended as follows:

PART 31—[AMENDED]

Paragraph 1. The authority citation for part 31 is amended by adding entries to read as follows:

Authority: 26 U.S.C. 7805 * * * Section 31.6011(a)–4 also issued under 26 U.S.C. 6011 * * * Section 31.6302–4 also issued under 26 U.S.C. 6302(a) and (c). * * *

Par. 2. Section 31.6011(a)–4 is amended as follows:

1. The heading for § 31.6011(a)–4 is revised.
2. The heading for paragraph (a) is revised.
3. Headings are added for paragraphs (a) (1) through (3).
4. The text of paragraph (a)(1) is revised.
5. Paragraph (b) is redesignated as paragraph (c).
6. New paragraph (b) is added.
7. The revised and added provisions read as follows:

§ 31.6011(a)–4 Returns of income tax withheld.

(a) *Withheld from wages*—(1) *In general.* Except as otherwise provided in paragraphs (a)(3) and (b) of this section, and in § 31.6011(a)–5, every person required to make a return of income tax withheld from wages pursuant to section 3402 shall make a return for the first calendar quarter in which the person is required to deduct and withhold such tax and for each subsequent calendar quarter, whether or not wages are paid therein, until the person has filed a final return in accordance with § 31.6011(a)–6. Except as otherwise provided in paragraphs (a)(2) and (3) and (b) of this section, and in § 31.6011(a)–8, Form 941 is the form prescribed for making the return required under this paragraph.

(2) *Wages paid for domestic service.* * * *

(3) *Wages paid for agricultural labor.* * * *

* * * * *

(b) *Withheld from nonpayroll payments.* Every person required to make a return of income tax withheld from nonpayroll payments for calendar year 1994 shall make a return for calendar year 1994 and for each subsequent calendar year (whether or not any such tax is required to be withheld therein) until a final return is made in accordance with § 31.6011(a)–6. Every person not required to make a return of income tax withheld from nonpayroll payments for calendar year 1994 shall make a return for the first calendar year thereafter in which the person is required to withhold such tax and for each subsequent calendar year until a final return is made in accordance with § 31.6011(a)–6. Form 945, Annual Return of Withheld Federal Income Tax, is the form prescribed for making the return required under this paragraph (b). Nonpayroll payments are—

(1) Certain gambling winnings subject to withholding under section 3402(q);

(2) Retirement pay for services in the Armed Forces of the United States subject to withholding under section 3402;

(3) Certain annuities as described in section 3402(o)(1)(B);

(4) Pensions, annuities, IRAs, and certain other deferred income subject to withholding under section 3405; and

(5) Reportable payments subject to backup withholding under section 3406.

* * * * *

Par. 3. The heading for paragraph (a) of § 31.6071(a)–1 is revised to read as set forth below.

§ 31.6071(a)–1 Time for filing returns and other documents.

(a) *Federal Insurance Contributions Act and income tax withheld from wages and from nonpayroll payments*— * * *

* * * * *

Par. 4. Section 31.6302–1 is amended as follows:

1. Paragraphs (e)(1) (iii) and (iv) are revised.
2. The last sentence of paragraph (e)(2) is revised.
3. The revisions read as follows:

§ 31.6302–1 Federal tax deposit rules for withheld income taxes and taxes under the Federal Insurance Contributions Act (FICA) attributable to payments made after December 31, 1992.

* * * * *

(e) * * *

(1) * * *

(iii) The income tax withheld under sections 3402 and 3405, except income tax withheld with respect to payments made after December 31, 1993, on the following—

(A) Certain gambling winnings under section 3402(q);

(B) Retirement pay for services in the Armed Forces of the United States under section 3402;

(C) Certain annuities described in section 3402(o)(1)(B); and

(D) Pensions, annuities, IRAs, and certain other deferred income under section 3405; and

(iv) The income tax withheld under section 3406, relating to backup withholding with respect to reportable payments made before January 1, 1994.

(2) * * * Also, see § 31.6302–3 concerning a taxpayer's option with respect to payments made before January 1, 1994, to treat backup withholding amounts under section 3406 separately.

* * * * *

Par. 5. In § 31.6302–3, paragraph (b) is revised to read as follows:

§ 31.6302–3 Federal tax deposit rules for amounts withheld under the backup withholding requirements of section 3406 for payments made after December 31, 1992 and before January 1, 1994.

* * * * *

(b) *Treatment of backup withholding amounts separately.* A taxpayer that withholds income tax under section 3406 with respect to reportable payments made after December 31, 1992, and before January 1, 1994, may, in accordance with the instructions provided with Form 941, deposit such tax under the rules of § 31.6302–1 without taking into account the other taxes described in paragraph (e) of § 31.6302–1 for purposes of determining when tax withheld under section 3406 must be deposited. A taxpayer that treats backup withholding amounts separately with respect to reportable payments made after December 31, 1992, and before January 1, 1994, shall not take tax withheld under section 3406 into account for purposes of determining when the other taxes described in paragraph (e) of § 31.6302–1 must otherwise be deposited under that section. See § 31.6302–4 for rules regarding the deposit of income tax withheld under section 3406 with respect to reportable payments made after December 31, 1993.

* * * * *

Par. 6. Section 31.6302–4 is added to read as follows:

§ 31.6302–4 Federal tax deposit rules for withheld income taxes attributable to nonpayroll payments made after December 31, 1993.

(a) *General rule.* With respect to nonpayroll withheld taxes attributable to nonpayroll payments made after December 31, 1993, a taxpayer is either a monthly or a semi-weekly depositor based on an annual determination. Except as provided in this section, the rules of § 31.6302–1 shall apply to determine the time and manner of making deposits of nonpayroll withheld taxes as though they were employment taxes. Paragraph (b) of this section defines nonpayroll withheld taxes. Paragraph (c) of this section provides rules for determining whether a taxpayer is a monthly or a semi-weekly depositor.

(b) *Nonpayroll withheld taxes defined.* For purposes of this section, effective with respect to payments made after December 31, 1993, *nonpayroll withheld taxes* means—

(1) Amounts withheld under section 3402(q), relating to withholding on certain gambling winnings;

(2) Amounts withheld under section 3402 with respect to amounts paid as retirement pay for service in the Armed Forces of the United States;

(3) Amounts withheld under section 3402(o)(1)(B), relating to certain annuities;

(4) Amounts withheld under section 3405, relating to withholding on pensions, annuities, IRAs, and certain other deferred income; and

(5) Amounts withheld under section 3406, relating to backup withholding with respect to reportable payments.

(c) *Determination of deposit status*—(1) *Rules for calendar years 1994 and 1995.* On January 1, 1994, a taxpayer's depositor status for nonpayroll withheld taxes is the same as the taxpayer's status on January 1, 1994, for taxes reported on Form 941 under § 31.6302–1. A taxpayer generally retains that depositor status for nonpayroll withheld taxes for all of calendar years 1994 and 1995. However, a taxpayer that under this paragraph (c) is a monthly depositor for 1994 and 1995 will immediately lose that status and become a semi-weekly depositor of nonpayroll withheld taxes if the One-Day rule of § 31.6302–1(c)(3) is triggered with respect to nonpayroll withheld taxes. See paragraph (d) of this section for a special rule regarding the application of the One-Day rule of § 31.6302–1(c)(3) to nonpayroll withheld taxes.

(2) *Rules for calendar years after 1995*—(i) *In general.* For calendar years after 1995, the determination of whether a taxpayer is a monthly or a semi-weekly depositor for a calendar year is based on an annual determination and generally depends on the aggregate amount of nonpayroll withheld taxes reported by the taxpayer for the lookback period as defined in paragraph (c)(2)(iv) of this section.

(ii) *Monthly depositor.* A taxpayer is a monthly depositor of nonpayroll withheld taxes for a calendar year if the amount of nonpayroll withheld taxes accumulated in the lookback period (as defined in paragraph (c)(2)(iv) of this section) is $50,000 or less. A taxpayer ceases to be a monthly depositor of nonpayroll withheld taxes on the first day after the taxpayer is subject to the One-Day rule in § 31.6302–1(c)(3) with respect to nonpayroll withheld taxes. At that time, the taxpayer immediately becomes a semi-weekly depositor of nonpayroll withheld taxes for the remainder of the calendar year and the succeeding calendar year. See paragraph (d) of this section for a special rule regarding the application of the One-Day rule of § 31.6302–1(c)(3) to nonpayroll withheld taxes.

(iii) *Semi-weekly depositor.* A taxpayer is a semi-weekly depositor of nonpayroll withheld taxes for a calendar year if the amount of nonpayroll withheld taxes accumulated in the lookback period (as defined in paragraph (c)(2)(iv) of this section) exceeds $50,000.

(iv) *Lookback period.* For purposes of this section, the lookback period for nonpayroll withheld taxes is the second calendar year preceding the current calendar year. For example, the lookback period for calendar year 1996 is calendar year 1994. A new taxpayer is treated as having nonpayroll withheld taxes of zero for any calendar year in which the taxpayer did not exist.

(d) *Special rules.* A taxpayer must treat nonpayroll withheld taxes, which are reported on Form 945, Annual Return of Withheld Federal Income Tax, separately from taxes reportable on Form 941, Employer's Quarterly Federal Tax Return. Taxes reported on Form 945 and taxes reported on Form 941 are not combined for purposes of determining whether a deposit of either is due, whether the One-Day rule of § 31.6302–1(c)(3) applies, or whether any safe harbor is applicable. In addition, separate Federal tax deposit coupons must be used to deposit taxes reported on Form 945 and taxes reported on Form 941. (See paragraph (b) of § 31.6302–1 for rules for determining an employer's deposit status for taxes reported on Form 941.) A deposit of taxes reported on Form 945 for one calendar year must be made separately from a deposit of taxes reported on Form 945 for another calendar year.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 93–27045 Filed 11–1–93; 9:40 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

Ohio Permanent Regulatory Program; Evaluation of Revegetation Success

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening of public comment period.

SUMMARY: OSM is reopening the public comment period for Revised Program Amendments Number 25 and 56 (PA 25R and PA 56R) to the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Ohio has submitted proposed changes to two rules, guidelines for evaluating revegetation success, and other supporting information. Together, these documents describe the sampling methods and standards which Ohio proposes to use to evaluate revegetation success prior to bond release on areas with different postmining land uses. The amendments are intended to make the Ohio program as effective as the corresponding Federal regulations.

This document sets forth the times and locations that the Ohio program and proposed amendments to that program will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on December 6, 1993. If requested, a public hearing on the proposed amendments will be held at 1 p.m. on November 29, 1993. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on November 19, 1993.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand-delivered to Mr. Richard J. Seibel, Director, Columbus Field Office, at the address listed below.

Copies of the Ohio program, the proposed amendments, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendments by contacting OSM's Columbus Field Office.

Office of Surface Mining Reclamation and Enforcement, Columbus Field Office, 2246 South Hamilton Road, Columbus, Ohio 43232, Telephone: (614) 866–0578.

Ohio Department of Natural Resources, Division of Reclamation, 1855 Fountain Square Court, Building H–3, Columbus, Ohio 43224, Telephone: (614) 265–6675.

FOR FURTHER INFORMATION CONTACT: Mr. Richard J. Seibel, Director, Columbus Field Office, (614) 866–0578.

SUPPLEMENTARY INFORMATION:

I. Background

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1982, **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, and 935.15, and 935.16.

II. Discussion of the Proposed Amendments.

The October 21, 1993, amendment submission which is the subject of the proposed rule is a combination and resubmission of two prior Ohio amendments, PA 25R and PA 56R. The following is a brief history of each of these two preceding amendments:

Revised Program Amendment Number 25 (PA 25R)

On January 14, 1993 (58 FR 4330), the Director of OSM announced his decision on a June 22, 1992, submission of PA 25R (Administrative Record No. OH–1725). In that decision, the Director approved Ohio's proposed revision to Ohio Administrative Code (OAC) section 1501:13–9–15 paragraph (J)(1) adopting the requirement that success of revegetation shall be measured using a statistically valid sampling technique with a 90-percent statistical confidence interval. However, the Director did not approve Ohio's visual (ocular) method of evaluating ground cover as a statistically valid means of performing that sampling. Therefore, the Director continued the requirement at 30 CFR 935.16(f) that Ohio amend its program to include a statistically valid sampling technique for evaluating ground cover in order to be as effective as the corresponding Federal regulations at 30 CFR 816.116(a).

By letter dated June 11, 1993 (Administrative Record No. OH–1889), the Ohio Department of Natural Resources, Division of Reclamation (Ohio) resubmitted PA 25R. In that resubmission, Ohio proposed to delete the recently approved requirements for statistical sampling of revegetation and to substitute a mixed use of ocular evaluation and statistical sampling under new paragraphs (G)(3)(b)(ii) and (iii) and revised paragraph (K)(1) of OAC 1501:13–09–15.

OSM announced receipt of new PA 25R in the July 6, 1993, **Federal Register** (58 FR 36178), and, in the same document, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period ended on August 5, 1993. The public hearing scheduled for August 2, 1993, was not held because not one requested an opportunity to testify.

By letter dated September 13, 1993 (Administrative Record No. OH–1917), OSM provided its questions and comments to Ohio on the June 11, 1993, resubmission of PA 25R. On October 12, 1993, Ohio requested and received a one-week extension to the due date for its response to OSM's September 13, 1993, letter (Administrative Record No. OH–1936 and 1937).

Ohio's October 21, 1993, amendment submission, which is the subject of this proposed rule, was submitted in part to address OSM's September 13, 1993, questions and comments on PA 25R. Also, as part of the October 21, 1993, submission, Ohio is formally withdrawing its earlier June 22, 1992, submission of PA 25R which was partially approved by the Director of OSM on January 14, 1993.

Revised Program Amendment Number 56 (PA 56R)

By letter dated May 1, 1992 (Administrative Record No. OH–1690), Ohio submitted proposed PA 56. This amendment proposed changes to two Ohio rules concerning measurement of revegetation success on pasture or grazing land, undeveloped land, recreational areas, and previously disturbed areas.

As part of and in support of PA 56, Ohio also submitted four draft Policy/Procedure Directives entitled "Measurement of productivity on pasture and grazing land," "Identification of areas for which the premining land use is undeveloped land," "Planting plans for areas for which the approved postmining land

use is undeveloped land," and "Verification of proper planting of tree seedlings." These proposed policy statements elaborated on and established criteria for the new requirements in the two revised Ohio rules.

OSM announced receipt of PA 56 in the June 2, 1992, **Federal Register** (57 FR 23178) and, in the same document, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period ended on July 2, 1992. The public hearing scheduled for June 29, 1992, was not held because no one requested an opportunity to testify.

OSM and Ohio staff met on October 15, 1992, and informally resolved most of OSM's initial questions and comments about Ohio's May 1, 1992, amendment submission. On November 19, 1992, OSM sent a letter to Ohio (Administrative Record No. OH–1794) concerning the one unresolved issue which remained after the October meeting.

By letter dated January 12, 1993 (Administrative Record No. OH–1803), Ohio resubmitted PA 56R. This revised amendment proposed additional modifications to the rule at OAC 1501:13–9–15. OSM announced receipt of new PA 56R in the March 22, 1993, **Federal Register** (58 FR 15315) and, in the same document, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period ended on April 21, 1993. The public hearing scheduled for April 16, 1993, was not held because no one requested an opportunity to testify.

By letter dated October 14, 1993 (Administrative Record No. OH–1939), OSM provided its questions and comments to Ohio on the January 12, 1993, resubmission of PA 56R. Ohio's October 21, 1993, amendment submission, which is the subject of this proposed rule, was submitted in part to address OSM's October 14, 1993, questions and comments on PA 56R.

October 21, 1993, Amendment Submission

The following is a brief summary of the substantive revisions proposed in the October 21, 1993, combined resubmission of PA 25R and PA 56R:

A. Land Use Changes

Ohio is revising OAC 1501:13–4–06 paragraph (E)(2)(g) to provide that any change to the designated postmining land use shall be considered a significant permit alteration subject to notice and hearing requirements.

B. General Requirement for Statistically Valid Measurement of Revegetation Success

Ohio is revising OAC 1501:13–9–15 paragraph (F)(1) to provide that the Chief of the Ohio Department of Natural Resources, Division of Reclamation (the Chief) shall compile guidelines specifying statistically valid sampling techniques for measuring revegetation success of ground cover, production, or stocking to be used for every final bond release evaluation. The statistical sampling techniques shall use a 90-percent confidence interval (i.e., one-sided test with a 0.10 alpha error). As discussed below, Ohio has included the referenced guidelines as one of the supporting documents for this amendment submission.

C. Augmentative Erosion Repair

Ohio is revising OAC section 1501:13–9–15 paragraph (F)(2)(c)(ii) to clarify that the Chief will classify instances of rill and gully erosion repair as either limited or extensive, based on the extent of repairs needed and the cause of the erosion. The Chief will consider extensive repairs to be augmentative.

D. Revegetation Success Standards for Pasture or Grazing Land

Ohio is revising OAC section 1501:13–9–15 paragraph (G)(3) (a) and (b) to provide that revegetation shall be determined to be successful for Phase III bond release on pasture or grazing land when:

(1) The five-year period of extended responsibility has expired;

(2) Planted and nonnoxious volunteer species equal or exceed the county average yield for hay for any two years of the period of extended responsibility, except the first year;

(3) For the last year of the period of extended responsibility and one additional year, except the first year, the ground cover equals or exceeds 90 percent; and

(4) No single area with less than 30 percent cover exceeds the lesser of 3,000 square feet or 0.3 percent of the land affected.

Ohio is deleting a revision to paragraph (G)(3)(a)(i) proposed in the January 12, 1993, submission of PA 56R which would have allowed evaluation of productivity based on soil surveys. Ohio is also deleting a revision to paragraph (G)(3)(b)(ii) proposed in the June 11, 1993, submission of PA 25R which would have provided for visual estimation of revegetation success.

E. Revegetation Success Standards for Industrial, Residential, or Commercial Areas

Ohio is revising OAC section 1501:13–9–15 paragraph (J)(1)(b) to provide that, for areas to be developed within two years after regrading is completed, revegetation shall be determined to be successful for a phase III bond release in the last year of the period of extended responsibility for revegetation success.

Ohio is revising OAC section 1501:13–9–15 paragraph (J)(2) to provide that, for areas to be developed two or more years after regrading is completed, only one ground cover evaluation in the last year of the period of extended responsibility for revegetation success is necessary for phase III bond release based on the requirements of revised paragraph (G)(3)(b).

F. Revegetation Success Standards for Woody Vegetation

Ohio is revising OAC section 1501:13–9–15 paragraph (L)(2) to provide that revegetation shall be determined to be successful for a phase III bond release in the last year of the period of extended responsibility for revegetation success when the five-year period of extended responsibility has expired and the herbaceous ground cover is at least 70 percent.

G. Revegetation Success Standards for Undeveloped Land

Ohio is revising OAC section 1501:13–9–15 paragraphs (M)(3) (b) and (c) to provide that revegetation shall be determined to be successful for a phase III bond release when the five-year period of extended responsibility has expired and:

(1) The herbaceous ground cover on areas not planted with trees and shrubs meets the 90-percent ground cover and barren area standards of revised paragraph (G)(3)(b) of OAC 1501:13–9–15, except that only one ground cover evaluation in the last year of the period of extended responsibility for revegetation success is necessary for phase III bond release; and

(2) The herbaceous ground cover on areas on which trees and shrubs are planted is at least 70 percent in the last year of the period of extended responsibility for revegetation success.

H. Revegetation Success Standards for Recreation Areas

Ohio is revising OAC section 1501:13–9–15 paragraphs (N) (1) and (2) to provide that, for areas where the approved postmining land use is developed recreation facilities,

including but not limited to portions of parks, camps, and amusement areas where woody vegetation would be incompatible with the approved postmining land use, the area shall meet the phase II and III ground cover standards specified in OAC 1501:13–9–15 paragraphs (G)(2) and revised (G)(3)(b), except that only one ground cover evaluation in the last year of the period of extended responsibility for revegetation success is necessary for phase III bond release. Areas of less intensive use shall meet the revegetation success requirements of OAC 1501:13–9–15 paragraph (L)(2) in the last year of the period of extended responsibility for revegetation success for phase III bond release.

I. Ohio Guidelines for Evaluating Revegetation Success

As part of and in support of the October 21, 1993, submission of the amendment, Ohio has included a document entitled "Guidelines for Evaluating Revegetation Success" as referenced in the proposed revisions to OAC 1501:13–9–15 paragraph (F)(1). This document covers data collection, recording, and analysis and has three parts:

Part A. Ground Cover: This part outlines Ohio's adaptation of the point-intercept "stick" method developed by John C. Rennie and Robert E. Farmer et. al. which Ohio will use to evaluate herbaceous ground cover and to evaluate tree and shrub survival concurrently with herbaceous ground cover.

Part B. Stocking of Trees and Shrubs: This part outlines Ohio's adaptation of the Rennie-Farmer method to evaluate tree and shrub survival independent of ground cover using circular plots and tree and shrub counts within those plots. This part also discusses proper handling and planting techniques for trees and shrubs.

Part C. Productivity: This part outlines Ohio's methods for measuring hay production on pasture, grazing land, and cropland and for measuring production on cropland planted with corn, oats, and wheat.

With the exception of the proposed Policy/Procedure Directive concerning planting plans on undeveloped land, Ohio is withdrawing the three other Policy/Procedure Directives submitted with the May 1, 1992, version of PA 56. The guidelines discussed above incorporate the provisions of these three policy directives.

J. Exclusion of Herbicide-Treated Areas During Evaluations of Ground Cover

In support of Part A.1.V of the guidelines discussed above, Ohio has submitted a letter from the Ohio Society of American Foresters advocating the exclusion of herbicide-treated areas from calculations of barren area.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendments proposed by Ohio satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Ohio program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Columbus Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m. on November 19, 1993. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the Columbus Field Office by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings shall be open to the public and, if possible, notices of the meetings will be posted at the locations listed under **ADDRESSES.** A written summary of each public meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This proposed rule is not considered a significant regulatory action under the criteria of section 3(f) of Executive Order 12866. Therefore, review by the Office of Management and Budget under section 6 of the Executive Order is not required prior to publication in the **Federal Register.**

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paper Reduction Act, 44 U.S.C. 3507 *et seq.*

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities

under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 29, 1993.

Carl C. Close,

Assistant Director, Eastern Support Center.

[FR Doc. 93–27089 Filed 11–3–93; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 946

Virginia Regulatory Program; Regulatory Reform III

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Virginia permanent regulatory program (hereinafter, the Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment includes changes to the Virginia program relative to siltation structures and impoundments. The Virginia Division of Mined Land Reclamation (DMLR) has also proposed changes to the program relative to revegetation standards for success roads and road construction. The amendment is intended to revise the State program to be consistent with the corresponding Federal standards and to clarify and correct inconsistencies in Virginia's rules.

This document sets forth the times and locations that the Virginia program and proposed amendment to the program are available for public inspection, the comment period during which interested parties may submit written comments on the proposed amendment, and the procedures that will be followed regarding the public hearing, if one is required.

DATES: Written comments must be received on or before 4 p.m. on December 6, 1993. If requested, a public hearing on the proposed amendment will be held on November 29, 1993; requests to present testimony at the hearing must be received on or before 4 p.m. on November 19, 1993.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand delivered to Mr. Robert A. Penn, Director, Big Stone Gap Field Office at the first address listed below. If a hearing is requested, it will be held at the same address.

Copies of the Virginia program, proposed amendments, and all written comments received in response to this document will be available for review at the locations listed below during normal business hours Monday through Friday, excluding holidays. Each requestor may receive, free of charge, one copy of the proposed amendment by contacting the OSM Big Stone Gap Field Office.

Office of Surface Mining Reclamation and Enforcement, Big Stone Gap Field Office, P.O. Drawer 1217, Powell Valley Square Shopping Center, room 220, Route 23, Big Stone Gap, Virginia 24219, Telephone (703) 523–4303

Virginia Division of Mined Land Reclamation, P.O. Drawer 900, Big Stone Gap, Virginia 24219, Telephone (703) 523–8100.

FOR FURTHER INFORMATION CONTACT: Mr. Robert A. Penn, Director, Big Stone Gap Field Office, Telephone (703) 523–4303.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of the Interior approved the Virginia program on December 15, 1981. Information pertinent to the general background and revisions to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval can be found in the December 15, 1981, **Federal Register** (46 FR 61085–61115). Subsequent actions concerning the conditions of approval and proposed amendments are identified at 30 CFR 946.12, 946.13, 946.15, and 946.16.

II. Discussion of Amendment

By letter dated October 22, 1993 (Administrative Record No. VA–829), Virginia submitted a proposed amendment to its program pursuant to SMCRA. The proposed amendment includes responses to a 30 CFR 732.17 notification dated November 17, 1989 (Administrative Record No. VA–743). Virginia first proposed changes to the specific sections included in today's document on October 1, 1990. OSM announced receipt of the proposed amendment in the October 31, 1990, **Federal Register** (55 FR 45811). As a result of an issue letter dated March 20, 1991, from OSM (Administrative Record No. VA–792), the October 1, 1990, submission was modified in a resubmission dated April 18, 1991 (56 FR 23664 and 29607). By letter dated May 12, 1992 (Administrative Record No. VA–818), Virginia submitted a request to withdraw portions of the October 1, 1990, submission (as modified April 18, 1991) in order to reconsider various proposals. Today's document addresses the sections that Virginia withdrew in its May 12, 1992, letter except for §§ 773.16(c)(4)(ii) and 773.16(c)(7) which required no further action on Virginia's part.

Virginia proposes to add language to §§ 480–03–19.816/817(a)(3)(ii) to set stability requirements for small low-hazard impoundments. In lieu of engineering tests to establish the minimum static factors of 1.3, Virginia proposes to allow the use of the graphical solution method as outlined in the "Bureau of Mines Report of Investigations 8564."

Proposed §§ 480–03–19.816/817.116(b)(3)(v)(A) deletes the requirement that stocking rates "* * * approximate the stocking and ground cover on the surrounding unmined area * * *." Virginia considers this language to be unnecessary.

Virginia proposes to amend §§ 480–03–19.816/817.116(c)(3) by changing the existing reference to "conservation practices" to "husbandry practices." Also, Virginia has included an exhaustive list of husbandry practices that it will accept. The proposed husbandry practices are considered by Virginia to be normal maintenance and, if utilized, will not extend the period of responsibility for revegetation success and bond liability.

Virginia proposes changes to §§ 480–03–19.816/817.151 (b)(1) through (b)(4). This section is being renumbered and changed to address the stability of road embankments. The material presented by Virginia also includes interpretive language relative to the construction of keyway cuts and the placement and compaction of material in embankments.

Virginia proposes to change §§ 480–03–19.816/817.152 to clarify that only design standards may be waived for existing roads provided that performance standards are met, and it is shown that reconstruction would result in greater environmental harm.

III. Public Comments Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendments proposed by Virginia satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Virginia program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under DATES or at locations other than the Big Stone Gap Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under FOR FURTHER INFORMATION CONTACT by close of business on November 19, 1993. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the Big Stone Gap Field Office by contacting the person listed under FOR FURTHER INFORMATION CONTACT. All such meetings will be open to the public and, if possible, notices of meetings will be posted in advance at the locations listed under ADDRESSES. A written summary of each public meeting will be made part of the Administrative Record.

Executive Order 12866

This proposed rule is not considered a significant regulatory action under the criteria of section 3(f) of Executive Order 12866. Therefore, review by the Office of Management and Budget under section 6 of the Executive Order is not required prior to publication in the **Federal Register.**

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of the Surface Mining Control and Reclamation Act (SMCRA) (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.13 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have significant economic impact on a substantial number of entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR 946

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 28, 1993.

Ronald C. Recker,

Acting Assistant Director, Eastern Support Center.

[FR Doc. 93–27087 Filed 11–3–93; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 124

RIN 0905–AE06

Medical Facility Construction and Modernization; Requirements for Provision of Services to Persons Unable To Pay

AGENCY: Public Health Service, DHHS.

ACTION: Proposed rule.

SUMMARY: This notice proposes revisions to the rules currently governing how certain health care facilities, assisted under titles VI and XVI of the Public Health Service Act, fulfill the assurance given in their applications for assistance that they would provide a reasonable volume of services to persons unable to pay. Public comment on the current rules and operational experience with them has indicated the need to revise the current requirements with respect to nonprofit facilities that provide substantial free or below cost care but are unable, under current requirements, to credit such care towards fulfillment of their assurance. The intended effect of this action is for qualified facilities to satisfy their uncompensated services assurance.

DATES: Comments must be received on or before January 3, 1994.

ADDRESSES: Written comments may be sent to: Mrs. Charlotte G. Pascoe, Director, Division of Facilities Compliance, BHRD, HRSA, 5600 Fishers Lane, room 11–19, Rockville, Maryland 20857.

Comments will be available for public inspection during normal business hours at this address. The Public Health Service will take appropriate steps, where necessary, to afford individuals with disabilities an equal opportunity to comment.

FOR FURTHER INFORMATION CONTACT:

Mr. Eulas Dortch, 301–443–5656.

SUPPLEMENTARY INFORMATION: The Secretary of Health and Human Services proposes an amendment to the rules governing what is popularly known as the Hill-Burton uncompensated services program. Health care facilities covered by the program received construction assistance under two titles of the Public Health Service Act, title VI (the "Hill-Burton Act", 42 U.S.C. 291, *et seq.*) and title XVI (42 U.S.C. 300q, *et seq.*). Under both titles, facilities receiving such construction assistance have been required, as a condition of receiving the construction assistance, to provide an assurance that "there will be available in the facility or portion thereof to be constructed or modernized a reasonable volume of services to persons unable to pay therefore * * *." 42 U.S.C. 291c(e). See also 42 U.S.C. 300s–1(b)(1)(K)(ii). This assurance is known as the "uncompensated services assurance."

Regulations governing compliance with the uncompensated services assurance were first issued in 1947, and have been revised several times. On May 18, 1979, comprehensive regulations governing compliance with the assurance were issued at 44 FR 29372. Among other things, the 1979 regulations: Established a minimum level of uncompensated services facilities were required to provide; set an annual compliance level of uncompensated services to be provided and required facilities to make up any deficit in meeting the annual compliance level through provision of more uncompensated services in later years; established national eligibility criteria for determining who is unable to pay and provided timing and documentation requirements for facilities to follow in making eligibility determinations; required facilities to allocate their uncompensated services either under a plan meeting certain requirements or on a first-request, first-served basis; required facilities to notify the public of the existence of their uncompensated services programs through public notice and provision of personal notice to individuals served by the facilities; and required facilities to keep records documenting compliance and to periodically report concerning compliance.

Experience with the 1979 regulations showed that they created substantial compliance problems for a number of public facilities. Although many public facilities were in the business of serving indigent patients, they could not meet the requirements of the regulations and were consequently amassing large deficits. Accordingly, on September 18, 1986, the Secretary published a rule creating a compliance alternative for public facilities at 51 FR 33208. The public facility compliance alternative is codified at 42 CFR 124.513. It provides that a publicly-owned and operated facility and quasi-public facility may be certified if it provides health services to eligible persons under a program of discounted health services and either received for the past three fiscal years at least 10 percent of its total operating revenue from State and/or local sources to cover operating deficits attributable to the provision of discounted health services, or provided in those fiscal years uncompensated services or free or discounted health services in an amount equal to or greater than twice the facility's annual compliance level (§ 124.513(b)). The facility must report annually as to whether the factors upon which the certification is based have changed and must keep records documenting its compliance (§§ 124.509(b) and 124.510(b)). The certification remains in effect until withdrawn, and the certified facility is required only to comply with the requirements relating to certified facilities (§§ 124.513(a) and 124.513(d)(1)). A title VI certified facility may make up previously assessed deficits either by showing that it met the conditions for certification in the deficit period or by continuing to provide services under the certification for a period equivalent to the period of deficit (§ 124.513(d)(2)(i)). A title XVI certified facility may make up previously assessed deficits by demonstrating that it met the conditions for certification in the deficit period; to the extent it cannot do so, it must make up any remaining deficit whenever its certification is withdrawn (§ 124.513(d)(2)(iii)(A)). If a title VI or XVI facility has an unassessed deficit, it may submit an independent certified audit to establish that no, or a lesser, deficit exists (§§ 124.513(d)(2)(ii) and 124.513(d)(2)(iii)(B)).

On December 3, 1987, the Secretary revised the 1979 regulations at 52 FR 46022. As pertinent here, two additional compliance alternatives were created: A compliance alternative for facilities with annual obligations of $10,000 or less and a compliance alternative for certain federally supported health centers. See §§ 124.514 and 124.515. The former alternative was adopted to bring the administrative costs of compliance for such facilities more into line with the actual level of uncompensated services available. (51 FR 31005, August 29, 1986.) The latter alternative was adopted in recognition of the fact that the facilities concerned already provided substantial amounts of free and below cost services to indigents in a structured fashion pursuant to the conditions of their Federal grants. (51 FR 31002, August 29, 1986.) The requirements applicable under § 124.514 resemble those applicable under the public facility compliance alternative.

The Secretary is proposing an additional compliance alternative designed to address facilities whose operational characteristics have created intractable compliance problems, but which nonetheless are providing substantial amounts of free and below cost services to the populations they serve. These facilities are private, nonprofit facilities, and thus do not qualify for the public facility compliance alternative. Their annual obligations exceed $10,000, so they do not qualify for the small annual obligation compliance alternative, and they are not federally supported centers qualifying for the compliance alternative at § 124.515. However, many of these facilities provide substantial amounts of free or below cost services, generally because they were created to provide services at no or a nominal charge to all persons, or they serve an indigent population that is entirely covered by third-party programs such as Medicaid. These include facilities such as sheltered workshops, crippled children rehabilitation facilities, cerebral palsy centers, chronic disease hospitals, Goodwill Centers, facilities for the blind, mental health centers, and Easter Seals Centers. Based on experience monitoring facilities' compliance with the uncompensated services regulations since 1979, the Department has found that many such facilities are accumulating large uncompensated services deficits, typically because their policies of not charging or of serving populations covered under governmental indigent care programs, preclude receiving credit under the uncompensated services regulations for the free and below cost care they in fact provide.

The Department has identified 180 private, nonprofit outpatient, rehabilitation, and community mental health center facilities with outstanding uncompensated services obligations

which are likely to have provided a large volume of free or below cost care while receiving little or no uncompensated services credit. A convenience sample of 28 facilities, consisting of a variety of types of facilities, were investigated. The findings of the investigation were as follows:

- 25 percent of the facilities (seven facilities) were operating a compliant uncompensated services program.
- 82 percent of the facilities (23 facilities, including several with compliant programs) were operating their own programs of free or reduced cost health services, with 18 of these providing services on a discounted basis and 5 providing services at no or a nominal charge.
- Of the five facilities providing services at no or nominal charge, four have a policy of providing services at no charge. These four facilities receive 100 percent of their revenue from third-party reimbursement sources and/or philanthropy.
- 29 percent of the facilities (eight facilities) collect no monies directly from patients. These eight facilities include the four described above which provide all services at no charge; the remaining four facilities do charge for services, but they collect no monies from their patients because all are fully covered by third-party sources. Philanthropy is used by two of these facilities to offset a portion of their operating deficits.
- 18 percent of the facilities (five facilities) have admissions practices which make it difficult or impossible to provide uncompensated services. Certain facilities operate under State agreements where the State controls the admissions and fully reimburses the facilities for the services provided, with no direct charges to patients.
- 75 percent of the facilities (21 facilities) received substantial philanthropic support totalling at least 10 percent of their non-Medicaid/Medicare revenues. Thirteen of these 21 facilities received from 36 percent to 94 percent of their revenues from philanthropic sources. By comparison, on average, in 1990 community hospitals received 1 percent of revenues from philanthropy ("USA Report on Giving, Fiscal Year 1990," Association for Health Care Philanthropy). Each of these facilities either does not charge individuals for services provided or provides services to the indigent at a reduced charge.

The Department's survey thus confirmed that there are a number of private, nonprofit facilities for which compliance with the uncompensated services requirements is difficult or impossible, given their charging policies, legal requirements applicable to their operations, characteristics of their patient populations, or some combination of these factors, but which clearly provided health services without regard to ability to pay. Such facilities are, in the Department's view, fulfilling the statutory objective of providing a reasonable volume of free and below cost services to persons unable to pay, as their policies generally ensure that all persons, including persons unable to pay, receive the facilities' services on a free or heavily discounted basis. Some facilities collect no monies from patients for services. It is unreasonable to require such facilities, which are clearly providing substantial amounts of services without regard to ability to pay, either to restructure their accounting, intake, billing and other systems to accommodate a rule which is not designed to recognize their charitable purpose or to face years of mounting deficits. Such facilities are in a position substantially similar to that of the public facilities for which the public facility compliance alternative was created. Thus, considerations supporting the creation of the public facility compliance alternative likewise support the creation of similar compliance alternative for private, nonprofit facilities.

Accordingly, the Secretary proposes a compliance alternative for private, nonprofit facilities which provide a substantial amount of services without regard to ability to pay, but which are unable to comply with the present uncompensated services requirements. The compliance alternative proposed below is substantially similar to the public facility compliance alternative with respect to reporting, recordkeeping, and make-up of deficits. However, the eligibility criteria differ, as they are functions of the characteristics of the facilities the alternative is designed to cover.

Under the rules proposed below, a facility may qualify for the compliance alternative if it is a private, nonprofit entity which falls into one of two categories. The first category consists of facilities that receive no monies directly from patients with incomes up to twice the poverty level (exclusive of certain deductible and coinsurance amounts and other required collections). The second category consists of facilities that have received for the three most recent fiscal years at least 10 percent of their non-Medicaid and non-Medicare operating revenue from philanthropic sources to cover operating deficits and either provide services under a "program of discounted health services" or provide all services to all individuals at no or a nominal charge (exclusive of certain deductible and coinsurance amounts and other required collections).

With respect to the first category, it is the Department's view that those facilities that collect no monies from patients with incomes up to twice the poverty level are meeting the statute's objectives. The exclusionary language in this criterion is included to facilitate collection of reimbursements from third-party programs that would be liable to pay for the services provided. With respect to the second category, the proposed percentage of philanthropic support in the private facility is comparable to the percentage of tax support in facilities certified under the public facility compliance alternative. Such monies are generally contributed to fund services which are deemed essential or worthwhile, but which are not self-supporting. The 10 percent level was selected because it is indicative of a significant level of philanthropic support. The "program of discounted health services" criterion is analogous to a similar criterion in the public facility compliance alternative, and reflects a recognition that many such facilities have in place a mechanism for determining eligibility for such services by screening for ability to pay. The rationale for the other criterion is self-evident: Facilities that provide all services at no or a nominal charge are adequately serving those in their patient population who are unable to pay.

The remaining amendments proposed below are technical in nature. In essence, they would amend the existing regulations to factor the new compliance alternative into the rules where appropriate. The policies contained in these amendments generally parallel the requirements relating to the public facility compliance alternative, although a few sections are changed slightly to reflect the differences in the qualification criteria between the two alternatives.

The Secretary solicits comments on the viability and advisability of the above criteria, as well as the other provisions proposed below. The limitation of this compliance alternative to private, nonprofit facilities is an issue upon which comment is particularly solicited, as there is some question whether the alternative should also be made available to public facilities which meet the above criteria, but do not meet the criteria for qualification under the public facility compliance alternative.

Regulatory Flexibility Act and Executive Order 12291

The proposed rule would generally maintain the existing procedural and reporting requirements for the majority of obligated facilities, but significantly lessen them for certain private, nonprofit facilities. The Department has determined that the impact would not approach the annual $100 million threshold for major economic consequences as defined in Executive Order 12291. Therefore, a regulatory impact analysis is not required.

Consistent with the provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Secretary certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act of 1980

This proposed rule contains information collections which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. The underlying purpose of this rule is to decrease recordkeeping, reporting, and notification burden for the charitable facilities. Facilities certified under the charitable facility compliance alternative will no longer be required to maintain extensive records on uncompensated services (§ 124.510(a)), but instead will have to maintain only records which document its eligibility for the compliance alternative (§ 124.510(b)). We believe this recordkeeping requirement imposes no additional burden because these documents are ordinarily retained by facilities. This change is expected to reduce the recordkeeping burden by 75 hours per facility per year.

Similarly, reporting burden will be reduced. Charitable facilities will be required to apply once for the certification (§ 124.516(c)), and thereafter will need only to certify their continued eligibility annually (§ 124.509(b)). Currently, facilities in deficit status, which include most of the charitable facilities, must file a report each year which documents the amount of uncompensated care provided (§ 124.509(a)). This change in reporting requirements is expected to reduce the reporting burden by 6 hours per facility in the first year, and by 13.5 hours per facility in subsequent years.

Finally, notification/disclosure burden will be eliminated, because the facilities will no longer be required to: (1) Publish a notice each year of the availability of uncompensated services (§ 124.504(a)); (2) provide individual written notices to each person seeking service in the facility (§ 124.504(c)); or (3) provide a determination of eligibility to each person applying for uncompensated services (§ 124.507). These changes are expected to reduce the notification burden by 380 hours per facility per year.

All sections of the regulations that contain reporting, recordkeeping, or notification/disclosure requirements have been approved by OMB under the Paperwork Reduction Act (OMB #0915–0077), except for § 124.516(c), which requires eligibility information to be submitted. This requirement has been submitted for OMB review under the Paperwork Reduction Act. The title, description, and respondent description of the information collections are shown below with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: Charitable Facility Compliance Alternative (42 CFR part 124 subpart F)

Description: Information will be collected from facilities requesting certification under the proposed compliance alternative for the purpose of determining whether the required criteria for qualification have been met.

Description of Respondents: Private non-profit institutions.

ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDEN

Section	Activity	Annual number of respondents	Annual frequency	Average burden per response	Annual burden hours
124.516(c)	Procedures for certification[1]	150	1	6.0	900

[1] Approximately 150 facilities are expected to be certified under the proposed charitable facility compliance alternative in the first year. We expect no new applications in subsequent years; therefore, there will be no burden beginning in year 2.

A copy of this proposed rule has been submitted to OMB for its review of these information collections. Send comments regarding this burden to the agency official designated for this purpose whose name appears in this preamble, and to Allison Eydt, HRSA Desk Officer, the Office of Information and Regulatory Affairs, OMB, Washington, DC 20503.

List of Subjects in 42 CFR Part 124

Grant programs—Health, Health facilities, Loan programs—Health, Low income persons, Reporting and recordkeeping requirements.

Dated: September 17, 1993.

Philip R. Lee,

Assistant Secretary for Health.

Approved: September 30, 1993.

Donna E. Shalala,

Secretary.

For reasons set out in the preamble, subpart F of 42 CFR part 124 is proposed to be amended as follows:

Subpart F—Reasonable Volume of Uncompensated Services to Persons Unable to Pay

1. The authority citation for 42 CFR part 124, subpart F, continues to read as follows:

Authority: 42 U.S.C. 216; 42 U.S.C. 300s(3).

2. Section 124.502 is amended by revising the first sentence of paragraph (m)(1) and revising paragraph (m)(2) to read as follows:

§ 124.502 Definitions.

* * * * *

(m) * * *

(1) For facilities other than those certified under § 124.513, § 124.514, § 124.515, or § 124.516, health services that are made available to persons unable to pay for them without charge or at a charge which is less than the allowable credit for those services.

* * *

(2) For facilities certified under § 124.513, § 124.514, § 124.515, or § 124.516, services as defined in paragraph (m)(1) of this section and services that are made available to persons unable to pay for them under programs described by the documentation provided under

§ 124.513(c)(2), § 124.514(c)(2), or § 124.516(c)(2), as applicable, or pursuant to the terms of the applicable grant or agreement as provided in § 124.515. Except as provided in § 124.516(b)(2), excluded are services reimbursed by Medicare, Medicaid, or other third party programs, including services for which reimbursement was provided as payment in full, and services provided more than 96 hours following notification to the facility by a peer review organization that it disapproved the services under section 1155(a)(1) or section 1154(a)(1) of the Social Security Act.

3. Section 124.508 is amended by revising the heading and introductory text of paragraph (a) to read as follows:

§ 124.508 Cessation of uncompensated services.

(a) *Facilities not certified under § 124.513, § 124.514, § 124.515 or § 124.516.* Where a facility, other than a facility certified under § 124.513, § 124.514, § 124.515, or § 124.516, has maintained the records required by § 124.510(a) and determines based thereon that it has met its annual compliance level for the fiscal year or the appropriate level for the period specified in its allocation plan, it may, for the remainder of that year or period:

* * * * *

4. Section 124.509 is amended by revising the heading of paragraph (a) and by revising the heading and introductory text of paragraph (b) to read as follows:

§ 124.509 Reporting requirements.

(a) *Facilities not certified under § 124.513, § 124.514, § 124.515, or § 124.516.* * * *

* * * * *

(b) *Facilites certified under § 124.513 or § 124.516.* A facility certified under § 124.513 of § 124.516 shall comply with paragraph (a)(3) of this section and shall submit within 90 days after the close of its fiscal year, as appropriate:

* * * * *

5. Section 124.510 is amended by revising the heading of paragraph (a) and by revising the heading and the first sentence of paragraph (b) to read as follows:

§ 124.510 Record maintenance requirements.

(a) *Facilities not certified under § 124.513, § 124.514, § 124.515, or § 124.516.* * * *

* * * * *

(b) *Facilities certified under §§ 124.513, 124.514, of 124.516.* A facility certified under §§ 124.513, 124.514, of 124.516 shall maintain, make available for public inspection consistent with personal privacy, and provide to the Secretary on request, any records necessary to document its compliance with the applicable requirements of this subpart in any fiscal year, including those documents submitted to the Secretary under § 124.513(c), 124.514(c), of 124.516(c). * * *

* * * * *

6. Section 124.511 is amended by revising the first sentence of paragraph (a)(3) and by revising paragraph (b)(1)(iii)(C) to read as follows:

§ 124.511 Investigation and determination of compliance.

(a) * * *

(3) When the Secretary investigates a facility, the facility, including a facility certified under § 124.513, § 124.514, § 124.515, or § 124.516, shall provide to the Secretary on request any documents, records and other information concerning its operation that relate to the requirements of this subpart. * * *

* * * * *

(b) * * *

(1) * * *

(iii) * * *

(c) The facility had procedures in place that complied with the requirements of §§ 124.504(c), 124.505, 124.507, 124.509, 124.510, 124.513(b)(2), 124.514(b)(2), 124.515, and 124.516 (b)(2) or (b)(3), as applicable, and systematically correctly followed such procedures.

* * * * *

7. Section 124.512 is amended by revising the introductory text of paragraph (b) and by revising paragraph (c)(1) to read as follows:

§ 124.512 Enforcement.

(a) * * *

(b) A facility, including a facility certified under § 124.513, § 124.514, or § 124.516, that has denied uncompensated services to any person because it failed to comply with the requirements of this subpart will not be in compliance with its assurance until it takes whatever steps are necessary to remedy fully the noncompliance, including:

* * * * *

(c) * * *

(1) Have a system for providing notice to eligible persons as required by § 124.504(c), § 124.513(b)(2), § 124.514(b)(2), or § 124.516(b)(3)(ii)(A), as applicable;

* * * * *

§ 124.516 [Redesignated as § 124.517]

8. In subpart F, § 124.516 is redesignated as § 124.517.

9. A new § 124.516 is added to subpart F, to read as follows:

§ 124.516 Charitable facility compliance alternative.

(a) *Effect of certification.* The Secretary may certify a facility which meets the requirements of paragraphs (b) and (c) of this section as a "charitable facility." A facility which is so certified is not required to comply with this subpart except as otherwise herein provided.

(b) *Criteria for qualification.* A facility may qualify for certification under this section if it meets the criteria of paragraphs (b)(1) and either (2) or (3) of this section:

(1) It is owned and operated by one or more nonprofit corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

(2) It receives no monies directly from patients with incomes up to double the current poverty line issued by the Secretary pursuant to 42 U.S.C. 9902, exclusive of amounts charged or received for purposes of claiming reimbursement under third party insurance or governmental programs, such as Medicaid or Medicare deductible or coinsurance amounts; or

(3)(i) It received, for the three most recent fiscal years, at least 10 percent of its total operating revenue (net patient revenue plus other operating revenue, exclusive of any amounts received, or if not received, claimed, as reimbursement under titles XVIII and XIX of the Social Security Act) from private philanthropic sources, such as private trusts, foundations, churches, charitable organizations, and individual donors; and either—

(ii)(A) Provides health services without charge or at a substantially reduced rate to persons who are determined by the facility to qualify therefor under a program of discounted health services. A "program of discounted health services" must provide for financial and other objective eligibility criteria and procedures, including notice prior to nonemergency service, that assure effective opportunity for all persons to apply for and obtain a determination of eligibility for such services, including a determination prior to service where requested; or

(B) Makes all services of the facility available to all persons at no charge or at a nominal charge.

(c) *Procedures for certification.* To be certified under this section, a facility

must submit to the Secretary, in addition to other materials that the Secretary may from time to time require, copies of the following:

(1) Audited financial statements for the three most recent fiscal years, sufficient to show that the facility meets the criteria of paragraph (b)(2) or (b)(3) of this section.

(2)(i) Where the facility claims qualification under paragraph (b)(3)(ii)(A) of this section, a complete description, and documentation where requested, of its program of discounted health services, including charging and collection policies of the facility, and eligibility criteria and notice and determination procedures used under its program(s) of discounted health services.

(ii) Where the facility claims qualification under paragraph (b)(2) or paragraph (b)(3)(ii)(B) of this section, a complete description, and documentation where requested, of its admission, charging, and collection policies.

(d) *Period of effectiveness.* (1) A certification by the Secretary under this section remains in effect until withdrawn. The Secretary may disallow credit under this subpart when the Secretary determines that there has been a material change in any factor upon which certification was based or substantial noncompliance with this subpart. The Secretary may withdraw certification where the change or noncompliance has not been in his judgment adequately remedied or otherwise continues.

(2) *Deficits*—(i) *Title VI-assisted facilities with assessed deficits.* Where a facility assisted under title VI of the Act has been assessed as having a deficit under § 124.503(b) that has not been made up prior to certification under this section, the facility may make up that deficit by either—

(A) Demonstrating to the Secretary's satisfaction that it met the applicable requirements of paragraph (b) of this section for each year in which a deficit was assessed; or

(B) Providing an additional period of service under this section on the basis of one year (or portion of a year) of certification for each year (or portion of a year) of deficit assessed. The period of obligation applicable to the facility under § 124.501(b) shall be extended until the deficit is made up in accordance with the preceding sentence.

(ii) Where any period of compliance under this subpart of a facility assisted under title VI of the Act has not been assessed, the facility will be presumed to have no allowable credit for such period. The facility may either—

(A) Make up such deficit in accordance with paragraph (d)(2)(i) of this section; or

(B) Submit an independent certified audit, conducted in accordance with procedures specified by the Secretary, of the facility's records maintained pursuant to § 124.510. If the audit establishes to the Secretary's satisfaction that no, or a lesser, deficit exists for the period in question, the facility will receive credit for the period so justified. Any deficit which the Secretary determines still remains must be made up in accordance with paragraph (d)(2)(i) of this section.

(iii) *Title XVI-assisted facilities.* (A) A facility assisted under title XVI of the Act which has an assessed deficit which was not made up prior to certification under this section shall make up that deficit in accordance with paragraph (d)(2)(i)(A) of this section. If it cannot make the showing required by that paragraph, it shall make up the deficit when its certification under this section is withdrawn.

(B) A facility assisted under title XVI of the Act whose compliance with this subpart has not been completely assessed will be presumed to have no allowable credit for the unassessed period. The facility may make up the deficit by—

(*1*) Following the procedure of paragraph (d)(2)(iii)(A) of this section; or

(*2*) Submitting an independent certified audit, conducted in accordance with procedures specified by the Secretary, of the facility's records maintained pursuant to § 124.510. If the audit establishes that no, or a lesser, deficit exists for the period in question, the facility will receive credit for the period so justified. Any deficit which the Secretary determines still remains must be made up in accordance with paragraph (d)(2)(iii)(A) of this section.

[FR Doc. 93–27092 Filed 11–3–93; 8:45 am]

BILLING CODE 4160–15–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93–180; RM–8237]

Radio Broadcasting Services; Bowie, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: The Commission dismisses the proposal filed by Central Oklahoma Radio Corporation (RM–8237), requesting the substitution of Channel 264A for Channel 264C3 for Station KRJT–FM at Bowie, Texas, and modification of KRJT–FM's license to specify the Class A channel, because an expression of interest to upgrade at Bowie has been filed. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93–180, adopted October 8, 1993, and released October 28, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Victoria M. McCauley,

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

[FR Doc. 93–27081 Filed 11–3–93; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 92–246; RM–8091]

Television Broadcasting Services; Ridgecrest, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal of.

SUMMARY: The Commission dismisses the petition of rule making and petition for reconsideration filed by Valley Public Television, Inc., requesting the substitution of noncommercial educational television Channel 41* for Channel *25 at Ridgecrest, California, or in the alternative, placement of a site restriction on Channel *25 to accommodate petitioner's application site for Channel *39 at Bakersfield, California. See 57 FR 57051, December 2, 1992. Petitioner requested and was granted dismissal of its application in the Bakersfield proceeding. Therefore, in view of the action taken in MM Docket No. 93–93, petitioner's proposal in the instant docket is moot, and thus no action is required. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT:

Sharon P. McDonald, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 92–246, adopted October 6, 1993, and released October 27, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

Victoria M. McCauley,

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

[FR Doc. 93–27083 Filed 11–3–93; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 93–200; RM–8254]

Radio Broadcasting Services; Micco, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; denial.

SUMMARY: This document denies the allotment of Channel 240C3 to Micco, Florida, as requested by Micco Broadcasting. See 58 FR 39494, July 23, 1993. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93–200, adopted September 30, 1993, and released October 27, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1919 M Street, NW., room 246, or 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Victoria M. McCauley,

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

[FR Doc. 93–27084 Filed 11–3–93; 8:45 am]

BILLING CODE 6712–01–M

Notices

Federal Register
Vol. 58, No. 212
Thursday, November 4, 1993

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

Forms Under Review by Office of Management and Budget

October 29, 1993.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Question about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from:

Department Clearance Officer,
USDA, OIRM, Room 404–W Admin. Bldg.,
Washington, DC 20250,
(202) 690–2118.

Revision

• Food and Nutrition Service
Food Distribution Regulations and Forms—Parts 240, 250, 251, 252, 253, 254
FNS–7, 52, 53, 57, 152, 155, 155A, 513, 513A, 516, 519A, 519B, 586A, 586B, 663
Recordkeeping; Monthly; Quarterly; Annually
Individuals or households; State or local governments; Small businesses or organizations; 92,847 responses; 853,270 hours
Robert DeLorenzo (703) 305–2661

Extension

• National Agricultural Statistics Service
Farm Costs And Returns Survey
Annually
Farms; 11,820 responses; 14,978 hours
Larry Gambrell (202) 720–5778

• Animal and Plant Health Inspection Service
Animal Welfare Part 3, Subparts A and D (Dogs, Cats, and Primates)
Recordkeeping; On occasion; Weekly; Semi-annually; Annually
State or local governments; businesses or other for-profit; Non-profit institutions; Small businesses or organizations; 179,400 responses; 85,033 hours
Jerry DePoyster (301) 436–7833

New Collection

• Food Safety and Inspection Service
Policy for Differentiating Between Calves and Adult Cattle
On occasion
Businesses or other for-profit; Small businesses or organizations; 100 responses; 25 hours
Debbie Ghrist (202) 720–7163

• Food Safety and Inspection Service
Prior Label Approval System
Recordkeeping
Business or other for-profit; Small businesses or organizations; 8,700 responses; 20,010 hours
Ralph Stafko (202) 720–8168

• National Agricultural Statistics Service
Farm Injury Survey
Annually
Farms; 19,000 responses; 6,333 hours
Larry Gambrell (202) 720–5778

• Agricultural Marketing Service
U.S. Standards for Grades of Fresh and Processed Fruits and Vegetables
On occasion
Individuals or households; State or local governments; Farms; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; Small businesses or organizations; 310 responses; 310 hours
Eric Forman (202) 690–0262

Larry K. Roberson,
Deputy Department Clearance Officer.

[FR Doc. 93–27048 Filed 11–3–93; 8:45 am]
BILLING CODE 3410–01–M

Rural Telephone Bank

Determination of the 1993 Fiscal Year; Interest Rates on Rural Telephone Bank Loans

AGENCY: Rural Telephone Bank, USDA.

ACTION: Notice of 1993 fiscal year interest rates determination.

SUMMARY: In accordance with 7 CFR 1610.10, the Rural Telephone Bank fiscal year 1993 cost of money rates have been established as follows: 6.05% and 6.35% for advances from the liquidating account and financing account, respectively (fiscal year is the period beginning October 1 and ending September 30).

Except for loans approved from October 1, 1987 through December 21, 1987 where borrowers elected to remain at interest rates set at loan approval, all loan advances made during fiscal year 1993 under bank loans approved prior to fiscal year 1992 shall bear interest at the rate of 6.05% (the liquidating account rate). All loan advances made during fiscal year 1993 under bank loans approved during or after fiscal year 1992 shall bear interest at the rate of 6.35% (the financing account rate).

The calculation of the Bank's cost of money rates for fiscal year 1993 for the liquidating account and the financing account are provided in Tables 1a and 1b. Since the calculated rates are greater than the minimum rate (5.00%) allowed under 7 U.S.C. 948(b)(3)(A), the cost of money rates for the liquidating account and financing account are set at 6.05% and 6.35%, respectively. The methodology required to calculate the cost of money rates is established in 7 CFR 1610.10(c).

FOR FURTHER INFORMATION CONTACT: Matthew P. Link, Director, Rural Telephone Bank Management Staff, Rural Electrification Administration, room 2832, South Building, U.S. Department of Agriculture, Washington, DC 20250, telephone number (202) 720–0530.

SUPPLEMENTARY INFORMATION: The Federal Credit Reform Act of 1990 ("Credit Reform") (2 U.S.C. 661a, et seq.) implemented a system to reform the budgetary accounting and management of Federal credit programs. Bank loans approved on or after October 1, 1991, are accounted for in a different manner than Bank loans approved prior to fiscal year 1992. As a result, the Bank

must calculate two cost of money rates: (1) The cost of money rate for advances made from the liquidating account (advances made during fiscal year 1993 on loans approved prior to fiscal year 1992) and (2) the cost of money rate for advances made during fiscal year 1993 on loans approved on or after October 1, 1991 (otherwise referred to as loans from the financing account).

The cost of money rate methodology is the same for both accounts. It develops a weighted average rate for the Bank's cost of money considering total fiscal year loan advances; the excess of fiscal year loan advances over amounts received in the fiscal year from the issuances of Class A, B, and C stocks, debentures and other obligations; and the costs to the Bank of obtaining funds from these sources.

Sources and Costs of Funds—Liquidating Account

During fiscal year 1993, the Bank was authorized to pay the following dividends: the dividend on Class A stock was 2.00% as established in amended section 406(c) of the Rural Electrification Act; no dividends were payable on Class B stock as specified in 7 CFR 1610.10(c); and the dividend on Class C stock was established by the Bank at 7.5%.

In accordance with section 406(a) of the RE Act, the Bank did not issue Class A stock in fiscal year 1993. Total advances for the purchase of Class B stock and cash purchases for Class B stock were $3,191,259. Rescissions of loan funds advanced for Class B stock amounted to $1,019,850. Thus, the amount received by the Bank from the issuance of Class B stock, per 7 CFR 1610.10(c), was $2,171,409 ($3,191,259 − $1,019,850). The total amount received by the Bank in fiscal year 1993 from the issuance of Class C stock was $12,213.

The Bank did not issue debentures or any other obligations related to the liquidating account in fiscal year 1993. Consequently, no cost was incurred related to the issuance of debentures subject to 7 U.S.C. 948(b)(3)(D).

The excess of fiscal year 1993 loan advances from the liquidating account over amounts received from issuances of stocks, debentures, and other obligations amounted to $82,421,744. The cost associated with this excess is the historical cost of money rate as defined in 7 U.S.C. 948(b)(3)(D)(v). The calculation of the Bank's historical cost of money rate for advances from the liquidating account is provided in Table 2a. The methodology required to perform this calculation is described in 7 CFR 1610.10(c). The cost for money rates for fiscal years 1974 through 1987 are defined in section 408(b) of the RE Act, as amended by Public Law 100–203, and are listed in 7 CFR 1610.10(c) and Table 2a herein.

Sources and Costs of Funds—Financing Account

During fiscal year 1993, the Bank was authorized to pay the following dividends: the dividend on Class A stock was 2.00% as established in amended section 406(c) of the Rural Electrification Act; no dividends were payable on Class B stock as specified in 7 CFR 1610.10(c); and the dividend on Class C stock was established by the Bank at 7.5%.

In accordance with section 406(a) of the RE Act, the Bank did not issue Class A stock in fiscal year 1993. Total advances for the purchase of Class B stock and cash purchases for Class B stock were $1,135,200. Since there were no rescissions of loan funds advanced for Class B stock, the amount received by the Bank from the issuance of Class B stock, per 7 CFR 1610.10(c), was $1,135,200. No amounts were received in fiscal year 1993 from the issuance of Class C stock associated with the financing account.

During fiscal year 1993, issuances of debentures or any other obligations related to the financing account were $22,210,535 at an interest rate of 6.65%.

The excess of fiscal year 1993 loan advances from the financing account over amounts received from issuances of stocks, debentures, and other obligations amounted to $493,465. The cost associated with this excess is the historical cost of money rate as defined in 7 U.S.C. 948(b)(3)(D)(v). The calculation of the Bank's historical cost of money rate for advances from the financing account is provided in Table 2b. The methodology required to perform this calculation is described in 7 CFR 1610.10(c).

