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Monday
November 6, 1995

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WASHINGTON, DC

[Three Sessions]

WHEN: November 14 at 9:00 am
November 28 at 9:00 am
December 5 at 9:00 am

WHERE: Office of the Federal Register Conference Room, 800 North Capitol Street NW., Washington, DC (3 blocks north of Union Station Metro)

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 322

Honeybees and Honeybee Semen

9 CFR Part 80

Paratuberculosis in Domestic Animals

CFR Corrections

In title 7 of the Code of Federal Regulations, parts 300 to 399, revised as of January 1, 1995, on page 288, the text of § 322.1(c) appearing in the second column is corrected to read:

§ 322.1 Importation of honeybees and honeybee semen.

* * * * *

(c) Honeybee semen from any country listed below is designated as a restricted article and may be imported * * *.

* * * * *

In title 9 of the Code of Federal Regulations, parts 1 to 199, revised as of January 1, 1995, on page 253, in § 80.4, a portion of paragraph (a), paragraph (b) designation and a portion of text was inadvertently omitted. As corrected paragraphs (a) and (b) should read as follows:

§ 80.4 Movement of paratuberculosis reactors.

* * * * *

(a) Cattle which have reacted to such a test shall be marked for identification by branding the letter ''T'' on the left jaw in letters not less than 2 nor more than 3 inches high, and attaching to the left ear a metal tag bearing a serial number and the inscription ''U.S.B.A.I. Reacted,'' or ''U.S. Reacted,'' or a similar State reactor tag. Such a metal tag, affixed to the left ear, shall be sufficient identification for reactors other than cattle.

(b) The reactors shall be accompanied to destination, in accordance with § 80.9, by a certificate issued by a Federal or State inspector or an accredited veterinarian showing: (1) That the animals have reacted to a test recognized by the Secretary of Agriculture for paratuberculosis; (2) the reactor tag number for each animal and the name of the owner of such animal when is was tested for paratuberculosis; (3) that the animals may be moved interstate; (4) the destination to which they are to be moved; and (5) the purpose for which they are moved.

BILLING CODE 1505–01–D

Agricultural Marketing Service

7 CFR Part 1131

[Docket No. AO–271–A32; DA–92–24]

Milk in the Central Arizona Marketing Area; Order Amending the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule removes the ''associated producer'' provisions and revises the producer-handler definition in the Central Arizona Federal milk order. The amendments, which were approved by two-thirds of the producers in the market, are based on proposals presented at a public hearing held in February 1992.

EFFECTIVE DATE: January 1, 1996.

FOR FURTHER INFORMATION CONTACT: Nicholas Memoli, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 690–1932.

SUPPLEMENTARY INFORMATION: This administrative rule is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. The amended order will promote orderly marketing of milk by producers and regulated handlers.

This final rule has been reviewed under Executive Order 12278, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the District Court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Prior documents in this proceeding:

Notice of Hearing: Issued December 21, 1992; published December 30, 1992 (57 FR 62241).

Recommended Decision: Issued December 15, 1993; published December 22, 1993 (57 FR 67703).

Extension of Time for Filing Exceptions: Issued February 4, 1994; published February 14, 1994 (59 FR 6916).

Revised Recommended Decision: Issued November 4, 1994; published November 14, 1994 (59 FR 56414).

Final Decision: Issued September 19, 1995; published September 28, 1995 (60 FR 50139).

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the Central Arizona order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

The following findings are hereby made with respect to the Central Arizona order:

(a) Findings upon the basis of the hearing record. Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Central Arizona marketing area.

Upon the basis of the evidence introduced at such hearing and the record thereof it is found that:

(1) The Central Arizona order, as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the order, as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The Central Arizona order, as hereby amended, regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial and commercial activity specified in, the marketing agreement upon which a hearing has been held.

(b) Determinations. It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in Section 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within the specified marketing area, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order amending the Central Arizona order is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order as hereby amended;

(3) The issuance of the order amending the Central Arizona order is favored by at least two-thirds of the producers who were engaged in the production of milk for sale in the marketing area.

List of Subjects in 7 CFR Part 1131

Milk marketing orders.

Order Relative to Handling

It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Central Arizona marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby further amended, as follows:

PART 1131—MILK IN THE CENTRAL ARIZONA MARKETING AREA

1. The authority citation for 7 CFR Part 1131 reads as follows:

Authority: 7 U.S.C. 601–674.

2. In § 1131.10, paragraph (a)(3) is redesignated as (a)(4), a new paragraph (a)(3) is added, and paragraph (a)(1)(ii) is revised to read as follows:

§ 1131.10 Producer-handler.

* * * * *

(a) * * *

(1) * * *

(ii) Fluid milk products obtained by transfer or diversion from pool plants, other order plants, or from a handler described in § 1131.9(b), in an amount not to exceed 5 percent of its fluid milk product disposition for the month or 5,000 pounds, whichever is less;

(2) * * *

(3) Does not distribute fluid milk products to a wholesale customer who also is serviced by a handler described in § 1131.9 (a) or (d) that supplied the same product in the same-sized package with a similar label to the wholesale customer during the month; and

* * * * *

§ 1131.13 [Amended]

3. In § 1131.13 paragraphs (a)(2) and (b)(1), the words ''that is not a producer-handler plant,'' are removed.

§§ 1131.21 and 1131.22 [Removed]

4. Sections 1131.21 and 1131.22 are removed.

5. In § 1131.30, paragraph (d) is redesignated as paragraph (e), in newly designated (e) the words ''(a) through (c)'' are revised to read ''(a) through (d)'', and a new paragraph (d) is added to read as follows:

§ 1131.30 Reports of receipts and utilization.

* * * * *

(d) Each handler described in § 1131.10 shall report:

(1) The pounds of milk received from each of the handler's own-farm production units, showing separately the production of each farm unit and the number of dairy cows in production at each farm unit;

(2) Fluid milk products and bulk fluid cream products received at its plant or acquired for route disposition from pool plants, other order plants, and handlers described in § 1131.9(b);

(3) Receipts of other source milk not reported pursuant to paragraph (d)(2) of this section;

(4) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1131.40(b)(1); and

(5) The utilization or disposition of all milk and milk products required to be reported pursuant to this paragraph.

* * * * *

§ 1131.33 [Removed]

6. Section 1131.33 is removed.

7. In § 1131.42 paragraph (d)(2)(vi), the words ''pursuant to § 1131.22 or'' are removed, and the introductory text of paragraph (c) and paragraph (c)(1) are revised to read as follows:

§ 1131.42 Classification of transfers and diversions.

* * * * *

(c) Transfers and diversions to producer-handlers. Skim milk or butterfat transferred or diverted from a pool plant or diverted from a handler described in § 1131.9(b) to a producer-handler under this or any other order shall be classified:

(1) As Class I milk, if transferred or diverted in the form of a fluid milk product; and

* * * * *

§ 1131.44 [Amended]

8. In § 1131.44(a)(4), the word ''.ilk'' is revised to read ''milk''.

9. In § 1131.50, paragraph (a) is revised to read as follows:

§ 1131.50 Class prices.

* * * * *

(a) The Class I price shall be the basic formula price for the second preceding month plus $2.52.

* * * * *

10. In § 1131.61, paragraph (b) is removed, paragraphs (c) through (f) are redesignated as paragraphs (b) through (e), and newly redesignated paragraph (d) is amended by removing paragraph (d)(3) and revising paragraphs (d)(1) and (d)(2) to read as follows:

§ 1131.61 Computation of uniform price.

* * * * *

(d) * * *

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1131.60(f).

* * * * *

§ 1131.72 [Amended]

11. In § 1131.72, the word ''for'' is revised to read ''from'' in the section heading, paragraph (b) is removed, and paragraph (c) is redesignated as paragraph (b).

§ 1131.77 [Amended]

12. In § 1131.77, the last sentence is removed.

§ 1131.85 [Amended]

13. In § 1131.85, paragraph (b) is removed and reserved.

Dated: October 31, 1995.

Shirley R. Watkins,

Acting Assistant Secretary, Marketing and Regulatory Programs.

[FR Doc. 95–27392 Filed 11–3–95; 8:45 am]

BILLING CODE 3410–02–P

Rural Utilities Service

7 CFR Part 1755

Telecommunications Program Regulations

AGENCY: Rural Utilities Service, USDA.

ACTION: Final rule.

SUMMARY: The Rural Utilities Service (RUS) amends its regulations on Telecommunications Standards and Specifications for Materials, Equipment and Construction, by rescinding a number of outdated bulletins. These bulletins are incorporated by reference in RUS telecommunications regulations and thus are regulatory in nature.

EFFECTIVE DATE: December 6, 1995.

FOR FURTHER INFORMATION CONTACT: Richard J. Peterson, Deputy Director, Telecommunications Standards Division, Rural Utilities Service, room 2835, South Building, U.S. Department of Agriculture, Washington, DC 20250–1500, telephone number (202) 720–8663.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be not significant and therefore has not been reviewed by the Office of Management and Budget.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. If adopted, this final rule will not:

(1) Preempt any State or local laws, regulations, or policies;

(2) Have any retroactive effect; and

(3) Require administrative proceedings before parties may file suit challenging the provisions of this rule.

Regulatory Flexibility Act Certification

The Administrator of RUS has determined that this final 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 *et seq.*). This final rule streamlines and updates RUS requirements for telephone borrowers by rescinding obsolete standards and specifications. Borrowers unable to use products meeting only the specifications being eliminated may experience increased short-term costs. However, RUS believes borrowers will benefit from reduced overall costs due to the greater durability and lower maintenance costs over time. These bulletins no longer meet industry standards.

Information Collection and Recordkeeping Requirements

This final rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (Pub. L. 96–511).

National Environmental Policy Act Certification

The Administrator has determined that this final rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this final rule is listed in the Catalog of Federal Domestic Assistance Programs under number 10.851, Rural Telephone Loans and Loan Guarantees, and 10.582, Rural Telephone Bank Loans. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402.

Executive Order 12372

This final rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation that requires intergovernmental consultation with state and local officials. A Notice of Final Rule entitled Department Programs and Activities Excluded from Executive Order 12372 (50 FR 47034) exempts RUS and RTB loans and loan guarantees, and RTB bank loans, to governmental and nongovernmental entities from coverage under this Order.

Background

RUS issues publications titled ''bulletins'' which serve to guide borrowers regarding already codified policy, procedures, and requirements needed to manage loans, loan guarantee programs, and the security instruments which provide for and secure RUS financing. RUS issues standards and specifications for the construction of telephone facilities financed with RUS loan funds. After review of RUS's bulletin and specification issuances, RUS has decided to rescind the outdated RUS bulletins listed below. These bulletins are incorporated by reference at 7 CFR 1755.97.

LIST OF RUS BULLETINS FOR RESCISSION

RUS bulletin No.	Specification No.	Date last issued	Title of standard or specification
345–13	PE–22	Jan. 1983	RUS Specification for Aerial and Underground Telephone Cable.
345–29	PE–38	Feb. 1982	RUS Specification for Self-Supporting Cable.
345–75	PE–65	Jan. 1977	RUS Specification for Electronic Trunk Circuits.
345–168	Form 538	Oct. 1977	RUS Specification for Equipment for Direct Distance Dialing.

RUS Bulletins 345–13, RUS Specification for Aerial and Underground Telephone Cable, PE–22 and 345–29, RUS Specification for Self-Supporting Cable, PE–38 specify the technical requirements for air core cables that are primarily used in aerial plant installations. With the development of filled cables having 80 degree Centigrade filling compounds, filled cables, which are primarily used for direct buried and underground plant

installations, can now be used for aerial plant installations. Since filled cables provide greater service reliability than air core cables, filled cables for aerial plant installations have increased on RUS borrower construction projects. This increasing use of filled cables for aerial installations has resulted in a decline of air core cables for aerial plant construction projects. Since the use of air core cables in aerial plant construction is declining on RUS borrower projects, RUS is rescinding both bulletins because of obsolescence.

RUS Bulletin 345–75, RUS Specification for Electronic Trunk Circuits, PE–65, is being rescinded because RUS trunk circuits are now digitally derived making RUS Bulletin 345–75 obsolete.

RUS Bulletin 345–168, RUS Specification for Equipment for Direct Distance Dialing, Form 538, specified the technical requirements for equipment use in direct distance dialing. Since the equipment requirements for direct distance dialing are now specified in RUS 7 CFR 1755.522, RUS General Specification for Digital, Stored Program Controlled Central Office Equipment, RUS Bulletin 345–168 is no longer required therefore making the document obsolete.

Comments

On January 5, 1995, RUS published a proposed rule (60 FR 1758) to rescind RUS Bulletin 345–13, RUS Specification for Aerial and Underground Telephone Cable, PE–22; RUS Bulletin 345–29, RUS Specification for Self-Supporting Cable, PE–38; RUS Bulletin 345–75, RUS Specification for Electronic Trunk Circuits, PE–65; and RUS Bulletin 345–168, RUS Specification for Equipment for Direct Distance Dialing, Form 538, because of obsolescence. Comments on this proposed rule were due by February 6, 1995. Comments and recommendations were received from four organizations by this due date. The comments, recommendations, and responses are summarized as follows:

All four organizations commented that they agreed with RUS's decision to rescind all four of the outdated bulletins.

Response: Since all four organizations agreed with RUS's decision to rescind the outdated bulletins, RUS will rescind the outdated bulletins.

List of Subjects in 7 CFR Part 1755

Incorporation by reference, Loan programs—communications, Rural areas, Telephone.

For reasons set out in the preamble, RUS amends Chapter XVII of title 7 of the Code of Federal Regulations as follows:

PART 1755—TELECOMMUNICATIONS STANDARDS AND SPECIFICATIONS FOR MATERIALS, EQUIPMENT AND CONSTRUCTION

1. The authority citation for part 1755 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.;* 1921 *et seq.;* Pub. L. 103–354, 108 Stat. 3178 (7 U.S.C. 6941 *et seq.*).

§ 1755.97 [Amended]

2. Section 1755.97 is amended by removing from the table the entries for bulletins 345–13, 345–29, 345–75, and 345–168.

Dated: October 30, 1995.

Jill Long Thompson,

Under Secretary, Rural Economic and Community Development.

[FR Doc. 95–27394 Filed 11–3–95; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 11

[Docket No. RM86–2–000]

Update of the Federal Energy Regulatory Commission's Fees Schedule for Annual Charges for the Use of Government Lands

Issued October 31, 1995.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; update of Federal land use fees.

SUMMARY: On May 8, 1987, the Commission issued its final rule amending Part 11 of its regulations (Order No. 469, 52 FR 18201 May 14, 1987). The final rule revised the billing procedures for annual charges for administering Part I of the Federal Power Act, the billing procedures for charges for Federal dam and land use, and the methodology for assessing Federal land use charges.

In accordance with the Commission's regulations, the Commission by its designee, the Executive Director, is updating its schedule of fees for the use of government lands. The yearly update is determined by adapting the most recent schedule of fees for the use of linear rights-of-way prepared by the United States Forest Service. Since the next fiscal year will cover the period from October 1, 1995, through September 30, 1996, the fees in this notice will become effective October 1, 1995. The fees will apply to fiscal year 1996 annual charges for the use of government lands.

EFFECTIVE DATE: October 1, 1995.

FOR FURTHER INFORMATION CONTACT: Diane E. Bernier, Financial Services Division, Office of the Executive Director and Chief Financial Officer, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 219–2886.

SUPPLEMENTARY INFORMATION: In accordance with Section 11.2, 18 CFR, the land values included in this document will be published in the Federal Register. In addition, the Commission provides all interested persons an opportunity to inspect or copy contents of this document during normal business hours in the Public Reference Room at the Commission's Headquarters, 888 First 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 (800) 856–3920. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400, or 1200 bps, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this order will be available on CIPS in ASCII and WordPerfect 5.1 format. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located at 888 First Street, NE., Washington, DC 20426.

List of Subjects in 18 CFR Part 11

Electric power, Reporting and recordkeeping requirements.

Christie McGue,

Executive Director and Chief Financial Officer.

Accordingly, the Commission, effective October 1, 1995, amends Part 11 of Chapter I, Title 18 of the Code of Federal Regulations, as set forth below.

PART 11—[AMENDED]

1. The authority citation for Part 11 continues to read as follows:

Authority: 16 U.S.C. 791a–825r; 42 U.S.C. 7101–7352.

2. In Part 11, Appendix A is revised to read as follows:

Appendix A to Part II

FEE SCHEDULE FOR FY 1996

State and county	Rate per acre
Alabama All counties	$23.37
Arkansas: All counties	17.54
Arizona:	
Apache	5.84
Cochise	
Gila	
Graham	
La Paz	
Mohave	
Navajo	
Pima	
Yavapai	
Yuma	
Coconino north of Colorado River	
Coconino south of Colorado River	23.37
Greenlee	
Maricopa	
Pinal	
Santa Cruz	
California:	
Imperial	11.68
Inyo	
Lassen	
Modoc	
Riverside	
San Bernardino	
Siskiyou	17.54
Ameda	29.22
Alpine	
Amador	
Butte	
Calaveras	
Colusa	
Contra Costa	
Del Norte	
El Dorado	
Fresno	
Glenn	
Humboldt	
Kern	
Kings	
Lake	
Madera	
Mariposa	
Mendocino	
Merced	
Mono	
Napa	
Nevada	
Placer	
Plumas	
Sacramento	
San Benito	
San Joaquin	
Santa Clara	
Shasta	
Sierra	
Solano	
Sonoma	
Stanislaus	
Sutter	
Tehama	
Trinity	
Tulare	
Tuolumne	
Yolo	
Yuba	

FEE SCHEDULE FOR FY 1996—Continued

State and county	Rate per acre
Los Angeles	35.07
Marin	
Monterey	
Orange	
San Diego	
San Francisco	
San Luis OBISPO	
San Mateo	
Santa Barbara	
Santa Cruz	
Ventura	
Colorado:	
Adams	5.84
Arapahoe	
Bent	
Cheyenne	
Crowley	
Elbert	
El Paso	
Huerfano	
Kiowa	
Kit Carson	
Lincoln	
Logan	
Moffat	
Montezuma	
Morgan	
Pueblo	
Sedgwick	
Washington	
Weld	
Yuma	
Baca	11.68
Dolores	
Garfield	
Las Animas	
Mesa	
Montrose	
Otero	
Prowers	
Rio Blanco	
Routt	
San Miguel	
Alamosa	23.37
Archuleta	
Boulder	
Chaffee	
Clear Creek	
Conejos	
Costilla	
Custer	
Denver	
Delta	
Douglas	
Eagle	
Fremont	
Gilpin	
Grand	
Gunnison	
Hinsdale	
Jackson	
Jefferson	
Lake	
La Plata	
Larimer	
Mineral	
Ouray	
Park	
Pitkin	
Rio Grande	

FEE SCHEDULE FOR FY 1996—Continued

State and county	Rate per acre
Saguache	
San Juan	
Summit	
Teller	
Connecticut: All counties	5.84
Florida:	
Baker	35.07
Bay	
Bradford	
Calhoun	
Clay	
Columbia	
Dixie	
Duval	
Escambia	
Franklin	
Gadsden	
Gilchrist	
Gulf	
Hamilton	
Holmes	
Jackson	
Jefferson	
Lafayette	
Leon	
Liberty	
Madison	
Nassau	
Okaloossa	
Santa Rosa	
Suwannee	
Taylor	
Union	
Wakulla	
Walton	
Washington	
All other counties	58.44
Georgia: All counties	35.07
Idaho:	
Cassia	5.84
Gooding	
Jerome	
Lincoln	
Minidoka	
Oneida	
Owyhee	
Power	
Twin Falls	
Ada	17.54
Adams	
Bannock	
Bear Lake	
Benewah	
Bingham	
Blaine	
Boise	
Bonner	
Bonneville	
Boundary	
Butte	
Camas	
Canyon	
Caribou	
Clark	
Clearwater	
Custer	
Elmore	
Franklin	

FEE SCHEDULE FOR FY 1996—Continued

State and county	Rate per acre
Fremont	
Gem	
Idaho	
Jefferson	
Kootenai	
Latah	
Lemhi	
Lewis	
Madison	
Nez Perce	
Payette	
AShosone	
Teton	
Valley	
Washington	
Kansas:	
All other counties	5.84
Morton	11.68
Illinois: All counties	17.54
Indiana: All counties	29.22
Kentucky: All counties	17.54
Louisana: All counties	35.07
Maine: All counties	17.54
Michigan:	
Alger	17.54
Baraga	
Chippewa	
Dickinson	
Delta	
Gogebic	
Houghton	
Iron	
Keweenaw	
Luce	
Mackinac	
Marquette	
Menominee	
Ontonagon	
Schoolcraft	
All other counties	23.37
Minnesota: All counties	17.54
Mississippi: All counties	23.37
Missouri: All counties	17.54
Montana:	
Big Horn	5.84
Blaine	
Carter	
Cascade	
Chouteau	
Custer	
Daniels	
McCone	
Meager	
Dawson	
Fallon	
Fergus	
Garfield	
Glacier	
Golden Valley	
Hill	
Judith Basin	
Liberty	
Musselshell	
Petroleum	
Phillips	
Pondera	
Powder River	
Prairie	
Richland	
Roosevelt	

FEE SCHEDULE FOR FY 1996—Continued

State and county	Rate per acre
Rosebud	
Sheridan	
Teton	
Toole	
Treasure	
Valley	
Wheatland	
Wibaux	
Yellowstone	
Beaverhead	17.54
Broadwater	
Carbon	
Deer Lodge	
Flathead	
Gallatin	
Granite	
Jefferson	
Lake	
Lewis & Clark	
Lincoln	
Madison	
Mineral	
Missoula	
Park	
Powell	
Ravalli	
Sanders	
Silver Bow	
Stillwater	
Sweet Grass	
Nebraska: All counties	5.84
Nevada:	
Churchill	2.92
Clark	
Elko	
Esmeralda	
Eureka	
Humboldt	
Lander	
Lincoln	
Lyon	
Mineral	
Nye	
Pershing	
Washoe	
White Pine	
Carson City	29.22
Douglas	
Storey	
New Hampshire: All counties	17.54
New Mexico:	
Chaves	5.84
Curry	
De Baca	
Dona Ana	
Eddy	
Grant	
Guadelupe	
Harding	
Hidalgo	
Lea	
Luna	
McKinley	
Otero	
Quay	
Roosevelt	
San Juan	
Socorro	
Torrance	
Rio Arriba	11.68

FEE SCHEDULE FOR FY 1996—Continued

State and county	Rate per acre
Sandoual	
Union	
Bernalillo	23.37
Catron	
Cibola	
Colfax	
Lincoln	
Los Alamos	
Mora	
San Miguel	
Santa Fe	
Sierra	
Taos	
Valencia	
New York: All counties	23.37
North Carolina: All counties	35.07
North Dakota: All counties	5.84
Ohio: All counties	23.37
Oklahoma:	
All other counties	5.84
Beaver	11.68
Cimarron	
Roger Mills	
Texas	
Le Flore	17.54
McCurtain	
Oregon:	
Harney	5.84
Lake	
Malheur	
Baker	11.68
Crook	
Deschutes	
Gilliam	
Grant	
Jefferson	
Klamath	
Morrow	
Sherman	
Umatilla	
Union	
Wallowa	
Wasco	
Wheeler	
Coos	17.54
Curry	
Douglas	
Jackson	
Josephine	
Benton	23.37
Clackamas	
Clatsop	
Columbia	
Hood River	
Lane	
Lincoln	
Linn	
Marion	
Multnomah	
Polk	
Tillamock	
Washington	
Yamhill	
Pennsylvania: All counties	23.37
Puerto Rico: All	35.07
South Dakota:.	
Butte	17.54
Custer	
Fall River	
Lawrence	

FEE SCHEDULE FOR FY 1996—Continued

State and county	Rate per acre
Mead	
Pennington	
All other counties	5.84
South Carolina: All counties	35.07
Tennessee: All counties	23.37
Texas:	
Culberson	5.84
El Paso	
Hudspeth	
All other counties	35.07
Utah:	
Beaver	5.84
Box Elder	
Carbon	
Duchesne	
Emery	
Garfield	
Grand	
Iron	
Jaub	
Kane	
Millard	
San Juan	
Tooele	
Uintah	
Wayne	
Washington	11.68
Cache	17.54
Daggett	
Davis	
Morgan	
Piute	
Rich	
Salt Lake	
Sanpete	
Sevier	
Summit	
Utah	
Wasatch	
Weber	
Vermont: All counties	23.37
Virginia: All counties	23.37
Washington:	
Adams	11.68
Asotin	
Benton	
Chelan	
Columbia	
Douglas	
Franklin	
Garfield	
Grant	
Kittitas	
Klickitat	
Lincoln	
Okanagan	
Spokane	
Walla Walla	
Whitman	
Yakima	
Ferry	17.54
Pend Oreille	
Stevens	
Callam	23.37
Clark	
Cowlitz	
Grays Harbor	
Island	
Jefferson	
King	

FEE SCHEDULE FOR FY 1996—Continued

State and county	Rate per acre
Kitsap	
Lewis	
Mason	
Pacific	
Pierce	
San Juan	
Skagit	
Skamania	
Snohomish	
Thurston	
Wahkiakum	
Whatcom	
West Virginia: All counties	23.37
Wisconsin: All counties	17.54
Wyoming:	
Albany	5.84
Campbell	
Cargon	
Converse	
Goshen	
Hot Springs	
Johnson	
Laramie	
Lincoln	
Natrona	
Niobrara	
Platte	
Sheridan	
Sweetwater	
Fremont	
Sublette	
Uinta	
Washakie	
Big Horn	17.54
Crook	
Park	
Teton	
Weston	
All other zones:	5.69

[FR Doc. 95–27383 Filed 11–3–95; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 10, 12, 102 and 178

[T.D. 95–69]

RIN 1515–AB71

Rules of Origin for Textile and Apparel Products

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule; corrections.

SUMMARY: This document corrects a final rule document which amended the Customs Regulations to set forth provisions governing the determination of the country of origin of textile and apparel products for purposes of laws enforced by the Customs Service. The corrections involve two erroneous regulatory text citations.

EFFECTIVE DATE: These corrections are effective October 5, 1995.

SUPPLEMENTARY INFORMATION:

Background

On September 5, 1995, Customs published T.D. 95–69 in the Federal Register (60 FR 46188) containing final amendments to the Customs Regulations to set forth standards governing the determination of the country of origin of textile and apparel products for purposes of laws enforced by Customs. The regulatory amendments primarily implemented the provisions of section 334 of the Uruguay Round Agreements Act (Pub. L. 103–465, 108 Stat. 4809) and included a new § 102.21 covering the majority of the section 334 provisions as well as new §§ 10.25 and 10.195(d) which concerned duty treatment accorded to imported articles incorporating textile components cut to shape in the United States. This document corrects the texts of §§ 10.25 and 10.195(d) which each contained an erroneous cross-reference to the definition of ''textile or apparel product'' in § 102.21.

Corrections of Publication

The document published in the Federal Register as T.D. 95–69 on September 5, 1995 (60 FR 46188) is corrected as set forth below.

1. On page 46196, in the third column, in § 10.25(a), the reference ''§ 102.21(b)(4)'' is corrected to read ''§ 102.21(b)(5)''.

2. On page 46197, in the second column, in § 10.195(d), the reference ''§ 102.21(b)(4)'' in the last sentence is corrected to read ''§ 102.21(b)(5)''.

Dated: October 31, 1995.

Stuart P. Seidel,

Assistant Commissioner, Office of Regulations and Rulings.

[FR Doc. 95–27437 Filed 11–3–95; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 2 and 21

RIN 2900–AG56

Veterans Training Under the Service Members Occupational Conversion and Training Program

AGENCY: Department of Veterans Affairs.

ACTION: Final rule and correcting amendment.

SUMMARY: This document adopts as a final rule with changes an interim rule which established regulations to provide benefits relating to job training programs for recently discharged veterans under the Service Members Occupational Conversion and Training Act of 1992.

EFFECTIVE DATE: November 6, 1995.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Policy and Program Administration, Education Service, Veterans Benefits Administration, (202) 273–7187.

SUPPLEMENTARY INFORMATION: On January 31, 1995, VA published in the Federal Register (60 FR 5848) an interim final rule with request for comments. This interim final rule implemented those responsibilities with respect to the Service Members Occupational Conversion and Training Act that the Secretary of Defense delegated to the Secretary of Veterans Affairs.

The public was given 62 days to submit comments. VA received no comments.

In reviewing the interim rule, VA noted that a small amount of material was inadvertently omitted from paragraph (c) of § 21.4832. Even so, the substance of paragraph (c) was evident from the interim rule document since this paragraph was fully discussed in the **SUPPLEMENTARY INFORMATION** section of the interim rule (60 FR 5851).

Based on the rationale set forth in the interim rule document, we are adopting the provisions of the interim rule as a final rule with the addition of the material that was inadvertently omitted from § 21.4832(c). This final rule also affirms the information in the interim rule document concerning the Regulatory Flexibility Act.

No Catalog of Federal Domestic Assistance number has been assigned to the program affected by these regulations.

List of Subjects

38 CFR Part 2

Authority delegation (Government agencies). Veterans Affairs Department.

38 CFR Part 21

Civil rights, Claims, Education, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: July 11, 1995.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, the interim rule amending 38 CFR parts 2 and 21 published at 60 FR 5848 on January 31, 1995 is adopted as a final rule with the following change:

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

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

Authority: 38 U.S.C. 501.

2. Section 21.4832, is amended by correctly adding the paragraph designation (c) and paragraph (c) introductory text to precede the second paragraph currently designated (1) under paragraph (b) to read as follows:

§ 21.4832 Payments to Employers.

* * * * *

(c) *Payments for tools and other work-related materials.* VA may reimburse the employer a maximum of $500 for the costs of tools and other work-related materials required for training upon receipt of:

* * * * *

[FR Doc. 95–27373 Filed 11–3–95; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 11 and 73

[FO Docket Nos. 91–171/91–301; FCC 95–420]

Emergency Broadcast/Alert System

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This *Memorandum Opinion and Order* addresses petitions for reconsideration of the Federal Communications Commission's (FCC) Emergency alert System rules (EAS). These rules were approved by the FCC in 1994 to replace the Emergency Broadcast System (EBS). The purpose of EAS is to improve emergency warnings and information using broadcast stations and cable systems. The *Memorandum Opinion and Order* makes some changes requested by the petitions and denies others, and amends a number of the EAS rules.

EFFECTIVE DATE: December 6, 1995.

FOR FURTHER INFORMATION CONTACT: EAS Staff, Compliance and Information Bureau, (202) 418–1220.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order* in FO Dockets 91–171/91–301, adopted October 4, 1995, and released October 23, 1995.

The full text of this Commission *Memorandum Opinion and Order* is available for inspection and copying during normal business hours in the FCC's Public Reference Center (Room 239), 1919 M Street, NW., Washington DC 20554. The complete text of the *Memorandam Opinion and Order* may also be purchased from the Commission's duplication contractor, International Transcription Services, Inc., 2100 M Street NW., suite 140, Washington, DC 20037, (202) 857–3800.

Synopsis of Memorandum Opinion and Order

The Federal Communications Commission (FCC) adopted a *Memorandum Opinion and Order* addressing petitions for reconsideration of its Emergency Alert System (EAS) rules. 47 CFR part 11. These rules were approved by the Commission on November 10, 1994, in a *Report and Order* which replaced the Emergency Broadcast System (EBS) with EAS. 59 FR 67090 (Dec. 28, 1994). The purpose of EAS is to use various communications technologies, such as broadcast stations and cable systems, to alert the public regarding national, state and local emergencies. EAS, compared to EBS, includes more sources capable of alerting the public and specifies new equipment standards and procedures to improve alerting capabilities.

Petitions for reconsideration were submitted by Data Broadcasting Corporation, Sage Alerting Systems, Inc., Federal Signal Corporation, Delco Electronics Corporation, and the national Association of Broadcasters. Also received were comments, oppositions to the petitions for reconsideration, and replies to the oppositions.

The petition for reconsideration raised three major issues. The first involved the Radio Broadcast Data System (RBDS). RBDS may be used to send emergency warnings on the subcarrier of FM broadcast stations. The Commission in its 1994 EAS *Report and Order* encouraged the use of RBDS, but did not require it. Several petitions for reconsideration requested that the FCC adopt rules specifying technical standards for RBDS. The Commission in its *Memorandum Opinion and Order* declined to establish standards since the use of RBDS is voluntary and mandated standards would impede technological advances and innovation.

The second major issue concerned the present EAS requirement that cable systems provide video interruption and an audio EAS message on all channels. The National Association of Broadcasters claimed in its petition for reconsideration that this violated the Copyright Act and the Commission's ''must carry'' rules since they prohibit cable systems from altering broadcast programming retransmitted on their systems. The Commission responded that there was no conflict, and the EAS requirement was permissible. The Commission further pointed out that the Cable TV Act of 1992 requires cable systems to provide emergency information.

The National Association of Broadcasters also requested that the Commission postpone its deadline for broadcasters to install EAS equipment from July 1, 1996, to July 1, 1997. The Commission agreed to delay implementation until January 1, 1997.

The petitions for reconsideration and related comments also requested a number of minor changes and clarifications in the EAS rules. The Commission agreed to many, but not all, of the requested changes. The rules that were changed in Part 11 (47 CFR Part 11) of the FCC's rules are as follows:

—Section 11.33(a)(9). To avoid dead air during automated operation, EAS decoders, after receive in an EAS header code, are required to reset automatically if an End of Message (EOM) code is not received. Reset time may not be less than two minutes.

—Section 11.33(a)(5). Clarifies the requirement that EAS decoders are required to have a distinct and separate aural or visible means to indicate when one of three listed conditions occurs such as the receipt of a valid EAS header code.

—Section 11.34(c). Specifies that the required FCC equipment authorization for combined EAS encoder/decoder devices is certification instead of notification.

—Sections 11.51(1) (redesignated as Section 11.51(j) in the amendments) and 11.52(e) are clarified, but not amended, by the *Memorandum Opinion and Order* to reflect that EAS encoders and decoders must be preprogrammed to transmit and accept eight event/originator codes automatically with any possible combination of location codes that are pertinent to the receiving station's coverage area or cable system's community.

The mandatory event codes are EAN (Emergency Action Notification), EAT (Emergency Action Termination), RMT (Required Monthly Test) and RWT (Required Weekly Test). The mandatory originator codes are EAN (Emergency Action Notification Network) and CIV (Civil Authorities) for EAN and EAT event codes, and EAS (Broadcast Station or Cable System) and CIV for the RMT and RWT event codes.

—Section 11.11. A note is added to this Section to make it clear that FM translators are not required to have EAS equipment.

—Section 11.21. Because of concern that state and local officials might misuse EAS, Section 11.21 of the rules is clarified so that only procedures in state and local plans will be followed in EAS, and these plans must be approved by the FCC's Compliance and Information Bureau. The FCC will monitor the operation of EAS and publish a report before July, 1 1998.

In addition, the FCC agreed to discuss with the Federal Emergency Management Agency (FEMA) the possibility of financial assistance to participants in implementing EAS.

The Commission declined to make several other requested rule changes. The Commission, though, on its own made some minor revisions and clarifications of its rules.

The amended rules become effective December 6, 1995. Furthermore, the Commission will begin to accept applications from manufacturers of EAS devices for FCC equipment authorization, namely, certification, fourteen days after the amended EAS rules are released.

Rule Clarifications

The Commission has received numerous informal questions and requests for clarification or correction of the rules. We will provide interpretations and clarifications to the extent that the issues raised do not go beyond the scope of the Report and Order or make substantive changes to the decisions embodied in the Report and Order:

—Section 0.311(g) states that the zip code is 20054. This is amended to be 20554.

—Section 11.11(b) states class D non-commercial FM and LPTV stations are not required to comply with Section 11.32. This is amended to state that they are not required to have or operate encoders which are defined in Section 11.32.

—Section 11.31(a)(1) states that EAS characters are seven-bit ASCII. This is amended to state that an eighth null bit is included for transmission of a full eight-bit byte.

—Section 11.31(b) states that call signs that use a dash must instead use a backslash in the EAS header code. This is amended to specify that ASCII character 47 is the proper character for the backlash.

—Section 11.31(c) gives an example of the EAS protocol that has a minor typographical error as printed in the Federal Register. This is corrected to replace a ''+'' sign with a ''−'' sign.

—Section 11.33(a)(3)(i) states that decoders must provide a means to record and store at least two minutes of audio or text messages. This is clarified to state that the audio or text storage can be internal or external to the decoder device. If no internal means for recording and storing is manufactured internal to the decoder, then some means to couple to an external device, such as an audio or digital jack connection, must be supplied on the decoder.

—Section 11.33(a)(3)(ii) states that decoders must provide a means to store a minimum of 10 preselected header codes. We clarify this rule to specify that the decoder must store ten preselected event and originator code combinations in addition to the eight mandatory code combinations of tests and national activations. Also, we specify that the decoder must store location codes pertaining to the broadcast station coverage areas or the cable system's community in addition to event and originator codes.

—Section 11.33(a)(11) states that header codes with an EAN Event code that is received by the two decoder audio inputs must be able to override all other EAS messages. This is amended to state that EAN Event codes received by any of the decoder audio inputs must override all other EAS messages, as it is possible that manufacturers may create decoders with more than two audio inputs.

—Section 11.33(b)(2) states that the tolerance of the two-tone frequencies in the decoder are 0.5 Hz above or below nominal. This is corrected to state the tolerance is 5 Hz.

—Section 11.51(b) states that broadcast stations may transmit only the EAS header and end-of-messages codes without the Attention Signal. This is amended by adding a sentence stating that no Attention Signal is warranted if the EAS message does not contain audio programming, such as a Required Weekly Test.

—Section 73.1250(h) refers to Section 11.51 of the EAS rules. This is amended to the more specific reference, Section 11.51(b).

Legal Basis

The *Memorandum Opinion and Order* is issued under the authority contained in Sections 1, 4 (i) and (o), 303(r), 624(g), and 706 of the Communications Act of 1934, as amended. 47 U.S.C. Sections 151, 154 (i) and (o), 303(r), 544(g), and 606.

List of Subjects

47 CFR Part 0

Delegation of authority, Organization and functions (Government agencies).

47 CFR Part 11

Emergency Alert System.

47 CFR Part 73

Radio broadcasting, Television broadcasting.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Amendments

Parts 0, 11, and 73 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for Part 0 continues to read as follows:

Authority: Secs. 5, 48 Stat. 1068, as amended, 47 U.S.C. 155.

2. Section 0.311 is amended by revising paragraph (g) to read as follows:

§ 0.311 Authority delegated.

* * * * *

(g) The Chief, Compliance and Information Bureau is delegated authority to grant waivers of the requirements of Part 11 of this chapter to participants required to install, operate or test Emergency Alert System (EAS) equipment. The Chief, Compliance and Information Bureau is further authorized to delegate this authority. Waiver requests must made in writing and forwarded to the FCC's EAS office 1919 M Street NW., Washington, DC 20554. Such requests must state the reason why the waiver is necessary and provide sufficient information such as, statements of fact regarding the financial status of the broadcast station, the number of other broadcast stations providing coverage in its service area or the likelihood of hazardous risks to justify a grant of the waiver.

* * * * *

PART 11—EMERGENCY ALERT SYSTEM (EAS)

3. The authority citation for Part 11 continues to read as follows:

Authority: 47 U.S.C. 151, 154 (i) and (o), 303(r), 544(g) and 606.

4. Section 11.11 is amended by revising paragraphs (a) and (b) to read as follows:

§ 11.11 The Emergency Alert System (EAS).

(a) The EAS is composed of broadcast networks; cable networks and program suppliers; AM, FM and TV broadcast stations; Low Power TV (LPTV) stations; cable systems; and other entities and industries operating on an organized basis during emergencies at the National, State, or local levels. It requires that at a minimum all participants use a common EAS protocol, as defined in § 11.31, to send and receive emergency alerts in accordance with the effective dates in the following tables:

TIMETABLE.—BROADCAST STATIONS

Requirement	Until 7/1/95	7/1/95	1/1/97	1/1/98
Two-tone/encoder timing	20–25 seconds	8–25 seconds	8–25 seconds	8–25 seconds.[1]
Two-tone decode timing	8–16 seconds required. 3–4 seconds optional.	All decoders at 3–4 seconds.	3–4 seconds	Two-tone decoder no longer used.
Digital decoder and encoder	Use is optional	Use is optional	Use is required	Use is required.

CABLE SYSTEMS

Requirement	Until 7/1/97	7/1/97 [2]
Two-tone signal from storage device.[1]	Use is optional, 8–25 seconds	Use is required, 8–25 seconds.
Digital decoder and encoder	Use is optional	Use is required.[2]

[1] Two-tone singal used only to provide audio alert to audience before EAS emergency messages and required monthly test.

[2] On this date, subject cable systems shall provide: (1) a video message on all channels or other alerting techniques to hearing impaired and deaf subscribers, (2) an audio message and video interruption on all channels, and (3) a video message on at least one channel to all subscribers.

NOTE: Class D FM and low power TV stations are not required to have two-tone or digital encoders. LPTV stations that operate as television broadcast translator stations are exempt from the requirement to have EAS equipment. FM translator stations are exempt from the requirement to have EAS equipment.

EAS TIMETABLE AND REQUIREMENTS BROADCAST STATIONS

Requirement	AM	FM	FM Class D	TV	LPTV [1]
Two-tone decoder (until 1/1/98)	Y	Y	Y	Y	Y
Two-tone encoder	Y	Y	N	Y	N
Digital decoder (1/1/97)	Y	Y	Y	Y	Y
Digital encoder (1/1/97)	Y	Y	N	Y	N
Audio message (1/1/97)		Y	Y	Y	YY
Video message (1/1/97)					YY

CABLE SYSTEMS

Requirement	
Two-tone decoder	N
Two-tone encoder	N
Digital decoder (7/1/97)	Y
Digital encoder (7/1/97)	Y
Audio message on all channels (7/1/97).	Y[2]
Video interruption on all channels, video message on one channel (7/1/97).	Y[3]

[1] LPTV stations that operate as television broadcast translator stations are exempt from the requirement to have EAS equipment.

[2] Shall transmit two-tone signal, but it may be from a storage device.

[3] Shall provide video on all channels or other alerting techniques to certified hearing impaired and deaf subscribers.

(b) Class D non-commercial educational FM stations as defined in § 73.506 of this chapter and LPTV stations as defined in § 74.701(f) of this chapter are not required to have or operate EAS encoders as defined in § 11.32. LPTV stations that operate as television broadcast translator stations, as defined in § 74.701(b) of this chapter are not required to comply with the requirements of this part. FM broadcast booster stations as defined in § 74.1201(f) of this chapter and FM translator stations as defined in § 74.1201(a) of this chapter which entirely rebroadcast the programming of other local FM broadcast stations are not required to comply with the requirements of this part.

* * * * *

5. Section 11.12 is revised to read as follows:

§ 11.12 Two-tone Attention Signal encoder and decoder.

Existing two-tone Attention Signal encoder and decoder equipment type accepted for use as Emergency Broadcast System equipment under Part 73 of this chapter may be used by broadcast stations until January 1, 1998, provided that such equipment meets the requirements of § 11.32(a)(9) and 11.33(b). Effective January 1, 1998, the two-tone Attention Signal decoder will no longer be required and the two-tone Attention Signal will be used to provide an audio alert.

6. Section 11.21 is amended by revising the introductory text to read as follows:

§ 11.21 State and Local Area Plans and FCC Mapbook.

EAS plans contain guidelines which must be followed by broadcast personnel, emergency officials and NWS personnel to activate the EAS. The plans include the EAS header code and messages that will be transmitted by key EAS sources (NP, LP, SP, and SR). State and local plans may contain unique methods of EAS message distribution such as the use of RBDS. The plans must be reviewed and approved by the Chief, Compliance and Information Bureau prior to implementation to ensure that they are consistent with national plans, FCC regulations, and EAS operation.

* * * * *

7. Section 11.31 is amended by revising paragraphs (a)(1), (b) and (c) to read as follows:

§ 11.31 EAS protocol.

(a) * * *

(1) The Preamble and EAS Codes must use Audio Frequency Shift Keying at a rate of 520.83 bits per second to transmit the codes. Mark frequency is 2083.3 Hz and space frequency is 1562.5 Hz. Mark and space time must be 1.92 milliseconds. Characters are ASCII seven bit characters as defined in ANSI X3.4–1977 ending with an eighth null bit (either 0 or 1) to constitute a full eight-bit byte.

* * * * *

(b) The ASCII dash and plus symbols are required and may not be used for any other purpose. Unused characters must be ASCII space characters. FM or TV call signs must use a backslash ASCII character number 47 (/) in lieu of a dash.

(c) The EAS protocol, including any codes, must not be amended, extended or abridged without FCC authorization. The EAS protocol and message format are specified in the following representation. Examples are also provided in the EAS Operating Handbook.

[PREAMBLE] ZCZC–ORG–EEE–PSSCCC+TTTT–JJJHHMM–LLLLLLLL– (one second pause)
[PREAMBLE] ZCZC–ORG–EEE–PSSCCC+TTTT–JJJHHMM–LLLLLLLL– (one second pause)
[PREAMBLE] ZCZC–ORG–EEE–PSSCCC+TTTT–JJJHHMM–LLLLLLLL– (at least a one second pause)
(transmission of 8 to 25 seconds of Attention Signal)
(transmission of audio, video or text messages)
(at least a one second pause)
[PREAMBLE] NNNN
(one second pause)
[PREAMBLE] NNNN
(one second pause)
[PREAMBLE] NNNN
(at least one second pause)

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* * * * *

8. Section 11.33 is amended by revising paragraphs (a)(3)(i), (a)(3)(ii), (a)(5) introductory text, (a)(5)(ii), (a)(9), (a)(11) and paragraph (b)(2) to read as follows:

§ 11.33 EAS Decoder.

(a) * * *

(3) * * *

(i) Record and store, either internally or externally, at least two minutes of audio or text messages. A decoder manufactured without an internal means to record and store audio or text must be equipped with a means (such as an audio or digital jack connection) to couple to an external recording and storing device.

(ii) Store at least 10 preselected event and originator header codes, in addition to the eight mandatory event/originator codes for tests and national activations, and store any preselected location codes for comparison with incoming header codes. A non-preselected header code that is manually transmitted must be stored for comparison with later incoming header codes. The header codes of the last ten received valid messages which still have valid time periods must be stored for comparison with the incoming valid header codes of later messages. These last received header codes will be deleted from storage as their valid time periods expire.

* * * * *

(5) Indicators. EAS decoders must have a distinct and separate aural or visible means to indicate when any of the following conditions occurs:

(i) * * *

(ii) Preprogrammed header codes, such as those selected in accordance with § 11.52(d)(2) are received.

* * * * *

(9) Reset. There shall be a method to automatically or manually reset the decoder to the normal monitoring condition. Operators shall be able to select a time interval, not less than two minutes, in which the decoder would automatically reset if it received an EAS header code but not an end-of-message (EOM) code. Messages received with the EAN Event codes shall disable the reset function so that lengthy audio messages can be handled. The last message received with valid header codes shall be displayed as required by paragraph (a)(4) of this section before the decoder is reset.

* * * * *

(11) A header code with the EAN Event code specified in § 11.31(c) that is received through any of the audio inputs must override all other messages.

(b) * * *

(2) Operation Bandwidth. The decoder circuitry shall not respond to tones which vary more than ±5 Hz from each of the frequencies, 853 Hz and 960 Hz.

* * * * *

9. Section 11.34 is amended by revising paragraph (c) to read as follows:

§ 11.34 Acceptability of the equipment.

* * * * *

(c) The functions of the EAS decoder, Attention Signal generator and receiver, and the EAS encoder specified in §§ 11.31, 11.32 and 11.33 may be combined and Certified as a single unit provided that the unit complies with all specifications in this rule section.

* * * * *

10. A new Section 11.47 is added to read as follows:

§ 11.47 Optional use of other communications methods and systems.

(a) Broadcast stations may additionally transmit EAS messages through other communications means than the main audio channel. For example, on a voluntary basis, FM stations may use subcarriers to transmit the EAS codes including 57 kHz using the RBDS standard produced by the National Radio Systems Committee (NRSC) and television stations may use subsidiary communications services.

(b) Other technologies and public service providers, such as DBS, low earth orbiting satellites, etc., that wish to participate in the EAS may contact the FCC's EAS office or their State Emergency Communication Committee for information and guidance.

* * * * *

11. Section 11.51 is amended by revising the third sentence of paragraph (a), adding a new sentence at the end of paragraph (b), revising paragraph (c), removing paragraphs (f) and (i), and redesignating the remaining paragraphs in alphabetical order to read as follows:

§ 11.51 EAS code and Attention Signal Transmission requirements.

(a) * * * After January 1, 1998, the shortened Attention Signal may only be used as an audio alert signal and the EAS codes will become the minimum signalling requirement for National level messages and tests.

(b) * * * No Attention Signal is warranted for EAS messages that do not contain audio programming, such as a Required Weekly Test.

(c) Effective January 1, 1997, all radio and television stations shall transmit EAS messages in the main audio channel.

* * * * *

12. Section 11.52 is amended by revising paragraph (a) to read as follows:

§ 11.52 EAS code and Attention Signal Monitoring requirements.

(a) Before January 1, 1998, broadcast stations must be capable to receiving the Attention Signal required by § 11.32(a)(9) and emergency messages of other broadcast stations during their hours of operation. Effective January 1, 1997, all broadcast stations must install and operate during their hours of operation, equipment capable of receiving and decoding, either automatically or manually, the EAS header codes, emergency messages and EOM code. The effective date for subject cable systems is July 1, 1997.

Note to paragraph (a). After January 1, 1998, the two-tone Attention Signal will not be used to actuate two-tone decoders but will be used as an aural alert signal.

* * * * *

13. Section 11.61 is amended by revising paragraphs (a)(1)(i), (a)(2)(i), and (a)(2)(ii)(A) to read as follows:

§ 11.61 Tests of EAS procedures.

(a) * * *

(1) * * *

(i) Effective January 1, 1997, AM, FM and TV stations.

* * * * *

(2) * * *

(i) Attention Signal. Until January 1, 1997, broadcast stations must conduct tests of the Attention Signal and Test Script at least once a week at random days and times between 8:30 a.m. and local sunset. Class D non-commercial educational FM and LPTV stations do not need to transmit the Attention Signal. Script content can be in the primary language of the station.

(ii) * * *

(A) Effective January 1, 1997, AM, FM and TV stations must conduct tests of the EAS header and EOM codes at least once a week at random days and times.

* * * * *

PART 73—BROADCAST RADIO SERVICES

14. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334.

15. Section 73.900 is amended by revising the third sentence to read as follows:

§ 73.900 Cross references.

* * * Equipment type accepted for EBS use under the old Subpart G rules may continue to be used at broadcast stations until January 1, 1998, provided that it meets all applicable requirements of Part 11 of this chapter.

* * * * *

16. Section 73.1250 is amended by revising the last sentence of paragraph (h) to read as follows:

§ 73.1250 Broadcasting emergency information.

* * * * *

(h) * * * However, when an emergency operation is being conducted under a national, State or Local Area Emergency Alert System (EAS) plan, emergency information shall be transmitted both aurally and visually unless only the EAS codes are transmitted as specified in § 11.51(b) of this chapter.

[FR Doc. 95–27201 Filed 11–3–95; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 95–125; RM–8670]

Radio Broadcasting Services; Saint Joseph, MN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 260A to Saint Joseph, Minnesota, in response to a petition filed by Saint John's University. *See* 60 FR 40813, August 10, 1995. The coordinates for Channel 260A are 45–31–24 and 94–18–48. There is a site restriction 4.6 kilometers (2.9 miles) south of the community. With this action, this proceeding is terminated.

DATES: Effective December 15, 1995. The window period for filing applications will open on December 15, 1995, and close on January 16, 1996.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order,* MM Docket No. 95–125, adopted October 16, 1995, and released October 31, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's 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 Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Minnesota, is amended by adding Channel 260A at Saint Joseph.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 95–27366 Filed 11–3–95; 8:45 am]

BILLING CODE 6712–01–F

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47 CFR Part 73

[MM Docket No. 95–130; RM–8674]

Radio Broadcasting Services; Taylorville, IL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Miller Communications, Inc., allots Channel 247A at Taylorville, Illinois, as the community's third local FM transmission service *See* 60 FR 40813, August 10, 1995. Channel 247A can be allotted to Taylorville in compliance with the Commission's minimum distance separation requirements with a site restriction of 7.9 kilometers (4.9 miles) south to avoid short-spacings to the licensed sites of Station WFYR(FM), Channel 247B1, Elmwood, Illinois, and Station WHMS–FM, Channel 248B, Champaign, Illinois. The coordinates for Channel 247A at Taylorville are North Latitude 39–28–44 and West Longitude 89–18–36. With this action, this proceeding is terminated.