Dated: October 29, 1993.

James B. Huff, Sr.,

Governor, Rural Telephone Bank.

TABLE 1a.—LIQUIDATING ACCOUNT RURAL TELEPHONE BANK COST OF MONEY RATE

Source of bank funds	Amount	Cost rate (percent)	Amount×cost rate	(Amount×rate)/advances (percent)
FY 1993 issuance of Class A stock	$0	2.00	$0	0.0000
FY 1993 issuance of Class B stock	2,171,409	0.00	0	0.0000
FY 1993 issuance of Class C stock	12,213	7.50	916	0.0011
FY 1993 issuance of debentures and other obligations	0	—	0	0.0000
Excess of total advances over FY 1993 issuance	82,421,744	6.21	5,118,390	6.0497
Total FY 1993 advances	84,605,366			[1] 6.05 [2] 5.00

[1] Calculated cost of money rate.
[2] Minimum cost rate allowable.

TABLE 1b.—FINANCING ACCOUNT RURAL TELEPHONE BANK COST OF MONEY RATE

Source of bank funds	Amount	Cost rate (percent)	Amount×cost rate	(Amount×rate)/advances (percent)
FY 1993 issuance of Class A stock	$0	2.00	$0	0.0000
FY 1993 issuance of Class B stock	1,135,200	0.00	0	0.0000
FY 1993 issuance of Class C stock	0	7.50	0	0.0000
FY 1993 issuance of debentures and other obligations:	22,210,535	6.65	1,477,001	6.1957

TABLE 1b.—FINANCING ACCOUNT RURAL TELEPHONE BANK COST OF MONEY RATE—Continued

Source of bank funds	Amount	Cost rate (percent)	Amount×cost rate	(Amount×rate)/advances (percent)
Excess of total advances over 1992 issuances	493,465	7.38	36,418	0.1528
Total FY 1993 advances	23,839,200			[1] 6.35 5.00

[1] Calculated cost of money rate.
[2] Minimum cost rate allowable.

TABLE 2a.—RURAL TELEPHONE BANK HISTORICAL COST OF MONEY LIQUIDATING ACCOUNT

Fiscal year	Bank cost of money (percent)	Bank loan advances	Advances X cost rate	(Advances X cost rate)/total advances (percent)
1974	5.01	$111,022,574	$5,562,231	0.264
1975	5.85	130,663,197	7,643,797	0.362
1976	5.33	99,915,066	5,325,473	0.253
1977	5.00	80,907,425	4,045,371	0.192
1978	5.87	142,297,190	8,352,845	0.396
1979	5.93	130,540,067	7,741,026	0.367
1980	8.10	199,944,235	16,195,483	0.768
1981	9.46	148,599,372	14,057,501	0.667
1982	8.39	112,232,127	9,416,275	0.447
1983	6.99	93,402,836	6,528,858	0.310
1984	6.55	90,450,549	5,924,511	0.281
1985	5.00	72,583,394	3,629,170	0.172
1986	5.00	71,852,383	3,592,619	0.170
1987	5.00	51,974,938	2,598,747	0.123
1988	5.00	119,488,367	5,974,418	0.283
1989	5.00	97,046,947	4,852,347	0.230
1990	5.00	107,694,991	5,384,750	0.255
1991	5.43	163,143,075	8,858,669	0.420
1992	6.14	84,940,822	5,215,366	0.247
Total advances		2,108,699,555		[1] 6.21

[1] Cost of money rate.

TABLE 2b.—RURAL TELEPHONE BANK HISTORICAL COST OF MONEY FINANCING ACCOUNT

Fiscal year	Bank cost of money (percent)	Bank loan advances	Advances X cost rate	(Advances X cost rate)/total advances (percent)
1992	7.38	$4,056,250	$299,351	7.380
Total advances		4,056,250		[1] 7.38

[1] Cost of money rate.

[FR Doc. 93–27189 Filed 11–3–93; 8:45 am]
BILLING CODE 3410–15–M

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket No. 931080–3280]

Annual Trade Survey

AGENCY: Bureau of the Census, Commerce.
ACTION: Notice of determination.

SUMMARY: In accordance with Title 13, United States Code, Sections 182, 224, and 225, I have determined the Census Bureau needs to collect data covering year-end inventories, annual sales, and purchases to provide a sound statistical basis for the formation of policy by various governmental agencies. These data also apply to a variety of public and business needs. This annual survey is a continuation of similar trade surveys conducted each year since 1978. It provides on a comparable classification basis annual sales and purchases for 1993 and inventories for 1992 and 1993. These data are not available publicly on a timely basis from nongovernmental or other governmental sources.

FOR FURTHER INFORMATION CONTACT: Nancy A. Piesto or Edward Murphy on (301) 763–3916.

SUPPLEMENTARY INFORMATION: The Census Bureau is authorized to take surveys necessary to furnish current data on subjects covered by the major censuses authorized by Title 13, United States Code. This survey will provide

continuing and timely national statistical data on wholesale trade for the period between economic censuses. The 1992 Economic Censuses are currently being tabulated. The data collected in this survey will be within the general scope and nature of those inquiries covered in the economic censuses.

The Census Bureau will require selected firms operating merchant wholesale establishments in the United States (with sales size determining the probability of selection) to report in the 1993 Annual Trade Survey. We will furnish report forms to the firms covered by this survey and will require their submission within thirty days after receipt. The sample will provide, with measurable reliability, statistics on the subjects specified above.

This survey has been submitted to the Office of Management and Budget, in accordance with the Paperwork Reduction Act, Public Law 96–511, as amended, and was cleared under OMB Control No. 0607–0195. We will provide copies of the form upon written request to the Director, Bureau of the Census, Washington, DC 20233.

Based upon the foregoing, I have directed that an annual survey be conducted for the purpose of collecting these data.

Dated: October 29, 1993.

Harry A. Scarr,

Acting Director, Bureau of the Census.

[FR Doc. 93–27108 Filed 11–3–93; 8:45 am]

BILLING CODE 3510–07–P

International Trade Administration

[A–588–804]

Antifriction Bearings From Japan; Notice of Court of International Trade Decision

AGENCY: International Trade Administration/Import Administration, Commerce.

SUMMARY: On October 7, 1993, the United States Court of International Trade (CIT) rejected the Department of Commerce's redetermination on remand of the final results of the first administrative review of the antidumping duty order on antifriction bearings (other than tapered roller bearings) and parts thereof from Japan (56 FR 31754, July 11, 1991). *Federal-Mogul Corporation and The Torrington Company* v. *United States* (Slip Op. 93–194, October 7, 1993) (*Federal-Mogul*). Specifically, the CIT rejected the Department's methodology in the redetermination for calculating the amount of the tax adjustment that was added to United States price. The CIT entered final judgment on this issue. The results covered the period November 9, 1988 through April 30, 1990.

EFFECTIVE DATE: October 18, 1993.

FOR FURTHER INFORMATION CONTACT: Michael Rill, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington DC, 20230; telephone (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On February 4, 1993 and March 29, 1993, the CIT in *Federal-Mogul Corporation* v. *United States,* (Slip Op. 93–17, February 4, 1993) and *The Torrington Company* v. *United States,* (Slip Op. 93–44, March 29, 1993), remanded the final results of the first administrative review of the antidumping duty order on antifriction bearings (other than tapered roller bearings) and parts thereof from Japan (56 FR 31754, July 11, 1991) to the Department for the reconsideration of a number of issues. For one of these issues, the Court ordered the Department to determine the exact monetary amount of the value-added tax (VAT) paid on each sale in the home market, to make certain that the amount of the VAT adjustment added to the comparable U.S. sale is less than or equal to this amount, and to add the full amount of the VAT in the home market to foreign market value (FMV) without adjustment. On June 28, 1993, the Department submitted to the CIT its redetermination on remand on the VAT and other issues. On October 7, 1993, the CIT ruled upon the Department's redetermination in *Federal-Mogul.* In this decision, the CIT rejected the Department's redetermination methodology for calculating the amount of the VAT adjustment added to USP.

In its decision in *Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) (Timken), the United States Court of Appeals for the Federal Circuit held that, pursuant to 19 U.S.C. 1516a(e), the Department must publish a notice of a court decision which is not "in harmony" with a Department determination, and must suspend liquidation of entries pending a "conclusive" court decision. The CIT's decision in *Federal-Mogul* on October 7, 1993, which rejected the Department's redetermination methodology for calculating the amount of the VAT adjustment added to USP, constitutes a decision not in harmony with the Department's final results.

Accordingly, the Department will continue the suspension of liquidation of the subject merchandise. Further, absent an appeal, or, if appealed, upon a "conclusive" court decision affirming the CIT's opinion, the Department will amend the final affirmative results of antifriction bearings (other than tapered roller bearings) and parts thereof from Japan to reflect the change in the VAT adjustment calculation methodology which was ordered by the CIT.

Dated: October 29, 1993.

Barbara R. Stafford,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–27149 Filed 11–3–93; 8:45 am]

BILLING CODE 3510–DS–P

[A–588–831 A–475–811 C–475–812]

Revision of Scope of Investigations: Antidumping Duty Investigations of Grain-Oriented Electrical Steel From Italy and Japan and Countervailing Duty Investigation of Grain-Oriented Electrical Steel From Italy

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 4, 1993.

FOR FURTHER INFORMATION CONTACT: In the Office of Antidumping Investigations, Michael Ready or Jeffery B. Denning at (202) 482–2613 and 482–4194, respectively, and in the Office of Countervailing Duty Investigations, Stephanie Hager, Annika O'Hara, or David Boyland at (202) 482–5055, 482–4198 and 482–0588 respectively, U.S. Department of Commerce, room 3099, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: On September 21, 1993, the Department published in the **Federal Register** the following notices of initiation of investigations: Initiation of Antidumping Duty Investigations: Grain-Oriented Electrical Steel from Italy and Japan (58 FR 49017) and Initiation of Countervailing Duty Investigation: Grain-Oriented Electrical Steel from Italy (58 FR 49018). Subsequently, we determined that the term "certain" should be eliminated from the first sentence of the "*Scope of Investigations*" sections as published in the notices of initiation for both the antidumping and countervailing duty investigations. For purposes of these investigations the term "certain" was found to be superfluous because it indicates that the Department is examining a subset of grain-oriented electrical steel products. Since the scope

of these investigations covers all categories of grain-oriented electrical steel, the term "certain" is misleading. Additionally, it was discovered that four of the Harmonized Tariff Schedule ("HTS") numbers specified in the scope section of the notice of initiation of the countervailing duty investigation were incorrect: 7225.10.0000, 7226.10.1010, 7226.5030, 7226.5060.

As a result of the foregoing, we have revised the written description of the scope of investigations as previously published. The revised scope of these investigations is stated in full, below.

Scope of Investigations

The product covered by these investigations is grain-oriented silicon electrical steel, which is a flat-rolled alloy steel product containing by weight at least 0.6 percent of silicon, not more than 0.08 percent of carbon, not more than 1.0 percent of aluminum, and no other element in an amount that would give the steel the characteristics of another alloy steel, of a thickness of no more than 0.560 millimeters, in coils of any width, or in straight lengths which are of a width measuring at least 10 times the thickness, as currently classifiable in the HTS under item numbers 7225.10.0030, 7225.30.7000, 7225.40.7000, 7225.50.8000, 7225.90.0000, 7226.10.1030, 7226.10.5015, 7226.10.5065, 7226.91.7000, 7226.91.8000, 7226.92.5000, 7226.92.7050, 7226.92.8050, 7226.99.0000, 7228.30.8050, 7228.60.6000, and 7229.90.1000. Although the HTS subheadings of the United States are provided for convenience and customs purposes, our written descriptions of the scope of these proceedings are dispositive.

We will transmit this revised scope to the U.S. Customs Service. This notice is published pursuant to section 732(c)(2) of the Tariff Act of 1930, as amended, and 19 CFR 353.13(b).

Dated: October 28, 1993.

Barbara R. Stafford,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–27152 Filed 11–3–93; 8:45 am]

BILLING CODE 3510–DS–P

[A–588–807]

Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, From Japan; Preliminary Results of Antidumping Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative reviews.

SUMMARY: In response to a request from Mitsuboshi Belting Limited (MBL), the respondent, the Department of Commerce (the Department) is now conducting two administrative reviews of the antidumping duty order on industrial belts and components and parts thereof, whether cured or uncured (hereinafter referred to as industrial belts), from Japan. These reviews cover one manufacturer/exporter during the periods June 1, 1991 through May 31, 1992 and June 1, 1992 through May 31, 1993.

As a result of these reviews, the Department has preliminary determined to assess antidumping duties based upon the best information otherwise available (BIA).

Interested parties are invited to comment on the preliminary results of these administrative reviews.

EFFECTIVE DATE: November 4, 1993.

FOR FURTHER INFORMATION CONTACT: Charles Vannatta or John Kugelman in the Office of Antidumping Compliance; International Trade Administration; U.S. Department of Commerce; Washington, DC 20230; telephone number (202) 482–5253.

SUPPLEMENTARY INFORMATION:

Background

On June 14, 1989, the Department published in the **Federal Register** (54 FR 25314) the antidumping duty order on industrial belts from Japan. On June 30, 1992, MBL requested that the Department conduct an administrative review of the period June 1, 1991, through May 31, 1992. The Department published a notice of initiation of the 1991/92 antidumping administrative review on July 22, 1992 (57 FR 32521). Furthermore, on June 30, 1993, MBL requested that the Department conduct an administrative review of the period June 1, 1992, through May 31, 1993. The Department published a notice of initiation of the 1992/93 antidumping administrative review on July 21, 1993 (58 FR 39007). The Department is now conducting these administrative reviews in accordance with Section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

On August 11, 1993, the Department presented its antidumping questionnaire to the counsel for MBL for these two administrative reviews. MBL did not respond to the Department's request for information.

Scope of the Review

Imports covered by the review are shipments of industrial belts and components and parts thereof, whether cured or uncured, from Japan. These products include V-belts, synchronous belts, and other industrial belts, in part or wholly of rubber or plastic, and containing textile fiber (including glass fiber) or steel wire, cord or strand, and whether in endless (*i.e.*, closed loops) belts, or in belting in lengths or links. This review excludes conveyor belts and automotive belts, as well as front engine drive belts found on equipment powered by internal combustion engines, including trucks, tractors, buses, and lift trucks.

During the periods of review, the merchandise was classifiable under Harmonized Tariff Schedule (HTS) subheadings 3926.90.55, 3926.90.56, 3926.90.57, 3926.90.59, 3926.90.60, 4010.10.10, 4010.10.50, 4010.91.11, 4010.91.15, 4010.91.19, 4010.91.50, 4010.99.11, 4010.99.15, 4010.99.19, 4010.99.50, 5910.00.10, 5910.00.90, and 7326.20.00. The HTS subheadings are provided for convenience and Customs purposes. The written description remains dispositive.

For these preliminary results, each review covers sales and entries made during each period of review by one Japanese manufacturer and exporter of industrial belts to the United States, MBL.

Preliminary Results of Review

Because MBL did not respond to the Department's request for information in the 1991/92 and 1992/93 administrative reviews, the Department has preliminarily determined to use BIA in both reviews. As BIA for MBL, the Department is assigning the rate from the less-than-fair-value investigation, in accordance with the two-tiered BIA methodology under which the Department imposes the most adverse rate upon those respondents who refuse to cooperate or otherwise significantly impede the proceeding. The Department's two-tiered methodology for assigning BIA based on the degree of a respondent's cooperation has been upheld by the U.S. Court of Appeals for the Federal Circuit (*Allied-Signal Aerospace Co.* v. *United States*, Appeal No. 93–1049 (Fed. Cir. June 22, 1993)

and *Krupp Stahl AG et al.* v. *United States*, Slip Op. 93–84 (CIT May 26, 1993)). The rate from the less-than-fair-value investigation is 93.16 percent.

Interested parties may request disclosure and/or an administrative protective order within five days of the date of publication of this notice. Interested parties may also request a public hearing within 10 days of the date of publication of this notice. Any hearing, if requested, will be held 44 days after the date of publication, or the first workday thereafter. Case briefs and/or written comments may be submitted to the Department not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed with the Department not later than 37 days after the date of publication. The Department will include in its publication of the final results of the administrative review an analysis of the issues raised in any written comments or at the hearing.

The Department will determine, and the U.S. Customs Service will assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the U.S. Customs Service.

Furthermore, the following cash deposit requirements will be effective upon completion of the final results of these administrative reviews of all shipments of industrial belts from Japan which were entered for consumption, or withdrawn from warehouse for consumption, on or after its publication date, as provided by Section 751(a)(1) of the Tariff Act:

(1) The cash deposit rate for MBL will be that established in the final result of the 1992/93 administrative review;

(2) The cash deposit rate for subject merchandise exported by manufacturers or exporters not covered in these reviews but covered in previous reviews or in the original less-than-fair-value investigation will be based upon the most recently published rate in a final result or determination for which the manufacturer or exporter received a company-specific rate;

(3) The cash deposit rate for subject merchandise exported by an exporter not covered in these reviews, a prior review, or the original investigation, but where the manufacturer of the merchandise has been covered by these or a prior final results or determination will be based upon the most recently published company-specific rate for that manufacturer; and

(4) The cash deposit rate for merchandise exported by all other manufacturers and exporters who are not covered by these or any previous administrative review conducted by the Department will be the "all others" rate established in the less-than-fair-value investigation.

On May 25, 1993, the Court of International Trade (CIT) in *Floral Trade Council* v. *United States*, Slip Op. 93–79, and *Federal-Mogul Corporation and the Torrington Company* v. *United States*, Slip Op. 93–83, decided that once an "all others" rate is established for a company it can only be changed through an administrative review. The Department has determined that in order to implement these decisions, it is appropriate to reinstate the "all others" rate from the less-than-fair-value investigation (or that rate as amended for correction of clerical errors as a result of litigation) in proceedings governed by antidumping duty orders. The "all others" rate for this proceeding is 93.16 percent.

This notice also serves as a preliminary reminder to all importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during these review periods. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred, and the subsequent assessment of double antidumping duties.

These administrative reviews and notice are in accordance with Section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: October 28, 1993.

Barbara R. Stafford,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–27150 Filed 11–3–93; 8:45 am]

BILLING CODE 3510–DS–M

[A–122–401]

Red Raspberries From Canada; Termination of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of termination of antidumping duty; administrative review.

SUMMARY: The Department of Commerce (the Department) has terminated the antidumping duty administrative review on certain red raspberries from Canada initiated on July 21, 1993.

EFFECTIVE DATE: November 4, 1993.

FOR FURTHER INFORMATION CONTACT: Sylvia Chadwick or Rick Herring, Office of Contervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION: On June 7, 1993, the Department of Commerce (the Department) published in the **Federal Register** a notice of "Opportunity to Request Administrative Review" (58 FR 31941) on the antidumping duty order on certain red raspberries from Canada (50 FR 26019; June 24, 1985) for the period June 1, 1992 through May 31, 1993. During June 1992, two respondents, Clearbrook Packers Inc. (Clearbrook) and Valley Berries Inc. (Valley), requested that the Department conduct reviews of their companies. No other interested party requested a review.

On July 21, 1993, the Department published a notice of initiation of a review of the two companies (58 FR 39007). On September 24, 1993, and September 29, 1993, respectively, Clearbrook and Valley withdrew their requests for an administrative review. Because the withdrawals were timely pursuant to 19 CFR 353.22(a)(5), the Department is terminating this review.

This notice is published in accordance with 19 CFR 353.22(a)(5).

Dated: October 28, 1993.

Barbara Stafford,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–27151 Filed 11–3–93; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

Draft Policy Guidance on Public Participation

AGENCY: Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Issuance of draft policy guidance.

SUMMARY: The Office of Ocean and Coastal Resource Management is issuing draft policy guidance on section 306(d)(14) of the Coastal Zone Management Act for comment by state coastal program managers and other interested parties.

DATES: Comments must be received by December 6, 1993.

ADDRESSES: Comments should be sent to Chief, Policy Coordination Division, Office of Ocean and Coastal Resource

Management, NOS/National Oceanic and Atmospheric Administration, 1305 East-West Hwy., N/ORM4, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Elaine Vaudreuil by phone at 301–713–3086, or by FAX at 301–713–4370.

SUPPLEMENTARY INFORMATION:

Authority

This draft guidance is issued pursuant to the authority of the Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451–1464).

Draft Guidance to Implement CZMA Section 306(d)(14)

The following guidance outlines OCRM standards for states and territories with Federally approved coastal management programs, and those developing management programs, to meet the public participation requirement under the Coastal Zone Management Act section 306(d)(14), as amended by Public Law 101–508, the Coastal Zone Act Reauthorization Amendments of 1990. This section states that before approving a management program submitted by a coastal state, the Secretary of Commerce shall find that "[t]he management program provides for public participation in permitting processes, consistency determinations, and other similar decisions."

The scope of this requirement extends to all activities that require specific or general authorization through permitting, consistency review, or other means pursuant to the enforceable policies of the coastal management program, and applicable state law. This guidance applies to all state authorizations subject to the statutory public participation requirement and shall not conflict with existing state or Federal regulations pertaining to Federal permitting processes, state permitting processes, and Federal consistency review of Federally permitted or licensed activities.

NOAA has reviewed public participation opportunities under state coastal zone management programs and has determined that existing public participation procedures under state law satisfy the public participation requirement under section 306(d)(14) for state permits. For applications under state general permits, public participation in the review of administrative procedures or regulations allowing for a general determination of consistency will satisfy the public participation requirement. NOAA's regulations already require public participation in state Federal consistency reviews of Federally permitted or licensed activities.

Therefore, NOAA believes that section 306(d)(14) imposes a new requirement for effective public participation only on the state's review of Federal agency consistency determinations for direct Federal activities under section 307(c)(1) of the CZMA and any other state coastal management decisions not now covered by an existing public participation procedure.

The following guidance outlines an acceptable standard for meaningful public participation. This guidance is being provided in draft for review by state agencies and interested parties. After final guidance is issued, state coastal zone management programs will have one year to comply with the guidance. Within one year, each state is to: (1) Develop public participation procedures for the review of direct Federal activities under section 307(c)(1) of the CZMA, if necessary, and submit a copy of those procedures to OCRM as a program change or submit documentation that procedures are already incorporated into the approved program and (2) conduct a review to determine if other public participation procedures are necessary. If additional procedures are necessary, the state must submit a copy of the procedures developed to OCRM as a program change. If no further procedures are needed, the state must submit to OCRM a notice that a review has been conducted and that no additional procedures are necessary.

This guidance is sufficiently broad to give states flexibility in developing public participation procedures that meet the intent of section 306(d)(14). OCRM will review each state's procedures during regularly scheduled evaluations of state coastal zone management programs under section 312 of the CZMA for compliance with the public participation requirement under section 306(d)(14), and will recommend procedural changes if necessary to meet OCRM's guidance.

Guidance to Implement CZMA Section 306(d)(14)

(a) Timely Public Notice Must Be Provided.

(1) States must issue public notice at the earliest practicable time after the application and/or consistency determination has been received by the lead state coastal management agency, except in cases where earlier public notice on the consistency determinations by the relevant Federal agency meets OCRM's standards for acceptable public notice listed below.

(2) A public comment period must be provided. The length of the comment period may vary in accordance with state or Federal law, and as appropriate for the type of authorization involved. However, the comment period must be sufficient to give the public a meaningful opportunity to develop and provide comments.

(b) Public participation at a minimum must consist of written public notice and solicitation of public comments. Provision for a public hearing or meeting may also be provided. If a state chooses to use public hearings or public meetings to provide for effective public participation, such hearings or meetings should be held in a location accessible to most interested or affected parties to the maximum extent possible.

Written public notice must:

(1) Specify that the proposed activity is subject to review for consistency under the policies of the state coastal management program;

(2) Provide sufficient information to serve as a basis for meaningful comment;

(3) Specify a source for additional information; and

(4) Specify a contact for submitting comments to the state coastal management program.

(c) At a minimum, public notice must be provided in the area(s) of coastal zone likely to be affected by the activity. Procedural options that may be used include, but are not limited to, the options listed below. The use of one or more of the following must also conform with the guidelines set forth in (a) and (b) above.

(1) Public notice through an official state gazette.

(2) Public notice through a local newspaper serving areas of coastal zone likely to be affected by the activity.

(3) Public notice through individual state mailings.

(4) Public notice through a state coastal zone management newsletter.

(5) Arrangements between a state coastal management program and appropriate Federal agencies for joint public notice to be provided by the state and Federal agency where direct Federal activities under section 307(c)(1) or Federally licensed or permitted activities under section 307(c)(3) are involved. OCRM also encourages other streamlined procedures for providing public participation. Federal agency notice of a proposed activity would

suffice if it meets the guidelines set forth in (a) and (b) above.

Frank Maloney,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 93–27070 Filed 11–3–93; 8:45 am]

BILLING CODE 3510–08–M

Interest To Prepare a Draft Environmental Impact Statement on the Proposed Ohio Coastal Management Program

AGENCY: National Oceanic and Atmospheric Administration, DOC.

ACTION: Notice of intent to prepare a draft environmental impact statement as required under the National Environmental Policy Act 42 U.S.C. 4321, et seq. (NEPA).

SUMMARY: Notice is hereby given of the intent to prepare a Draft Environmental Impact Statement (DEIS) on the proposed approval of the Ohio Coastal Management Program (OCMP, or Program) under the provisions of section 306 of the Federal Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1455, and distribute it in December 1993.

Federal approval of the OCMP would make the State eligible for program administration grant funds and require that Federal actions be consistent with the Program.

The Program is the culmination of several years of development and consists of numerous State policies on diverse management issues which are prescribed by statute and made enforceable under State law. The Program should improve the decisionmaking process for determining appropriate coastal land and water uses in light of resource considerations and increase public awareness of coastal resources. The Program should also lead to increased long-term protection of the State's coastal resources, and may result in some short-term economic impacts on coastal users. Federal alternatives will include delaying or denying approval if certain requirements of the Coastal Zone Management Act have not been met. State alternatives include the possibility of modifying parts of the Program or withdrawal of the request for Federal approval.

In order to determine the scope and significance of issues to be addressed in the DEIS, the office of Ocean and Coastal Resource Management (OCRM) hereby solicits comments on the proposed action, particularly with respect to the following issues:

(1) The adequacy of the scope and geographic coverage of the Program's laws and regulations to manage impacts on wetlands, beaches and other vulnerable natural resources;

(2) The adequacy of the mechanisms for administrative review and enforcement of compliance of agency decisions;

(3) The adequacy of the erosion hazard area program; and

(4) The adequacy of the mechanisms for State agency coordination and consultation in order to effectively implement the OCMP.

The manner in which the State proposes to address the above requirements was presented in the State public review Draft Program Document of the OCMP, in February 1992. The State has considered all comments submitted in response to that document in the preparation of the OCMP Draft Program Document to be released with the DEIS in December. Copies of the State public review document are available from OCRM.

DATES: Persons or organizations wishing to submit comments on these or other issues should do so by December 6, 1993. Any comments received after that time will be considered in the response to comments received on the DEIS.

ADDRESSES: Requests for the above described documents and all comments should be made to: Ellen Brody, Coastal Programs Division, Great Lakes Region, Office of Ocean and Coastal Resource Management, 1305 East-West Highway (N/ORM3), Silver Spring, Maryland 20910; tel; 301/713–3113.

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Frank W. Maloney,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 93–27071 Filed 11–3–93; 8:45 am]

BILLING CODE 3510–08–M

[I.D. 102993B]

Gulf of Mexico Fishery Management Council; Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) and its Committees will meet on November 15–18, 1993. The meetings will be held at the Royal d'Iberville Hotel, 1980 Beach Boulevard, Biloxi, MS; telephone: (601) 388–6610. The agenda is as follows:

Council

The Council will convene on November 17 at 8:30 a.m. and recess at 5 p.m. Council agenda items and the times allocated for discussion are as follow:

From 8:45 a.m. to 9:15 a.m.: Consider Appointments of Committees.

From 9:15 a.m. to 10 a.m.: Receive a presentation on Myths, Models and Management.

From 10 a.m. to 11 a.m.: Receive public testimony on the Longline/Buoy Area Change;

(**Note:** Testimony cards must be turned in to staff before the start of public testimony.)

From 11 a.m. to 5 p.m.: Receive the Reef Fish Management Committee report.

The Council will reconvene at 8:30 a.m. on November 18. It will receive reports from the following Committees:

(1) 8:30 a.m. to 8:45 a.m.—Habitat Protection Committee's 1993 report;

(2) 8:45 a.m. to 9 a.m.—Budget Committee;

(3) 9 a.m. to 9:30 a.m.—Shrimp Management Committee;

(4) 9:30 a.m. to 9:45 a.m.—Receive a report on the ICCAT Advisory Committee meeting held in Silver Spring, Maryland, October 14–15, 1993; and then Enforcement reports, Director's reports prior to adjournment at 10:30 a.m.

Committees

The Budget Committee and the Shrimp Management Committee will meet on November 15 at 1 p.m. and adjourn at 5:30 p.m. The Habitat Protection Committee and the Reef Fish Management Committee will meet on November 16 at 8 a.m. and adjourn at 5 p.m.

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Beverly Badillo at the address below by November 5.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, suite 331, Tampa, FL; telephone: (813) 228–2815.

Dated: October 29, 1993.

Alfred J. Bilik,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–27061 Filed 11–3–93; 8:45 am]

BILLING CODE 3510–22–P

[I.D. 102893A]

North Pacific Fishery Management Council; Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The North Pacific Fishery Management Council (Council) and its advisory committees will meet during the week of December 6, 1993, in Seattle, Washington. The Council's Advisory Panel and its Scientific and Statistical Committee will begin their meetings at 8 a.m. on December 6. The Council will begin its plenary session at 8 a.m. on December 7 and continue through the week until the agenda is completed. All meetings will be held at the Downtown Hilton Hotel, 6th and University Streets, Seattle, Washington.

The Council will consider and may take action on any of the following agenda items:

(1) Reports by the National Marine Fisheries Service, the Alaska Department of Fish and Game, and the United States Coast Guard;

(2) Appointments to the Advisory Panel and the Scientific and Statistical Committee for 1994, and to the Pacific Northwest Crab Industry Advisory Committee for 1994–95;

(3) Receive a status report on the implementation of the North Pacific Fisheries Research Plan and comment on regulatory adjustments for 1994;

(4) Finalize elements and options for the Comprehensive Rationalization Program for formal analysis;

(5) Review of the final rule and implementation plan for the Sablefish and Halibut Individual Fishing Quota program, if available;

(6) Initial review of a regulatory amendment which would implement a 5,000 lb trip limit on the 12-hour halibut openings in International Pacific Halibut Commission area 4B, with a 20 percent set-aside for vessels fishing under the trip limits;

(7) Review initial analysis for a superexclusive registration area for the Norton Sound red king crab fishery, if available. Receive report on action plan to facilitate Federal/State of Alaska management of crab fisheries;

(8) Approval of final Stock Assessment and Fishery Evaluation reports for the Gulf of Alaska and Bering Sea/Aleutian Islands groundfish fisheries for 1994; setting of final groundfish bycatch specifications for the 1994 fisheries, and bycatch rate standards for the Vessel Incentive Program;

(9) Review of proposed regulatory amendements for directed fishing standards for 1994 and the apportionment of the Gulf of Alaska trawl halibut PSC to shallow and deepwater complexes;

(10) Receive a report on the status of an industry-sponsored "Salmon Foundation";

(11) Review current tasking and give staff direction; and

(12) Review of responses to Social Impact Request for Proposals, if necessary.

Other committees and workgroups may meet during the week. All meetings are open to the public with the exception of a meeting of the Nominating Committee and a Council executive session which will be held sometime during the week. During the executive session the Council will receive reports on litigation, international affairs, and personnel matters.

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Judy Willoughby, (907) 271–2809, at least ten (10) working days prior to the meeting date.

FOR FURTHER INFORMATION CONTACT: The North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 271–2809.

Dated: October 29, 1993.

Alfred J. Bilik,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–27059 Filed 11–03–93; 8:45 am]

BILLING CODE 3510–22–P

[I.D. 102993A]

Pacific Fishery Management Council; Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council (Council) and its advisory entities will hold a public meeting on November 15–19, 1993, at the Clarion Hotel (near the San Francisco Airport), 401 East Millbrae Avenue, Millbrae, California. Except for the closed session noted below, the meetings are open to the public.

The Council will meet on November 15 at 1 p.m. in a closed session (not open to the public) to discuss personnel matters and litigation. The Council's open session begins at 1:30 p.m. on November 15 to consider administrative and other matters, including the Council's budget, appointments to the Groundfish Management Team and the Salmon Advisory Subpanel, and revisions to the Statement of Organization, Practices and Procedures. The Council will also address the following salmon issues on November 15.

The Salmon agenda items are:

(1) Sequence of events and status of the 1992 fisheries;

(2) Hook-and-release mortality rate estimates in the ocean sport fishery;

(3) Recommendations on weekly sport possession limits; and

(4) Update on actions to restore Oregon coastal natural coho stocks and several Puget Sound chinook and coho stocks.

The public may address the Council on fisheries issues unrelated to the agenda on November 15 at 4 p.m. Public comments that pertain to action items on the agenda will be heard prior to Council action on each issue.

The Council will reconvene on November 16 at 8 a.m. to address final action on a salmon plan amendment that deals with management of Oregon coastal natural coho, and scoping for future plan amendments. On that same day, the Council is scheduled to address habitat issues, take tentative action on a draft fishery management plan for coastal pelagic species, take final action on Pacific halibut allocations and sport fishery measures for 1994, and consider amendments to the halibut catch sharing plan for 1995.

On November 17, 18, and 19, the Council will address numerous groundfish management issues.

The Groundfish management issues include:

(1) Status of implementation of Council actions;

(2) Status of fisheries and inseason adjustments;

(3) License limitation appeals;

(4) Final action on a long-term framework for allocating whiting;

(5) Experimental fishing permit requests for the shore-based whiting fishery;

(6) Black rockfish management off Oregon, including rockfish bag limits;

(7) Final harvest levels for 1994;

(8) Allocations to open access and limited entry segments of the fishery;

(9) Trip limits, management lines and other management measures for open access and limited entry segments for 1994;

(10) General groundfish fishing and processing permits;

(11) Industry workshops on stock assessment;

(12) Draft plan amendment for individual quotas (IQ) for fixed gear sablefish fisheries; and

(13) New management approaches for groundfish.

Other Meetings

The *Scientific and Statistical Committee (SSC)* will meet on November 15 at 8 a.m. to address scientific issues on the Council agenda, and will reconvene on November 16 at 8 a.m.

The Groundfish Advisory Subpanel will meet on November 15 at 9 a.m. to address groundfish management issues on the Council agenda, meet again on November 16 at 8 a.m., and reconvene on November 17 at 7 a.m.

The *Salmon Technical Team* will meet on November 15 at 10 a.m. to address salmon management issues.

The *Habitat Steering Group* will convene on November 15 at 8:30 a.m. to discuss operating procedures; and beginning at 10 a.m., to hear presentations on habitat issues.

The *Budget Committee* will meet on November 15 at 10 a.m. to consider changes to the Council budget.

The *Enforcement Consultants* will meet on November 17 at 7 p.m. to address enforcement issues related to Council agenda items. A meeting of the Enforcement Consultants and members of the sablefish industry will convene November 17 at 9 a.m. to address the sablefish IQ program.

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Pam Buzan, telephone (503) 326–6352 at least 5 days prior to the meeting date.

Detailed agendas for the above meetings will be available to the public after November 5, 1993.

FOR FURTHER INFORMATION CONTACT: Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, suite 420, 2000 SW. First Avenue, Portland, OR 97201; telephone: (503) 326–6352.

Dated: October 29, 1993.

Alfred J. Bilik,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–27060 Filed 11–3–93; 8:45 am]

BILLING CODE 3510–22–P

Mid-Atlantic Fishery Management Council; Statements of Organization, Practices and Procedures

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

ACTION: Notice of revision to statements of organization, practices and procedures.

SUMMARY: Pursuant to section 302(f)(6) of the Magnuson Fishery Conservation and Management Act (Magnuson Act), 16 U.S.C. 1801 *et seq.*, each Regional Fishery Management Council (Council) is responsible for carrying out its functions under the Magnuson Act, in accordance with such uniform standards as are prescribed by the Secretary of Commerce (Secretary). Further, each Council must make available to the public a statement of its organization, practices and procedures (SOPPs).

On December 10, 1991, Department of Commerce (DOC) published Financial Assistance Notice No. 4 that revised DOC's standard terms and conditions for grant awards. Notice No. 4, effective January 1, 1992, addressed the movement of direct cost items among budget categories.

On September 27, 1993, NOAA published in the **Federal Register** (58 FR 50288) an interim final rule that revised the regulations (50 CFR part 605) and guidelines concerning the operations of the Councils under the Magnuson Act. The interim final rule, effective September 27, 1993, addressed the recording of motions before Council votes on any matter to be forwarded to the Secretary.

In accordance with the two revisions noted above, the Mid-Atlantic Fishery Management Council (Mid-Atlantic Council) has revised its SOPP, which was originally published in the **Federal Register** on June 15, 1977. Interested parties may obtain a copy of the Mid-Atlantic Council's revised SOPP by contacting David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building, room 2115, 300 South New Street, Dover, DE 19901–6790; telephone (302) 674–2331.

Dated: October 29, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–27058 Filed 11–3–93; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in China

October 29, 1993

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: November 1, 1993

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6703. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being increased for carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 57 FR 62304, published on December 30, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 29, 1993

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 23, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive

concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in China and exported during the twelve-month period which began on January 1, 1993 and extends through December 31, 1993.

Effective on November 1, 1993, you are directed to amend further the directive dated December 23, 1992 to increase the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and the People's Republic of China:

Category	Adjusted twelve-month limit [1]
Levels not in a group	
317/326	18,534,733 square meters.
336	153,720 dozen.
345	130,304 dozen.
410	1,958,533 square meters of which not more than 1,569,975 square meters shall be in Category 410–A [2] and not more than 1,569,975 square meters shall be in Category 410–B [3].
436	15,008 dozen.
438	26,264 dozen.
440	37,522 dozen of which not more than 21,440 dozen shall be in Category 440–M [4].
443	135,076 numbers.
444	200,811 numbers.
445/446	289,447 dozen.
447	78,061 dozen.
631	1,149,891 dozen pairs.
650	105,936 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1992.

[2] Category 410–A: only HTS numbers 5111.11.3000, 5111.11.7030, 5111.11.7060, 5111.19.2000, 5111.19.6020, 5111.19.6040, 5111.19.6060, 5111.19.6080, 5111.20.9000, 5111.30.9000, 5111.90.3000, 5111.90.9000, 5212.11.1010, 5212.12.1010, 5212.13.1010, 5212.14.1010, 5212.15.1010, 5212.21.1010, 5212.22.1010, 5212.23.1010, 5212.24.1010, 5212.25.1010, 5311.00.2000, 5407.91.0510, 5407.92.0510, 5407.93.0510, 5407.94.0510, 5408.31.0510, 5408.32.0510, 5408.33.0510, 5408.34.0510, 5515.13.0510, 5515.22.0510, 5515.92.0510, 5516.31.0510, 5516.32.0510, 5516.33.0510, 5516.34.0510 and 6301.20.0020.

[3] Category 410–B: only HTS numbers 5007.10.6030, 5007.90.6030, 5112.11.2030, 5112.11.2060, 5112.19.9010, 5112.19.9020, 5112.19.9030, 5112.19.9040, 5112.19.9050, 5112.19.9060, 5112.20.3000, 5112.30.3000, 5112.90.3000, 5112.90.9010, 5112.90.9090, 5212.11.1020, 5212.12.1020, 5212.13.1020, 5212.14.1020, 5212.15.1020, 5212.21.1020, 5212.22.1020, 5212.23.1020, 5212.24.1020, 5212.25.1020, 5309.21.2000, 5309.29.2000, 5407.91.0520, 5407.92.0520, 5407.93.0520, 5407.94.0520, 5408.31.0520, 5408.32.0520, 5408.33.0520, 5408.34.0520, 5515.13.0520, 5515.22.0520, 5515.92.0520, 5516.31.0520, 5516.32.0520, 5516.33.0520 and 5516.34.0520.

[4] Category 440–M: HTS numbers 6203.21.0030, 6203.23.0030, 6205.10.1000, 6205.10.2010, 6205.10.2020, 6205.30.1510, 6205.30.1520, 6205.90.2020, 6295.90.4020 and 6211.31.0030.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–27072 Filed 11–3–93; 8:45 am]

BILLING CODE 3510–DR–F

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 94–1]

Chattem, Incorporated; Complaint

AGENCY: Consumer Product Safety Commission.

ACTION: Publication of a complaint under the Poison Prevention Packaging Act and the Consumer Product Safety Act.

SUMMARY: Under Provisions of its Rules of Practice for Adjudicative Proceedings (16 CFR part 1025), the Consumer Product Safety Commission must publish in the **Federal Register** Complaints which it issues. Printed below is a complaint in the matter of Chattem, Incorporated.

SUPPLEMENTARY INFORMATION: (attached).

Dated: October 28, 1993.

Sheldon D. Butts,

Deputy Secretary.

Complaint

Nature of Proceedings

1. This is an administrative adjudicative proceeding pursuant to section 4(c) of the Poison Prevention Packaging Act (PPPA), 15 U.S.C. 1473(c), seeking an order to require that Respondent, Chattem, Inc., package certain over-the-counter drugs exclusively in packaging that meets the effectiveness specifications for special (child-resistant) packaging. 16 CFR 1700.15(b).

Jurisdiction

2. This proceeding is instituted pursuant to the authority contained in section 4(c) of the PPPA, 15 U.S.C. 1473(c) and in section 30(a) of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2079(a).

Parties

3. The Consumer Product Safety Commission ("the Commission") is an independent agency of the United States Government. Pursuant to section 30(a) of the CPSA, 15 U.S.C. 2079(a), the Commission is charged with the administration and enforcement of the PPPA.

4. Respondent Chattem, Incorporated is a Tennessee Corporation, with its principal place of business located at 1715 West 38th Street, Chattanooga, Tennessee 37409.

5. Whenever this complaint refers to any act of the Respondent, the reference shall be deemed to mean that the officers, employees, or agents of Respondent authorized such act, while actively engaged in the management, direction, or control of the affairs of the Respondent and while acting within the scope of their employment.

Products Manufactured by Respondent

6. Respondent packages the following over-the-counter drug products under the trade name "Pamprin":

a. Maximum Strength Pamprin Tablets containing 500 mg. of acetaminophen per tablet (previously known as "Extra Strength Pamprin Tablets"). The product is packaged in three sizes containing 12, 24, and 48 tablets respectively.

b. Maximum Strength Pamprin Caplets containing 500 mg. of acetaminophen per caplet (previously known as "Extra Strength Pamprin Caplets"). The product is packaged in two sizes containing 24 and 48 caplets respectively.

c. Pain Relief Pamprin Caplets containing 250 mg. of acetaminophen per caplet (previously known as "Maximum Strength Pamprin Caplets"). The product is packaged in two sizes containing 16 and 32 caplets respectively.

7. All sizes of the Pamprin products listed in paragraph 6 contain acetaminophen in amounts in excess of 1 gram per retail package. Pamprin caplets and tablets are intended for oral administration to humans.

8. Respondent packages and distributes all sizes of the Pamprin products listed in paragraph 6 for sale

to individuals for consumption in or about the household. All sizes of the Pamprin products listed in paragraph 6 are "household substances", as that term is defined in section 2(2) of the PPPA, 15 U.S.C. 1471(2).

9. Respondent markets all of the Pamprin products listed in paragraph 6 as drugs to relieve symptoms associated with menstrual distress. Women of child-bearing age are the population most likely to use Pamprin products.

Acts and Practices of Respondent

10. Pursuant to 16 CFR 1700.14(a)(16), Respondent is required to package each of the Pamprin products listed in paragraph 6 above in packages which meet the effectiveness specifications for special packaging (hereinafter "child-resistant packaging"). 16 CFR 1700.15.

11. For the purpose of making Pamprin products readily available to elderly or handicapped persons unable to use products packaged in child-resistant packages, section 4(a) of the PPPA, 15 U.S.C. 1473(a), permits Respondent to package one size of each of the Pamprin products listed in paragraph 6 above in packages which are not child-resistant.

12. Respondent packages the 12 tablet and 48 tablet sizes of the 500 mg. Pamprin tablet product in child-resistant packaging. In 1992, the 12 tablet size constituted approximately ■ percent [1] of the total production of the 500 mg. Pamprin tablet product. The 48 tablet size constituted approximately ■ percent of the total production of the 500 mg. Pamprin tablet product.

13. Pursuant to section 4(a) of the PPPA, Respondent packages the 24 tablet size of the 500 mg. Pamprin tablet product in packages that are not child-resistant. The 24 tablet package is labeled "Package not child-resistant." In 1992, the 24 tablet size constituted approximately ■ percent of the total production of the 500 mg. Pamprin tablet product.

14. Respondent packages the 48 caplet size of the 500 mg. Pamprin caplet product in child-resistant packaging. In 1992, the 48 caplet size constituted approximately ■ of the total production of the 500 mg. Pamprin caplet product.

15. Pursuant to section 4(a) of the PPPA, Respondent packages the 24 caplet size of the 500 mg. Pamprin caplet product in packages that are not child-resistant. The 24 caplet package is labeled "Package not child-resistant." In 1992, the 24 caplet size constituted approximately ■ percent of the total production of the 500 mg. Pamprin caplet product.

16. Respondent packages the 32 caplet size of the 250 mg. Pamprin caplet product in child-resistant packaging. In 1992, the 32 caplet size constituted approximately ■ percent of the total production of the 250 mg. Pamprin caplet product.

17. Pursuant to section 4(a) of the PPPA, Respondent packages the 16 caplet size of the 250 mg. Pamprin caplet product in packages that are not child-resistant. The 16 caplet package is labeled "Package no child-resistant." In 1992, the 16 caplet size constituted approximately ■ percent of the total production of the 250 mg. Pamprin caplet product.

18. In the case of a household substance subject to a requirement for special packaging which is packaged in packages which are not child-resistant pursuant to section 4(a) of the PPPA, 15 U.S.C. 1473(a), section 4(c) of the PPPA, 15 U.S.C. 1473(c), provides that, if the Commission determines that the manufacturer or packer is not supplying the substance in "popular size" packages which are child-resistant, the Commission may, after giving the manufacturer or packer an opportunity to comply with the purposes of the PPPA, order the manufacturer or packer to package the substance exclusively in child-resistant packaging if the Commission finds, after opportunity for hearing, that such exclusive use of child-resistant packaging is necessary to accomplish the purposes of the PPPA.

19. On or about July 6, 1993, the Commission determined that the 12 and 48 tablet sizes of the 500 mg. Pamprin tablet product are not "popular size" packages within the meaning of section 4(c) of the PPPA, 15 U.S.C. 1473(c).

20. On or about July 6, 1993, the Commission determined that the 48 caplet size of the 500 mg. Pamprin caplet product is not a "popular size" package within the meaning of section 4(c) of the PPPA, 15 U.S.C. 1473(c).

21. On or about July 6, 1993, the Commission determined that the 32 caplet size of the 250 mg. Pamprin caplet product is not a "popular size" package within the meaning of section 4(c) of the PPPA, 15 U.S.C. 1473(c).

22. By letter dated July 14, 1993, the Commission advised Respondent of its determination that the Respondent is not supplying the products listed in paragraphs 19, 20, and 21 in "popular size" packages and, in accordance with Section 4(c) of the PPPA, 15 U.S.C. 1473(c), gave Respondent the opportunity to comply with the purposes of the PPPA by requesting the Respondent to alter its packaging practices with respect to the products listed in paragraph 6.

23. By letter dated August 2, 1993, Respondent responded that it would not alter its packaging practices for the products listed in paragraph 6.

24. The Pamprin products listed in paragraph 6 are specifically marketed for use by women of child-bearing age who may have young children or who may come in contact with such children.

25. The quantities of the Pamprin products listed in paragraph 6 packaged in child-resistant packaging are insufficient to supply purchasers of those products who have young children or who may come in contact with young children.

26. The number of elderly or handicapped purchasers of the Pamprin products listed in paragraph 6 unable to use child-resistant packaging is substantially less than the quantities of those products packaged in packages that are not child-resistant.

27. Exclusive use of special packaging for Pamprin products listed in paragraph 6 is necessary to accomplish the purposes of the PPPA.

Wherefore, the staff requests that the Commission issue an order requiring the Respondent to package the Pamprin products listed in paragraph 6 of this complaint exclusively in child-resistant packaging, and to order such other relief as may be reasonably necessary to obtain Respondent's compliance with the PPPA.

Wherefore, the premises considered, the Commission hereby issues this complaint on the fifteenth day of October, 1993.

By direction of the Commission:

Carlos L. Perez,

Deputy Assistant Executive Director, Office of Compliance and Enforcement.

Alan H. Schoem,

Director, Division of Administrative Litigation.

Michael J. Gidding,

Dennis C. Kacoyanis,

Trial Attorneys, Division of Administrative Litigation.

List and Summary of Documentary Evidence

1. Requirements for Child Resistant Packaging of Acetaminophen Preparation. 44 FR 51211, August 31,

[1] Respondent has claimed that the percentages of production of the various Pamprin products may not be publicly disclosed because the percentages are derived from confidential sales information. To preserve Respondent's claim for consideration by the administrative law judge in this matter, the Commission has removed the percentages from this notice, pending resolution of respondent's claims pursuant to § 1025.45 of the Commission's Rules of Adjudicatory Practice relating to *in camera* treatment of confidential information. 16 CFR 1025.45.

1979. Notice establishing special packaging for acetaminophen preparations, subsequently codified at 16 CFR 1700.14(a)(6).

2. Report of Establishment Inspection of Chattem, Inc., on September 18, 1990 and Letter of Advice dated February 22, 1991. Report contains sales figures for the Pamprin product line.

3. Response of Chattem, Inc. on March 13, 1991 to February 22, 1991 Letter of Advice, with attachments.

4. Chattem, Inc. Submission of June 26, 1992 to the Consumer Products Safety Commission, with attachments.

5. Correspondence dated December 31, 1992 and January 25, 1993 from Charles Jolly, Chattem, to Dennis Kacoyanis, Consumer Product Safety Commission enforcement staff.

6. Chattem, Inc. Submission of September 8, 1993 to the Consumer Product Safety Commission, with attachments.

7. Minutes of Commission Votes to Issue the Complaint against Chattem.

8. Correspondence dated July 14, 1993 from Sadye E. Dunn, Secretary, Consumer Product Safety Commission, to Chattem.

9. Correspondence dated August 2, 1993 from Charles Jolly, Chattem, to Sadye E. Dunn, Secretary, Consumer Product Safety Commission, in response to the July 14, 1993 letter from the Commission.

10. *Vital and Health Statistics: Current Estimates from the National Health Interview Survey, 1989,* Series 10, No. 176; National Center for Health Statistics (October, 1990). Includes estimates of the prevalence of chronic conditions and limitation of activity.

11. *Unintentional Ingestions of Medications By Children Under 5 Years of Age (January–March 1989);* United States Consumer Product Safety Commission Directorate for Epidemiology.

[FR Doc. 93–27037 Filed 11–3–93; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Advisory Committee on Military Personnel Testing

Pursuant to Public Law 92–463, notice is hereby given that a meeting of the Defense Advisory Committee on Military Personnel Testing is scheduled to be held from 8:30 a.m. to 4:30 p.m. on December 2, 1993, and from 8:30 a.m. to 4:30 p.m. on December 3, 1993. The meeting will be held at The Williamsburg Hospitality House, 415 Richmond Road, Williamsburg, Virginia. The purpose of the meeting is to review planned changes in the Department of Defense's Student Testing Program and progress in developing paper-and-pencil and computerized enlistment tests. Persons desiring to make oral presentations or submit written statements for consideration at the Committee meeting must contact Dr. Jane M. Arabian, Assistant Director, Accession Policy, Office of the Assistant Secretary of Defense (Personnel and Readiness), room 2B271, The Pentagon, Washington, DC 20301–4000, telephone (703) 697–9271, no later than November 12, 1993.

Dated: October 29, 1993.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–27062 Filed 11–3–93; 8:45 am]

BILLING CODE 5000–04–M

Defense Science Board; Meeting

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board will meet in closed session on February 16–17, May 25–26, and October 19–20, 1994 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Defense Science Board will discuss interim findings and tentative recommendations resulting from ongoing Task Force activities. The Board will also discuss plans for future consideration of scientific and technical aspects of specific strategies, tactics, and policies as they may affect the U.S. national defense posture.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. II (1988)), it has been determined that these Defense Science Board meetings concern matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly these meetings will be closed to the public.

Dated: November 1, 1993.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–27095 Filed 11–3–93; 8:45 am]

BILLING CODE 5000–04–M

Defense Science Board Task Force on Defense Acquisition Reform (Phase II); Meeting

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Defense Acquisition Reform (Phase II) will meet in closed session on November 16 and December 16, 1993 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will further define the elements of pilot industry initiatives for jet engines and a segment of electronics, further define the elements of pilot initiatives for two unified commands, and assess the DoD review comments on our Phase I report and recommend changes in approach if appropriate.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. II, (1988)), it has been determined that these DSB Task Force meetings, concern matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly these meetings will be closed to the public.

Dated: November 1, 1993.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–27094 Filed 11–3–93; 8:45 am]

BILLING CODE 5000–04–M

Defense Science Board Task Force on Antitrust Aspects of Defense Industry Consolidation; Meeting

ACTION: Notice of advisory committee meeting.

SUMMARY: The Defense Science Board Task Force on Antitrust Aspects of Defense Industry Consolidation will meet in open session on November 22, 1993 at the Pentagon, room 3E869, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense.

Persons interested in further information should call Ms. Amy Jeffress at (703) 697–9247.

Dated: November 1, 1993.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–27093 Filed 11–3–93; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Management Service, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by November 30, 1993.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection request should be addressed to Cary Green, Department of Education, 400 Maryland Avenue, SW., room 4682, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Cary Green, (202) 401–3200.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Resources Management Service, publishes this notice with the attached proposed information collection request prior to submission of this request to OMB. This notice contains the following information: (1) Type of review requested, e.g., expedited; (2) Title; (3) Abstract; (4) Additional Information; (5) Frequency of collection; (6) Affected public; and (7) Reporting and/or Recordkeeping burden. Because an expedited review is requested, a description of the information to be collected is also included as an attachment to this notice.

Dated: October 29, 1993.

Cary Green,

Director, Information Resources Management Service.

Office of Postsecondary Education

Type of Review: Expedited
Title: Federal Direct Stafford Loans/ Federal Direct Unsubsidized Stafford Loans Promissory Note Disclosure
Frequency: Annually
Affected Public: Individuals or households
Reporting Burden:
Responses: 270,000
Burden Hours: 44,820
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0

Abstract: Direct Loans were established under title IV, part D of HEA by the Student Loan Reform Act of 1993 part of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66). Under Direct Loans, loan capital is provided directly to student and parent borrowers by the Federal Government rather than through private lenders. This program replaces the direct loan demonstration program that was authorized by the Higher Education Amendments of 1992 (Pub. L. 102–325).

The form will be used in the direct loan program for Federal Stafford Loans and Federal Direct Unsubsidized Stafford Loans. The information on this form will be partially pre-printed and used by ED to uniquely identify the loan as well as to service and collect the loan. The information supplied by the borrower will be used to verify eligibility, determine billing procedures, and collect and enforce the loan obligation. If ED did not collect the information its ability to service and, if necessary, enforce the loan would be seriously impaired.

Additional Information: An expedited review is requested because of the time constraints imposed by the requirement to implement the Direct Loan program for the 1994–95 award year. Software development has progressed to a stage where changes in data elements and/or delays in printing and distributing the Promissory Notes would require contract modifications and reprogramming of the software, with serious time and cost implications for the Federal government and for program implementation. In view of the aforementioned, ED is requesting an approval by November 10, 1993.

BILLING CODE 4000–01–M

FEDERAL DIRECT STUDENT LOAN PROGRAM

U.S. Department of Education, Washington, DC

Warning: Any person who knowingly makes a false statement of misrepresentation on this form is subject to penalties which may include fines, imprisonment, or both under the U.S. Criminal Code and 20 U.S.C.

OMB NO. 1840-NEW
FORM APPROVED
EXP. DATE 00-00-00

Federal Direct Stafford Loan
Federal Direct Unsubsidized Stafford Loan
Promissory Note and Disclosure

Section A: To Be Completed By Borrower

1. Name (last, first, middle initial)	2. Social security number	3. Date of birth
4. Permanent home address (street, city, state, ZIP)		
5. Permanent home phone (with area code)	6. Driver's license state and number	

7. References: You must list two persons with different U.S. addresses, who have known you for at least three years.

Name		
Permanent address		
City, state, ZIP		
Area code/telephone		

Section B: To Be Completed by School

8. School name	9. School address (street, city, state, ZIP)
10. School code/branch	11. Loan period approved From: MM/DD/YY To: MM/DD/YY

The chart below shows anticipated disbursement amounts and dates. Actual amounts and dates may vary.

	Anticipated Disbursement Dates	Loan amount approved	Loan fee rate	Loan fee amount	Net disbursement amount	Interest rate
Federal Direct Stafford Loan	1 or entire _____					
	2 on _____					
	3 on _____					
	4 on _____					
	Total					

	Anticipated Disbursement Dates	Loan amount approved	Loan fee rate	Loan fee amount	Net disbursement amount	Interest rate
Federal Direct Unsubsidized Stafford Loan	1 or entire _____					
	2 on _____					
	3 on _____					
	4 on _____					
	Total					

I promise to pay the U.S. Department of Education all sums (hereafter "loan" or "loans") disbursed under this Promissory Note plus interest and other fees which may become due, as provided in this Promissory Note. If I fail to make payments on this Promissory Note when due, I will also pay collection costs including attorney's fees and court costs. I understand that I may cancel or reduce the size of my loan by refusing any disbursement that is issued to me. I certify that the total amount of loan that I receive under this Promissory Note will not exceed the allowable annual maximum or cumulative maximum under the Higher Education Act of 1965, as amended.

I understand that this is a Promissory Note. I will not sign this Promissory Note before reading it, even if I am advised not to read this Promissory Note. I am entitled to an exact copy of this Promissory Note and a statement of the Borrower's Rights and Responsibilities. My signature certifies that I have read, understood and agreed to the terms and conditions of this Promissory Note. My signature on this Promissory Note will serve as my authorization for my loan proceeds to be credited to my student account by the school identified in Section B.

Under penalty of perjury I certify that the information contained in the Borrower Section of this Promissory Note is true and accurate. The proceeds of this loan will be used for authorized educational expenses at the certifying school for the specified loan period. I certify that I do not owe a refund on a Federal Pell Grant, Basic Educational Opportunity Grant, Supplemental Educational Opportunity Grant or a State Student Incentive Grant and that I am not now in default on any loan received under the Federal Perkins Loan Program (including National Defense Student Loans) or the Federal Family Education Loan Program, or if I am in default, I have made arrangements that are satisfactory to the Secretary of the Department of Education.

I UNDERSTAND THAT THIS IS A FEDERAL LOAN THAT I MUST REPAY.

12. Loan identification number(s)

13. Signature of borrower Date

DISCLOSURE OF TERMS

This promissory note applies to **Federal Direct Stafford Loans and Federal Direct Unsubsidized Stafford Loans**. In this note, the Higher Education Act of 1965, as amended 20 U.S.C. 1070, et seq., and applicable United States Department of Education regulations, are referred to as "the Act." The terms of this note will be interpreted in accordance with the Act and other applicable Federal statutes.

With the exception of interest charges that the federal government will pay on the borrower's behalf for a Federal Direct Stafford Loan, I agree to pay interest on the principal amount of the loan from the date of disbursement, until the loan is paid in full.

If I fail to make the required interest payments when due, I agree that the U.S. Department of Education may add the accrued interest to the unpaid balance of the loan. This is capitalization.

INTEREST RATE

For **Federal Direct Stafford Loans** and **Federal Direct Unsubsidized Stafford Loans** for which the first disbursement of this loan is made on or after July 1, 1994 and before July 1, 1995, the applicable rate of interest is, during any twelve month period beginning on July 1 and ending on June 30, determined on the preceding June 1 and is equal to the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held prior to such June 1; plus 3.1 percent, but shall not exceed 8.25 percent.

If this note is signed before July 1, with an anticipated disbursement date that is after July 1, the interest rate that is printed on this promissory note may be inaccurate since the variable interest rate on this promissory note is determined on the preceding June 1 and is equal to the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held prior to such June 1. I will receive a statement of the actual interest rate after the disbursement of the loan. If, after reviewing the actual interest rate, I decide to decline this loan, I am entitled to a refund of all loan origination costs, if I pay back the principal on this note in full to the U.S. Department of Education within 120 days of disbursement.

REPAYMENT

I am obligated to repay the full amount of the loan, and accrued interest. On a Federal Direct Stafford Loan, the federal government will pay interest costs until the expiration of the grace period. Federal Direct Stafford Loans usually have a grace period of 6 months after the end of enrollment as at least a half-time student at an eligible school. I will repay the principal of the loan(s) in periodic installments during a repayment period(s) that begins, on the day immediately following the end of the grace period. On a Federal Direct Unsubsidized Stafford Loan, the repayment period begins on the day after the expiration of the six month grace period that follows after I cease to be enrolled on at least a half-time basis and ending no later than ten years from that date, exclusive of any period of deferment or forbearance.

There are four repayment options: a standard repayment plan, with a fixed annual repayment amount paid over a fixed period of time; an extended repayment plan, with a fixed annual repayment amount paid over an extended period of time, except that I shall annually repay a minimum amount that will be determined by the U.S. Department of Education; a graduated repayment plan, with annual repayment amounts established at two or more graduated levels and paid over a fixed or extended period of time, except that my scheduled payments shall not be less than 50 percent, nor more that 150 percent, of what the amortized payment on the amount owed would be if the loan were repaid under the standard repayment plan; and an income contingent repayment plan, with varying annual repayment amounts based on my income, paid over an extended period of time prescribed by the U.S. Department of Education not to exceed 25 years. The U.S. Department of Education will provide me with an opportunity to select a repayment plan. If I do not select a plan, the U.S. Department of Education will provide me with a standard repayment, or an extended repayment, or a graduated repayment

BILLING CODE 4000-01-C

The U.S. Department of Education will issue a repayment schedule that provides a schedule of payment amounts and due dates. The repayment schedule will include all of my Federal Direct Stafford Loans and Federal Direct Unsubsidized Stafford Loans. The U.S. Department of Education may grant me forbearance to eliminate any delinquency that persists even though I am making scheduled payments. I may prepay all or any of the unpaid balance on the loan at any time without a penalty. If I do not specify which loan I am prepaying, the U.S. Department of Education will determine how to apply the prepayment.

LATE CHARGES AND COLLECTION COSTS

If I fail to make any part of an installment payment within ten days after it becomes due, the U.S. Department of Education may collect a late charge not to exceed six cents for each dollar for each late installment. If I default on a loan, I will pay the reasonable collection fees plus court costs and attorney's fees associated with the collection of the debt.

ACCELERATION AND DEFAULT

At the option of the U.S. Department of Education, the entire unpaid balance will become immediately due and payable upon the occurrence of any one of the following events: (a) I fail to enroll as at least a half-time student at the institution that certified the loan; (b) I fail to use the proceeds of the loan solely for educational expenses; (c) I make a false representation that results in my receiving a loan for which I am ineligible; or (d) I default on the loan.

Information concerning the loan including the date of disbursement, the amount of the loan, and the repayment status of the loan will be reported to national credit bureaus. The following events will constitute a default on the loan: (a) I fail to pay the entire unpaid balance after the U.S. Department of Education has exercised its option under the preceding paragraph; or (b) I fail to make installment payments when due or to comply with the other terms of this note; and the U.S. Department of Education reasonably concludes that I no longer intend to honor the repayment obligation, provided the failure persists for at least 180 days, for payments due monthly, or 240 days, for payments due less frequently than monthly. If I default, the U.S. Department of Education may capitalize all the outstanding interest into a new principal balance.

If I default on this loan, the default will be reported to national credit bureaus. I understand that the resulting credit report will have a significant negative affect on my credit rating. If I default on this loan, my federal income tax refund may be withheld to pay the debt, my wages may be garnisheed or offset, and legal action may be brought against me to enforce the terms of this note. I will be ineligible for additional federal student financial aid and for assistance under most federal benefit programs.

Any notice that is required to be given to me will be effective when mailed by first class mail, to the latest address that the U.S. Department of Education has for me. I will immediately notify the U.S. Department of Education of a change of address. Failure to enforce, or insisting on compliance with, any term of this note shall not be a waiver of any right of the U.S. Department of Education. The provisions of this note can only be waived or modified, in writing, by the U.S. Department of Education. If any provision of this note is deemed to be unenforceable, the invalidity of that provision will not invalidate this promissory note.

PAPERWORK REDUCTION

Public reporting burden for this collection of information is estimated to average 10 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 this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and to the Office of Management and Budget, Paperwork Reduction Project ___-___, Washington, D.C. 20503.

Office of Postsecondary Education

Type of Review: Expedited
Title: Federal Direct PLUS Loan Record and Promissory Note
Frequency: Annually
Affected Public: Individuals or households
Reporting Burden:
Responses: 26,000
Burden Hours: 13,000
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0

Abstract: Direct Loans were established under title IV, part D of HEA by the Student Loan Reform Act of 1993 part of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66). Under Direct Loans, loan capital is provided directly to student and parent borrowers by the Federal Government rather than through private lenders. This program replaces the direct loan demonstration program that was authorized by the Higher Education Amendments of 1992 (Pub. L. 102–325).

The information on this form will be partially pre-printed and used by ED to uniquely identify the loan as well as to service and collect the loan. The information supplied by the borrower will be used to verify eligibility, determine billing procedures, and collect and enforce the loan obligation. If ED did not collect the information its ability to service and, if necessary, enforce the loan would be seriously impaired.

Additional Information: An expedited review is requested because of the time constraints imposed by the requirement to implement the Direct Loan program for the 1994–95 award year. Software development has progressed to a stage where changes in data elements and/or delays in printing and distributing the Promissory Notes would require contract modifications and reprogramming of the software, with serious time and cost implications for the Federal government and for program implementation. In view of the aforementioned, ED is requesting an approval by November 10, 1993.

BILLING CODE 4000–01–M

FEDERAL DIRECT STUDENT LOAN PROGRAM

U.S. Department of Education, Washington, DC

Warning: Any person who knowingly makes a false statement of misrepresentation on this form is subject to penalties which may include fines, imprisonment, or both under the U.S. Criminal Code and 20 U.S.C.

OMB NO. 1840-NEW
FORM APPROVED
EXP. DATE 00-00-00

Federal Direct PLUS Loan Application and Promissory Note

Section A: To Be Completed By Borrower

1. Name (last, first, middle initial)	2. Social security number	3. Date of birth
4. Permanent home address (street, city, state, ZIP)		
5. Permanent home phone (with area code)	6. Driver's license state and number	
7. U.S. citizenship status (check one) 1 ☐ U.S. citizen or national 2 ☐ Permanent resident or other eligible alien 3 ☐ Neither 1 nor 2 — *Alien registration number* A	8. Loan amount requested	9. Loan period requested From: MM/DD/YY To: MM/DD/YY

10. References: You must list two persons, with different U.S. addresses, who have known you for at least three years.

Name		
Address		
City, state, ZIP		
Area code/telephone		

11. Employer name	12. How many years with this employer?	13. Employer address
14. Employer phone number	15. Are you currently in default on an education loan or do you owe a refund on a federal student grant? If "Yes," read the instructions carefully and attach the required documentation. Yes ☐ No ☐	

Section B: To Be Completed By Student

16. Name (Last, first, middle initial)	17. Date of birth	18. Social security number
19. U.S. citizenship status (check one) 1 ☐ U.S. citizen or national 2 ☐ Permanent resident or other eligible alien 3 ☐ Neither 1 nor 2 — *Alien registration number* A	20. Are you currently in default on an education loan or do you owe a refund on a federal student grant? If "Yes," read the instructions carefully and attach the required documentation. Yes ☐ No ☐	

My signature certifies that I have read and agreed to the conditions given in the "student certification" printed on the reverse of this Loan Record and Promissory Note.

21. Signature of Student 22. Date

Section C: To Be Completed By School

23. School name	24. Address (street, city, state, ZIP)	
25. School code/branch	26. Loan period approved From: MM/DD/YY To: MM/DD/YY	27. Certified loan amount

28. Recommended disbursement date(s) (MM/DD/YY) 1st 2nd 3rd 4th

I promise to pay the U.S. Department of Education all sums (hereafter "loan" or "loans") disbursed under this Promissory Note plus interest and other fees which may become due, as provided in this Promissory Note. If I fail to make payments on this Promissory Note when due, I will also pay collection costs including attorney's fees and court costs. I understand that I may cancel or reduce the size of my loan by refusing any disbursement that is issued to me.

I understand that this is a Promissory Note. I will not sign this Promissory Note before reading it, even if I am advised not to read this Promissory Note. I am entitled to an exact copy of this Promissory Note and a statement of the Borrower's Rights and Responsibilities. My signature certifies that I have read, understood and agreed to the terms and conditions of this Promissory Note. My signature on this Promissory Note will serve as my authorization for my loan proceeds to be credited to the student account of the student identifed in Section B by the school identified in Section C.

Under penalty of perjury I certify that the information contained in the Borrower Section of this Promissory Note is true and accurate. The proceeds of this loan will be used for authorized educational expenses of the student named above at the certifying school for the specified loan period. I authorize the Secretary of the U.S. Department of Education to investigate my credit record and report information concerning my credit to the proper persons and organizations.

I UNDERSTAND THAT THIS IS A FEDERAL LOAN THAT I MUST REPAY.

29. Loan identification number

30. Signature of borrower Date

DISCLOSURE OF TERMS

This promissory note applies to Federal Direct PLUS Loans.

In this note, the Higher Education Act of 1965, as amended 20 U.S.C. 1070, et seq. and applicable U.S. Department of Education regulations are referred to as "the Act." The terms of this note will be interpreted in accordance with the Act and other applicable Federal statutes.

I agree to pay interest on the principal amount of the loan from the date of disbursement until the loan is paid in full. If I fail to make the required interest payments when due, I agree that the U.S. Department of Education may add the accrued interest to the unpaid balance of the loan. This is capitalization.

INTEREST RATE

The interest rate on this loan during any 12-month period beginning on July 1 and ending on June 30, is determined on the preceding June 1 and is equal to the bond equivalent rate of 52-week Treasury bills auctioned at the final auction held prior to such June 1; plus 3.1 percent, but shall not exceed 9 percent.

REPAYMENT

I am obligated to repay the full amount of the loan and accrued interest.

Unless I have received a deferment or forbearance, the repayment period for a Federal Direct PLUS loan will begin on the date that the loan is disbursed. The first payment is due within sixty days from that date.

There are three repayment options: a standard repayment plan, with a fixed annual repayment amount paid over a fixed period of time; an extended repayment plan, with a fixed annual repayment amount paid over an extended period of time, except that I shall annually repay a minimum amount that will be determined by the U.S. Department of Education; and a graduated repayment plan, with annual repayment amounts established at two or more graduated levels and paid over a fixed or extended period of time, except that my scheduled payments shall not be less than 50 percent, nor more that 150 percent, of what the amortized payment on the amount owed would be if the loan were repaid under the standard repayment plan. The U.S. Department of Education will provide me with an opportunity to select a repayment plan. If I do not select a plan, the U.S. Department of Education will provide me with a repayment plan.

The U.S. Department of Education will issue a repayment schedule that provides a schedule of payment amounts and due dates. My repayment schedule will include all of my Federal Direct PLUS Loans. The U.S. Department of Education may grant me forbearance to eliminate a delinquency that persists, even though I am making scheduled payments. I may prepay all or any part of the unpaid balance on the loans at anytime, without a penalty. If I do not specify which loan I am prepaying, the U.S. Department of Education will determine how to apply the prepayment.

LATE CHARGES AND COLLECTION COSTS

If I fail to make an installment payment within ten days after it becomes due, the U.S. Department of Education may collect a late charge that will not exceed six cents for each dollar of each late installment. If I default on a loan, I will pay reasonable costs plus court costs, collection fees and attorney's fees.

ACCELERATION AND DEFAULT

At the option of the U.S. Department of Education, the entire unpaid balance will become immediately due and payable on the occurrence of any of the following events: (a) the student that is the subject of this Federal Direct PLUS loan fails to enroll as at least a half-time student at the school that certified the loan application; (b) the proceeds of the loan are used for expenses that are unrelated to education; (c) I, the borrower, make a false representation that results in my receiving a loan for which I am ineligible; or (d) I default on the loan.

I will default on this loan if I fail to make an installment payment when it is due, or to meet the other terms of this promissory note. The following events will constitute a default on the loan: (a) I fail to pay the entire unpaid balance after the U.S. Department of Education has exercised its option under the preceding paragraph; (b) I fail to make installment payments when due or to comply with the other terms of this note, and the U.S. Department of Education reasonably concludes that I no longer intend to honor the repayment obligation, provided the failure has persisted for at least 180 days for payments due monthly, or 240 days, for payments due less frequently than monthly. If I default, the U.S. Department of Education will capitalize all outstanding interest into a new principal balance.

If I default on this loan, the default will be reported to national credit bureaus. I understand that the resulting credit report will have a negative affect on my credit rating. If I default on this loan, my federal income tax refund may be withheld to pay the debt, my wages may be garnisheed or offset, and legal action may be brought against me to enforce the terms of this note. I will be ineligible for additional federal student financial aid and for assistance under most federal benefit programs.

Any notice that is required to be given to me will be effective when mailed by first class mail, to the latest address that the U.S. Department of Education has for me. I will immediately notify the U.S. Department of Education of any change of my address. Failure to enforce, or insisting on compliance with, any term of this note shall not be a waiver of any right of the U.S. Department of Education. The provisions of this note can only be waived or modified, in writing, by the U.S. Department of Education. If any provision of this note is deemed to be unenforceable, the invalidity of that provision will not invalidate this promissory note.

STUDENT CERTIFICATION

I declare under penalty of perjury that the following is true and correct: (1) I certify that the information contained in the Student Section of this document is true, complete and correct to the best of my knowledge and belief and is made in good faith. (2) I certify that the borrower named in the borrower section of this document is my natural or adoptive parent or my legal guardian. (3) I authorize the release of information pertinent to this loan (i) by the school, the U.S.Department of Education, or their agents, to members of my immediate family unless I submit written direction otherwise; and (ii) by and amongst my schools, the U.S. Department of Education and their agents. (4) I certify that I do not now owe a refund on a Federal Pell Grant, Basic Education Opportunity Grant, Supplemental Educational Opportunity Grant, or a State Student Incentive Grant and that I am not now in default on any loan received under the Federal Perkins Loan Program (including NDSL loans) or the Federal Family Education Loan Program (or FFELP as defined in the Statement of Borrower's rights and Responsibilities) or, if I am in default I have made payment arrangements that are satisfactory to the U.S. Department of Education. (5) So that the loans(s) requested can be approved, I authorize the U.S. Department of Education to send any information about me that is under its control, including information from the Free Application for Federal Student Aid to state agencies and nonprofit organizations that administer financial aid programs under the FFELP. (6) I authorize my schools and the U.S. Department of Education to verify my social security number with the Social Security Administration (SSA) and, if the number is incorrect, then I authorize SSA to disclose my correct social security number to these parties.

[FR Doc. 93-27036 Filed 11-3-93; 8:45 am]
BILLING CODE 4000-01-M

Indian Education National Advisory Council; Meeting

AGENCY: National Advisory Council on Indian Education, Education.

ACTION: Notice of open meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Executive Committee of the National Advisory Council on Indian Education. This notice also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATES AND TIME: Monday, November 29, 1993 from 10 a.m. to 5 p.m. and Tuesday, November 30, 1993 from 10 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the John Ascuaga's Nuggett Hotel, 1100 Nugget Ave., Sparks, Nevada 89431, 702/356–3300.

FOR FURTHER INFORMATION CONTACT: Robert K. Chiago, Executive Director, National Advisory Council on Indian Education, 330 C Street, SW., room 4072, Switzer Building, Washington, DC 20202–7556. Telephone: 202/205–8353.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Indian Education is established under section 5342 of the Indian Education Act of 1988 (25 U.S.C. 2642). The Council is established to, among other things, assist the Secretary of Education in carrying out responsibilities under the Indian Education Act of 1988 (part C, title V, Pub. L. 100–297) and to advise Congress and the Secretary of Education with regard to federal education programs in which Indian children or adults participate or from which they can benefit.

The meeting is open to the public. The agenda of the National Advisory Council on Indian Education includes a general business meeting and a review session of the findings from hearings previously held by the NACIE Executive Committee on November 18 and 19 in Albuquerque, New Mexico. The hearings were held to allow the Indian community the opportunity to provide written and/or oral testimony on the reauthorization of the Elementary and Secondary Education Act and the Goals 2000: Educate America Act.

Records are kept of all Council proceedings, and are available for public inspection at the office of the National Advisory Council on Indian Education located at 330 C Street, SW., room 4072, Washington, DC 20202–7556 from the hours of 9 a.m. to 4:30 p.m. Monday through Friday.

Dated: October 26, 1993.

Robert K. Chiago,

Executive Director, National Advisory Council on Indian Education.

[FR Doc. 93–27090 Filed 11–3–93; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Intent to Award Grant to Health Physics Society; Financial Assistance Award

AGENCY: Department of Energy (DOE).

ACTION: Notice of intent.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.6(a)(5), it is making a discretionary financial assistance award based on the criterion set forth at 10 CFR 600.7(b)(2)(i)(D) to the Health Physics Society (HPS), McLean, Virginia, under Grant Number DE–EF01–94EH89394. The DOE intends to make a noncompetitive financial assistance award. The purpose of the proposed grant is to support a 15-month project during which 13 training workshops will be held to instruct teachers on the basics of radiation for dissemination to primary and secondary school students. This effort will have a total estimated cost of $301,800 to be provided by the DOE.

FOR FURTHER INFORMATION CONTACT: Please write the U.S. Department of Energy, Office of Placement and Administration, ATTN: Jeffrey R. Dulberg, HR–531.24, 1000 Independence Avenue SW., Washington, DC 20585.

SUPPLEMENTARY INFORMATION: The proposed grant will provide funding to HPS for 13 training workshops to be held across the U.S. for a 15-month period beginning December 1, 1993, and ending February 28, 1995. The participants will be primary and secondary school teachers who will receive instruction in the basics of ionizing and nonionizing radiation including time, distance, and shielding principles. The teachers will receive continuing education units (CEUs) credit. Laboratory demonstrations at the workshops will be reproduced at the teachers' respective schools, thereby disseminating scientific information to students. Laboratory demonstrations at the schools are intended to promote interest and enthusiasm in science and mathematics on the part of students who will be applying scientific principles and problem solving to real world situations.

The project is meritorious because of its relevance to the accomplishment of an important public purpose—providing an approach for disseminating information on radiation to the public and for promoting interest in students to pursue careers in science and mathematics. HPS has been instrumental in developing the program and curriculum for the planned workshops. HPS has conducted three pilot workshops in the past two years. The HPS members who will be conducting the workshops are professional health physicists who have extensive experience in developing and conducting training in the area of radiation health and safety for science teachers. HPS has refined the process and curriculum associated with conducting these workshops. As the premier health physics professional group in the U.S., HPS can effectively coordinate and conduct the workshops nationwide. The applicant has exclusive domestic capability to perform the activity successfully, based upon experience and technical expertise in radiation health and safety issues. The DOE knows of no other entity which is conducting or is planning to conduct such an activity.

Based on the evaluation of relevance to the accomplishment of a public purpose, it is determined that the proposal represents a beneficial method and approach to disseminate to the public information on radiation fundamentals.

Scott Sheffield,

Director, Headquarters Operations Division B, Office of Replacement and Administration.

[FR Doc. 93–27123 Filed 11–3–93; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Project No. 10552–005 Idaho]

Contractors Power Group, Inc.; Availability of Environmental Assessment

October 29, 1993.

In accordance with the National Environmental Policy Act of 1969, and the Federal Energy Regulatory Commission's regulations, 18 CFR part 380 (Order No. 486, 52 FR 47910), the Office of Hydropower Licensing (OHL) has reviewed the application for amendment of license to change the route of the transmission line for the Mile 28 Hydroelectric Project. This project is located on the Milner-Gooding Canal in Jerome County, Idaho. The staff of OHL's Division of Project Compliance and Administration prepared an Environmental Assessment (EA) for the

action. In the EA, staff concludes that the transmission line would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Reference and Information Center, room 3308, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–27055 Filed 11–3–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–1–112–001]

Blue Lake Gas Storage Co.; Report of Refund

October 29, 1993.

Take notice that on October 26, 1993, Blue Lake Gas Storage Company (Blue Lake) tendered for filing with the Commission a report detailing Blue Lake's refund calculation of ACA Charge and interest pursuant to the Commission's order on September 29, 1993, in Docket No. TM94–1–112–000.

Blue Lake states that the refund of $71,853 plus interest of $1,004 was distributed to ANR Pipeline Company by reducing its current monthly bill on October 20, 1993.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211. All such protests should be filed on or before November 5, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–27052 Filed 11–3–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–1–112–002]

Blue Lake Gas Storage Co.; Proposed Changes in FERC Gas Tariff

October 29, 1993.

Take notice on October 26, 1993, that Blue Lake Gas Storage Company (Blue Lake) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, First Revised Sheet No. 5.

Blue Lake states that First Revised Sheet No. 5 implements the Commission order issued September 29, 1993, which required Blue Lake to delete the ACA unit surcharge from its tariff. Blue Lake requests an October 1, 1993, effective date for First Revised Sheet No. 5.

Blue Lake states that copies of the filing were served upon Blue Lake's jurisdictional customer.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before November 5, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–27053 Filed 11–3–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–126–000, et al. and RP92–235–000]

Koch Gateway Pipeline Co.

October 29, 1993.

The Commission approved a Settlement in the above-captioned proceeding which authorized Koch Gateway Pipeline Company (KGPC), formerly United Gas Pipe Line Company, to offer a Market Responsive Storage and Delivery Service (MRSDS), on an experimental basis for a limited period of time.[1] This approval allowed KGPC to charge market-based storage rates for a bundled storage and delivery service, subject to a price cap and a revenue sharing mechanism. The Settlement provided that KGPC and the MRSDS customers would provide the Commission staff with privileged and confidential reports describing the transactions conducted under MRSDS. These reports have been treated as confidential pursuant to § 388.112 of the Commission's regulations.[2]

Take notice that on October 26, 1993, KGPC informed the Commission that it is withdrawing its request that the reports it has filed be held from public disclosure. KGPC states that there is no longer any need for KGPC to keep past transaction information confidential since all open seasons for MRSDS have ended.

Any party wishing to protest or comment upon the disclosure of the information contained in the reports filed with the Commission by KGPC concerning its MRSDS may file comments on or before November 5, 1993.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–27051 Filed 11–3–93; 8:45 am]

BILLING CODE 6717–01–M

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[1] 57 FERC ¶ 61,086 (1992), *reh'g granted in part and denied in part*, 57 FERC ¶ 61,397 (1992). The Commission extended this authority through March 31, 1994, as part of a settlement in Docket No. RP92–235–000. United Gas Pipe Line Company, 62 FERC ¶ 61,290 (1993).

[2] 18 CFR 388.112 (1993).

[Docket No. RP93–205–000]

Koch Gateway Pipeline Co.; Technical Conference

October 29, 1993.

In the Commission's order issued on October 29, 1993, in the above-captioned proceeding, the Commission held that Koch Gateway Pipeline Company's tariff filing, proposing to charge market-based rates for firm and interruptible storage, raises issues for which a technical conference is to be convened. The conference to address the issues has been scheduled for Tuesday, November 10, 1993, at 10 a.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426.

All interested persons and staff are permitted to attend.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–27056 Filed 11–3–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–616–000]

Tennessee Gas Pipeline Co.; Notice of Technical Conference

October 29, 1993.

Take notice that on November 18, 1993, at 10 a.m., the Commission staff will convene an informal technical conference in the above-captioned proceeding to discuss the issues raised by the various parties. The conference will be held in Room 3400–D at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

All interested persons and Commission staff are invited to attend.

For further information, contact Robert D. Long, 825 North Capitol

Street, NE., Washington, DC 20426, (202) 208–2265.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–27054 Filed 11–3–93; 8:45 am]

BILLING CODE 6717–01–M

Office of Energy Efficiency and Renewable Energy

[Docket No.: EE–NOA–93–101]

Demonstration and Commercial Application of Renewable Energy and Energy Efficiency Technologies Management Plan

AGENCY: Department of Energy.

ACTION: Notice of availability and opportunity for public comment.

SUMMARY: The Department of Energy today announces the availability of a draft Management Plan for the Demonstration and Commercial Application of Renewable Energy and Energy Efficiency Technologies Program created by the Renewable Energy and Energy Efficiency Technology Competitiveness Act of 1989 (Public Law 101–218) (Act) and amended by the Energy Policy Act of 1992 (Public Law 102–486). The draft plan presents a strategy for assisting the private sector in technology commercialization and in helping to meet foreign competition. Copies of the draft plan have been sent to the members of the Department's Advisory Committee on Renewable Energy and Energy Efficiency Joint Ventures under the Act. The Department solicits comments from the public concerning the Draft Management Plan for the Commercialization Ventures Program.

DATES: Written comments (6 copies) are due on or before January 3, 1993.

ADDRESSES: Written comments (6 copies) should be sent to the following address: U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE–90, Notice of Availability and Opportunity for Public Comment, Docket No. EE–NOA–93–101, 1000 Independence Avenue, SW., Room 6B–025, Washington, DC 20585, (202) 586–0561. Fax comments will not be accepted.

The draft Management Plan is available on request and/or copying in the U.S. Department of Energy, Freedom of Information Reading Room, 1E–190, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6020. Hours Monday through Friday 9:00 a.m.–4:00 p.m.

FOR FURTHER INFORMATION CONTACT: C. Harvey Major, Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, Mail Stop EE–542, 1000 Independence Avenue, SW., Room 6B–256, Washington, DC 20585, (202) 586–5517.

Issued in Washington, DC, on October 26, 1993.

Frank M. Stewart,

Acting Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 93–27124 Filed 11–3–93; 8:45 am]

BILLING CODE 6450–01–M

Office of Hearings and Appeals

Cases Filed During the Week of October 8 through October 15, 1993

During the week of October 8 through October 15, 1993, the appeal and the applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

Dated: October 28, 1993.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Oct. 8 through Oct. 15, 1993]

Date	Name and location of applicant	Case No.	Type of submission
Sept. 24, 1993	Shell/Fitzpatrick Oil Company, London, Ohio.	RR315–9	Request for Modification/Rescission in the Shell Refund Proceeding. If Granted: The July 6, 1993 Dismissal Letter (Case No. RF315–308) issued to Fitzpatrick Oil Company would be modified regarding the firm's application for refund submitted in the Shell Refund Proceeding.
Do	Shell/Kennel's Service Station, Bellefontaine, Ohio.	RR315–8	Request for Modification/Rescission in the Shell Refund Proceeding If Granted: The March 1, 1991 Dismissal Letter (Case No. RF315–10013) issued to Kennel's Service Station would be modified regarding the firm's application for refund submitted in the Shell Refund Proceeding.
Oct. 12 1993	L&M Technologies, Albuquerque, New Mexico.	LWD–0009	Motion for discovery. If Granted: Ronald Sorri will be ordered to produce to L&M Technologies information about the expert witness Mr. Sorri intends to call at the hearing to be held in LWA–0001, as requested by L&M through its attorney, Charles Ofelt.
Do	McKusick Petroleum Dover-Foxcroft, Maine.	LEE–0054	Exception to the Reporting Requirements. If Granted: McKusick Petroleum would not be required to file Form EIA–782B, "Resellers'/Retailers' Monthly Petroleum Products Sales Report."
Do	Ronald Sorri Albuquerque, New Mexico ..	LWD–0008	Motion for Discovery. If Granted: L&M Technologies would be ordered to produce to Ronald Sorri the performance appraisals of L&M employees as requested by Thad Guyer, Attorney for Ronald Sorri, in his September 24, 1993 letter.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of Oct. 8 through Oct. 15, 1993]

Date	Name and location of applicant	Case No.	Type of submission
Do	Ronald Sorri Medford, Oregon	LWX–0011	Supplemental order. If Granted: By October 22, 1993, the parties (Ronald Sorri, Sandia National Laboratories, L&M Technologies) would submit to the Office of Hearings and Appeals a numbered list of exhibits attached to copies of the exhibits so numbered, which the parties intend to offer into evidence in the hearing of October 26, 1993 to be held in LWA–0001.
Oct. 14, 1993	Kenneth W. Besecker, Martinez, Georgia	LFA–0326	Appeal of an information request denial. If Granted: Kenneth H. Besecker would receive additional information responsive to his Freedom of Information Requests SR–93–016B and SR–93–015B.

REFUND APPLICATIONS RECEIVED

[Week of Oct. 8 Through Oct. 15, 1993]

Date received	Name of refund proceeding/name of refund applicant	Case No.
10/12/93	Sulphur Canal	RF346–105.
10/13/93	City of Dallas	RF321–21756.
10/13/93	City of Dallas	RF321–19933.
10/12/93	Tony's Texaco	RF321–19931.
10/12/93	Archer Daniels Midland Company	RF321–19932.
10/8/93 thru 10/15/93	Atlantic Richfield applications received	RF304–14648 thru RF304–14665.
10/8/93 thru 10/15/93	Crude Oil Refund Applications received	RF272–94936 thru RF272–94947.

[FR Doc. 93–27125 Filed 11–3–93; 8:45 am]

BILLING CODE 6450–01–P

Cases Filed During the Week of October 15 Through October 22, 1993

During the week of October 15 through October 22, 1993, the appeals and applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: October 28, 1993.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Oct. 15 through Oct. 22, 1993]

Date	Name and location of applicant	Case No.	Type of submission
Oct. 20, 1993	Economic Regulatory Administration, Washington, DC.	LRD–0010	Motion for discovery. If granted: Discovery would be granted to Economic Regulatory Administration in connection with the Statement of Objections submitted in response to the March 26, 1993 Proposed Remedial Order (Case No. LRO–0004) issued to Chevron U.S.A., Inc.
Oct. 21, 1993	Whirlpool Corporation, Benton Harbor, MI	RR272–119	Request for modification/rescission in the crude oil refund proceeding. If granted: The September 10, 1993 Dismissal Letter (Case No. RF272–91954) issued to Whirlpool Corporation would be modified regarding the firm's Application for Refund submitted in the Crude Oil Refund Proceeding.
Oct. 22, 1993	James L. Schwab, Auburn, WA	LFA–0327	Appeal of an information request denial. If granted: The October 8, 1993 Freedom of Information Request Denial issued by the Albuquerque Operations Office would be rescinded, and James L. Schwab would receive access to DOE information.

REFUND APPLICATIONS RECEIVED
[Week of Oct. 15 to Oct. 22, 1993]

Date received	Name of firm	Case No.
10/15/93 thru 10/22/93	Crude oil refund applications received	RF272–94948 thru RF272–94970.
10/15/93 thru 10/22/93	Texaco Oil refund applications received	RF321–19934 thru RF321–19938.
10/15/93 thru 10/30/93	Gulf Oil refund applications received	RF300–21757 thru RF300–21762.
10/18/93	Raymond Oil, Inc	RF340–190.
10/19/93	Bill E. Haynes	RF346–106.
10/19/93	Highway 14 Canal Station	RF346–107.

[FR Doc. 93–27126 Filed 11–3–93; 8:45 am]
BILLING CODE 6450–01–P

Issuance of Decisions and Orders During the Week of September 27 Through October 1, 1993

During the week of September 27 through October 1, 1993, the decisions and orders summarized below were issued with respect to applications for exception 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.

Refund Applications

Cicero School District 99, 9/30/93, RR272–112

The DOE issued a Decision and Order concerning a Motion for Reconsideration filed in the subpart V crude oil special refund proceeding being conducted by the DOE under 10 CFR part 205. Cicero School District 99 (Cicero) used oil for heating during the refund period, but later switched to natural gas. Because Cicero did not purchase heating oil after the refund period, it did not respond to OHA's request for information about its current oil usage, and its original application was dismissed. In its Motion for Reconsideration, Cicero provided information explaining its petroleum product purchases for the refund period. The DOE determined that the Motion was meritorious and granted a refund of $2,129.

Good Hope Refineries/Texas City Refining, Inc., 10/1/93, RF339–4

The DOE issued a Decision and Order denying an Application for Refund filed in the Good Hope Refineries special refund proceeding on behalf of Texas City Refining, Inc. (TCR), a purchaser of covered Good Hope petroleum products during the consent order period. The OHA initially identified TCR as a spot purchaser because of the firm's sporadic and infrequent purchases of Good Hope catalytic feedstock. In response, TCR claimed that the irregular nature of the catalytic feedstock market forced the firm to make the inconsistent purchases that the OHA had incorrectly identified as spot purchases. The OHA concluded that even if TCR need not or could not always purchase from Good Hope, when Good Hope did have product available for sale, TCR could choose whether to make a purchase. We therefore presumed that TCR bought product from Good Hope only when those purchases were economically advantageous, and that TCR was not injured by those purchases. Accordingly, TCR's Application for Refund was denied.

Gulf Oil Corporation/Gordon's Gulf Service, et al., 9/27/93, RF300–20915, et al.

The DOE issued a Decision and Order concerning Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding by Gordon's Gulf Service, et al. One of these Applications for Refund was submitted by National Recovery Aide (NRA), a filing agency, on behalf of La Rue's Gulf. NRA failed to fulfill its obligation as a filing agency to notify the OHA promptly when a change of address occurred. Accordingly, the refund check will not be sent to NRA but will be sent directly to La Rue's Gulf.

Murphy Oil Corporation/Lang Oil, Inc., 9/30/93, RF309–815

The DOE issued a Decision and Order denying an Application for Refund filed by Lang Oil, Inc. in the Murphy Oil Corporation special refund proceeding. The applicant was identified as a spot purchaser during our preliminary review of the case, because nearly one-third of its Murphy purchases were made in only one month of the consent order period. Since Lang Oil, Inc. did not convincingly demonstrate that it was a regular purchaser of Murphy petroleum products nor show that it was required to purchase Murphy product in order to supply its base period customers, the spot purchaser presumption of non-injury was not rebutted, and Lang Oil Inc.'s claim was denied.

Texaco Inc./White's Texaco, 9/28/93, RR321–83

N.E. White, Jr., the owner of White's Texaco, filed a Motion for Reconsideration of a Decision and Order that denied duplicate refund applications that Mr. White had filed in the Texaco refund proceeding. Mr. White stated that he had signed the second application, and certified that no other application had been filed, because he believed that the first application was not complete since his filing representative had not obtained gallonage information to support the claim. The DOE granted the Motion, finding that Mr. White's explanation for filing the second application was credible. In considering Mr. White's refund claim, the DOE found that, as an indirect purchaser of Texaco motor gasoline, he was eligible for a refund since his supplier had received a Texaco refund based upon a presumption of injury. The DOE further found, on the basis of a complete set of invoices for a large portion of the refund period and an extrapolation for the remainder of the period, that White's Texaco had purchased 2,329,224 gallons of Texaco motor gasoline during the refund period. The total amount of the refund granted to White's Texaco was $3,510.

Whitaker Oil Co./W.R. Meadows of Georgia, Inc. et al., 9/27/93, RF351–1 et al.

The DOE issued a Decision and Order concerning four Applications for Refund filed in the Whitaker Oil Company special refund proceeding. All of the applicants were named in the audit files of the Economic Regulatory Administration as purchasers of diesel fuel, kerosene, toluene, and/or xylene from Whitaker during the period from November 1973 through March 1974. In addition, each applicant provided

documentation to establish the number of gallons of product it purchased from Whitaker. None of the applicants claimed that it suffered a disproportionate overcharge as a result of Whitaker's alleged overcharges. Accordingly, each applicant's allocable share was calculated by multiplying the number of gallons of diesel fuel, kerosene, toluene, and xylene purchased during the period specified above by $0.0618, the per gallon refund amount used in the Whitaker proceeding. Because each claimant is a reseller whose allocable share was less than $10,000, or an end-user, these claimants were not required to provide separate, detailed demonstrations that they absorbed Whitaker's alleged overcharges, and each applicant was granted a refund equal to its full allocable share plus interest. The sum of the refunds granted was $9,354 ($8,531 principal plus $823 interest).

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Atkinson Freight Lines.	RF272–94769	9/28/93
Atlantic Richfield Company/Chicago W. Pullman & So. R.R. *et al.*	RF304–14076	9/30/93
Beacon Oil Company/Dudley and Petty, Inc.	RF238–77	9/27/93
Bossier Parish Police Jury.	RF272–78392	9/28/93
M&M Farm Supply, Inc.	RF272–78407	.....
City of Thomasville, Alabama *et al.*	RF272–88399	9/27/93
Enron Corp./Mowry's Suburban Gas.	RF340–81	9/28/93
Blandin Paper Company.	RF340–114	.....
Goldstar Mail Service, Inc. *et al.*	RF272–90525	10/01/93
Gulf Oil Corporation/Aero Farm Chemical, Inc. *et al.*	RF300–21027	9/30/93
Gulf Oil Corporation/Beach's Gulf Service *et al.*	RF300–20000	9/28/93
Gulf Oil Corporation/City of Waverly *et al.*	RF300–21244	10/01/93
Gulf Oil Corporation/Earnhardt Lumber Co.	RF300–21753	9/28/93
Gulf Oil Corporation/Fayetteville Automotive Center *et al.*	RF300–14093	9/30/93
Gulf Oil Corporation/Rinehart Oil Co.	RR300–229	10/01/93
Sturdy Oil Co	RR300–230	.....
Purmax Oil Co ..	RR300–231	.....
Silco Oil Co	RR300–233	.....
Gulf Oil Corporation/Tammany Mall Gulf *et al.*	RF300–20069	10/01/93
Gulf Oil Corporation/Vienna Gulf.	RF300–13861	9/27/93
James Gulf	RF300–21754	.....
Gulf Oil Corporation/Whitman Oil Company.	RF300–19790	9/29/93
K Mart Corporation.	RF272–77658	9/30/93
K Mart Corporation.	RF272–77659	.....
Llano County, Texas *et al.*	RF272–85417	9/28/93
Malm Company, Inc.	RF272–87037	10/01/93
Shell Oil Company/Smith's Shell Station.	RF315–962	10/01/93
A&G Shell Service.	RF315–5764	.....
Texaco Inc./Berard Brothers, Inc.	RF321–16535	9/27/93
Berard Brothers, Inc.	RF321–17809	.....
Texaco Inc./Gaeta Brothers Oils, Inc. *et al.*	RF321–6560	9/28/93
Texaco Inc./Hayes Texaco *et al.*	RF321–11112	9/29/93
Texaco Inc./Hogge's Texaco *et al.*	RF321–11001	10/01/93
Texaco Inc./Partie/McPherson, Inc. #2 *et al.*	RF321–17004	10/01/93

Dismissals

The following submissions were dismissed:

Name	Case No.
Bridger Elementary #2	RF272–80609
Cement Texaco	RF321–16965
City of Altoona	RF272–82820
City of Devine	RF272–82897
City of Gaylord	RF272–82616
City of Hartford	RF272–82690
City of Laurens	RF272–82614
City of Lindsey	RF272–82817
City of Matoon	RF272–82836
City of New Albany	RF272–82983
City of Pittsfield	RF272–82929
City of Wadena	RF272–82655
Cloverdale Community Schools.	RF272–82467
Crestwood Local School District.	RF272–82921
Ed Hamill Tire	RF321–18142
Essex Group, Inc.	RF272–92516
Evans Investment Company ..	RF272–93531
Fulmer's Texaco	RF321–18127
Ignacio 11 JT	RF272–79481
Jim Fitzpatrick's Texaco in Bellflower.	RF321–19269
Jim Fitzpatrick's Texaco, Santa Fe Springs.	RF321–19268
Jordan-Elbridge Central School.	RF272–82469
Martin County Schools	RF272–79558
McNees Texaco of Muncie	RF321–18080
Mini Mall Texaco	RF321–16966
Mt. Clemens Community Schools.	RF272–79656
Murray Ind. Schools	RF272–79660
North Adams School District ..	RF272–79516
Prince George County Public Schools.	RF272–80617
Resort Builders, Inc.	RF272–90955
Rush Springs Texaco	RF321–16968
S.A.D. #77, East Machias	RF272–79506
Sam's Texaco	RF321–14592
Santa Barbara County R.O.P.	RF272–80613
Schippers Express, Inc.	RF272–93005
Scribner-Snyder Community Schools.	RF272–82498
Southern Kern Unified School District.	RF272–82998
Special Education Cooperative Lake County/SED.	RF272–79461
Stanley Texaco	RF321–14481
Strickland Texaco	RF321–14593
Town of Hampton	RF272–82796
Town of Veazie	RF272–82825
Town of Winnsboro	RF272–82843
Township of Georgetown	RF272–82642
Township of Lower Providence.	RF272–82652
Velma Texaco	RF321–16967
Village of Lodi	RF272–82907
Village of Oak Harbor	RF272–82806
Village of Oak Park	RF272–82900
Washington County School Dist.	RF272–79621

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: October 28, 1993.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 93-27127 Filed 11-3-93; 8:45 am]

BILLING CODE 6450-01-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4796-8]

Louisiana; Final Determination of Adequacy of State/Tribal Municipal Solid Waste Permit Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of final determination on application of Louisiana for full program adequacy determination.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires States to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or small quantity generator waste will comply with the revised Federal MSWLF Criteria (40 CFR part 258). RCRA section 4005(c)(1)(C) requires the Environmental Protection Agency (EPA) to determine whether States have adequate "permit" programs for MSWLFs, but does not mandate issuance of a rule for such determinations. EPA has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR) that will provide procedures by which EPA will approve, or partially approve, State/Tribal landfill permit programs. The Agency intends to approve adequate State/Tribal MSWLF permit programs as applications are submitted. Thus, these approvals are not dependent on final promulgation of the STIR. Prior to promulgation of the STIR, adequacy determinations will be made based on the statutory authorities and requirements. In addition, States/Tribes may use the draft STIR as an aid in interpreting these requirements. The Agency believes that early approvals have an important benefit. Approved State/Tribal permit programs provide interaction between the State/Tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in State/Tribes with approved permit programs can use the site-specific flexibility provided by part 258 to the extent the State/Tribal permit program allows such flexibility. EPA notes that regardless of the approval status of a State/Tribe and the permit status of any facility, the federal landfill criteria will apply to all permitted and unpermitted MSWLF facilities.

Louisiana applied for a determination of adequacy under section 4005 of RCRA. EPA reviewed Louisiana's application and proposed a determination that Louisiana's MSWLF permit program is adequate to ensure compliance with the revised MSWLF Criteria. After consideration of all comments received, EPA is today issuing a final determination that the State/Tribe's program is adequate.

EFFECTIVE DATE: The determination of adequacy for Louisiana is effective on November 4, 1993.

FOR FURTHER INFORMATION CONTACT: Becky Weber, Chief, Solid Waste Section, US EPA Region 6, Dallas, Texas 75202; (214) 655-6760.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, EPA promulgated revised Criteria for MSWLFs (40 CFR part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires States to develop permitting programs to ensure that facilities comply with the Federal Criteria under part 258. Subtitle D also requires in section 4005 that EPA determine the adequacy of State municipal solid waste landfill permit programs to ensure that facilities comply with the revised Federal Criteria. To fulfill this requirement, the Agency has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR). The rule will specify the requirements which State/Tribal programs must satisfy to be determined adequate.

EPA intends to approve State/Tribal MSWLF permit programs prior to the promulgation of STIR. EPA interprets the requirements for States or Tribes to develop "adequate" programs for permits or other forms of prior approval to impose several minimum requirements. First, each State/Tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Next, the State/Tribe must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The State/Tribe also must provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA. Finally, EPA believes that the State/Tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

EPA Regions will determine whether a State/Tribe has submitted an "adequate" program based on the interpretation outlined above. EPA plans to provide more specific criteria for this evaluation when it proposes the State/Tribal Implementation Rule. EPA expects States/Tribes to meet all of these requirements for all elements of a MSWLF program before it gives full approval to a MSWLF program.

B. State of Louisiana

On May 17, 1993, Louisiana submitted an application for adequacy determination for Louisiana's municipal solid waste landfill permit program. On August 9, 1993, EPA published a tentative determination of adequacy for all portions of Louisiana's program. Further background on the tentative determination of adequacy appears at 58 FR 42321, 42322 (August 9, 1993). A 30-day public comment period was held until September 8, 1993. In this notice of tentative determination, EPA announced that a public hearing would be held if a sufficient number of people requested a hearing. The Agency received two comment letters in response to the tentative determination. No requests for a public hearing were received, therefore, a hearing was not held.

In the tentative determination notice, EPA discussed that Louisiana was undergoing public comment on five minor amendments to the solid waste regulations (Title 33, Part VIII, Chapters 3, 5 and 7). These amendments were promulgated as final rules and published in the Louisiana Register on September 20, 1993.

C. Public Comments

EPA received the following public comments on the tentative determination of adequacy for Louisiana's MSWLF permit program.

One commenter maintained that use of the draft State/Tribal Implementation Rule (STIR) as guidance is a violation of the Administrative Procedure Act (APA) requirements stating that any rule must go through public notice and opportunity for public comment. EPA does not believe that it is violating any requirement of the APA. The Agency is not utilizing the draft STIR as a regulation which binds either the Agency or the State/Tribes. Instead, EPA is using the draft STIR as guidance for evaluating State/Tribal permit programs and maintains its discretion to approve

or disapprove State/Tribal permit programs utilizing the draft STIR and/or any other criteria which assures compliance with 40 CFR part 258.

In addition, members of the public have an opportunity to comment on the criteria by which EPA assures the adequacy of State/Tribal MSWLF permit programs because the Agency discusses the criteria for approval of a permit program when it publishes each tentative determination notice in the **Federal Register**. In the tentative determination notice for approval of the State of Louisiana's permit program, the Agency set forth for public comment the requirements for an adequate permit program. 58 FR, 42321 (August 9, 1993).

One commenter expressed support that Louisiana should receive full program approval. The commenter noted that the Louisiana Department of Environmental Quality (LDEQ) proposed amendments on June 20, 1993, which would extend the compliance deadlines by a six-month period for all MSWLF facilities. The LDEQ's proposal was based on EPA's preliminary plans to propose an extension of the subtitle D MSWLF criteria. On July 28, 1993, the EPA proposed a rule (58 FR 40568) that would extend the effective date of the Federal criteria for only a limited number of smaller MSWLFs. Therefore, Louisiana's June 20, 1993, proposal offered an extension to a broader universe of facilities than EPA's proposed rule. The LDEQ has since revised its proposed rule to be consistent with EPA's proposed rule, and will delay final adoption of their rule until EPA issues a final rule regarding the compliance dates extension to ensure consistency.

A commenter maintained that Louisiana's permit program fails to satisfy the public participation requirement for RCRA permits set forth in 40 CFR part 124 (part 124). In particular, this commenter argued that Louisiana's program failed to meet the requirements in part 124, which require that the public be provided with 45 days to comment on RCRA permits and that a public hearing be held for RCRA permits whenever the State Director receives written notice of opposition to a draft permit and a request for hearing within 45 days of public notice.

EPA disagrees with the conclusions that this commenter has reached concerning the applicability of 40 CFR part 124 to the permitting of MSWLF facilities by States under subtitle D of RCRA. Part 124 has never applied to any permitting by States of solid waste disposal facilities under RCRA subtitle D. Instead, part 124 specifies the procedural requirements for decision making when RCRA subtitle C permits are issued by approved States or EPA. The preamble to the final rule which originally established the part 124 regulations make it clear that the rules apply to permits issued pursuant to the hazardous waste program under RCRA subtitle C (along with other specified EPA- or State-administered permit programs), but not to permits issued by States to RCRA subtitle D solid waste disposal facilities. 45 FR 33290 (May 19, 1980).

The definition of "permit" in 40 CFR 124.2 itself, which the commenter cites in support of its position, clearly indicates that a permit means an "authorization, license, or equivalent control document issued by EPA or an "approved State" to implement the requirement of this part and 40 CFR parts 122, 123, 124, 144, 145, 233, 270 and 271." Part 270 of title 40 contains permitting requirements for the hazardous waste permit program under RCRA subtitle C. The part 271 regulations contain requirements for authorization of state hazardous waste programs. None of the specifically-mentioned requirements contained in the definition of "permit" pertain to requirement for solid waste disposal facilities, such as MSWLFs, under RCRA subtitle D.

Contrary to the position taken by this commenter, EPA has stated that the public participation requirement of 40 CFR part 256 are applicable to state permit programs to ensure compliance with revised criteria in 40 CFR part 258. 58 FR 50978, 50995 (October 9, 1991). The applicability of the part 256 public participation requirements to state programs created to implement the MSWLF regulations under RCRA subtitle D has been recognized by the United States Court of Appeals for the District of Columbia. *Sierra Club* vs. *EPA*, 992 F.2d 337 (D.C. Cir. 1993).

Part 256 requires that state permit programs must hold a public hearing before approving a permit (or renewing a permit) for a solid waste disposal facility "if the State determines there is a significant public interest in the proposed permit." 40 CFR 256.63. In review of LAC 33:VII.511(F), EPA believes that Louisiana's permit program for MSWLFs meets the public participation requirement of part 256 because public hearings are required to be held when the administrative authority determines that there is sufficient public interest.

One commenter stated that the LDEQ regulations fail to meet the minimum Federal standards for detection monitoring. In particular, this commenter believed that the requirements of 40 CFR part 258.54(a)(2), that is, four factors that a State Director must consider in determining alternative detection monitoring parameters, were not included in the Louisiana regulations. In comparing the Federal criteria at 40 CFR 258.54(a)(2) to the Louisiana Environmental Regulatory Code Title 33: Part VII.709(E)(3)(g)(i), EPA found that the Louisiana regulations do require that identical factors be considered by the administrative authority before alternative parameters for detection monitoring may be approved. Thus, EPA believes that the Louisiana program adequately addresses the issue of alternative detection monitoring parameters.

One commenter wrote that under Louisiana State Law, the right of citizens to judicial review is limited. The commenter stated that citizens have no right under State law to appeal LDEQ permitting decisions. In reviewing the Louisiana Revised Statutes (R.S. 30:2024—Finality of action; trial de novo; appeals), EPA finds that any person aggrieved by a final decision may appeal to the Court of Appeal, First Circuit, if a motion for an appeal is filed with the secretary within thirty days after the final decision is ordered or served.

One commenter believes that Louisiana's environment requires more than minimal Federal standards for location and design criteria, given the State's unique geologic and hydrogeologic conditions. In reviewing a State permit program for adequacy, EPA ensures that the minimum national criteria are met, although States are free to adopt regulations more stringent than the Federal criteria. In establishing a uniform MSWLF design standard, EPA's goal was to identify a design that would provide adequate protection in all locations. EPA finds that the LDEQ's design standard exceeds the uniform design standards as adopted in the Federal criteria. For example, the composite liner design set forth in the Federal criteria requires 2 feet of clay liner with a hydraulic conductivity of 1×10^{-7} cm/sec, whereas the composite liner required by LDEQ requires 3 feet of recompacted clay with a hydraulic conductivity of no more than 1×10^{-7} cm/sec, in effect making the Louisiana design criteria more stringent than the Federal criteria. Therefore, EPA believes that Louisiana has taken into account the unique environmental conditions of the State in adopting more protective design criteria for MSWLFs.

D. Decision

After reviewing the public comments, EPA concludes that Louisiana's application for adequacy determination meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Louisiana is granted a determination of adequacy for all portions of its municipal solid waste permit program.

Louisiana's solid waste program does not apply and cannot be enforced in Indian country in the State.

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of section 7002 of RCRA to enforce the Federal MSWLF criteria in 40 CFR part 258 independent of any State/Tribal enforcement program. As EPA explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a State/Tribal program approved by EPA should be considered to be in compliance with the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

Today's action takes effect on the date of publication. EPA believes it has good cause under section 553(d) of the Administrative Procedure Act, 5 U.S.C 553(d), to put this action into effect less than 30 days after publication in the **Federal Register**. All of the requirements and obligations in the State's/Tribe's program are already in effect as a matter of State/Tribal law. EPA's action today does not impose any new requirements that the regulated community must begin to comply with. Nor do these requirements become enforceable by EPA as federal law. Consequently, EPA finds that it does not need to give notice prior to making its approval effective.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this notice from the requirements of section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This notice, therefore, does not require a regulatory flexibility analysis.

Authority: This notice is issued under the authority of section 4005 of the Solid Waste Disposal Act as amended; 42 U.S.C. 6946.

Dated: October 19, 1993.

Joe D. Winkle,

Acting Regional Administrator.

[FR Doc. 93–27106 Filed 11–3–93; 8:45 am]

BILLING CODE 6560–50–P

[FRL–4797–3]

Pennsylvania; Adequacy Determination of the State's Municipal Solid Waste Permit Program

AGENCY: Environmental Protection Agency (Region III).

ACTION: Notice of tentative determination on application of Commonwealth of Pennsylvania Department of Environmental Resources for Full Program Adequacy Determination, Public Hearing and Public Comment Period.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires states to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or small quantity generator waste will comply with the revised Federal MSWLF Criteria (40 CFR part 258). RCRA section 4005(c)(1)(C) requires the Environmental Protection Agency (EPA) to determine whether states have adequate "permit" programs for MSWLFs, but does not mandate issuance of a rule for such determinations. EPA has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR) that will provide procedures by which EPA will approve, or partially approve, state/tribal municipal solid waste landfill permit programs. EPA intends to approve adequate state/tribal MSWLF permit programs as applications are submitted. Thus, these approvals are not dependent on final promulgation of the STIR. Prior to promulgation of STIR, adequacy determinations will be made based on the statutory authorities and requirements. In addition, states/tribes may use the draft STIR as an aid in interpreting these requirements. Approved state/tribe permit programs provide for interaction between the state/tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in state/tribes with approved permit programs can use the site-specific flexibility provided by 40 CFR part 258 to the extent the state/tribal permit program allows such flexibility. EPA notes that regardless of the approval status of a state/tribe and the permit status of any facility, the federal landfill criteria continue to apply to all permitted and unpermitted MSWLF facilities.

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of section 7002 of RCRA to enforce the Federal MSWLF criteria in 40 CFR part 258, independent of any state/tribal enforcement program. As EPA explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a state/tribal program approved by EPA should be considered to be in compliance with the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

The Commonwealth of Pennsylvania through the Pennsylvania Department of Environmental Resources (PADER) has applied for a determination of adequacy under Section 4005 of RCRA. EPA has reviewed Pennsylvania's MSWLF application and has made a tentative determination that all portions of Pennsylvania's MSWLF permit program are adequate to assure compliance with the revised Federal MSWLF Criteria.

DATES: All comments on Pennsylvania's application for a determination of adequacy must be received by EPA Region III by the close of business on December 22, 1993. EPA Region III will hold a public hearing on December 22, 1993 from 10 a.m. to 1 p.m. in the offices of the Pennsylvania Department of Environmental Resources located at 400 Market Street, in Harrisburg, Pennsylvania. Pennsylvania will attend the public hearing held by EPA Region III. Comments can be submitted either as oral statements during the public hearing or in writing at the time of the public hearing. In addition, written comments on Pennsylvania's application may be submitted to EPA Region III at the address specified below.

ADDRESSES: Copies of Pennsylvania's application for adequacy determination are available for inspection from 9 a.m. to 4 p.m. at the following State and EPA addresses: Pennsylvania Department of Environmental Resources, 400 Market Street, 14th Floor, Harrisburg, Pennsylvania 17105–2063, Attn: Mr. George MeHaffie, telephone (717) 787–9871; and U.S. EPA Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, Attn: Mr. Christopher J. Luksic, mailcode (3HW53), telephone (215) 597–2842. The public may submit written comments on EPA Region III's tentative determination until the close of business on December 22, 1993. All

comments must be sent to U.S. EPA Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, Attn: Mr. Jeffrey M. Alper, mailcode (3HW53).

FOR FURTHER INFORMATION CONTACT: U.S. EPA Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, Attn: Mr. Andrew R. Uricheck, mailcode (3HW53), telephone (215) 597–7936.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, EPA promulgated revised Criteria for MSWLFs (40 CFR part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires states to develop permitting programs to ensure that MSWLFs comply with the Federal Criteria under 40 CFR part 258. Section 4005 of Subtitle D requires that EPA determine the adequacy of state municipal solid waste landfill permit programs to ensure that facilities comply with the revised Federal Criteria. To fulfill this requirement, EPA has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR). The rule will specify the requirements which state/tribal programs must satisfy to be determined adequate.

EPA intends to approve state/tribal MSWLF permit programs prior to the promulgation of a STIR. EPA interprets the requirements for states or tribes to develop "adequate" programs for permits or other forms of prior approval to impose several minimum requirements. First, each state/tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Next, the state/tribe must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The state/tribe also must provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA. Finally, EPA believes that the state/tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

Each EPA Regional office will determine whether a state/tribe has submitted an "adequate" program based on the criteria outlined above. EPA expects states/tribes to meet all of these requirements for all elements of a MSWLF program before it gives full approval to a MSWLF program.

B. Pennsylvania

On July 23, 1993, Pennsylvania submitted a final application for adequacy determination. EPA Region III reviewed Pennsylvania's application and tentatively has determined that all portions of Pennsylvania's MSW landfill permitting program, with the changes proposed, will ensure compliance with the revised Federal Criteria.

EPA Region III has determined that Pennsylvania's program satisfies the requirements of the draft State/Tribal Implementation Rule (STIR). In addition, although regulatory language and structure in certain Pennsylvania regulations may not reflect the exact language and structure in the corresponding EPA requirements, EPA also has determined that Pennsylvania will ensure compliance with 40 CFR part 258 as follows:

Subpart A—General

The current Pennsylvania requirements fully comply with: 40 CFR 258.1, Purpose, Scope, and Applicability; § 258.2, Definitions; and § 258.3, Consideration of other Federal laws.

Subpart B—Location Restrictions

1. The current Pennsylvania requirements fully comply with: § 258.11, Floodplains; § 258.12, Wetlands; and § 258.15, Unstable areas.

2. Airport Safety (§ 258.10) and Seismic Impact Zones (§ 258.14) siting restrictions will be addressed by Pennsylvania's revision of their permit application forms requiring permittees to comply with the notification requirements of § 258.10 and to consider seismic impacts in their design as stated in § 258.14.

3. Fault Areas (§ 258.13)—Pennsylvania has provided a certification from the Pennsylvania Geologic Survey which states that there are no Holocene Faults in the Commonwealth of Pennsylvania.

4. Closure of Existing MSWLF Units (§ 258.16)—Section 258.16 will not be adopted by Pennsylvania, since Pennsylvania has certified that no currently operating landfills are sited in areas impacting airport safety (§ 258.10), floodplains (§ 258.11), or unstable areas (§ 258.15), as defined in these sections.

Subpart C—Operating Criteria

1. The current Pennsylvania requirements fully comply with: § 258.20, Hazardous Waste Exclusion; § 258.21, Daily Cover; § 258.22, Disease Vectors Control; § 258.24, Air Criteria; § 258.25, Access requirements; § 258.26, Run-on/Run-off; § 258.27, Surface Water; and § 258.29, Record Keeping.

2. Explosive Gas Control (§ 258.23)—Pennsylvania's program meets these requirements through Pennsylvania Code Title 25, Chapter 273, Section 292 (273.292), which requires regular passive venting and monitoring of facility structures. If critical levels of methane gas are reached in facility structures or at the facility boundary, the owner/operator is required to conduct active venting on the landfill system. In the event of an emergency situation, Pennsylvania requires the owner/operator to immediately implement their contingency plan (see 25 Pa. Code § 273.303).

3. Liquids Restrictions (§ 258.28)—Pennsylvania will prohibit the recirculation of leachate except at those landfills that have a composite liner.

Subpart D—Landfill Design

1. In accordance with § 258.40 (a)(1) and (c), Pennsylvania has demonstrated that their alternate liner system, consisting of a double liner/double leachate collection system design (25 Pa. Code §§ 273.251–273.256), ensures compliance with the requirements of this section. Pennsylvania has made this demonstration through mathematical modeling, using the Hydrologic Evaluation of Landfill Performance (HELP) and Multimedia Exposure Assessment (MULTIMED) Models. Pennsylvania's modeling shows that the existing liner system meets the § 258.40 performance standard under worst-case assumptions anywhere in the Commonwealth. Pennsylvania-specific data was used as input parameters to the models when available and appropriate. In addition, worst-case conditions were assumed for other parameters where data from Pennsylvania was not applicable or available.

Subpart E—Groundwater Monitoring and Corrective Action

1. The current Pennsylvania requirements fully comply with: § 258.50, Applicability; § 258.51, Groundwater monitoring systems; and § 258.57, Selection of Remedy.

2. Groundwater Sampling and Analysis Requirements (§ 258.53), Detection Monitoring Program (§ 258.54) and Assessment Monitoring Program (§ 258.55)—Through the use of existing authorities and appropriate permit conditions, Pennsylvania will require Appendix I and II sampling of leachate collected in the detection zone of the liner system. Based on the results of that testing, Pennsylvania will require the owner/operator to include any detected parameters exceeding the Maximum Contaminant Level (MCL) in the routine groundwater sampling and analysis

program (25 Pa. Code § 273.284). If groundwater degradation has been detected in accordance with 25 Pa. Code § 273.286, Pennsylvania will require that a groundwater assessment plan be prepared and implemented. With these mechanisms in place, Pennsylvania's program ensures compliance with the requirements of these sections.

3. Assessment of Corrective Measures (§ 258.56) and Selection of Remedy (§ 258.57)—Pennsylvania's program will ensure compliance with these sections through Pennsylvania's abatement plan requirements (25 Pa. Code § 273.287). In the event that an abatement plan must be prepared and implemented by an owner/operator, Pennsylvania requires that the permit be modified. The permit modification process includes public involvement.

4. Implementation of the Corrective Action Program (§ 258.58)—Pennsylvania ensures compliance with the requirements of this section through both 25 Pa. Code § 273.287 and the Clean Streams Law, which prohibits pollution of any waters in the Commonwealth.

Subpart F—Closure and Post-Closure Care

1. Closure Criteria (§ 258.60)—Pennsylvania will require flexible membrane caps where appropriate. However, Pennsylvania will approve clay caps in situations where final slopes are excessive, and where other concerns prohibit the use of a flexible membrane. In addition, Pennsylvania requires the use of a drainage layer to further limit infiltration by diverting rainfall from the cap, thus further ensuring that their final cover system meets the EPA performance criteria. Pennsylvania will request that the final cover be in place within 6 months of the last receipt of waste. Time extensions for construction of the final cover will be granted by Pennsylvania where weather conditions prohibit proper cover construction, or where it is technically impractical to construct a final cover within 6 months.