DATES: Effective December 15, 1995. The window period for filing applications will open on December 15, 1995 and close on January 16, 1996.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MM Docket No. 95–130, adopted October 18, 1995, and released October 31, 1995. 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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Illinois, is amended by adding Channel 247A at Taylorville.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 95–27363 Filed 11–3–95; 8:45 am]

BILLING CODE 6712–01–F

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47 CFR Part 73

[MM Docket No. 95–128; RM–8672]

Radio Broadcasting Services; Carthage, IL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Sharon K. Bryan, allots Channel 230A at Carthage, Illinois, as the community's second local FM transmission service. *See* 60 FR 40812, August 10, 1995. Channel 230A can be allotted to Carthage in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 230A at Carthage are North Latitude 40–24–48 and West Longitude 91–08–00. With this action, this proceeding is terminated.

DATES: Effective December 15, 1995. The window period for filing applications will open on December 15, 1995 and close on January 16, 1996.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MM Docket No. 95–128, adopted October 18, 1995, and released October 31, 1995. 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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Illinois, is amended by adding Channel 230A at Carthage.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 95–27364 Filed 11–3–95; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 950206040–5040–01; I.D. 103095A]

Groundfish of the Bering Sea and Aleutian Islands Area; Pacific Cod by Vessels Using Hook-and-Line or Pot Gear in the Bering Sea and Aleutian Islands

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

ACTION: Reallocation; modification of a closure.

SUMMARY: NMFS is reallocating the unused amount of Pacific cod total allowable catch (TAC) from vessels using trawl gear to vessels using hook-and-line or pot gear and is opening

directed fishing for Pacific cod by vessels using hook-and-line or pot gear in the Bering Sea and Aleutian Islands management area (BSAI). These actions are necessary to utilize the TAC specified for Pacific cod in the BSAI and promote the goals and objectives of the North Pacific Fishery Management Council (Council).

EFFECTIVE DATES: For the reallocation of the unused amount of Pacific cod from vessels using trawl gear to vessels using hook-and-line or pot gear: 12 noon, Alaska local time (A.l.t.,), November 3, 1995, until 12 midnight, A.l.t., December 31, 1995. For the opening of directed fishing for Pacific cod by vessels using hook-and-line or pot gear in the BSAI: 12 noon, A.l.t., November 17, 1995, until 12 midnight, A.l.t., December 31, 1995.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the 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 directed fishery for Pacific cod by vessels using hook-and-line and pot gear in the BSAI was closed on October 16, 1995, to prevent exceeding the 1995 apportionment of the Pacific cod TAC allocated to vessels using hook-and-line or pot gear in the BSAI (October 19, 1995, 60 FR 54046).

The Director, Alaska Region, NMFS, has determined that vessels using trawl gear will not be able to harvest 10,000 metric tons (mt) of Pacific cod allocated to those vessels under § 675.20(a)(2)(iv)(A). In accordance with § 675.20(a)(2)(iv)(B), NMFS is reallocating the unused amount of Pacific cod to vessels using hook-and-line or pot gear. The allocation to vessels using hook-and-line or pot gear will increase to 121,800 mt, of which 10,287 mt remained unharvested as of October 14, 1995.

NMFS is terminating the previous closure and is opening directed fishing for Pacific cod by vessels using hook-and-line and pot gear in the BSAI.

All other closures remain in full force and effect.

Classification

This action is taken under § 675.20 and is exempt from review under E.O. 12866.

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

Dated: October 31, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 95–27442 Filed 11–3–95; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 60, No. 214
Monday, November 6, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 928

[Docket No. FV95–928–1–PR; Amendment 1]

Papayas Grown in Hawaii; Reduction of Expenses and Assessment Rate for 1995–96 Fiscal Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule invites comments on revising the expenses and assessment rate previously established under Marketing Order No. 928 for the 1995–96 fiscal year. This proposal would reduce the budget of expenses and rate which papaya handlers may be assessed for funding expenses by the Papaya Administrative Committee (Committee) that are reasonable and necessary to administer the program.

DATES: Comments must be received by December 6, 1995.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, Fax # (202) 720–5698. Comments should reference the docket number and the date and page number of this issue of the Federal Register and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Mary Kate Nelson, Marketing Assistant, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721, telephone (209) 487–5901, or Fax # (209) 487–5906; or Charles L. Rush, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2522–S. P.O. Box 96456, Washington, D.C. 20090–6456; telephone: (202) 720–5331, or Fax # (202) 720–5698.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Agreement and Order No. 928 (7 CFR part 928), regulating the handling of papayas grown in Hawaii; hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (Department) is issuing this proposed rule in conformance with Executive Order 12866.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, papayas grown in Hawaii are subject to assessments. It is intended that the assessment rate as proposed herein will be applicable to all assessable papayas handled during the 1995–96 fiscal year, which began on July 1, 1995, and ends June 30, 1996. This proposed rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

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

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

There are approximately 300 producers of papayas in Hawaii, and approximately 60 handlers regulated under this marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of these producers and handlers may be classified as small entities.

The papaya marketing order, administered by the Department, requires that the assessment rate for a particular fiscal year apply to all assessable papayas handled from the beginning of such year. Annual budgets of expenses are prepared by the Committee, the agency responsible for local administration of this marketing order, and submitted to the Department for approval. The members of the Committee are handlers and producers of Hawaiian papayas. They are familiar with the Committee's needs and with the costs for goods, services, and personnel in their local area, and are thus in a position to formulate appropriate budgets. The Committee's budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of papayas. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the Committee's expected expenses. In recommending an assessment rate, the Committee also considered funds available in a monetary reserve that could be used to pay expenses.

The Committee met on April 28, 1995, and unanimously recommended expenses totaling $562,044 for its 1995–96 budget. The Committee met again on July 20, 1995, and unanimously recommended a new budget because the original budget contained inaccuracies. The revised recommendation contained expenses totaling $465,800 for the 1995–96 budget. This was a $123,400 reduction in expenses compared to the 1994–95 budget of $589,200.

The Committee also unanimously recommended an assessment rate of $.0089 per pound for the 1995–96 fiscal year, which was the same as was recommended for the 1994–95 fiscal year.

An interim final rule implementing these recommendations was published in the Federal Register [60 FR 43351, August 21, 1995] and provided a 30-day comment period for interested persons. No comments were received. A final rule was published in the Federal Register on September 28, 1995 [60 FR 50078].

The Committee met again on September 28, 1995, and recommended revising the budget to reduce expenses to $435,800, and the assessment rate to $.0059 per pound for the 1995–96 fiscal year, which is $.0030 less than was recommended for the 1994–95 fiscal year. The Committee recommended reducing their expenses for research and development by $30,000, and reducing the reserve carryover for the following year to $26,597. There was some concern expressed at the meeting as to whether the Committee would have enough income to meet expenses. Ultimately, by a vote of eight to three with one abstention, the Committee recommended the reduced expenses of $435,800 and an assessment rate of $.0059.

The assessment rate, when applied to anticipated shipments of 33 million pounds, would yield $194,700 in assessment income. Other sources of program income include $40,000 from the Hawaii Department of Agriculture, $57,000 from the USDA's Foreign Agricultural Service, $7,800 from the Japanese Inspection Program, $3,000 in interest income, and $4,766 from the County of Hawaii. Thus, total income would be expected to be $307,266. The Committee plans on using money from its reserve to meet its estimated expenses for the year.

Major expense categories for the 1995 fiscal year include $165,500 for the market expansion program, $115,000 for research and development, and $67,000 for salaries. Funds in the reserve at the end of the 1995–96 fiscal year, estimated at $26,597, would be within the maximum permitted by the order of one fiscal year's expenses.

This action would reduce the assessment obligation imposed on handlers. The assessments would be uniform for all handlers. The assessment costs would be offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

Interested persons are invited to submit their views and comments on this proposal. Comments received within 30 days of publication of this proposed rule in the Federal Register will be considered prior to any final action being taken.

List of Subjects in 7 CFR Part 928

Marketing agreements, Papayas, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 928 is proposed to be amended as follows:

PART 928—PAPAYAS GROWN IN HAWAII

1. The authority citation for 7 CFR part 928 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 928.225 is proposed to be revised as follows:

§ 928.225 Expenses and assessment rate.

Expenses of $435,800 by the Papaya Administrative Committee are authorized and an assessment rate of $.0059 per pound of assessable papayas is established for the fiscal year ending June 30, 1996. Unexpended funds may be carried over as a reserve.

Dated: October 31, 1995.

Terry C. Long,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–27391 Filed 11–3–95; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Parts 710 Through 740

[FHWA Docket No. 95–18]

RIN 2125–AC17

Right-of-Way Program Administration

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Advance notice of proposed rulemaking (ANPRM); request for comments.

SUMMARY: The FHWA requests comments concerning a comprehensive revision of the regulations affecting the administration of its highway right-of-way programs. One purpose of the revision is to update general policies and make programmatic changes to more effectively implement the Intermodal Surface Transportation Efficiency Act of 1991 [ISTEA] and the Surface Transportation and Uniform Relocation Assistance Act of 1987 [STURAA]. The effect of the legislation and the FHWA's own review of its regulations indicates that a complete revision of the regulations should be considered. The FHWA requests comments on the issues identified in this advance notice and any other issues the reader believes relevant to current administration of right-of-way programs. Following a review of comments received in response to this notice, a notice of proposed rulemaking will be prepared.

DATES: Comments in response to this notice must be submitted on or before January 5, 1996.

ADDRESSES: Submit written, signed comments to FHWA Docket No. 95–18, Federal Highway Administration, Room 4232, HCC–10, Office of the Chief Counsel, 400 Seventh Street SW., Washington, D.C. 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Robert A. Johnson, (202) 366–2020, or Mr. Marshall Schy, (202) 366–2035, ANPRM Analysis Group, Office of Real Estate Services, HRW–11, or Mr. Reid Alsop, Attorney, Office of Chief Counsel, HCC–31, (202) 366–1371. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: The FHWA provides funds to States to reimburse them for the costs of constructing highways and related activities. One of these activities involves the costs of acquiring necessary right-of-way. In carrying out the right-of-way program, the FHWA has issued regulations at 23 CFR concerning right-of-way activities for federally assisted highway projects. Recent transportation legislation (the STURAA in 1987, Pub.

L. 100–17, 101 Stat. 132, and the ISTEA in 1991, Pub. L. 102–240, 105 Stat. 1914) amended and added programs affecting right-of-way procedures. Program funding that supported the Interstate, Primary, Urban, and Secondary highway systems was replaced by new funding categories that support a Surface Transportation Program (STP) and, after congressional approval, a National Highway System (NHS). In addition, the FHWA is seeking ways to improve and simplify regulatory content. Outdated items are to be removed, or updated with a focus on results, not process.

As part of its efforts at regulatory reform and to address statutory changes, the FHWA believes that a comprehensive review is needed of all 23 CFR sections that affect right-of-way program administration and property management issues. In addition, the relationship of those sections to government-wide rules, such as 49 CFR Part 18 (containing administrative requirements for contracting and for real property disposal) and 49 CFR Part 24 (containing rules to implement the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91- 646, Stat. 1894, as amended) must also be considered. The intent of the review would be to consolidate the FHWA right- of-way program requirements and eliminate unneeded elements. The possible addition of new provisions to address current program needs will also be part of the review process.

Many of the existing regulations were issued to provide project-level oversight during the construction of the Federal Interstate System through a series of approvals and authorizations. Under a final rule published at 59 FR 25326 on May 16, 1994, the FHWA eliminated several of these Federal approval actions that were no longer necessary. This proposed review would take a more extensive look at the controls required and seek appropriate methods to manage right-of-way related activities and programs for NHS and STP related projects.

An update of the right-of-way regulations could be approached several ways. Initially, a decision on the basic structure of the regulations would be required. One option would be to completely restructure Parts 710 through 740 of title 23, CFR. An alternate course would retain the existing structure and make appropriate rescissions and additions. Comments concerning how best to structure updated right-of-way regulations for maximum usefulness are requested. Any major restructuring would have to specifically address the administrative, funding, acquisition, and property management provisions needed for current programs.

In addition to the structure of the regulations, the consolidation and cross-referencing of regulatory materials will be considered. Currently, right-of-way related regulations are interspersed throughout 23 CFR. Within 23 CFR, right-of-way administrative requirements on land management for withdrawn Interstate segments (Part 480), right-of-way certification requirements prior to construction authorization (§ 635.309), land relinquishments for abandoned facilities (Part 620, subpart B) probably could be consolidated. Under a comprehensive review, each right-of-way requirement could be evaluated for relevance to current operations, and that those found still to be valid could be placed within the regulatory structure at a location consistent with their individual purpose.

Alternative methods to achieve program objectives will be explored during development of new regulations. For example, the certification requirements in § 635.309 are intended to assure that coordination between right-of-way acquisition and construction contracting occurs before the bidding process begins. While these provisions lessen the chance for controversy over the availability of right-of-way for construction, they are primarily intended to protect the rights of property owners and relocatees. Rather than retain the certification requirement and FHWA's direct involvement on NHS projects, the State manual requirements under § 710.205 could be modified to require an element that would describe how the coordination process and needed protections would be accomplished within the State.

Other examples of regulations that may no longer be required in their present form to meet current program objectives are mentioned below. Comments are requested concerning all program requirements that should be considered for recision or modification. The examples listed are to stimulate comments and are not a complete list of areas where change might be appropriate. Comments are also requested in response to the specific questions set forth below.

1. Current reimbursement policies are outlined in § 710.304. This section contains many limitations regarding Federal participation in costs incurred by States or local governments. Changes in State litigation procedures, the advent of alternative forms of dispute resolution, and other programmatic developments indicate that many of these limitations may no longer be necessary. Comments on which reimbursement limitations remain appropriate for use in current programs are requested. Alternative ways to address reimbursement policy will also be considered.

2. One reimbursement limitation that deserves special attention involves the requirement in § 710.304(h) limiting participation in damages to those considered ''generally compensable in eminent domain.'' With the changes that have occurred in program funding and the various funding options available through the NHS and STP, is this limitation still valid or should some change be considered, e.g., basing Federal reimbursement solely on what each State is legally obligated to pay under its own laws?

3. Provisions in § 710.305 on support for right-of-way claims need to be conformed with current practice. Changes in technology have altered the billing process relating to progress and final claims. Accountability and documentation requirements that support reimbursement claims for right-of-way expenditures should also be modified. Comments on acceptable alternatives are invited.

4. The provisions in § 712.204 concerning project procedures need to be updated. Some of these provisions, such as the general provision requiring State Highway Departments to make requests in writing, are being made obsolete by technological changes. Also, for the STP, project level activity in many States is no longer subject to detailed FHWA oversight. The section should be revised to reflect current fiscal practices, and project level requirements simplified.

5. In the same section, the restriction applied to hardship acquisitions, preventing acquisition of § 4(f) (49 U.S.C. 303) or historic properties, should be re-evaluated. While entirely appropriate as a restriction on protective purchases, the practice may in a hardship situation adversely impact the property owner.

6. Subpart D of Part 712 dealing with documentation requirements necessary to support administrative, legal, and court awards may no longer be necessary. Administrative settlement issues are addressed in 49 CFR 24.102(j). Other provisions are dependent on State eminent domain practices and are potentially unneeded based on current programs and funding practices. Issues relating to noncompensable items may impose more administrative burdens on the

program than is warranted, and would become unnecessary if the limitation mentioned under Item 2 above is removed. Is there still a need to limit the interest paid on deficiency for the amount of awards in excess of court deposits? Can alternative means be used to promote prompt deposit, and disposition of filed eminent domain cases? Comments on which elements in this section should be retained are requested.

7. Subpart F of Part 712 covers FHWA participation in the functional replacement of publicly-owned property. What requirements or provisions could be changed to reduce the administrative overhead included within this program? Can reimbursement be based on anticipated costs needed to replace a public facility using current codes and building practices rather than actual costs? Would it serve the public interest to provide a cash payment and not require replacement of the public facility affected?

8. Part 713 contains provisions relating to property management of lands acquired for Federal projects. Section 18.31 of 49 CFR contains the DOT version of government-wide uniform grant regulations that relate to management and disposal of right-of-way. The STURAA added 23 U.S.C. 156, relating to airspace utilization, which contains provisions concerning airspace income that differ from the regulatory provisions contained in 49 CFR Part 18. Under 49 CFR, net sale income from a disposal of excess land is, with certain exceptions, to be credited to Federal funds. Under 23 U.S.C., income based on the sale or lease of airspace requires only that the funds received be applied to projects that are or would be eligible for assistance under title 23, U.S.C. These differing accounting procedures may create unnecessary administrative overhead and not yield appropriate benefits for protecting the Federal interest. Both section 156 and Part 18 supersede some portions of 23 CFR Part 713. Comments are requested on ways to handle property management income generated after completion of a transportation improvement and whether the existing dual standard presents any practical problems that could be resolved through revised regulations.

9. Part 720, Appraisal, and Part 740, Relocation Assistance, contain basic contracting procedures. Since 49 CFR 18.36 also contains provisions relating to contracting, much of the content in these two parts may no longer be necessary. Comments are requested as to which provisions within these two parts should be retained, and the basis for such retention.

In addition to changes and modifications in existing regulations, additions to address changes made by the ISTEA also should be considered. Several of these changes are discussed below.

A. The ISTEA emphasized preservation of right-of-way corridors. Preservation is one of the factors to be considered during the metropolitan and Statewide planning processes, and the preservation of abandoned railway corridors is one of the ''transportation enhancement activities'' included in the STP. Section 1017(c) of the ISTEA also required completion of a study assessing appropriate ways to preserve vital transportation corridors. These provisions, along with actions taken by several States to better coordinate land development and transportation needs, have extended the scope of preservation beyond the actions covered by existing ''protective purchase'' regulations. Land use controls have the potential to provide enhanced opportunities for maintaining and developing transportation resources without affecting community growth or encroaching on environmentally sensitive areas. Even with better use of land use controls, early and selective acquisitions of key parcels of land may still be required. What specific changes in right-of-way regulations at the Federal level are needed to support State and local preservation activities?

B. Under the STP there are 10 categories of transportation enhancement activities (defined in 23 U.S.C. 101(a)), several of which could involve acquisition of real property interests. Many of these activities are locally based initiatives. Land requirements are site-specific and are often acquired in the name of a local government or even a non-profit organization. Is regulatory flexibility and separate guidance necessary on such projects, or should conventional right-of-way acquisition policies be applied? Are the acquisition and management practices used to support the right-of-way program appropriate for transportation enhancement activities? What latitude is appropriate if differing standards are to be applied? Why?

C. The ISTEA added a provision to 23 U.S.C. 108(d) that under certain conditions would allow retroactive reimbursement of acquisition expenditures incurred by a State before a property has been incorporated within a federally-financed project. Comments are sought on ways to better implement the provisions of this section.

D. The ISTEA contains provisions for wetlands banking. The use of land banking is also referred to in regard to corridor preservation. What administrative and property management issues need to be addressed to accommodate these special forms of land acquisition?

E. Consideration will be given to developing performance standards for State administration of the right- of-way function. These standards, similar to the measurement tools used by established management systems, could be used to assess State performance in lieu of other forms of Federal oversight. Comments on measurement tools that could be used as part of such an approach are requested.

All of the above issues will receive careful review. Comments are requested on the various policy concerns and issues which are briefly outlined above, as well as any other relevant concerns or issues that should be addressed. Our intent is to develop regulations that complement the new transportation development process, allow flexibility for users of Federal financial assistance, yet provide for an appropriate level of stewardship of right-of-way expenditures, and address issues of compliance with other related Federal law and regulation.

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable. In addition to late comments, the FHWA will also continue to file in the docket relevant information that becomes available after the comment closing date, and interested persons should continue to examine the docket for new material.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. It is anticipated that the economic impact of this rulemaking will be minimal; therefore, a full regulatory evaluation is not required. When a proposed rule is developed following evaluation of comments received from this advance notice, further

consideration will be given to the impact of any action planned.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), the FHWA will provide an evaluation of the effects on small entities of any proposed rule developed following receipt of comments from this action.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Parts 710 Through 740

Grant programs—transportation, Highways and roads, Real property acquisition, Relocation assistance, Rights-of-way.

(23 U.S.C. 101(a), 103, 107, 108, 111, 114, 142(g), 156, 204, 210, 308, 317, 323; 49 U.S.C. 303, 2000, 4633, 4651–4655; 49 CFR 1.48(b), 18, 21 and 24; 23 CFR 1.32)

Issued on: October 27, 1995.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 95–27446 Filed 11–3–95; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 202, 206, and 211

RIN 1010 AC02

Amendments to Gas Valuation Regulations for Federal Leases

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Minerals Management Service (MMS) is proposing amendments to regulations governing the valuation for royalty purposes of natural gas produced from Federal leases. These changes would add several alternative valuation methods to the existing regulations. The proposed rules represent the consensus decisions reached by MMS' Federal Gas Valuation Negotiated Rulemaking Committee (Committee).

DATES: Comments must be submitted on or before January 5, 1996.

ADDRESSES: Mail written comments, suggestions, or objections regarding the proposed amendment to: Minerals Management Service, Royalty Management Program, Rules and Procedures Staff, P.O. Box 25165, MS 3101, Denver, Colorado, 80225–0165. MMS will publish a separate notice in the Federal Register indicating dates and locations of public hearings regarding this proposed rulemaking.

FOR FURTHER INFORMATION CONTACT: David S. Guzy, Chief, Rules and Procedures Staff, Telephone (303) 231–3432, FAX (303) 231–3194. Minerals Management Service, Royalty Management Program, Rules and Procedures Staff, P.O. Box 25165, MS 3101, Denver, Colorado, 80225–0165.

SUPPLEMENTARY INFORMATION: The principal authors of this proposed rule are Lawrence E. Cobb of MMS, John L. Price of MMS, and Peter Schaumberg of the Office of the Solicitor. Members of the Federal Gas Valuation Negotiated Rulemaking Committee also participated in the preparation of this proposed rule.

I. Introduction

On June 2, 1994, the Secretary of the Interior chartered the Committee to advise MMS on a rulemaking to address: (1) The valuation of gas produced from approved Federal unit and communitization agreements (agreements) (particularly when lessees take less than their entitled share of production); and (2) the benchmark valuation system for valuing gas sold under non-arm's-length contracts (59 FR 32944, June 27, 1994). The Committee's scope was limited to examining values for gas produced from Federal leases and its original charter did not include the valuation of gas sold under arm's-length contracts. However, the Committee was faced with a new gas marketing environment which has resulted from deregulation of natural gas production and open access, particularly with the issuance of Federal Energy Regulatory Commission (FERC) Order No. 636 (Order No. 636) (57 FR 13267, April 16, 1992). To simplify valuation for all types of Federal gas sales impacted by today's gas market, MMS concurred with the Committee's recommendation to expand its charter to include the valuation of Federal gas production under both arm's-length and non-arm's-length sales contracts.

Members of the Committee included representatives from the American Petroleum Institute (API), the Council of Petroleum Accountants Societies (COPAS), the Rocky Mountain Oil and Gas Association (RMOGA), the Independent Petroleum Association of America (IPAA)/Independent Petroleum Association of Mountain States (IPAMS), the Natural Gas Supply Association (NGSA), an independent marketer, representatives of large independent producers, MMS, and personnel from the States of Utah, North Dakota, Montana, and New Mexico representing the State and Tribal Royalty Audit Committee (STRAC).

The Committee agreed to operate based on consensus decision making. MMS committed to publish as a proposed rulemaking all consensus decisions. The Committee further agreed that its final report and the resulting proposed rule would not prohibit any Committee member or his/her constituents from commenting on this proposed rule or challenging the final rule, or any order issued under the rule.

The policy of the Department of the Interior is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. All of the sessions of the Committee were announced in the Federal Register, were open to the public, and provided for an opportunity for public input. In addition, any interested persons may submit written comments, suggestions, or objections regarding this

proposed rule to the location identified in the **ADDRESS** section of this preamble.

The rulemaking process has necessarily required that the Committee's consensus be incorporated into the existing regulations as well as in new regulations. In some instances, various participants on the Committee may have longstanding differences of opinion with MMS on the meaning and interpretation of existing regulations, some of which may be under administrative or judicial appeal. The incorporation of the Committee's consensus as expressed in the report into the existing regulatory framework should not be interpreted or infer that consensus was also reached on these differences or that they have been waived or withdrawn.

MMS commends the Committee's ability to compromise and develop a proposal that would simplify royalty payments on natural gas produced from Federal leases, while reducing administrative costs, decreasing litigation costs, and maintaining revenue neutrality.

II. Purpose and Background

In March 1995, the Committee published its final report (''Committee Report''), which summarizes the consensus decisions of the 20-member Committee. This report forms the basis for the proposals in this rulemaking and is an essential part of the regulatory history for this proposed rulemaking. For each recommendation, the report provides background as to why the Committee considered a regulatory change, the alternatives discussed, any related negotiation, the final recommendation, and, if necessary, further explanation of the recommendation, including examples. You may obtain the report by contacting the MMS Valuation and Standards Division at (303) 275–7201 or –7234, or by facsimile at (303) 275–7227.

III. Description of Regulatory Proposals

This proposed rulemaking would accomplish two principal purposes. The first principal purpose is to establish a procedure to value, and to report and pay royalties on, production for operating rights owners of Federal leases that are part of mixed agreements, *i.e.*, Federally-approved agreements that include other than only Federal leases with the same royalty rate and fund distribution. The second principal purpose is to provide lessees with alternative methods to value gas production from Federal leases that would supplement the valuation procedures in the existing regulations in 30 CFR part 206. However, as explained later in this preamble, not all leases would qualify for the alternative valuation methods.

These alternative valuation methods would *not* apply to Indian leases. Therefore, as part of this rulemaking, MMS would have to restructure 30 CFR parts 202 and 206. Basically, the existing provisions of subpart D of parts 202 and 206 currently applicable to both Federal and Indian gas would be retained, but would be applicable only to Indian gas. All references to Federal gas, and those valuation provisions unique to Federal gas, would be removed. In addition, new subparts would be created in both parts 202 and 206 for Federal gas. These new subparts would retain most of the provisions of the existing regulations applicable to Federal gas (of course, with references to Indian gas removed). In addition, these new subparts would include the proposed alternative valuation methods the Committee developed, including simplified procedures to determine applicable transportation allowances.

It should be noted that there is a negotiated rulemaking committee that is considering changes to the procedures for valuing gas production from Indian leases (60 FR 7152, February 7, 1995). However, any regulatory changes resulting from that process would affect only Indian leases and would not directly impact this rulemaking.