2. Post-Closure Care Requirements (§ 258.61)—Although Pennsylvania's regulations do not specifically state that post-closure must occur for 30 years, Pennsylvania requires that post-closure continue until leachate generation ends and gas collection is no longer necessary (25 Pa. Code §§ 271.314, 271.341 and 271.342). In addition, Pennsylvania requires that bonds needed for financial assurance be calculated for a minimum period of thirty (30) years. With these requirements in place, EPA has determined that Pennsylvania's program ensures compliance with the requirements of this section.

Subtitle G—Financial Assurance

1. The current Pennsylvania requirements fully comply with: § 258.70, Applicability; and § 258.74, Allowable Mechanisms.

2. Financial Assurance for Post-Closure Care (§ 258.72) and Financial Assurance for Corrective Action (§ 258.73)—Pennsylvania considers a facility to be active until final closure is reached. At the time of final closure, the owner/operator must have a bond that is based upon the total estimated cost to Pennsylvania for completing final closure. Through the above mechanisms, EPA believes that Pennsylvania's program will ensure compliance with these sections.

EPA Region III will consider all public comments on its tentative determination received during the public comment period and during the public hearing. Issues raised by those comments will be the basis for a final determination of adequacy for Pennsylvania's program. EPA Region III will make a final decision on whether or not to approve Pennsylvania's program, and will give notice in the **Federal Register.** The notice will include a summary of the reasons for the final determination and a response to all major comments. EPA Region III's final determination to grant full approval to the Pennsylvania program will not be made until Pennsylvania has revised and placed in effect the application forms and guidance documents discussed above.

Compliance with Executive Order 12866

The Office of Management and Budget has exempted this notice from the requirements of Section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b) and 40 CFR part 258, I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This notice, therefore, does not require a regulatory flexibility analysis.

Authority: This notice is issued under the authority of section 4005 of the Solid Waste Disposal Act as amended; 42 U.S.C. 6946.

Dated: October 28, 1993.

William T. Wisniewski,

Acting Regional Administrator.

[FR Doc. 93-27107 Filed 11-3-93; 8:45 am]

BILLING CODE 6560-50-P

[OPPTS-59309B; FRL-4740-1]

Certain Chemicals; Approval of Modifications for Test Marketing Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of modifications for two test marketing exemptions (TMEs) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA designated the original test marketing applications as TME-92-13 and TME-92-14. The test marketing conditions are described below.

EFFECTIVE DATES: October 26, 1993.

FOR FURTHER INFORMATION CONTACT: William B. Lee, New Chemicals Branch, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E613A, 401 M St. SW., Washington, D.C. 20460, (202 260-1769).

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

EPA hereby approves the modifications for TME-92-13 and TME-92-14. EPA has determined that test marketing of the new chemical substances described below, under the conditions set out in the TME applications and modification requests, will not present any unreasonable risk of injury to health or the environment. Test marketing period, production volume, use, and the number of customers must not exceed that specified in the applications and modifications. All other conditions and

restrictions described in the original Notice of Approval of Test Marketing Application must be met.

TME–92–13 and TME–92–14

Notice of Approval of Original Applications: July 28, 1992 (57 FR 33349).

Modified Test Marketing Period: Confidential.

Modified Production Volume: Confidential.

Modified Number of Customers: Confidential.

Commencing On: Date of manufacture.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

List of Subjects

Environmental protection, Test marketing exemptions.

Dated: October 26, 1993.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 93–27104 Filed 11–3–93; 8:45 am]

BILLING CODE 6560–50–F

[OPPTS–59319B; FRL–4740–2]

Certain Chemicals; Approval of Modifications to Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of modifications of the test marketing period for a test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA designated the original test marketing applications as TME–93–9 and TME–93–10. The test marketing conditions are described below.

EFFECTIVE DATES:: October 19, 1993.

FOR FURTHER INFORMATION CONTACT: Edna G. Pleasants, New Chemicals Branch, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–611, 401 M St. SW., Washington, D.C. 20460, (202 260–3725).

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

EPA hereby approves the modifications of the test marketing periods for TME–93–9 and TME –93–10. EPA has determined that test marketing of the new chemical substances described below, under the conditions set out in the TME applications and modifications requests, and for the modified time periods specified below, will not present any unreasonable risk of injury to health or the environment. Production volumes, uses, and the number of customers must not exceed that specified in the applications. All other conditions and restrictions described in the original Notices of Approval of Test Marketing Applications must be met.

TME–93–9 and TME–93–10

Notice of Approval of Original Application: March 19, 1993. (58 FR 15145).

Modified Test Marketing Period: 12 Months.

Commencing on: Date of manufacture.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

List of Subject

Environmental protection, Test marketing exemption.

Dated: October 19, 1993.

Charles M. Auer,

Director, Chemical Control Division, Office of Toxic Substances.

[FR Doc. 93–27105 Filed 11–3–93; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL MARITIME COMMISSION

[Petition No. P86–93]

West Coast of South America Agreement; Petition for Temporary Exemption From Electronic Tariff Filing Requirements

Notice is hereby given of the filing of a petition by the West Coast of South America Agreement pursuant to 46 CFR 514.8(a), for temporary exemption from the November 12, 1993, electronic tariff filing requirements of the Commission's ATFI System.

To facilitate thorough consideration of the petition, interested persons are requested to reply to the petition no later than November 8, 1993. Replies shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573–0001, shall consist of an original and 15 copies, and shall be served on Counsel for petitioner, Mr. Wayne R. Rohde, Esq., Sher & Blackwell, 1255 23rd Street, NW., Suite 500, Washington, DC 20037–1194.

Copies of the petition are available for examination at the Washington, DC office of the Secretary of the Commission, 800 N. Capitol Street, NW., room 1046.

Joseph C. Polking,

Secretary.

[FR Doc. 93–27039 Filed 11–3–93; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Citizens Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice

in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than November 22, 1993.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Citizens Bancshares, Inc., Salinveville, Ohio; to acquire 66.67 percent of the voting shares of The Firestone Bank, Lisbon, Ohio.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Sun Financial Corporation, Earth City, Missouri; to acquire at least 96.9 percent of the voting shares of First National Bank of Annapolis, Annapolis, Missouri.

C. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Incus Co. Ltd, Road Town, Tortola, British Virgin Islands and Kline Investment Co., Ltd., Road Town, Tortola, British Virgin Islands; to become bank holding companies by acquiring 65 percent of the voting shares of Laredo National Bancshares, Inc., Laredo, Texas, and thereby indirectly acquire The Laredo National Bank, Laredo, Texas, and South Texas National Bank of Laredo, Laredo, Texas.

Board of Governors of the Federal Reserve System, October 25, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-26709 Filed 11-3-93; 8:45 am]

BILLING CODE 6210-01-F

Carlos Hank Rhon; Change in Bank Control Notice

Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than November 18, 1993.

A. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Carlos Hank Rhon, Lomas Virreyes, Mexico; to acquire an additional 37.9 percent of the voting shares of Laredo National Bancshares, Inc., Laredo, Texas, for a total of 64.7 percent, and thereby indirectly acquire The Laredo National Bank, Laredo, Texas, and South Texas National Bank of Laredo, Laredo, Texas.

Board of Governors of the Federal Reserve System, October 25, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-26710 Filed 11-3-93; 8:45 am]

BILLING CODE 6210-01-F

Summit Bank Corporation; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 18, 1993.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Summit Bank Corporation, Atlanta, Georgia; to engage *de novo* in purchasing loans as a participant from bank subsidiaries pursuant to § 225.25(b)(1) of the Board's Regulation Y. This activity will be conducted in the State of Georgia.

Board of Governors of the Federal Reserve System, October 25, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-26711 Filed 11-3-93; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 100493 AND 101593

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Iowa Methodist Health System, Inc., Iowa Lutheran Hospital, Iowa Lutheran Hospital	93-0928	10/04/93
American International Group, Inc., Texaco, Inc., Texaco Exploration and Production, Inc	93-1744	10/04/93
Cincinnati Bell Inc., First Data Corporation, WATS Marketing of America, Inc	93-1767	10/04/93
F.W. Woolworth Co., Melville Corporation, Rosedale Accessory Lady, Inc	93-1771	10/04/93
Ernest L. Samuel, Glynwed International PLC, Amari USA Inc., Stock Alloys Inc., Gulf Coast Supply Co	93-1779	10/04/93
Caremark International Inc., Hennepin Faculty Associates, Regional Kidney Disease Program	93-1785	10/04/93
Dover Corporation, Todd Taricco, Thermal Equipment Corporation	93-1795	10/04/93
Welsh, Carson, Anderson & Stowe VI, L. P., Digital Communications Associates, Inc., Digital Communications Associates, Inc	93-1797	10/04/93
Welsh, Carson, Anderson & Stowe VI, L. P., DCA Holdings, Inc., DCA Holdings, Inc	93-1798	10/04/93
Jay I. Kislak, Farragut Mortgage Co., Inc., Farragut Mortgage Co., Inc	93-1800	10/04/93
Farragut Mortgage Co., Inc., Jay I. Kislak, J.I. Kislak, Inc	93-1801	10/04/93
Dover Corporation, Phoenix Refrigeration Systems, Inc., Phoenix Refrigeration Systems, Inc	93-1803	10/04/93
Mellon Bank Corporation, BankAmerica Corporation, Actium Leasing Corporation	93-1805	10/04/93
SAFECO Corporation, American Financial Corporation, Talbot Agency, Inc	93-1808	10/04/93
Seagull Energy Corporation, Petrofina S.A., Fina Oil and Chemical Company	93-1809	10/04/93
Authentic Fitness Corporation, Taren Holdings, Inc., Taren/assets & Ardmore, S.A	93-1816	10/04/93
Melville Corporation, Standard Drug Company, Standard Drug Company	93-1726	10/05/93
R.E. Turner, Castle Rock Entertainment, Castle Rock Entertainment	93-1786	10/05/93
Santa Fe Energy Resources, Inc., Hadson Corporation, Hadson Corporation	93-1793	10/05/93
Hadson Corporation, Santa Fe Energy Resources, Inc., Adobe Gas Pipeline Company	93-1794	10/05/93
Blockbuster Entertainment Corporation, Republic Pictures Corporation, Republic Pictures Corporation	93-1819	10/05/93
UNC Incorporated, Lear Siegler Holdings Corp., Lear Siegler Management Services Corp	93-1764	10/06/93
Reynolds Metals Company, Philip Morris Companies Inc., R/M Can Company	93-1760	10/07/93
Abbey Healthcare Group Incorporated, Total Pharmaceutical Care, Inc., Total Pharmaceutical Care, Inc	93-1718	10/08/93
Simmons Poultry Farms, Inc., Rymer Foods Inc., Rymer Chicken Inc	93-1768	10/08/93
The Williams Companies, Inc., Mobil Corporation, A Delaware Corporation, Mobil Corporation, A New York Corporation	93-0002	10/08/93
Southern Union Company, Western Resources, Inc., Missouri Gas Distribution Operations	93-1723	10/09/93
Marmon Holdings, Inc., Westlake Metal Fabrication Corporation, Westlake Metal Fabrication Corporation	93-1780	10/13/93
First Financial Management Corporation, Brown-Forman Corporation, Brown-Forman Enterprises	93-1826	10/13/93
PepsiCo, Inc., D'Angelo Inc., D'Angelo Inc	93-1846	10/13/93
International Business Machines Corporation, Philip F. Anschutz, Southern Pacific Telecommunications Company	94-0001	10/13/93
Century Telephone Enterprises, Inc., Celutel, Inc., Celutel, Inc	94-0005	10/13/93
K-Mart Corporation, Corporate Express, Inc., Corporate Express, Inc	94-0006	10/13/93
Network Systems Corporation, Bytex Corporation, Bytex Corporation	94-0011	10/13/93
Mark J. Wattles, Charles C. Butt, H.E. Butt Grocery Company	94-0014	10/13/93
Tootsie Roll Industries, Inc., Warner-Lambert Company, Warner-Lambert's Chocolate/Carmel Confections Division	93-1841	10/14/93
Federal-Mogul Corporation, SPX Corporation, Sealed Power Replacement Division of SPX	93-1772	10/15/93

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, room 303, Washington, DC 20580, (202) 326-3100.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 93-27086 Filed 11-3-93; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 93N-0401]

Drug Export; Triludan® (Terfenadine) 60-milligram "small" Tablets

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: Food and Drug Administration (FDA) is announcing that Marion Merrell Dow, Inc., has filed an application requesting approval for the export of the human drug Triludan® (Terfenadine) 60-milligram (mg) "small" Tablets to Japan.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: James E. Hamilton, Division of Drug Labeling Compliance (HFD-313), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-594-2073.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the

agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the Federal Register within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Marion Merrell Dow, Marion Park Dr., Kansas City, MO 64134–0627, has filed an application requesting approval for the export of the human drug Triludan® (Terfenadine) 60-mg "small" Tablets to Japan. The firm has approval for Seldane® (Terfenadine) 60-mg "regular" Tablets. Triludan® Tablets are indicated for the treatment of seasonal allergic rhinitis. The application was received and filed in the Center for Drug Evaluation and Research on May 25, 1993, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by November 15, 1993, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: October 21, 1993.

Stephanie R. Gray,

Acting Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 93–27041 Filed 11–3–93; 8:45 am]

BILLING CODE 4160–01–F

National Institutes of Health

National Cancer Institute; Meeting of the Subcommittee to Evaluate the National Cancer Program, National Cancer Advisory Board

Pursuant to Public Law 92–463, notice is hereby given of the meeting of National Cancer Advisory Board Subcommittee to Evaluate the National Cancer Program, November 21, 1993, at the Hyatt Regency Hotel, One Metro Center, Bethesda, Maryland 20815.

The meeting will be open to the public from 10 a.m. to approximately 8 p.m. Discussions will address the evaluation and achievements of the National Cancer Program. Attendance by the public will be limited to space available.

Ms. Carole Frank, Committee Management Specialist, National Cancer Institute, National Institutes of Health, Executive Plaza North, room 630M, 9000 Rockville Pike, Bethesda, Maryland 20892 (301/496–5708), will provide a summary of the meeting and a roster of the Subcommittee members upon request.

Ms. Cherie Nichols, Executive Secretary, Subcommittee to Evaluate the National Cancer Program, National Cancer Advisory Board, National Cancer Institute, National Institutes of Health, Building 31, room 11A23, Bethesda, Maryland 20892 (301/496–5515), will furnish substantive program information.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Cherie Nichols on (301/496–5515) in advance of the meeting.

This notice is being published less than 15 days prior to the meeting due to the difficulty of coordinating the attendance of members because of conflicting schedules.

Dated: October 28, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–27038 Filed 11–3–93; 8:45 am]

BILLING CODE 4140–01–M

Frederick Cancer Research and Development Center Advisory Committee; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Frederick Cancer Research and Development Center Advisory Committee, November 30, 1993, Building 549, Executive Board Room, NCI Frederick Cancer Research and Development Center, Frederick, Maryland.

This meeting will be open to the public on November 30 from 8:30 a.m. to approximately 12 noon to discuss administrative matters such as future meetings, budget, and informational items related to the operation of the NCI Frederick Cancer Research and Development Center. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), title 5 U.S.C. and sec. 10(d) of Public Law 92–463, the meeting will be closed to the public on November 30 from approximately 12 noon to adjournment for discussion of the previous site visit recommendations for the Laboratory of Eukaryotic Gene Expression under contract with ABL-Basic Research Program and a discussion of the site visit report of the chemistry of Carcinogenesis Laboratory.

These discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the Contractor, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Carole Frank, Committee Management Officer, National Cancer Institute, Executive Plaza North, room 630E, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892–9906, Tel. (301) 496–5708, will provide a summary of the meeting and a roster of committee members upon request.

Dr. Cedric W. Long, Executive Secretary, Frederick Cancer Research and Development Center Advisory Committee, National Cancer Institute Frederick Cancer Research and Development Center, P.O. Box B, Frederick, Maryland 21702–1201, Tel. (301) 846–1108, will furnish substantive program information upon request.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dr. Cedric Long, Tel. (301) 846–1108 in advance of the meeting.

(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: October 29, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–27140 Filed 11–3–93; 8:45 am]

BILLING CODE 4140–01–M

Cancer Biology-Immunology Contracts Review Subcommittee A; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Cancer Biology-Immunology Contracts Review Subcommittee A,

National Cancer Institute, National Institutes of Health, on December 2–3, 1993, at the Executive Plaza North Building, Conference Room J, 6130 Executive Boulevard, Rockville, Maryland 20892.

This meeting will be open to the public on December 2 from 8 a.m. to 9 a.m. to discuss administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92–463, the meeting will be closed to the public on December 2 from 9 a.m. to recess and on December 3 from 8 a.m. to adjournment for the review, discussion, and evaluation of individual contract proposals. These proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Committee Management Officer, National Cancer Institute, Executive Plaza North Building, room 630, National Institutes of Health, Rockville, Maryland 20892, Tel. 301/496–5708, will provide a summary of the meeting and a roster of the committee members upon request.

Dr. Lalita D. Palekar, Scientific Review Administrator, Cancer Biology-Immunology Contracts Review Committee, 6130 Executive Boulevard, room 609, Rockville, Maryland 20892, Tel. 301/496–7575, will furnish substantive program information.

Individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations, should contact Ms. Alma O. Carter, (301) 496–7523 in advance of the meeting.

(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: October 29, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–27141 Filed 11–3–93; 8:45 am]

BILLING CODE 4140–01–M

Subcommittee B of the Cancer Biology-Immunology Contracts Review Committee; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of Subcommittee B of the Cancer Biology-Immunology Contracts Review Committee, National Cancer Institute, National Institutes of Health, on December 6, 1993, at the Executive Plaza North Building, Conference Room D, 6130 Executive Boulevard, Rockville, Maryland 20892.

This meeting will be open to the public on December 6 from 8:30 a.m. to 9:30 a.m. to discuss administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92–463, the meeting will be closed to the public of December 6 from 9:30 a.m. to adjournment for the review, discussion, and evaluation of individual contract proposals. These proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Committee Management Officer, National Cancer Institute, Executive Plaza North Building, room 630E, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892–9003, (301) 496–5708, will provide a summary of the meeting and a roster of the committee members upon request.

Dr. Lalita D. Palekar, Scientific Review Administrator, Cancer Biology-Immunology Contracts Review Committee, National Cancer Institute, Executive Plaza North, room 609, 9000 Rockville Pike, Bethesda, Maryland 20892–9903, (301) 496–7575, will furnish substantive program information.

Individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations, should contact Ms. Alma O. Carter, (301) 496–7523 in advance of the meeting.

(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: October 29, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–27142 Filed 11–3–93; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Advisory Board; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Cancer Advisory Board, National Cancer Institute, on November 22–23, 1993, in Conference Room 10, 6th Floor, Building 31C, National Instutitues of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

The meeing will be open to the public from 8 a.m. to recess on November 22 and from 8 a.m. to 12:30 p.m. on November 23 to discuss issues relating to Board business and will include: The Report on Activities of the President's Cancer Panel; the Director's Report on the National Cancer Institute; and Scientific Presentations. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sec. 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92–463, the meeting will be closed from 12:30 p.m. to adjournment for discussion of activities carried out by and through the National Cancer Institute which will include a discussion of extramural/intramural programmatic and personnel policies of a sensitive nature. These discussions could disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy.

The Committee Management Office, National Cancer Institute, National Institutes of Health, Executive Plaza North, room 630, 9000 Rockville Pike, Bethesda, Maryland 20892 (301/496–5708) will provide a summary of the meeting and roster of the Board members, upon request.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Carole Frank, Committee Management Specialist, at 301/496–5708 in advance of the meeting.

This notice is being published less than 15 days prior to the meeting due to the difficulty of coordinating the attendance of members and speakers because of conflicting schedules.

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: October 29, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–27143 Filed 11–3–93; 8:45 am]

BILLING CODE 4140–01–M

Nomination Subcommittee of the National Deafness and Other Communication Disorders Advisory Board; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Nomination Subcommittee of the National Deafness and Other Communication Disorders Advisory Board on December 8, 1993. The meeting will take place from 11:30 a.m. to 12:30 p.m. in room 3C05, Building 31, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892, and will be conducted as a telephone conference with the use of a speaker phone.

In accordance with the provisions set forth in sec. 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92–463, the meeting will be closed to the public to discuss the nomination of the Chairperson of the National Deafness and Other Communication Disorders Advisory Board and the nomination of the Advisory Board Liaison to the National Deafness and Other Communication Disorders Advisory Council. This discussion could reveal personal information concerning members of the Advisory Board, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

A roster of the Subcommittee's members may be obtained from Ms. Monica M. Davies, Executive Director, National Deafness and Other Communication Disorders Advisory Board, Building 31, room 3C08, National Institutes of Health, Bethesda, Maryland 20892, (301) 402–1129, upon request.

(Catalog of Federal Domestic Assistance Program No. 93.173, Biological Research Related to Deafness and Communication Disorders.)

Dated: October 29, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–27147 Filed 11–3–93; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; Meeting

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the National Institute on Deafness and Other Communication Disorders Special Emphasis Panel.

The meeting will be closed in accordance with the provisions set forth in sec. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications, contract proposals, and/or cooperative agreements. These applications, and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Panel: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel.

Dates of Meeting: November 30, 1993.

Time of Meeting: 8 a.m. until adjournment.

Place of Meeting: Holiday Inn Chevy Chase, Chevy Chase, MD.

Agenda: Review of R03 applications.

Contact Person: Dr. Mary Nekola, Scientific Review Administrator, NIDCD/SRB, Executive Plaza South, room 400C, Bethesda, Maryland 20892, (301) 496–8683.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Other Communication Disorders)

Dated: October 29, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–27148 Filed 11–3–93; 8:45 am]

BILLING CODE 4140–01–M

NIDR Board of Scientific Counselors; Meeting

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Board of Scientific Counselors, National Institute of Dental Research (NIDR), on December 1–3, 1993, in the H. Trendley Dean Conference Room, Building 30, National Institutes of Health, Bethesda, Maryland. The meeting will be open to the public from 8:30 a.m. to recess on December 1. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sec. 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92–463, the meeting will be closed to the public from 8:30 a.m. until adjournment on December 2–3 for the review, discussion, and evaluation of individual programs and projects conducted by the NIDR, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. Brent Jaquet, Director, Office of Planning, Evaluation, and Communications, NIDR, NIH, Building 31, room 2C34, Bethesda, Maryland 20892 (telephone (301) 496–6705) will provide a summary of the meeting, roster of committee members and substantive program information. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary listed above in advance of the meeting.

Dated: October 29, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–27144 Filed 11–3–93; 8:45 am]

BILLING CODE 4140–01–M

End-Stage Renal Disease Data Advisory Committee; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the End-Stage Renal Disease Data Advisory Committee on November 30, 1993. The meeting will begin at approximately 8:30 a.m. to approximately 5 p.m. at the Hyatt Regency Baltimore, on the Inner Harbor, 300 Light Street, Baltimore, Maryland. The meeting, which will be open to the public, is being held to discuss the 1944 Annual Report and other ESRD Data issues. Attendance by the public will be limited to space available. Notice of the meeting room will be posted in the hotel lobby.

For any further information, and for individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, please contact Dr. Ralph Bain, Executive Director, End-Stage Renal Disease Data Advisory Committee, 1801 Rockville Pike, suite 500, Rockville, Maryland 20852, (301) 496–6045, two weeks prior to the meeting date. In addition, upon request, Dr. Bain's office will provide an agenda, a roster of the members, and summaries of the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.847–849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health.)

Dated: October 29, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–27145 Filed 11–3–93; 8:45 am]

BILLING CODE 4140–01–M

National Diabetes Advisory Board; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Diabetes Advisory Board on December 6–7, 1993. The Board will meet on Monday, December 6 and Tuesday, December 7, from 8:30 a.m. to approximately 5 p.m. The focus of these meetings will be devoted to discussion of Diabetes Translation Activities, including the development of recommendations for lower extremities and eye translation efforts, a review of the costs associated with diabetes, an update on the Department of Veterans Affairs and the 1994 Annual Report. The meeting will be held at the Washington Marriott Hotel, 1221 22nd Street NW., Washington, DC. Although the entire meeting will be open to the public, attendance will be limited to space available. Notice of the meeting room will be posted in the hotel lobby.

For any further information, and for individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, please contact Mr. Raymond M. Kuehne, Executive Director, National Diabetes Advisory Board, 1801 Rockville Pike, suite 500, Rockville, Maryland 20852, (301) 496–6045, two weeks prior to the meeting date. In addition, his office will provide a membership roster of the Board and an agenda and summaries of the meetings.

(Catalog of Federal Domestic Assistance Program No. 93.847–849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health.)

Dated: October 29, 1993.

Susan K. Feldman,

Committee Management Officer, NIH

[FR Doc. 93–27146 Filed 11–3–93; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Statement of Organization, Functions, and Delegation of Authority; Office of the Assistant Secretary for Health

Part H, Public Health Service (PHS), Chapter HS (Office of the Assistant Secretary for Health), of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (DHHS), 42 FR 61338, December 2, 1977, as amended most recently at 58 FR 7140–41, February 4, 1993, is amended to reflect the establishment of two divisions in the Office of Emergency Preparedness (OEP), Office of the Assistant Secretary for Health, to provide a critically needed management substructure to assist the Director in planning, coordination, and operations in support of OEP activities.

Office of the Assistant Secretary for Health

Under Chapter HA, Office of the Assistant Secretary for Health, Section HA–20, Functions, under Office of Emergency Preparedness (HAP), add the following titles and statements:

Division of Emergency Readiness and Operations (HAP2)

The Division: (1) Develops National emergency health plans and programs to assure operational readiness to respond to major disasters; (2) directs, coordinates, and monitors the performance of heads of Department of Health and Human Services (DHHS) Operating Divisions (OPDIVS), Staff Divisions (STAFFDIVS) and the Regional Staffs in carrying out assigned emergency preparedness responsibilities; (3) provides central emergency preparedness policy guidance, coordination, and assistance to DHHS OPDIVS and STAFFDIVS, heads of PHS Agencies, Regional Directors, and Regional Health Administrators; (4) works with the Federal Emergency Management Agency and other Federal departments and agencies to develop plans and maintain operational readiness for response to Federal, state, and local government requests for assistance during major disasters; (5) develops and coordinates medical equipment and training plans for major disasters; (6) establishes, coordinates, and maintains logistical plans and communication networks with Federal, state, and local emergency preparedness organizations; (7) provides for preliminary disaster medical assessment needs in direct support for deployment; and (8) evaluates the results of various studies conducted by OHS agencies on environmental hazards affecting disaster planning.

Division of Administration and Support Systems (HAP3)

The Division: (1) Directs, coordinates, and monitors enrollment policy and procedures of Disaster Medical Assistance Teams (DMAT) volunteers with sponsoring organizations; (2) provides advice and consultation to representatives of potential DMAT sponsors, community leaders and professional organizations on plans and requirements in the development of non-Federal DMATs; (3) negotiates Memorandum of Understanding with sponsoring organizations of non-Federal DMATs and advises on strategies for community organization, team development, recruitment and training, and other resources to support local DMATs; (4) negotiates release of local DMATs with sponsoring organizations for Federal disaster service in national emergencies; (5) coordinates Federal employment, standards and requirements of non-Federal DMATs with the staff of the Division of Personnel Operations, Office of Personnel Management; and (6) maintains management systems to enroll, alert, and employ non-Federal DMATs.

Dated: October 20, 1993.

Philip R. Lee,

Assistant Secretary for Health.

[FR Doc. 93–27096 Filed 11–3–93; 8:45 am]

BILLING CODE 4160–17–M

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies and Laboratories That Have Withdrawn From the Program

AGENCY: Substance Abuse and Mental Health Services Administration, HHS (formerly: National Institute on Drug Abuse, ADAMHA, HHS).

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (53 FR 11979, 11986). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's

certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be identified as such at the end of the current list of certified laboratories, and will be omitted from the monthly listing thereafter.

FOR FURTHER INFORMATION CONTACT: Denise L. Goss, Program Assistant, Division of Workplace Programs, Room 9–A–54, 5600 Fishers Lane, Rockville, Maryland 20857; Tel.: (301) 443–6014.

SUPPLEMENTARY INFORMATION: Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in an every-other-month performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are *not* to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

Aegis Analytical Laboratories, Inc., 624 Grassmere Park Road, Suite 21, Nashville, TN 37211, 615–331–5300

Alabama Reference Laboratories, Inc., 543 South Hull Street, Montgomery, AL 36103, 800–541–4931/205–263–5745

Allied Clinical Laboratories, 201 Plaza Boulevard, Hurst, TX 76053, 817–282–2257

American Medical Laboratories, Inc., 14225 Newbrook Drive, Chantilly, VA 22021, 703–802–6900

Associated Pathologists Laboratories, Inc., 4230 South Burnham Avenue, Suite 250, Las Vegas, NV 89119–5412, 702–733–7866

Associated Regional and University Pathologists, Inc. (ARUP), 500 Chipeta Way, Salt Lake City, UT 84108, 801–583–2787

Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–227–2783 (formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Bayshore Clinical Laboratory, 4555 W. Schroeder Drive, Brown Deer, WI 53223, 414–355–4444/800–877–7016

Bioran Medical Laboratory, 415 Massachusetts Avenue, Cambridge, MA 02139, 617–547–8900

Cedars Medical Center, Department of Pathology, 1400 Northwest 12th Avenue, Miami, FL 33136, 305–325–5810

Centinela Hospital Airport Toxicology Laboratory, 9601 S. Sepulveda Blvd., Los Angeles, CA 90045, 310–215–6020

Clinical Pathology Facility, Inc., 711 Bingham Street, Pittsburgh, PA 15203, 412–488–7500

Clinical Reference Lab, 11850 West 85th Street, Lenexa, KS 66214, 800–445–6917

CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory, 3308 Chapel Hill/Nelson Hwy., Research Triangle Park, NC 27709, 919–549–8263/800–833–3984

CompuChem Laboratories, Special Division, 3308 Chapel Hill/Nelson Hwy., Research Triangle Park, NC 27709, 919–549–8263

Cox Medical Centers, Department of Toxicology, 1423 North Jefferson Avenue, Springfield, MO 65802, 800–876–3652/417–836–3093

CPF MetPath Laboratories, 21007 Southgate Park Boulevard, Cleveland, OH 44137–3054, 800–338–0166 (outside OH)/800–362–8913 (inside OH), (formerly: Southgate Medical Laboratory; Southgate Medical Services, Inc.)

Damon/MetPath, 140 East Ryan Road, Oak Creek, WI 53154, 800–638–1100 (formerly: Damon Clinical Laboratories; Chem-Bio Corporation; CBC Clinilab)

Damon/MetPath, 8300 Esters Blvd., Suite 900, Irving, TX 75063, 214–929–0535 (formerly: Damon Clinical Laboratories)

Dept. of the Navy, Navy Drug Screening Laboratory, Great Lakes, IL, Building 38–H, Great Lakes, IL 60088–5223, 708–688–2045/708–688–4171

Dept. of the Navy, Navy Drug Screening Laboratory, Norfolk, VA, 1321 Gilbert Street, Norfolk, VA 23511–2597, 804–444–8089 ext. 317

Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Drive, Valdosta, Georgia 31604, 912–244–4468

Doctors & Physicians Laboratory, 801 East Dixie Avenue, Leesburg, FL 32748, 904–787–9006

Drug Labs of Texas, 15201 I–10 East, Suite 125, Channelview, TX 77530, 713–457–3784

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Road, Warminster, PA 18974, 215–674–9310

ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 601–236–2609 (moved 6/16/93)

Employee Health Assurance Group, 405 Alderson Street, Schofield, WI 54476, 800–627–8200 (formerly: Alpha Medical Laboratory, Inc.)

General Medical Laboratories, 36 South Brooks Street, Madison, WI 53715, 608–267–6267

Harrison & Associates Forensic Laboratories, 606 N. Weatherford, P.O. Box 2788, Midland, TX 79702, 800–725–3784/915–687–6877

HealthCare/Preferred Laboratories, 24451 Telegraph Road, Southfield, MI 48034, Inside MI: 800–328–4142/Outside MI: 800–225–9414

Hermann Hospital Toxicology Laboratory, Hermann Professional Building, 6410 Fannin, Suite 354, Houston, TX 77030, 713–793–6080

IHC Laboratory Services Forensic Toxicology, 930 North 500 West, Suite E, Provo, UT 84604, 800–967–9766

Jewish Hospital of Cincinnati, Inc., 3200 Burnet Avenue, Cincinnati, Ohio 45229, 513–569–2051

Laboratory of Pathology of Seattle, Inc., 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 206–386–2672

Laboratory Specialists, Inc., 113 Jarrell Drive, Belle Chasse, LA 70037, 504–392–7961

Marshfield Laboratories, 1000 North Oak Avenue, Marshfield, WI 54449, 715–389–3734/800–222–5835

Mayo Medical Laboratories, 200 S.W. First Street, Rochester, MN 55905, 507–284–3631

Med-Chek/Damon, 4900 Perry Highway, Pittsburgh, PA 15229, 412–931–7200 (formerly: Med-Chek Laboratories, Inc.)

MedExpress/National Laboratory Center, 4022 Willow Lake Boulevard, Memphis, TN 38175, 901–795–1515

Medical Science Laboratories, 11020 W. Plank Court, Wauwatosa, WI 53226, 414–476–3400

MedTox Bio-Analytical, a Division of MedTox Laboratories, Inc., 6160 Variel Avenue, Woodland Hills, CA 91367, 818–226–4373 (formerly: Laboratory Specialists, Inc.; Abused Drug Laboratories; moved 12/21/92)

MEDTOX Bio-Analytical, 8600 West Catalpa Avenue, Chicago, IL 60656, 800–872–5221/312–714–9191 (formerly: MedTox Bio-Analytical, a Division of MedTox Laboratories, Inc.,; Bio-Analytical Technologies)

MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112, 800–832–3244/612–636–7466

Methodist Hospital of Indiana, Inc., Department of Pathology and Laboratory Medicine, 1701 N. Senate Boulevard, Indianapolis, IN 46202, 317–929–3587

Methodist Medical Center Toxicology Laboratory, 221 N.E. Glen Oak Avenue, Peoria, IL 61636, 800–752–1835/309–671–5199

MetPath, Inc., 1355 Mittel Boulvard, Wood Dale, IL 60191, 708–595–3888

MetPath, Inc., One Malcolm Avenue, Teterboro, NJ 07608, 201–393–5000

MetWest-BPL Toxicology Laboratory, 18700 Oxnard Street, Tarzana, CA 91356, 800–492–0800/818–343–8191

National Center for Forensic Science, 1901 Sulphur Spring Road, Baltimore, MD 21227, 410–536–1485 (formerly: Maryland Medical Laboratory, Inc.)

National Drug Assessment Corporation, 5419 South Western, Oklahoma City, OK 73109, 800–749–3784 (formerly: Med Arts Lab)

National Health Laboratories Incorporated, 5601 Oberlin Drive, Suite 100, San Diego, CA 92121, 619–455–1221

National Health Laboratories Incorporated, 2540 Empire Drive, Winston-Salem, NC 27103–6710, Outside NC: 919–760–4620/800–334–8627/Inside NC: 800–642–0894

National Health Laboratories Incorporated, 75 Rod Smith Place, Cranford, NJ 07016–2843, 908–272–2511

National Health Laboratories Incorporated, d.b.a. National Reference Laboratory, Substance Abuse Division, 1400 Donelson Pike, Suite A–15, Nashville, TN 37217, 615–360–3992/800–800–4522

National Health Laboratories Incorporated, 13900 Park Center Road, Herndon, VA 22071, 703–742–3100

National Psychopharmacology Laboratory, Inc., 9320 Park W. Boulevard, Knoxville, TN 37923, 800–251–9492

National Toxicology Laboratories, Inc., 1100 California Avenue, Bakersfield, CA 93304, 805–322–4250

Nichols Institute Substance Abuse Testing (NISAT), 7470–A Mission Valley Road, San Diego, CA 92108–4406, 800–446–4728/619–686–3200 (formerly: Nichols Institute)

Northwest Toxicology, Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 800–322–3361

Occupational Toxicology Laboratories, Inc., 2002 20th Street, Suite 204A, Kenner, LA 70062, 504–465–0751

Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Avenue, Eugene, OR 97440–0972, 503–687–2134

Pathology Associates Medical Laboratories, East 11604 Indiana, Spokane, WA 99206, 509–926–2400

PDLA, Inc. (Princeton), 100 Corporate Court, So. Plainfield, NJ 07080, 908–769–8500/800–237–7352

PharmChem Laboratories, Inc., 1505–A O'Brien Drive, Menlo Park, CA 94025, 415–328–6200/800–446–5177

PharmChem Laboratories, Inc., Texas Division, 7606 Pebble Drive, Fort Worth, TX 76118, 817–595–0294 (Formerly: Harris Medical Laboratory)

Physicians Reference Laboratory, 7800 West 110th Street, Overland Park, KS 66210, 913–338–4070/800–821–3627 (Formerly: Physicians Reference Laboratory Toxicology Laboratory)

Poisonlab, Inc., 7272 Clairemont Mesa Road, San Diego, CA 92111, 619–279–2600/800–882–7272

Precision Analytical Laboratories, Inc., 13300 Blanco Road, Suite #150, San Antonio, TX 78216, 210–493–3211

Puckett Laboratory, 4200 Mamie Street, Hattiesburg, MS 39402, 601–264–3856/800–844–8378

Regional Toxicology Services, 15305 N.E. 40th Street, Redmond, WA 98052, 206–882–3400

Resource One, Inc., Seven Pointe Circle, Greenville, SC 29615, 803–233–5639

Roche Biomedical Laboratories, 1801 First Avenue South, Birmingham, AL 35233, 205–581–4170

Roche Biomedical Laboratories, 1957 Lakeside Parkway, Suite 542, Tucker, GA 30084, 404–939–4811

Roche Biomedical Laboratories, Inc., 1120 Stateline Road, Southaven, MS 38671, 601–342–1286

Roche Biomedical Laboratories, Inc., 69 First Avenue, Raritan, NJ 08869, 800–437–4986

Saint Joseph Hospital Toxicology Laboratory, 601 N. 30th Street, Omaha, NE 68131–2197, 402–449–4940

Scott & White Drug Testing Laboratory, 600 S. 25th Street, Temple, TX 76504, 800–749–3788

S.E.D. Medical Laboratories, 500 Walter NE, Suite 500, Albuquerque, NM 87102, 505–848–8800

Sierra Nevada Laboratories, Inc., 888 Willow Street, Reno, NV 89502, 800–648–5472

SmithKline Beecham Clinical Laboratories, 7600 Tyrone Avenue, Van Nuys, CA 91045, 818–376–2520

SmithKline Beecham Clinical Laboratories, 3175 Presidential Drive, Atlanta, GA 30340, 404–934–9205 (formerly: SmithKline Bio-Science Laboratories)

SmithKline Beecham Clinical Laboratories, 506 E. State Parkway, Schaumburg, IL 60173, 708–885–2010 (formerly: International Toxicology Laboratories)

SmithKline Beecham Clinical Laboratories, 11636 Administration Drive, St. Louis, MO 63146, 314–567–3905

SmithKline Beecham Clinical Laboratories, 400 Egypt Road, Norristown, PA 19403, 800–523–5447 (formerly: SmithKline Bio-Science Laboratories)

SmithKline Beecham Clinical Laboratories, 8000 Sovereign Row, Dallas, TX 75247, 214–638–1301 (formerly: SmithKline Bio-Science Laboratories)

South Bend Medical Foundation, Inc., 530 N. Lafayette Boulevard, South Bend, IN 46601, 219–234–4176

Southwest Laboratories, 2727 W. Baseline Road, Suite 6, Tempe, AZ 85283, 602–438–8507

St. Anthony Hospital (Toxicology Laboratory), P.O. Box 205, 1000 N. Lee Street, Oklahoma City, OK 73102, 405–272–7052

St. Louis University Forensic Toxicology Laboratory, 1205 Carr Lane, St. Louis, MO 63104, 314–577–8628

Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, Suite 208, Columbia, MO 65203, 314–882–1273

Toxicology Testing Service, Inc., 5426 N.W. 79th Avenue, Miami, FL 33166, 305–593–2260

The following laboratory withdrew from the National Laboratory Certification Program during October 1993:

Parke DeWatt Laboratories, Division of Comprehensive Medical Systems, Inc., 1810 Frontage Rd., Northbrook, IL 60062, 708–480–4680

Richard Kopanda,

Acting Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 93–26947 Filed 11–03–93; 8:45 am]

BILLING CODE 4160–20–U

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N–93–3443; FR–3206–N–03]

Announcement of Funding Awards for Fiscal Year 1992 Indian Applicants Under the HOME Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards for Fiscal Year 1992 Indian Applicants under the HOME Program. The purpose of this document is to announce the names and addresses of the award winners and the amount of the awards to be used to expand the supply of affordable housing.

FOR FURTHER INFORMATION CONTACT: Dom Nessi, Office of Native American Programs, U.S. Department of Housing and Urban Development, room 4140, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–1015.

To provide service for persons who are hearing- or speech-impaired, this number may be reached via TDD by dialing the Federal Information Relay Service on 1–800–877–TDDY, 1–800–877–8339, or 202–708–9300. (Telephone numbers, other than "800" TDD numbers, are not toll free.)

SUPPLEMENTARY INFORMATION: The HOME Investment Partnerships Act (title II of the Cranston-Gonzalez National Affordable Housing Act) was signed into law on November 28, 1990 (Pub. L. 101–625). The HOME Act creates the HOME Investment Partnerships (or HOME) Program that provides funds to Indian tribes to expand the supply of affordable housing for very low-income and low-income persons. Interim regulations for the HOME Investment Partnerships Program are codified at 24 CFR part 92. The requirements of 24 CFR part 92, subpart M (§§ 92.600–92.652) apply specifically to the Indian HOME program.

On June 12, 1992, HUD published a Notice of Funding Availability

announcing the availability of $15 million in FY 1992 funds for Indian Applicants under the HOME program (57 FR 26720). The Department reviewed, evaluated and scored the applications received based on the criteria in the NOFAs. As a result, HUD has funded the applications announced below, and in accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989), the Department is publishing details concerning the recipients of funding awards, as follows:

List of Awardees for Grant Assistance under the FY 92 Indian HOME Program funding competition, by name, address, and grant amount:

1. Eastern Band of Cherokee Indians, POB 455, Cherokee, NC 28719, $540,000.
2. Red Lake Band of Chippewa Indians, Red Lake, MN 56671, $500,000.
3. Sault Ste Marie Tribe, Route 2, Box 267, Sault Ste Marie, MI 49783, $771,591.
4. Stockbridge Munsee Community, Route 1, Bowler, WI 54416, $150,000.
5. Cherokee Nation of Oklahoma, POB 948, Tahlequah, OK 74465, $475,985.
6. Turtle Mountain, POB 900, Belcourt, ND, $312,500.
7. Blackfeet, POB 850, Browning, MT 59417, $2,523,000.
8. Blackfeet, POB 850, Browning, MT 59417, $2,993,538.
9. Manzanita Band of Mission Indians, 1302 Old Mine Road, Box 1302, Boulevard, CA, $99,138.
10. Pala Band of Mission Indians, POB 43, Pala, CA 92059, $686,040.
11. Pueblo of Zuni, POB 339, Zuni, NM 83727, $1,854,312.
12. Salt River Pima-Maricopa Indian Community, Route 1, Box 216, Scottsdale, AZ 85256, $900,000.
13. Taos Pueblo, POB 1846, Taos, NM 87571, $205,398.
14. Taos Pueblo, POB 1846, Taos, NM 87571, $353,545.
15. Table Bluff Reservation, Wiyot Tribe, POB 519, Loleta, CA 95551, $372,000.
16. Colville Confederated Tribes, Public Works & Utilities Dept., POB 150, Nespelem, WA 99155, $764,750.
17. Cook Inlet Tribal Council, Inc., 670 West Fireweed Lane, Suite 200, Anchorage, AK 99503, $1,498,203.

Dated: October 27, 1993.

Michael B. Janis,

General Deputy Assistant, Secretary for Public and Indian Housing.

[FR Doc. 93–27077 Filed 11–3–93; 8:45 am]

BILLING CODE 4210–33–M

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket Nos. N–93–3267; FR–3068–N–04 and N–93–3411; FR–3195–N–03]

Awards Notice of Funding for Persons With Disabilities—Set-Aside for Persons Disabled as a Result of Infection With the Human Acquired Immunodeficiency Virus

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department as a result of competitions for funding under three Notices of Funding Availability for Supportive Housing for Persons with Disabilities—Set-Aside for Persons Disabled as a Result of Infection with the Human Acquired Immunodeficiency Virus. The announcement contains the names and addresses of the award winners for these three competitions and the amounts of the awards.

DATES: November 4, 1993.

FOR FURTHER INFORMATION CONTACT: Margaret Milner, Acting Director, Office of Elderly and Assisted Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–4542. The TDD number for the hearing impaired is (202) 708–4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The purpose of these competitions was to announce the availability of set-asides for supportive housing for persons disabled as a result of infection with the Human Acquired Immunodeficiency Virus (HIV). Notices of Funding Availability (NOFAs) were published in the **Federal Register** on June 12, 1991 (56 FR 27138), April 7, 1992 (57 FR 11868), and September 30, 1992 (57 FR 45065).

The June 12, 1991 Notice announced the set-aside of 500 units. The April 7, 1992 Notice announced another competition for the remaining 285 units left from the June 12, 1991 competition. The September 30, 1992 Notice announced a third competition for 120 units that remained after the April 7, 1992 competition. All of the set-aside has now been awarded.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989), the Department is publishing the names, addresses, and amounts of those awards, as set out at the end of this Notice.

Dated: October 28, 1993.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

SECTION 811.—PROGRAM FOR PERSONS WITH DISABILITIES, FISCAL YEARS 1991, 1992, AND 1993 DISABILITY TYPE "HIV" SET-ASIDE SELECTIONS

Sponsor	Minority code (if applicable)	FHA and project rental assistance contract (PRAC) Nos.	Total disability units type	M or NM	Capital grant amount	Rental ass'tance cont auth	Budget authority
**Region: Boston							
*Field Office: Boston							
Cambridge and Somerville Cooperative Apt Proj.	.....	023–HD010/MA06–Q911–010	8 HIV	M	353000	34200	684000
Rogerson House	.....	023–HD011/MA06–Q911–011	20 HIV	M	1704300	102000	2040000
Subsubtotal	.....		28		2057300	136200	2724000
*Field Office: Hartford							
Warburton Community ...	.....	017–HD007/CT26–Q933–001	23 HIV	M	2164300	92000	1840000
Subsubtotal	.....		23		2164300	92000	1840000

SECTION 811.—PROGRAM FOR PERSONS WITH DISABILITIES, FISCAL YEARS 1991, 1992, AND 1993 DISABILITY TYPE "HIV" SET-ASIDE SELECTIONS—Continued

Sponsor	Minority code (if applicable)	FHA and project rental assistance contract (PRAC) Nos.	Total disability units type	M or NM	Capital grant amount	Rental ass'tance cont auth	Budget authority
Subtotal			51		4221600	228200	4564000
**Region: New York							
*Field Office: Buffalo							
Sisters of the Third Franciscan Order.		014–HD008/NY06–Q933–001	24 HIV	M	1539500	83100	1662000
Subsubtotal			24		1539500	83100	1662000
*Field Office: New York							
North General Hospital	2	012–HD015/NY36–Q933–002	27 HIV	M	2035900	126800	2536000
Subsubtotal			27		2035900	126800	2536000
*Field Office: Newark							
Straight and Narrow, Inc		031–HD001/NJ39–Q911–001	24 HIV	M	1704300	101200	2024000
Subsubtotal			24		1704300	101200	2024000
Subtotal			75		5279700	311100	6222000
**Region: Philadelphia							
*Field Office: Baltimore							
AIDS Interfaith Residential Services.		052–HD005/MD06–Q921–005	14 HIV	M	716700	33000	660000
Subsubtotal			14		716700	33000	660000
*Field Office: Charleston							
Covenant House, Inc		045–HD007/WV15–Q921–004	6 HIV	M	421800	19000	380000
Subsubtotal			6		421800	19000	380000
*Field Office: Philadelphia							
Family Service Association of Bucks County.		034–HD016/PA26–Q921–007	8 HIV	M	341200	33000	660000
Subsubtotal			8		341200	33000	660000
*Field Office: Richmond							
Richmond AIDS Ministries.		051–HD008/VA36–Q921–002	8 HIV	M	268200	23600	472000
Richmond AIDS Ministries.		051–HD009/VA36–Q921–003	8 HIV	M	268200	23600	472000
AIDS Support Group		051–HD010/VA36–Q921–004	6 HIV	M	244500	17700	354000
Subsubtotal			22		780900	64900	1298000
*Field Office: Washington							
Wesley Housing Development Corporation.		000–HD009/VA39–Q921–001	12 HIV	M	804000	42400	848000
Whitman-Walker Clinic, Inc.	2	000–HD011/DC39–Q933–001	13 HIV	M	937800	78300	1566000
Subsubtotal			25		1741800	120700	2414000
Subtotal			75		4002400	270600	5412000
**Region: Atlanta							
*Field Office: Birmingham							
AIDS Task Force and St. Andrew's Foundation.		062–HD020/AL09–Q921–010	18 HIV	M	876500	47600	952000
Subsubtotal			18		876500	47600	952000
*Field Office: Greensboro							
The Brothers Foundation, Inc.	2	053–HD020/NC19–Q911–020	7 HIV	M	249200	16400	328000
Subsubtotal			7		249200	16400	328000
*Field Office: Jacksonville							
AIDS Help, Inc. of Monroe County.		066–HD004/FL29–Q911–008	3 HIV	NM	171600	8000	160000
People With Aids Coalition.		066–HD011/FL29–Q921–013	24 HIV	M	1275000	66900	1338000
Subsubtotal			27		1446600	74900	1498000
*Field Office: Knoxville							

SECTION 811.—PROGRAM FOR PERSONS WITH DISABILITIES, FISCAL YEARS 1991, 1992, AND 1993 DISABILITY TYPE "HIV" SET-ASIDE SELECTIONS—Continued

Sponsor	Minority code (if applicable)	FHA and project rental assistance contract (PRAC) Nos.	Total disability units type	M or NM	Capital grant amount	Rental ass'tance cont auth	Budget authority
AIDS Response Knoxville.		087–HD010/TN37–Q921–006	8 HIV	M	410900	21000	420000
Subsubtotal			8		410900	21000	420000
Subtotal			60		2983200	159900	3198000
**Region: Chicago							
*Field Office: Chicago							
The Center for Rehabilitation and Training.		071–HD009/IL06–Q911–009	24 HIV	M	1136200	73700	1474000
Chicago House		071–HD024/IL06–Q933–001	9 HIV	M	538100	29300	586000
Subsubtotal			33		1674300	103000	2060000
*Field Office: Cleveland							
Summit AIDS Housing Corp.		042–HD008/OH12–Q911–008	23 HIV	M	1248800	75200	1504000
Subsubtotal			23		1248800	75200	1504000
*Field Office: Indianapolis							
The Damien Center		073–HD015/IN36–Q933–001	24 HIV	M	1322800	72700	1454000
Subsubtotal			24		1322800	72700	1454000
*Field Office: Milwaukee							
Madison AIDS Support Network.		075–HD009/WI39–Q911–009	23 HIV	M	1219100	68400	1368000
Subsubtotal			23		1219100	68400	1368000
*Field Office: Minn/St Paul							
Westminster Corporation		092–HD004/MN46–Q911–004	11 HIV	M	662100	34900	698000
Subsubtotal			11		662100	34900	698000
Subtotal			114		6127100	354200	7084000
**Region: Kansas City							
*Field Office: St. Louis							
Interfaith Residences		085–HD002/MO36–Q911–002	24 HIV	M	1349700	75200	1504000
Subsubtotal			24		1349700	75200	1504000
Subtotal			24		1349700	75200	1504000
**Region: Denver							
*Field Office: Denver							
Our House, Inc		101–HD004/CO99–Q922–004	8 HIV	M	262200	21100	422000
Subsubtotal			8		262200	21100	422000
Subtotal			8		262200	21100	422000
**Region: San Francisco							
*Field Office: Los Angeles							
A.S. Foundation of Orange County.		122–HD019/CA16–Q922–001	24 HIV	M	1792200	95400	1908000
Subsubtotal			24		1792200	95400	1908000
*Field Office: Phoenix							
The Phoenix Shanti Group.		123–HD002/AZ20–Q911–002	24 HIV	M	1093700	64200	1284000
Subsubtotal			24		1093700	64200	1284000
Subtotal			48		2885900	159600	3192000
**Region: Seattle							
*Field Office: Seattle							
Northwest AIDS Foundation.		127–HD003/WA18–Q911–003	24 HIV	M	1477000	74900	1498000

SECTION 811.—PROGRAM FOR PERSONS WITH DISABILITIES, FISCAL YEARS 1991, 1992, AND 1993 DISABILITY TYPE "HIV" SET-ASIDE SELECTIONS—Continued

Sponsor	Minority code (if applicable)	FHA and project rental assistance contract (PRAC) Nos.	Total disability units type	M or NM	Capital grant amount	Rental ass'tance cont auth	Budget authority
Volunteers of America ...	.....	171–HD002/WA19–Q921–004	21 HIV	M	1129100	61400	1228000
Subsubtotal	.....		45		2606100	136300	2726000
Subtotal	.....		45		2606100	136300	2726000
Total	.....		500		29717900	1716200	34324000

[FR Doc. 93–27076 Filed 11–3–93; 8:45 am]
BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UTU–52337 and UTU–57609]

Utah; Proposed Reinstatement of Terminated Oil and Gas Leases

In accordance with title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97–451), a petition for reinstatement of oil and gas leases UTU–52337 and UTU–57609 for lands in San Juan County, Utah, was timely filed and required rentals and royalties accruing from August 1, 1993, the date of termination, have been paid.

The lessee has agreed to new lease terms for rentals and royalties at rates of $5 per acre and 16⅔ percent, respectively. The $500 administrative fee for each lease has been paid and the lessee has reimbursed the Bureau of Land Management for the cost of publishing this notice.

Having met all the requirements for reinstatement of lease UTU–52337 and UTU–57609 as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the leases, effective August 1, 1993, subject to the original terms and conditions of the leases and the increased rental and royalty rates cited above.

Robert Lopez,

Chief, Minerals Adjudication Section.

[FR Doc. 93–27035 Filed 11–3–93; 8:45 am]
BILLING CODE 4310–DQ–M

Fish and Wildlife Service

Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT–781482

Applicant: Columbia University, New York, NY.

The applicant requests a permit to import blood and hair samples taken from adult captive-held Sumatran rhinoceros (*Dicerorhinus sumatrensis*), Indian tapirs (*Tapirus indicus*), Siamangs (*Hylobates syndactylus*), Kloss gibbons (*Hylobates klossii*), and grey gibbons (*Hylobates mulleri*), from Malaysia and Indonesia for DNA analysis to enhance the propagation and survival of the species.

PRT–784001

Applicant: Steve Martin, Frazier Park, CA.

The applicant requests a permit to export and reimport two captive-bred tigers (*Panthera tigris*) to India for purposes of providing educational material during exhibition.

PRT–784030

Applicant: Steve Martin, Frazier Park, CA.

The applicant requests a permit to export and reimport two captive-bred chimpanzees (*Pan troglodytes*) to India for purposes of providing educational material during exhibition.

PRT–783870

Applicant: Florida Iguana & Tortoise Breeders, Davie, FL.

The applicant requests a permit to export four captive-bred Galapagos tortoises (*Geochelone elephantopus*) to the Reptile Zoo Iguana in Vlissingen, Netherlands for the purpose of enhancement of propagation and survival of the species.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 420(c), Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: October 29, 1993.

Susan Jacobsen,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 93–27067 Filed 11–3–93; 8:45 am]
BILLING CODE 4310–55–M

INTERSTATE COMMERCE COMMISSION

Availability of Environmental Assessments

Pursuant to 42 U.S.C. 4332, the Commission has prepared and made available environmental assessments for the proceedings listed below. Dates environmental assessments are available are listed below for each individual proceeding.

To obtain copies of these environmental assessments contact Ms. Tawanna Glover-Sanders or Ms. Johnnie Davis, Interstate Commerce Commission, Section of Energy and Environment, room 3219, Washington, DC 20423, (202) 927–6212 or (202) 927–6245.

Comments on the following assessment are due 15 days after the date of availability:

AB–12 (Sub-No. 161X), Southern Pacific Transportation Company—Abandonment Exemption—in Karnes and Bee Counties, Texas.
EA available 10/29/93.

Comments on the following assessment are due 30 days after the date of availability:

None.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–27122 Filed 11–3–93; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32372]

South Plains Lamesa Railroad, Ltd.—Acquisition and Operation Exemption—the Atchison, Topeka and Santa Fe Railway Company

South Plains Lamesa Railroad, Ltd. (SPLR), a noncarrier, has filed a notice of exemption to acquire from the Atchison, Topeka and Santa Fe Railway Company (Santa Fe) and to operate a 54.5 mile rail line between Slaton, TX and Lamesa, TX (from Lamesa Subdivision milepost 0+329.16 feet to milepost 54.06), in Lamesa, Slaton, Arvana, O'Donnell, Tahoka and Wilson, in Lubbock, Dawson and Lynn Counties, TX. This acquisition will be completed by a direct transfer of assets from Santa Fe to SPLR. The proposed transaction was expected to be consummated on or after October 14, 1993.

Any comments must be filed with the Commission and served on: William R. Power, 301 Walton Building, 6900 Anderson Boulevard, Fort Worth, TX 76120.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. 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 automatically stay the transaction.

Decided: October 20, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–27114 Filed 11–3–93; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to section 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on July 21, 1993, Ciba-Geigy Corporation, Pharmaceuticals Division, Regulatory Compliance, 556 Morris Avenue, Summit, New Jersey 07901, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the Schedule II controlled substance Methylphenidate (1724).

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Director, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than December 6, 1993.

Dated: October 28, 1993.

Gene R. Haislip,

Director, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 93–27097 Filed 11–3–93; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Notice of Application

Pursuant to section 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on September 23, 1993, Hoffman-LaRoche Inc., 340 Kingsland Street, Nutley, New Jersey 07110, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the Schedule II controlled substance Levorphanol (9220).

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Director, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than December 6, 1993.

Dated: October 28, 1993.

Gene R. Haislip,

Director, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 93–27098 Filed 11–3–93; 8:45 am]

BILLING CODE 4410–09–M

Importation of Controlled Substances; Notice of Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacturer of the substance an opportunity for a hearing.

Therefore, in accordance with section 1311.42 of title 21, Code of Federal Regulations (CFR), notice is hereby given that on September 20, 1993, North Pacific Trading Co., 1505 SE Gideon Street, Portland, Oregon 97202, made application to the Drug Enforcement Administration to be registered as an importer of Marihuana (7360) a basic class of controlled substance in Schedule I.

This application is exclusively for the importation of Marihuana seed which will be rendered non-viable and used as bird seed.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objectives to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Director, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than (30 days from publication).

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42(b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Director, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42(a), (b), (c), (d), (e), and (f) are satisfied.

Dated: October 28, 1993.

Gene R. Haislip,

Director, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 93–27099 Filed 11–3–93; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–28,832; TA–W–28,833]

Chuska Energy Co., Denver, CO and Sunfield Energy Co., Denver, CO; Notice of Affirmative Determination Regarding Application for Reconsideration

On September 13, 1993, counsel for the workers requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for workers at the subject firms. The Department's Negative Determination was issued on August 24, 1993 and published in the **Federal Register** on September 3, 1993 (58 FR 46997).

Counsel states that the closure of the subject firms in May 1993 resulting from a merger with Harken Energy does not address the firms layoffs in July 1992.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 27th day of October 1993.

Stephen A Wandner,

Deputy Director, Office of Legislation and Actuarial Services, Unemployment Insurance Service.

[FR Doc. 93–27116 Filed 11–3–93; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–28,793]

Petroleum Testing Service, Inc., Santa Fe Springs, CA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on July 30, 1993, applicable to all workers of the subject firm. The certification notice was published in the **Federal Register** on August 27, 1993 (58 FR 45358).

At the request of the company, the Department reviewed the certification for workers of Petroleum Testing Service in Santa Fe Springs, California. The Department's impact date (December 11, 1992) should have been December 11, 1991 to include the worker separations in 1991 and in October 1992 when the facility closed. Accordingly, the Department is amending the certification to show the correct impact date and include a termination date of January 1, 1993.

The amended notice applicable to TA–W–28,793 is hereby issued as follows:

All workers of Petroleum Testing Service, Inc., Santa Fe Springs, California, who became totally or partially separated from employment on or after December 11, 1991 and before January 1, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 27th day of October 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 93–27115 Filed 11–3–93; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts, NFAH.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) a request for expedited clearance, by December 1, 1993, of the following proposal 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 by November 25, 1993.

ADDRESSES: Send comments to Mr. Steve Semenuk, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., room 3002, Washington, DC 20503; (202–395–7316). In addition, copies of such comments may be sent to Ms. Judith E. O'Brien, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202–682–5401).

FOR FURTHER INFORMATION CONTACT: Ms. Judith E. O'Brien, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202–682–5401).