A description of the major regulatory changes proposed in this rulemaking as a result of the Committee's recommendations follows:

Part 202

MMS is proposing a new subpart J for 30 CFR part 202 that would be applicable only to Federal gas. MMS correspondingly would amend existing subpart D of part 202 to remove references to Federal gas, but would preserve all the provisions for valuing Indian gas under that subpart.

The new subpart J for Federal gas would retain many of the basic provisions of existing subpart D. Also, based on the Committee's recommendations, several new provisions related to valuing production from, or allocable to, Federal leases in agreements would be included in subpart J.

In new § 202.450(d), MMS is proposing that royalty would be due on the full share of production allocated to a Federal lease under the terms of the agreement at the royalty rate specified in the lease. This would not be a change from the existing rules. The primary proposal is that for each operating rights owner in the lease, royalty would be due on its entitled share of production allocable to the lease based on its percentage ownership. (See the recommendation under section II.D. of the Committee Report and the definition of ''entitlements'' under new § 206.451.) Therefore, for an operating rights owner who owns 25 percent of the operating rights for a Federal lease in the agreement, if 100 MMBtu of gas production are allocable to the lease, royalty is due on 25 MMBtu.

Notwithstanding that royalties are due from each operating rights owner based on its entitled share, the operating rights owner may be able to report and pay royalties on a different basis as will be discussed later in the preamble with respect to changes to part 211.

Further, for mixed agreements, that is, agreements comprised of leases with different lessors, royalty rates, and/or funds distributions, to provide some relief to small operating rights owners (defined below) who cannot market their entitled share of production each and every month, MMS is proposing an exception whereby royalties could be paid monthly on takes (defined under new § 206.451), subject to an annual adjustment to entitlements. This issue is addressed in detail in section II.D of the Committee Report (example on page 68).

New § 202.450(d) also would include procedures to value the portion of any production to which an operating rights owner is entitled but does not take. This provision is important because the operating rights owner must pay royalty on the non-taken portion. In most cases, value would be based on the weighted average value of the gas that was taken from the lease. This issue also is addressed in section II.D of the Committee Report.

Part 206

MMS is proposing a new subpart J for 30 CFR Part 206 that would be applicable only to valuation of Federal gas. Like part 202, MMS would amend existing subpart D to remove references to Federal gas, but would preserve all the provisions for valuing Indian gas under that subpart. Therefore, Indian gas valuation would not be affected by this rulemaking.

The new subpart J for Federal gas basically would retain the valuation provisions of existing subpart D applicable to Federal gas. In fact, for some gas production from Federal leases, the valuation rules would not change at all. However, to simplify the rules and to provide new valuation mechanisms responsive to changes in the gas market, MMS is proposing alternative valuation rules that would determine gas values based on published indices. Transportation

allowance procedures also would be simplified for all producers. Several of the more important changes are described below.

Section 206.451 Definitions

MMS would retain almost all of the definitions in existing § 206.151. However, § 206.451 also would include many new definitions for terms used in the alternative valuation sections and other new sections of the rules. These definitions are contained in attachment 5 to the Committee Report. Most of these definitions are self-explanatory and are best understood when explained below in the context in which they are used.

MMS is proposing a modified definition for ''gathering'' to assist in distinguishing that function from transportation. Under this proposed definition, some movement of gas which is now gathering would fall within the definition of transportation. This change would be a fundamental change in existing regulations. Under current regulations, transportation constitutes movement of gas to a remote market away from the lease, and gathering constitutes movement of lease production to a central accumulation and/or treatment point on the lease, unit or communitized area, or to a central accumulation or treatment point off the lease, unit or communitized area as approved by BLM or MMS Outer Continental Shelf (OCS) operations personnel for onshore and OCS leases, respectively. The change reflected in the proposed rule's definition is one element of overall negotiated concessions by all parties involved in the Committee proceedings. The basis for the proposed change is addressed in section II.E. of the Committee Report.

A new definition also is proposed for ''small operating rights owner.'' These persons would be granted an exception from the obligation to report and pay royalties on their entitled share of production each month, and could pay based on their takes subject to an annual adjustment to entitlements. This is addressed in § 202.450 and in § 211.18. A small operating rights owner would be defined as a person who produces less than 6,000 Mcf/day total U.S. gas production *and* less than 1,000 bbls/day total U.S. oil production. This includes production from all domestic properties, Federal and non-Federal. (See page 67 of the Committee Report.)

Section 206.452 Valuation Standards—Unprocessed Gas

In most respects this section is the same as existing § 206.152. Therefore, for Federal gas production that is not processed and does not qualify for the proposed alternative valuation methods, discussed below, valuation would occur under this section. The valuation procedures essentially would be the same as under the existing rules in § 206.152.

However, there are a few changes in this proposed rule. Section 206.452(a)(3) would provide that gas which is sold or otherwise transferred to the lessee's marketing affiliate (a defined term) would be valued based upon the sale by the marketing affiliate. Thus, the applicable valuation procedure would depend on the marketing affiliate's sale. That sale would determine whether one of the new alternative valuation methods applies. Therefore, as explained further below, if the marketing affiliate sells unprocessed gas under an arm's-length dedicated contract, it could *not* use the alternative valuation methods. Other types of gas disposition by the marketing affiliate might qualify for the alternative valuation methods. Page 15 of the Committee Report provides a complete explanation of how such gas may be valued.

Under § 206.452(b), the valuation provisions applicable to gas sold under arm's-length contracts, value would be determined the same as under the existing rules, *i.e.*, based on the lessee's gross proceeds. However, if gas is sold under an arm's-length contract that is *not* dedicated (a dedicated contract is a contract where gas is sold from a specific source—see the definition in § 206.451), and if the gas production qualifies for valuation under the alternative valuation methods in § 206.454, then the lessee may *elect* to use those alternative valuation methods instead of the arm's-length valuation procedures in § 206.452(b). What gas qualifies for valuation under § 206.454 is discussed below in the preamble for that section. This issue is covered in detail in section II.A. of the Committee Report.

Paragraph (c) of § 206.452 applies to gas that is not sold under an arm's-length contract. It would provide that the lessee first must determine whether the gas qualifies for valuation under the new alternative valuation methods in § 206.454. Those qualification standards are discussed later in this preamble with respect to § 206.454. If the gas qualifies for valuation under § 206.454, the lessee would be *required* to use that section. (See recommendation on page 15 of the Committee Report.) If the gas does not qualify for valuation under § 206.454, then the benchmark valuation procedures under § 206.452(c) for non-arm's-length dispositions would apply. These procedures are the same as those under existing § 206.152. This issue is also discussed in detail in section II.A. of the Committee Report.

Of all the issues the Committee addressed, only one issue remains outstanding—improved benchmarks for valuing Federal gas sold under non-arm's-length contracts (*i.e.*, §§ 206.452(c) (1), (2) and (3)) when the gas is not subject to valuation under the new provisions of § 206.454. This issue, representing a small portion of overall Federal gas production, is the only issue on which the Committee did not reach consensus. (See section II.B. of the Committee Report.) MMS plans to issue a separate rulemaking that will improve the existing benchmarks. For that rulemaking, MMS will take under consideration the deliberations of the committee and invites any interested party to submit suggestions for improvements to the benchmarks with comments submitted on this proposed rulemaking.

Paragraph (g) of § 206.452 is the provision that corresponds to existing § 206.152(i). The existing provision states that ''Notwithstanding any other provision of this section,'' value cannot be less than the gross proceeds accruing to the lessee for lease production.

MMS is proposing to amend this section to eliminate the above-quoted introductory clause and to expressly exclude gas valued under an index-based method under § 206.454. This change is necessary to make it clear that if a provision of § 206.452 permits a lessee to value gas using an index-based method under the new alternative valuation methods in § 206.454, it would not be required to compare that index-based value to its gross proceeds.

Paragraph (i) of § 206.452, which corresponds to existing § 206.152(j), also would be amended to exclude gas valued using an index-based method under § 206.454. The diligence standard addressed in this paragraph is inapplicable to index-based valuation.

Section 206.453 Valuation Standards—Processed Gas

This section applies to the valuation of gas that is processed by the lessee. The changes proposed to modify this section from existing § 206.153 basically parallel the changes discussed in the previous section regarding the modifications in proposed § 206.452 from existing § 206.152. However, because this section addresses valuation of residue gas and gas plant products, there are some additional differences.

Under § 206.453(b), the valuation provision applicable to residue gas and gas plant products sold under arm's-

length contracts, value would be determined the same as under the existing rules; *i.e.*, based on the lessee's gross proceeds.

However, if residue gas is sold under an arm's-length contract that is *not* dedicated (see the definition of ''dedicated'' in § 206.451), and if the gas production qualifies for valuation under the alternative valuation methods under § 206.454, then the lessee could *elect* to apply those provisions instead of the arm's-length valuation procedures in § 206.453(b). This issue is discussed with unprocessed gas in section II.A. of the Committee Report. Likewise, for NGL's, elemental sulfur and drip condensate associated with such residue gas, the lessee may *elect* to apply § 206.454 to value those products. The alternative valuation methods in § 206.454 would not be applicable to carbon dioxide, nitrogen or other non-Btu gas plant products. Section II.C. of the Committee Report provides a more complete explanation of this issue.

Under § 206.453(c), for residue gas or gas plant products not sold under an arm's-length contract, the lessee first must determine whether the residue gas or gas plant product is subject to valuation under § 206.454. For residue gas that is subject to § 206.454, the lessee would be *required* to use that section. (This proposal is explained on page 15 of the Committee Report.) Otherwise, valuation under this section would be the same as under existing § 206.153.

The proposed changes to the remaining paragraphs of § 206.453 are the same as those discussed above for § 206.452. Some additional changes applicable to both unprocessed gas and processed gas (both new §§ 206.452 and 206.453) not previously discussed are:

—MMS would delete all references in this new subpart to FERC maximum lawful prices because of deregulation.

—All references to warranty contracts would be eliminated because MMS does not believe there are any still in effect.

—The provisions of § 206.155 of the existing rules requiring dual accounting for certain Federal gas production (not Indian gas production) are not included in proposed subpart J based on the Committee's recommendation under section II.H. of the Committee Report.

Section 206.454 Alternative Valuation Standards for Unprocessed Gas and Processed Gas

This section is the principal new section for this proposed rule. It would add alternative gas valuation methods to the existing rules using published index prices and other criteria that should facilitate valuation in many circumstances.

However, this alternative valuation section would not be applicable to all gas. First, it would not apply at all to unprocessed gas or residue gas sold under a dedicated arm's-length contract, defined in proposed § 206.451 as a contractual commitment to deliver gas from a specific lease or well. For a discussion of why the Committee excluded gas sold under arm's-length dedicated contracts see section II.A.3 of the Committee Report.

Second, this alternative gas valuation section is applicable only to gas production from certain leases. Those leases must be in a zone (MMS-defined geographic area containing blocks or fields as defined in proposed § 206.452) with an active spot market and published indices, or be deepwater OCS leases. A complete discussion of these zones begins on page 48 of the Committee Report.

An active spot market is defined in proposed § 206.451 as a market where one or more MMS-acceptable publications publish bidweek prices (or if bidweek prices are not available, first-of-the-month prices) for at least one index pricing point in the zone. An index pricing point, or IPP, also is a defined term in § 206.451. Page 19 of the Committee Report includes diagrams of IPP's for various connection situations.

If the production does not qualify for valuation under this section because the lease is not in a zone with an active spot market with published indices, then the lessee would be required to value the production under §§ 206.452 or 206.453, as applicable. It also should be noted that this section would not apply to carbon dioxide, nitrogen, or other non-Btu gas plant products because all the alternative valuation methods are Btu-based.

If the production qualifies for valuation under this section, then the lessee would have a series of elections and choices for valuation based on how the production is sold.

1. For *unprocessed* gas sold under an arm's-length non-dedicated contract, the lessee could elect to use either an index-based method under this section (described below) or the gross proceeds valuation provision of § 206.452(b)(1).

2. For *unprocessed gas* sold non-arm's-length, the lessee must value the gas under this section using either an index-based method or, if the gas is sold to the lessee's affiliated purchaser (who is not a marketing affiliate) and if that affiliate sells the gas under an arm's-length contract, then the affiliate's gross proceeds (determined under § 206.452) are the value. Sales to marketing affiliates would be excluded here because, as provided in § 206.452(a)(3), valuation would be required on the basis of the marketing affiliate's sale.

3. For *residue gas* sold under an arm's-length non-dedicated contract, the lessee could elect to use either an index-based method under this section or the gross proceeds valuation procedure of § 206.453(b)(1).

4. For *residue gas* sold non-arm's-length, the procedure is the same as for unprocessed gas sold non-arm's length in paragraph 2 above.

5. If the lessee values residue gas using an index-based method, then the lessee has a choice on how to value the *NGL's, elemental sulfur and drip condensate* associated with that residue gas. It could either use the same index-based price per MMBtu used to value the associated residue gas, or it could use the procedures in §§ 206.453 (b) or (c) depending on whether the products are sold arm's-length or non-arm's-length.

6. If the lessee values the residue gas under an arm's-length non-dedicated contract using § 206.453(b), or if the lessee uses its affiliate's arm's-length gross proceeds under this section (§ 206.454(a)(2)(ii)(B)), then the lessee also has a choice on how to value the *NGL's, elemental sulfur and drip condensate.* It could use the same price per MMBtu used to value the associated residue gas. Alternatively, it could use §§ 206.453 (b) or (c), depending on whether the products are sold arm's-length or non-arm's-length.

Elections 1 and 2 are explained in section II.A.3.b. of the Committee Report. Elections 3, 4, 5, and 6 are explained in section II.C. of the Committee Report.

Paragraph (a)(3) of § 206.454 would provide four conditions to using the alternative valuation methods just described. First, there must be an active spot market for the gas subject to the valuation. As explained above, active spot market is defined in § 206.451.

Second, the gas must actually flow, or be capable of flowing, through at least one pipeline with at least one published index applicable to the zone.

Third, for all leases in a zone:

1. All unprocessed gas and residue gas sold under an arm's-length non-dedicated contract must be valued the same under this section. Therefore, for all such gas in the zone the lessee must make the same election to use either an index-based method or §§ 206.452(b) or 206.453(b), as applicable.

2. All unprocessed gas and residue gas produced from leases in the zone not sold under an arm's-length contract

must be valued using the same method where the lessee has an election. Therefore, if for one lease the lessee's affiliate sells the gas arm's-length and the lessee elects to use that value instead of an index-based value, for every other lease in the zone where the affiliate sells arm's-length the lessee must use the affiliate's arm's-length gross proceeds for valuation. If there are other leases in the same zone where, for example, the lessee's affiliate did *not* sell the gas under an arm's-length contract, under paragraphs (a)(1)(ii) or (a)(2)(ii) of § 206.454 there is no election for those leases and the lessee would be required to use index for those situations.

3. For all residue gas from leases in the zone valued under paragraphs (a)(2)(i) or (ii) of § 206.454 using the index-based method, the lessee must value all the NGL's, elemental sulfur and drip condensate associated with that residue gas using the same method. Thus, the lessee must use either an index-based method to value all such products in the zone or it must use §§ 206.453 (b) or (c), as applicable.

4. For all residue gas from leases in the zone valued under paragraphs (a)(2)(i) or (a)(2)(ii)(B) of § 206.454 using a gross proceeds method, the lessee must value all the NGL's, elemental sulfur and drip condensate associated with that residue gas using the same method. Therefore, the lessee must use either the price per MMBtu of the associated residue gas to value all such products in the zone or it must use §§ 206.453 (b) or (c), as applicable.

Fourth, the lessee's elections for valuation in each zone must be made for a period of 2 calendar years. If the lessee adds production from leases in the zone during that 2-year period, or acquires new leases in the zone, that production would be valued under the same election.

If the lessee does not satisfy all of the four above-described criteria, then it must value production under §§ 206.452 and 206.453. These criteria are listed on page 16 of the Committee Report.

Paragraph (a)(6) of § 206.454 would address an issue that the Committee did not consider. It involves situations where a lessee entered into a gas contract settlement prior to the effective date of a final rule in this matter, and actually receives the settlement payment before or after the effective date of the final rule. Under current MMS interpretation of the gross proceeds requirements, the payment the lessee receives under that gas contract settlement may be attributable in whole or in part to production that occurs after the effective date of this rule. This paragraph would provide that any portion of the gas contract settlement payment attributable to that production would be subject to royalty in addition to any index-based or other value established under § 206.454.

By way of illustration, assume that the lessee entered into a gas contract settlement and received a lump-sum payment in January 1995 for a gas sales contract for lease production that would have been in effect until June 1997. Assume further that under MMS' current royalty valuation procedures, MMS would consider the lump-sum payment to be attributable pro rata to the production that occurs from the lease until June 1997 at the rate of $0.10 per MMBtu. Under paragraph (a)(6) of § 206.454, if the index-based value determined for production for May 1996 were $2.00, the lessee would be required to pay royalty on $2.10.

Paragraph (a)(6) of § 206.454, as proposed, does not require that royalty be paid on any amounts attributable to gas contract settlements entered into after the effective date of the rule where the lessee uses an index-based or other value under § 206.454. (Of course, MMS does consider certain of such payments to be subject to royalty for lessees using gross proceeds to value production, which is not addressed in this paragraph.) MMS specifically requests comment on whether amounts for gas contract settlements entered into after the rule's effective date should be subject to royalty for lessees who use index-based or other values under § 206.454.

Paragraph (b) of § 206.454 would explain how to determine the index value for gas production when the lessee must use, or elects to use, an index-based method. Determination of the index value depends on whether the gas flows or could flow through a single connect, a split connect or a multiple connection. This determination must be made for each well on a lease because different wells may have different connections. A discussion of determining index values begins on page 18 of the Committee Report under *Index Pricing Points*.

For a single connect, the index value is the index price for the first index pricing point (IPP). For that IPP, the lessee will have selected a publication from the MMS-acceptable list in accordance with § 206.454(d). The price published in that publication for that month for that IPP would be used to value all production from the well that month.

If the well has a split connect or a multiple connection, the lessee would be required to elect one of two methods to calculate the index value:

1. Weighted-average index value. This index would be calculated by first multiplying the volume of gas from the well *actually* flowing to each IPP by the applicable index price for that IPP (using the publication the lessee selected under paragraph (d) of § 206.454).

(Example: IPP1—10,000 MMBtu × $1.20/MMBtu = $12,000; IPP2—20,000 MMBtu × $1.30/MMBtu = $26,000; IPP3—10,000 MMBtu × $1.20/MMBtu = $12,000). The numbers for each IPP are then added, equaling a total of $50,000. That sum is divided by the total volume (40,000 MMBtu) and the resulting quotient ($1.25/MMBtu) is the index value. The amount of gas actually flowing to each IPP is determined by using the nominations confirmed at the first of the month or the total nominations confirmed during the month, applied consistently for the two-year election period. If the actual flow of the gas during the month is different from the flow determined by the confirmed nominations used to calculate the value under this paragraph, the weighted average index value will not be recalculated using the actual flow volume. This index value would apply to all production from the well no matter which IPP the gas actually flowed through.

2. Fixed index value. First, for each IPP through which gas from the well flows *or could flow,* determine the average of the applicable monthly index prices for the *previous* calendar year using the publication selected for that year. Array the average prices determined for each IPP from highest at the top to lowest at the bottom. If there are only two IPP's, select the IPP associated with the highest average price. If there are three or more IPP's, select the IPP associated with the second highest average price. For whichever IPP is selected, go to the publication selected for that IPP for the current year (which could be a different publication than the one used the previous year). The index price for the current month for the IPP in that publication is the index value for all gas production from the well that month no matter where the gas actually flows. Example: Last year's 12-month average and this month's index price for each IPP through which the lessee's gas flows or could flow are:

	Last year's average	Current month
IPP2	$1.89/MMBtu	$2.05/MMBtu.

	Last year's average	Current month
IPP3	$1.86/MMBtu	$2.00/MMBtu.
IPP1	$1.85/MMBtu	$2.10/MMBtu.

The second IPP in the array, IPP3, is used to value production in the current year. For this month, the index price in the publication selected for IPP 3 is $2.00/MMBtu. This index value is used to value all production from the well.

If the result of the calculation is that the selected average index price (either the highest or second highest, as applicable) is identical to another average index price, then the calculation of the average index prices for the previous year would have to be redone to eight decimal places, and the process would then proceed the same.

The lessee would be required to elect to use either the weighted average index method or the fixed index method for the two-calendar-year election period. The lessee also would have to apply the same elected method to all wells connected to the same split connect or multiple connection. But the lessee could use the weighted average index method for one split connect in a zone and the fixed index method for another split connect in the same zone. For the Committee's discussion of this issue, see pages 20–23 of the Committee Report.

Paragraph (c) of § 206.454 would provide that the lessee would be entitled to deduct an applicable transportation allowance from the index value to determine the value for royalty purposes. Transportation allowances are addressed later in this preamble.

Paragraph (d) of § 206.454 would explain how a lessee selects an acceptable publication for the index price from a list of acceptable publications that MMS periodically will publish in the Federal Register. (See Committee Report discussion under *Choice of Index Publication,* beginning on page 29.)

Paragraph (e) of proposed § 206.454 relates to determination of the final safety net median value. In summary, as is explained in substantial detail at pages 33 to 45 of the Committee Report, the lessee would be required to compare its alternative value determined under this section to the final safety net median value for each zone. If its alternative value is lower than the final safety net median value (which would be based on arm's-length gross proceeds valuation information reported to MMS on Form MMS–2014 and other sources), then the lessee would be required to pay additional royalty and, in some cases, late payment interest.

Paragraphs (e)(1) through (e)(3) of § 206.454 would explain in substantial detail what reported information and other data MMS would use to calculate the final safety net median value.

Paragraph (e)(4) of § 206.454 would explain that the final safety net median value for a zone would be calculated by arraying the prices per MMBtu derived from the collected data from highest to lowest (at the bottom). The final safety net median value would be that price at which 50 percent plus 1 MMBtu of the production (starting from the bottom) is sold. This value would apply for a calendar year.

The proposed rules would provide in paragraph (e)(7) of § 206.454 that a lessee could request a technical procedural review of the final safety net median value from the Associate Director for Royalty Management. The Associate Director's decision following that review would be a final Departmental decision not subject to further administrative review.

Paragraphs (e)(8) through (e)(10) of § 206.454 would explain how the lessee must determine whether it owes additional royalty based on the difference between the annual weighted average value of its production determined under this section and the final safety net median value for each zone. If its annual weighted-average value is lower than the final safety net median value, this proposed rule explains in detail what percentage of the difference the lessee must pay as additional royalty. That percentage depends upon what product is being valued (*e.g.* unprocessed gas, residue gas, or plant products) and which alternative valuation method is used. If the lessee's annual weighted average value is higher than the final safety net median value, it would owe no additional royalty and would not receive any credit or refund.

Under paragraph (e)(11) of § 206.454, for leases on certain OCS deepwater blocks that MMS specifies, the additional royalty calculations under paragraphs (e)(8), (e)(9), and (e)(10) would be made using adjusted transportation allowances because of the unusual distances involved. MMS also would use the final safety net median value for the closest zone where production flows or could flow.

Paragraph (e)(6) of § 206.454 would require that MMS publish the final safety net median value within 2 years after the end of the relevant calendar year. The Committee did not address the consequences of MMS not publishing the final safety net median value within two years. MMS requests comments on the appropriate consequences in this event. Options could include: (1) Using the initial safety net median value; or (2) having no additional royalties due; or (3) suspending interest until the final safety net median value is published.

Paragraph (e)(12) of § 206.454 would provide that MMS will endeavor to publish an *initial* safety net median value within 6 months following the end of the calendar year to give lessees an up-front approximation of the safety net median value. The lessee could then pay any additional royalty that may be due. If the lessee made an estimated payment following publication of the initial safety net median value and if the final safety net median value is lower than the initial safety net median value, then the lessee would receive a credit or refund of its overpayment.

This paragraph also would provide that the lessee could report any additional royalty payments using a one-line entry on Form MMS–2014 for each zone. If the lessee reports an estimated payment following the initial safety net median value, then following publication of the final safety net median value it must file an amended Form MMS–2014 adjusting any payments for each zone, if necessary. On this amended report, the lessee may recoup any overpayment by filing a credit adjustment. This *first* credit adjustment would not be subject to section 10 of the Outer Continental Shelf Lands Act, 43 U.S.C. § 1339, for the same reasons that adjustment of an estimated transportation or processing allowance from estimated to actual is not subject to section 10. See 30 CFR 230.461(f). However, if the lessee makes a second adjustment to that line for any zone, it would be subject to all of section 10's provisions including the 2-year limit and the approval requirements.

Finally, under this section, late payment interest would not accrue on any additional royalty owed until the date MMS publishes the *initial* safety net value. Therefore, for example, for calendar 1997, if the initial safety net value is published June 30, 1998, and if the lessee makes an estimated payment July 31, 1998, it would owe only 1-month's interest. If it did not pay any additional royalty until the final safety net median value is published, or if its estimated payment were deficient, interest would run from June 30, 1998, until the deficient royalty payments were made. The issue of interest is explained on pages 42–43 of the Committee Report.

These proposed rules would require in paragraph (e)(5) of § 206.454 that the final safety net median value must be based on a representative sample of data

reflecting gross proceeds sales. Paragraph (f) of § 206.454 would explain how that representative sample would be determined. (See *Representative Sample* discussion beginning on page 44 of the Committee Report.)

Paragraph (g) of § 206.454 would provide that MMS would publish in the Federal Register the zones with an active spot market and published indices that are eligible for an index-based valuation method. MMS would consider such criteria as common markets served, common pipeline systems, simplification and easy identification, such as an offshore block or an onshore county. Under paragraph (h) of § 206.454, MMS would hold a technical conference if necessary and publish notice in the Federal Register that a zone is disqualified for the following calendar year. That notice would be published by September 1 of the preceding year.

Section 206.456 Transportation Allowances—General

If a lessee values gas at a point off the lease, this section would authorize a transportation allowance for the reasonable costs of transporting identifiable, measurable gas to that point. This section would also provide for an exception whereby MMS could approve an allowance for the transportation of bulk deepwater production upon request of the lessee. No allowance would be authorized for gathering costs. The basis for this proposal is contained in section II.E. of the Committee Report. The Committee Report used the term ''location differential,'' but this proposed rule uses the term ''transportation allowance'' for the same purpose. The transportation allowance would be applicable to unprocessed gas, residue gas and gas plant products, and would be available both in situations where production is valued under §§ 206.452 and 206.453, as well as under the new alternative valuation methods in § 206.454.