SUPPLEMENTARY INFORMATION: The Endowment requests the review of a revised collection of information. This entry is issued by the Endowment and contains the following information: (1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Title: FY 95 Presenting and Commissioning Program Application Guidelines for Presenting.

Frequency of Collection: One-time.

Respondents: State and local arts agencies, non profit arts organizations.

Use: Guideline instructions and applications elicit relevant information from non profit organizations and state and local arts agencies that apply in the Presenting and Commissioning Program. This information is necessary for the accurate, fair and thorough consideration of competing proposal in the review process.

Estimated Number of Respondents: 530.

Average Burden Hours per Response: 34.72.

Total Estimated Burden: 18,400.

Judith E. O'Brien,

Management Analyst, Administrative Services Division, National Endowment for the Arts.

[FR Doc. 93–27042 Filed 11–3–93; 8:45 am]

BILLING CODE 7537–01–M

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts, NFAH.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) a request for clearance of the following proposal 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 by December 6, 1993.

ADDRESSES: Send comments to Mr. Steve Semenuk, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., room 3002, Washington, DC 20503; (202–395–

7316). In addition, copies of such comments may be sent to Ms. Judith E. O'Brien, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202–682–5401).

FOR FURTHER INFORMATION CONTACT: Ms. Judith E. O'Brien, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202–682–5401).

SUPPLEMENTARY INFORMATION: The Endowment requests the review of a revision of a currently approved collection of information. This entry is issued by the Endowment and contains the following information:

(1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Title: FY 95 Dance on Tour Application Guidelines.

Frequency of Collection: One-time.

Respondents: State and regional arts agencies.

Use: Guideline instructions and applications elicit relevant information from state and regional arts agencies that apply in the Presenting and Commissioning Program's Dance on Tour category. This information is necessary for the accurate, fair and thorough consideration of competing proposal in the review process.

Estimated Number of Respondents: 20.

Average Burden Hours per Response: 35.

Total Estimated Burden: 700.

Judith E. O'Brien,

Management Analyst, Administrative Services Division, National Endowment for the Arts.

[FR Doc. 93–27043 Filed 11–3–93; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Human Resource Development; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Human Resource Development

Date and Time: November 18–19, 1993, 8 a.m.–5 p.m.

Place: Stafford Place, 4201 Wilson Blvd., Arlington, VA (11/18/93) Arlington Renaissance Hotel, 950 North Stafford St., Arlington, VA

Type of Meeting: Closed

Contact Person: Dr. Lawrence A. Scadden, Senior Program Director or Ms. Mary M. Kohlerman, Program Director, Persons with Disabilities, HRD Room 815, National Science Foundation, 4101 Wilson Blvd., Arlington VA 22230. Telephone (703) 306–1636.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Experimental and Model Projects proposals as part of the selection process for awards.

Reason for Closing: 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 the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Reason for Late Notice: Difficulty in arranging convenient meeting time.

Dated: November 1, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–27078 Filed 11–3–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Human Resource Development; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Date and Time: November 21, 1993: 7 p.m. to 8:30 p.m.; November 22, 1993: 8:30 a.m. to 5:30 p.m.; November 23, 1993: 8:30 a.m. to 2:30 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, room 380, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Jane Daniels, Senior Program Director, Human Resource Development Division, room 815, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230 Telephone: (703) 306–1637.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Experimental Protects for Women and Girls proposals as part of the selection process for awards.

Reason for Closing: 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 the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: November 1, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–27079 Filed 11–3–93; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

IA [93–002]

George D. Shepherd; Order Prohibiting Involvement in Certain NRC-Licensed Activities (Effective Immediately)

I

George D. Shepherd has been employed as a radiographer in the field of industrial radiography since 1980. On approximately June 15, 1992, Mr. Shepherd was hired by Western Stress, Inc. (WSI or Licensee). WSI holds Materials License No. 42–26900–01 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR parts 30 and 34. The license authorizes the conduct of industrial radiography activities in accordance with the conditions specified therein.

II

On July 1, 1992, NRC conducted a field inspection of WSI at the Hess Oil Refinery in St. Croix, U.S. Virgin Islands. During this inspection, Mr. Shepherd, who was the lead radiographer, and an assistant radiographer were observed performing radiographic operations without alarm ratemeters as required by 10 CFR 34.33(a). The violation was observed by the inspector as he entered the immediate vicinity of the work area. When Mr. Shepherd and the assistant radiographer observed the inspector, the assistant radiographer went to the work vehicle to get the alarm ratemeters. The inspector also observed that the radiographers had not posted the restricted area during radiographic operations, as required by 10 CFR 34.42, nor had Mr. Shepherd performed a survey of the exposure device and source guide tube following each radiographic exposure, as required by 10 CFR 34.43(b). As a result of this inspection, a Notice of Violation and Proposed Imposition of a Civil Penalty was issued to WSI on July 30, 1992.

Between July 29, 1992 and April 30, 1993, an investigation was conducted by the NRC Office of Investigations (OI) to determine whether the conduct of Mr. Shepherd and the assistant radiographer was willful. Based on that investigation

the NRC staff concludes that Mr. Shepherd deliberately and repeatedly violated the NRC requirement to wear an alarm ratemeter during radiographic operations and according to the testimony of the assistant radiographer, encouraged the assistant radiographer to discontinue using his alarm ratemeter. In addition, based on the investigation, the NRC staff concludes that on July 1, 1992, Mr. Shepherd deliberately violated the NRC posting and surveying requirements. Specifically, he was aware of the regulatory requirements to rope off and conspicuously post the area in which radiographic operations were being performed and to perform a radiation survey of the entire circumference of the exposure device and the source guide tube after each radiographic exposure, and yet failed to meet the regulatory requirements of 10 CFR 34.43 and 10 CFR 34.42.

III

Based on the above, Mr. Shepherd engaged in deliberate misconduct which caused the licensee to be in violation of 10 CFR 34.33(a), 34.43, 34.42, and 30.10. The NRC must be able to rely on the Licensee and its employees to comply with NRC requirements, including the requirements to wear alarming ratemeters, to rope off and post the area of radiographic operations, and to perform post-exposure surveys. Compliance with NRC requirements as to posting and roping of radiation areas is necessary to protect members of the public, including licensee employees, from potential danger. Performance of a survey of the radiographic device after each exposure is an important safety requirement to prevent overexposures. Mr. Shepherd's deliberate actions in causing the Licensee to violate these requirements have raised serious doubts as to whether he can be relied on to comply with NRC requirements. Mr. Shepherd's deliberate misconduct cannot and will not be tolerated.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected if Mr. Shepherd were permitted at this time to perform radiographic operations in any area where the NRC maintains jurisdiction. Therefore, the public health, safety and interest require that Mr. Shepherd be prohibited from performing or supervising licensed activities for either an NRC licensee or an Agreement State licensee (operating in areas of NRC jurisdiction in accordance with 10 CFR 150.20) for a period of two years from the date of this order. In addition, for a period of two years commencing after the two-year prohibition, Mr. Shepherd should be required to notify the NRC of his employment by any person (including any entity) engaged in licensed activities under an NRC or Agreement State license (where the work is performed in areas under NRC jurisdiction), so that appropriate inspections can be performed. During that same two-year period, Mr. Shepherd should also be required to provide a copy of this Order to any person employing him and who holds an NRC license or an Agreement State license and performs licensed activities in NRC jurisdiction. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of the conduct described above is such that the public health, safety and interest require that this Order be effective immediately.

IV

Accordingly, pursuant to sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 30.10, and 10 CFR 150.20, *It is hereby ordered, effective immediately, that:*

1. George D. Shepherd is prohibited for two years from the date of this Order from performing, supervising, or engaging in any way in licensed activities under an NRC license, or an Agreement State license when activities under that license are conducted in areas of NRC jurisdiction pursuant to 10 CFR 150.20.

2. For a period of two years commencing after the expiration of the two-year period of prohibition, George D. Shepherd shall notify the Regional Administrator, NRC Region II, 101 Marietta Street, NW, Suite 2900, Atlanta, Georgia 30323, at least five days prior to the performance of licensed activities, of his being employed to perform or supervise such licensed activities. Licensed activities include those performed for an NRC licensee or an Agreement State licensee doing work in areas of NRC jurisdiction. The notice shall include the name, address, and telephone number of the NRC or Agreement State licensee and the location where the licensed activities will be performed. In addition, for that same period of two years commencing after completion of the two-year period of prohibition, Mr. Shepherd shall provide a copy of this Order to his employer prior to performing licensed activities in areas of NRC jurisdiction for any employer holding either an NRC license or an Agreement State license.

The Regional Administrator, NRC Region II, may, writing, relax or rescind any of the above conditions upon demonstration by Mr. Shepherd of good cause.

V

In accordance with 10 CFR 2.202, George D. Shepherd must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 30 days of the date of this Order. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which George D. Shepherd or any other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Chief, Docketing and Service Section, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region II, 101 Marietta Street, NW., Suite 2900, Atlanta, Georgia 30323, and to George D. Shepherd if the answer or hearing request is by a person other than George D. Shepherd. If a person other than George D. Shepherd requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by George D. Shepherd or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), George D. Shepherd, or any other person adversely affected by this Order, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, the provisions specified in Section IV above shall be final 20 days

from the date of this Order without further order or processing. An Answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated at Rockville, Maryland, this 27th day of October 1993.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support.

[FR Doc. 93–27138 Filed 11–3–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–305]

Wisconsin Public Service Corp., Wisconsin Power and Light Co., Madison Gas and Electric Co.; Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Wisconsin Public Service Corporation, Wisconsin Power and Light Company, and Madison Gas and Electric Company, (the licensees) to withdraw their application dated February 8, 1993, as supplemented March 3, 1993, for a proposed amendment to Facility Operating License No. DPR–43 for the Kewaunee Nuclear Power Plant, located in Kewaunee County, Wisconsin.

The proposed amendment would have revised the facility technical specifications to provide interim alternate plugging criteria for the Kewaunee steam generators based on eddy current test indications in the tube support plate regions.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on February 19, 1993 (58 FR 9224). However, by letter dated March 17, 1993, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated February 8, 1993, as supplemented March 3, 1993, and the licensee's letter dated March 17, 1993, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the local public document room located at the University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 53401.

Dated at Rockville, Maryland, this 27th day of October 1993.

For the Nuclear Regulatory Commission.

John N. Hannon,

Director, Project Directorate III–3, Division of Reactor Projects—III/IV/V Office of Nuclear Reactor Regulation.

[FR Doc. 93–27139 Filed 11–3–93; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Cost Accounting Standard 9904.404, Capitalization of Tangible Capital Assets, and Cost Accounting Standard 9904.409, Cost Accounting Standard—Depreciation of Tangible Capital Assets

ACTION: Request for public comments.

SUMMARY: The Office of Federal Procurement Policy, Cost Accounting Standards Board (CASB), invites public comments concerning a Staff Discussion Paper on the topic of the treatment to be accorded tangible capital asset gains or losses subsequent to mergers or business combinations by Government contractors. This topic is a subset of the overall issue being considered by the Board concerning the recognition and pricing of changing capital asset values resulting from business combinations by Government contractors. See 56 FR 42079 (August 26, 1991).

DATES: Requests for a copy of the Staff Discussion Paper must be in writing and must be received by January 3, 1994. Comments must be in writing and must be received by January 18, 1994.

ADDRESSES: Requests for a copy of the Staff Discussion Paper or comments upon its contents should be addressed to Dr. Rein Abel, Director of Research, Cost Accounting Standards Board, Office of Federal Procurement Policy, 725 17th Street, NW., room 9001, Washington, DC 20503. Attn: CASB Docket No. 91–06(2).

FOR FURTHER INFORMATION CONTACT: Dr. Rein Abel, Director of Research, Cost Accounting Standards Board (telephone 202–395–3254).

SUPPLEMENTARY INFORMATION: The Office of Federal Procurement Policy, Cost Accounting Standards Board, is considering various issues and alternatives related to the topic of the recognition and pricing of changing capital asset values of Government contractors resulting from mergers and business combinations. This issue was previously addressed by the Board in a Staff Discussion Paper issued on August 26, 1991. See 56 FR 42079. The public comments received in response thereto, and, the Board's further consideration of this topic, revealed an extensive divergence of views as between Government and industry representatives. In order to better focus on the issues that it considers most important to the resolution of this matter, the Board has requested that the staff issue a revised Discussion Paper.

It is the CASB staff's desire that the questions raised in the Staff Discussion Paper will better enable the Board to develop a comprehensive framework for a consistently applied Government-wide policy concerning this controversial topic.

Section 26(g)(1) of the Office of Federal Procurement Policy Act, 41 U.S.C. 422(g)(1), requires that the Board, prior to the promulgation of any new or revised Cost Accounting Standards (CAS), consult with interested persons concerning the advantages, disadvantages and improvements anticipated in the pricing and administration of Government contracts as a result of the adoption a proposed Standard.

The purpose of the Staff Discussion Paper is to request your views on the Board's specific consideration of the treatment to be accorded capital asset gains or losses subsequent to a business combination involving a Government contractor(s). The Staff Discussion Paper has not been formally approved by the Board. Rather, it represents research accomplished to date by the staff in the respective subject areas.

Dated: October 29, 1993.

Allan V. Burman,

Administrator for Federal Procurement Policy and Chairman, Cost Accounting Standards Board.

[FR Doc. 93–27112 Filed 11–3–93; 8:45 am]

BILLING CODE 3110–01–M

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Open Committee Meeting

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on—

Thursday, Dec. 2, 1993
Thursday, Dec. 16, 1993

The meetings will start at 10:45 a.m. and will be held in room 5A06A, Office of Personnel Management Building, 1900 E Street, NW., Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chairman,

representatives from five labor unions holding exclusive bargaining rights for Federal blue-collar employees, and representatives from five Federal agencies. Entitlement to membership on the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

These scheduled meetings will start in open session with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chairman to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of the meeting.

Annually, the Committee publishes for the Office of Personnel Management, the President, and Congress a comprehensive report of pay issues discussed, concluded recommendations, and related activities. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chairman on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on these meetings may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, room 1340, 1900 E Street, NW., Washington, DC 20415 (202) 606–1500.

Dated: October 27, 1993.

Anthony F. Ingrassia,

Chairman, Federal Prevailing Rate Advisory Committee.

[FR Doc. 93–27044 Filed 11–3–93; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 33116; File No. SR–NASD–93–60]

Securities Exchange Act of 1934; Order of Summary Abrogation

October 29, 1993.

In the Matter of National Association of Securities Dealers, Inc.

Notice is hereby given that the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(3)(C) of the Securities Exchange Act of 1934 [1] ("Act"), is summarily abrogating a rule of the National Association of Securities Dealers, Inc. ("NASD").

On October 25, 1993, the NASD filed with the Commission a rule change ("Rule Change") changing the operational features of the SelectNet service, the NASD's screen-based communication service. The NASD designated the Rule Change to take effect upon filing with the Commission pursuant to section 19(b)(3)(A) of the Act [2] and, on October 25, 1993, the Commission issued for publication notice of the filing and immediate effectiveness of the Rule Change.[3] In its Notice, the Commission specifically noted that section 19(b)(3)(C) of the Act provides that, within 60 days of the filing of the Rule Change, the Commission may summarily abrogate the Rule Change if it appears that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.[4]

The Rule Change prohibits entry of orders in SelectNet priced away from the inside Nasdaq market. The NASD indicated that the Rule Change was necessary to inhibit the entry of a large number of erroneous orders priced away from the inside Nasdaq market that result in erroneous trades.

Subsequent to the NASD's submission of the Rule Change with the Commission, the Commission received comment expressing opposition to the proposed change to SelectNet and questioning whether the Rule Change is consistent with the Act. The Commission believes that the procedures provided by section 19(b)(2) will provide a more appropriate mechanism for determining whether the Rule Change is consistent with the provisions of the Act. Therefore, the Commission finds that in the interest of the public, for the protection of investors and otherwise in furtherance of the purposes of the Act, it should abrogate the Rule Change.

It is therefore ordered, pursuant to section 19(b)(3)(C) of the Act, that the Rule Change (File No. SR–NASD–93–60) is summarily abrogated as of this date, and that, if the NASD chooses to refile the Rule Change, it do so pursuant to section 19(b)(2) of the Act.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–27046 Filed 11–3–93; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(3)(C) (1988).

[2] 15 U.S.C. 78s(b)(3)(A).

[3] Securities Exchange Act Release No. 33101 (October 25, 1993) 58 FR ———— ("Notice").

[4] *Id.*

[Release No. 34–33111; File No. SR–NYSE–93–25]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to Proposed Rule Change Relating to Floor Conduct and Safety Guidelines

October 28, 1993.

I. Introduction

On May 19, 1993, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the Exchange's Floor Conduct and Safety Guidelines ("Guidelines").[3] On October 6, 1993, the NYSE submitted to the Commission Amendment No. 1 to the proposed rule change.[4]

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

[3] The Guidelines were originally adopted in 1977 to ensure that the behavior and practices of individuals on the floor of the Exchange contribute to the efficient, undisrupted conduct of business, and do not jeopardize the safety or welfare of others. *See* Securities Exchange Act Release No. 13893 (August 26, 1977), 42 FR 45402 (September 9, 1977) (notice of effectiveness of File No. SR–NYSE–77–23).

[4] *See* letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Diana Luka-Hopson, Branch Chief, Commission, dated October 4, 1993. Amendment No. 1 revised the proposal to state that during any proceeding initiated pursuant to NYSE Rule 476, the Exchange's rule governing formal disciplinary proceedings, all procedural rights afforded by the Rule would apply. In addition, Amendment No. 1 states that during a NYSE Rule 476 proceeding, an Exchange Hearing Panel may consider a fine previously imposed pursuant to the Guidelines when determining an appropriate penalty.

The proposed rule change was published for comment in Securities Exchange Act Release No. 32498 (June 23, 1993), 58 FR 34837 (June 29, 1993). No comments were received on the proposal. This order approves the proposed rule change, including Amendment No. 1 on an accelerated basis.

II. Description of the Proposal

The NYSE proposes to amend the General Conduct on Floor and on Other Premises Under Exchange Control ("General Conduct") section of its Guidelines. This section currently provides that engaging in activities involving practical jokes, roughhousing, the use of abusive or indecorous language, or the failure to cooperate with Exchange security personnel conveys a very unbusinesslike appearance and is strictly prohibited on the trading Floor and other premises under Exchange control. The NYSE proposes to amend this section to state that prohibited activities under this section include, but are not limited to, the conduct noted above and to add indecorous behavior to the list of prohibited activities within the Guidelines.

The Exchange also proposes to revise the penalties for violations of the General Conduct section. Currently, under the General Conduct section of the Guidelines, members of the Exchange are subject to a $250 fine for the first offense and a $500 fine for a second offense.[5] The NYSE proposes to amend the Guidelines to authorize two Floor Officials, at least one of whom must be a Floor Governor, to impose a fine under this section. Under the amended Guidelines, the Floor Officials would be able to impose a fine within a range of $250 to $1,000 against any member for an offense under the General Conduct section. Exchange Clerks would continue to be subject to a three-day I.D. card suspension for a first offense and a five-day I.D. card suspension for the second offense for violations of the General Conduct Section.[6] The Exchange believes that the revised fines will make penalties for violations of the General Conduct section more meaningful. The Exchange also believes that the requirement that two Floor Officials, at least one of whom is a Floor Governor, impose the fine will bring uniformity to the administration of this policy.

The NYSE proposes to amend the General Conduct section of the Guidelines to provide that, where any prohibited act under the General Conduct section constitutes a substantial violation of the Guidelines or where there are repeated instances of the prohibited acts, the Exchange may conduct an investigation with a view toward initiating a formal disciplinary proceeding against any member or clerk pursuant to NYSE Rule 476. The NYSE's proposal specifies that sexual harassment, conduct disruptive to trading, or conduct which could cause public embarrassment to the Exchange would constitute substantial violations of the General Conduct section. The Exchange argues that such act or acts may be found to be detrimental to the interest or welfare of the Exchange or to constitute conduct inconsistent with just and equitable principles of trade, which would require a full investigation to assess whether formal disciplinary action is warranted.

The amended Guidelines would specify that if a disciplinary proceeding pursuant to Rule 476 is initiated by the Exchange, all procedural rights contained in Rule 476 would apply.[7] Furthermore, the Guidelines would provide that, in any such proceeding, an Exchange Hearing Panel may, in determining an appropriate penalty against a respondent, consider any fine previously imposed for the same conduct involved in the proceeding before the Hearing Panel.[8]

The NYSE also proposes to amend its Procedures for Handling Violations of the Guidelines. The Procedures currently provide that action may be initiated under the Guidelines when a Floor Official observes a member or a Floor clerical employee of a member or member organization in violation of the Guidelines, or if a violation is brought to the attention of a Floor Official by an Exchange employee who is in a supervisory or managerial capacity. The NYSE proposes to amend the Procedures to allow a Floor Official to take action when he or she observes or receives information that a member or a Floor clerical employee of a member or member organization may be in violation of the Guidelines, and the Floor Official determines, after appropriate inquiry, that a violation has occurred.

The Exchange states that the proposed rule change supports the Guidelines' purpose of ensuring the safety and welfare of all individuals on the Exchange Floor by enhancing the Exchange's ability to respond swiftly and effectively to certain types of aberrant behavior on the Floor of the Exchange. The NYSE believes that the proposal is consistent with section 6(b)(5) of the Act, which provides, in pertinent part, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with the requirements of sections 6(b) (5), (6) and (7) of the Act.[9]

The Commission believes that the NYSE's proposal is a reasonable measure which should help to ensure the orderly operation of the Exchange floor. The proposal addresses important operational concerns by explicitly prohibiting indecorous behavior on the Exchange. In this regard, the proposed rule change is consistent with the current Guidelines which, among other things, prohibit activities involving practical jokes, roughhousing, abusive or indecorous language or the failure to cooperate with Exchange security personnel. The Commission believes that this proposed amendment to the Guidelines should contribute to the NYSE's efforts to ensure the efficient, undisrupted conduct of business on the Exchange and provide a trading floor environment free from conduct that could distract or interfere with market activity. As a result, the proposal should enhance the members' ability to engage in transactions in securities and, thereby, protect investors and the public interest.

The Commission believes that the proposed amendment provide appropriate penalties for violations of the General Conduct section of the Guidelines. Specifically, the proposed fines are reasonable in relation to the infractions in question because of the NYSE's interest in ensuring the safety of its Floor personnel and the undisrupted conduct of business on the Exchange.

[5] The current Guidelines also provide that clerks are subject to a three-day I.D. card suspension for the first offense and a five-day I.D. card suspension for a second offense.

[6] A member or clerk would be able to appeal any fine levied under this provision pursuant to the procedures outlined in the Floor Conduct and Safety Guidelines. Telephone conversation between Donald Siemer, Director, Market Surveillance, NYSE and Louis A. Randazzo, Attorney, Commission, on May 20, 1993.

[7] NYSE Rule 476 requires, among other things, written notice of the charges, a hearing before a Hearing Panel, a record of any hearing, and the right to appeal the determination of the Hearing Panel and/or the penalty imposed.

[8] *See* Amendment No. 1, *supra* note 4.

[9] 15 U.S.C. 78f (1988).

Moreover, the Commission believes it is appropriate to require two Floor Officials, at least one of whom must be a Floor Governor, to impose fines pursuant to the Guidelines. This requirement should help to insure that such fines are imposed in a fair, impartial and consistent manner. In addition, because the proposal defines the scope of prohibited conduct, provides notice to members, provides a right of appeal, and is tailored to serve a legitimate Exchange regulatory interest, the proposal provides fair and reasonable procedures for the regulation of trading Floor conduct.

The Commission also believes that it is appropriate for the Exchange to retain discretion to pursue formal disciplinary proceedings, in accordance with NYSE Rule 476, for substantial or repeated violations of the General Conduct section of the Guidelines. This will enable the Exchange to seek stiffer sanctions where warranted by the scope and nature of the violative conduct. The Commission, however, emphasizes that when an Exchange investigation results in a full disciplinary proceeding pursuant to Rule 476, all procedural rights provided in the Rule would apply.[10] The Commission, therefore, expects that the Exchange will not use the imposition of a summary fine under the Guidelines as a determination of wrongdoing in a proceeding pursuant to Rule 476. In addition, upon levying a sanction in a determination of wrongdoing under a Rule 476 proceeding, the Commission expects the Exchange to refund any fine previously imposed under the Guidelines for the same conduct involved in the Rule 476 proceeding.[11]

Finally, the Commission believes that the amendments to the Guideline's Procedures should serve to assist the Exchange in its ability to initiate action pursuant to the Guidelines and, thereby, enforce compliance with its requirements. In particular, the proposal clarifies that action may be taken when a Floor Official personally observes or receives information and determines, after appropriate inquiry that a violation has occurred. This proposal should contribute to the NYSE's efforts to monitor compliance with the Guidelines, as well as contribute to the efficient, undisrupted conduct of business on the Exchange.

The Commission finds good cause for accelerated approval of Amendment No. 1 to the proposed rule change prior to the thirtieth day after publication of notice of filing thereof. The NYSE's original proposal was published in the Federal Register for the full statutory period and no comments were received.[12] Amendment No. 1 modifies the proposal to make certain technical and clarifying adjustments to the proposed rule change but leaves its overall structure unchanged.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–93–25 and should be submitted by November 26, 1993.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[13] that the proposed rule change, including Amendment No. 1 on an accelerated basis, (SR–NYSE–93–25) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–27129 Filed 11–3–93; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19822; 812–8492]

Fidelity Systematic Investment Plans, et al.; Application

October 29, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Fidelity Systematic Investment Plans ("Fidelity Plans UIT"), Destiny Plans IIA (formerly named Security Action Plans and referred to herein as the "Security Plans UIT"), and Fidelity Distributors Corporation ("Fidelity Distributors").

RELEVANT ACT SECTIONS: Order requested under section 17(b) of the Act that would grant an exemption from section 17(a).

SUMMARY OF APPLICATION: Applicants seek an order to combine the asserts of two periodic payment plan unit investment trusts ("UITs"), the Security Plans UIT and the Destiny Plans II, a series of the Fidelity Plans UIT. Both of the UITs are sponsored by Fidelity Distributors and invest in the same open-end investment company.

FILING DATE: The application was filed on July 9, 1993 and amended on September 28, 1993.

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 23, 1993, 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 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, 82 Devonshire Street, Boston, MA 02109.

FOR FURTHER INFORMATION CONTACT: Felice R. Foundos, Staff Attorney, at (202) 272–2190, or Robert A. Robertson, Branch Chief, at (202) 272–3018 (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. Fidelity Plans UIT is a registered unit investment trust created under a Custodian Agreement dated July 15, 1969 (the "Destiny Custodian

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[10] *See* Amendment No. 1, *supra* note 4. *See also* note 7 *supra*, and accompanying text.

[11] Rule 476 provides that in any proceeding under the Rule, any sanction imposed may be remitted or reduced by the Hearing Panel on such terms and conditions as it deems fair and equitable.

[12] *See* Securities Exchange Act Release No. 32498 (June 23, 1993), 58 FR 34837 (June 29, 1993).

[13] 15 U.S.C. 78s(b)(2) (1988).

[14] 17 CFR 200.30–3(a)(12) (1991).

Agreement"). It issues periodic payment plans in two series: Destiny Plans I and Destiny Plans II (the "Destiny II Series"). Destiny II Series invests in shares of Destiny II, a series of Fidelity Destiny Portfolios, an open-end investment company. Fidelity Distributors, a registered broker-dealer, is the sponsor, principal underwriter, and administrator for both series of the Fidelity Plans UIT. Fidelity Distributors is an affiliate of Fidelity Management & Research Company, the investment manager of Destiny II. State Street Bank and Trust Company is the custodian for Fidelity Plans UIT, and Boston Financial Data Systems, Inc. is its transfer agent.

2. Security Plans UIT is a registered unit investment trust established under a Plan Custodian and Administration Agreement dated November 6, 1981 (the "Security Custodian Agreement"). It also issues periodic payment plans. Prior to March 26, 1993, the Security Plan UIT invested in shares of Security Action Fund, an open-end investment company.

3. At a special shareholders meeting on March 15, 1993, shareholders of Security Action Fund approved a plan of reorganization. The reorganization was effected on March 26, 1993. Under the reorganization, the assets of Security Action Fund were exchanged at net asset value for shares of Destiny II. All shares received by Security Action Fund were distributed to Bank IV Topeka, N.A., as custodian for Security Plans UIT. The reorganization did not affect the terms of the outstanding Security plans. Existing planholders would continue making monthly payments under the terms of their outstanding Security plans; however, no new Security plans would be established. Further, pursuant to an amendment to the Security Custodian Agreement dated March 26, 1993, Fidelity Distributors became the sponsor, principal underwriter and administrator of the Security Plans UIT, Boston Financial Data Systems became its transfer agent and State Street Bank succeeded Bank IV as the custodian.

4. As result of the reorganization, the Security Plans UIT and the Destiny II Series have the same sponsor, principal underwriter, custodian, and transfer agent, and invest in shares of the same investment portfolio, Destiny II. In addition, State Street Bank holds Destiny II shares for Security Plans UIT and the Destiny II Series under custodian agreements that are identical in all material respects. Accordingly, applicants propose to combine the assets of the Security Plans UIT with the assets of Destiny II Series into one asset pool to eliminate duplicative administrative functions, reduce costs, and simplify the custodial arrangements for the benefit of planholders.

5. To effect the proposed transaction, applicants intend to amend the Destiny Custodian Agreement to incorporate any provisions necessary to cover the outstanding Security plans and to combine the custodial pool maintained under the Security Custodian Agreement with the custodial pool maintained for the Destiny II Series under the Destiny Custodian Agreement. Other than combining the assets held under the custodian agreements, all contractual rights, expenses and other aspects of the outstanding Security plans and the Destiny II plans will remain the same as before the proposed transaction, except certain annual service fees may be reduced. Further, all expenses of the proposed transaction will be borne by Fidelity Distributors and/or an affiliated person of Fidelity Distributors.

6. Applicants represent that the proposed transaction will be effected without a planholder vote in accordance with state law and the custodian agreements. Applicants will inform planholders of the proposed transaction promptly after it has been effected.

Legal Analysis

1. Section 17(a) of the Act generally prohibits an affiliated person of a register investment company, or an affiliate thereof, from selling to or purchasing from such investment company any security or other property. Because the Security Plans UIT and the Destiny II Series share a common sponsor and could be deemed to be under common control, they may be affiliates of each other. Accordingly, the pooling of the custodial account assets may be viewed as a purchase or sale that would be prohibited by section 17(a). While applicants do not concede that section 17(a) applies to the proposed transaction, to eliminate any doubt applicants request an exemption under section 17(b) from section 17(a) to permit the proposed transaction.

2. Section 17(b) of the Act provides that a person may apply for an order exempting a transaction from section 17(a) and the Commission shall issue such order if evidence establishes that:

(a) The terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching;

(b) The proposed transaction is consistent with the policy of each registered investment company involved; and

(c) The proposed transaction is consistent with the general purposes of the Act.

3. In determining whether the transaction is reasonable and fair, applicants believe that the proposed transaction is analogous to a merger of investment companies. Rule 17a–8 under the Act exempts mergers of certain affiliated investment companies from section 17(a) if the board of directors determine that the merger is in the best interests of the investment company and that the interests of the shareholders will not be diluted. While the UITs do not have directors and the proposed transaction does not come within the parameters of rule 17a–8, applicants believe that the rule 17a–8 criteria may be employed to judge the reasonableness and fairness of the proposed transaction.

4. Applicants believe that the investment objective of Security Plans UIT and Destiny II Series are compatible because both serve as vehicles for the accumulation of Destiny II shares and will continue to accumulate such shares after the proposed transaction. The only change will be that assets held under the custodian agreements will be held in a single pool rather than in two separate pools.

5. Applicants also represent that no dilution of or increase in plan values will occur as a result of the proposed transaction. Immediately after the transaction is consummated, a Security planholder's interest in the Security Plans UIT will have been replaced with an interest of equal value in the Fidelity Plans UIT and will continue to represent an interest in the same number of underlying shares. The proposed transaction will not result in any change in charges, costs, fees or expense borne by holders of the Security plans or Destiny II plans, except a service fee may be reduced. No charge will be assessed on the plans as a result of the proposed transaction. Fidelity Distributors has received an opinion from tax counsel representing that no federal income tax liability will be imposed on the planholders of the UITs in connection with the proposed transaction. Fidelity Distributors or an affiliated person of Fidelity Distributors will bear all expenses incurred in connection with the proposed transaction, including legal and other fees and expenses. In light of the above, applicants believe that the terms of the reorganization and the consideration to be paid or received are fair and reasonable and do not involve overreaching by any person.

6. Applicants represent that the proposed transaction will not adversely

affect the interests of planholders because the transaction will not change the Security plans or the Destiny II plans in any material respect. From the perspective of planholders of Security Plans UIT, the only significant change was the replacement of Security Action Fund with Destiny II as the underlying investment for their plans. This charge was approved by the planholders. Accordingly, applicants believe that the proposed reorganization is consistent with the policies of each of the UITs, and is consistent with the general purposes of the Act.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–27130 Filed 11–3–93; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 19824; 812–8420]

M.S.D. & T. Funds, Inc., et al.; Application

October 29, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("Act").

APPLICANTS: M.S.D. & T. Funds, Inc. ("MSD&T"), Mercantile-Safe Deposit & Trust Fund ("Mercantile"), and The Winsbury Company Limited Partnership ("Winsbury").

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) from sections 18(f), 18(g), and 18(i).

SUMMARY OF APPLICATION: Applicants seek a conditional order under section 6(c) of the Act to permit MSD&T and other investment companies for which Mercantile acts in the future as investment adviser, sub-adviser, administrator or, if and when permitted under applicable law, as distributor (collectively with MSD&T, the "Funds") to offer an unlimited number of classes of new shares representing interests in the same portfolio of securities.

FILING DATE: The application was filed on June 3, 1993, and amended on August 31, 1993 and October 26, 1993.

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 23, 1993, 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 who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants: MSD&T and Mercantile, Two Hopkins Plaza, Baltimore, Maryland 21201, Winsbury, 1900 East Dublin-Granville Road, Columbus, Ohio 43229.

FOR FURTHER INFORMATION CONTACT: Courtney S. Thornton, Senior Attorney, at (202) 272–5287, or C. David Messman, Branch Chief, at (202) 272–3018 (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. MSD&T is a Maryland corporation registered under the Act as an open-end management investment company. Currently, MSD&T offers eight separate investment portfolios (the "Portfolios"). These Portfolios are the Prime Money Market Fund, Government Money Market Fund, Tax-Exempt Money Market Fund, Tax-Exempt Money Market Fund (Trust), Value Equity Fund, Intermediate Fixed Income Fund, Maryland Tax-Exempt Bond Fund, and International Equity Fund.

2. Mercantile serves as investment adviser and administrator to each of the Portfolios. Winsbury is MSD&T's distributor.

3. Under the current distribution system, shares of each of the Portfolios are offered by Winsbury primarily to Mercantile, its affiliates and correspondent banks, and to the public through selected broker-dealers and other financial intermediaries at their net asset value per share. No sales load is charged on the purchase of shares of the Portfolios, the reinvestment of dividends or other distributions paid by the Portfolios, share exchanges, or other kinds of transactions. No redemption charge or contingent deferred sales load is charged in connection with the shares of any Portfolio, and shares of the Portfolios do not bear distribution expenses pursuant to rule 12b–1 under the Act.

4. MSD&T proposes to offer an unlimited number of classes of shares in the Portfolios. These classes may be offered (a) in connection with a plan or plans adopted pursuant to rule 12b–1 under the Act (the "Distribution and Service Plans"), (b) in connection with non-rule 12b–1 shareholder administrative service plans (the "Administrative Plans"), (c) in connection with certain tax-exempt employee benefit and retirement plans ("Retirement Plans"), and/or (d) in connection with the allocation of certain expenses that are directly attributable only to certain of such new or existing classes ("Class Expenses").

5. Except for its class designation, the allocation of certain expenses, voting rights and differences in exchange privileges and sales loads, each new class of shares would be identical in all respects and would be subject to the same investment objective, policies, and limitations that apply to the existing class of shares or other new classes of shares in the same Portfolio. The net asset value per share in each Portfolio would be calculated and would be determined in the same manner and on the same days and at the same times, regardless of class. The net investment income and capital gains, if any, of each Portfolio would be declared and paid at the same times to all shareholders of the Portfolio, and expenses, other than Plan Payments and Class Expenses described below, would be borne on a *pro rata* basis by each class on the basis of the relative net asset value of the respective class. While the manner of determining net asset value of classes within a Portfolio would be identical, the net asset value of the classes within a Portfolio may differ because of different Plan Payments, if any, and Class Expenses, if any, charged to a particular class. The Fund involved would disclose such possible difference in net asset value in the Portfolio's prospectus, where applicable.

6. With respect to each new class, the Fund could enter into a Distribution and Service Plan agreement (unless the new class of shares is being offered in connection with retirement plans) and/or an Administrative Plan agreement (collectively, "Plan Agreements") with groups, organizations or institutions ("Organizations") concerning the provision of certain services to the clients, members or customers or such Organizations who from time to time beneficially own shares of a particular class. The services to be provided by Organizations to their class shareholders under a Distribution and Service Plan may include: (i) Preparing, printing and distributing prospectuses and

shareholder reports to current shareholders; (ii) complying with federal and state securities laws pertaining to the sale of shares; (iii) aggregating and processing purchase, exchange and redemption requests for shares from clients and placing net purchase, exchange and redemption orders with the distributor; (iv) processing dividend payments from a Fund on behalf of clients; (v) providing information periodically to clients showing their positions in shares; (vi) providing and maintaining elective services such as check writing, wire transfer and automatic investment and withdrawal services; (vii) acting as sole shareholder of record and nominee for clients; (viii) maintaining account records for clients; (ix) issuing confirmations of transactions; (x) providing subaccounting with respect to shares beneficially owned by clients or providing to a Fund the information necessary for subaccounting; (xi) if required by law, forwarding shareholder communications from a Fund (such as proxies, shareholder reports, annual and semiannual financial statements and dividend, distribution and tax notices) to clients; (xii) providing services primarily intended to result in the sale of shares; or (xiii) providing such other services analogous to the foregoing as may be reasonably requested from time to time by a Fund. Because many of the services contemplated under the Distribution and Service Plan would be distribution related, such Plan would be adopted pursuant to rule 12b–1 under the Act. Under a Distribution and Service Plan, a Fund would reimburse its distributor for (i) out-of-pocket expenses incurred in connection with distributing shares, and (ii) payments by its distributor to one or more securities dealers, financial institutions or other industry professionals that are dealers or shareholders of record or that otherwise have a servicing relationship with the beneficial owners of shares for distribution assistance and/or shareholder administrative support services provided with respect to the shares.

7. The services to be provided by Organizations to their class shareholders under an Administrative Plan could include: (i) Preparing, printing and distributing prospectuses and shareholder reports to current shareholders; (ii) aggregating and processing purchase, exchange and redemption requests for shares from clients and placing net purchase, exchange and redemption orders with the distributor; (iii) processing dividend payments from a Fund on behalf of clients; (iv) providing information periodically to clients showing their positions in shares; (v) providing and maintaining elective services such as check writing, wire transfer and automatic investment and withdrawal services; (vi) acting as sole shareholder of record and nominee for clients; (vii) maintaining account records for clients; (viii) issuing confirmations of transactions; (ix) providing subaccounting with respect to shares beneficially owned by clients or providing to a Fund the information necessary for subaccounting; (x) if required by law, forwarding shareholder communications from a Fund (such as proxies, shareholder reports, annual and semi-annual financial statements and dividend, distribution, and tax notices) to clients; or (xi) providing such services analogous to the foregoing as a Fund may reasonably request. Under an Administrative Plan, fees would be paid by a Fund to one or more securities dealers, financial institutions or other industry professionals that are dealers or shareholders of record or that otherwise have a servicing relationship with the beneficial owners of shares for administrative services provided with respect to the shares.

8. The provision of services under the Plans would augment or replace those provided to MSD&T by its investment adviser, administrator, fund accountant, transfer agent and distributor. The services provided by these service contractors generally relate either to the internal operations of MSD&T or to MSD&T's relationship with the shareholders of record. The support services that would be provided pursuant to the Plans, however, would relate to the indirect relationship between MSD&T and the beneficial owners of shares. In effect, applicants propose to permit Organizations to select those services they wish to provide to their Class Shareholders under one or other Plan Agreements, with the precise services to be rendered to be tailored to the needs of their Class Shareholders and specified in the relevant Plan Agreements. Any services that would be duplicative of those presently provided by the Fund's service contractors would replace those services; the service contractors would not provide such services to the affected new class, and the service contractors would not be paid fees with respect to such services. Further, there would be no duplication of services or fees charged to a new class subject to the different Plans. Applicants believe that this approach would permit a Fund to package shares and shareholder services and offer them to and through Organizations in a manner best designed to meet the investment needs of Class Shareholders and the service abilities of Organizations.

9. With respect to each new class, a Fund would pay an Organization either directly or indirectly through its distributor pursuant to a Distribution and Service Plan agreement for its services and assistance in accordance with the terms of its particular Plan Agreements, and the expense of such payments would be borne entirely by the beneficial owners of the new class of the Portfolio to which each Plan Agreement relates. Plan Payments paid to an Organization pursuant to a Distribution and Service Plan agreement currently are not expected to exceed .75% per annum of the average daily net asset value of the shares of the new class subject to that particular Distribution and Service Plan agreement. Similarly, Plan Payments paid to an Organization pursuant to an Administrative Plan agreement currently are not expected to exceed .25% per annum of the average daily net asset value of the shares of the new class subject to that particular Administrative Plan agreement. In all cases, the Funds shall comply with Article III, section 26 of the Rules of Fair Practice of the National Association of Securities Dealers, Inc. (as amended from time to time), which relates to the maximum amount of asset-based sales charges that may be imposed by an investment company.

10. The shares in different classes within a Portfolio might also have different exchange privileges. Any exchange privilege connected to any of the Funds' shares will be limited to exchanges among Portfolios that are part of the same "group of investment companies," as defined in rule 11a–3 under the Act, and there will be no exchange privileges among classes of shares in the same Portfolio of a Fund. All share exchanges will be conducted in accordance with the provisions of rule 11a–3 of the Act.

11. Expenses of a Fund that could not be attributed directly to any one Portfolio ("Fund Expenses"), such as directors' fee and expenses, audit and legal fees, and SEC and state blue sky registration fees, would be allocated to each Portfolio based on the relative net assets of such Portfolio. All shares representing interests in the same Portfolio would bear such Portfolio's portion of Fund Expenses, allocated to each of the Portfolio's classes based on the relative net asset value of the Portfolio's respective classes. Certain expenses, such as advisory fees, accounting fees, custodian fees, and fees

related to preparation of separate documents of the Portfolio, may be attributable to a Portfolio but not to one particular class of that Portfolio ("Portfolio Expenses"). Class Expenses, which would include transfer or sub-transfer agent fees identified by the transfer agent as being attributable to a specific class of shares, would be allocated equally to each outstanding share representing an interest in the class.

12. The gross income of each Portfolio will be allocated among the Portfolio's classes, *pro rata*, based on the relative net asset value of the Portfolio's respective classes. Because of the Plan Payments and Class Expenses that may be borne by each class of shares, the net income of (and dividends payable to) each class may be different from the net income of the other classes of shares of the Portfolio. In addition, to the extent aggregate Class Expenses are higher with respect to one class of a Portfolio, the net income and dividends payable with regard to that class would be lower than the net income and dividends payable with regard to the other classes of the Portfolio's shares. Dividends paid to shares in each class of a Portfolio, however, would be declared and paid on the same days and at the same times, and, except as noted with respect to the expenses of Plan Payments and Class Expenses, would be determined in the same manner and paid in the same amounts.

13. The investment adviser to a Portfolio may choose to reimburse or waive Class Expenses on certain classes of the Portfolio on a voluntary, temporary basis. The amount of Class Expenses waived or reimbursed by the investment adviser may vary from class to class. Class Expenses are by their nature specific to a given class and obviously expected to vary from one class to another. Applicants thus believes that it is acceptable and consistent with shareholder expectations to reimburse or waive Class Expenses at different levels for different classes of the same Portfolio.

14. In addition, the investment adviser to a Portfolio may waive or reimburse Fund Expenses and/or Portfolio Expenses (with or without a waiver or reimbursement of Class Expenses), but only if the same proportionate amount of Fund Expenses and/or Portfolio Expenses are waived or reimbursed for each class of the Portfolio. Thus, any Fund Expenses that are waived or reimbursed would be credited to each class of a Portfolio according to the relative net assets of the classes. Fund Expenses and Portfolio Expenses apply equally to all classes of a given Portfolio. Accordingly, it may not be appropriate to waive or reimburse Fund Expenses or Portfolio Expenses at different levels for different classes of the same Portfolio.

Applicants' Legal Analysis

1. Applicants request an exemptive order to the extent that the proposed issuance and sale of shares representing interests in a Fund's Portfolios might be deemed: (a) To result in a "senior security" within the meaning of section 18(g) of the Act, and thus to be prohibited by section 18(f)(1) of the Act; and (b) to violate the equal voting provisions of section 18(i) of the Act.

2. Applicants believe that the abuses that section 18 of the Act is intended to redress are not present in the proposed arrangements. The proposed arrangements would not involve borrowings and would not affect the Funds' existing assets or reserves. In addition, the proposed arrangements will not increase the speculative character of the shares in a Portfolio, since all shares will participate *pro rata* in all of the Portfolio's income and all of the Portfolio's expenses (with the exception of the proposed Plan Payments and Class Expenses). Under the proposed arrangement, mutuality of risk will be preserved with respect to all of the shares in a Portfolio. Further, since all of the shares in a Portfolio will be redeemable at all times, no class of shares will have any preference or priority over another class of shares in the Portfolio in the usual sense. Because the similarities (and, with respect to Plan Payments, Class Expenses and associated voting rights, dissimilarities) of the shares will be fully disclosed in the Portfolio's prospectus, investors will not be given misleading impressions as to the safety from risk of the shares and the nature of the shares will not be rendered speculative.

3. Under the proposed arrangement, the Funds could, among other things, compensate financial intermediaries for providing support services that are tailored to the needs of their clients. Clients who enjoy such services would, in turn, bear the associated service expenses. Such clients would enjoy not only the benefits of such services, but also the additional investment safety and stability resulting from their ability to invest in established, sizeable investment Portfolios. Moreover, since holders of additional classes of shares may invest in existing Portfolios, all shareholders of the applicable Portfolios would benefit from the economies of scale that result where a portion of the fixed costs normally associated with open-end management investment companies would, potentially, be spread over a greater number of shares than they would be otherwise.

4. Applicants believe that the proposed allocation of expenses and voting rights relating to the Plans in the manner described is equitable and would not discriminate against any group of shareholders. Investors purchasing shares offered in connection with a Plan and/or bearing particular Class Expenses would bear the costs associated with such services (and would also enjoy exclusive shareholder voting rights with respect to matters affecting the applicable Plan). Investors that do not receive the services provided by Organizations under a Plan and/or the benefits of particular Class Expenses would purchase shares not sold in connection with a Plan and/or not bearing the cost of such expenses. Moreover, because, with respect to any Portfolio, the rights and privileges of all classes in the Portfolio would be substantially identical, the possibility that their interests would ever conflict would be remote.

Applicants' Conditions

Applicants agree that any order granting the requested relief shall be subject to the following conditions:

1. Each class of shares will represent interests in the same Portfolio of investments of a Fund, and be identical in all respects, except as set forth below. The only differences between the classes of shares of the same Portfolio will relate solely to: (a) The impact of (i) expenses assessed to a class pursuant to a Plan, (ii) other Class Expenses, which are limited to (A) transfer or sub-transfer agent fees identified by the transfer agent as being attributable to a specific class of shares; (B) printing and postage expenses related to preparing and distributing materials such as shareholder reports, prospectuses and proxies to current shareholders of a particular class; (C) blue sky registration fees incurred by a class of shares; (D) SEC registration fees incurred by a class of shares; (E) the expense of administrative personnel and services as required to support the shareholders of a specific class; (F) litigation or other legal expenses relating solely to one class of shares; and (G) directors' fees incurred as a result of issues relating to one class of shares; and (iii) any other incremental expenses subsequently identified that should be properly allocated to one class and that are approved by the Commission pursuant to an amended order; (b) the fact that the classes will vote separately with respect to a Portfolio's Plans; (c) the different exchange privileges of the

classes of shares; and (d) the designation of each class of shares of a Portfolio.

2. The directors of a Fund, including a majority of the independent directors, will approve the multi-class system. The minutes of the meetings of the directors of the Fund regarding the deliberations of the directors with respect to the approvals necessary to implement the multi-class system will reflect in detail the reasons for the directors' determination that the proposed multi-class system is in the best interests of both the Fund involved and its shareholders.

3. On an ongoing basis, the directors of a Fund, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor each Portfolio having a multi-class system for the existence of any material conflicts among the interests of the various classes of shares. The directors, including a majority of the independent directors, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. Mercantile and, if other than Mercantile, a Portfolio's investment adviser and distributor will be responsible for reporting any potential or existing conflicts to the directors. If a conflict arises, Mercantile and, if other than Mercantile, the Portfolio's investment adviser and distributor at their own cost will remedy such conflict up to and including establishing a new registered management investment company.[1]

4. The initial determination of the Class Expenses that will be allocated to a particular class and any subsequent changes thereto will be reviewed and approved by a vote of the board of directors of a Fund, including a majority of the directors who are not interested persons of the Fund. Any person authorized to direct the allocation and disposition of monies paid or payable by a Fund to meet Class Expenses shall provide to the board of directors, and the directors shall review, at least quarterly, a written report of the amounts so expended and the purposes for which such expenditures were made.

5. Any Administrative Plan will be adopted and operated in accordance with the procedures set forth in rule 12b–1(b) through (f) as if the expenditures made thereunder were subject to rule 12b–1, except that shareholders will not enjoy the voting rights specified in rule 12b–1.

6. The directors of a Fund will receive quarterly and annual statements concerning distribution and shareholder servicing expenditures complying with paragraph (b)(3)(ii) of rule 12b–1, as it may be amended from time to time. In the statements, only expenditures properly attributable to the sale or servicing of a particular class of shares will be used to justify any distribution or servicing fee charged to that class. Expenditures not related to the sale or servicing of a particular class will not be presented to the directors to justify any fee attributable to that class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the independent directors in the exercise of their fiduciary duties.

7. Dividends paid by a Portfolio with respect to each class of its shares, to the extent any dividends are paid, will be calculated in the same manner, at the same time, on the same day, and will be in the same amount, except that Plan Payments relating to each respective class of shares and the Class Expenses relating to each class of shares will be borne exclusively by that class.

8. The methodology and procedures for calculating the net asset value and dividends and distributions of the various classes and the proper allocation of expenses among the various classes has been reviewed by an expert ("Expert") who has rendered a report to the applicants, which has been provided to the staff of the Commission, that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. On an ongoing basis, the Expert, or an appropriate substitute Expert, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to the Fund involved that the calculations and allocations are being made properly. The reports of the Expert shall be filed as part of the periodic reports filed with the Commission pursuant to sections 30(a) and 30(b)(1) of the Act. The work papers of the Expert with respect to such reports, following request by the Fund involved (which the Fund agrees to provide), will be available for inspection by the Commission staff upon written request to the Fund for such work papers by a senior member of the Division of Investment Management, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director, and any Regional Administrators or Associate and Assistant Administrators. The initial report of the Expert is a "report on policies and procedures placed in operation" and the ongoing reports will be "reports on policies and procedures placed in operation and tests of operating effectiveness" as defined and described in Statement of Auditing Standards No. 70 of the American Institute of Certified Public Accountants ("AICPA"), as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

9. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends and distributions of the various classes of shares and the proper allocation of expenses among the classes of shares and this representation has been concurred with by the Expert in the initial report referred to in condition 8 above and will be concurred with by the Expert, or an appropriate substitute Expert, on an ongoing basis at least annually in the ongoing reports referred to in condition 8 above. Applicants will take immediate corrective measures if this representation is not concurred in by the Expert or appropriate substitute Expert.

10. The prospectus of each Portfolio having a multi-class system will contain a statement to the effect that a salesperson and any other person entitled to receive compensation for selling or servicing Portfolio shares may receive different compensation with respect to one particular class of shares over another in the same Portfolio.

11. The distributor for any Fund with a multi-class system will adopt compliance standards as to when each class of shares may appropriately be sold to particular investors. Applicants will require all persons selling shares of a Portfolio having a multi-class system to agree to conform to such standards.

12. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the directors with respect to the multi-class system will be set forth in guidelines which will be furnished to the directors of a Fund having a multi-class system.

13. Each Portfolio having a multi-class system will disclose the respective expenses, performance data, distribution arrangements, services, fees, sales loads, deferred sales loads, and exchange privileges applicable to each class of shares in a Portfolio in every prospectus relating to such Portfolio, regardless of whether all classes of shares are offered through

[1] If a Portfolio's adviser is a national bank, the obligations of such adviser to take such remedial action may be limited by applicable law, such as the Glass-Steagall Act, which has been interpreted to prohibit banks from acting as a sponsor or distributor of an open-end investment company. If the obligations of a Portfolio's adviser are so limited, the distributor will assume the responsibility for complying with this condition.

each prospectus. Any Fund with a multi-class system will disclose the respective expenses and performance data applicable to all classes in a Portfolio of shares in every shareholder report relating to such Portfolio. The shareholder reports will contain, in the statement of assets and liabilities and statement of operations, information related to the Portfolio as a whole generally and not on a per class basis. Each Portfolio's per share data, however, will be prepared on a per class basis with respect to all classes of shares of such Portfolio. To the extend any advertisement or sales literature describes the expenses or performance data applicable to any class of shares, it will also disclose the respective expenses and/or performance data applicable to all classes of shares. The information provided by applicants for publication in any newspaper or similar listing of any Portfolio's net asset value and public offering price will present each class of shares separately.

14. Applicants acknowledge that the grant of the exemptive order requested by the application will not imply Commission approval, authorization or acquiescence in any particular level of payments that the Portfolios may make pursuant to a Plan in reliance on the exemptive order.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–27131 Filed 11–3–93; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 19823; 812–8372]

PMC Capital, Inc.; Notice of Application

October 29, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: PMC Capital, Inc. ("PMC"); PMC Advisers, Inc. ("Adviser"); PMC Commercial Trust ("REIT"); Andrew S. Rosemore and Lance B. Rosemore (the "individual applicants").

RELEVANT ACT SECTIONS: Order requested pursuant to section 6(c) to grant an exemption from section 12(d)(3) and pursuant to section 17(d) and rule 17d–1 to permit applicants to engage in affiliated transactions.

SUMMARY OF APPLICATION: Applicants seek an order to permit PMC to own a registered investment adviser, Adviser, and to allow Adviser to provide advisory services to REIT, a real estate investment trust organized by certain officers and directors of PMC.

FILING DATE: The application was filed on April 26, 1993, and amendments thereto were filed on July 22, September 22, and October 28, 1993.

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 22, 1993, 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 who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicants, 17290 Preston Road, Dallas, Texas 75252.

FOR FURTHER INFORMATION CONTACT: Joseph G. Mari, Senior Special Counsel, (202) 272–3030, or Barry D. Miller, Senior Special Counsel, (202) 272–3018 (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. PMC, a Florida corporation, is a closed-end, diversified management investment company, registered under the Act. Since its organization, it has been managed by its officers and directors, rather than by an external advisory organization pursuant to contract. PMC has three subsidiaries that are licensed by the Small Business Administration ("SBA") and are registered under the Act as closed-end, diversified management investment companies (the "SBA subsidiaries"). The SBA subsidiaries, respectively, obtain direct loans, or guarantees of borrowings, from the SBA for investment; make loans solely to qualifying small businesses in conjunction with SBA guarantee programs; and obtain funding from SBA not only from loans but from the sale of nonvoting preferred stock to SBA.

2. Adviser is a Texas corporation and a wholly-owned subsidiary of PMC. Applicants propose that Adviser will register as an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act") and enter into an investment management agreement with REIT to provide investment advisory services to REIT. The individual applicants propose to organize REIT under the Texas Real Estate Investment Trust Act to engage in the business of originating loans.

3. Andrew S. Rosemore is chief operating officer, executive vice president, and a director and shareholder of PMC; executive vice president, chief operating officer, and a director of Adviser; and executive vice president, treasurer, a trust manager, and interest holder of REIT. Lance B. Rosemore is president, chief executive officer, secretary, and a director and shareholder of PMC; president, chief executive officer, secretary and a director of Adviser; and president, chief executive officer, secretary, and a trust manager and interest holder of REIT.

4. PMC has been unable to satisfy the demand for loans from its customers and potential customers because (a) many of its customers have grown to exceed the limitations applicable to the SBA program; (b) PMC generates significant interest from potential new borrowers who are interested in loans of a size or type that do not meet the SBA criteria; (c) PMC has made loans or loan commitments to the full extent of its available capital; and (d) leverage restrictions applicable to PMC preclude it from borrowing enough additional capital to satisfy loan demand. As a result, PMC and its shareholders have lost potential revenue generating opportunities.

5. PMC's management discussed with several investment bankers the possibility of conducting a secondary equity offering by PMC to raise capital to fund loan origination opportunities currently being declined by PMC. The investment bankers expressed the view that a secondary equity offering of sufficient size to fund the level of loan opportunities available to PMC is not in the best interest of the existing shareholders because the time it would take to invest fully the funds raised in an offering will cause significant dilution in earnings and lower dividend payments to existing shareholders. PMC's management concluded that a potential equity offering by PMC resulting in a reduction of earnings and dividends would cause unfavorable publicity, dissatisfaction of existing shareholders, and stock sales by dissatisfied shareholders resulting in decline of stock prices. PMC's management also determined that

because the Act restricts PMC's ability to incur debt, PMC cannot borrow enough capital to meet loan demand.

6. PMC's management determined that the staff and facilities of PMC would be capable of handling a larger volume of loan transactions without incurring a material amount of additional overhead expenses. PMC's board of directors concluded that the limitations on raising capital and more fully utilizing PMC's staff and facilities can best be overcome by the formation of REIT to provide a source of capital to originate loans to borrowers who currently are being declined by PMC because it has insufficient capital to make such loans. Management further proposed the formation of Adviser as a wholly-owned subsidiary of PMC to serve as investment adviser to REIT (the "REIT proposal"). Consistent with its normal shareholder communications practices, PMC included the proposal to create Adviser in the annual proxy statement, advising its shareholders of the proposal to create Adviser. PMC's shareholders specifically approved the organization of Adviser as an investment adviser to REIT at their annual meeting on June 18, 1993.

7. PMC's board of directors determined to organize Adviser, rather than to provide investment adviser to REIT directly, to maintain PMC's tax status as a regulated investment company under the Internal Revenue Code ("Code"). Section 851(b)(2) of the Code effectively limits the income that may be generated through an advisory business conducted directly by a regulated investment company. That section requires that 90% of the income of an investment company must be derived from certain sources, and although income from investment adviser services will not qualify as one of those sources, dividend income will. The net income of Adviser, if any, will be paid to PMC periodically in the form of dividends. PMC's management and board of directors have determined that it will be inappropriate for PMC to serve as investment adviser to REIT directly because of the potential for transgressing the limitations set forth in section 851(b)(2) of the Code.

8. Interests in REIT will be offered through a public offering of securities to be registered under the Securities Act of 1933. The individual applicants who initially formed and organized REIT will be the sole shareholders of REIT prior to the contemplated public offering. In the initial organization of REIT, the individual applicants each have purchased 100 shares of REIT at the proposed public offering price per share less underwriting discounts and commissions. REIT will offer 200,000 shares directly to its trust managers and officers as well as to certain directors, officers and employees of PMC and Adviser, at a price equal to the price of the shares offered to the public less underwriting discounts and commissions.

9. The individual applicants and Susan R. Friedman will serve as trust managers and officers of REIT. Susan R. Friedman is the sister of the individual applicants and also serves as executive vice president of PMC and of Adviser. The remaining four trust managers for REIT will be four persons who are not affiliated with PMC. Initially, all of the officers of REIT will be officers of PMC and Adviser. No more than an aggregate of 15% of the interests in REIT will be sold to officers, directors and employees of REIT or its subsidiaries with the remaining interests expected to be acquired by non-affiliated in the public offering. To establish guidelines for compliance with certain Code requirements relating to the tax status of REIT, the REIT Declaration of Trust prohibits any shareholder of REIT from acquiring more than 9.8% of REIT shares except to the extent specifically approved by the trust managers under certain limited circumstances if that would not jeopardize the tax status of REIT.

10. PMC and REIT will enter into a loan origination agreement to set forth specific objective criteria (as further described below) to be used by Adviser to allocate loan origination opportunities. That agreement will provide that PMC will continue to make loans through its investment company subsidiaries in accordance with the eligibility requirements of the SBA programs used by such subsidiaries.

11. Adviser will, under the supervision of REIT management, identify, evaluate, and structure the investments to be made by REIT; arrange debt financing for REIT; and be responsible for monitoring the investments made by REIT, including loan portfolio management and servicing. It is contemplated that Adviser will enter into an investment advisory agreement that expires on December 31 of each year; however, such agreement will be renewable by REIT, subject to approval by a majority of trust managers who are unaffiliated with Adviser or PMC.

12. In consideration for the advisory services to be rendered to REIT, Adviser is expected to be paid quarterly in arrears, a base fee (the "Base Fee") consisting of a servicing fee of .125% per quarter of the average of the quarterly value of all assets and an advisory fee of .25% per quarter of the average of the quarterly value of all REIT's invested assets. Additionally, for each calender year commencing January 1, 1994 during which PMC's annual return on average common equity capital after deduction of the Base Fee (the "Actual Return") exceeds the yield on the five year U.S. Treasury note on the day immediately preceding the date of the effectiveness of the initial public offering plus 150 basis points (the "Minimum Return"), REIT will pay to Adviser an additional advisory fee (the "Annual Fee") equal to the product determined by multiplying the average of the annual value of all invested assets by a percentage equal to the difference between the Actual Return and the Minimum Return, up to a maximum of 1% per annum. The Annual Fee will be earned only to the extent that the annual return on average common equity capital after deduction of the Base Fee and Annual Fee is at least equal to the Minimum Return. All such advisory fees will be reduced by 50% regarding the value of assets other than temporary investments and cash that exceeded shareholders' equity as a result of leverage. Additionally, such advisory fee will be waived until the earlier of six months after the date of the consummation of the public offering by REIT or the investment of 50% of REIT's initial equity capital in mortgage loans and real estate. Adviser shall agree not to reduce the advisory fee for two years or waive any portion of such fee after the initial six-month period following the formation of REIT.

13. REIT will adopt an employee share option plan pursuant to which REIT may grant options for up to an aggregate 160,000 shares to persons who are officers or key employees of REIT or Adviser. PMC's board of directors noted that no individual option grants have yet been determined and that the share option plan is intended to provide incentive compensation to officers and employees of Adviser regarding the performance of REIT.

14. Adviser will be capitalized with an amount of money and assets reasonably necessary to cover its organizational expenses and will utilize certain employees and facilities of PMC to perform the investment advisory services to be provided to REIT. Initially, all the directors, officers, and employees of Adviser will hold similar positions as directors, officers, and employees of PMC. Although PMC's board of directors has not determined the compensation of its officers and employees following the startup of Adviser, it is contemplated that they will not be compensated solely as a

result of holding positions as directors, officers, or employees of Adviser.

15. Expenses associated with the provision of advisory services to REIT, other than direct expenses of REIT, will be borne by Adviser. REIT will be required to pay all organizational and certain offering expenses incurred by REIT, Adviser or its affiliates on behalf of REIT in connection with the organization of REIT and the public offering. REIT also will pay all operating expenses except those specifically required to be borne by Adviser. REIT will not be responsible for any compensation to REIT's officers (other than share options of REIT) or the cost of office space, equipment, and other personnel or expenses required for REIT's day-to-day operations other than direct expenses of REIT. Consistent with industry practice, REIT will reimburse Adviser for the specific expenses of REIT incurred by Adviser on behalf of REIT, including transaction costs incident to the acquisition and disposition of investments, regular legal and auditing fees and expenses, the fees and expenses of REIT's independent trust managers, the costs of printing and mailing proxies and reports to interest holders and the fees and expenses of REIT's custodian and transfer agent, if any. REIT, rather than Adviser, also will be required to pay expenses associated with any litigation and any extraordinary, nonrecurring or direct expenses specific to REIT. All fees that may be paid to Adviser by any person other than REIT in connection with any investment transaction of REIT will be paid or credited to REIT.

Applicants' Legal Analysis

1. Section 12(d)(3) makes it unlawful for any registered investment company to purchase or otherwise acquire any security issued by or any other interest in the business of any person who is a broker or dealer, is engaged in the business of underwriting, or is either an investment adviser of an investment company or an investment adviser registered under the Advisers Act, unless (a) such person is a corporation all the outstanding securities of which are owned by one or more registered investment companies; and (b) such person primarily is engaged in the business of underwriting and distributing securities issued by other persons, selling securities issued by other persons, selling securities to customers, or any one or more of such or related activities, and the gross income of such person normally is derived principally from such business or related activities.

2. Applicants state that because all of Adviser's gross revenues are expected to be derived from its services as an investment adviser registered under the Advisers Act, PMC's interest in Adviser may be deemed to violate section 12(d)(3) if a registered investment adviser is not deemed to be a "related activity." Accordingly, applicants request an exemption from section 12(d)(3) to permit PMC to cause Adviser, as its wholly-owned subsidiary, to be registered as an investment adviser under the Advisers Act for the purpose of providing advisory services to REIT, and serving as an investment adviser to any future advisory clients (subject to obtaining any required approval pursuant to the Act).

3. Applicants also state that the REIT proposal and the transactions contemplated thereby may be deemed to constitute a "joint enterprise or other joint arrangement" among the applicants within the meaning of section 17(d) and rule 17d–1. Accordingly, applicants request an order pursuant to section 17(d) and rule 17d–1 to permit applicants to engage in the REIT proposal, including (a) the establishment of Adviser as a wholly-owned subsidiary of PMC to be registered as an adviser under the Advisers Act; (b) the loan origination agreement between PMC and REIT; (c) the investment management agreement between Adviser and REIT; and (d) the contemplated affiliation and interests in REIT by affiliates of PMC as described above.

4. section 6(c) permits the SEC to conditionally or unconditionally exempt any person or transaction from any provision of provisions of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. The requested relief is consistent with the policy and provisions of the Act in that it will enable PMC's shareholders to obtain the benefit of advisory fees paid to Adviser for advising REIT regarding investments that PMC otherwise would decline due to limitations on available capital while maintaining PMC's status as an investment company for federal income tax purposes.

5. The procedures and policies that have been adopted regarding Adviser and the methods of operations proposed will ensure that PMC will continue to be operated and managed in the interests of its shareholders and that ownership by it of Adviser otherwise will be consistent with the purposes fairly intended by the policy and provisions of the Act.

6. The REIT proposal will benefit PMC's shareholders by allowing them to benefit from the investment activities of REIT without the corresponding investment risks. When PMC's board of directors recommended the formation of Adviser as wholly-owned registered investment adviser subsidiary of PMC in connection with the REIT proposal, it did so after discussion of the concomitant risks and liabilities. PMC's board concluded that the contemplated advisory services to be rendered to REIT could be provided substantially by existing staff and facilities of PMC without adversely affecting existing obligations to PMC. PMC's board of directors is satisfied that any added risks have been mitigated by the provisions of the REIT proposal and that PMC's shareholders will benefit from the advisory services to be provided by Adviser in connection with the REIT proposal. In determining that the proposed advisory fee is fair to PMC and its shareholders, PMC's board of directors considered and reviewed information relating to comparable fees applicable to other advisers or mortgage real estate investment trusts.

7. PMC's board of directors believes that the REIT proposal will be beneficial for the following reasons: (a) It will allow PMC to use its existing staff and facilities to generate additional income to PMC without incurring material incremental overhead costs. The board of directors reviewed information summarizing projected revenues and expenses expected to result from the REIT proposal demonstrating that the marginal expense to PMC involved in the REIT proposal will be immaterial and the REIT proposal will generate additional revenue to PMC; (b) It will allow PMC to preserve relationships with customers who cannot otherwise be serviced by PMC and will allow PMC to attract new customers seeking a more full-service lending source. The board of directors concluded that access to capital through the REIT proposal will help prevent loss of business to competitors; (c) It will expand the overall investor base in PMC activities by attracting investors in REIT (including institutional investors) that will not necessarily be interested in investing in PMC. This will create a larger potential source of capital that will inure to the benefit of PMC's shareholders by creating a larger pool of assets managed directly by PMC and Adviser for a fee; (d) It will allow capital to be raised with more flexibility as to leverage, increasing the total capital base to be directly and indirectly

managed by PMC; (e) it will increase the overall size and visibility of the PMC organization which is expected to generate new loan origination opportunities for both PMC and REIT.

8. PMC's board of directors noted that the REIT proposal includes several provisions to mitigate conflicts of interest between PMC and REIT and to protect adequately PMC regarding potential conflicts of interest with REIT: (a) A loan agreement will be entered into between PMC and REIT to set forth specific objective criteria to be used by Adviser to allocate loan origination opportunities. That agreement will provide that PMC will continue to make loans through its investment company subsidiaries in accordance with the eligibility requirements of the SBA programs used by such subsidiaries. REIT will make loans primarily (i) to borrowers that exceed the eligibility requirements of the SBA programs used by PMC, (ii) in excess of $1,100,000, or (iii) that do not conform to PMC's fundamental policies; (b) No joint investments will be permitted between PMC and REIT; (c) A majority of the trust managers of REIT will not be affiliates of PMC or Adviser; (d) A majority of the directors of PMC and Adviser will not be affiliates of REIT; (e) The investment management agreement, the loan origination agreement, or any amendments or modifications thereto or any other agreements between PMC and Adviser on the one hand and REIT on the other hand must be approved by the independent board members or trust managers of each entity; (f) The investment management agreement may be terminated without cause by REIT or Adviser upon sixty days' notice and is subject to annual renewal upon review and approval by the independent board members or trust managers of each entity; (g) REIT will be required to pay all organizational and offering expenses as well as operating expenses other than the specific expenses to be paid by Adviser consistent with industry practices in connection with rendering the services to be provided by Adviser. The minutes of the meetings of PMC's board of directors reflect that the board has approved the advisory agreement between Adviser and REIT, the loan origination agreement, and the other aspects of the REIT proposal.

9. Accordingly, the REIT proposal is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Further, PMC's board of directors determined that the REIT proposal is fair and reasonable and does not involve overreaching or self-dealing on the part of any person or entity to be involved.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. PMC's board of directors, including a "required majority" of the directors, as defined in section 57(o) of the Act, will review at least annually the relationship among Adviser, REIT, and their affiliated persons, to determine whether the benefits derived by PMC and its shareholders warrant the continuation of the advisory relationship, including, but not limited to, the advisory agreement between Adviser and REIT, and, if appropriate, will approve (by a vote of a majority of the directors of PMC, including the required majority) at least annually such continuation.

2. A loan agreement will be entered into between PMC and REIT to set forth specific objective criteria, as described in the application, to be used by Adviser to allocate loan origination opportunities. Any amendments or modifications to the loan origination agreement will be approved by PMC's board of directors, including the required majority.

3. The minutes of the meetings of PMC's board regarding the relationship among Adviser, REIT, and their affiliated persons, including consideration of the advisory agreement between Adviser and REIT, and the loan origination agreement or any amendments or modifications thereto, as the case may be, is in the best interests of both PMC and its shareholders.

4. PMC will, without prejudice to the rights of its board of directors to dispose of PMC's equity interest in Adviser in its entirety, at all times own beneficially and of record all of the issued and outstanding shares of capital stock of Adviser and will cause Adviser not to issue any authorized but unissued shares of its capital stock to any person other than PMC.

5. A majority of the directors of PMC and Adviser will not have any financial interest in or be interested persons of REIT.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–27132 Filed 11–3–93; 8:45 am]

BILLING CODE 8010–01–M

[File No. 81–915]

Application and Opportunity for Hearing: Time Warner Entertainment Company, L.P., et al.

October 29, 1993.

Notice is hereby given that Time Warner Entertainment Company, L.P. ("TWE") and Time Warner Inc. ("Time Warner"), on behalf of American Television and Communications Corporation, Warner Brothers, Inc., Warner Cable Communications Inc., Home Box Office, Inc., Warner Communications Inc., Warner Cable Communications Company, Memphis CATV, Inc., Capital Cablevision Systems, Inc., Warner Cable of New York, Inc., People's Cable Corporation, TA Milwaukee Cable Company, Inc., Time Warner Cable Inc., and SIFTA Milwaukee Cable Corporation, have filed an application pursuant to section 12(h) of the Securities Exchange Act of 1934, as amended, (the "1934 Act") for an order exempting the aforementioned affiliates of TWE and Time Warner from certain reporting requirement under section 15(d) of the 1934 Act.

For a detailed statement of the information presented, all persons are referred to the application which is on file at the offices of the Commission in the Public Reference Room, 450 Fifth street, NW., Washington, DC 20549.

Notice is further given that any interested person, not later than November 30, 1993, may submit to the Commission in writing his or her views or any substantial facts bearing on the application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reasoning for such request, and the issues of fact or law raised by the application which he or she desires to controvert. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponement thereof. At any time after that date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–27133 Filed 11–3–93; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. 93–80; Notice 1]

Babyhood Manufacturing, Inc.; Receipt of Petition for Determination of Inconsequential Noncompliance

Babyhood Manufacturing, Inc. (Babyhood) of Shrewsbury, Massachusetts has determined that some of its child safety seats fail to comply with the buckle release force requirements of 49 CFR 571.213, "Child Restraint Systems," Federal Motor Vehicle Safety Standard (FMVSS) No. 213, and has filed an appropriate report pursuant to 49 CFR part 573, Defect and Noncompliance Reports. Babyhood has also petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) on the basis that the noncompliance is inconsequential as it relates to motor vehicle safety.

This notice of receipt of a petition is published under Section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgement concerning the merits of the petition.

Paragraph S5.4.3.5 of FMVSS No. 213 states that "[a]ny buckle in a child restraint system belt assembly designed to restrain a child using the system shall, when tested in accordance with S6.2.1 prior to the dynamic test, not release when a force of less than nine pounds is applied and shall release when a force of not more than 14 pounds is applied. After the dynamic test of S6.1, when tested in accordance with S6.2.3, [the buckle shall] release when a force of not more than 16 pounds is applied."

Between January 31, 1992 and June 30, 1993, Babyhood produced approxmiately 3,100 child restraint seats, with shoulder harness straps that do not comply with the buckle release requirements of FMVSS No. 213. When four Babyhood child restraint seats were tested by the Calspan Corporation for NHTSA, two of the four units required forces of 14.3 and 15.9 pounds to release the buckle, thus failing the test specified in the standard. The other two complied with the standard. Babyhood performed subsequent tests on buckles it had in inventory and found that approximately 25 percent of the buckles required release forces of over 14 pounds. These belts all complied with the minimum release force requirement of nine pounds before the dynamic test and the maximum release force requirement of 16 pounds after the test.

Babyhood supports its petition for inconsequential noncompliance with the following:

> The minimum and maximum buckle release force requirements have been changed over the years since the first standard was issued in 1970. The criterion in setting the minimum relate[s] to prevention of buckle release by the infant or other inadvertant [sic] cause. Evaluation of a maximum relates to ease routine use along with concern for ready release in emergency situations. From an original of 20 pounds maximum release force the standards have evolved to a pre-impact release of 9 to 14 pounds and 16 pounds maximum after impact.
>
> [Babyhood believes that c]learly, the higher release force reported in these tests is not a safety issue relative to inadvertant [sic] release of the buckle. From a safety perspective, the question becomes the ability to release the buckle in an emergency situation. Since the standards permit a maximum 16 pounds release force after impact (emergency situation), the observed test results do not present a safety hazard beyond that allowed by the standard. Release force in the 14 to 16 pound range would relate to ease of use for the consumer. To date, [Babyhood has] not received any complaints on the operating force of the buckle mechanism. Additionally, a frequent use of the [Babyhood] car seat involves removal of the unit with the infant strapped in and placing it on a wheel assembly thereby becoming a stroller * * * rather than unbuckling the child.
>
> [Babyhood believes that t]he observed test results are within the limits that effect [sic] the safety performance of the car seat. Operation between 14 and 16 pounds release force would relate to ease of use. No consumer complaints have been received.

Interested persons are invited to submit written data, views, and arguments on the petition of Babyhood, described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that six copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the petition is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: December 6, 1993.

(15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on October 29, 1993.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 93–27066 Filed 11–3–93; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 93–01; Notice 4]

Ford Motor Co.; Grant of Petition for Amendment of Temporary Exemption From Federal Motor Vehicle Safety Standards

Ford Motor Company of Dearborn, Michigan, petitioned for an amendment of NHTSA Exemption No. 93–2 to include exemptions from paragraph S5.3.1.7 of Standard No. 108, and from paragraph S7.3 of Standard No. 208. Ford was granted Exemption No. 93–2 on March 31, 1993, on the basis that it would facilitate the development and field evaluation of low-emission motor vehicles, specifically the Ford Ecostar van. The reader is referred to Notice 2 for a full discussion of Ford's petition and the granting of its petition (58 FR 16907).

Notice of receipt of Ford's petition for amendment was published in the **Federal Register** on August 19, 1993, and an opportunity afforded for comment (58 FR 44207). This notice grants the petition.

The standards from which Ford requested an additional exemption were:

1. Paragraph S5.3.1.7 of Standard No. 108, *Lamps, Reflective Devices, and Associated Equipment.* Under this requirement, if a front turn signal lamp is located less than 100 mm from the lighted edge of a lower beam headlamp, the minimum luminous intensities are required to be 2.5 times that of a turn signal that is located at 100 mm or a greater distance.

The Ecostar's front turn signal lamps are located approximately 74 mm from the lighted edge of the lower beam headlamp, and are therefore subject to the 2.5 multiplier. Were the lamps located at 100 mm, they would comply with the turn signal photometrics. However, they do not, in all instances, provide a multiplier of 2.5. Grouped values exceed requirements in zones 1 and 5, "but are below the 2.5 factor for zones 2, 3, and 4 by 30% to 42%." Ford believes that an exemption would not

unreasonably degrade the safety of the vehicle because "the fleet customers for these few vehicles very likely will place them in service primarily during daylight hours when the headlamps will not be activated, thus presenting no concern regarding the potential for illuminated headlamps to mask front turn signals." Ford also argues that the European Escort is routinely operated in countries where daytime use of headlamps is routine, and there has been no "indication of any problems of headlamps interfering with turn signal visibility."

2. Paragraph S7.3 of Standard No. 208, *Occupant Crash Protection*. The European restraint system does not have the audible seat belt reminder required by S7.3. Ford previously petitioned for exemption from this requirement, and the petition was denied. As NHTSA observed, Ford presented no reasons to justify its request. Because NHTSA routinely requires compliance with this requirement by imported grey market vehicles, the agency did not view it as burdensome to achieve.

Ford replied that it had attempted, without success, to incorporate a belt use switch into the safety belt system of the Ecostar. Since the retractor of the European Ecostar was never expected to be shipped to the U.S., a version of it with an audible reminder switch was never developed. Because the seat belt buckle assembly is mounted to the seat tracks and because that design is unique to the European Escort, Ford stated that no seat belt buckle incorporating a buckle switch can be installed in the vehicle. Ford believes that most grey market vehicles are converted by installing parts used in the versions of these vehicles that are designed for export to the U.S.; however, there are no such parts available for the Ecostar since no version of the European Escort is exported.

Ford argued that an exemption would not unreasonably degrade the safety of the vehicle because "the agency's research indicates that the reminder system required by Standard 208 does not increase seat belt usage." Further, "Ecostars will be operated in business fleets by trained drivers, who will be instructed to wear seat belts."

No comments were received on the petition.

With respect to the requested exemption from Standard No. 108, Ford admits that the turn signal lamps will have 30 to 42 percent less intensity than required in the three central zones of the beam pattern. This area is important for seeing turn signals in intersections. Because the average human eye can distinguish differences in intensity that exceed 20 percent, the difference in light output between a complying lamp and the one that Ford will provide will be noticeable, and the noncompliance is not one of an academic nature, but one with potential safety implications.

Ford's argument that this condition has caused no comment in the operation in Europe of its vehicles is not persuasive. Although Europe also has mandatory headlamp-to-turn signal lamp spacing/photometry requirements, the photometry requirements differ from those of Standard No. 108. The European headlamps produce significantly less light than American ones in areas above the horizontal. The Ecostar headlamps will be ones meeting the specifications of Standard No. 108, and hence will produce a higher level of light in the eyes of oncoming drivers, increasing the possibility of turn signal masking.

Ford has also claimed that the Ecostars will be used primarily in daylight hours, implying that the photometry relationships between turn signals and headlamps is of lesser importance. Even if this claim could be substantiated, headlamps may well be in operation during daylight hours in winter, at dawn or dusk, or under conditions of inclement weather.

The determination that the agency must make with respect to this petition is that the safety of the vehicle would not be unreasonably degraded by the exemption. The agency also has the authority to impose such terms and conditions as are deemed appropriate on the granting of exemptions. NHTSA believes that the safety of the Ecostar would not be unreasonably degraded by an exemption from S5.3.1.7 of Standard No. 108, provided that Ford supplies a warning visible to the operator that advises the exercise of caution in the making of turns when the headlamps and turn signal lamps are in simultaneous operation.

As for Ford's petition for exemption from S7.3 of Standard No. 208, NHTSA wishes to point out that the assertion that the agency's research indicates that the reminder system does not increase seat belt usage is based on data derived from 1975–76 cars when consistent belt usage was as low as 8 to 10 percent. Even consistent users occasionally forget to fasten their restraints, and reminder systems are helpful to call attention to the availability of the system. However, the agency agrees with Ford that it is more likely that restraints will be used in business fleets by vehicle operators who must follow the operating procedures established by their employers.

In consideration of the foregoing, it is hereby found that an amendment of NHTSA Exemption No. 93–2, in the manner petitioned for, would not unreasonably degrade the safety of the Ford Ecostar vehicle, and it is further found that the previous public interest and low-emission vehicle findings of the Administrator in issuing NHTSA Exemption No. 93–2 apply to this amendment thereof. Accordingly, NHTSA Exemption No. 93–2 is hereby amended to include S5.3.1.7 of 49 CFR 571.108, Motor Vehicle Safety Standard No. 108 *Lamps, Reflective Devices and Associated Equipment*, provided that each vehicle so exempted contain a warning visible to the operator advising care in executing turns when the turn signal lamps and headlamps are operated simultaneously, and from S7.3 of 49 CFR 571.208, Motor Vehicle Safety Standard No. 208, *Occupant Restraint Systems*.

Authority: 15 U.S.C. 1410; delegations of authority at 49 CFR 1.50.

Issued on: November 1, 1993.

Howard M. Smolkin,

Executive Director.

[FR Doc. 93–27134 Filed 11–1–93; 2:08 pm]

BILLING CODE 4910–59–M

UNITED STATES ENRICHMENT CORPORATION

Conflict of Interests Policy

AGENCY: United States Enrichment Corporation.

ACTION: Notice of interim policy with request for comments.

SUMMARY: The United States Enrichment Corporation (Corporation), a newly formed government corporation established by the Energy Policy Act of 1992, is issuing this interim policy to implement the Corporation's statutory conflict of interests requirements, found at 42 U.S.C. 2297b–3(j). The Corporation is issuing this interim policy pursuant to the authority provided to it under 42 U.S.C. 2297b–3(j).

DATES: This interim policy is effective August 16, 1993. Public comments must be submitted on or before December 6, 1993.

ADDRESSES: Comments may be mailed to the Office of General Counsel, United States Enrichment Corporation, 2300 M Street, NW., 5th Floor, Washington, DC 20037–1434.

FOR FURTHER INFORMATION CONTACT: Robert J. Moore, General Counsel, telephone (202) 835–7610.

SUPPLEMENTARY INFORMATION:

Background

The United States Enrichment Corporation, an agency and instrumentality of the United States, was established by the Energy Policy Act of 1992 (Act), Pub. L. 102–486, 106 Stat. 2923, as a wholly owned government corporation. Among other things, the Corporation was established as the Government's exclusive agent for the marketing and sale of enriched uranium and uranium enrichment and related services. The Corporation's customers include private domestic and foreign customers as well as the Department of Energy.

Interim Policy

The Act provides that directors, officers and other management-level employees of the Corporation may not have a "financial interest" in customers, contractors, or competitors of the Corporation as well as certain other businesses. See 42 U.S.C. 2297b–3(j). This interim policy defines what constitutes a "financial interest" for purposes of the Act's conflict of interests requirements. The interim policy also addresses divestiture of financial interests that directors, officers and other management-level employees of the Corporation are prohibited from acquiring or holding.

Administrative Procedure Act

The Corporation's interim conflict of interests policy implements a statutory provision that applies to USEC directors, officers and other management-level employees. The interim policy relates to agency management and personnel and is not anticipated to have any substantial effect on individuals outside of the Corporation. Given the nature of the interim policy, it is not subject to the rulemaking provisions of the Administrative Procedure Act, 5 U.S.C. 553, pursuant to the exemption provided in section 553(a)(2) thereof for matters "relating to agency management or personnel or to public property, loans, grants, benefits, or contracts". Because the Corporation believes that it is beneficial to provide the public with the opportunity to comment, it has chosen to publish the conflict of interests policy initially as an interim policy. A final policy will be issued subsequent to the expiration of the period for public comment. The Corporation anticipates incorporating or otherwise responding to comments which it considers relevant to the interim policy, upon issuance of the policy.

Executive Order 12291

As a policy related to agency management and personnel, the Corporation's interim conflict of interests policy is not a "regulation" or "rule" for purposes of Executive Order 12291. In any event, this interim policy would not be a "major rule" within the meaning of Executive Order 12291 because it: (1) Does not have an annual effect on the economy of $100 million or more; (2) does not result in a major increase in the cost of financial institution operations or governmental supervision; and (3) does not have a significant adverse effect on competition (foreign or domestic), employment, investment, productivity or innovation within the meaning of Executive Order 12291.

Regulatory Flexibility Act

The Corporation's interim conflict of interests policy is not a "rule" for the purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* In any event, the interim policy would not be expected to have a significant economic impact on a substantial number of small entities within the meaning of that Act. The interim policy implements the Corporation's statutory conflict of interests requirements which do not effect private business or corporate entities. Accordingly, a regulatory flexibility analysis is not required.

Executive Order 12612

Executive Order 12612 requires that policies be reviewed for Federalism effects on the institutional interests of state and local governments, and, if the effects are sufficiently substantial and direct, that a Federalism assessment be prepared to assist senior policymakers. The Corporation's interim conflict of interests policy will not have any substantial and direct effect on state and local governments within the meaning of this Executive Order.

List of Subjects

Conflict of interests, Ethical conduct.

Issued in Washington, DC, September 27, 1993.

William H. Timbers,

Transition Manager.

For the reasons set out in the preamble, USEC issues the following interim conflict of interests policy:

United States Enrichment Corporation Conflict of Interests Policy

I. General

All employees of the United States Enrichment Corporation (Corporation) are subject to the regulations of the U.S. Office of Government Ethics that specify the Standards of Ethical Conduct for Employees of the Executive Branch, see 5 CFR Part 2635. Subpart D of part 2635 (Sections 2635.401 to 2635.403) of these regulations provides for the disqualification of employees in handling certain matters in which the employee has a direct or imputed financial interest including the necessity in certain cases for employees to divest or not acquire certain financial interests. Section 2635.403 of these regulations covering prohibited financial interests notes that, in addition to the restrictions contained in that regulation, agency employees may be prohibited by other statutes from holding certain financial interests. The Corporation's enabling statute contains such restrictions with regard to Corporation Directors and Supervisory Employees (as these terms are defined in Section II of this policy).

II. Definitions

For the purposes of this policy:

(a) *Customer, contractor, or competitor of the Corporation or any business that may be adversely affected by the success of the Corporation.* The Corporation's Procurement Manager shall maintain a current list of all customers, contractors, or competitors of the Corporation and any business that may be adversely affected by the success of the Corporation. The Corporation's Designated Agency Ethics Official shall periodically distribute such list to all Directors and Supervisory Employees. The term "contractor" in the preceding sentence means any entity which has a services contract for over $25,000 with the Corporation or which has a contract for over $50,000 with the Corporation to supply commercially offered supplies or equipment.

(b) *Directors* means persons appointed by the President with the advice and consent of the Senate pursuant to section 1304(b) of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2297b–3(b)).

(c) *Financial Interests.*

(1) Financial Interests include both direct and indirect financial interests. A direct financial interest means the ownership or part ownership of stocks, bonds, debentures, warrants, partnership interests, or other debt or equity holdings in an entity (or in an affiliate of such entity) and includes serving as an employee, officer, director, trustee, or partner of an entity (or an affiliate of such entity), whether or not compensated for such service. The term "affiliate" in the preceding sentence refers to any individual, corporation or other organization or enterprise that

controls or is controlled by such entity. An indirect financial interests includes:

(A) the holding of certain pension rights and other financial relationships that are equivalent to a direct financial interest in an entity (or in an affiliate of such entity);

(B) the Financial Interests of the employee's spouse or minor child in an entity (or in an affiliate of such entity); and

(C) the right to purchase or acquire any direct financial interest, such as a stock option or commodity future, in an entity (or in an affiliate of such entity).

(2) Financial Interests do not include:

(A) interests in mutual funds or regulated investment companies the portfolios of which are widely diversified, and similarly constituted, commercially fungible entities;

(B) any pension plan which holds no more than a small percentage of its assets in the form of direct financial interests in a customer, contractor, or competitor of the Corporation or any business that may be adversely affected by the success of the Corporation;

(C) life insurance investments;

(D) state and municipal bonds;

(E) U.S. savings bonds and bank, credit union or loan association savings certificates; and

(F) such other interests as the Corporation's Designated Agency Ethics Official may determine are not Financial Interests as defined by Section II(c)(1) of this policy by virtue, for example, of their remote or inconsequential relationship to a customer, contractor, or competitor of the Corporation or any business that may be adversely affected by the success of the Corporation.

(d) *Supervisory Employees* means Corporation officers and other management level employees. The Corporate Vice President for Human Resources will publish annually a list of Corporation officers and other management-level employees.

III. Prohibition

Any Director or Supervisory Employee shall not acquire or hold any Financial Interests in a customer, contractor, or competitor of the Corporation or any business that may be adversely affected by the success of the Corporation.

IV. Divestiture

(a) *Reasonable period to divest.* In the event that a Director or Supervisory Employee holds a Financial Interest prohibited under Section III of this policy (whether by gift or bequest or because of an addition to the list provided for in Section II(a) of this policy or otherwise), such Director or Supervisory Employee shall be given a reasonable period of time, considering the nature of his or her particular duties and the nature and marketability of such Financial Interest, within which to sell or to divest himself or herself of such Financial Interest. As long as such Director or Supervisory Employee continues to hold a prohibited Financial Interest, he or she shall disqualify himself or herself from participating in any matter which is related to or which may be affected by such Financial Interest. Except in cases of unusual hardship, as determined by the Corporation, a reasonable period of time shall not exceed 90 days from

(1) the date of the Director's appointment or the Supervisory Employee's hire or promotion; or

(2) the date on which the Director or Supervisory Employee first came to hold a Financial Interest prohibited under Section III of this policy, whether by gift or bequest or because of an addition to the list provided for in Section II(a) of this policy or otherwise.

(b) *Eligibility for special tax treatment.* Any Director or Supervisory Employee required to sell or divest himself or herself of a Financial Interest prohibited by Section III of this policy may be eligible to defer the tax consequences of such sale or divestiture pursuant to 5 CFR part 2634, subpart J.

[FR Doc. 93–27033 Filed 11–3–93; 8:45 am]
BILLING CODE 8270–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Extension of Comment Period for Section 306 Review of the U.S.-Japan Supercomputer Agreement

AGENCY: Office of the United States Trade Representative.

ACTION: Extension of comment period for section 306 review of the U.S.-Japan Supercomputer Agreement until January 31, 1994.

SUMMARY: On August 4, 1993 the Office of the United States Trade Representative (USTR) announced (58 FR 41552) that it was seeking the views of interested parties on the implementation by the Government of Japan of the U.S.-Japan Supercomputer Agreement. Since USTR is especially interested in the experience and views of those companies participating in Japanese Government supercomputer procurement under the supplementary budget of the current Japanese Fiscal year (April 1, 1993–March 31, 1994), the comment period has been extended until January 31, 1994.

SUPPLEMENTARY INFORMATION: Comments must be filed in accordance with the requirements set forth in 15 CFR 2006.8(b) and are due no later than 5 pm, Monday, February 28, 1994. Comments must be in English and provided in twenty copies to: Chairman, Section 301 Committee, room 233, 600 Seventeenth Street, NW., Washington, DC 20506.

Comments will be placed in a file [Docket 301–75] open to public inspection pursuant to 15 CFR 2006.15. Confidential business information submitted in accordance with 15 CFR 2006.15 must be clearly marked "Business Confidential" in a contrasting color ink at the top of each page on each of 20 copies, and must be accompanied by the nonconfidential summary of the confidential information. The nonconfidential summary will be placed in the Docket, which is open to public inspection.

Irving A. Williamson,

Chairman, Section 301 Committee.

[FR Doc. 93–27135 Filed 11–3–93; 8:45 am]
BILLING CODE 3190–01–M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Cemeteries & Memorials; Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the Department of Veterans Affairs' Advisory Committee on Cemeteries and Memorials has been renewed for a two-year period, commencing on August 23, 1993 and extending through August 22, 1995.

Dated: October 26, 1993.

By direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 93–27109 Filed 11–3–93; 8:45 am]

BILLING CODE 8320–01–M

VA Advisory Committee on Women Veterans; Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the Department of Veterans Affairs Advisory Committee on Women Veterans has been renewed for a 2-year period beginning September 29, 1993, through September 29, 1995.

Dated: October 27, 1993.

By direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 93–27110 Filed 11–3–93; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 212
Thursday, November 4, 1993

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).

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 10:03 a.m. on Tuesday, November 2, 1993, 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 a certain insured depository institution.

Matters relating to the Corporation's corporate and supervisory activities.

Recommendation concerning an administrative enforcement proceeding.

A personal matter.

In calling the meeting, the Board determined, on motion of Mr. Stephen R. Steinbrink, acting in the place and stead of Director Eugene A. Ludwig (Comptroller of the Currency), seconded by Mr. John F. Downey, Acting in the place and stead of Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), concurred in by Acting Chairman Andrew C. Hove, Jr., that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii) , (c)(9)(B), and (c)(10), of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550—175th Street, NW., Washington, DC.

Dated: November 2, 1993.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 93–27331 Filed 11–2–93; 3:22 pm]

BILLING CODE 6714–01–M

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NUMBER: 93–26722.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, November 4, 1993, 10:00 a.m., meeting open to the public.

THE FOLLOWING ITEM WAS DELETED FROM THE AGENDA:

Future Meetings.

THE FOLLOWING ITEMS WERE ADDED TO THE AGENDA:

Advisory Opinion 1993–19: Charles F.C. Ruff on behalf of Friends of John Glenn (continued from meeting of October 28, 1993).

Definition of "Member" of a Membership Association Final Rules: Announcement of Effective Date.

Multicandidate Committee Final Rules and Forms: Announcement of Effective Date.

DATE AND TIME: Tuesday, November 9, 1993 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

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 Hardy,

Administrative Assistant.

[FR Doc. 93–27325 Filed 11–2–93; 3:22 pm]

BILLING CODE 6715–01–M

FOREIGN CLAIMS SETTLEMENT COMMISSION

F.C.S.C. Meeting Notice No. 2–94

Announcement in Regard to Commission Meetings and Hearings

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

Date and time	Subject matter
Mon., Nov. 15, 1993 at:	Oral Hearings on objections to Proposed Decisions issued on claims against Iran:
9:30 a.m	IR–2297—Kenneth W. Mosley.
10:00 a.m	IR–1261—Jalil Fardanesh.
11:00 a.m	IR–0820—Victor J. Jamal.
	IR–0826—Emile J. Jemal.
	IR–1126—Estate of Arpen Jamal, Dec'd.
	IR–1224—Estate of Emma J. Abrahamyan, Dec'd.
2:00 p.m	IR–0338—Harry Hoffmeister, Jr.
2:30 p.m	IR–1173—Lynn Engdahl.
3:00 p.m	IR–1744—Walter F. Bohmer.
3:30 p.m	IR–0382—Robert Haslam.
4:00 p.m	IR–1260—Houshang Dowlatshahi.
Tues., Nov. 16, 1993 at 9:30 a.m.	Hearings on the record on objections to Proposed Decisions in the following claims against Iran:
	IR–0207—Suong Le Conley.
	IR–0214—David A. Conley.
	IR–2049—Gerardo B. Olivas and Sydney A. Baker.
	IR–2055—Yvonne M. Baker.
Tues., Nov. 16, 1993 at:	Hearings on the record on objections to Proposed Decisions in the following claims against Iran:
9:30 a.m	IR–0643—Granville W. Horsey
	IR–0775—Robert J. Russell.
11:00 a.m	Consideration of Proposed Decisions on claims against Iran.

Subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

All meetings are held at the Foreign Claims Settlement Commission, 601 D Street, NW., Washington, DC. Requests for information, or advance notices of

intention to observe a meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 601 D Street, NW., Room 10000, Washington, DC 20579. Telephone: (202) 208–7727.

Dated at Washington, DC, on: November 2, 1993

Judith H. Lock,

Administrative Officer.

[FR Doc. 93–27330 Filed 11–2–93; 3:22 pm]

BILLING CODE 4410–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

INSTITUTE OF MUSEUM SERVICES

Notice of Meeting

SUMMARY: This notice sets forth the agenda of a forthcoming meeting of the National Museum Services Board. This notice also describes the functions of the Board. Notice of this meeting is required under the Government through the Sunshine Act (Public Law 94–409) and regulations of the Institute of Museum Services, 45 CFR 1180.84.

TIME/DATE: 9:00 a.m. to 2 p.m.—November 19, 1993.

STATUS: Open.

ADDRESSES : National Postal Museum, 2 Massachusetts Avenue, NE., Washington, DC 20005, 202/633–8185.

FOR FURTHER INFORMATION CONTACT: S. William Laney, Executive Assistant to the National Museum Services Board, Institute of Museum Services, 1100 Pennsylvania Avenue, NW., room 510, Washington, DC 20506—(202) 606–8536.

SUPPLEMENTARY INFORMATION: The National Museum Services Board is established under the Museum Services Act, Title II of the Arts, Humanities, and Cultural Affairs Act of 1976, Public Law 94–462. The Board has responsibility for the general policies with respect to the powers, duties, and authorities vested in the Institute under the Museum Services Act.

The meeting of Friday, November 19, 1993 will be open to the public.

If you need special accommodations due to a disability, please contact: Institute of Museum Services, 1100 Pennsylvania Avenue, NW., Washington, DC 20506—(202) 606–8536—TDD (202) 606–8636 at least seven (7) days prior to the meeting date.

National Museum Services Board

November 19, 1993 Meeting Agenda

I. NMSB Chairman's Report and Approval of Minutes from July 23, 1993 Meeting
II. Agency Director's Report
III. NMSB Committee Report: Museum Assessment Program (MAP) Evaluation
IV. Agency Agenda Reports: Programs
V. Agency Agenda Reports: Appropriations/ Reauthorization
VI. Agency Agenda Reports: Legislative/ Public Affairs
VII. NMSB Open Agenda

Dated: October 29, 1993.

Linda Bell,

Acting Director, Institute of Museum Services.

[FR Doc. 93–27191 Filed 11–2–93; 9:03 am]

BILLING CODE 7036–01–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

"Federal Register"

CITATION OF PREVIOUS ANNOUNCEMENT: [58 FR 58229 October 29, 1993]

STATUS: Open meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: Tuesday, October 26, 1993.

CHANGE IN THE MEETING: Time change.

An open meeting scheduled for Wednesday, November 3, 1993, at 10:00 a.m. has been changed to 9:00 a.m.

Commissioner Schapiro, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: John Ramsay at (202) 272–2100.

Dated: November 2, 1993.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–27337 Filed 11–2–93; 3:46 pm]

BILLING CODE 8010–01–M

Corrections

Federal Register
Vol. 58, No. 212
Thursday, November 4, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Packers and Stockyards Administration

9 CFR Part 203

RIN 0590-AA07

Regulations and Policy Statements Under the Packers and Stockyards Act; Trade Practices, Scale Test Instructions, Advertising Allowance Guidelines

Correction

In rule document 93-25007 beginning on page 52884 in the issue of Wednesday, October 13, 1993, make the following corrections:

§ 203.14 [Corrected]

1. On page 52886, in the third column, in § 203.14, 3.(a), in the tenth line, "completing" should read "competing".

2. On page 52887, in the first column, in § 203.14, 3.(a) *Example 2:*, in the third line, the second "of" should read "for".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 7004

[MT-930-4210-06; MTM 40641, MTM 41507]

Partial Revocation of Executive Order Dated July 9, 1910, and Executive Order No. 3053 Dated February 28, 1919; Montana

Correction

In rule document 93-25273 appearing on page 53429 in the issue of Friday, October 15, 1993, make the following corrections:

1. The Docket number should have appeared as set forth above.

2. In the SUMMARY, in the second column, in the eighth line, "dispositions" should read "disposition".

3. In the FOR FURTHER INFORMATION CONTACT, in the second line, remove "BLM War,".

BILLING CODE 1505-01-D

federal register

Thursday
November 4, 1993

Part II

Department of Agriculture

Forest Service

36 CFR Parts 215 and 217

Notice, Comment, and Appeal Procedures for National Forest System Projects and Activities; Requesting Review of National Forest Plans and Project Decisions; Final Rule

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Parts 215 and 217

Notice, Comment, and Appeal Procedures for National Forest System Projects and Activities; Requesting Review of National Forest Plans and Project Decisions

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule revises the process for administrative review of National Forest System management decisions as required by Section 322 of the Department of the Interior and Related Agencies Appropriations Act for fiscal year 1993. The intended effect is to provide the public with timely notice and opportunity to comment on proposed actions implementing national forest land and resource management plans and to provide consistent procedures by which the public may appeal decisions on those actions.

EFFECTIVE DATES: This rule is effective November 4, 1993, except § 215.5 is effective January 3, 1994.

FOR FURTHER INFORMATION CONTACT: Susan Yonts-Shepard, Staff Assistant, Office of the Deputy Chief, National Forest System, telephone (202) 205–1519.

SUPPLEMENTARY INFORMATION:

Background

The Forest Service is responsible for managing 191 million acres in National Forests, National Grasslands, and other areas known collectively as the National Forest System. The Chief of the Forest Service, through a line organization of regional foresters, forest supervisors and district rangers, manages the surface resources and in some instances, the subsurface resources, of these lands.

Under the regulations at 36 CFR part 217, the Department, at its own discretion, has provided a process by which persons or organizations may appeal National Forest System management decisions. Until the 1993 Interior and Related Agencies Appropriations Act (hereafter the Act), there was no statutory requirement that the Forest Service provide an appeal procedure.

Section 322 of the Act established in law a two-tiered system of notice and opportunity to comment on project level decisions affecting the National Forest System. The first tier established a process by which persons or organizations receive notice and the opportunity to comment on proposed actions. The second tier established procedures by which persons or organizations may appeal decisions subsequently made on planned actions.

On April 14, 1993, the Forest Service published a proposed rule to implement section 322 of the Act (58 FR 19369). An initial 15-day comment period was subsequently extended to June 1, 1993, in response to public request. (58 FR 19369).

In addition to publishing the proposed rule in the Federal Register, the Forest Service gave direct notice of the proposed rule to numerous interested parties and invited comments. Agency personnel also held briefings around the country for the public and various organizations and government agencies. Over 9,000 individuals from every State in the Union submitted comments on the proposed rule. In addition, comments were received from representatives of Federal, State, and local government agencies; colleges and schools, environmental groups, Indian tribes, media, professional associations, and industry groups (both timber and nontimber). Most comments came in individually written letters, but a number of form letters and petitions were also received, each containing numerous signatures. All suggestions and comments have been reviewed and considered in preparation of this final rule.

General Comments

Both supporters and opponents addressed many of the same issues from opposing viewpoints, and both requested clarifications or changes to timeframes in the proposed regulations.

About 80 percent of respondents generally supported the proposed rule; the remaining twenty percent were generally opposed. Those who generally supported the rule as proposed stated that the changes would streamline the appeals process. However, these respondents emphasized the need to require "standing" for appellants, the necessity for exemptions from the appeal process to expedite salvage harvesting of dead and dying timber, the need for a "finite" time period for the disposition of appeals to prevent unnecessary delays in implementing projects, and the need for only a single level of review. These supporters repeatedly stressed the economic impacts on people, communities, and local industries from the delay in implementation of projects resulting from the current appeals process. Also, most of the supporters objected to allowing oral comments on proposed actions and preferred that the final rule require appellants to express their concerns about a specific project in writing.

Those who generally opposed the proposed rule contended that the proposal violated the spirit, intent, and letter of the Act and the Forest Service's own statements regarding public involvement by eliminating Section 322's requirement of mail notification of agency proposed actions to those who request it; by limiting the public's ability to appeal certain agency actions; and by placing unnecessary process burdens on appellants and "commenters" by not using a postmark to determine timeliness. Opponents also expressed concern that the Forest Service would abuse the discretion provided by the proposed exemption from appeal for "emergency situations," and that the use of fellow line officers for administrative reviews of an agency official's decision would constitute a "buddy system" that biases the reviews.

Section-by-Section Comments

The following summarizes the major changes to the proposed regulations made as a result of the Department's review of public comments on the proposed regulations.

The proposed regulations had three subparts; Subpart A—Public Notice and Comment, Subpart B—Appeal of Project and Activity Decisions, and Subpart C—Appeal of Regional Guides and National Forest Land and Resource Management Plans. Much of Subparts A and B were identical or very similar. In the final regulations, Subpart A and B have been combined and simplified where possible. All definitions are now in one place and the number of sections is reduced.

Subpart C has been eliminated. Very few comments were received on this section. Since the planning regulation at 36 CFR part 219 is being revised and may result in a new rule, it makes little sense to modify the appeal regulations for Forest plans until such time as this planning direction is completed. Rather than provide a new and separate set of regulations, the Department will continue to use the appeal regulations at 36 CFR part 217 for appeal of decisions dealing with approval, revision, or amendments of a forest plan as well as approval and amendment of a regional guide. The final rule includes conforming amendments to the regulations at 36 CFR part 217, which are necessary to reflect that projects and activities implementing forest plans are now appealable only under part 215 unless a project or activity decision is included as part of a forest plan or a significant amendment or revision of a

forest plan. The need for revising the appeal regulations at 36 CFR part 217 for forest plan appeals will be reviewed once a decision is made on questions concerning new information for implementation, amendment, and revision of forest plans.

Proposed sections 215.1 and 215.2. A review of comments indicated it would be unnecessarily complex to retain two different subparts; thus in the final rule, §§ 215.1 and 215.2 combine the purpose and scope and definitions into one rule. Additionally, public comment indicated the need for clarification of several terms. Accordingly, the final rule includes several additional terms, rephrases other terms and deletes one term. Those terms that are new or reworded are listed and defined below. The Department believes these will help clarify the requirements and intent of the rule.

Appeal Period. As used in the final rule, the appeal period is the time during which an appeal may be filed.

Appeal Review Officer. This term was changed in the final rule to Appeal Reviewing Officer to be consistent with the title of Appeal Deciding Officer.

Appellant. The definition in the final rule was expanded to include organizations, in addition to people.

Notice of Decision. This term was defined in the proposed regulation but is not included in the final rule, because section 215.9 in the final rule clearly sets out the process and requirements for giving notice of any decision which has been subject to the notice and comment provisions of this rule.

Intervenor. In the final rule, this term is replaced by "interested party." The term "intervenor" implied a formal, legal relationship, which is not the case. "Interested party" was selected because it implies a less formal relationship and better describes who may be involved in an appeal.

Proposed Timber Harvest Categorically excluded from documentation under Forest Service Handbook 1909.12, section 31.2, paragraph 4. This definition has been moved from § 215.3 of the proposed rule so that this lengthy definition will not have to be repeated throughout the rule whenever there is a need to refer to proposed timber harvest categorically excluded from documentation in an environmental assessment or environmental impact statement.

Proposed Sections 215.3 and 215.4. Proposed § 215.3 listed those proposed actions that would be subject to notice and comment prior to decisions. These included proposed actions implementing national forest land and resource management plans (LRMPs), including nonsignificant amendments; certain timber harvest actions which are categorically excluded from documentation in an Environmental Assessment (EA) or Environmental Impact Statement (EIS) and forestry research or state and private forestry actions carried out in national forest plans. This section also covered notice of and comment on proposed actions on those few forests where LRMPs are not yet approved. By contrast, proposed § 215.4 listed these proposed actions not subject to the new pre-decisional notice and comment requirements of section 322 of the Act.

Respondents supported limiting notice and comment to those projects which would be analyzed and documented in an EA and Finding of No Significant Impact (FONSI), since projects requiring an EIS are already subject to notice and comment requirements through NEPA compliance procedures.

Respondents also generally supported giving notice and opportunity to comment on timber sales that are normally categorically excluded from documentation in an EA or EIS. However, many respondents felt the rule should require notice and opportunity to comment on all proposed actions that are categorically excluded. These respondents expressed concern that exempting actions from notice and comment would prevent the public from knowing what the Forest Service is doing; they also objected to decisions currently subject to appeal under the rule at 36 CFR part 217 not being subject to appeal under the proposed rule. Many others were unaware of the Forest Service Handbook categories and so did not know what actions were covered by the proposed rule.

The proposed rule also included a provision at § 215.4(b) to exempt emergency actions from public notice and comment and to permit the Chief or Regional Forester to exempt an emergency action from appeals. Over 50 percent of respondents believe it is critical for the regulations to allow the agency to harvest dead and dying timber quickly, through salvage sales, before the timber's value is lost due to decay. Supporters of the emergency provision of the proposed rule often noted that the ability to waive the appeal process for emergency situations is necessary to achieve timely salvage.

Others stated that they distrusted the motives for the emergency provision. These reviewers feared that the Forest Service would abuse this provision by using it as an excuse to cut more trees and as an excuse to limit public input, thereby depriving the American people of the opportunity to contribute their ideas and opinions on the management of their National Forests. Many believed that the Forest Service would not inform the public about agency emergency plans.

Some proponents and opponents asked that "emergency situation" be defined more specifically. Several other reviewers pointed out that the Act does not provide for exemption of notice, comment, and appeal for proposed actions dealing with emergencies, but only provides for an exemption to the automatic stay provision if the Chief determines that an emergency situation exists with respect to a decision of the Forest Service.

Response. Although it may not seem consistent to have only one category of categorical exclusion subject to notice and comment, and subsequently, to appeal, there are good reasons to do so. Category 4 exclusions are for timber harvest of less than 250,000 board feet or salvage of 1,000,000 board feet of merchantable timber. In contrast to other proposed actions which may be categorically excluded, timber sales are often controversial and of keen public interest, even where impacts are minimal. If these decisions were exempted from notice and comment, the Forest Service might give the appearance of trying to shelter timber sales from appeal, with the result that agency credibility could be questioned.

As to concerns that the public would be unaware of other projects that are categorically excluded, public involvement in project planning is required by the Forest Service procedures which implement the National Environmental Policy Act (NEPA) including projects which may be categorically excluded. Therefore, interested and affected persons do have opportunity to keep up with categorically excluded activities. However, by their very nature, proposed actions that may be categorically excluded from documentation in an EA or EIS have little to no environmental effect. Therefore, providing additional notice and comment and, thus, appeal of these actions would be superfluous, except for timber sales. Therefore, the final rule retains notice and comment on only Category 4 (timber sale) categorical exclusions.

In response to concerns that the Forest Service could abuse the emergency exemption provision, §§ 215.3 and 215.4 have been revised to make emergency actions subject to notice and comment procedures. This will assure that the public receives timely information about such projects and preserves subsequent opportunity

to appeal such decisions under the new rule.

Based on further Departmental consideration, the notice and comment requirement for nonsignificant amendments is limited in the final rule to nonsignificant amendments that would be included as part of a project decision implementing national forest land and resource management plans. Decisions on nonsignificant amendments that are not included as part of a decision on a proposed action remain subject to the rules at 36 CFR part 217.

A number of respondents noted that the proposed rule did not meet the requirement of section 322 with respect to mailing a notice to those who have requested it and those known to have participated in the decisionmaking process.

Response. These respondents are correct. Accordingly, the final rule at § 215.5(b) provides that the Responsible Official shall promptly mail the environmental assessment with a letter identifying the proposed action or (for categorically excluded actions) a letter briefly describing the proposed action, to those who have requested notice and to persons who are known to have participated in the decisionmaking process. It should be noted that the wording of the final rule is slightly different from the wording in the Act. The Act refers to "mailing notice about the proposed action," whereas the final rule is written to require mailing the environmental assessment or letter describing the action. Rather than mailing a notice of the availability of documents and requiring members of the public then to request the actual documents, the final rule would require that the documents be sent initially. This is simpler and allows the public sufficient time to review the documents.

Proposed § 215.6. This section of the proposed rule addressed how comments were to be filed. The proposed rule used the date of actual receipt by the agency, rather than the postmark at time of mailing, as evidence of timely filing of comments within the 30-day predecisional comment period as well as for the later filing of appeals (proposed § 215.28, final § 215.13).

Many believed this proposed provision would place an undue burden on those who wished to submit comments and on appellants, because the speed and assurance of timely delivery by the Post Office or other carrier is beyond the person's control. Many also felt that this requirement would effectively reduce to less than 14 days the time available to review the proposed action and to provide constructive comments, because people must often wait for information on a project from the Forest Service. These respondents conjectured that, after receiving the requested information, they would have to mail their comments or appeals at least 7 days before the deadline to assure that they would be received by the Forest Service on time. In addition, some people felt that not using the postmark penalized rural residents and non-local appellants who would find it burdensome and costly to ensure direct receipt.

Many stated that if a postmark is good enough for the Internal Revenue Service, it should be good enough for the Forest Service. They advocated the retention of the postmark or other device, such as facsimile imprint, to provide evidence of timely filing within the comment or appeal period. Some people mentioned the possibility of abuse if the Forest Service were responsible for documenting receipt.

Concern also was expressed that under the proposed rule (§ 215.6(c)(2)) comments would not be considered if they were late. These reviewers felt that having a rigid cut off date would overly restrict the responsible official and deny the official access to useful comments. Since analysis of comments may continue for quite some time after the comment period, these respondents felt there should be the option for considering substantive comments that arrive a few days late.

Response. In response to comments received, § 215.6(c)(2) of the final rule has been changed to provide that "written comments may not be considered unless they are postmarked or facsimile imprinted by the close of business on the 30th day following publication of the notice." For oral comments, however, the rule retains the receipt date. This change provides the Responsible Official some discretion to consider later-arriving written and oral comments. If the comments are substantive and may help the Responsible Official's analysis or assist in decisionmaking, such comments should be available for consideration.

An additional paragraph has been added at § 215.6(c)(1) which requires the Responsible Official to clearly note the date of receipt of comments. All comments, even those postmarked after the close of the comment period, should be kept as part of the project file. As provided in § 215.6(c)(2) timely comments must be considered prior to making a final decision on the project.

The proposed rule required addressing comments in the decision document (§ 215.24(b)(1)). The final rule adds paragraph (d) to § 215.6 which requires the Responsible Official to address comments in an appendix to the EA or, for an action to be categorically excluded, in the project file. This change allows the Responsible Official to keep the decision document brief, as intended in NEPA (40 CFR 1500.4), and also allows a less formal response.

Proposed § 215.22. This section is redesignated as § 215.7 *Decisions subject to appeal* in the final rule. Only minor editorial changes were made.

Proposed § 215.23. This section is redesignated as § 215.8 *Decisions not subject to appeal* of the final rule. In response to concerns about the emergency exemption, the provision exempting emergencies from appeal has been deleted in conformance with the changes made and previously discussed under § 215.4 *Actions subject to notice and comment.*

Proposed § 215.24. This section is 215.9 *Notice of Decision Documents* in the final rule. The Department has not adopted the requirement that requests for documents be made in writing. Although the Act calls for written requests, it has been the practice of the Forest Service to accept oral requests for documents. The Department believes that this is an appropriate policy that should be continued. Also, the final rule provides that documents will be sent to those who have expressed interest at any time during the planning of the specific project, not just during the comment period required under this rule. The Department believes that all those who have participated in the planning should be informed of the final outcome.

The Act states that "a designated Forest Service employee shall offer to meet with each individual who files an appeal * * * and attempt to dispose of the appeal." The proposed rule required listing the informal meeting date in the decision document and the decision announcement. This requirement has not been adopted because such a formal notice did not meet the intent of the Act. The communication will now be informal and will be made directly with the appellant by the Responsible Official after receiving the appeal.

Finally the entire paragraph (b) of proposed 215.24 on decision document content has not been included in the final rule, since it duplicated administrative requirements already issued through Environmental Procedures Handbook (FSH 1909.15). As previously noted, the requirement for addressing comments in the decision document has been changed in § 215.6 *Comments* to provide that they will be addressed in an appendix to the EA or in a project file.

Proposed § 215.25. This is § 215.10 *Implementation of decisions* in the final rule. Paragraph (a) of this section of the final rule was rewritten to stay implementation of all decisions subject to appeal until 5 business days after the end of the appeal filing period if there is no appeal. This change is needed to ensure a reasonable time for an appeal with a timely postmark to be received through the mail.

Although implementation of emergency actions may still be immediate, the proposed provision exempting emergencies from appeal has been rewritten to reflect that exemptions for emergencies apply only to stays of implementation and not to appeal (§ 215.10(d). The exemption from stay can be granted only by the Chief. Paragraph (d)(1)(i)–(iv) defines emergency and cites examples. A review by the Department indicates that exemptions are needed to allow activities to occur in response to unexpected, serious occurrences or situations urgently requiring prompt action. The examples of an emergency given in § 215.10 are not intended to be all-inclusive in recognition that the Chief needs discretion to determine when an emergency exists. Paragraph (d)(2) of this section of the final rule requires the Responsible Official to notify the public that the agency intends to handle the action as an emergency as part of its notice of the proposed action. Additionally, examples of how the Forest Service may respond to emergency situations has been added to section 215.10(d)(2).

Proposed § 215.26(a)(2). This section is § 215.11 *Who may participate in appeals* in the final rule. The proposed rule provided that any person who, or non-federal organization that, provided comment or otherwise expressed interest in the specific proposal prior to the close of the comment period could file an appeal. For proposed actions subject to § 215.3, the proposal provided that persons or organizations who could appeal must have provided comment or otherwise expressed their interest in the specific proposal prior to the close of the comment period.

The lack of definition in 215.26(a)(2) in the proposed rule for the words "otherwise expressed interest" was an issue for many respondents. In general, supporters of the proposed rule want the "expressed interest" to be in writing. [The Act, Sec. 322(c), states "* * * written or oral comments or by otherwise notifying * * *"] Some of the same respondents also stated that appeal issues should be limited to those specific comments that appellants addressed during the comment period.

A small number of people suggested that bonds should be posted by those who file appeals. Some reviewers suggested that appellants should be U.S. citizens over 18 years of age. A very small group of respondents believed that non-local persons or organizations should be denied appeal rights. These respondents felt they were being held "hostage" by people living far away with no knowledge of the area. Other respondents believed that no prior expression of interest should be necessary in order to have standing to appeal.

Response. In the colloquy on Forest Service appeals during Senate consideration of the Act, it is apparent that Congress expects the Forest Service to clearly define a process by which "standing" requirements are met. One Senator stated "I feel that it is imperative that as the Forest Service implements the appeal provision in this legislation, they must clearly define a process by which the public comments that are received, in whatever form, are clearly documented. If there is ever a question of standing, I feel the burden of proof should be on the Forest Service to prove that an individual does not have standing rather than the appellant having to prove that he or she is eligible to file an appeal."

Section 322(c) of the Act makes clear that a person who has submitted written or oral comments or otherwise notified the Forest Service of an interest in the proposed action during the public comment process may appeal a decision. Therefore, it is not in keeping with the Act to restrict the right of appeal only to those who have submitted written comments, or to those who live in the "local" area; or on the other hand, to allow anyone to appeal regardless of whether they have previously expressed interest.

The final rule at § 215.11(a) now states that an appeal of decisions pursuant to this part may be filed by persons who, or any non-Federal organization or entity that, submitted written comment in response to an environmental assessment or letter describing the action, or provided comment or otherwise expressed interest in a specific proposal at any time prior to the close of the comment period specified in § 215.6. Section 215.6 sets the requirements for information to be provided by persons submitting comments.

As previously noted in the discussion of definitions, the term "intervenor" has been replaced in the final rule with the term "interested parties" to better reflect the informal nature of the appeal process and of the relationship between those who appeal and those who wish to comment on an appeal. Under § 215.13(e), interested parties may participate in the appeal process by sending written comments to the Appeal Reviewing Officer no later than 15 days after the close of the appeal filing period and providing a copy to appellant. They may also participate in the informal disposition meeting(s) as provided in 215.13(f)(1). There are no longer any "standing" requirements for "interested parties."

The proposed rule stated that Federal agencies could not participate as appellants, but it was unclear whether Federal agencies could participate as intervenors. The final rule 215.11(c) makes clear that federal agencies cannot participate as either appellants or interested parties.

Proposed § 215.27. This is § 215.12 in the final rule. The final rule requires the appeal to be filed with the Appeal Deciding Officer. In addition, the table has been corrected to make the Regional Forester the Appeal Deciding Officer for both District Ranger and Forest Supervisor decisions.

Proposed § 215.28. This is § 215.13 *Appeal time periods and process* in the final rule. Also, as noted in the discussion of proposed § 215.6, extensive comments were received on evidence of timely filing of appeals. Those respondents who wanted to eliminate any delay in the administrative review process and subsequent implementation of the Responsible Official's decision favored the proposed provision that an appeal should be received, rather than postmarked by the closing date.

Response. In response to comments received, the final rule, at § 215.13(c), adopts a postmark or facsimile date imprint as evidence of timely filing of appeal. Requiring documents to be received by the end of the appeal period was intended to allow the maximum amount of time (15 days) to set up an informal meeting to attempt to resolve the appeal. Section 322 of the Act states that this meeting shall take place no later than 15 days after the closing date for filing an appeal, not after receipt of the appeal.

In the past, the postmark has been used (or time and date on a facsimile) as evidence of timely filing. The final rule reinstates that practice.

However, this change may restrict the time available for scheduling an informal disposition meeting and may reduce the time available for the Appeal Reviewing Officer's review and recommendation and the Appeal Deciding Officer's decision on the appeal. It is now likely that the optional

15-day extension period contained in § 215.34(c) will be used in almost every case. To reflect this, the appeal decision due date in § 215.13(h)(3) has been extended to 45 days following the end of the appeal filing period (30 days plus the 15-day extension). However, to assure timely decisions, § 215.13(d) has been included to prevent any further extensions of time.