If gas flows (or, for some alternative valuation methods, gas *could* flow) through more than one pipeline segment to the point where value is determined, the applicable transportation allowance would be based on the total allowance for each segment determined under § 206.457. Therefore, if the gas flows through a jurisdictional pipeline and then a non-jurisdictional pipeline before it gets to the point where value is determined, the allowance would be based on the total for both segments.

MMS would add a new provision in § 206.456(a)(2) providing that the lessee's costs of compression downstream of the facility measurement point (FMP), incurred either by the payment of such cost under a contract or by performance of the compression by the lessee, is allowable as a transportation cost. Also, under this new provision, costs of boosting or compressing residue gas after processing would be part of the lessee's transportation allowance for residue gas. This issue is addressed in section II.F. of the Committee Report.

The remaining provisions are the same as in existing § 206.156, including limitations on the allowances.

Section 206.457 Determination of Transportation Allowances

This section would be organized differently from existing § 206.157. In addition to determining whether the transportation cost is arm's-length or non-arm's-length, the lessee would have to differentiate in some cases between jurisdictional pipelines (defined in § 206.451 as a pipeline with a rate regulated by FERC or a state agency) and non-jurisdictional pipelines (not FERC or state-agency regulated). This distinction is based on the Committee's recommendations for classifying pipeline systems on pages 23–24 of the Committee Report.

Paragraph (a) of § 206.457 would explain that if the lessee uses gross proceeds to value its gas, then the transportation allowance would be determined under paragraphs (b) or (c) of § 206.457, depending upon whether the pipeline is jurisdictional or non-jurisdictional and whether or not the transportation arrangement is arm's-length. If the lessee elects an index-based method to value its gas, then, as provided in paragraph (d) of § 206.457, the transportation allowance would also be determined under paragraphs (b) or (c) of § 206.457, if the lessee actually transports some gas to the IPP used for value. If the lessee elects an index-based method but *does not* flow any gas to the IPP used for value, then the transportation allowance would be determined under paragraph (d)(5) of § 206.457.

Paragraph (b) of § 206.457 would apply if the lessee determines value under § 206.452 or 206.453, or under the provisions applicable to arm's-length sales of gas by the lessee's affiliate (§§ 206.454(a)(1)(ii)(B) and 206.454(a)(2)(ii)(B)). If the value is determined under those sections and if the lessee transports either unprocessed gas, residue gas, gas plant products, or drip condensate through a *jurisdictional* pipeline, the transportation allowance would be based on the reasonable, actual contract rate paid. (See Committee recommendation on page 23 of the Committee Report.) This would apply to both arm's-length and non-arm's-length situations. Similarly, if the lessee values under those sections and transports production though a *non-jurisdictional* pipeline under an *arm's-length contract*, the transportation allowance also would be based on the reasonable, actual contract rate paid. (See Committee recommendation on page 24 of the Committee Report.)

The remaining provisions of paragraph (b) are essentially the same as the arm's-length contract rate provisions in existing § 206.157.

Paragraph (c) of § 206.457 would apply in situations where value is determined under §§ 206.452 and 206.453 and transportation is through a *non-jurisdictional* pipeline under a *non-arm's-length contract* or no contract situations (see page 24 of the Committee Report). The transportation allowance provision that would apply would depend upon how much gas is transported through that pipeline under arm's-length transportation contracts.

If 30 percent or less of the gas in the pipeline flows under arm's-length transportation contracts, the allowance would be based on either:

(1) The lessee's reasonable actual costs determined under paragraph (c)(2) of § 206.457, which contains basically the same cost calculations as under the existing regulations; or

(2) A rate of $0.02/MMBtu for OCS leases or a *de minimis* rate for onshore leases not to exceed $0.09/MMBtu. MMS would periodically determine the onshore rate based upon available transportation cost data and publish it in the Federal Register. The rate would be applicable for 1 calendar year.

If more than 30 percent of the gas is transported under arm's-length contracts, the lessee could use either:

(1) Its reasonable actual costs for transportation; or

(2) A rate determined by arraying all of the arm's-length rates for the pipeline from highest at the top to the lowest at the bottom. The applicable rate would be the one closest to the 25th percentile from the bottom. An example is provided on page 26 of the Committee Report.

As noted above, the provisions of § 206.457(c)(2) used to determine reasonable actual costs are essentially the same as under existing § 206.157(b)(2). A new provision would be added to paragraph (c)(2)(iv)(A) of § 206.457 related to depreciation for purchased systems. This issue is discussed on pages 28 and 29 of the Committee Report.

Paragraph (d) of § 206.457 would apply to determine transportation

allowances each month for gas valued under the new *index-based* valuation methods in § 206.454(b). The transportation allowance would be determined by the type of connection to the well (*i.e.,* single connect, split connect or multiple connection) and the type of index valuation method used. This issue is discussed under section II.A. of the Committee Report under *Location Differential (LD).*

Under § 206.457(d)(2), for a single connect, the transportation allowance for volumes actually transported to the IPP where value is determined would be determined under § 206.457 (b) or (c), as applicable. Thus, for example, if it is a jurisdictional pipeline or a non-jurisdictional pipeline with an arm's-length contract, § 206.457(b) would apply and the allowance would be based on the lessee's contract rate. By contrast, if it is a non-jurisdictional pipeline and the lessee has a non-arm's-length transportation contract, the allowance would be determined under § 206.457(c) based on the lessee's actual costs or one of the other alternatives in that paragraph. These proposals are listed on pages 23–24 of the Committee Report.

If the lessee's gas does not actually flow to the IPP, then the transportation allowance for that pipeline would be determined under § 206.457(d)(5) discussed below.

Paragraph (d)(3) of § 206.457 applies to situations where the lessee's gas production from a well with a split connect or multiple connection is valued using the weighted average index method under § 206.454(b)(2)(i). The lessee first would be required to determine the applicable transportation allowance, using either paragraph (b) or (c) of § 206.457, as applicable, for gas volumes actually transported to each IPP used in the calculation to value the lessee's gas from the well. Thus, if there are five IPP's used in the weighted average calculation, five allowances must be calculated. The lessee then must determine the volume weighted average transportation allowance per MMBtu for those five pipelines. That rate per MMBtu could then be deducted as the transportation allowance against the weighted average index value per MMBtu for all the lessee's production from the well. Page 25 of the Committee Report provides an example of calculating the weighted average transportation allowance.

Finally, paragraph (d)(4) of § 206.457 applies where the lessee's gas production from a well with a split connect or multiple connection is valued using the fixed index value method under § 206.454(b)(2)(ii) and where some of the lessee's gas actually flows to the IPP selected for value. In that situation, the transportation allowance for all the lessee's gas from the well would be determined based on the lessee's transportation allowance rate per MMBtu, determined under § 206.457 (b) or (c), as applicable, to transport gas to that IPP. Therefore, if IPP5 is the selected IPP for valuation purposes, and 20 percent of the lessee's gas from the well actually flows to that IPP, the transportation allowance rate per MMBtu for the pipeline to IPP5 also would be applied to the other 80 percent of the lessee's gas from the same well. If none of the lessee's gas actually flows to that IPP, then the lessee must use § 206.457(d)(5) to determine the allowance.

As noted above, there may be situations where gas does not actually flow to an IPP that is used to determine value. However, a transportation allowance rate must be determined for the pipeline or pipelines, to that IPP. Under § 206.457(d)(5), if it is a jurisdictional pipeline, the rate would be the maximum interruptible transportation (IT) rate for the pipeline that month (see page 23 of the Committee Report).

If the pipeline is a non-jurisdictional pipeline and the lessee is not affiliated with the owners of that pipeline, the rate would be based on either:

(1) A rate MMS would calculate for the lessee for a fee to cover MMS administrative costs; or

(2) A rate determined by the lessee based on such factors as rates paid under arm's-length contracts for that pipeline, the pipeline's published rates, and rates the lessee actually pays to the pipeline (see page 24 of the Committee Report).

If it is a non-jurisdictional pipeline and the lessee *is* affiliated with the owners of that pipeline, the applicable transportation allowance rate would be determined under the cost-based provisions of § 206.457(c) applicable to other non-arm's-length or no contract situations (see page 24 of the Committee Report).

Paragraph (e) of § 206.457 would require that the transportation allowance must be reported as a separate line item on the Form MMS–2014 unless MMS approves a different procedure (see page 23 of the Committee Report). However, all gas transportation allowance forms would be eliminated to make reporting simple. See section II.G. of the Committee Report for the Committee's recommendation on this issue.

The other paragraphs relating to interest assessments, adjustments, and actual or theoretical losses are essentially the same as under the existing rules. Certain changes would be made to account for the reduction in the reporting procedures.

Section 206.458 Processing Allowances—General

This section, which would allow a deduction for the reasonable actual costs of processing when value is determined under § 206.453, is the same as existing § 206.158. Therefore, the same limitations on allowances would apply as under the existing rules. No processing allowance would be applicable to gas plant products valued under § 206.454.

Section 206.459 Determination of Processing Allowances

This section would explain how the processing allowance is determined based on whether the lessee has an arm's-length or non-arm's-length (or no contract) processing agreement. This section is the same as existing § 206.159 with a few changes. Under § 206.459(b)(2)(iv)(A), which is part of the actual cost calculation for non-arm's-length or no contract processing situations, a new provision would be added regarding depreciation for newly acquired facilities. The issue regarding depreciation is discussed on page 24 of the Committee Report.

The most significant change would be in paragraph (c) of § 206.459. As with transportation allowances, the reporting requirements would be simplified by eliminating all processing allowance forms. The lessee only would be required to report the processing allowance as a separate line on the Form MMS–2014 unless MMS approves a different reporting procedure. (See section II.G. of the Committee Report.) Of course, all allowances are subject to audit, and the interest assessment and adjustment provisions in §§ 206.459 (d) and (e) would apply.

Part 211

In a separate rulemaking, MMS has proposed regulations regarding who is liable for royalty and other payments due on Federal and Indian leases (60 FR 30492, June 9, 1995). That rulemaking also explains who is required to report and pay royalties. MMS does not address in that other rulemaking the reporting requirements for mixed agreements and, instead, is proposing those rules in this rulemaking. Therefore, MMS is proposing here paragraph (c) of what would be a new § 211.18 regarding who is required to report and pay royalties.

The Committee was requested to consider payment and reporting for agreements which contain only Federal leases with the same royalty rate and funds distribution. The Committee concurred with an MMS draft proposal that payment should be made on a takes basis with an exception to seek approval for payment on an entitlements basis. (See pages 63–64 of Committee report.) Because this subject was beyond the Committee's charge, MMS included it in that separate rulemaking (60 FR 30492, June 9, 1995).

This new paragraph would explain royalty reporting requirements for leases in mixed agreements. The basic requirement is that an operating rights owner in a Federal lease in a mixed agreement must report and pay royalties each month based on its entitled share of production. This issue is described in section II.D. of the Committee Report.

However, in a provision parallel to what is proposed in this rulemaking for § 202.450(d), discussed above, an operating rights owner who meets the definition of small operating rights owner in § 206.451 could report and pay royalties each month based on its takes. Then, within 6 months after the end of the calendar year, it would have to adjust its reports and pay based on its entitled share if it is greater than the takes.

This proposed rule would allow a credit for overtaken volumes for the calendar year. MMS specifically requests comments on how this credit should be processed.

Under § 211.18(c)(2)(iii), if the volume of production the small operating rights owner reported and paid on for the calendar year is equal to or greater than its entitled share of production for the year, no interest would be assessed for any individual months where volumes were underreported. However, MMS would assess interest for any volumes reported on takes but where the value of those volumes is underpaid. For example, assume that the entitled share of production is 10 MMBtu of production each month. For the year, the small operating rights owner reported and paid on 120 MMBtu. However, in July, only 5 MMBtu with a value of $1.00 per MMBtu was reported. The correct value should have been $2.00 per MMBtu. No interest is owed for the underreported 5 MMBtu that month. However, for the 5 MMBtu that were reported, interest is owed on the $1.00 of underreported value.

If the total volume the small operating rights owner reported and paid on for the calendar year is less than its entitled share for that year, it would be required to pay interest on all underreported volumes and any associated underpaid royalties.

The rule would provide an exemption from the basic requirement that all operating rights owners must report pay based on entitlements if they agree among themselves to use an alternative method. The only condition is that royalties must be reported and paid on the full volume of production for the lease and the agreement.

Finally, under many of the proposals contained in this rulemaking, additional reporting on the Report of Sales and Royalty Remittance (Form MMS–2014) would be necessary to implement the proposals. For example, where a small operating rights owner pays on its takes, MMS would need to be alerted via the Form MMS–2014 that it may not receive royalties on the full share of production allocable to the lease during the calendar year. Lessees using index-based methods, as well as lessees using alternative methods to value the gas plant products, would need to notify MMS on the Form MMS–2014 in order for MMS to apply the safety net median value procedure. Also, lessees paying on gross proceeds in zones with an active spot market would need to alert MMS on the Form MMS–2014 whether or not those gross proceeds are based on arm's-length or non-arm's-length contracts. MMS requests input on how to best accommodate this supplementary reporting.

IV. Procedural Matters

The Regulatory Flexibility Act

The Department certifies that this rule will not have significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This proposed rule will amend regulations governing the valuation for royalty purposes of natural gas produced from Federal leases. These changes would add several alternative valuation methods to the existing regulations.

Executive Order 12630

The Department certifies that the rule does not represent a governmental action capable of interference with constitutionally protected property rights. Thus, a Takings Implication Assessment need not be prepared under Executive Order 12630, ''Government Action and Interference with Constitutionally Protected Property Rights.''

Executive Order 12778

The Department has certified to the Office of Management and Budget that these final regulations meet the applicable standards provided in Sections 2(a) and 2(b)(2) of Executive Order 12778.

Executive Order 12866

This rule is significant under Executive Order 12866 and has been reviewed by the Office of Management and Budget.

The Committee's many objectives for improving the process included simplicity, administrative cost savings, and revenue neutrality for both lessees and lessors.

A key component of the Committee's recommendations, the ''safety net,'' assured MMS and the States that index-based values would not result in substantially lower revenues than those received under the current method of gross proceeds. The ''safety net'' allows MMS the ability to monitor the revenue impact of index-based valuation by comparing index values to the median value of all gross proceeds in the area.

The Committee was not able to demonstrate empirically the revenue neutrality of this proposed rule for a number of reasons. Although revenue neutrality could not be documented, the Committee anticipated that the use of published indices may ultimately reduce MMS' and industry's administrative costs related to royalty payments.

The benefits of the proposed rule to both MMS and its constituents are numerous. Benefits to independent producers include: (1) The ability to continue to pay royalties on gross proceeds received under dedicated arm's-length contracts and (2) an option to eliminate administrative costs associated with natural gas liquid royalty payments by paying on a wellhead value for non-dedicated arm's-length contracts.

Benefits to all producers include: (1) An option to value production from arm's-length non-dedicated contracts on published indices in areas with active spot markets; (2) elimination of the requirement to submit transportation and processing forms for Federal gas leases; (3) elimination of dual accounting for gas produced from Federal leases; and (4) greatly simplified definitions of gathering and compression.

MMS and State governments realize administrative cost savings through: (1) Reduction in audit, enforcement, and litigation costs associated with determining the proper value of federal gas sold in the FERC Order 636 environment; (2) reduction in retroactive adjustments made to royalty reports to account for sales adjustments made from gas pools and market

centers; and (3) elimination of resources necessary to collect and verify all forms related to transportation and processing allowances.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget. The proposed amendments to the gas valuation regulations would reduce reporting requirements by not requiring the following forms to be filed for gas production from Federal onshore and offshore mineral leases:

MMS–4109—Gas Processing Allowance Summary Report (OMB No. 1010–0075)

MMS–4295—Gas Transportation Allowance Report (OMB No. 1010–0075)

National Environmental Policy Act of 1969

We have determined that this rulemaking is not a major Federal action significantly affecting the quality of the human environment, and a detailed statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is not required.

List of Subjects

30 CFR Parts 202 and 206

Coal, Continental shelf, Geothermal energy, Government contracts, Indians-lands, Mineral royalties, Natural gas, Petroleum, Public lands—mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 211

Coal, Continental shelf, Geothermal energy, Indians-lands, Mineral resources, Mineral royalties, Natural gas, Oil, Public lands—mineral resources, Reporting and recordkeeping requirements.

Dated: August 4, 1995.

Bob Armstrong,

Assistant Secretary—Land and Minerals Management.

For the reasons set out in the preamble, parts 202, 206, and 211 of title 30 of the Code of Federal Regulations are proposed to be amended as follows:

PART 202—ROYALTIES

1. The authority citation for part 202 is revised to read as follows:

Authority: 5 U.S.C. 301 *et seq.*; 25 U.S.C. 396 *et seq.*, 396a *et seq.*, 2101 *et seq.*; 30 U.S.C. 181 *et seq.*, 351 *et seq.*, 1001 *et seq.*, 1701 *et seq.*; 31 U.S.C. 9701; 43 U.S.C. 1301 *et seq.*, 1331 *et seq.*, 1801 *et seq.*

Subpart B—Oil, Gas, OCS Sulfur, General

2. Section 202.51 is amended by revising paragraph (b) to read as follows:

§ 202.51 Scope and definitions.

* * * * *

(b) The definitions in subparts C, D, I, and J of part 206 of this title are applicable to subparts B, C, D, I, and J of this part.

3. The heading of subpart D is revised to read ''Indian Gas.''

4. Section 202.150 is amended by adding a new sentence at the beginning of paragraph (a) as set forth below and by removing the words '', except helium produced from Federal leases,'' in the first sentence of paragraph (a); removing the words ''a Federal or'' from paragraph (b)(1), paragraph (e)(2), and paragraph (f), and substituting the word ''an'' in their place; removing the words ''or if MMS determines that gas was unavoidably lost or wasted from an OCS lease,'' in paragraph (c); removing the words ''Federal or'' from the first and third sentences of paragraph (e)(1); and by removing the words ''Federal and'' from paragraph (f) introductory text.

§ 202.150 Royalty on gas.

(a) This subpart applies only to Indian leases. * * *

* * * * *

5. Section 202.151 is amended by removing the phrase ''Federal and'' in the second sentence of paragraph (a).

6. Section 202.152 is amended by removing the words '', except that for OCS leases in the Gulf of Mexico, gas volumes and BTU heating values shall be reported at a standard pressure base of 15.025 psia and a standard temperature base of 60 °F,'' from the second sentence of paragraph (a)(1).

7. A new subpart J is added as follows:

Subpart J—Federal Gas

Sec.
202.450 Royalty on gas.
202.451 Royalty on processed gas.
202.452 Standards for reporting and paying royalties on gas.

Subpart J—Federal Gas

§ 202.450 Royalty on gas.

(a) *Royalty rate.* Royalties due on gas production from leases subject to the requirements of this subpart must be at the rate established by the terms of the lease. Royalty must be paid in value unless MMS requires payment in kind. When paid in value, the royalty due must be the value, for royalty purposes, determined under 30 CFR part 206 multiplied by the royalty rate in the lease.

(b) *Gas subject to royalty.* (1) All gas (except gas unavoidably lost or used on, or for the benefit of, the lease, including that gas used off-lease for the benefit of the lease when such off-lease use is permitted by MMS or BLM, as appropriate) produced from a Federal lease to which this subpart applies is subject to royalty. However, except as provided in § 202.451(b), in no instances will any gas be approved for use royalty free downstream of the facility measurement point approved for the gas.

(2) When gas is used on, or for the benefit of, the lease at a production facility handling production from more than one lease with the approval of MMS or BLM, as appropriate, or at a production facility handling unitized or communitized production, only that proportionate share of each lease's production (actual or allocated) necessary to operate the production facility may be used royalty free.

(3) Where the terms of any lease are inconsistent with this subpart, the lease terms will govern to the extent of that inconsistency.

(c) *Avoidably lost and wasted gas and compensatory royalty.* (1) If BLM determines that gas was avoidably lost or wasted from an onshore lease, or that gas was drained from an onshore lease for which compensatory royalty is due, or if MMS determines that gas was avoidably lost or wasted from an OCS lease, then the value of that gas must be determined in accordance with 30 CFR part 206.

(2) If a lessee receives insurance compensation for unavoidably lost gas, royalties are due on the amount of that compensation. This paragraph does not apply to compensation through self-insurance.

(d) *Agreements.* (1) Royalties are due on production allocated to Federal leases under the terms of an agreement in accordance with the following requirements:

(i) Royalty rate—Royalties are due based on the royalty rate specified in the lease (or as modified by the agreement).

(ii) Volume—Royalties are due each month on the full share of production allocated to the lease under the terms of the agreement. For each operating rights owner (working interest owner) in the lease, royalties are due on its entitled share of production allocable to the lease; *provided that,* for production allocable to a small operating rights owner (defined in § 206.451) of a lease committed to a mixed agreement (also defined in § 206.451), royalties may be reported and paid on a monthly basis on takes volumes, even if the total volume reported and paid for that lease for the

month is less than the total volume of production allocable to the lease under the agreement; *provided further,* for each calendar year in which royalties are paid by or on behalf of a small operating rights owner based on its takes volumes, within 6 months after the end of that calendar year the operating rights owner must compare its total entitled volumes of production for the calendar year to its total takes volume for that calendar year and pay additional royalties on any portion of its annual entitled volumes not taken during the calendar year based on the value determined under paragraph (d)(1)(iii)(D) of this section. If the small operating rights owner has taken more than its entitled share of production for the calendar year and has paid royalty on that taken volume, the small operating rights owner will be entitled to a credit for the over-taken volumes.

(iii) Value—The value of production that an operating rights owner in a Federal lease takes must be determined under 30 CFR part 206. However, if an operating rights owner in a Federal lease in a mixed agreement takes more than its entitled share of production for any month, the value of its entitled share must be the weighted-average value of the production, determined under 30 CFR part 206, that the operating rights owner takes during that month based on the acceptable method.

(iv) Value for mixed agreements—untaken volumes—For mixed agreements, the value of production that an operating rights owner in a Federal lease is entitled to but does not take for any month must be determined as follows:

(A) Where the operating rights owner takes a portion of its entitled share of production from a lease, value for the untaken volumes must be based on the weighted average of the value of the production taken by that owner for that month from the same lease in the agreement as determined under 30 CFR part 206.

(B) If the operating rights owner takes none of its entitled share and that production would have been valued using an index-based method under § 206.454 had it been taken, then the value of production not taken for that month must be determined under § 206.454(b) as if it had been taken. If the operating rights owner uses a weighted-average index value under § 206.454(b)(2)(i), the most recent prior month's confirmed nominations must be used in calculating the weighted-average index value.

(C) If the operating rights owner takes none of its entitled share of production from a lease and that production cannot be valued under paragraph (B) above, then the value of production not taken for that month must be determined based on the first applicable of the following methods:

(*1*) The weighted average of the operating rights owner's gross proceeds under arm's-length contracts during the previous three months for production from or attributable to the same lease in the agreement;

(*2*) The weighted average of the operating rights owner's gross proceeds under arm's-length contracts during the previous three months for production from or attributable to other leases in the agreement;

(*3*) The weighted average of the operating rights owner's gross proceeds under arm's-length contracts for that month in the field or area.

(*4*) An index-based value for that month determined under § 206.454 if the lease is in a zone with an active spot market and acceptable published indices and the gas production flows or could flow to an IPP.

(*5*) A value determined for that month under §§ 206.452(c) or 206.453(c), as applicable.

(D) For a small operating rights owner of a Federal lease who elects to pay royalties on takes under paragraph (d)(1)(ii) of this section, the value of any portion of its entitled share not taken during the calendar year must be based on the first applicable of the following methods:

(*1*) The weighted-average value of the production the operating rights owner takes from the same lease in the agreement during the calendar year;

(*2*) The weighted-average value of the production the operating rights owner takes from other leases in the agreement during the calendar year;

(*3*) A value determined under §§ 206.452(c) or 206.453(c), as applicable.

(v) Reporting and payment—Royalties must be reported and paid as provided in part 211 of this title.

(2) If a lessee takes less than its entitled share of agreement production for any month, but royalties are paid on the full volume of its entitled share in accordance with the provisions of this section, no additional royalty will be owed for that lease for prior periods at the time the lessee subsequently takes more than its entitled share to balance its account or when the lessee is paid a sum of money by the other agreement participants to balance its account.

(3) If a Federal lessee takes less than its entitled share of agreement production, upon request of the lessee MMS may authorize a royalty valuation method different from that required by paragraph (d)(1) of this section, but consistent with the purpose of these regulations, for any volumes not taken by the lessee but for which royalties are due.

(e) *Exception for all agreement production.* For production from Federal leases which are committed to agreements, upon request of a lessee MMS may establish the value of production under a method other than the method required by the regulations in this title if: (1) the proposed method for establishing value is consistent with the requirements of the applicable statutes, lease terms and agreement terms; (2) to the extent practical, persons with an interest in the agreement, including royalty interests, are given notice and an opportunity to comment on the proposed valuation method before it is authorized; and (3) to the extent practical, persons with an interest in a Federal lease committed to the agreement, including royalty interests, must agree to use the proposed method for valuing production from the agreement for royalty purposes.

§ 202.451 Royalty on processed gas.

(a) A royalty, as provided in the lease, must be paid on the value of: (1) any drip condensate; and (2) residue gas and all gas plant products resulting from processing the gas produced from a lease subject to this part. MMS will authorize a processing allowance for the reasonable, actual costs of processing the gas produced from Federal leases. Processing allowances must be determined in accordance with Subpart J of 30 CFR Part 206.

(b) A reasonable amount of residue gas will be allowed royalty free for operation of the processing plant, but no allowance will be made for expenses incidental to marketing, except as provided in 30 CFR part 206. In those situations where a processing plant processes gas from more than one lease, only that proportionate share of each lease's residue gas necessary for the operation of the processing plant will be allowed royalty free.

(c) No royalty is due on residue gas, or any gas plant product resulting from processing gas, which is reinjected into a reservoir within the same lease, unit area, or communitized area, when the reinjection is included in a plan of development or operations and the plan has received BLM or MMS approval for onshore or offshore operations, respectively, until such time as they are finally produced from the reservoir for sale or other disposition off-lease.

§ 202.452 Standards for reporting and paying royalties on gas.

(a)(1) Gas volumes and Btu heating values, if applicable, must be determined under the same degree of water saturation. Gas volumes must be reported in units of one thousand cubic feet (Mcf), and Btu heating value must be reported at a rate of Btu's per cubic foot, at a standard pressure base of 14.73 psia and a standard temperature base of 60°F, except that for OCS leases in the Gulf of Mexico, gas volumes and Btu heating values must be reported at a standard pressure base of 15.025 psia and a standard temperature base of 60°F. Gas volumes and Btu heating values must be reported, for royalty purposes, on the same water vapor saturated or unsaturated basis prescribed in the lessee's gas sales contract.

(2) The frequency and method of Btu measurement as set forth in the lessee's contract must be used to determine Btu heating values for reporting purposes. However, the lessee must measure the Btu value at least semiannually by recognized standard industry testing methods even if the lessee's contract provides for less frequent measurement.

(b)(1) Residue gas and gas plant product volumes must be reported as specified in this paragraph.

(2) Carbon dioxide (CO_2), nitrogen (N_2), helium (He), residue gas, and any other gas marketed as a separate product must be reported by using the same standards specified in paragraph (a) of this section.

(3) Natural gas liquids (NGL's) must be reported in standard U.S. gallons (231 cubic inches) at 60°F, except for zones with an active spot market and valid published indices. In those zones, NGL's must be reported based on its heating value in accordance with the MMS Oil and Gas Payor Handbook.

(4) Sulfur (S) volumes must be reported in long tons (2,240 pounds).

PART 206—PRODUCT VALUATION

8. The authority citation for part 206 is revised to read as follows:

Authority: 5 U.S.C. 301 *et seq.*; 25 U.S.C. 396 *et seq.*, 396a *et seq.*, 2101 *et seq.*; 30 U.S.C. 181 *et seq.*, 351 *et seq.*, 1001 *et seq.*, 1701 *et seq.*; 31 U.S.C. 9701; 43 U.S.C. 1301 *et seq.*, 1331 *et seq.*, 1801 *et seq.*.

Subpart D [Revised]

9. The heading of subpart D is revised to read ''Indian Gas.''

§ 206.150 [Amended]

10. Section 206.150 is amended by removing the words ''Federal and'' from paragraph (a); removing paragraph (e)(1); redesignating paragraph (e)(2) as paragraph (e)(1); redesignating paragraph (e)(3) as paragraph (e)(2); and by removing paragraph (e)(4).

11. Section 206.151 is amended by removing the words ''Federal and'' from the definition of *Audit*; removing the third sentence from the definition of *Field*; removing the words ''Federal or'' from the fourth sentence of the definition of *Gross proceeds*; removing the words ''Outer Continental Shelf or onshore Federal or'' from the definition of *Lease products;* removing the words ''Federal and'' from the definition of *Net profit share*; removing the definitions of *Outer Continental Shelf (OCS)* and *Section 6 lease*; and by adding two new sentences at the end of the definition of *Lease* as set forth below.

§ 206.151 Definitions.

* * * * *

Lease * * * For purposes of this subpart, this definition excludes Federal leases. However, where the term *lease* is used in reference to an agreement, this term may refer to non-Indian leases (e.g., Federal leases, State leases, or fee leases) where the context requires.

§ 206.152 [Amended]

12. Section 206.152 is amended by removing the words ''Federal or'' from paragraph (e)(2).

§ 206.153 [Amended]

13. Section 206.153 is amended by removing the words ''Federal or'' from paragraph (e)(2).

§ 206.154 [Amended]

14. Section 206.154 is amended by removing the words ''or MMS for onshore and OCS leases, respectively'' from paragraph (a)(1); and by removing the words ''Federal and'' from the second sentence of paragraph (c)(4).

§ 206.157 [Amended]

15. Section 206.157 is amended by removing the words ''(for both Federal and Indian leases)'' and ''or a State regulatory agency (for Federal leases)'' from the second sentence in paragraph (b)(5); removing the words ''For lessees transporting production from onshore Federal and Indian leases,'' from paragraph (e)(2); and by removing paragraph (e)(3).

§ 206.159 [Amended]

16. Section 206.159 is amended by removing the words ''For lessees processing production from onshore Federal and Indian leases,'' from paragraph (e)(2); and by removing paragraph (e)(3).

17. A new Subpart J is added as follows:

Subpart J—Federal Gas

Sec.
206.450 Purpose and scope.
206.451 Definitions.
206.452 Valuation standards—unprocessed gas.
206.453 Valuation standards—processed gas.
206.454 Alternative valuation standards for unprocessed gas and processed gas.
206.455 Determination of quantities and qualities for computing royalties.
206.456 Transportation allowances—general.
206.457 Determination of transportation allowances.
206.458 Processing allowances—general.
206.459 Determination of processing allowances.

Subpart J—Federal Gas

§ 206.450 Purpose and scope.

(a) This subpart is applicable to all gas production from Federal oil and gas leases. The purpose of this subpart is to establish the value of production for royalty purposes consistent with the mineral leasing laws, other applicable laws and lease terms. This subpart does not apply to Indian leases.

(b) If the specific provisions of any statute, settlement agreement resulting from any administrative or judicial proceeding, or oil and gas lease subject to the requirements of this subpart are inconsistent with any regulation in this subpart, then the lease, statute, or settlement agreement will govern to the extent of that inconsistency.

(c) All royalty payments made to MMS are subject to audit and adjustment.

§ 206.451 Definitions.

For purposes of this subpart:

Active spot market means a market where one or more MMS-acceptable publications publish bidweek prices (or if bidweek prices are not available, first of the month prices) for at least one index pricing point in the zone.

Agreement means a federally-approved unit or communitization agreement.

Allowance means a deduction in determining value for royalty purposes. *Processing allowance* means an allowance for the reasonable costs for processing gas determined under this subpart. *Transportation allowance* means an allowance for the cost of moving royalty bearing substances (identifiable, measurable oil and gas, including gas that is not in need of initial separation) from the point at which it is first identifiable and measurable to the sales point or other point where value is established under this subpart.

Area means a geographic region at least as large as the defined limits of an oil and/or gas field, in which oil and/or gas lease products have similar quality, economic, and legal characteristics.

Arm's-length contract means a contract or agreement that has been arrived at in the marketplace between independent, nonaffiliated persons with opposing economic interests regarding that contract.

(1) For purposes of this subpart, two persons are affiliated if one person controls, is controlled by, or is under common control with another person. For purposes of this subpart, based on the instruments of ownership of the voting securities of an entity, or based on other forms of ownership:

(i) Ownership in excess of 50 percent constitutes control;

(ii) Ownership of 10 through 50 percent creates a presumption of control; and

(iii) Ownership of less than 10 percent creates a presumption of noncontrol which MMS may rebut if it demonstrates actual or legal control, including the existence of interlocking directorates.

(2) Notwithstanding any other provisions of this subpart, contracts between relatives, either by blood or by marriage, are not arm's-length contracts. MMS may require the lessee to certify ownership control. To be considered arm's-length for any production month, a contract must meet the requirements of this definition for that production month as well as when the contract was executed.

Audit means a review, conducted in accordance with generally accepted accounting and auditing standards, of royalty payment compliance activities of lessees or other interest holders who pay royalties, rents, or bonuses on Federal leases.

BLM means the Bureau of Land Management of the Department of the Interior.

Compression means raising the pressure of gas.

Condensate means liquid hydrocarbons (normally exceeding 40 degrees of API gravity) recovered at the surface without resorting to processing. Condensate is the mixture of liquid hydrocarbons that results from condensation of petroleum hydrocarbons existing initially in a gaseous phase in an underground reservoir.

Contract means any oral or written agreement, including amendments or revisions thereto, between two or more persons and enforceable by law that with due consideration creates an obligation.

Dedicated means a contractual commitment to deliver gas production (or a specified portion of production) from a lease or well when that production is specified in a sales contract *and* that production must be sold pursuant to that contract to the extent that production occurs from that lease or well.

Drip condensate means any condensate recovered downstream of the facility measurement point without resorting to processing. Drip condensate includes condensate recovered as a result of its becoming a liquid during the transportation of the gas removed from the lease or recovered at the inlet of a gas processing plant by mechanical means, often referred to as scrubber condensate.

Entitlement (or entitled share) means, for leases in an agreement, the gas production allocable to lease acreage under the agreement terms, multiplied by the operating rights owner's percentage of interest ownership in that acreage.

Facility measurement point (or point of royalty settlement) means the point at which the measurement device is located that was approved by MMS or BLM for determining the volume of gas removed from the lease.

Field means a geographic region situated over one or more subsurface oil and gas reservoirs encompassing at least the outermost boundaries of all oil and gas accumulations known to be within those reservoirs vertically projected to the land surface. Onshore fields are usually given names and their official boundaries are often designated by oil and gas regulatory agencies in the respective States in which the fields are located. Outer Continental Shelf (OCS) fields are named and their boundaries are designated by MMS.

Gas means any fluid, either combustible or noncombustible, hydrocarbon or nonhydrocarbon, which is extracted from a reservoir and which has neither independent shape nor volume, but tends to expand indefinitely. It is a substance that exists in a gaseous or rarefied state under standard temperature and pressure conditions.

Gas plant products means separate marketable elements, compounds, or mixtures, whether in liquid, gaseous, or solid form, resulting from processing gas, excluding residue gas.

Gathering means the movement of an unseparated, bulk production stream to a point, on or off the lease, where the production stream undergoes initial separation into identifiable oil, gas, or free water.

Gross proceeds (for royalty payment purposes) means the total monies and other consideration accruing to an oil and gas lessee for the disposition of unprocessed gas, residue gas, or gas plant products produced. Gross proceeds includes, but is not limited to, payments to the lessee for certain services such as compression, dehydration, measurement, and/or field gathering to the extent that the lessee is obligated to perform them at no cost to the Federal Government, and payments for gas processing rights. Gross proceeds, as applied to gas, also includes but is not limited to reimbursements for severance taxes and other reimbursements. Tax reimbursements are part of the gross proceeds accruing to a lessee even though the Federal royalty interest may be exempt from taxation. Monies and other consideration, including the forms of consideration identified in this paragraph, to which a lessee is contractually or legally entitled but which it does not seek to collect through reasonable efforts are also part of gross proceeds.

Index means the calculated composite price ($/MMBtu) of spot market sales published by a publication that meets MMS-established criteria for acceptability at the index pricing point.

Index pricing point (IPP) means the first point on any pipeline connected to a well which is a single connect or split connect for which there is an index. For a multiple connection, it means the first point on each pipeline segment after the pipeline connected to the well splits for which there is an index.

Jurisdictional pipeline means a pipeline with a rate regulated and approved by the Federal Energy Regulatory Commission (FERC) or a state agency.

Lease means any contract, profit-share arrangement, joint venture, or other agreement issued or approved by the United States under a mineral leasing law that authorizes exploration for, development or extraction of, or removal of lease products—or the land area covered by that authorization, whichever is required by the context. For purposes of this subpart, this definition excludes Indian leases. However, where the term ''lease'' is used in reference to an agreement, the term may refer to non-Federal leases (*e.g.* Indian leases, State leases, or fee leases) where the context requires.

Lease products means any leased minerals attributable to, originating from, or allocated to a lease.

Lessee means any person to whom the United States issues a lease, and any person who has been assigned an obligation to make royalty or other payments required by the lease. This includes any person who has an interest in a lease as well as an operator or payor who has no interest in the lease but who has assumed the royalty payment responsibility.

Like-quality lease products means lease products which have similar chemical, physical, and legal characteristics.

Marketable condition means lease products which are sufficiently free from impurities and otherwise in a condition that they will be accepted by a purchaser under a sales contract typical for the field or area.

Marketing affiliate means an affiliate of the lessee whose function is to acquire only the lessee's production and to market that production.

Minimum royalty means that minimum amount of annual royalty that the lessee must pay as specified in the lease or in applicable leasing regulations.

Mixed agreement means an agreement that includes leases other than only Federal leases with the same royalty rate and fund distribution.

Multiple connection means a situation where one pipeline is connected to the well, platform, central delivery point, or plant, but that pipeline splits prior to an IPP or IPP's.

Natural gas liquids (NGL's) means those gas plant products consisting of a mixture of ethane, propane, butane, and/or heavier liquid hydrocarbons.

Net-back method (or work-back method) means a method for calculating market value of gas at the lease. Under this method, costs of transportation, processing, or manufacturing are deducted from the proceeds received for the gas, residue gas or gas plant products, and any extracted, processed, or manufactured products, or from the value of the gas, residue gas or gas plant products, and any extracted, processed, or manufactured products, at the first point at which reasonable values for any such products may be determined by a sale under an arm's-length contract or comparison to other sales of such products, to ascertain value at the lease.

Net output means the quantity of residue gas and each gas plant product that a processing plant produces.

Net profit share means the specified share of the net profit from production of oil and gas as provided in the agreement.

Non-jurisdictional pipeline means a pipeline with no rates regulated or approved by Federal Energy Regulatory Commission (FERC) or a state agency.

Operating rights owner (working interest owner) means a person who owns operating rights in a lease subject to this subpart. A record title owner is the owner of operating rights under a lease except to the extent that the operating rights or a portion thereof have been transferred from record title. (See BLM regulations at 43 CFR 3100.0–5(d) and MMS regulations at 30 CFR 256.62).

Outer Continental Shelf (OCS) means all submerged lands lying seaward and outside of the area of land beneath navigable waters as defined in section 2 of the Submerged Lands Act (43 U.S.C. § 1301) and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

Percentage-of-proceeds contract means a contract for the sale of gas prior to processing which provides for the consideration to be determined based upon a percentage of the purchaser's proceeds resulting from processing and selling the gas and the gas plant products.

Person means any individual, firm, corporation, association, partnership, consortium, or joint venture (when established as a separate entity).

Posted price means the price, net of all adjustments for quality and location, specified in publicly available price bulletins or other price notices available as part of normal business operations for quantities of unprocessed gas, residue gas, or gas plant products in marketable condition.

Processing means any process designed to remove elements or compounds (hydrocarbon and nonhydrocarbon) from gas, including absorption, adsorption, or refrigeration. Field processes which normally take place on or near the lease, such as natural pressure reduction, mechanical separation, heating, cooling, dehydration, and compression, are not considered processing. The changing of pressures and/or temperatures in a reservoir is not considered processing.

Residue gas means that hydrocarbon gas consisting principally of methane resulting from processing gas.

Section 6 lease means an OCS lease subject to section 6 of the Outer Continental Shelf Lands Act, as amended, 43 U.S.C. 1335.

Selling arrangement means the individual contractual arrangements under which sales or dispositions of gas, residue gas and gas plant products are made. Selling arrangements are described by illustration in the MMS Royalty Management Program Oil and Gas Payor Handbook.

Single connect means a situation where only one pipeline is connected to the well, platform, central delivery point, or plant, and that pipeline does not split prior to an IPP.

Small operating rights owner is a person who produces less than 6,000 Mcf/day total U.S. gas production at 14.73 pounds per square inch absolute (psia) at 60 °F *and* less than 1,000 bbls/day total U.S. oil production at 60 °F.

Split connect means a situation where more than one pipeline connects to the well, platform, central delivery point, or plant prior to or at the IPP or IPP's.

Spot sales agreement means a contract wherein a seller agrees to sell to a buyer a specified amount of unprocessed gas, residue gas, or gas plant products at a specified price over a fixed period, usually of short duration, which does not normally require a cancellation notice to terminate, and which does not contain an obligation, nor imply an intent, to continue in subsequent periods.

Takes means when the operating rights owner sells or removes production from, or allocated to, the lease, or when such sale or removal occurs for the benefit of an operating rights owner.

Zone means a geographic area containing blocks or fields as defined by MMS.

§ 206.452 Valuation standards—unprocessed gas.

(a)(1) This section applies to the valuation of gas that is not processed and gas that is processed but is sold or otherwise disposed of by the lessee under an arm's-length contract prior to processing (including gas sold under an arm's-length percentage-of-proceeds contract). Where the lessee's contract includes a reservation of the right to process the gas and the lessee exercises that right, § 206.453 of this subpart will apply instead of this section.

(2) The value of production, for royalty purposes, is the value of gas determined under this section less applicable allowances determined under this subpart.

(3) For purposes of this section, gas which is sold or otherwise transferred to the lessee's marketing affiliate and then sold by the marketing affiliate must be valued depending on how the marketing affiliate resells the gas.

(b)(1)(i) The value of gas sold under an arm's-length contract is the gross proceeds accruing to the lessee, except as provided in paragraphs (b)(1)(ii) and (iii) of this section, and except as provided in § 206.454 of this subpart to

the extent that section applies to gas sold under an arm's-length contract that is not dedicated. The lessee will have the burden of demonstrating that its contract is arm's-length. The value which the lessee reports, for royalty purposes, is subject to monitoring, review, and audit. Also, for arm's-length percentage-of-proceeds contracts, the value of production, for royalty purposes, must never be less than a value equivalent to 100 percent of the value of the residue gas attributable to the processing of the lessee's gas.

(ii) In conducting reviews and audits for gas valued based upon gross proceeds under this paragraph, MMS will examine whether the contract reflects the total consideration actually transferred either directly or indirectly from the buyer to the seller for the gas. If the contract does not reflect the total consideration, then MMS may require that the gas sold under that contract be valued in accordance with paragraphs (c) (2) or (3) of this section. Value may not be less than the gross proceeds accruing to the lessee, including the additional consideration.

(iii) If MMS determines for gas valued under this paragraph that the gross proceeds accruing to the lessee under an arm's-length contract do not reflect the reasonable value of the production because of misconduct by or between the contracting parties, or because the lessee otherwise has breached its duty to the lessor to market the production for the mutual benefit of the lessee and the lessor, then MMS will require that the gas production be valued under paragraphs (c) (2) or (3) of this section. When MMS determines that the value may be unreasonable, MMS will notify the lessee and give the lessee an opportunity to provide written information justifying the lessee's value.

(2) MMS may require a lessee to certify that its arm's-length contract provisions include all of the consideration to be paid by the buyer, either directly or indirectly, for the gas.

(c) If gas is not sold under an arm's-length contract, the lessee must first determine whether the gas is subject to valuation under § 206.454. If that section is applicable, the lessee must use it to value the production. For gas not subject to valuation under that section and for other gas that must be valued under this paragraph, the value of gas must be the first applicable of the following:

(1) The gross proceeds accruing to the lessee pursuant to a sale under its non-arm's-length contract (or other disposition other than by an arm's-length contract), provided that those gross proceeds are equivalent to the gross proceeds derived from, or paid under, comparable arm's-length contracts for purchases, sales, or other dispositions of like-quality gas in the same field (or, if necessary to obtain a reasonable sample, from the same area). In evaluating the comparability of arm's-length contracts for the purposes of these regulations, the following factors shall be considered: price, time of execution, duration, market or markets served, terms, quality of gas, volume, and such other factors as may be appropriate to reflect the value of the gas;

(2) A value determined by consideration of other information relevant in valuing like-quality gas, including gross proceeds under arm's-length contracts for like-quality gas in the same field or nearby fields or areas, posted prices for gas, prices received in arm's-length spot sales of gas, other reliable public sources of price or market information, and other information as to the particular lease operation or the salability of the gas; or

(3) A net-back method or any other reasonable method to determine value.

(d)(1) Where the value is determined under paragraph (c) of this section, the lessee must retain all data relevant to the determination of royalty value. Such data will be subject to review and audit, and MMS will direct a lessee to use a different value if it determines that the reported value is inconsistent with the requirements of these regulations.

(2) Any Federal lessee will make available upon request to the authorized MMS or state representatives, to the Office of the Inspector General of the Department of the Interior, or other person authorized to receive such information, arm's-length sales and volume data for like-quality production sold, purchased or otherwise obtained by the lessee from the field or area or from nearby fields or areas.

(e) If MMS determines that a lessee has not properly determined value, the lessee must pay the difference, if any, between royalty payments made based upon the value it has used and the royalty payments that are due based upon the value established by MMS. The lessee must also pay interest on that difference computed under 30 CFR 218.54. If the lessee is entitled to a credit, MMS will provide instructions for the taking of that credit.

(f) The lessee may request a value determination from MMS. In that event, the lessee must propose to MMS a value determination method, and may use that method in determining value for royalty purposes until MMS issues its decision. The lessee must submit all available data relevant to its proposal. MMS will expeditiously determine the value based upon the lessee's proposal and any additional information MMS deems necessary. In making a value determination MMS may use any of the valuation criteria authorized by this subpart. That determination will remain effective for the period stated therein. After MMS issues its determination, the lessee must make the adjustments in accordance with paragraph (e) of this section.

(g) For gas valued under this section (but not for any gas valued using an index-based method under § 206.454), under no circumstances may the value of production for royalty purposes be less than the gross proceeds accruing to the lessee for lease production, less applicable allowances determined under this subpart.

(h) The lessee is required to place gas in marketable condition at no cost to the Federal Government unless otherwise provided in the lease agreement. Where the value established under this section is determined by a lessee's gross proceeds, that value must be increased to the extent that the gross proceeds have been reduced because the purchaser, or any other person, is providing certain services the cost of which ordinarily is the responsibility of the lessee to place the gas in marketable condition.

(i) For gas valued under this section (but not for any gas valued using an index-based method under § 206.454), value must be based on the highest price a prudent lessee can receive through legally enforceable claims under its contract. If there is no contract revision or amendment, and the lessee fails to take proper or timely action to receive prices or benefits to which it is entitled, it must pay royalty at a value based upon that obtainable price or benefit. Contract revisions or amendments must be in writing and signed by all parties to an arm's-length contract. If the lessee makes timely application for a price increase or benefit allowed under its contract but the purchaser refuses, and the lessee takes reasonable measures, which are documented, to force purchaser compliance, the lessee will owe no additional royalties unless or until monies or consideration resulting from the price increase or additional benefits are received. This paragraph may not be construed to permit a lessee to avoid its royalty payment obligation in situations where a purchaser fails to pay, in whole or in part or timely, for a quantity of gas.

(j) Notwithstanding any provision in these regulations to the contrary, no review, reconciliation, monitoring, or other like process that results in a

redetermination by MMS of value under this section will be considered final or binding as against the Federal Government or its beneficiaries until the audit period is formally closed.

(k) Certain information submitted to MMS to support valuation proposals, including transportation or extraordinary cost allowances, may be exempted from disclosure under the Freedom of Information Act, 5 U.S.C. 552, or other Federal Law. Any data specified by law to be privileged, confidential, or otherwise exempt will be maintained in a confidential manner in accordance with applicable law and regulations. All requests for information about determinations made under this subpart are to be submitted in accordance with the Freedom of Information Act regulation of the Department of the Interior, 43 CFR part 2.

§ 206.453 Valuation standards—processed gas.

(a)(1) This section applies to the valuation of gas that is processed by the lessee (including gas where the lessee has an agreement with a gas processing plant that provides for the retention of the gas plant products by the plant owner and for the payment, in kind or in value, to the lessee for the plant thermal reduction). This section also applies to any other gas production to which this subpart applies and that is not subject to the valuation provisions of § 206.452 of this subpart, including situations where the lessee's contract includes a reservation of the right to process the gas and the lessee exercises that right.

(2) The value of production, for royalty purposes, is the combined value of the residue gas and all gas plant products determined under this section, plus the value of any drip condensate determined under this part, less applicable transportation allowances and processing allowances determined under this part. No processing allowance is applicable to any gas plant products valued under § 206.454.

(3) For purposes of this section, residue gas or any gas plant product which is sold or otherwise transferred to the lessee's marketing affiliate must be valued depending on how the marketing affiliate resells the gas.

(b)(1)(i) The value of residue gas or any gas plant product sold under an arm's-length contract is the gross proceeds accruing to the lessee, except as provided in paragraphs (b)(1) (ii) and (iii) of this section, and except as provided in § 206.454 of this subpart to the extent that section applies. The lessee will have the burden of demonstrating that its contract is arm's-length. The value that the lessee reports for royalty purposes is subject to monitoring, review, and audit.

(ii) In conducting these reviews and audits for gas valued based upon gross proceeds under this paragraph, MMS will examine whether or not the contract reflects the total consideration actually transferred either directly or indirectly from the buyer to the seller for the residue gas or gas plant product. If the contract does not reflect the total consideration, then MMS may require that the residue gas or gas plant product sold under that contract be valued in accordance with paragraph (c) (2) or (3) of this section. Value may not be less than the gross proceeds accruing to the lessee, including the additional consideration.

(iii) If MMS determines for gas valued under this paragraph that the gross proceeds accruing to the lessee under an arm's-length contract do not reflect the reasonable value of the residue gas or gas plant product because of misconduct by or between the contracting parties, or because the lessee otherwise has breached its duty to the lessor to market the production for the mutual benefit of the lessee and the lessor, then MMS will require that the residue gas or gas plant product be valued under paragraph (c) (2) or (3) of this section. When MMS determines that the value may be unreasonable, MMS will notify the lessee and give the lessee an opportunity to provide written information justifying the lessee's value.

(2) MMS may require a lessee to certify that its arm's-length contract provisions include all of the consideration to be paid by the buyer, either directly or indirectly, for the residue gas or gas plant product.

(c) If residue gas or any gas plant product is not sold under an arm's-length contract, the lessee must first determine whether the residue gas or gas plant product is subject to valuation under § 206.454. For residue gas subject to valuation under § 206.454, the lessee must use that section to value the residue gas. For residue gas or any gas plant product not subject to valuation under that section and for other residue gas and gas plant products that must be valued under this paragraph, the value must be the first applicable of the following:

(1) The gross proceeds accruing to the lessee pursuant to a sale under its non-arm's-length contract (or other disposition other than by an arm's-length contract), provided that those gross proceeds are equivalent to the gross proceeds derived from, or paid under, comparable arm's-length contracts for purchases, sales, or other dispositions of like quality residue gas or gas plant products from the same processing plant (or, if necessary to obtain a reasonable sample, from nearby plants). In evaluating the comparability of arm's-length contracts for the purposes of these regulations, the following factors shall be considered: price, time of execution, duration, market or markets served, terms, quality of residue gas or gas plant products, volume, and such other factors as may be appropriate to reflect the value of the residue gas or gas plant products;

(2) A value determined by consideration of other information relevant in valuing like-quality residue gas or gas plant products, including gross proceeds under arm's-length contracts for like-quality residue gas or gas plant products from the same gas plant or other nearby processing plants, posted prices for residue gas or gas plant products, prices received in spot sales of residue gas or gas plant products, other reliable public sources of price or market information, and other information as to the particular lease operation or the salability of such residue gas or gas plant products; or

(3) A net-back method or any other reasonable method to determine value.

(d)(1) Where the value is determined under paragraph (c) of this section, the lessee must retain all data relevant to the determination of royalty value. Such data will be subject to review and audit, and MMS will direct a lessee to use a different value if it determines upon review or audit that the reported value is inconsistent with the requirements of these regulations.