It should be noted that the Responsible Official need not wait until the end of the appeal period to schedule an informal disposition meeting with the appellant. That contact may be made as soon as possible after the appeal is received.

Paragraph (e) requires any interested party to submit comments to the appeal reviewing officer within 15 days after the close of the appeal filing period and to provide a copy to the appellants at the same time. This provision was added, because there is no good way to quickly determine who wants to submit comments on an appeal as an interested party, and since the timeline for completing the appeal process under this statute is very short, it will be up to interested parties themselves to contact the Appeal Deciding Officer to see if an appeal has been filed, ask for the name and address of the Appeal Reviewing Officer and of the appellants, and to submit their comments on time. Although this puts a responsibility on the interested party, this is a reasonable approach, since the alternative is to burden the Forest Service with the impossible task of identifying and contacting all interested parties to apprise them of each appeal.

Paragraph (f)(1) of this section has been changed to provide that interested parties may also participate in the informal disposition meeting and can obtain the location, date and time for the meeting from the Responsible Official.

Paragraphs (f)(1), (2), and (3) give more specific instructions on the timeframes for appeal task accomplishment. The final rule requires the Responsible Official to transmit the decision documentation and records of informal meetings to the Reviewing Officer within 15 days of the close of the appeal filing period. A requirement was added that the Appeal Reviewing Officer must send the recommendation to the Appeal Deciding Officer within 30 days of the end of the appeal filing period. The timeframe for the Appeal Deciding Officer to issue a decision on the appeal was changed to 45 days after the end of the appeal filing period.

Paragraph (g)(1) through (3) of this section of the proposed rule were either not included in the final rule because they are unnecessary steps in the process or were incorporated into paragraphs (f)(1) through (3).

Proposed § 215.29. This is § 215.14 *Content of an appeal* in the final rule. Since the informal meeting is no longer announced in the decision document, paragraph (b)(5) (requiring the appellants to indicate whether they will attend the informal meeting) was not retained in the final rule.

Proposed § 215.30. This is § 215.15 *dismissal of appeal without review* in the final rule. Wording was added to paragraph (a)(5) to allow dismissal of an appeal if the appellant did not express an interest in the specific proposal at any time prior to close of the comment period. This makes it clear that appellants need only to have submitted comments at some time during the planning of the specific project and do not necessarily have to submit comments during the comment period specified in this rule.

Proposed § 215.31. These provisions on "intervention" were incorporated into § 215.11 "Who may participate in appeals" of the final rule under the topic heading *Comments from interested parties.*

Proposed § 215.32. This is § 215.16 *Informal disposition* in the final rule. The proposed rule, in accordance with the Act, provided a 15-day period following the close of the appeal period during which the Responsible Official, or designated representative, was to meet with an appellant to attempt to resolve the appeal.

Some people were concerned that the 15-day limit in the Act and regulation was too short to allow meaningful dialogue and negotiation to take place. Other concerns dealt with the requirement that the date and place of the meeting must be determined at the time of decision and be announced in the decision document. Therefore, the appellant(s) might be unable to attend the meeting. Some people suggested arranging the date and place of the meeting after consulting with the appellant. Also of concern was the provision in the Act that the informal disposition meeting be held in the vicinity of the lands affected by the decision. It was felt that the expense and time required to travel long distances to the place of the meeting might preclude some appellants from participating in the informal disposition process. One person suggested appellants should be reimbursed for expenses or time away from work. Others felt the meeting should not be optional; that appellants should be required to meet with the Forest Service to work out an informal disposition of the appeal.

Response. The Act states: "A designated employee of the Forest Service shall offer to meet with each individual who files an appeal * * * and attempt to dispose of the appeal. Each meeting * * * shall take place not later than 15 days after the closing date for filing an appeal; and at a location designated by the Chief of the Forest Service that is in the vicinity of the lands affected by the decision."

Extending the 15-day time period and requiring appellants to attend were determined by the Department not to be in keeping with the wording of the Act. This short time period emphasizes the importance of being involved early in the planning process. It was not the intent of the Act to encourage members of the public to wait until the last minute to express concerns about projects.

The Act clearly put the responsibility for offering to meet on the agency, not on the appellant. The proposed rule addressed this by pre-scheduling the informal disposition meeting and including the date, time, and location in the decision documentation and the public notice of decision published in the designated newspaper. In response to public concerns, the final rule at § 215.16(b) now requires the Responsible Official to get in touch with the appellant(s) and offer to meet and discuss resolution of the issues raised in the appeal as soon as possible after the appeal has been filed.

The Department views meetings "on the ground" as the best way to resolve concerns raised by the public. However, the difficulty of this requirement is also realized. The final rule § 215.16(b) states that the location of the meeting shall be in the vicinity of the lands affected by the decision but makes allowances for moving the location at the discretion of the Responsible Official. Final rule § 215.16(c) allows for telephone conferences and video conferences if an in-person meeting cannot take place.

There is still concern that using the postmark as evidence of timely filing of an appeal (an appeal may arrive past the end of the appeal period and still be timely by postmark) may cut into the 15-day period for the informal resolution meeting. Given the statutory provisions, the Department sees no way to resolve this problem.

Paragraph (a) now requires the Responsible Official to get in touch with the appellant promptly after the appeal is filed to offer to meet in an effort to resolve the appeal informally. This complies with the intent of the Act and replaces the notice of informal meeting

listed in the decision document and the decision announcement in the newspaper.

Paragraph (b) was added to specify that the meeting shall be held in the vicinity of the lands affected by the decision.

Paragraph (c) was added to indicate that although in-person meetings are preferred, other types of communications may be used to confer and to accommodate schedules and travel distance.

Paragraph (d) was reworded to require the appellant to write a letter to the Appeal Deciding Officer withdrawing the appeal. This more specifically indicates the type of notice that is required from the appellant withdrawing an appeal. A written timely withdrawal more formally and clearly documents the agreement to withdraw an appeal.

Paragraph (e) has been reworded to require the Responsible Official to notify the Appeal Reviewing Officer in writing if the appeal is not resolved in the informal meeting, and eliminates the requirement from this section that intervenor comments be sent as part of the appeal record. Inclusion of the interested party comments in the appeal record is now covered under 215.2.

Proposed § 215.33. This is § 215.17 *Formal disposition* in the final rule. The proposed rule stated that if an Appeal Deciding Officer did not issue a decision within 45 days, "the decision being appealed stands as the final agency decision."

Some respondents noted a lack of agency accountability associated with this provision. There would be no incentive for the Forest Service to decide appeals within the 45-day limit, since by "not deciding," the original project decision would become final. It was noted that the agency could virtually ignore appeals. A person's only recourse would then be litigation.

Many people noted that a finite period for deciding appeals was necessary because delays associated with appeals result in uncertainty for businesses and communities dependent upon the national forests and waste money.

Response. Although the Act contains this requirement, it is entirely within Forest Service jurisdiction to require a decision on the appeal within the prescribed time period. The final rule 215.17(b) therefore states the Appeal Deciding Officer shall issue a notification to the appellants concerning the disposition of their appeal within the allotted time. The Department believes appellants deserve a response from the Appeal Deciding Officer and that the Forest Service should not, in essence, ignore concerns raised by the public.

Paragraph (a) requires the Appeal Deciding Officer to issue an appeal decision not later than 45 days after the end of the appeal filing period.

Proposed paragraph (b)(2) has not been incorporated because the final rule requires the Appeal Deciding Officer to issue a written notification concerning disposition of an appeal. This was in response to public concern about use of the (pocket approval) provision of the Act to "rubber stamp" a responsible official's decision. The notification requirement will avoid the appearance of ignoring an appeal and promote accountability.

Proposed § 215.34. This is § 215.18 *Appeal deciding officer authority* in the final rule. Paragraph (c) *Extension of time* was not incorporated in the final rule because the appeal review period has been already set at 45 days and no extensions are possible.

Paragraph (e) *Appeal decisions* was not included in this section of the final rule because it is already covered in § 215.13(h)(3).

Proposed § 215.35. This is § 215.19 *Appeal reviewing officer authority* in the final rule. Public comment expressed concern that too many Forest Service officials were involved in the formal disposition process; that, in addition, the Appeal Reviewing Officers might be Responsible Officials on other decisions, thus creating the perception of bias during the review. Some respondent's were concerned about the potential for bias if a forest supervisor could review a district ranger's decision on the same forest.

Support was expressed in a significant number of comments for confining review of decisions to one level of the Forest Service. There also were a number of comments in favor of retaining the current (two level) process. Suggestions also were made to establish a review board, which was perceived as being more objective in reviewing decisions.

Response. In response to the concern about the appearance of bias by a person being a line officer of equal level, the final rule at section § 215.19(a) designates the Appeal Reviewing Officer as follows: an agency official at the regional level designated by the Chief for appeals of district ranger and forest supervisor decisions; and an agency official at the Washington Office level designated by the Chief for appeals of regional forester decisions. Under the final rule, the Appeal Reviewing Officer may not have participated in the initial decision and will not be responsible for implementing the initial decision after the appeal is decided.

Paragraph (b) *Scope of review* was rewritten to clarify that the Appeal Reviewing Officer's review is to focus on decision documentation and the appeal record. The appeal record is defined in § 215.2. The reference to the Appeal Reviewing Officer seeking additional information from any source was not adopted because the decision on the appeal should be based on the same information used in the Responsible Official's decision.

Paragraphs (c) *Review period* and (d) *Appeal disposition recommendation* have been included in the final rule at § 215.13(f)(2). A new paragraph (c) has been added in § 215.19 to clarify that the Appeal Reviewing Officer's review of decisions shall focus on decision documentation developed by the Responsible Official in reaching a decision, issues raised in the appeal, and comments submitted by interested parties.

Proposed 215.36. This is § 215.20 *Policy in event of judicial proceedings* in the final rule. This section was edited to acknowledge that the Department may waive exhaustion of administrative remedies as an argument in court actions.

Proposed 215.37. This is § 215.21 *Applicability and effective date* in the final rule. No change was made in this section.

Summary

The Department is committed to fostering a public involvement climate that allows for the open expression of ideas and encourages the public to join with the Agency in identifying and analyzing natural resource management options which result in balanced, multiple-use management of the national forest. In examining the efficiency of the current appeal process, the question is not whether the public should be involved in Forest Service planning and decisionmaking, but when and how that involvement should occur. The Act allows for expanded opportunities for public involvement in Forest Service decisionmaking. With section 322 of the Act, Congress recognized that critical decisions irretrievably committing resources generally occur at the project level of decisionmaking, a view long held by both the Department and the courts, as evidenced in decisions rendered on appeals and in court decisions on challenges to forest plans.

The Department has concluded that the public interest is best served by mutual efforts to resolve differences during the decisionmaking process,

rather than after a decision has been made. Therefore, in implementing this rule, the Department hopes to expand opportunities for pre-decisional involvement of the public in agency decisionmaking by establishing procedures to require public notice of and opportunity to comment on proposed actions. The procedures for the appeal of project and activity decisions which implement forest plans will allow for expeditious review of public concerns.

Adding a pre-decisional public notice and comment opportunity will help reduce the uncertainty that results from post-decisional appeals for communities dependent upon Forest Service goods and services, and will allow for greater stability in these dependent communities.

Regulatory Impact

This final rule has been reviewed under USDA procedures and Executive Order 12866 governing "Regulatory Planning and Review."The rule will not substantially increase prices or costs for consumers, industry, or State or local governments, nor adversely affect competition, employment, investment productivity, innovation, or the ability of United States-based enterprises to compete in foreign markets. To the contrary, adoption of this rule is intended to substantially reduce the disruption and delay arising from the current appeal rule and, thereby, provide a greater assurance that the Forest Service can carry out programs authorized and funded by Congress. Moreover, this rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), and it has been determined that this section will not have a significant adverse economic impact on a substantial number of small entities as defined by that Act.

Executive Order No. 12278

Executive order No. 12778 implements the Civil Justice Reform Act. The General Counsel has certified to the Office of Management and Budget that the regulations in this rule meet the applicable standards provided in sections 2(a) and 2(b) of Executive Order No. 12778. By focusing on pre-decisional notice and comment, this rule is fully consistent with the President's emphasis in implementing the Civil Justice Reform Act to use early and alternative methods to resolve conflicts and thereby reduce the potential of litigation.

Environmental Impact

This final rule falls within a category of actions (Rules, regulations or policies to establish Service-wide administrative procedures, program processes, or instructions) which normally does not individually or cumulatively have a significant effect on the quality of the human environment and, therefore, may be categorically excluded from documentation in an environmental assessment or environmental impact statement unless scoping indicates extraordinary circumstances exist (Forest Service Handbook 1909.15, section 31.1b, paragraph 2; 57 FR 43180, September 18, 1992). Scoping of the proposed rule indicated that there were no extraordinary circumstances involved. Therefore, this final rule is excluded from documentation in an environmental assessment or environmental impact statement.

Controlling Paperwork Burdens on the Public

This rule does not contain any recordkeeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 and thereby imposes no paperwork burden on the public.

List of Subjects in 36 CFR Parts 215 and 217

Administrative practice and procedure, National forests.

Accordingly, 36 CFR chapter II is amended as set forth below.

Add a new part 215 to read as follows:

PART 215—NOTICE, COMMENT, AND APPEAL PROCEDURES FOR NATIONAL FOREST SYSTEM PROJECTS AND ACTIVITIES

Sec.

215.1 Purpose and scope.
215.2 Definitions.
215.3 Proposes actions subject to notice and comment.
215.4 Actions not subject to notice and comment.
215.5 Notice for public comment on proposed actions.
215.6 Response to comments received on proposed actions.
215.7 Decisions subject to appeal.
215.8 Decisions not subject to appeal.
215.9 Notice of decisions.
215.10 Implementation of decisions.
215.11 Who may participate in appeals.
215.12 Where to file appeals.
215.13 Appeal time periods and process.
215.14 Content of an appeal.
215.15 Dismissal of appeal without review.
215.16 Informal disposition.
215.17 Formal disposition.
215.18 Appeal deciding officer authority.
215.19 Appeal reviewing officer authority.
215.20 Policy in event of judicial proceedings.
215.21 Applicability and effective date.

Authority: 16 U.S.C. 472, 551; sec. 322, Pub. L. 102–381, 106 Stat. 1419 (16 U.S.C. 1612 note).

§ 215.1 Purpose and scope.

(a) *Purpose.* The rules of this part have two purposes. First, this part establishes a process by which persons or organizations may receive notice and be provided opportunity to comment on proposed actions implementing national forest land and resource management plans prior to a final decision by the responsible official. This includes notice of and opportunity to comment on nonsignificant amendments of land and resource management plans that are made in conjunction with those proposed actions. Second, this part provides for prompt administrative review of project and activities implementing forest plans and establishes who may appeal decisions on planned actions, the kind of decisions that may be appealed, the responsibilities of the participants in an appeal, and the procedures that apply.

(b) *Scope.* The process established in this part constitutes the final administrative opportunity for the public to influence National Forest System project decisionmaking prior to implementation. The rules of this part complement, but do not replace, numerous other opportunities to participate in and influence agency decisionmaking provided pursuant to the National Environmental Policy Act of 1969, the National Forest Management Act, and the implementing regulations and procedures in 40 CFR parts 1500–1508 and 36 CFR parts 216 and 219, Forest Service Manual Chapters 1920 and 1950, and Forest Service Handbooks 1909.12 and 1909.15.

§ 215.2 Definitions.

For the purpose of this part—

Appeal is the written document filed with an Appeal Deciding Officer by one who objects to a decision covered by this part.

Appeal Deciding Officer is the Forest Service line officer having the delegated authority and responsibile to render a decision on an appeal filed under this part.

Appeal Period is the 45 calendar-day period during which an appeal may be filed with the Appeal Deciding Officer.

Appeal Record is the information assembled and/or created during the course of an appeal and upon which review of an appeal is conducted. It consists of the decision documentation, the appeal, the Responsible Official's documentation of the informal disposition meeting, the public notice of

decision document, and written comments submitted by interested parties.

Appeal Reviewing Officer is an agency official who reviews an appeal and makes a written recommendation to the Appeal Deciding Officer on the disposition of the appeal.

Appellant is a person or organization filing an appeal under this part.

Categorical Exclusion refers to a category of actions which do not individually or cumulatively have a significant effect on the human environment and for which neither an environmental impact statement (EIS) nor an environmental assessment (EA) is required (40 CFR 1508.4; Forest Service Handbook 1909.15, Chapter 30).

Comment Period is the 30 calendar day period, following publication of the notice for public comment, available to interested persons to provide comments to a Responsible Official on a proposed action subject to this part.

Decision Document is the document that records the decisions for actions implementing land and resource management plans. (See also, Record of Decision, Decision Notice, and Decision Memo.)

Decision documentation refers to the decision document and all relevant environmental and other analysis documentation and records on which the Responsible Official based a decision that is at issue under an appeal filed pursuant to this part. Decision documentation may include, but is not limited to, a project or case file, Record of Decision, Decision Notice, Decision Memo, environmental assessment, finding of no significant impact, draft and final environmental impact statement, land and resource management plan, regional guide, and documents incorporated by reference in any of the preceding documents.

Decision Memo is a concise written record of a Responsible Official's decision to implement actions that have been categorically excluded from documentation in an environmental impact statement or environmental assessment (40 CFR 1508.4, Forest Service Handbook 1909.15, Chapter 30).

Decision Notice is a concise written record of a Responsible Official's decision based on an environmental assessment and a finding of no significant impact. (40 CFR 1508.9, Forest Service Handbook 1909.15, Chapter 40).

Environmental Assessment is a concise public document that provides sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact (40 CFR 1508.9; Forest Service Handbook (FSH), 1909.15, Chapter 40).

Environmental Impact Statement is a detailed written statement as required by section 102(2)(C) of the National Environmental Policy Act of 1969 (40 CFR 1508.11; FSH 1909.15, Chapter 20).

Finding of No Significant Impact (FONSI) is a document prepared by a federal agency presenting the reasons why an action, not otherwise excluded, will not have a significant effect on the human environment and for which an environmental impact statement, therefore, will not be prepared. It includes the environmental assessment or a summary of it and shall note any other environmental documents related to it (40 CFR 1508.13; Forest Service Handbook 1909.15, Chapter 40).

Forest Service line officer is a Forest Service official who serves in a direct line of command from the Chief and who has the delegated authority to make and execute decisions subject to this part. Specifically, for the purposes of this part, a Forest Service employee who holds one of the following offices and titles: District Ranger, Deputy Forest Supervisor, Forest Supervisor, Deputy Regional Forester, Regional Forester, Associate Deputy Chief, Deputy Chief, Associate Chief of the Forest Service, or an employee delegated the authority to act in one of these capacities.

Interested Party is a person or organization other than the appellant that provides written information to the Appeal Reviewing Officer regarding an appeal.

Proposed action is a proposal made by the Forest Service to authorize, recommend, or implement an action on National Forest System lands to meet a specific purpose and need which is subject to the notice and comment provisions of this part.

Proposed Timber Harvest Categorically Excluded from Documentation under Forest Service Handbook 1909.12, section 31.2, paragraph 4 is timber harvest which removes 250,000 board feet or less of merchantable wood products, or salvage which removes 1,000,000 board feet or less of merchantable wood products; which requires one mile or less of low standard road construction (Service level D. FSH 7709.56); and assures regeneration of harvested or salvaged areas, where required; which normally are categorically excluded from documentation in an environmental assessment or environmental impact statement; and for which a project or case file and decision memo are required (Forest Service Handbook 1909.12, sec. 31.2, para. 4).

Record of Decision is a document signed by a Responsible Official recording a decision that was preceded by preparation of an environmental impact statement (40 CFR 1505.2; Forest Service Handbook 1909.15, Chapter 20).

Responsibile Official is the Forest Service line officer who has the authority and responsibility to make decisions on proposed actions subject to notice, comment and appeal under this part.

§ 215.3 Proposed actions subject to notice and comment.

The notice and comment procedures of § 215.5 apply only to the following actions:

(a) Proposed actions implementing national forest land and resource management plans (36 CFR 219.11) for which an environmental assessment is prepared.

(b) Proposed timber harvest as described in Paragraph 4, section 31.2 of Forest Service Handbook 1905.15 for which a project or case file and Decision Memo are required.

(c) Nonsignificant amendments (36 CFR part 219) to land and resource management plans that are included as part of a decision on a proposed action as specified in paragraph (a) of this section.

(d) Proposed actions on those National Forests which do not yet have approved land and resource management plans prepared pursuant to 36 CFR part 219 as follows:

(1) Proposed actions for which an environmental assessment is prepared; or

(2) Proposed timber harvest as described in Paragraph 4, section 31.2 of Forest Service Handbook 1905.15 for which a project or case file and Decision Memo are required.

(e) Proposed forestry research activities to be conducted on National Forest Systems lands for which an environmental assessment has been prepared.

§ 215.4 Actions not subject to notice and comment.

The following proposed actions are not subject to notice and comment procedures of § 215.5

(a) Actions described in a draft environmental impact statement, for which notice and comment procedures are governed by 40 CFR parts 1500–1508;

(b) Actions categorically excluded from documentation in an environmental impact statement or environmental assessment pursuant to 7 CFR 1b.3 or FSH 1909.15, sections 31.1 and 31.2, except timber harvest actions as specified in § 215.3(b) and (d)(2);

(c) Any action or policy not subject to the provisions of the National Environmental Policy Act and the implementing regulations at 40 CFR parts 1500–1508;

(d) Rules promulgated in accordance with the Administrative Procedure Act (5 U.S.C. 551 et seq.) or policies and procedures issued in Forest Service Manuals and Handbooks (36 CFR parts 200, 216);

(e) A nonsignificant amendment to a land and resource management plan which is made separately from a proposed action specified in § 215.3(c) and which, therefore, is subject to appeal under part 217 of this chapter.

§ 215.5 Notice and comment on proposed actions.

(a) *Annual notice of newspapers.* Annually, each Regional Forester shall, through notice published in the **Federal Register**, advise the public of the principal newspapers to be utilized for publishing notices required by this section.

(b) *Manner of giving notice.* (a) The Responsible Official shall publish notice of proposed actions as specified in § 215.3 in a newspaper of general circulation identified pursuant to the requirements of paragraph (a) of this section.

(2) The Responsible Official also shall give the public notice of the opportunity to comment on proposed actions subject to this part as follows:

(i) For proposed actions requiring an environmental assessment, the Responsible Official shall promptly mail the environmental assessment along with a letter identifying the proposed action to any person who has requested it and to persons who are known to have participated in the environmental analysis process.

(ii) For proposed timber harvest actions categorically excluded from documentation under Forest Service Handbook 1909.15, section 31.2, paragraph 4, the Responsible Official shall promptly mail a letter briefly describing the proposed to any person who has requested notice, to persons who are on a mailing list to receive notice of this type of decision, or to persons who are known to have participated in the decisionmaking process.

(c) *Content of the public notice for comment on proposed actions.* All notices provided or published pursuant to this section shall include the following:

(1) The title and brief description of the proposed action;

(2) A general description of the proposed action location;

(3) Instructions on how to obtain additional information on the proposed action;

(4) The name, title, address, and telephone number of the Responsible Official to whom comments should be addressed; and

(5) The date the comment period ends (§ 215.6(a)).

§ 215.6 Response to comments received on proposed actions.

(a) *Comment period.* The Responsible Official shall accept comments on an proposed action subject to § 215.3 for 30 days following the date of publication of the notice for public comment. Both oral and written comments shall be accepted. The 30-day period for comment begins on the first day after publication of notice. Saturdays, Sundays, and Federal holidays are included in computing all time periods in this section; however, when the comment period ends on a Saturday, Sunday, or Federal holiday, the comment period shall be extended to the close of business of the next Federal working day.

(b) *Submission.* Persons expressing an interest or submitting comments to the Responsible Official in response to a notice published or provided pursuant to § 215.5 shall provide the following information, which will become a matter of public record:

(1) Name, address, and (if possible) telephone number;

(2) Title of the document(s) on which comment is being submitted; and

(3) Specific facts or comments along with supporting reasons that the person believes the Responsible Official should consider in reaching a decision.

(c) *Timeliness.* It is the responsibility of persons providing comments to submit them by the close of the comment period.

(1) When comments are received, the Responsible Official shall clearly identify the date of receipt.

(2) The Responsible Official must consider all written comments postmarked or facsimile imprinted by the close of business on the 30th day following publication of the notice (§ 215.5) and all oral comments received by the close of business on the 30th day following publication of the notice.

(d) The Responsible Official shall address comments received from the public during the comment period in an appendix to the environmental assessment. For proposed timber harvest actions to be categorically excluded from documentation under Forest Service Handbook 1909.15, section 31.2, paragraph 4, public comments and responses to them shall be placed in the project file.

(e) Notes of oral comments received in response to a notice for public comment pursuant to § 215.5 shall be placed in the files and addressed pursuant to paragraph (d) of this section.

§ 215.7 Decisions subject to appeal.

Only the following decisions are subject to appeal under this part:

(a) Project and activity decisions documented in a Record of Decision or Decision Notice, including those which, as a part of the project approval decision, contain a nonsignificant amendment to a National Forest Land and Resource Management Plan (36 CFR 219.10).

(b) Timber harvest project and activity decisions as described in paragraph 4, Section 31.2 of Forest Service Handbook 1909.15 which are documented in a decision memo.

§ 215.8 Decisions not subject to appeal.

(a) The following decisions are not subject to appeal under this part:

(1) Project or activity decisions included in a Record of Decision for significant amendment, revision, or approval of a land and resource management plan, appeal of which is governed by 36 CFR part 217;

(2) Preliminary findings made during planning and/or analysis processes. Such findings are appealable only upon issuance of a decision document;

(3) Actions for which notice and opportunity to comment have been published and on which no expression of interest has been received during the comment period (§ 215.6), and on which the Responsible Official's decision does not modify the proposed action; and

(4) Decisions for actions that have been categorically excluded from documentation in an environmental assessment or environmental impact statement in FSH 1909.15, Section 31.1 and 31.2, except as noted in § 215.7(b).

(b) In addition to decisions excluded from appeal by paragraph (a) of this section, the Appeal Deciding Officer shall dismiss any appeal filed on subsequent implementing actions that result from the initial project decision subject to appeal under § 215.7. For example, an initial decision to offer a timber sale is appealable under this part; subsequent implementing actions to advertise or award that sales are not appealable under this part.

(c) Decisions solely affecting the business relationship between the Forest Service and holders of written instruments regarding occupancy and use of National Forest System lands can be appealed by permit holders under

either 36 CFR part 251, subpart C, or this part, but cannot be appealed under both regulations.

§ 215.9 Notice of decisions.

(a) *Publication of public notice.* The Responsible Official shall publish a notice of any decision which is subject to notice and comment under § 215.3 in a newspaper of general circulation identified pursuant to the requirements of § 215.5(a).

(b) *Publication of notice of a decision.* A notice of a decision published pursuant to this section shall:

(1) Include the decision title and a concise description of the action(s) to be taken, the name and title of the Responsible Official, and instructions for obtaining a copy of the decision document;

(2) Except for decisions on which no expression of interest was received during the comment period § 215.8(4), state that the decision is subject to appeal pursuant this part and include the following:

(i) State the name and address of the Appeal Deciding Officer with whom an appeal should be filed;

(ii) Specify that an appeal must be postmarked and submitted to the Appeal Deciding Officer within 45 days of the date of publication in accordance with § 215.13;

(3) For those decisions on which no comment was received, state that the decision is not subject to appeal pursuant to § 215.8(a)(4).

(c) *Mailing decision documents.* The Responsible Official shall promptly mail the decision document to those who request the specific document and to those who submitted comments on the proposed action either before or during the comment period provided pursuant to § 215.6.

§ 215.10 Implementation of decisions.

(a) If no appeal is filed, implementation of decisions subject to appeal pursuant to this part may occur on, but not before, 5 business days from the close of the appeal filing period.

(b) If an appeal is filed, implementation may not occur for 15 days following the date of appeal disposition. In the event of multiple appeals of the same decision, the date of the disposition of the last appeal controls the implementation date.

(c) If a project is not appealable because, pursuant to § 215.8(a)(4), no expression of interest has been received and there is no change from the proposed action, implementation may occur immediately upon publication of the notice of the decision as provided in § 215.9.

(d) A project decision is not subject to a stay if the Chief of the Forest Service determines that an emergency situation exists with respect to the decision in accordance with the following provisions of this paragraph:

(1) An emergency, as defined here, is an unexpected event, or a serious occurrence or a situation requiring urgent action. Examples of an emergency include, but are not limited to, the following:

(i) Vegetation loss which presents an immediate threat of flooding or landslide.

(ii) Hazardous or unsafe situations as a result of wildfire or other circumstances.

(iii) Damage to water quality caused by siltation due to fire or flooding.

(iv) Potential loss of fish and wildlife habitat due to windstorms and blowdowns.

(v) Sudden outbreaks of forest pests and diseases.

(2) The Responsible Official shall notify the public that the Forest Service intends to handle this project as an emergency in the public notice on proposed actions as provided in § 215.5(c)(1). Actions responding to emergency situations may be accomplished with force account (Forest Service crews), service contracts or timber sale contracts.

§ 215.11 Who may participate in appeals.

(a) Except as provided for in paragraph (c) of this section, an appeal pursuant to this part may be filed by any person who, or any non-Federal organization or entity that has met either of the following criteria:

(1) Submitted written comment in response to a project draft Environmental Impact Statement; or

(2) Provided comment or otherwise expressed interest in a particular proposed action by the close of the comment period specified in § 215.6.

(b) Persons interested in or potentially affected by an appeal may participate as an interested party, as provided in § 215.13(e).

(c) Forest Service employees and Federal agencies may not participate as appellants or interested parties.

§ 215.12 Where to file appeals.

The Appeal Deciding Officer with whom appeals must be filed are as follows:

If the responsible official who made the decision is:	Then the appeal deciding officer is:
Regional Forester	Chief of the Forest Service.
Forest Supervisor or District Ranger	Regional Forester.
Do.	

§ 215.13 Appeal time periods and process.

(a) *Filing procedures.* To appeal a decision under this part, a person must submit a written appeal to the Appeal Deciding Officer within the 45 day appeal filing period specified in the public notice published pursuant to § 215.9.

(b) *Computation of time periods.* (1) The day after the publication of the public notice published pursuant to § 215.9 is the first day of the appeal filing period.

(2) All time periods in this section are to be computed using calendar days. Saturdays, Sundays, and Federal holidays are included in computing the time period for filing an appeal. However, when the filing period would expire on a Saturday, Sunday, or Federal holiday, the filing time is extended to the end of the next Federal working day.

(c) *Evidence of timely filing.* The appellant is responsible for submitting an appeal on or before the last day of the appeal filing period. Where there is a question about timelines of an appeal, the U.S. Postal Service postmark on a mailed appeal or the time and date imprint on a facsimile appeal will be used to determine timeliness.

(d) *Time extensions.* Time extensions are not permitted.

(e) *Interested party comments.* Interested parties must submit written comments to the Appeal Reviewing Officer within 15 days after close of the appeal filing period and are encouraged to provide a copy to the appellants at the same time. An interested party can obtain the address of the Appeal Reviewing Officer and appellants by contacting the Appeal Deciding Officer.

(f) *Time period for formal disposition.* Unless an appeal is resolved through the informal disposition process provided for in § 215.16, the following timeframe and process shall apply:

(1) *Transmittal of decision documentation.* Within 15 days of the close of the appeal filing period, the Responsible Official shall transmit the appeal record to the Appeal Reviewing Officer.

(2) *Review recommendation.* Within 30 days of the close of the appeal filing period, the Appeal Reviewing Officer shall review the appeal record and forward it to the Appeal Deciding Officer with a written recommendation on the disposition of the appeal(s). The

Appeal Reviewing Officer's recommendation shall be released upon issuance of an appeal decision.

(3) *Appeal decision.* Within 45 days following the end of the appeal filing period, the Appeal Deciding Officer shall issue a written decision or otherwise give notice to appellant(s) concerning the disposition of the appeal. The decision or notice shall briefly explain why the Responsible Official's original decision was affirmed or reversed, in whole or in part.

§ 215.14 Content of an appeal.

(a) It is the appellant's responsibility to provide sufficient written evidence and rationale to show why the Responsible Official's decision should be remanded or reversed.

(b) An appeal submitted to the Appeal Deciding Officer becomes a part of the appeal record. An appeal must meet the following requirements:

(1) State that the document is an appeal filed pursuant to 36 CFR part 215;

(2) List the name and address of the appellant and, if possible, a telephone number;

(3) Identify the decision document by title and subject, date of the decision, and name and title of the Responsible Official;

(4) Identify the specific change(s) in the decision that the appellant seeks or portion of the decision to which the appellant objects;

(5) State how the Responsible Official's decision fails to consider comments previously provided, either before or during the comment period specified in § 215.6 and, if applicable, how the appellant believes the decision violates law, regulation, or policy.

§ 215.15 Dismissal of appeal without review.

(a) An Appeal Deciding Officer shall dismiss an appeal without review when:

(1) The appeal is not postmarked or the facsimile is not date imprinted within the 45-day appeal filing period in accordance with § 215.13;

(2) The requested relief or change cannot be granted under law, fact, or regulation;

(3) The decision at issue is being appealed by the appellant under another administrative proceeding;

(4) The decision is excluded from appeal pursuant to § 215.8;

(5) The appellant did not express an interest in the specific proposal at any time prior to the close of the comment period specified in § 215.6;

(6) The Responsible Official has withdrawn the decision being appealed; or

(7) The appellant has filed for Federal judicial review of the decision and the Chief has waived the argument in § 215.20.

(b) The Appeal Deciding Officer shall give written notice to the appellant, interested parties, and Responsible Official that an appeal is dismissed and state the reasons for dismissal.

§ 215.16 Informal disposition.

(a) *Offer to meet.* When a decision is appealed under this part, the Responsible Official must contact the appellant(s) and offer to meet and discuss resolution of the issues raised in the appeal. This contact shall be made as soon as practicable after an appeal has been filed.

(b) *Time and location of meeting.* If one or more appellants agree to meet, the meeting(s) must take place not later than 15 days after the closing date for filing an appeal. The location of the meeting shall be in the vicinity of the lands affected by the decision. When the District Ranger is the Responsible Official, meetings will generally be located on or near that Ranger District. When the Forest Supervisor or Regional Forester is the Responsible Official, meetings will generally take place at a location within or near the National Forest.

(c) *Type of meeting.* Generally, participants shall be physically present at informal disposition meetings. Where an appellant cannot attend a meeting in person because of schedule conflicts or travel distances, alternative types of meetings (such as telephone conferences or video conferences) may be arranged. This alternative type meeting also must take place not later than 15 days after the closing date for filing an appeal. The informal disposition meeting must be open to interested parties and the public.

(d) *Agreement on disposition.* The Responsible Official must notify the Appeal Deciding Officer of the names of meeting participants and the outcome of the informal disposition meeting.

(1) If the appellant(s) and Responsible Official reach agreement on disposition of the appeal, the Responsible Official shall so notify the Appeal Deciding Officer and the appellant shall withdraw the appeal by letter to the Appeal Deciding Officer no later than 15 days after the meeting. Upon notice from the appellant that the appeal has been withdrawn, the Appeal Deciding Officer shall notify the interested parties, Appeal Reviewing Officer, and Responsible Official of the conclusion of the appeal.

(2) If, as a result of the agreement reached at the informal disposition meeting, new information is received or changes to the original project decision or environmental analysis are proposed, the Responsible Official must follow the procedures in the Environmental Policy and Procedures Handbook, FSH 1909.15, section 18.

(e) *Failure to reach agreement.* If the appeal is not resolved through the informal disposition meeting, the Responsible Official shall so notify the Appeal Deciding Officer in writing. The Appeal Deciding Officer shall then advise the Appeal Reviewing Officer to proceed with formal review of the appeal.

§ 215.17 Formal disposition.

(a) *Formal disposition period.* The Appeal Deciding Officer shall issue an appeal decision not later than 45 days after the end of the appeal filing period.

(b) *Appeal decision.* The Appeal Deciding Officer shall complete a review based on the appeal record as defined in § 215.2 and the Reviewing Officer's recommendation. The Appeal Deciding Officer shall issue a written appeal decision either affirming or reversing the Responsible Official's decision, in whole or in part, and may include instructions for further action. The Appeal Deciding Officer shall send a copy of the appeal decision to the appellant, interested parties, the Appeal Reviewing Officer, and the Responsible Official. If a formal decision is not issued, the Appeal Deciding Officer shall notify the appellant(s) of the disposition of their appeal.

§ 215.18 Appeal deciding officer authority.

(a) *Consolidation of appeal decisions.* In cases involving multiple appeals of a decision subject to this part, the Appeal Deciding Officer shall determine whether to issue one appeal decision or separate appeal decisions.

(b) *Procedural decisions.* The Appeal Deciding Officer shall make all procedural determinations in this part. Such determinations are not subject to further administrative review.

(c) *Appeal decisions.* The Appeal Deciding Officer's decision constitutes the final administrative determination of the Department of Agriculture.

§ 215.19 Appeal reviewing officer authority.

(a) *Identification of Appeal Reviewing Officer.* An agency official at the Regional Office level designated by the Chief is the Appeal Reviewing Officer for appeals of District Ranger and Forest Supervisor decisions. An agency official at the Washington Office level designated by the Chief is the Appeal Reviewing Officer for appeals of

Regional Forester Decisions. The Appeal Reviewing Officer shall be an officer at least at the level of the agency official who made the initial decision on the project or activity that is under appeal and has not participated in the initial decision and will not be responsible for implementing the initial decision after the appeal is decided.

(b) *Scope of review.* The Appeal Reviewing Officer's review of decisions under this part focuses on decision documentation developed by the Responsible Official in reaching the decision, issues raised in the appeal, and comments submitted by interested parties.

(c) *Consolidation of recommendations.* In cases involving multiple appeals of a decision subject to this part, the Appeal Reviewing Officer shall determine whether to issue one recommendation or separate recommendations.

§ 215.20 Policy in event of judicial proceedings.

Unless waived in a specific case, it is the position of the Department of Agriculture that any filing for Federal judicial review of a decision subject to review under this part is premature and inappropriate unless the plaintiff has first sought to invoke and exhaust the procedures available under this part.

§ 215.21 Applicability and effective date.

(a) The requirements of § 215.5 of this part to provide notice and opportunity to comment on proposed actions described in § 215.3 is effective January 3, 1994.

(b) Decisions for which notice has been given pursuant to 36 CFR 217.5 prior to January 3, 1994, remain subject to the appeal procedures of 36 CFR part 217.

PART 217—APPEAL OF REGIONAL GUIDES AND NATIONAL FOREST LAND AND RESOURCE MANAGEMENT PLANS

2. Revise the heading for part 217 to read as set out above.

3. The authority citation for part 217 continues to read as follows:

Authority: 16 U.S.C. 551, 472.

4. Revise § 217.1 to read as follows:

§ 217.1 Purpose and scope.

(a) This part provides a process by which a person or organization interested in the management of the National Forest System may administratively appeal decisions to approve, amend, or revise a National Forest land and resource management plan or approve or amend a regional guide prepared pursuant to 36 CFR part 219. This part establishes who may appeal such decisions, the kind of decisions that may be appealed, the responsibilities of the participants in an appeal, and the procedures that apply. This part provides a review of such decisions by an official at the next administrative level.

(2) This part complements, but does not replace, numerous opportunities to participate in and influence agency decisionmaking provided pursuant to the National Environmental Policy Act of 1969 (NEPA) and the associated implementing regulations and procedures in 40 CFR parts 1500–1508, 36 CFR parts 215, 216, and 219, Forest Service Manual Chapters 1920 and 1950, and Forest Service Handbooks 1909.12 and 1909.15.

5. Amend § 217.2 by removing the definition for "Decision Memo" and by revising the definitions for "decision document", "decision documentation", and "Forest Service line officer" to read as follows:

§ 217.2 Definitions.

* * * * *

Decision document means a written document that a Deciding Officer signs to execute a decision subject to review under this part. Specifically a Record of Decision or a Decision Notice.

Decision documentation refers to the decision document and all relevant environmental and other analysis documentation on which the Deciding Officer based a decision that is at issue under the rules of this part. Decision documentation includes, but is not limited to, environmental assessments, findings of no significant impact, environmental impact statements, land and resource management plans, regional guides, documents incorporated by reference in any of the preceding documents, and drafts of these documents released for public review and comment.

* * * * *

Forest Service line officer. The Chief of the Forest Service or a Forest Service official who serves in a direct line of command from the Chief and who has the delegated authority to make and execute decisions under this subpart. Specifically, for the purposes of this subpart, a Forest Service employee who hold one of the following offices and titles: Forest Supervisor, Deputy Forest Supervisor, Regional Forester, Deputy Regional Forester Deputy Chief, Associate Deputy Chief, Associate Chief, or the Chief of the Forest Service.

* * * * *

6. Revise § 217.3 to read as follows:

§ 217.3 Decisions subject to appeal.

(a) The following decisions are subject to appeal under this part:

(1) Decisions to approve, amend, or revise a National Forest Land and Resource Management Plan including project or activity decisions for which environmental effects have been analyzed and disclosed within a final EIS and documented in a Record of Decision including approval, significant amendments, or revisions of a land and resource management plan.

(2) Decisions to approve or amend a regional guide prepared pursuant to 36 CFR part 219 and documented in a Decision Notice or Record of Decision are subject to appeal under this part, except as provided in § 217.4.

(b) Decisions as defined in paragraph (a) of this section and documented in a Decision Notice or a Record of Decision that are made by a subordinate Forest Service staff officer acting within delegated authority are considered to be decisions of the Forest Service line officer.

7. Revise § 217.4 to read as follows:

§ 217.4 Decisions not subject to appeal.

The following decisions are not subject to appeal under this part.

(a) Decisions on projects or activities implementing National Forest Land and Resource Management Plans including project decisions that include a non-significant amendment to a National Forest Land and Resource Management Plan.

(b) Preliminary planning decisions or preliminary decisions as to National Environmental Policy Act or National Forest Management Act processes made prior to release of final plans, guides, and environmental documents.

(c) Recommendations of Forest Service line officers to higher ranking Forest Service or Departmental officers or to other entities having final authority to implement the recommendations in question, such as wilderness and wild and scenic river recommendations.

8. Amend § 217.7 by revising paragraphs (b), (c), and (d) and by removing paragraph (e) to read as follows:

§ 217.7 Levels of appeal.

* * * * *

(b) *Decisions made by Forest Supervisors and Regional Foresters.* The levels of available review are as follows:

(1) If the decision is made by a Forest Supervisor, the notice of appeal is filed with the Regional Forester;

(2) If the decision is made by a Regional Forester, the notice of appeal is filed with the Chief of the Forest Service.

(c) *Discretionary review of dismissal decisions.* Dismissal decisions rendered by Forest Service line officers pursuant to this part (§ 217.11) are subject to discretionary review as follows:

(1) If the initial Reviewing Officer was the Regional Forester, the Chief has discretion to review.

(2) If the Reviewing Officer was the Chief, the Secretary of Agriculture has discretion to review.

(d) *Discretionary review of appeal decisions.* Appeal decisions rendered by Regional Foresters and the Chief pursuant to this part are subject to discretionary review as follows:

(1) If the Reviewing Officer was the Regional Forester, the Chief has discretion to review.

(2) If the Reviewing Officer was the Chief, the Secretary of Agriculture has discretion to review.

9. Amend § 217.8 by removing paragraphs (f)(1) and (f)(3) and redesignating paragraphs (f)(2) and (f)(4) as (f)(1) and (f)(2), respectively, and by revising paragraph (a)(2) to read as follows:

§ 217.8 Appeal process sequence.

(a) * * *

(2) File the notice of appeal within 45 days of the date specified in the published legal notice for non-significant amendments to land and resource management plans documented in a Decision Notice or Record of Decision.

* * * * *

10. Revise paragraph (i) of § 217.10 to read as follows:

§ 217.10 Implementation and stays of decision.

* * * * *

(i) A Reviewing Officer's decision on a request to stay implementation of a project or activity included in a Land and Resource Management Plan or significant amendment or revision to the plan is not subject to discretionary review at the next administrative level.

* * * * *

11. Revise paragraph (a) of § 217.14 to read as follows:

§ 217.14 Intervention.

(a) For a period not to exceed 20 days following the filing of a notice of appeal, the Reviewing Officer shall accept requests to intervene in the appeal from any interested or potentially affected person or organization. Requests to intervene in an appeal during the discretionary review (§ 217.7(d)) shall not be accepted.

* * * * *

12. Revise paragraph (a) of § 217.15 to read as follows:

§ 217.15 Appeal record.

(a) Upon receipt of a copy of the notice of appeal, the Deciding Officer shall assemble the relevant decision documentation (§ 217.2) and pertinent records, and transmit them to the Reviewing Officer within 30 days in appeal of non-significant amendments to land and resource management plans or within 60 days for appeals of land and resource management plan approvals, significant amendments, or revisions, and for other programmatic decisions. The time period for forwarding the decision documentation is not extendable.

* * * * *

13. Revise paragraph (e) of § 217.16 to read as follows:

§ 217.16 Decisions.

* * * * *

(e) Unless a higher level officer exercises the discretion to review a Receiving Officer's decision as provided at § 217.7(d), the Reviewing Officer's decision is the final administrative decision of the Department of Agriculture and the decision is not subject to further review under this part.

14. In § 217.17, revise paragraphs (b), (c) and (f) to read as follows:

§ 217.17 Discretionary review.

(b) As provided for a §§ 217.7 (c) and (d), 217.10(h), and 217.11, certain dismissal decisions rendered by Forest Service line officers, and appeal decisions rendered by Regional Foresters and the Chief (§ 217.16) are subject to discretionary review at the next highest administrative level. Within one day following the date of any decision subject to such discretionary review, the Reviewing Officer shall forward a copy of the decision and the decision documents (§ 217.2) upon which the appeal was predicated to the next higher officer.

(c) When a stay of implementation is in effect, it shall remain in effect until the end of the 15-day period in which a higher level officer must decide whether or not to review a Reviewing Officer's decision (§ 217.17(d)). If the higher level officer decides to review the Reviewing Officer's decision, the stay will remain in effect until a decision is issued (§ 217.17(f)), or until the end of the 30-day review period provided in § 217.17(g) whichever is less.

* * * * *

(f) The discretionary level Reviewing Officer shall conclude the review within 30 days of the date of the notice issued to participants that the lower decision will be reviewed, and shall send a copy of the review decision to all participants.

* * * * *

Dated: October 29, 1993.

James R. Lyons,

Assistant Secretary, Natural Resources and Environment.

[FR Doc. 93–27034 Filed 11–3–93; 8:45 am]

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federal register

Thursday
November 4, 1993

Part III

Department of Agriculture

Food Safety and Inspection Service

9 CFR Parts 317 and 381

Safe Handling Statements on Labeling of Raw Meat and Poultry; Rule

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 317 and 381

[Docket No. 93–012F–1]

RIN 0583–AB67

Mandatory Safe Handling Statements on Labeling of Raw Meat and Poultry Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending the Federal meat and poultry products inspection regulations to remove the provisions that make safe handling instructions mandatory on raw and partially cooked meat and poultry product labeling. The interim and final regulations that require such safe handling instructions were issued by FSIS to provide additional safeguards to protect consumers from exposure to possible bacterial contaminants found in raw and partially cooked meat and poultry products. The United States District Court for the Western District of Texas recently enjoined the Department from enforcing or implementing such interim or final regulations based on a request for a preliminary injunction by several industry associations. This action is being taken to remove those provisions mandating safe handling instructions pending opportunity for public comment on a proposed rule to mandate safe handling instructions, which is published elsewhere in this issue of the **Federal Register**.

EFFECTIVE DATE: November 4, 1993.

FOR FURTHER INFORMATION CONTACT: Patrick J. Clerkin, Director, Field Operations Division, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 254–2537.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule is in conformance with Executive Order 12866, and the Assistant Secretary has determined that it is not a "significant regulatory action." This final rule: (1) Has an effect on the economy of less than $100 million; (2) does not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (3) does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (4) does not alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations of recipients thereof; and (5) does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order 12866.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. States and local jurisdictions are preempted under the Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA) from imposing any marking, labeling, packaging, or ingredient requirement on federally inspected meat and poultry products that are in addition to, or different than, those imposed under the FMIA or PPIA. States and local jurisdictions may, however, exercise concurrent jurisdiction over meat and poultry products that are outside official establishments for the purpose of preventing the distribution of meat and poultry products that are misbranded or adulterated under the FMIA or PPIA, or, in the case of imported articles, which are not at such an establishment, after their entry into the United States. Under the FMIA and PPIA, States that maintain meat and poultry inspection programs must impose requirements that are at least equal to those required under the FMIA and PPIA. The States may, however, impose more stringent requirements on such State inspected products and establishments.

No retroactive effect will be given to this rule. The administrative procedures specified in 9 CFR 306.5 and 381.35 must be exhausted prior to any judicial challenge of the application of the provisions of this rule, if the challenge involves any decision of an inspector relating to inspection services provided under the FMIA or PPIA. The administrative procedures specified in 9 CFR Parts 335 and 381, subpart W, must be exhausted prior to any judicial challenge of the application of the provisions of this rule with respect to labeling decisions.

Effect on Small Entities

The Administrator has determined that this rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601). The rule removes the requirement that raw and partially cooked meat and poultry product labeling must bear safe handling instructions.

Background

In mid-January 1993, outbreaks of a severe food poisoning led to four deaths among approximately 500 confirmed cases in Washington, Idaho, California, and Nevada. The outbreaks were linked to the pathogenic bacterial strain *E. coli* 0157:H7. Because most of the cases were traceable to undercooked hamburgers served at a fast-food restaurant chain, Federal and local authorities intensified their regulatory activities. In June and July of this year, the Department became aware of nine separate incidents where *E. coli* 0157:H7 has been the cause of illness or death or at least suspected of being the cause.

The Department concluded that it was time to require safe handling information on raw and partially cooked meat and poultry products and require it immediately via the interim final rulemaking process. On August 16, 1993, FSIS published in the **Federal Register** an interim rule with request for comments (58 FR 43478) that amended the Federal meat and poultry products inspection regulations to make safe handling instructions mandatory on raw and partially cooked meat and poultry product labeling. The interim rule mandated the inclusion of safe handling instructions on the labels of certain meat and poultry products along with a rationale statement to indicate the reason why it is important to follow such handling instructions. Generally, the rule required safe handling instructions for those products that are uncooked or have not been otherwise further processed to make them ready-to-eat.

The rule provided for the use of two different rationale statements depending on where the product is labeled. One rationale statement was designed for use on products fully labeled at the federally inspected establishments and a second rationale statement was designed for use on products labeled at retail. The interim rule was to become effective on October 15, 1993.

After reviewing the 357 comments received in response to the interim rule, FSIS published a final rule on October 12, 1993 (58 FR 52856), which adopted the interim rule with some changes. The final rule provided more flexibility in the placement of the safe handling instructions on the label. Although all products were required to have safe handling instructions in some form by October 15, 1993, official establishments and retailers were permitted by the final rule to use alternate approaches to deliver the safe handling instructions to consumers until April 15, 1994, except for comminuted products. All official

establishments and retailers were required to comply with the requirement that the safe handling instructions appear on the product label by April 15, 1994. The final rule also required such labeling for certain pork products, other than those described in § 318.10(a)(1), by January 15, 1994.

On September 23, 1993, the Texas Food Industry Association, the National-American Wholesale Grocers' Association, the International Foodservice Distributors Association, and the National Grocers Association filed a compliant in the United States District Court for the Western District of Texas (District Court) alleging that the issuance of the interim rule violated the Administrative Procedure Act (APA) because the Department failed to establish good cause to circumvent the notice and comment requirements of the APA and because the October 15, 1993, effective date was arbitrary and capricious. Plaintiffs requested that the District Court issue a preliminary injunction.

On October 14, 1993, the District Court granted plaintiffs' request for a preliminary injunction and enjoined the Department from enforcing or implementing the interim or final regulations against the plaintiffs or any other affected entities or individuals. The Department filed a motion with the United States Court of Appeals for the Fifth Circuit on October 15, 1993, to stay the preliminary injunction and allow the safe handling regulations to take effect. This motion was denied on October 19, 1993.

FSIS considers the use of safe handling instructions necessary to further reduce the risk of foodborne illness. Therefore, in lieu of taking further litigation action on this case which may further delay implementation of a final rule, the Department has determined it to be more expeditious to follow the notice and comment requirements set forth in the APA. Accordingly, FSIS has published a proposed rule elsewhere in this issue of the **Federal Register** that would mandate safe handling instructions on raw and partially cooked meat and poultry labeling.

This final rule is issued to remove the earlier regulatory provisions implemented through the interim rule and the final rule mandating safe handling instructions. This action allows FSIS to propose safe handling instructions through the notice and comment requirements of the APA.

List of Subjects

9 CFR Part 317

Food labeling, Meat inspection.

9 CFR Part 381

Food labeling, Poultry inspection.

Final Rule

For the reasons discussed in the preamble, FSIS is amending 9 CFR parts 317 and 381 of the Federal meat and poultry products inspection regulations as follows:

PART 317—LABELING, MARKING DEVICES, AND CONTAINERS

1. The authority citation for part 317 continues to read as follows:

Authority: 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

§ 317.2 [Amended]

2. Section 317.2 is amended by removing paragraph (1).

§ 317.5 [Amended]

3. Section 317.5 is amended by adding the word "or" following the semicolon at the end of paragraph (b)(12), replacing the semicolon at the end of paragraph (b)(13) with a period and removing the word "or", and removing paragraph (b)(14).

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

4. The authority citation for part 381 continues to read as follows:

Authority: 7 U.S.C. 450, 21 U.S.C. 451–470; 7 CFR 2.17, 2.55.

§ 381.125 [Amended]

5. Section 381.125 is amended by removing the paragraph designation of paragraph (a) and removing paragraph (b).

§ 381.134 [Amended]

6. Section 381.134 is amended by adding the word "or" following the semicolon at the end of paragraph (b)(12), replacing the semicolon at the end of paragraph (b)(13) with a period and removing the word "or", and removing paragraph (b)(14).

Patricia Jensen,

Acting Assistant Secretary, Marketing and Inspection Services.

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Food Safety and Inspection Service

9 CFR Parts 317 and 381

Mandatory Safe Handling Statements on Labeling of Raw Meat and Poultry Products; Proposed Rule

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 317 and 381

[Docket No. 93–026P]

RIN 0583–AB67

Mandatory Safe Handling Statements on Labeling of Raw Meat and Poultry Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to amend the Federal meat and poultry products inspection regulations to make safe handling instructions mandatory on all raw meat and poultry product labeling. The handling instructions include a rationale statement and address safe storage of raw product, prevention of cross-contamination, cooking of raw product, and handling of leftovers. The proposed rule would provide additional safeguards to protect consumers for exposure to possible bacterial contaminants found in raw meat and poultry products. This action is being taken in an effort to reduce the risk of foodborne illness.

DATES: Comments must be received on or before December 20, 1993.

ADDRESSES: Written comments to: Policy Office, Attn: Diane Moore, FSIS Hearing Clerk, room 3171, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. Oral comments as provided by the Poultry Products Inspection Act should be directed to Mr. Patrick J. Clerkin, (202) 254–2537. (See also "Comments" under "Supplementary Information.").

FOR FURTHER INFORMATION CONTACT: Patrick J. Clerkin, Director, Field Operations Division, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 254–2537.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Agency has determined that this proposed rule is a significant regulatory action under Executive Order 12866 because the action would likely raise policy issues arising out of the principles set forth in the Executive Order. Over the years, the Department has been committed to an extensive consumer education program to help prevent foodborne illness caused by improper handling of foods. However, the Department now believes that consumer education alone is not sufficient, and is advocating a new policy direction that would require safe handling instructions on raw and partially cooked meat and poultry products to further combat foodborne illness.

As discussed elsewhere in this preamble, the Department requested comments on an earlier interim rule (58 FR 43478). A preliminary economic analysis was published for comment in the preamble of that interim rule. Most comments addressed the cost of the rule. The following analysis expands on the preliminary analysis utilizing the comments that were received.

Risk Analysis

This proposed rule would reduce the risk of foodborne illness associated with the handling, preparation, and storage of meat and poultry products. Reduced risk would lead to public health benefits that are measured in terms of reduced medical costs, reduced time loss from work, reduced pain and suffering and loss of life.

The Department of Agriculture (USDA) has recently published estimates that the annual cost of foodborne illnesses ranges from $5,162 to $6,076 million. The estimated cost of foodborne illness attributable to meat and poultry products is $3,880 to $4,330 million annually. The estimated costs by pathogen are contained in Table 1.

TABLE 1.—ESTIMATED ANNUAL COSTS FOR SELECTED FOODBORNE PATHOGENS, 1992

Pathogen[1]	Cases	Deaths	Annual medical and productivity costs	Attributable to meat and poultry	
				Percent of cases	Costs[2]
	Number	Number	Dollars million	Percent	Dollars million
Bacteria:					
Salmonella	1,920,000	960–1,920	1,888–1,588	50	600–800
Campylobacter jejuni or coli	2,100,000	120–360	907–1,016	50	450–500
Escherichia coli 0157:H7	7,668–20,448	146–389	229–610	50	100–300
Listeria monocytogenes	1,526–1,581	378–433	209–233	50	100
Parasites:					
Toxoplasma gondii[3]	2,090	42	2,628	100	2,630
Trichinella spiralis	131	0	0.8	100	0
Taenia saginata	894	0	0.2	100	0
Taenia solium[4]	210	0	0.1	100	0
Total	.....	.....	5,162–6,076	.....	3,880–4,330

[1] Analysis assumes 100% of human illnesses are foodborne for *Campylobacter, Escherichia coli, Trichinella,* and the *Taenias* and assumes 96% of *Salmonella* cases, 85% of *Listeria* cases, and 50% of *Toxoplasma* cases are foodborne, Meat and poultry are assumed to be responsible for 100% of foodborne parasitic diseases and 50% of foodborne bacterial diseases.

[2] Estimates rounded.

[3] Productivity losses are high for survivors who develop mental retardation or blindness as a result of toxoplasmosis. These costs exclude toxoplasmic encephalitis infections in 2,250 to 10,200 AIDS patients annually which are a significant cause of premature death (50% of cases may also have a foodborne origin).

[4] Costs are estimated at less than $0.1 million, although estimates do not include costs for cystericercosis which may have an indirect foodborne transmission.

Reference: Agricultural Outlook, Economic Research Service, USDA, AO–197 (June 1993), pp.32–36.

The estimates in Table 1 were developed after the widespread outbreak of foodborne illness attributed to *Escherichia coli* 0157:H7 in undercooked hamburgers from a fast-food chain in 1993. Although the States

have voted to make foodborne illness from *E. coli* 0157:H7 a disease that must be reported to the Center for Disease Control (CDC), such reporting will not be effective for some time. Thus, cost estimates for *E. coli* should be reviewed as preliminary. Even without CDC reporting, the Department continues to become aware of new cases of illness. Recent cases of illness and death from *E. coli* 0157:H7 attributable to home-prepared hamburgers are discussed elsewhere in this preamble. The gravity of many cases of illness resulting from *E. coli* 0157:H7 and the continuing evidence of consumers undercooking hamburgers creates a serious public health problem that is not reflected in the numbers of Table 1.

While the safe handling instructions would be required for raw and partially-cooked meat and poultry products, the instructions would also help prevent all foodborne illnesses that can be prevented by safe handling practices, both at food service facilities and in the kitchens of private residences. In other words, the health risk addressed by this proposal is not measured solely by the foodborne illness costs that can be attributed to raw or partially-cooked products, but rather by the costs that can be attributed to the full range of unsafe food handling practices that can lead to foodborne illness. These include:

(1) Cross-contamination from raw product to a ready-to-eat product such as a tossed salad;

(2) cooking to a temperature that does not kill any existing pathogens;

(3) recontamination of cooked product with juices from raw product (e.g., using the same plate to carry meat to and from the barbecue grill without washing it before the trip from the grill);

(4) leaving leftovers uncovered for long periods of time without refrigeration; and

(5) leaving any cooked product at room temperature.

Since most foodborne illness associated with meat and poultry products can be attributed to some improper handling or cooking practice, one can conclude that this proposed rule would address the entire $3,880 to $4,330 million of cost attributable to meat and poultry products. Outbreaks of foodborne illness attributed to contaminated, "ready-to-eat" deli cold-cuts are probably the most removed from safe handling, but even in these cases the messages on refrigerating cooked meat products have an indirect application. Assessments of CDC outbreak data have identified infected food handlers as a potential source of foodborne illness. However, in such cases, it is usually impossible to determine whether the food handler is a victim or a source.

Public Health Benefits

The benefits of the proposed rule are directly related to the effectiveness of the safe handling messages in changing consumer or food service employee behavior. Reductions in unsafe handling practices should result in proportional reductions in the number of cases of foodborne illness. That is, a change that reduces unsafe food handling practices by one percent should reduce the number of foodborne illnesses by the same level.

The Department conducted a literature search for possible studies on the effectiveness of safe handling instructions. Such instructions have been used for a wide range of consumer products from medical devices to power tools to pesticides and home cleaning chemicals. The Department is not aware of any quantitative estimate of effectiveness of any handling instructions already in use. Most "effectiveness" studies focus on the relative effectiveness of different messages or mediums.