(2) Any Federal lessee will make available upon request to the authorized MMS or state representatives, to the Office of the Inspector General of the Department of the Interior, or other persons authorized to receive such information, arm's-length sales and volume data for like-quality residue gas and gas plant products sold, purchased or otherwise obtained by the lessee from the same processing plant or from nearby processing plants.

(e) If MMS determines that a lessee has not properly determined value, the lessee must pay the difference, if any, between royalty payments made based upon the value it has used and the royalty payments that are due based upon the value established by MMS. The lessee must also pay interest computed on that difference under 30 CFR 218.54. If the lessee is entitled to a credit, MMS will provide instructions for the taking of that credit.

(f) The lessee may request a value determination from MMS. In that event,

the lessee must propose to MMS a value determination method, and may use that method in determining value for royalty purposes until MMS issues its decision. The lessee must submit all available data relevant to its proposal. MMS will expeditiously determine the value based upon the lessee's proposal and any additional information MMS deems necessary. In making a value determination, MMS may use any of the valuation criteria authorized by this subpart. That determination will remain effective for the period stated therein. After MMS issues its determination, the lessee must make the adjustments in accordance with paragraph (g) of this section.

(g) For residue gas and gas plant products valued under this section (but not for residue gas or gas plant products valued under §§ 206.454(a)(2)(i), (ii)(A), (iii) or (iv)), under no circumstances may the value of production for royalty purposes be less than the gross proceeds accruing to the lessee for residue gas and/or any gas plant products, less applicable transportation allowances and processing allowances determined under this subpart.

(h) The lessee is required to place residue gas and gas plant products in marketable condition at no cost to the Federal Government unless otherwise provided in the lease agreement. Where the value established under this section is determined by a lessee's gross proceeds, that value must be increased to the extent that the gross proceeds have been reduced because the purchaser, or any other person, is providing certain services the cost of which ordinarily is the responsibility of the lessee to place the residue gas or gas plant products in marketable condition.

(i) For residue gas and gas plant products valued under this section (but not for any residue gas or gas plant product valued using an index-based method under § 206.454), value must be based on the highest price a prudent lessee can receive through legally enforceable claims under its contract. Absent contract revision or amendment, if the lessee fails to take proper or timely action to receive prices or benefits to which it is entitled it must pay royalty at a value based upon that obtainable price or benefit. Contract revisions or amendments must be in writing and signed by all parties to an arm's-length contract. If the lessee makes timely application for a price increase or benefit allowed under its contract but the purchaser refuses, and the lessee takes reasonable measures, which are documented, to force purchaser compliance, the lessee will owe no additional royalties unless or until monies or consideration resulting from the price increase or additional benefits are received. This paragraph may not be construed to permit a lessee to avoid its royalty payment obligation in situations where a purchaser fails to pay, in whole or in part, or timely, for a quantity of residue gas or gas plant product.

(j) Notwithstanding any provision in these regulations to the contrary, no review, reconciliation, monitoring, or other like process that results in a redetermination by MMS of value under this section will be considered final or binding as against the Federal Government or its beneficiaries until the audit period is formally closed.

(k) Certain information submitted to MMS to support valuation proposals, including transportation allowances, processing allowances or extraordinary cost allowances, may be exempted from disclosure under the Freedom of Information Act, 5 U.S.C. 552, or other Federal law. Any data specified by law to be privileged, confidential, or otherwise exempt, will be maintained in a confidential manner in accordance with applicable law and regulations. All requests for information about determinations made under this subpart are to be submitted in accordance with the Freedom of Information Act regulation of the Department of the Interior, 43 CFR part 2.

§ 206.454 Alternative valuation standards for unprocessed gas and processed gas.

(a) *Applicability*. This section provides an alternative method to value for royalty purposes unprocessed gas and processed gas produced from Federal leases. However, it does not apply to unprocessed gas or residue gas sold under a dedicated arm's-length contract. It also does not establish value for carbon dioxide, nitrogen, or other non-Btu components of the gas stream. This section applies only to gas production from leases that are in zones with an active spot market and published indices acceptable to MMS under paragraph (d) of this section and to deepwater OCS leases whether or not in a zone. If the production does not qualify for valuation under this section, then the lessee must value its production under §§ 206.452 or 206.453, as applicable.

(1)(i) For unprocessed gas subject to this section that is sold under an arm's-length contract that is not dedicated, the lessee may elect to value the gas using an index-based method under this section. If the lessee does not elect to use this section, then the requirements of § 206.452(b)(1) apply.

(ii) For unprocessed gas subject to this section not sold under an arm's-length contract, the lessee must value the gas using either:

(A) an index-based method under this section; or

(B) the gross proceeds (determined under § 206.452) accruing to the lessee's affiliated purchaser, but only if the affiliated purchaser is not a marketing affiliate and it sells the gas under an arm's-length contract.

(2)(i) For residue gas subject to this section that is sold under an arm's-length contract that is not dedicated, the lessee may elect to value the gas using an index-based method under this section. If the lessee does not elect to use this section, then the requirements under § 206.453(b)(1) apply.

(ii) For residue gas subject to this section that is not sold under an arm's-length contract, the lessee must value the gas under this section using either:

(A) an index-based value under this section; or

(B) the gross proceeds (determined under § 206.453) accruing to the lessee's affiliated purchaser, but only if the affiliated purchaser is not a marketing affiliate and it sells the residue gas under an arm's-length contract.

(iii) If the lessee values residue gas under paragraph (a)(2) of this section using an index-based method, then the lessee may elect to value the NGL's, elemental sulfur, and drip condensate associated with that residue gas using the same index-based value per MMBtu used to value the associated residue gas, including any transportation allowance under § 206.457 applicable to the residue gas. If the lessee does not elect to use the index-based method, the provisions of §§ 206.453(b) or (c), as applicable, apply to value those products.

(iv) If the lessee values the residue gas under an arm's-length contract that is not dedicated using § 206.453(b), or if it values the residue gas using its affiliated purchaser's arm's-length gross proceeds under paragraph (a)(2)(ii)(B) of this section, then the lessee may elect to value the NGL's, elemental sulfur, and drip condensate associated with that residue gas using the same price per MMBtu used to value the associated residue gas, including any transportation allowance under § 206.457 applicable to the residue gas. If the lessee does not elect to use this alternative value, the provisions of §§ 206.453(b) or (c), as applicable, apply.

(3) A lessee may use the alternative valuation methods provided under paragraphs (a)(1) and (a)(2) of this section only if:

(i) There is an active spot market for the gas to be valued; and

(ii) The gas flows or could flow through at least one pipeline with at least one published index price in the zone; and

(iii) For all leases in a zone or each OCS deepwater lease:

(A) all unprocessed gas and residue gas subject to this section that is sold under an arm's-length contract that is not dedicated is valued using the same valuation method under this section; and

(B) all unprocessed gas and residue gas subject to this section that is not sold under an arm's-length contract is valued using the same valuation method under this section where the lessee has an election; and

(C) all NGL's, elemental sulfur, and drip condensate associated with residue gas valued under paragraph (a)(2) of this section using an index-based method is valued using the same valuation method; and

(D) all NGL's, elemental sulfur, and drip condensate associated with residue gas valued under paragraphs (a)(2)(i) and (a)(2)(ii)(B) of this section using a gross proceeds based method is valued using the same valuation method; and

(iv) The lessee uses the valuation method elected for at least 2 calendar years.

(v) Any alternative value election under paragraphs (a)(1) and (a)(2) of this section is subject to adjustment as provided in paragraph (e) of this section.

(4) If the lessee does not satisfy all the criteria under paragraph (a)(3) of this section, the value of the unprocessed gas or processed gas must be determined under §§ 206.452 or 206.453 of this subpart, as applicable.

(5) Any production in the zone that the lessee adds during the two year election period must be valued for the remainder of the period using the same method as for the lessee's other production in the zone sold under similar circumstances.

(6) If the lessee receives or received any revenue in connection with the reformation or termination of any gas purchase contract that occurred prior to effective date of this rule associated with production from a Federal lease, those revenues may be subject to royalty in accordance with the Department's existing precedents at the time a part of such revenue is attributed to later production. If so, royalty will be due on the increment of revenue attributed to future production in addition to any index-based or other value established under this section.

(b) *Index-based valuation.* The value of gas from a well on a lease for any month determined by using an index-based method under this section is the index value. Calculation of the index value depends upon whether the gas flows or could flow through a single connect, a split connect, or multiple connection as follows:

(1) For a single connect, the index value is the index price for the first IPP. The index value must be used for that month to value the gas production from the well.

(2) For a split connect or a multiple connection, the lessee must elect one of the two following options to determine the index value. The index value so determined must be used for that month to value the gas production from the well.

(i) *Weighted-Average Index Value.* The weighted-average index value for the month is calculated by:

(A)(*1*) multiplying the volume of the lessee's gas actually flowing from a well to each IPP by the applicable index price for that IPP determined using the publication selected under paragraph (d) of this section;

(*2*) adding the numbers for each IPP determined under paragraph (b)(2)(i)(A)(*1*) of this section; and

(*3*) dividing that sum by the total volume of the lessee's gas actually flowing to all IPP's. The resulting quotient is the index value for gas production from the well for that month.

(B) For purposes of paragraph (b)(2)(i) of this section, the amount of gas actually flowing to each IPP is determined by using the nominations confirmed at the first of the month or the total nominations confirmed during the month, applied consistently for the two-year election period. If the actual flow of the gas during the month is different from the flow determined by the confirmed nominations used to calculate the value under this paragraph, the weighted average index value will not be recalculated using the actual flow volume.

(ii) *Fixed Index Value.* (A) The fixed index value for the month is determined as follows: for each of the IPP's through which gas from a well flows or could flow, determine the average of the applicable monthly index prices for the previous calendar year published in the publication selected for each of those IPP's under paragraph (d) of this section. List the average price determined for each IPP from highest at the top to lowest at the bottom. If there are only two IPP's, select the IPP associated with the first average index price starting from the top of the list. The selected IPP will be used for the entire calendar year. The index price for the current month in the current year's publication selected for that IPP is the index value for all gas production from the well for that month. If there are three or more IPP's, select the IPP associated with the second average index price starting from the top of the list. The selected IPP will be used for the entire calendar year. The index price for the current month in the current year's publication selected for that IPP is the index value for all gas production from the well for that month.

(B) The result of the calculation in preceding paragraph (A) may be that the selected average index price (either the highest average index price if there are only two IPP's, or the second highest if there are more than two IPP's) is identical to another index price in the array. In that event, the lessee must recalculate the average of the applicable monthly index prices for the previous calendar year for each IPP to eight decimal points and redetermine the selected average index price and the corresponding publication in accordance with preceding paragraph (b)(2)(ii)(A) of this section. If the selected average index price still is identical to another average index price, the lessee may choose either one.

(C) The transportation allowance provided under § 206.457 may not be included in the calculation under either preceding paragraphs (b)(2)(ii) (A) or (B) of this section.

(iii) *Election.* To determine the index value for a split connect or multiple connection situation, the lessee must elect to use the weighted-average index value or the fixed index value for the same two year period as elected under paragraph (a)(3)(iv) of this section. The elected method must be applied to all of the lessee's gas subject to valuation under this section produced from wells that are connected for the same split connect or multiple connection. Therefore, for example, within the same zone, the lessee may elect the weighted-average index value for production from wells connected to one multiple connection, and the fixed index value for production from wells connected to a different multiple connection. The election to use either the weighted-average index value or the fixed index value must be made at the same time the lessee elects to use an index-based method under paragraph (a) of this section.

(c) *Transportation allowance.* As provided under § 206.456, a transportation allowance may be deducted from the index-based value determined under this section for the

costs that are, or would be, incurred to transport the gas to the IPP(s).

(d) *Acceptable publications.* At the beginning of each calendar year for which the lessee elects to use an index-based method to value production from a well under paragraph (a) of this section, the lessee must select a publication that meets MMS-established criteria for acceptability for each applicable IPP to determine the associated index price. If more than one publication publishes an index price at an applicable IPP, the lessee must select one of the acceptable publications to use during that calendar year.

(1) MMS periodically will publish in the Federal Register a list of acceptable publications based on certain criteria, including, but not limited to:

(i) Publications frequently used by buyers and sellers,

(ii) Publications frequently referenced in purchase or sales contracts,

(iii) Publications which use adequate survey techniques, including the gathering of information from a substantial number of sales, and

(iv) Publications independent from lessees and MMS.

(2) Any publication may petition MMS to be added to the list of acceptable publications provided the publication meets the criteria under paragraph (d)(1) of this section.

(3) MMS will reference which tables in the publications must be used for determining IPP's and associated index prices.

(4) MMS will publish the IPP's that it considers common among acceptable publications.

(5) For single connects:

(i) If an acceptable publication publishes a new IPP that qualifies as the first IPP, the lessee must use that IPP beginning with the first day of the month the new IPP is published;

(ii) If the lessee's selected publication eliminates the IPP the lessee is using, the lessee must select another publication for that IPP beginning with the first day of the month the IPP is eliminated;

(iii) If the IPP the lessee is using is eliminated from all acceptable publications, the lessee must determine a new IPP at the first pipeline interconnect to which the gas flows or could flow beginning with the first day of the month the original IPP is eliminated.

(6) For a split connect or a multiple connection where the lessee elects to use the weighted-average index value:

(i) If an acceptable publication adds a new IPP to which the lessee's gas flows, the lessee must begin using the new IPP beginning with the first day of the month the new IPP is added;

(ii) If any of the lessee's selected publications eliminates an IPP to which the lessee's gas flows, the lessee must select another acceptable publication for that IPP beginning with the first day of the month the IPP is eliminated;

(iii) If an IPP to which the lessee's gas flows is eliminated from all acceptable publications, the lessee may not use that volume in the weighted-average index value calculation beginning with the first day of the month the IPP is eliminated, unless another IPP is downstream of the original IPP.

(7) For a split connect or a multiple connection where the lessee elects to use the fixed index value:

(i) If an acceptable publication adds a new IPP, that IPP must not be used in determining the fixed index value until the following calendar year;

(ii) If the lessee's selected publication eliminates an IPP the lessee was using, the lessee must select another acceptable publication for that IPP beginning with the first day of the month the IPP is eliminated.

(iii) If the IPP the lessee was using is eliminated from all acceptable publications, the lessee must exclude that IPP and determine a new IPP under paragraph (b)(2)(ii) of this section beginning with the first day of the month the original IPP is eliminated.

(e) *Additional royalty obligations.* Under paragraphs (e)(8), (e)(9), and (e)(10) of this section, the weighted average of the alternative values determined under this section by the lessee in a zone for the calendar year, less applicable transportation allowances, must be compared to the final safety net median value calculated for the zone under this paragraph. If the lessee's weighted-average value is less than the final safety net median value, the lessee must pay additional royalties under paragraphs (e)(8), (e)(9), or (e)(10) of this section, as applicable. If the lessee's weighted-average value for the zones less applicable transportation allowances under § 206.457 equals or exceeds the final safety net median value, royalty will be based on the lessee's weighted-average value for the zone.

(1) MMS will use, to the extent possible, the following information reported on Form MMS–2014 for leases in a zone for the calendar year to calculate the final safety net median value. The lines of information from the Form MMS–2014 described in the following paragraphs (e)(1)(i)–(iv) of this section are the final reported transactions existing at the time the final safety net median value is calculated 2 years following the end of the calendar year:

(i) Lines reporting royalty due (Transaction Code 01 or 06) for unprocessed gas (Product Code 04) and residue gas (Product Code 03) where the sales value represents values based on gross proceeds under the following sales transactions:

(A) Arm's-length dedicated sales;

(B) Arm's-length non-dedicated sales, but only if the associated gas plant products are valued under § 206.453;

(C) Arm's-length resales by the lessee's affiliated purchaser, but only if the associated gas plant products are valued under § 206.453;

(D) Federal royalty-in-kind gas sales for the applicable zone.

(ii) Lines reporting royalty due (Transaction Code 01) for drip condensate (Product Code 05), natural gas liquids (Product Code 07), and elemental sulfur (Product Code 19) associated with the residue gas reported on the lines in paragraph (e)(1)(i) of this section.

(iii) Lines reporting transportation allowances (Transaction Code 11) associated with any product reported on the lines in paragraphs (e)(1)(i) and (ii) of this section.

(iv) Lines reporting processing allowances (Transaction Code 15) associated with NGL's and sulfur reported on the lines in paragraph (e)(1)(ii) of this section.

(2) MMS will also use the following information related to the calendar year's production to calculate the final safety net median value:

(i) Unappealed orders for additional royalties;

(ii) Unappealed MMS Director's decisions involving orders for additional royalties;

(iii) Refunds from requests under Section 10 of the OCS Lands Act of 1953, 43 U.S.C. § 1339; and

(iv) Amounts from MMS Director's decisions pending in administrative or judicial actions.

(v) If any monetary amounts under paragraphs (e)(1)(i)–(iv) of this section are not reported on a Form MMS–2014, MMS will convert the amounts to an appropriate rate per MMBtu for use under paragraph (e)(1) of this section.

(3) The final safety net median value will not include:

(i) Lines reporting royalties paid on pipeline buyout or buydown settlement amounts (Transaction Code 31);

(ii) Unpaid issue letters (preliminary determination letters); or

(iii) Appealed orders not yet decided by the MMS Director.

(4) The final safety net median value for a zone is calculated by arraying the

prices per MMBtu derived from the information under paragraphs (e)(1) and (2) of this section from highest to lowest (at the bottom). The final safety net median value is that price at which 50 percent plus 1 MMBtu of the production (starting from the bottom) is sold.

(5) The final safety net median value must be based on a representative sample as provided in paragraph (f) of this section.

(6) MMS will publish in the Federal Register the final safety net median value within two years following the end of the calendar year.

(7) A lessee may request a technical procedural review from the Associate Director for Royalty Management of the final safety net median value after it is published. All affected parties will be given an opportunity to participate in the review process. Following the technical procedural review, the Associate Director may modify the final safety net median value. The Associate Director's decision following the technical procedural review will be completed in an expeditious manner and will be a final Departmental decision not subject to further administrative review.

(8) This paragraph applies to a lessee's unprocessed gas and residue gas produced from leases in a zone which is valued using an index-based method under this section, but only for that residue gas where the associated gas plant products are valued under § 206.453 and not under this section. The lessee must determine the weighted-average index-based value for unprocessed gas and residue gas in the zone by summing the index-based values determined under this section, less applicable transportation allowances under § 206.457, and dividing that sum by the total quantity of MMBtu's of unprocessed gas and residue gas in the zone. If that weighted-average index-based value is less than the final safety net median value for the zone, the lessee must pay additional royalties, plus interest, as follows:

(i) For the first calendar year this section is in effect, the additional royalty payment for production subject to this paragraph is calculated as follows:

(A) Determine the lesser of the final safety net median value or 105 percent of the lessee's weighted-average index-based value determined in preceding paragraph (e)(8);

(B) Subtract the weighted-average index-based value from the lesser value under preceding paragraph (e)(8)(i)(A) of this section;

(C) Multiply the difference by the lessee's royalty quantity for all unprocessed gas and residue gas in the zone subject to this paragraph, converted to MMBtu's.

(ii) For subsequent calendar years, the additional royalty payment for production subject to this paragraph is calculated as follows:

(A) Subtract the lessee's weighted-average index-based value determined under preceding paragraph (e)(8) from the final safety net median value;

(B) Multiply the difference by 50 percent;

(C) Multiply the result by the lessee's royalty quantity for all unprocessed gas and residue gas in the zone subject to this paragraph, converted to MMBtu's.

(iii) Late payment interest will accrue on any underpaid royalties in accordance with paragraph (e)(12) of this section.

(9) This paragraph applies to a lessee's residue gas, NGL's, elemental sulfur, and drip condensate produced from leases in a zone which are valued using an index-based value determined under this section. The lessee must determine the weighted-average index-based value of that residue gas and associated products in the zone by summing the index-based values determined under this section, less applicable transportation allowances under § 206.457, and dividing that sum by the total quantity of MMBtu's of that residue gas and associated products in the zone. If that weighted-average index-based value is less than the final safety net median value for the zone, the lessee must pay additional royalties, plus interest, as follows:

(i) For the first calendar year this section is in effect, the additional royalty payment for production subject to this paragraph is calculated as follows:

(A) Determine the lesser of the final safety net median value or 105 percent of the lessee's weighted-average index-based value determined under preceding paragraph (e)(9);

(B) Subtract the weighted-average index-based value from the lesser value under preceding paragraph (e)(9)(i)(A) of this section;

(C) Multiply the difference by the lessee's royalty quantity for all residue gas and associated products in the zone subject to this paragraph, converted to MMBtu's.

(ii) For subsequent calendar years, the additional royalty payment for production subject to this paragraph is calculated as follows:

(A) Subtract the lessee's weighted-average index-based value determined under preceding paragraph (e)(9) from the final safety net median value;

(B) Multiply the difference by 50 percent;

(C) Multiply the result by the lessee's royalty quantity for all residue gas and associated products in the zone subject to this paragraph, converted to MMBtu's.

(iii) Late payment interest will accrue on any underpaid royalties in accordance with paragraph (e)(12) of this section.

(10) This paragraph applies to a lessee's residue gas, NGL's, elemental sulfur, and drip condensate produced from leases in a zone which are valued using the lessee's or the lessee's affiliated purchaser's gross proceeds for residue gas determined under §§ 206.453(b) or 206.454(a)(2)(ii)(B) of this subpart, as applicable. The lessee must determine the weighted-average value of that residue gas and associated products in the zone by summing the gross proceeds-based values determined under §§ 206.453(b) or 206.454(a)(2)(ii)(B), less applicable transportation allowances under § 206.457, and dividing that sum by the total quantity of MMBtu's of that residue gas and associated products in the zone. If the resulting weighted-average gross proceeds-based value is less than the final safety net median value for the zone, the lessee must pay additional royalties, plus interest, as follows:

(i) For the first calendar year this section is in effect, the additional royalty payment for production subject to this paragraph is calculated as follows:

(A) Determine the lesser of the final safety net median value or 105 percent of the lessee's weighted-average gross proceeds-based value determined under preceding paragraph (e)(10);

(B) Subtract the weighted-average gross proceeds-based value from the lesser value under preceding paragraph (e)(10)(i)(A) of this section;

(C) Multiply the difference by the lessee's royalty quantity for all residue gas and associated products in the zone subject to this paragraph, converted to MMBtu's.

(ii) For subsequent calendar years, the additional royalty payment for production subject to this paragraph is calculated as follows:

(A) Subtract the lessee's weighted-average gross proceeds-based value determined under preceding paragraph (e)(10) from the final safety net median value;

(B) Multiply the difference by 50 percent;

(C) Multiply the result by the lessee's royalty quantity for all residue gas and associated products in the zone subject

to this paragraph, converted to MMBtu's.

(iii) Late payment interest will accrue on any underpaid royalties in accordance with paragraph (e)(12) of this section.

(11) For each deepwater lease on the Outer Continental Shelf, the additional royalty due under paragraphs (e)(8), (e)(9), and (e)(10) of this section will be calculated by deducting from the applicable safety net median value the appropriate transportation allowance to the first point within a zone to which production from that lease flows.

(12)(i) As soon as possible following the end of each calendar year (preferably within 6 months), MMS will publish an initial safety net median value for each zone. The initial safety net median value will be calculated using the methodology in paragraph (e)(4) of this section and using the information listed in paragraph (e)(1) of this section available at the time of its calculation, even if that information is not final.

(ii) The lessee may submit an estimated payment for any additional royalty it determines is due because of the difference between the lessee's weighted-average value determined under this section and the initial safety net median value. If the final safety net median value published under paragraph (e)(6) of this section is lower than the initial safety net median value, the lessee is entitled to a credit or refund of all or a portion of its estimated payment without interest under paragraph (e)(12)(iii) of this section.

(iii) After publication of the initial safety net median value or the final safety net median value, the lessee may report additional royalty payments using a one-line entry on Form MMS–2014 for each zone. If the lessee files a Form MMS–2014 and makes an estimated payment of additional royalty after publication of the initial safety net median value, then following publication of the final safety net median value it must file an amended Form MMS–2014 adjusting any payments for each zone, if necessary. On this amended Form MMS–2014, the lessee may recoup any overpayment by filing a credit adjustment. This first credit adjustment is not subject to the requirements of section 10 of the Outer Continental Shelf Lands Act, 43 U.S.C. 1339. Any subsequent credit adjustment for a zone is subject to section 10.

(iv) Late payment interest will not accrue on any additional royalty owed under paragraphs (e)(8), (e)(9), or (e)(10) of this section until the date MMS publishes the initial safety net value.

(f) *Representative sample.* The final safety net median value must be based on a representative sample, which, for purposes of this section, means at least ten percent of the MMBtu of production reported to MMS on Form MMS–2014 for leases in a zone under paragraphs (e)(1) (i) and (ii) of this section, or at least twenty percent of the lines reported to MMS on Form MMS–2014 for leases in a zone under paragraphs (e)(1) (i) and (ii) of this section. If a representative sample meeting these criteria is not available at the time MMS is required to calculate the initial safety net median value under paragraph (e)(12) of this section, MMS will use the following procedures to obtain an appropriate sample:

(1) Among lessees in the zone using an index-based method to value production under this section, MMS will ask for volunteers to provide access to their records (including records regarding affiliated purchasers' resale values) to obtain arm's-length gross proceeds volume and value information. MMS will take a stratified sample of this information to be added to the information reported on Form MMS–2014 based on arm's-length gross proceeds under paragraphs (e)(1) (i) and (ii) of this section to determine the final safety net median value for the zone.

(2) If there are no volunteers in the zone, or not enough information from the volunteers to fulfill the requirements of a representative sample, MMS will establish the final safety net median value. Actions that MMS will take to determine the final safety net median value will include, but not be limited to, issuing orders to lessees within the zone necessary to obtain sufficient gross proceeds data to develop the final safety net median value for the zone.

(3) Lessees that volunteer to provide access to their records under this paragraph will have any additional royalty obligation determined under paragraphs (e)(8), (e)(9), or (e)(10) of this section based upon the lesser of a negotiated value or a calculation under those paragraphs using the final safety net median value reduced by $0.005/MMBtu.

(g) *Zone determination.* (1) MMS will publish in the Federal Register the zones with an active spot market and published indices that are eligible for an index-based valuation method. MMS will use the following factors and conditions in determining eligible zones:

(i) Common markets served;

(ii) Common pipeline systems;

(iii) Simplification; and

(iv) Easy identification in MMS' system, such as offshore blocks, offshore areas, or onshore counties.