In order to maximize the benefits of the rule, the Department conducted focus group research to determine which of several safe handling label formats would be most useful to consumers.[1] Six different formats using different messages, some with accompanying symbols, were evaluated. The focus group research was a primary consideration in the selection of the proposed format.

In order to increase the effectiveness of safe handling labels, the Department has implemented a comprehensive information and education campaign to increase consumer awareness of safe handling labels and also increase the level of understanding of the messages the labels are intended to convey. The combined effect of having the most useful label and the accompanying education campaign should result in a relatively high level of effectiveness.

Without a specific estimate for effectiveness in reducing illness, the Department has calculated projected health benefits for a range of effectiveness levels. These estimates are shown in Table 2, both as annual recurring health benefits, and since benefits will recur annually, as the present value of 20-year health benefits. The 20-year time period is the same time period used to estimate costs and benefits of other regulatory actions including the recent rulemaking on nutrition labeling. The 20-year benefits in Table 2 are based on a discount rate of 7 percent.

TABLE 2.—ESTIMATED BENEFITS

[Millions of dollars]

Effectiveness in preventing cases of foodborne illness (percent)	Estimated annual benefits		Estimated 20-year benefits	
	Low	High	Low	High
1	$38.8	$43.3	$410.9	$458.5
2	77.6	86.6	821.8	917.1
5	194.0	216.5	1,789.7	2,292.7
10	388.0	433.0	4,108.9	4,585.5
20	776.0	866.0	8,217.8	9,170.9

In criticizing the preliminary benefit analysis, several commenters pointed to the statement that "The Department is not aware of any quantitative estimate of effectiveness." Taking this statement out of context misses the point. The net benefit analysis was constructed to show that while the exact level of effectiveness is unknown, safe handling

[1] A copy of the results of the focus group study is available for public review in the FSIS Hearing Clerk's office.

labels do not need to prevent a high level of foodborne illness to result in net societal benefits.

It is the nature of health and safety regulations that benefits accrue to society in general while costs are borne by specific businesses or other entities. This situation normally leads to cases where costs can be quantified easier than benefits.

Cost Analysis

The proposed rule would require that all comminuted meat and poultry products that are not fully cooked be labeled with safe handling instructions within 30 days of the publication of a final rule. Other raw or partially cooked meat or poultry products would have to be labeled by April 15, 1994. Prior to April 15, 1994, the non-comminuted products could be accompanied by "leaflets", i.e., point-of-purchase instructions provided to individual consumers. Products packaged in official establishments would be the responsibility of official establishments. Products packaged at retail stores would be the responsibility of retail stores. Official establishments would not have to provide leaflets if they had a prior agreement with their retail customers indicating that the retail stores would assume responsibility for the point-of-purchase materials. The labeling of products packaged at official establishments would have to be completed prior to shipment.

For retail stores, the safe handling instructions could be incorporated onto existing labels or could be added to packages in the form of pressure-sensitive labels, i.e., self-adhesive stickers similar to address labels commonly used today. For packages that are labeled in official inspected establishments, the firms can decide whether to apply pressure-sensitive labels or make permanent modifications to approved labels. Such label modifications will be generally approved.

Retail Costs

There are three central cost issues that will determine the impact on retail stores. These are the compatibility of existing scale/wrapping systems, the increased cost for labels, and the labor costs for applying labels. These three costs are discussed separately but are interrelated because the cost of labels and labor depend on whether or not the existing equipment is compatible. Based on the comments on the preliminary analysis, the Department estimates that retail stores prepare approximately 10 billion packages annually, and that an estimated 1 billion or 10 percent are for comminuted product.

Use of Existing Scale/Meat Wrapping Systems

The preliminary analysis assumed that retail stores would have the option of applying a second auxiliary label or of increasing their label size to combine weight and price information with safe handling instructions. While some retail companies indicated their equipment could handle a larger label, others stated that they would not be able to increase the amount of printing on the labels or the size of the label generated without retooling or replacing scale/meat wrapping systems. Other firms indicated they used equipment that could print the safe handling instructions, but could not print the symbols. A large retail firm suggested they would upgrade their equipment rather than apply separate labels. Given the planned April 15, 1994 date for labeling non-comminuted product, the Department anticipates that upgraded equipment will be the response of most large retail chains that cannot use existing equipment to apply a single label. The Department expects the majority of retail stores to initially use point-of-purchase information for non-comminuted product and use separate pressure-sensitive labels for comminuted product and then phase in new equipment that can apply safe handling instructions along with net weight and price information.

Two retail comments provided per store estimates to upgrade existing store equipment or replace equipment. These estimates were approximately $6,000 and $9,000 per scale. Thus, it would take an estimated $144 to $216 million to provide compatible scales in each of the 24,000 supermarkets with annual sales over $2.5 million.

Labor Costs

A large number of comments noted that the Department's preliminary analysis did not include labor costs associated with applying pressure-sensitive labels to retail packages. These comments are correct. If firms can use existing equipment, there are no additional labor costs. The comments suggested that for firms that must use auxiliary labels, there are ways to minimize costs. While some comments suggested that applying the label would take from 2 to 4 seconds per label, a rate of from 15 to 30 per minute, a retail chain with almost 100 supermarkets commented that labels could be applied at a rate of 100 per minute using retail hand label guns. Most estimates of labor costs per package ranged from $.0075 to $.0175 per label. However, none of these estimates were based on the use of label application guns.

The Department believes that most retail stores will expend upfront capital costs rather than experience recurring labor costs. The April 15, 1994 date for most products will allow for modifying equipment or phasing in new equipment, if needed. Small retail stores are more likely to experience some labor costs but the option of hand-held labeling guns should minimize such costs. The Department also anticipates that stores will utilize point-of-purchase materials that will minimize any labor costs.

Cost Per Label

The preliminary analysis assumed that all raw product already includes some form of commercially prepared label and that the incremental cost of including the safe handling instructions will increase the total per label cost by $.0025 to $.005. One large retail chain commented that printing the safe handling instructions as part of their price labels would double their label costs from $.0025 to $.005, the same estimate as used in the preliminary analysis. For firms that indicated they would require separate labels, the most frequent response was that the labels would cost $.01 each. The preliminary analysis estimated that the cost of an additional label would range from $.01 to $.025. In general, the comments supported this estimate with more comments suggesting the lower end of the range. There were comments, including one from an official at the Small Business Administration, suggesting that some retail firms were paying far more for pressure-sensitive labels. Discussions with label manufacturers indicate that the lower prices are available for even small quantities.

The cost per label will be a recurring cost. Comments suggest that the larger retail chains will utilize equipment, especially by April 15, 1994, that will keep the recurring cost in the range of $.0025 to $.005 per label. Larger retail chains most likely account for more than 80 percent of the packages. If 80 percent of the packages (8 billion) have recurring costs of $.00375 (midpoint of $.0025 and $.005) and 20 percent (2 billion) have recurring costs of $.01 per package, then 10 billion retail packages have recurring costs of $50 million per year.

The labor costs for applying 2 billion labels using label guns would be $3.2 million (160 staff years at an average salary of $20,000 per year). Thus, total

recurring retail costs are estimated at $53.2 million.

Number of Packages

The preliminary analysis was based on an estimate that consumers purchase approximately 15 billion retail packages of fresh meat and poultry products annually. Comments raised the question of whether the 15 billion is an estimate of total packages or packages that are packed, wrapped, and labeled at retail stores. The 15 billion figure is an estimate of total retail packages of raw product purchased at retail. The Department is aware that most poultry is packed and labeled at processing plants. Comments provided an estimate that there are approximately 4.5 billion packages of raw poultry sold annually at retail. Given that some raw meat is also packed at processing plants, it is reasonable to assume that the 15 billion estimate can be separated into 10 billion packages labeled at retail and 5 billion packages labeled at processing plants.

As discussed earlier, the Department estimates that 10 percent, or 1 billion, of the packages labeled at retail stores are comminuted product. Using the same 10 percent estimate, an estimated 500 million packages labeled at processing plants are comminuted products. Comminuted products labeled at processing plants include boxes of frozen beef patties, fresh and frozen chubs of ground beef or ground poultry, and more recently, tray-packed, fresh-ground poultry.

Retail Costs Versus Manufacturer Costs

Several manufacturers (official establishments) previously commented that the Department based its cost estimate almost totally on the cost associated with compliance at the retail level, and that little consideration was given to economic impact on the manufacturer. The Department recognizes that the preliminary analysis appeared to focus on retail costs. Actually, the intent was to focus on recurring costs, recognizing that processors would most likely make permanent modifications to labels. Processors would, therefore, face larger upfront, one-time costs, but would not experience recurring costs. The April 15, 1994 date for non-comminuted product should reduce costs to processors as safe handling instructions can be incorporated with other planned labeling changes.

The Department estimates that there are somewhere between 50,000 and 100,000 labels approved for use by processors that are affected. The difficulty in estimating the number of labels and products arises because of the rapid growth of frozen snacks and entrees that have detailed heating and preparation instructions but frequently no clear differentiation between what is fully cooked and what is partially cooked. This proposed rule would help consumers separate fully cooked from partially-cooked product, a distinction the Department believes should have been clarified long ago.

The cost of revising a label varies widely depending on the type of label, the number, the number of colors affected and the printing process used. Adding safe handling instruction is the lowest cost type of modification because it involves single color printing. The Department also is aware that many of the labels affected, such as frozen entrees, are modified frequently in the normal course of doing business. Thus, in many cases, the April 1994 date will allow for the addition of safe handling instructions as part of an already planned revision. Given the above considerations, the Department considers an average cost of $1,000 per label to be a reasonable estimate for the average label modification cost. Thus, processors would experience one-time, upfront costs from $50 to $100 million.

Cost Summary

After reviewing the comments on the preliminary analysis, the Department has concluded that most costs will be on-time, upfront cost. Processing plants will make permanent modifications to existing labels rather than continue to apply pressure-sensitive labels. These one-time costs have been estimated to range from $50 to $100 million. Processing plants may have to apply some pressure-sensitive labels to comminuted products until permanent changes can be made.

Large retail chains can be expected to modify equipment to handle a larger single label when their existing equipment is not compatible. These one-time costs have been estimated to range from $144 to $216 million. The recurring costs for retail labels are estimated at $50 million per year. The recurring labor costs for small retail firms are estimated at $3.2 million per year. These recurring cost estimates assume that small retail firms should be able to procure labels for $0.01 each and apply them efficiently using retail label guns.

New Benefit Analysis

Since the public health benefits are recurring, it is necessary to either compare annual benefits with annual recurring costs plus annualized nonrecurring costs or examine present value estimates for both cost and benefit streams. This analysis will present both methods. To make such comparisons, the Department used a 20-year time period, the time period used to compare costs and benefits of nutrition labeling.

The Department has estimated recurring costs to retailers of $53.2 million per year ($50 million for labels and $3.2 million for labor). The annualized costs of processor label modifications (one-time costs of $50 to $100 million) would range from $6 to $12 million per year using a 10 percent cost of capital. The annualized costs of upgraded retail scales/wrapping systems (one-time costs of $144 to $216 million) would range from $17.3 to 26.9 million. Thus, the estimated total annual costs would be:

Type of cost	Millions
Recurring lables	$50.0
Recurring labor	3.2
Processing label modification	6.0–12.0
Retail equipment	17.3–26.9
Total	76.5–92.1

As presented in Table 2, estimated annual benefits will range from $77.6 to $86.6 million if the safe handling instructions prevent only 2 percent of associated foodborne illness. At 3 percent effectiveness, the annual benefits would range from $116.4 to $129.9 million. Thus, while there may be net benefits at the 2 percent level, there are clearly net benefits if safe handling instructions reduce associated foodborne illness by 3 percent.

Total upfront costs are estimated to range from $199 ($50 plus $144) million to $316 ($100 plus $216) million. The present value (7 percent discount rate) of 20 years of $53.2 million recurring costs is $563.4 million. Table 3 illustrates the present value costs and benefits for different levels of effectiveness. As with annualized cost, the present value method also shows that there may be net benefits at the 2 percent level of effectiveness. An effectiveness level of 3 percent assures net societal benefits.

TABLE 3.—PRESENT VALUE OF 20-YEAR COST AND BENEFITS

Effectiveness (percent)	Benefits		Costs	
	Low	High	Low	High
1	$410.9	$458.5	$757.4	$879.4
2	821.8	917.1	757.4	879.4
5	1,789.7	2,292.7	757.4	879.4
10	4,108.9	9,170.9	757.4	879.4

Executive Order 12778

This proposed rule has been reviewed under Executed Order 12778, Civil Justice Reform. States and local jurisdictions are preempted under the Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA) from imposing any marking, labeling, packaging, or ingredient requirement on federally inspected meat and poultry products that are in addition to, or different than, those imposed under the FMIA or PPIA. States and local jurisdictions may, however, exercise concurrent jurisdiction over meat and poultry products that are outside official establishments for the purpose of preventing the distribution of meat and poultry products that are misbranded or adulterated under the FMIA or PPIA, or, in the case of imported articles, which are not at such an establishment, after their entry into the United States. Under the FMIA and PPIA, States that maintain meat and poultry inspection programs must impose requirements that are at least equal to those required under the FMIA and PPIA. The States may, however, impose more stringent requirements on such State inspected products and establishments.

No retroactive effect will be given to this rule. The administrative procedures specified in 9 CFR 306.5 and 381.35 must be exhausted prior to any judicial challenge of the application of the provisions of this rule, if the challenge involves any decision of an inspector relating to inspection services provided under the FMIA or PPIA. The administrative procedures specified in 9 CFR parts 335 and 381, subpart W, must be exhausted prior to any judicial challenge of the application of the provisions of this rule with respect to labeling decisions.

Effect on Small Entities

The Administrator has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601). The proposal would affect a substantial number of small entities, but the economic impact on such small entities would not be significant.

The proposed rule affects both retail stores and inspected establishments. In 1991, USDA estimated there were 253,000 foodstores in the United States. These stores are categorized as follows:

Supermarkets (sales >$2.5 million each)	23,813
Superettes (sales <$2.5 million each)	94,647
Convenience stores	51,700
Specialty stores	82,895
Total	253,055

Most of the small businesses affected would be superettes and specialty stores, such as meat markets, butcher shops, and locker plants. The specialty store category includes a large number of small businesses that do not sell meat and poultry products, e.g., confectionery stores. Most convenience stores do not sell raw or partially cooked meat and poultry products.

The Department has reviewed all comments on the interim rule pertaining to small business and particularly those received from the Office of Chief Counsel for Advocacy, U.S. Small Business Administration. The Department recognizes that small retail firms would experience the greatest relative ongoing costs because they may not be able to afford new or modified equipment that can minimize costs. With regard to comments that pressure-sensitive labels can cost $.05 or more, the other comments are conclusive that such labels are available at far lower costs. Other comments suggest that labor costs can be minimized by using label application guns.

The public health risks do not allow for alternative small business considerations. At least one of the recent incidents described in the interim rule involved ground beef sold through a small market in a small community.

Comments

Interested persons are invited to submit comments concerning this proposal. Written comments should be sent to the Policy Office and refer to Docket No. 93–026P. Any person desiring an opportunity for an oral presentation of views, as provided by the Poultry Products Inspection Act, should make such request to Mr. Patrick J. Clerkin so that arrangements can be made for such views to be presented. A record will be made of all views orally presented. All comments submitted in response to this proposal will be available for public inspection in the Policy Office from 9 a.m. to 12:30 p.m. and from 1:30 p.m. to 4 p.m., Monday through Friday.

Background

Introduction

The Secretary of Agriculture has statutory authority to require meat and poultry products to bear labels including such "information as the Secretary may require * * * to assure that * * * the public will be informed of the manner of handling required to maintain the article in a wholesome condition." Federal Meat Inspection Act, 21 U.S.C. 601(n)(12); Poultry Products Inspection Act, 21 U.S.C. 453(h)(12). The Secretary issued an "interim final" rule on August 16, 1993, requiring raw meat and poultry products to carry instructions as to safe handling, effective October 15, 1993 (58 FR 43478). At the same time the Secretary asked for comments by September 15, 1993. In light of these comments, the Secretary issued a final rule on October 12, 1993, which made significant changes in response to the comments (58 FR 52856). To support issuance of an interim final rule, the Secretary invoked the "good cause" exception in section 553(b) of the Administrative Procedure Act (APA). The APA allows issuance of a final regulation without notice and comment, upon an administrative finding that for "good cause" prior notice and comment is "impracticable, unnecessary, or contrary to the public interest." 5 U.S.C 553(b)(3)(B).

On September 23, 1993, the Texas Food Industry Association, the National American Wholesale Grocers' Association, the International Foodservice Distributors Association, and the National Grocers Association filed a complaint in the United States District Court for the Western District of

Texas (District Court) alleging that the issuance of the interim rule violated the Administrative Procedure Act (APA) because the Department failed to establish good cause to circumvent the notice and comment requirements of the APA and because the October 15, 1993, effective date was arbitrary and capricious. Plaintiffs requested that the Court issue a preliminary injunction.

On October 14, the District Court granted plaintiffs' request for a preliminary injunction and enjoined the Department from enforcing or implementing the interim or final regulations against the plaintiffs or any other affected entities or individuals. The Department filed a motion with the United States Court of Appeals for the Fifth Circuit on October 15 to stay the preliminary injunction and allow the safe handling regulations to take effect. This motion was denied on October 19, 1993.

While the Department believes it would prevail on the APA issue in further litigation, it recognizes that a notice and comment rulemaking will take less time than further litigating the APA issue with the plaintiffs. Due to the importance of protecting public health and the related need to provide this crucial information to consumers as quickly as possible, the Department is publishing today this proposal to amend the regulations to require safe handling instructions on raw and partially cooked meat and poultry products, and a final rule, which is published elsewhere in this issue, that eliminates the provisions promulgated in the previously cited rulemakings.

Authority

The Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*) direct the Secretary of Agriculture to maintain meat and poultry inspection programs designed to assure consumers that meat and poultry products distributed to them (including imports) are wholesome, not adulterated, and properly marked, labeled, and packaged.

Section 2 of the FMIA (21 U.S.C. 601) and section 2 of the PPIA (21 U.S.C. 451) state that unwholesome, adulterated, or misbranded meat or meat food products and poultry products are injurious to the public welfare, destroy markets for wholesome, not adulterated, and properly marked, labeled, and packaged products, and result in sundry losses to producers and processors of meat and poultry products, as well as injury to consumers. Therefore, Congress has granted the Secretary authority to regulate meat, meat food products, and poultry products to protect consumers' health and welfare. Subsection 1(n)(12) of the FMIA (21 U.S.C. 601(n)(12)) and subsection 4(h)(12) of the PPIA (21 U.S.C. 453(h)(12)) state that the term "misbranded" applies to any product if it fails to bear, directly thereon or on its container, as the Secretary may by regulations prescribe, the inspection legend, and unrestricted by any of the foregoing, such information as the Secretary may require in such regulations to assure that it will not have false or misleading labeling and that the public will be informed of the manner of handling required to maintain the article in a wholesome condition. Section 7(d) of the FMIA (21 U.S.C. 607(d)) states: "No article subject to this title shall be sold or offered for sale by any person, firm, or corporation, in commerce, under any name or other marking or labeling which is false or misleading, or in any container of a misleading form or size, but established trade names and other marking and labeling and containers which are not false or misleading and which are approved by the Secretary are permitted." The PPIA contains similar language in section 8(c) (21 U.S.C. 457(c)).

FSIS carries out its responsibility under these laws by inspecting meat and poultry products and facilities at federally inspected establishments. As part of the inspection, FSIS routinely monitors for the presence of microbial contamination in commercially cooked or processed ready-to-eat meat and poultry products to assure that they are safe. The samples are tested in FSIS laboratories. After product leaves the federally inspected establishment, FSIS compliance officers monitor the product as it is handled, sold, and transported in commerce. State and local food regulatory agencies also regulate and inspect grocery stores, restaurants, and other establishments that sell food. The reported incidence of unsafe products reaching consumers is low.

Safe Handling Labeling Instructions

In 1972, the American Public Health Association, individual consumers, and six other public health and consumer interest groups brought suit in the U.S. District Court for the District of Columbia against the U.S. Department of Agriculture alleging that labels placed on meat and poultry products were false and misleading because they failed to warn consumers against the dangers of food poisoning caused by Salmonella and other bacteria in such products. The Court of Appeals affirmed the District Court's order dismissing the action, and ruled that the Secretary of Agriculture did not abuse his discretion by choosing to undertake a consumer education program instead of requiring labeling instructions for meat and poultry products. Since that ruling, USDA has conducted a massive and increasingly targeted food safety campaign to inform consumers about safe handling and cooking of meat and poultry products. FSIS has offered a toll-free nationwide hotline, staffed by food safety specialists, and conducted campaigns, directed at such specialized audiences as food handlers, institutions, health professionals, and at-risk populations, as well as food handlers in the home. Additionally, FSIS has permitted the voluntary labeling of poultry products with safe handling instructions since 1987. FSIS does not monitor participation in voluntary labeling; however, one trade association has said that 75 percent of its members offer handling instructions on their labels.

New Policy Direction

In recent years, FSIS has been aware that a growing percentage of the U.S. population consists of persons lacking experience in food preparation and knowledge of safe food handling and storage methods. Studies of foodborne illness outbreaks have repeatedly shown improper food handling to be the frequent cause of foodborne illnesses. Improper cooling of cooked foods has been ranked as the leading factor. Other factors cited included inadequate cooking, cross-contamination, and inadequate reheating.

Studies of consumer knowledge and practices indicate that a significant number lack basic food safety information and skills, particularly with respect to the relationship between temperature and foodborne illness. A nationwide study done in 1972 (Jones and Weimer) classified 63 percent of a national sample as "high risk" based on the use of one or more food handling practices identified by the researchers as unsafe.[2] A study by Woodburn and VanDeRiet, published in 1985, concluded that cross-contamination between raw and cooked foods, inadequate cooking, and unsafe holding temperatures were frequent food handling practices in the home.[3] A 1990 study of the knowledge of food safety and home food preparation practices in 2,000 randomly selected households (Williamson, Gravani and Lawless) showed that: (1) 18 percent were not

[2] A copy of this study is available for public review in the FSIS Hearing Clerk's office.

[3] A copy of this study is available for public review in the FSIS Hearing Clerk's office.

concerned or not sure about leaving cooked meat out at room temperature for over 4 hours; (2) 68 percent would leave a large quantity of cooked stew in the pot it was cooked in or would store it in a deep container; (3) 29 percent would leave cooked chicken on the counter to cool before refrigerating it; and (4) 23 percent would thaw hamburger on the countertop at room temperature.[4]

Information from the Center for Disease Control (CDC) revealed that: (1) Undercooking was a factor in 108 of 345 (31.3 percent) home outbreaks of foodborne illness that occurred between 1973 and 1982 (data include all foods); and (2) cooking foods ahead, i.e., 12 hours or more before serving, was a factor in 12.8 percent of the home outbreaks.

While the Agency has long been committed to a program of consumer education to help prevent foodborne illness, as exemplified by its distribution of publications for consumers and its Meat and Poultry Hotline, it has become convinced of the need for more direct methods of placing food safety information in the hands of consumers. Thus, Agency officials in early January began to advocate in their speeches and writings that the mandatory safe handling instructions on the labeling of meat and poultry products was a necessary component of a program to combat foodborne illness.

The Agency's new policy direction gained additional impetus following the mid-January 1993 outbreaks of a severe food poisoning that led to four deaths among approximately 500 confirmed cases in Washington, Idaho, California, and Nevada.

The outbreaks were linked to the pathogenic bacterial strain *E. coli* 0157:H7. Because most of the cases were traceable to undercooked hamburgers served at a fast-food restaurant chain, Federal and local authorities have intensified their regulatory activities. In June and July, the Department became aware of nine separate incidents where *E. coli* 0157:H7 has been the cause of illness or death or at least suspected of being the cause. The incidents led the Department to conclude that it was time to require safe handling information on raw meat and poultry products and require it immediately via the interim final rulemaking process. On August 16, 1993, FSIS published in the **Federal Register** an interim rule (58 FR 43478) that amended the Federal meat and poultry products inspection regulations to make safe handling instructions mandatory on all raw and partially cooked meat and poultry product labeling. As discussed below, the Agency is currently monitoring 30 cases of foodborne illness. Many of these cases occurred after publication of the interim rule.

Parameters of Food Safety

After reviewing available information, FSIS in conjunction with the Food and Drug Administration (FDA) identified the following parameters of safe handling by consumers: How to safely store raw product and thaw frozen product; how to avoid cross-contamination during preparation; how to cook for optimal safety and palatability; and, how to store leftovers after preparation. For institutions, hot holding of prepared food is an additional parameter. (The term institutions as used throughout this preamble includes hotels, restaurants, or similar institutions.) In addition, the Agency is proposing that the safe handling instructions include a rationale statement specifying the reason why it is important to follow such instructions. The Agency believes that consumers will pay more attention to the safe handling instructions if they understand that mishandling will lead to the growth of bacteria and possibly to illness.

Labeling

Various methods have been used in the past to inform consumers of handling instructions. Such methods have included putting the instructions on the product label, on inserts, on tags attached to the product, and on point-of-purchase materials displayed near the product at the point of sale. Some research has indicated that such information was best communicated by means such as point-of-purchase information and other consumer education efforts. However, other published research has shown that the best location for handling information is on the outside of the package of meat and poultry products where it will be prominent and visible at the time of purchase. FSIS has concluded that the outside label is the most appropriate location for safe handling instructions.

The Agency strongly believes that safe handling instructions must be visible on products at the time they are purchased. The number of packaged raw products that are not large enough to accommodate these instructions and all other mandatory information is not significant.

The Agency considered three options for presenting safe handling information on the label. These options included long word messages, short word messages, and short word messages with symbols or graphic representations to accompany the message. To collect information on which format would most effectively influence consumer behavior, FSIS initiated consumer focus-study research.

In the FSIS initiated consumer focus-study, most participants wanted to see safe handling instructions on raw meat and poultry products. Consumers in the study expressed a preference for the safe handling instructions to be on the package label and felt that other labeling, such as pamphlets or in-store signs, should only be used to supplement package labels. Instructions with graphic illustrations were generally preferred to those without graphic illustrations and the short word messages were preferred to the long word messages. Also, most participants of the focus group study felt that the rationale statement was a necessary part of the safe handling instructions.

Current Regulations

The Federal meat and poultry products inspection regulations currently require the placement of safe handling statements on packaged products that require special handling to maintain their wholesome condition. Sections 317.2 and 381.125 of the Federal meat and poultry products inspection regulations (9 CFR 317.2(k) and 9 CFR 381.125, respectively) provide that packaged products which require special handling to maintain their wholesome condition shall have prominently displayed on the principal display panel of the label the statement: "Keep Refrigerated," "Keep Frozen," "Perishable Keep Under Refrigeration," or such similar statement as the Administrator may approve in specific cases.

Interim Rule

On August 16, 1993, FSIS published in the **Federal Register** an interim rule (58 FR 43478) that mandated the inclusion of safe handling instructions on the labels of certain meat and poultry products along with a rationale statement to indicate the reason why it is important to follow such handling instructions. Generally, the rule required safe handling instructions for those products that are uncooked or have not been otherwise further processed to make them ready-to-eat. The Department has established required cooking temperatures for certain beef, poultry, and patty products. These requirements are set forth at 9 CFR 318.17, 381.150, and 318.23, respectively. The Department

[4] A copy of this study is available for public review in the FSIS Hearing Clerk's office.

has also described at 9 CFR 318.10(a) a category of pork products that are customarily well cooked before service to consumers. The Department has also established processing requirements for the curing or other treatment of certain meat products to control microbial activity. Some of these products are identified in part 319 of the meat inspection regulations. The uncooked products and products that have not been otherwise further processed so as to render them ready-to-eat are considered to be at risk of microbial contamination and warrant the application of safe handling labels. The interim rule generally provided that products not receiving a heat treatment that would be lethal to pathogens must bear the label. Pork products were an exception. While a class of clearly raw products were identified, some other products that are not included have not received a lethal heat treatment. Such products are among products listed at 9 CFR 318.10(b).

The interim rule provided for the use of the following two rationale statements depending on where the product was labeled: (1) This product was inspected for your safety. Some animal products may contain bacteria that could cause illness if the product is mishandled or cooked improperly. For your protection, follow these safe handling instructions.; and (2) This product was prepared from inspected and passed [meats or poultry]. Some animal products may contain bacteria that cause illness if the product is mishandled or cooked improperly. For your protection, follow these safe handling instructions. The first rationale statement was designed for use on products fully labeled at the federally inspected establishments and the second rationale statement was designed for use on products labeled at retail. The latter reflects the fact that the product has been further processed without continuous inspection.

The interim rule required the following four safe handling statements for use on the label of products distributed to consumers: (1) Keep refrigerated or frozen. Thaw in refrigerator or microwave. (A graphic illustration of a refrigerator shall be displayed next to the statement.); (2) Keep raw [meats or poultry] separate from other foods. Wash working surfaces (including cutting boards), utensils, and hands after touching raw [meats or poultry]. (A graphic illustration of a bar of soap shall be displayed next to the statement.); (3) Cook thoroughly. (A graphic illustration of a skillet shall be displayed next to the statement.); and (4) Refrigerate leftovers within 2 hours. (A graphic illustration of a clock shall be displayed next to the statement.)

The interim rule required the following four safe handling statements for use on the labels of products distributed to institutions: (1) Keep refrigerated or frozen. Thaw in refrigerator or microwave; (2) Keep raw [meats or poultry] separate from other foods. Wash working surfaces (including cutting boards), utensils, and hands after touching raw [meat or poultry]; (3) Cook thoroughly; and (4) Keep foods hot at 140° F or higher. Immediately after service, refrigerate leftovers. In addition, the same graphic illustrations described above for consumers, depicting the essence of each message were required to be displayed next to each safe handling statement.

The interim rule required that safe handling instructions accompany each product and appear either on the principal display panel or the information panel of the product label. The safe handling instructions were to be set off in a box by use of hairlines and would be all black or one color type printed on a white or other neutral contrasting background. In addition, there was a minimum type size of one-sixteenth of an inch. The safe handling information could be supplemented by point-of-purchase materials, videos, live demonstrations or other media. Examples of point-of-purchase materials to display safe handling information may include large placards (e.g., wall posters, signs, aisle hangers), pamphlets, brochures, videos, and notebooks.

The rule allowed safe handling instructions to be added to labels by the manufacturer and to be approved under the provisions of generic label approval since the regulations prescribed the exact language of the safe handling instructions.

The interim rule exempted products intended for further processing by an inspected establishment from mandatory safe handling labeling requirements. Since products for further processing by another federally inspected or State inspected establishment would not be available to consumers or food service institutions, FSIS believed it was unnecessary to require safe handling instructions on such packaging.

The FSIS Hearing Clerk received 357 comments on the interim rule. Commenters included consumers, representatives of consumer and other interest groups, State meat and poultry inspection officials, university officials, representatives and associations of retail stores, representatives and associations of official meat and poultry establishments, an association of exporters, representatives of farm bureaus and farm cooperatives, consultants to the food industry, label manufacturers, a Small Business Administration official, a Food and Drug Administration (FDA) official, State health agency officials, members of Congress, and others. These comments will be made a part of this rulemaking record.

Based on an analysis of the comments received, relevant changes were made in the final rule. These changes are detailed below.

On October 12, 1993, FSIS published in the **Federal Register** a final rule (58 FR 52856) that amended the interim regulations.

Final Rule

The final rule mandated the inclusion of safe handling instructions on the labels of only certain raw and partially cooked meat and poultry products by October 15, 1993. As explained below, only ground and other comminuted products were required to include the instructions on the label. Alternative means of presenting the instructions were provided for other products. The rule required safe handling instructions for those products that are uncooked or have not been otherwise further processed to make them ready-to-eat. Pork products listed in 9 CFR 318.10(b) that were uncooked or not otherwise processed so as to be rendered ready-to-eat which were not covered by the interim rule were included in the final rule. Products that were added by the final rule would not be required to carry safe handling instruction labeling until January 15, 1994. Uncooked products and products that have not been otherwise further processed so as to render them ready-to-eat are considered to be at risk of microbial contamination and warrant the application of safe handling labels. The final rule generally provided that products not receiving a heat treatment that would be lethal to pathogens must bear the label.

Recognizing that official establishments and retailers would have problems including the safe handling instructions on the labeling of some products, FSIS modified the final rule to permit official establishments and retailers to use alternate approaches to deliver the safe handling instructions to consumers for a 6-month period, except for comminuted products. "Comminuted" is a processing term which describes the reduction in size of pieces of meat or poultry, and includes chopping, flaking, grinding, or mincing. All official establishments and retailers

would have been required to comply with the requirement that the safe handling instructions appear on the product label by April 15, 1994. FSIS anticipated that some official establishments that produce these products would be able to comply sooner than that date as their individual circumstances would permit. The Agency expected that they would comply as soon as possible since the alternate approaches entail use of additional materials and added handling of products. The April 15, 1994, date would have provided official establishments and retailers manufacturing the covered categories of products a reasonable amount of time from the publication of the final rule to obtain labeling. This should have been sufficient, especially in light of the generic approval of such labels. FSIS believed that these alternatives were responsive to comments, and would allow official establishments and retailers to achieve compliance by October 15, 1993, and would insure that the safe-handling instructions reach consumers.

The alternate approaches permitted by the final rule are presented below: (1) Official establishments could have included in the shipping container either pressure-sensitive labels containing the safe handling instructions for retailers to apply to packages or leaflets containing a facsimile of the safe handling instructions in lettering no smaller than one-sixteenth of an inch for retailers to place in close proximity to the packages to ensure that leaflets would likely be seen and taken home by consumers; and (2) retailers could have distributed leaflets containing the facsimile described above.

In some cases, it was expected that retailers might prefer pressure-sensitive labels or leaflets of their own design and manufacture to those that an official establishment would provide under the permitted alternative. If a retailer notified an official establishment in writing that it intended to supply its own labels or labeling, the official establishment would not have been required to supply the materials in the shipping container.

The final rule did not permit these alternate approaches to be used for comminuted meat or comminuted poultry products. FSIS recognized that these products may pose the same or similar challenges with respect to affixing safe-handling instructions. However, these comminuted products pose an increased risk of foodborne illness. First, the starting materials for comminuted meat and poultry products are trimmings which tend to have a higher probability of contamination because a high percentage of trimmings come from the surface of the carcass. Second, the production process assures that any present pathogens will be distributed throughout the product, including the interior, while bacteria tend to remain on the surface of other cuts of meat and poultry. The consumption of raw comminuted meat packaged at a single meat processing establishment, was the cause of a multi-State outbreak of *Salmonella* newport disease (Fontaine *et al.* 1978).[5] Pathogenic *E. coli* 0157:H7 in comminuted meat has been responsible for outbreaks of hemorrhagic colitis. Adequate cooking of the comminuted meat should minimize or eliminate the risk of contracting this disease from its consumption. Cooked comminuted meat as an ingredient in a variety of foods can be associated with foodborne illness (Bryan, 1980).[6]

The Agency concluded that all products defined in the interim rule should have such labeling, as indicated above, regarding safe handling instructions by October 15, 1993 and that meat or meat products of swine that have been added under the final rule should have such labeling by January 15, 1994. Official establishments would have been able to obtain the alternative labeling materials allowed under the final rule by that date. They also would have been able to come into full compliance with the label requirements for any comminuted products by that date.

The final rule provided for the use of the following rationale statement regardless of whether the product was packaged and labeled in an official establishment or at retail: This product was prepared from inspected and passed meat and/or poultry. Some food products may contain bacteria that could cause illness if the product is mishandled or cooked improperly. For your protection, follow these safe handling instructions.

The final rule provided for the use of the following rationale statement for poultry slaughtered under exemptions specified in 9 CFR 381.10; Some food products may contain bacteria that could cause illness if the product is mishandled or cooked improperly. For your protection, follow these safe handling instructions.

The final rule required the following four safe handling statements for use on the label of both red meat and poultry products distributed to both household consumers and institutions: (1) Keep refrigerated or frozen. Thaw in refrigerator or microwave. (Any portion of this statement that is in conflict with the product's specified handling instructions, may be omitted.) (A graphic illustration of a refrigerator shall be displayed next to the statement.); (2) Keep raw meat and poultry separate from other foods. Wash working surfaces (including cutting boards), utensils, and hands after touching raw meat or poultry. (A graphic illustration of soapy hands under a faucet shall be displayed next to the statement.); (3) Cook thoroughly. (A graphic illustration of a skillet shall be displayed next to the statement.); and (4) Keep hot foods hot. Refrigerate leftovers immediately or discard. (A graphic illustration of a thermometer shall be displayed next to the statement.)

The final rule provided more flexibility in the placement of the safe handling instructions on the label. The requirement that safe handling instructions be on the principal display panel or the information panel of the label was deleted in the final rule. FSIS would permit safe handling instructions to appear anywhere on the label where they would likely be read. The final rule modified the need for the information to be set off in a box by use of hairlines and to all black or one color type printed on a white or other neutral contrasting background. The final rule stated that the instructions shall be set off by a border and shall be one color type printed on a single color contrasting background. FSIS believed that with the added flexibility provided in the final rule and the flexibility provided in the nutrition labeling regulations that labels would be large enough to accommodate both the mandatory features.

The final rule continued to allow safe handling instructions to be added to labels by the manufacturer and to be approved under the provisions of generic label approval since the regulations prescribe the exact language of the handling instructions.

The final rule continued to exempt products intended for further processing by an inspected establishment from mandatory safe handling labeling requirements. Since products for further processing by another federally inspected or State inspected establishment would not be available to consumers or food service institutions, FSIS believed it was unnecessary to require safe handling instructions on such packaging.

[5] A copy of this study is available for public review in the FSIS Hearing Clerk's office.

[6] A copy of this study is available for public review in the FSIS Hearing Clerk's office.

The comments and changes did not affect the Department's determination that immediate action was necessary to protect public health. Since the changes made in the final rule did not establish new requirements for immediate implementation, but provide affected businesses with additional flexibility not available under the interim rule they relieved restrictions. Further, the Department believed that good cause existed to make the final rule effective less than 30 days after publication in order to increase information to consumers and others which would help reduce the risk of foodborne illness caused by unsafe handling and cooking practices.

Proposal

FSIS is proposing to amend the Federal meat and poultry products inspection regulations by mandating the inclusion of safe handling instructions on the labeling of certain meat and poultry products along with a rationale statement to indicate the reason why it is important to follow such handling instructions. Products that will require safe handling instructions are those that are uncooked or have not been otherwise further processed to make them ready-to-eat. The Department has established required cooking temperatures for certain beef, poultry, and patty products. These requirements are set forth at 9 CFR 318.17, 381.150, and 318.23, respectively. The proposed rule applies the beef temperature requirements to beef, swine, sheep, goat, horse, and other equine. The Department has also established processing requirements for the curing or other treatment of certain meat products to control microbial activity. Some of these products are identified in part 319 of the meat inspection regulations. These cooked products, e.g., cooked sausage, and some products that have been otherwise further processed so as to render them ready-to-eat, e.g., dry fermented sausage, are not considered to be at sufficient risk of microbial contamination to warrant the application of safe handling labels. However, some products that are traditionally considered ready-to-eat receive no lethal heat treatment and may not be pathogen free. FSIS is reevaluating its policies and regulations governing these products. The Agency plans to propose a regulation requiring that these products either bear the safe handling instructions or be processed in such a manner as to render them pathogen free.

FSIS is proposing to permit official establishments and retailers to use alternate approaches to deliver the safe handling instructions until April 15, 1994, except for comminuted products. All official establishments and retailers would be required to comply with the requirement that the safe handling instructions appear on the product label by April 15, 1994.

The alternate approaches permitted by the proposed rule are presented below: (1) Official establishments may include in the shipping container either pressure-sensitive labels containing the safe handling instructions for retailers to apply to packages or leaflets containing a facsimile of the safe handling instructions in lettering no smaller than one-sixteenth of an inch for retailers to place in close proximity to the packages to ensure that leaflets are likely to be seen and taken home by consumers; and (2) retailers may distribute leaflets containing the facsimile described above.

In some cases, it was expected that retailers might prefer pressure-sensitive labels or leaflets of their own design and manufacture to those that on official establishment would provide under the permitted alternative. FSIS is proposing that if a retailer notifies an official establishment is writing that it intends to supply its own labels or labeling, the official establishment would not be required to supply the materials in the shipping container.

The proposed rule does not permit these alternate approaches to be used for comminuted meat or comminuted poultry products.

The proposed rule provides for the use of the following rationale statement if the product is prepared from inspected and passed meat and/or poultry: This product was prepared from inspected and passed meat and/or poultry. Some food products may contain bacteria that could cause illness if the product is mishandled or cooked improperly. For your protection, follow these safe handling instructions.

The proposed rule provides for the use of the following rationale statement for poultry slaughtered under exemptions specified in 9 CFR 381.10: Some food products may contain bacteria that could cause illness if the product is mishandled or cooked improperly. For your protection, follow these safe handling instructions.

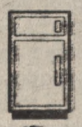
The proposed rule requires the following four safe handling statements for use on the label of both red meat and poultry products distributed to both household consumers and institutions: (1) Keep refrigerated or frozen. Thaw in refrigerator or microwave. (Any portion of this statement that is in conflict with the product's specific handling instructions, may be omitted.) (A graphic illustration of a refrigerator shall be displayed next to the statement.); (2) Keep raw meat and poultry separate from other foods. Wash working surfaces (including cutting boards), utensils, and hands after touching raw meat or poultry. (A graphic illustration of soapy hands under a faucet shall be displayed next to the statement.); (3) Cook thoroughly. (A graphic illustration of a skillet shall be displayed next to the statement.); and (4) Keep hot foods hot. Refrigerate leftovers immediately or discard. (A graphic illustration of a thermometer shall be displayed next to the statement.)

The label for safe handling instructions is shown in Exhibit 1.

Exhibit 1

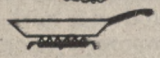
Safe Handling Instructions

This product was prepared from inspected and passed meat and/or poultry. Some food products may contain bacteria that could cause illness if the product is mishandled or cooked improperly. For your protection, follow these safe handling instructions.



Keep refrigerated or frozen.
Thaw in refrigerator or microwave.

Keep raw meat and poultry separate from other foods. Wash working surfaces (including cutting boards), utensils, and hands after touching raw meat or poultry.



Cook thoroughly.

Keep hot foods hot. Refrigerate leftovers immediately or discard.

FSIS is proposing that safe handling instructions may appear anywhere on the label where they would likely to be read. The proposal also requires the safe handling instructions to be set off by a border and to be one color type printed on a single color contrasting background.

FSIS is proposing to exempt products intended for further processing by an inspected establishment from mandatory safe handling labeling requirements. Since products for further processing by another Federal or State establishment will not be available to consumers or food service institutions, FSIS believes it is unnecessary to require safe handling instructions on such packaging.

FSIS is proposing to allow safe handling instructions to be added to labels by the manufacturer and to be approved under the provisions of generic label approval since the regulations prescribe the exact language of the safe handling instructions.

The Agency anticipates many comments suggesting that the implementation be postponed until July 6, 1994, and coincide with the implementation of the nutrition regulations; this would avoid the need to revise labels twice in a several month period. However, as evidenced by the promulgation of the interim rule, the Department believes that the safe handling instructions need to be included on labels as quickly as possible in order to protect human health, and suggests that companies concerned with reprinting labels revise their timetables for nutrition labeling. Also, FSIS is currently monitoring a total of 30 cases of foodborne illness. Among new incidents, not reported in the prior rulemaking publication are the following:

Reading, CT

The health department is investigating an outbreak of *E. coli* 0157:H7 that appears to be linked to a country club. On September 8, 1993, there were four confirmed cases of *E. coli* 0157:H7 involving two elderly women who were hospitalized and two children who were not hospitalized. three of the four attended a barbecue at the country club on September 5, 1993. the health department subsequently learned a 5th confirmed case involving an 11 year old who had also attended the barbecue. Undercooked hamburgers are suspected and samples of the frozen patties are being tested.

Butte, MO

The Butte/Silver Bow Health Department is reporting an outbreak of 6 confirmed cases of *E. coli* 0157:H7 in persons ranging in age from 23 months to 69 years. All 6 of those confirmed illness, as well as that of a 3 year old boy whose illness has not been confirmed, are recovering without complications. Health officials are in the process of interviewing the ill to try to identify a source.

San Diego, CA

San Diego County Department of Environmental Health Services is investigating a fast food restaurant as a possible source of *E. coli* 0157:H7 after a 2 year old girl became ill with the organism. The girl had shared a plain cheeseburger there with her mother 60 hours prior to her onset of illness. Her mother also became ill but her case was not confirmed. A 4 year old sister who also had a cheeseburger did not become ill. No other cases are being linked to the fast food restaurant. Hamburgers were sent to a laboratory in San Diego for analysis.

Ft. Wayne, IN

The Indiana State Department of Health is investigating a confirmed case of *E. coli* 0157:H7 involving a 5 year old

boy in Ft. Wayne who is seriously ill with complications of HUS. The public health officials are investigating a hamburger helper meal made with ground beef purchased at a local grocery store as a possible source of the organism. A tablespoon portion remaining from the meal was negative for *E. coli* 0157:H7.

Because of the continued incidence of these foodborne illnesses and because prior public comments on the issues associated with this proposed rule will be made a part of the rulemaking record, FSIS is limiting the comment period to 45 days, rather than the 60 days provided for under Executive Order 12866. FSIS also intends to publish a final regulation that would take effect 30 days after its publication.

Acknowledging that many producers have already manufactured labeling consistent with requirements of the interim rule and final rule, and that many are voluntarily applying such labeling, FSIS will permit safe handling instructions provided in both the August 16 interim rule and the October 12 final rule to be used for six months past the effective date of the final rule developed from this proposal.

Failure to provide safe handling instructions on the labeling of products subject to these regulations will be regarded as misbranding under Section 1 of the FMIA and Section 4 of the PPIA.

List of Subjects

9 CFR Part 317

Food labeling, Meat inspection.

9 CFR Part 381

Food labeling, Poultry inspection.

Proposed Rule

For the reasons discussed in the preamble, FSIS is proposing to amend 9 CFR parts 317 and 381 of the Federal meat and poultry products inspection regulations as follows:

PART 317—LABELING, MARKING DEVICES, AND CONTAINERS

1. The authority citation for part 317 continues to read as follows:

Authority: 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

2. Section 317.2 would be amended by adding a new paragraph (l) to read as follows:

§ 317.2 Labels; definition; required features.

* * * * *

(l) Safe handling instructions shall be provided for: All meat and meat products of cattle, swine, sheep, goat, horse, or other equine not heat processed in a manner that conforms to the time and temperature combinations in the Table for Time/Temperature Combination For Cooked Beef, Roast Beef, and Cooked Corned Beef in § 318.17, or that have not undergone other further processing that would render them ready-to-eat; and all comminuted meat patties not heat processed in a manner that conforms to the time and temperature combinations in the Table for Permitted Heat-Processing Temperature/Time Combinations For Fully-Cooked Patties in § 318.23; except as exempted under paragraph (l)(4) of this section.

(1)(i) Safe handling instructions shall accompany every meat or meat product, specified in this paragraph (l), destined for household consumers, hotels, restaurants, or similar institutions and shall appear on the label, except as provided in paragraphs (l)(1)(i) (A) and (B) of this section. The information shall be in lettering no smaller than one-sixteenth of an inch in size and shall be prominently placed with such conspicuousness (as compared with other words, statements, designs or devices in the labeling) as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(A) Until April 15, 1994, in lieu of placing the safe handling instructions on the label, official establishments may include in the shipping container either pressure-sensitive labels containing the safe handling instructions for retailers to apply to packages or leaflets containing a facsimile of the safe handling instructions in lettering no smaller than one-sixteenth of an inch for retailers to distribute with the packages, except that this is not permitted for comminuted meat products. Including pressure-sensitive labels or leaflets in shipping containers is not necessary if retailers notify official establishments in writing that they will provide such labeling.

(B) Until April 15, 1994, in lieu of placing the safe handling instructions on the label, retailers may distribute leaflets containing a facsimile of the safe handling instructions in lettering no smaller than one-sixteenth of an inch, except that this is not permitted for comminuted meat products.

(ii) The safe handling information shall be presented on the label under the heading "Safe Handling Instructions" which shall be set in type size larger than the print size of the rationale statement and handling statements as discussed in paragraphs (l)(2) and (l)(3) of this section. The safe handling information shall be set off by a border and shall be one color type printed on a single color contrasting background whenever practical.

(2) The labels of the meat and meat products specified in this paragraph (l) shall include the following rationale statement as part of the safe handling instructions, "This product was prepared from inspected and passed meat and/or poultry. Some food products may contain bacteria that could cause illness if the product is mishandled or cooked improperly. For your protection, follow these safe handling instructions." This statement shall be placed immediately after the heading and before the safe handling statements.

(3) Meat and meat products, specified in this paragraph (l), shall bear the labeling statements:

(i) Keep refrigerated or frozen. Thaw in refrigerator or microwave. (Any portion of this statement that is in conflict with the product's specific handling instructions, may be omitted, e.g., instructions to cook without thawing.) (A graphic illustration of a refrigerator shall be displayed next to the statement.);

(ii) Keep raw meat and poultry separate from other foods. Wash working surfaces (including cutting boards), utensils, and hands after touching raw meat or poultry. (A graphic illustration of soapy hands under a faucet shall be displayed next to the statement.);

(iii) Cook thoroughly. (A graphic illustration of a skillet shall be displayed next to the statement.); and

(iv) Keep hot foods hot. Refrigerate leftovers immediately or discard. (A graphic illustration of a thermometer shall be displayed next to the statement.)

(4) Meat or meat products intended for further processing at another official establishment are exempt from the requirements prescribed in paragraphs (l)(1) through (l)(3) of this section.

3. Section 317.5 would be amended by removing the word "or" following the semicolon at the end of paragraph (b)(12), replacing the period at the end of paragraph (b)(13) with a semicolon followed by the word "or", and adding a new paragraph (b)(14) to read as follows:

§ 317.5 Generically approved labeling.

* * * * *

(b) * * *

(14) The addition of safe handling instructions as required by § 317.2 of this subchapter.

PART 381—[AMENDED]

4. The authority citation for part 381 continues to read as follows:

Authority: 7 U.S.C. 450, 21 U.S.C. 451–470; 7 CFR 2.17, 2.55.

5. Section 381.125 would be amended by designating the current paragraph as (a) and adding a new paragraph (b) to read as follows:

§ 381.125 Special handling label requirements.

* * * * *

(b) Safe handling instructions shall be provided for all poultry products not heat processed in accordance with the provisions of § 381.150(b) or that have not undergone other further processing that would render them ready-to-eat, except as exempted under paragraph (b)(4) of this section.

(1)(i) Safe handling instructions shall accompany the poultry products, specified in this paragraph (b), destined for household consumers, hotels, restaurants, or similar institutions and shall appear on the label, except as provided in paragraphs (b)(1)(i)(A) and (B) of this section. The information shall be in lettering no smaller than one-sixteenth of an inch in size and shall be prominently placed with such conspicuousness (as compared with other words, statements, designs or devices in the labeling) as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(A) Until April 15, 1994, in lieu of placing the safe handling instructions on the label, official establishments may include in the shipping container either pressure-sensitive labels containing the safe handling instructions for retailers to apply to packages or leaflets containing a facsimile of the safe handling instructions in lettering no smaller than one-sixteenth of an inch for retailers to distribute with the packages, except that this is not permitted for comminuted poultry products. Including pressure-sensitive labels or leaflets in shipping containers is not necessary if retailers notify official establishments in writing that they will provide such labeling.

(B) Until April 15, 1994, in lieu of placing the safe handling instructions on the label, retailers may distribute leaflets containing a facsimile of the safe handling instructions in lettering no smaller than one-sixteenth of an inch, except that this is not permitted for comminuted poultry products.

(ii) The safe handling information shall be presented on the label under the heading "Safe Handling Instructions" which shall be set in type size larger than the print size of the rationale statement and handling statements as discussed in paragraphs (b)(2) and (b)(3) of this section. The safe handling information shall be set off by a border and shall be one color type printed on a single color contrasting background whenever practical.

(2)(i) The labels of the poultry products, specified in this paragraph (b) and prepared from inspected and passed poultry, shall include the following rationale statement as part of the safe handling instructions, "This product was prepared from inspected and passed meat and/or poultry. Some food products may contain bacteria that could cause illness if the product is mishandled or cooked improperly. For your protection, follow these safe handling instructions." This statement shall be placed immediately after the heading and before the safe handling statements.

(ii) The labels of the poultry products, specified in this paragraph (b) and prepared pursuant to § 381.10(a)(2), (5), (6), and (7), shall include the following rationale statement as part of the safe handling instructions, "Some food products may contain bacteria that could cause illness if the product is mishandled or cooked improperly. For your protection, follow these safe handling instructions." This statement shall be placed immediately after the heading and before the safe handling statements.

(3) Poultry products, specified in this paragraph (b), shall bear the labeling statements:

(i) Keep refrigerated or frozen. Thaw in refrigerator or microwave. (Any portion of this statement that is in conflict with the product's specific handling instructions may be omitted, e.g., instructions to cook without thawing.) (A graphic illustration of a refrigerator shall be displayed next to the statement.);

(ii) Keep raw meat and poultry separate from other foods. Wash working surfaces (including cutting boards), utensils, and hands after touching raw meat or poultry. (A graphic illustration of soapy hands under a faucet shall be displayed next to the statement.);

(iii) Cook thoroughly. (A graphic illustration of a skillet shall be displayed next to the statement.); and

(iv) Keep hot foods hot. Refrigerate leftovers immediately or discard. (A graphic illustration of a thermometer shall be displayed next to the statement.)

(4) Poultry products intended for further processing at another official establishment are exempt from the requirements prescribed in paragraphs (b)(1) through (b)(3) of this section.

6. Section 381.134 would be amended by removing the word "or" following the semicolon at the end of paragraph (b)(12), replacing the period at the end of paragraph (b)(13) with a semicolon followed by the word "or", and adding a new paragraph (b)(14) to read as follows:

§ 381.134 Generically approved labeling.

* * * * *

(b) * * *

(14) The addition of safe handling instructions as required by § 381.125.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–27068 Filed 11–3–93; 8:45 am]

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Vol. 58, No. 212

Thursday, November 4, 1993

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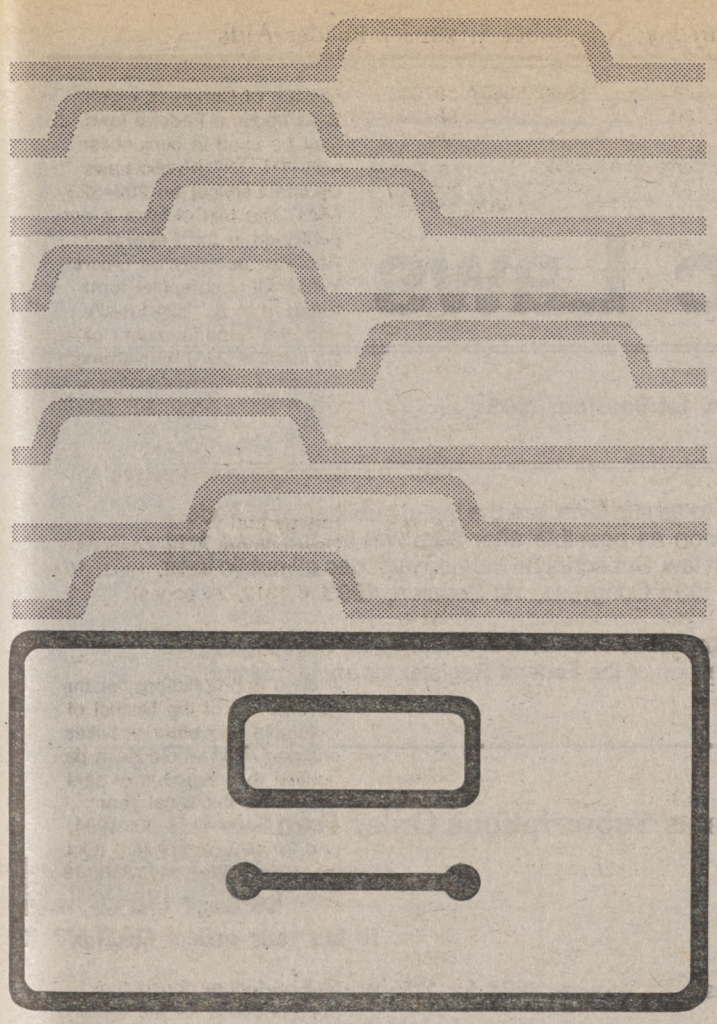

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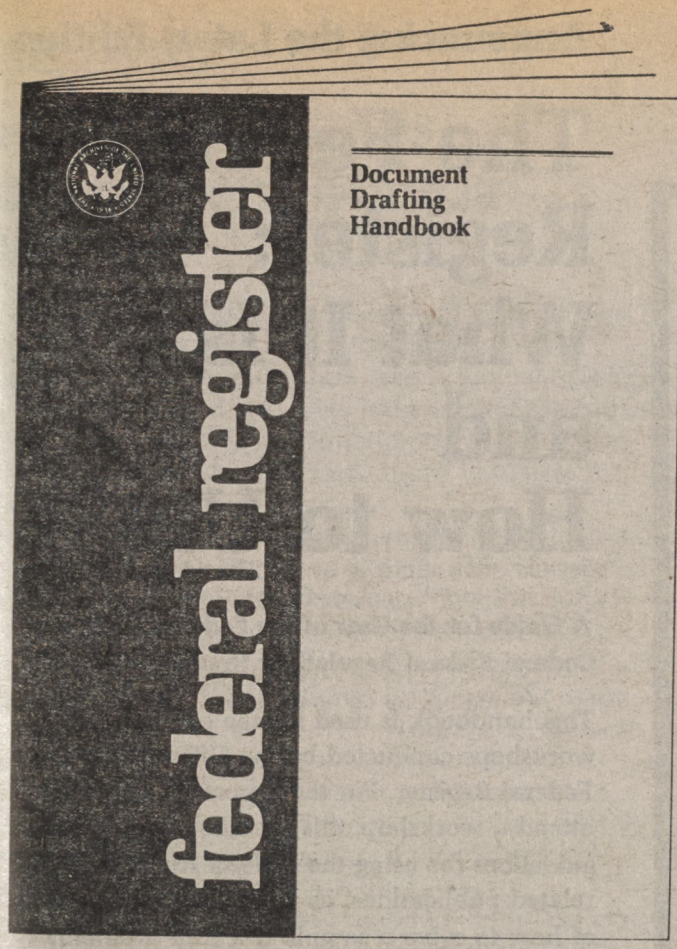

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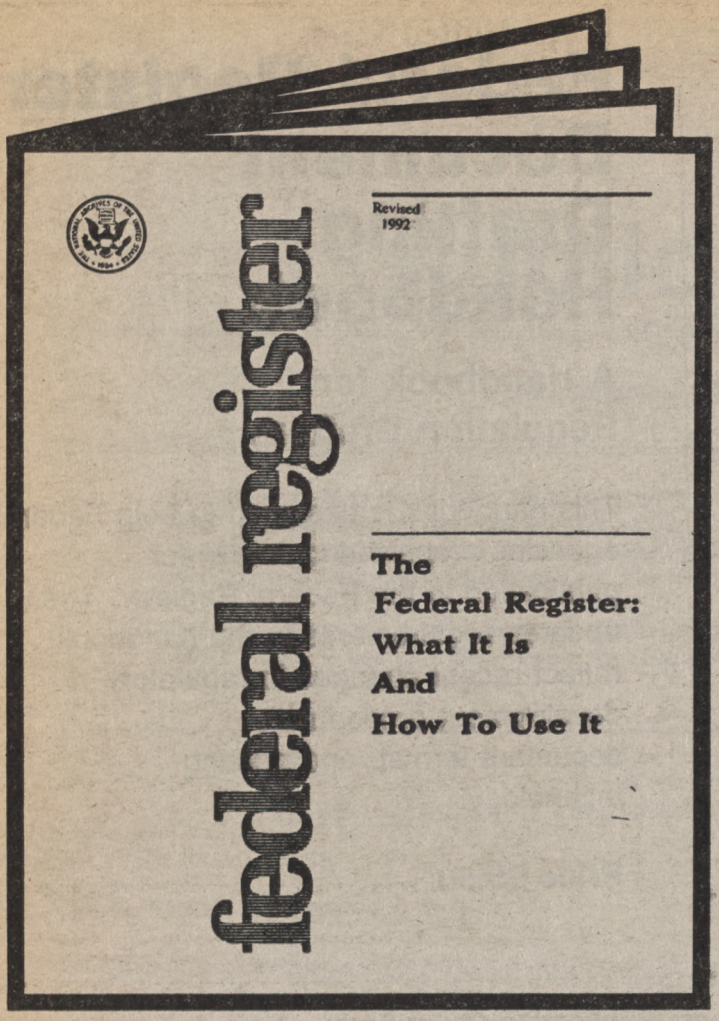

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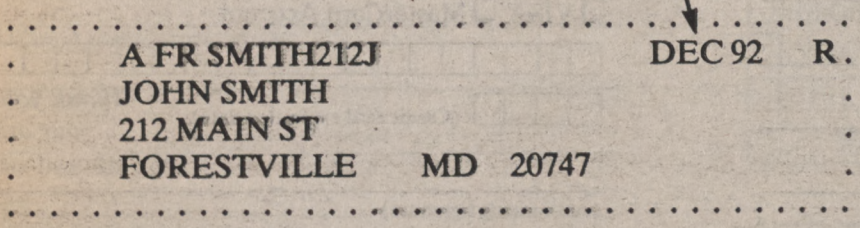

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