(2) Deepwater leases in the OCS will not be included in a zone that includes non-deepwater leases.

(3) MMS will monitor the market activity in the zones and, if necessary, hold a technical conference to add or modify a particular zone. Any change to the zones will be published in the Federal Register.

(h) *Zone disqualification.* If market conditions change so that an index-based method for determining value is no longer an appropriate measure of market value for a zone, MMS will hold a technical conference to consider disqualification of a zone. MMS will publish notice in the Federal Register of a zone disqualification. However, MMS will not disqualify a zone prior to the end of the calendar year. MMS will notify lessees by September 1 of the year prior to disqualification.

§ 206.455 Determination of quantities and qualities for computing royalties.

(a)(1) Royalties must be computed on the basis of the quantity and quality of unprocessed gas at the facility measurement point approved by BLM or MMS for onshore and OCS leases, respectively.

(2) If the value of gas determined under § 206.452 of this subpart is based upon a quantity and/or quality that is different from the quantity and/or quality at the facility measurement point, as approved by BLM or MMS, that value must be adjusted for the differences in quantity and/or quality.

(b)(1) For residue gas and gas plant products, the quantity basis for computing royalties due is the monthly net output of the plant even though residue gas and/or gas plant products may be in temporary storage.

(2) If the value of residue gas and/or gas plant products determined under § 206.453 of this subpart is based upon a quantity and/or quality of residue gas and/or gas plant products that is different from that which is attributable to a lease, determined in accordance with paragraph (c) of this section, that value must be adjusted for the differences in quantity and/or quality.

(c) The quantity of the residue gas and gas plant products attributable to a lease must be determined according to the following procedure:

(1) When the net output of the processing plant is derived from gas obtained from only one lease, the quantity of the residue gas and gas plant products on which computations of royalty are based is the net output of the plant.

(2) When the net output of a processing plant is derived from gas obtained from more than one lease producing gas of uniform content, the quantity of the residue gas and gas plant products allocable to each lease must be in the same proportions as the ratios obtained by dividing the amount of gas delivered to the plant from each lease by the total amount of gas delivered from all leases.

(3) When the net output of a processing plant is derived from gas obtained from more than one lease producing gas of nonuniform content, the quantity of the residue gas allocable to each lease will be determined by multiplying the amount of gas delivered to the plant from the lease by the residue gas content of the gas, and dividing the arithmetical product thus obtained by the sum of the similar arithmetical products separately obtained for all leases from which gas is delivered to the plant, and then multiplying the net output of the residue gas by the arithmetic quotient obtained. The net output of gas plant products allocable to each lease will be determined by multiplying the amount of gas delivered to the plant from the lease by the gas plant product content of the gas, and dividing the arithmetical product thus obtained by the sum of the similar arithmetical products separately obtained for all leases from which gas is delivered to the plant, and then multiplying the net output of each gas plant product by the arithmetic quotient obtained.

(4) A lessee may request MMS approval of other methods for determining the quantity of residue gas and gas plant products allocable to each lease. If approved, such method will be applicable to all gas production from Federal leases that is processed in the same plant.

(d)(1) No deductions may be made from the royalty volume or royalty value for actual or theoretical losses. Any actual loss of unprocessed gas that may be sustained prior to the facility measurement point will not be subject to royalty provided that such loss is determined to have been unavoidable by BLM or MMS, as appropriate.

(2) Except as provided in paragraph (d)(1) of this section and 30 CFR 202.451(c) of this part, royalties are due on 100 percent of the volume determined in accordance with paragraphs (a) through (c) of this section. There can be no reduction in that determined volume for actual losses after the quantity basis has been determined or for theoretical losses that are claimed to have taken place. Royalties are due on 100 percent of the value of the unprocessed gas, residue gas, and/or gas plant products as provided in this subpart, less applicable allowances. There can be no deduction from the value of the unprocessed gas, residue gas, and/or gas plant products to compensate for actual losses after the quantity basis has been determined, or for theoretical losses that are claimed to have taken place.

§ 206.456 Transportation allowances—general.

(a)(1) Where the value of gas has been determined under this subpart at a point off the lease (*e.g.*, sales point, IPP, or other point of value determination), the lessee may deduct from value a transportation allowance to reflect the value, for royalty purposes, at the lease. For residue gas and gas plant products, the lessee may deduct a transportation allowance representing the reasonable costs of transporting the residue gas and gas plant products to a gas processing plant off the lease and from the plant to a point away from the plant. If gas flows or could flow through more than one pipeline segment to the point where value is determined, the transportation allowance will be based on the total allowances for each segment determined under § 206.457.

(2) For the purposes of this subpart, the lessee's costs of compression downstream of the facility measurement point incurred either by the payment of such cost under a contract or the performance of that function may be a part of the lessee's transportation allowance determined under § 206.457 of this subpart. However, under no circumstances may any costs of compression occurring prior to the facility measurement point be deductible. The lessee's costs of boosting or compressing residue gas after processing are part of the transportation allowance for residue gas.

(b) Transportation costs must be allocated among all products produced and transported as provided in § 206.457 of this subpart.

(c)(1) Except as provided in paragraph (c)(2) of this section, the transportation allowance deduction on the basis of a selling arrangement must not exceed 50 percent of the value of the unprocessed gas, residue gas, or gas plant products determined under § 206.452, § 206.453, or § 206.454 of this subpart, as applicable. For purposes of this section, NGL's must be considered one product.

(2) Upon request of a lessee, MMS may approve an exception for a transportation allowance deduction in excess of the limitations prescribed by paragraph (c)(1) of this section. The lessee must demonstrate that the transportation costs incurred in excess of the limitations prescribed in paragraph (c)(1) of this section were reasonable and necessary. An application for exception must contain all relevant and supporting documentation necessary for MMS to make a determination. Under no circumstances may the value for royalty purposes under any selling arrangement be reduced to zero.

(3) Notwithstanding any other provision of this subpart, MMS may approve, upon request of the lessee, a transportation allowance for the movement of gas from deepwater OCS leases, even if the production from the lease has not been initially separated.

(d) If, after a review and/or audit, MMS determines that a lessee has improperly determined a transportation allowance authorized by this subpart, then the lessee must pay any additional royalties, plus interest, determined in accordance with 30 CFR 218.54, or will be entitled to a credit, without interest.

§ 206.457 Determination of transportation allowances.

(a) *Introduction.* This section explains how to determine the applicable transportation allowance. If the lessee uses gross proceeds to value its production, then the transportation allowance is based on the transportation costs under paragraphs (b) or (c) of this section, depending upon whether the pipeline is jurisdictional or non-jurisdictional, and whether the transportation contract is arm's-length. If the lessee uses an index-based method to value its production, *and if* a portion of the lessee's gas flows to the IPP used for value, then, as provided in paragraph (d) of this section, the transportation allowance is based on the transportation costs under paragraphs (b) or (c) of this section, as applicable. If the lessee uses an index-based method to value its production, but *none* of its gas flows to the IPP used for value, the transportation allowance is determined under paragraph (d)(5) of this section.

(b) *Jurisdictional pipelines and arm's-length transportation contracts for non-jurisdictional pipelines.* (1)(i) For all value determinations under § 206.452, § 206.453, § 206.454(a)(1)(ii)(B), or § 206.454(a)(2)(ii)(B) of this subpart, where the lessee or its affiliate actually transports unprocessed gas, residue gas, gas plant products, or drip condensate through a jurisdictional pipeline, the transportation allowance must be based on the reasonable, actual contract rate paid in accordance with this paragraph.

(ii) For all value determinations under § 206.452, § 206.453, § 206.454 (a)(1)(ii)(B), or § 206.454(a)(2)(ii)(B) of

this subpart, where the lessee or its affiliate actually transports unprocessed gas, residue gas, gas plant products, or drip condensate through a non-jurisdictional pipeline under an arm's-length transportation contract, the transportation allowance must be based on the reasonable, actual contract rate paid in accordance with this paragraph.

(2)(i) In conducting reviews and audits, MMS will examine whether or not the actual contract rate paid reflects more than the consideration actually transferred either directly or indirectly from the lessee to the transporter for the transportation. If the contract rate paid reflects more than the total consideration, then MMS may require that the transportation allowance be determined in accordance with paragraph (c)(2) of this section.

(ii) If MMS determines that the actual contract rate paid does not reflect the reasonable value of the transportation because of misconduct by or between the contracting parties, or because the lessee otherwise has breached its duty to the lessor to market the production for the mutual benefit of the lessee and the lessor, then MMS will require that the transportation allowance be determined in accordance with paragraph (c)(2) of this section. When MMS determines that the value of the transportation may be unreasonable, MMS will notify the lessee and give the lessee an opportunity to provide written information justifying the lessee's transportation costs.

(3)(i) If a transportation contract includes more than one product in a gaseous phase and the transportation costs attributable to each product cannot be determined from the contract, the total transportation costs must be allocated in a consistent and equitable manner to each of the products transported in the same proportion as the ratio of the volume of each product to the volume of all products in the gaseous phase. No allowance may be taken for the costs of transporting lease production which is not royalty bearing without MMS approval.

(ii) Notwithstanding the requirements of paragraph (b)(3)(i) of this section, the lessee may propose to MMS a cost allocation method on the basis of the values of the products transported. MMS will approve the method unless it determines that it is not consistent with the purposes of the regulations in this part.

(4) If a transportation contract includes both gaseous and liquid products and the transportation costs attributable to each cannot be determined from the contract, the lessee must propose an allocation procedure to MMS. The lessee may use the transportation allowance determined in accordance with its proposed allocation procedure until MMS issues its determination on the acceptability of the cost allocation. The lessee must submit all relevant data to support its proposal. MMS will then determine the gas transportation allowance based upon the lessee's proposal and any additional information MMS deems necessary.

(5) Where the lessee's payments for transportation under a contract are not based on a dollar per unit, the lessee must convert whatever consideration is paid to a dollar value equivalent for the purposes of this section.

(6) Where an arm's-length sales contract price or a posted price includes a provision whereby the listed price is reduced by a transportation factor, MMS will not consider the transportation factor to be a transportation allowance. The transportation factor may be used in determining the lessee's (or affiliate's, as the case may be) gross proceeds for the sale of the product. The transportation factor may not exceed 50 percent of the base price of the product without MMS approval.

(7) MMS may require that a lessee submit transportation contracts, production agreements, operating agreements, and related documents. Documents must be submitted within a reasonable time as determined by MMS.

(c) *Non-jurisdictional pipelines—non-arm's-length transportation.* (1) For all value determinations under § 206.452, § 206.453, § 206.454(a)(1)(ii)(B), or § 206.454(a)(2)(ii)(B) of this subpart, the transportation allowance for a non-jurisdictional pipeline under either a non-arm's-length transportation contract or no contract must be determined as follows:

(i) If 30 percent or less of the gas in the pipeline is transported under arm's-length transportation contracts, the transportation allowance for a calendar year must be based on either:

(A) The lessee's reasonable, actual costs as provided under paragraph (c)(2) of this section; or

(B) A rate of $0.02/MMBtu for leases on the Outer Continental Shelf; for onshore leases a *de minimis* rate determined by MMS for onshore leases not to exceed $0.09/MMBtu, including pipeline fuel consideration. MMS periodically will establish the rate based upon available transportation cost data and will publish the applicable rate in the Federal Register.

(ii) If more than 30 percent of the gas in the pipeline is transported under arm's-length transportation contracts, the transportation allowance for a calendar year must be based on either:

(A) The lessee's reasonable, actual costs as provided under paragraph (c)(2) of this section; or

(B) A rate determined by arraying all of the arm's-length contract rates for the pipeline from highest at the top to lowest at the bottom and starting from the bottom, choosing the rate closest to the 25th percentile from the bottom. If two of the contract rates are equidistant from the 25th percentile, use the average of the two rates.

(2) This paragraph applies to non-arm's-length and no contract transportation situations where the lessee elects to determine its transportation allowance based upon its actual costs. Under this paragraph, the lessee's reasonable, actual costs include operating and maintenance expenses, overhead, and either depreciation and a return on undepreciated capital investment in accordance with paragraph (c)(2)(iv)(A) of this section, or a cost equal to the initial depreciable investment in the transportation system multiplied by a rate of return in accordance with paragraph (c)(2)(iv)(B) of this section. Allowable capital costs are generally those costs for depreciable fixed assets (including costs of delivery and installation of capital equipment) which are an integral part of the transportation system.

(i) Allowable operating expenses include: Operations supervision and engineering; operations labor; fuel; utilities; materials; ad valorem property taxes; rent; supplies; and any other directly allocable and attributable operating expense which the lessee can document.

(ii) Allowable maintenance expenses include: Maintenance of the transportation system; maintenance of equipment; maintenance labor; and other directly allocable and attributable maintenance expenses which the lessee can document.

(iii) Overhead directly attributable and allocable to the operation and maintenance of the transportation system is an allowable expense. State and Federal income taxes and severance taxes and other fees, including royalties, are not allowable expenses.

(iv) A lessee may use either depreciation or a return on depreciable capital investment. After a lessee has elected to use either method for a transportation system, the lessee may not later elect to change to the other alternative without approval of MMS.

(A) To compute depreciation, the lessee may elect to use either a straight-line depreciation method based on the life of equipment or on the life of the

reserves which the transportation system services, or a unit of production method. After an election is made, the lessee may not change methods without MMS approval. A change in ownership of a transportation system will not alter the depreciation schedule established by the original transporter/lessee for purposes of the allowance calculation. However, for transportation systems purchased by the lessee or the lessee's affiliate that do not have a previously claimed MMS depreciation schedule, the lessee may treat the transportation system as a newly installed facility for depreciation purposes. With or without a change in ownership, a transportation system must be depreciated only once. Equipment may not be depreciated below a reasonable salvage value.

(B) MMS will allow as a cost an amount equal to the allowable initial capital investment in the transportation system multiplied by the rate of return determined under paragraph (b)(2)(v) of this section. No allowance will be provided for depreciation. This alternative may apply only to transportation facilities first placed in service after March 1, 1988.

(v) The rate of return must be the industrial rate associated with Standard and Poor's BBB rating. The rate of return must be the monthly average rate as published in Standard and Poor's Bond Guide for the first month for which the allowance is applicable. The rate must be redetermined at the beginning of each subsequent calendar year.

(vi) The deduction for transportation costs must be determined on the basis of the lessee's cost of transporting each product through each individual transportation system. Where more than one product in a gaseous phase is transported, the allocation of costs to each of the products transported must be made in a consistent and equitable manner in the same proportion as the ratio of the volume of each product to the volume of all products in the gaseous phase. The lessee may not take an allowance for transporting a product which is not royalty bearing without MMS approval.

(vii) Notwithstanding the requirements of paragraph (c)(2)(vi) of this section, the lessee may propose to MMS a cost allocation method on the basis of the values of the products transported. MMS will approve the method unless it determines that it is not consistent with the purposes of the regulations in this part.

(viii) Where both gaseous and liquid products are transported through the same transportation system, the lessee must propose a cost allocation procedure to MMS. The lessee may use the transportation allowance determined in accordance with its proposed allocation procedure until MMS issues its determination on the acceptability of the cost allocation. The lessee must submit all relevant data to support its proposal. MMS will then determine the transportation allowance based upon the lessee's proposal and any additional information MMS deems necessary.

(ix) Upon request by MMS, the lessee must submit all data used to determine its transportation allowance. The data must be provided within a reasonable period of time, as determined by MMS.

(d) *All pipelines—index-based valuation methods.* (1) This paragraph applies to determine transportation allowances each month for gas valued under the index-based valuation methods in § 206.454(b) of this subpart.

(2) Where the lessee's gas production from a well with a single connect is valued using an index-based method under § 206.454(b)(1), *and* a portion of the lessee's gas actually flows to the IPP used for value, the applicable transportation allowance must be determined under either paragraphs (b) or (c) of this section, as applicable. If the lessee's gas does not actually flow to the IPP, the transportation allowance for that pipeline must be determined under paragraph (d)(5) of this section.

(3) Where the lessee's gas production from a well with a split connect or multiple connection is valued using a weighted-average index value under § 206.454(b)(2)(i) of this subpart, the lessee first must determine the applicable transportation allowance under either paragraphs (b) or (c) of this section, as applicable, for gas volumes actually transported to each IPP used in the calculation to value the lessee's gas from the well. The volume weighted-average transportation allowance per MMBtu for all of the lessee's gas transported to each IPP used for valuation is the applicable transportation allowance for all of the lessee's gas from the well.

(4) Where the lessee's gas production from a well with a split connect or multiple connection is valued using the fixed-index value method under § 206.454(b)(2)(ii) of this subpart, and if some of the lessee's gas actually flows to the IPP selected for value, then the transportation allowance for all the lessee's gas from the well is determined based upon the lessee's transportation allowances per MMBtu, determined under paragraphs (b) or (c) of this section, as applicable, to transport gas to that IPP. If none of the lessee's gas actually flows to the IPP selected for value, the transportation allowance must be determined under paragraph (d)(5) of this section.

(5) A transportation allowance for a pipeline, or pipeline segment, through which a lessee's gas does not actually flow must be determined as follows:

(i) If it is a jurisdictional pipeline, the applicable transportation allowance rate is the maximum interruptible transportation (IT) rate for the pipeline for the month.

(ii) If it is a non-jurisdictional pipeline and the lessee is not affiliated with the owners of the pipeline, the applicable transportation allowance is determined based on either:

(A) A rate calculated by MMS at the lessee's request for a fee paid to MMS based on MMS' administrative costs of calculating that rate; or

(B) A rate determined by the lessee based on documentation supporting the non-jurisdictional pipeline's rate, including but not limited to any one of the following:

(*1*) an arm's-length contract;

(*2*) the pipeline's published rate; or

(*3*) the rate applicable to the lessee's actual transportation through the pipeline for any 30 days (not necessarily consecutive) in the previous 12 months.

(iii) If it is a non-jurisdictional pipeline and the lessee is affiliated with the owners of the pipeline, the applicable transportation allowance is determined under § 206.457(c).

(e) *Reporting.* Transportation allowances must be reported as a separate line item on Form MMS–2014, unless MMS approves a different reporting procedure.

(f) *Interest assessments.* (1) If a lessee erroneously reports a transportation allowance which results in an underpayment of royalties, interest must be paid on the amount of that underpayment.

(2) Interest required to be paid by this section must be determined in accordance with 30 CFR 218.54.

(g) *Adjustments.* (1) If the actual transportation allowance is less than the amount the lessee has taken on Form MMS–2014, the lessee will be required to pay additional royalties due plus interest computed under 30 CFR 218.54, retroactive to the first day of the first month the lessee is authorized to deduct a transportation allowance. If the actual transportation allowance is greater than the amount the lessee has taken on Form MMS–2014, the lessee will be entitled to a credit without interest.

(2) For lessees transporting production from onshore Federal leases, the lessee must submit a corrected Form MMS–2014 to reflect actual costs, together with any payment, in

accordance with instructions provided by MMS.

(3) For lessees transporting gas production from leases on the OCS, if the lessee's estimated transportation allowance exceeds the allowance based on actual costs, the lessee must submit a corrected Form MMS–2014 to reflect actual costs, together with its payment, in accordance with instructions provided by MMS. If the lessee's estimated transportation allowance is less than the allowance based on actual costs, the refund procedure will be specified by MMS.

(h) *Actual or theoretical losses.* Notwithstanding any other provisions of this subpart, for other than arm's-length contracts, no cost will be allowed for transportation which results from payments (either volumetric or for value) for actual or theoretical losses. This section does not apply when the transportation allowance is based upon a FERC or state regulatory agency-approved tariff.

(i) *Other transportation cost determinations.* The provisions of this section will apply to determine transportation costs when establishing value using a net-back valuation procedure or any other procedure that requires deduction of transportation costs.

§ 206.458 Processing allowances—general.

(a) Where the value of any gas plant product is determined under § 206.453 of this subpart, a deduction will be allowed for the reasonable actual costs of processing. No processing allowance is applicable to any gas plant product valued under § 206.454.

(b) Processing costs must be allocated among the gas plant products. A separate processing allowance must be determined for each gas plant product and processing plant relationship. Natural gas liquids (NGL's) must be considered as one product.

(c)(1) Except as provided in paragraph (d)(2) of this section, the processing allowance may not be applied against the value of the residue gas. Where there is no residue gas MMS may designate an appropriate gas plant product against which no allowance may be applied.

(2) Except as provided in paragraph (c)(3) of this section, the processing allowance deduction on the basis of an individual product must not exceed 66⅔ percent of the value of each gas plant product determined in accordance with § 206.453 of this subpart (such value to be reduced first for any transportation allowances related to postprocessing transportation authorized by § 206.456 of this subpart).

(3) Upon request of a lessee, MMS may approve a processing allowance in excess of the limitation prescribed by paragraph (c)(2) of this section. The lessee must demonstrate that the processing costs incurred in excess of the limitation prescribed in paragraph (c)(2) of this section were reasonable, actual, and necessary. An application for exception must contain all relevant and supporting documentation for MMS to make a determination. Under no circumstances may the value for royalty purposes of any gas plant product be reduced to zero.

(d)(1) Except as provided in paragraph (d)(2) of this section, no processing cost deduction will be allowed for the costs of placing lease products in marketable condition, including dehydration, separation, compression upstream of the facility measurement point, or storage, even if those functions are performed off the lease or at a processing plant. Where gas is processed for the removal of acid gases, commonly referred to as 'sweetening,' no processing cost deduction will be allowed for such costs unless the acid gases removed are further processed into a gas plant product. In such event, the lessee will be eligible for a processing allowance as determined in accordance with this subpart. However, MMS will not grant any processing allowance for processing lease production which is not royalty bearing.

(2)(i) If the lessee incurs extraordinary costs for processing gas production from a gas production operation, it may apply to MMS for an allowance for those costs which will be in addition to any other processing allowance to which the lessee is entitled under this section. Such an allowance may be granted only if the lessee can demonstrate that the costs are, by reference to standard industry conditions and practice, extraordinary, unusual, or unconventional.

(ii) Prior MMS approval to continue an extraordinary processing cost allowance is not required. However, to retain the authority to deduct the allowance the lessee must report the deduction to MMS in a form and manner prescribed by MMS.

(e) If MMS determines that a lessee has improperly determined a processing allowance authorized by this subpart, then the lessee must pay additional royalties, plus interest determined in accordance with 30 CFR 218.54, or will be entitled to a credit, without interest.

§ 206.459 Determination of processing allowances.

(a) *Arm's-length processing contracts.* (1)(i) For processing costs incurred by a lessee under an arm's-length contract, the processing allowance must be the reasonable actual costs incurred by the lessee for processing the gas under that contract, except as provided in paragraphs (a)(1)(ii) and (a)(1)(iii) of this section, subject to monitoring, review, audit, and adjustment. The lessee will have the burden of demonstrating that its contract is arm's-length.

(ii) In conducting reviews and audits, MMS will examine whether the contract reflects more than the consideration actually transferred either directly or indirectly from the lessee to the processor for the processing. If the contract reflects more than the total consideration, then MMS may require that the processing allowance be determined in accordance with paragraph (b) of this section.

(iii) If MMS determines that the consideration paid under an arm's-length processing contract does not reflect the reasonable value of the processing because of misconduct by or between the contracting parties, or because the lessee otherwise has breached its duty to the lessor to market the production for the mutual benefit of the lessee and lessor, then MMS will require that the processing allowance be determined in accordance with paragraph (b) of this section. When MMS determines that the value of the processing may be unreasonable, MMS will notify the lessee and give the lessee an opportunity to provide written information justifying the lessee's processing costs.

(2) If an arm's-length processing contract includes more than one gas plant product and the processing costs attributable to each product can be determined from the contract, then the processing costs for each gas plant product must be determined in accordance with the contract. No allowance may be taken for the costs of processing lease production which is not royalty-bearing.

(3) If an arm's-length processing contract includes more than one gas plant product and the processing costs attributable to each product cannot be determined from the contract, the lessee must propose an allocation procedure to MMS. The lessee may use its proposed allocation procedure until MMS issues its determination. The lessee must submit all relevant data to support its proposal. MMS will then determine the processing allowance based upon the lessee's proposal and any additional information MMS deems necessary. No processing allowance will be granted for the costs of processing lease production which is not royalty bearing.

(4) Where the lessee's payments for processing under an arm's-length contract are not based on a dollar per unit basis, the lessee must convert whatever consideration is paid to a dollar value equivalent for the purposes of this section.

(5) MMS may require that a lessee submit arm's-length processing agreements and related documents. Documents must be submitted within a reasonable time, determined by MMS.

(b) *Non-arm's-length or no contract.* (1) If a lessee has a non-arm's-length processing contract or has no contract, including those situations where the lessee performs processing for itself, the processing allowance will be based upon the lessee's reasonable actual costs as provided in this paragraph. All processing allowances deducted under a non-arm's-length or no-contract situation are subject to monitoring, review, audit, and adjustment. MMS will monitor the allowance deduction to ensure that deductions are reasonable and allowable. When necessary or appropriate, MMS may direct a lessee to modify its estimated or actual processing allowance.

(2) The processing allowance for non-arm's-length or no-contract situations must be based upon the lessee's actual costs for processing during the reporting period, including operating and maintenance expenses, overhead, and either depreciation and a return on undepreciated capital investment in accordance with paragraph (b)(2)(iv)(A) of this section, or a cost equal to the initial depreciable investment in the processing plant multiplied by a rate of return in accordance with paragraph (b)(2)(iv)(B) of this section. Allowable capital costs are generally those costs for depreciable fixed assets (including costs of delivery and installation of capital equipment) which are an integral part of the processing plant.

(i) Allowable operating expenses include: Operations supervision and engineering; operations labor; fuel; utilities; materials; ad valorem property taxes; rent; supplies; and any other directly allocable and attributable operating expense which the lessee can document.

(ii) Allowable maintenance expenses include: Maintenance of the processing plant; maintenance of equipment; maintenance labor; and other directly allocable and attributable maintenance expenses which the lessee can document.

(iii) Overhead directly attributable and allocable to the operation and maintenance of the processing plant is an allowable expense. State and Federal income taxes and severance taxes, including royalties, are not allowable expenses.

(iv) A lessee may use either depreciation or a return on depreciable capital investment. When a lessee has elected to use either method for a processing plant, the lessee may not later elect to change to the other alternative without approval of MMS.

(A) To compute depreciation, the lessee may elect to use either a straight-line depreciation method based on the life of equipment or on the life of the reserves which the processing plant services, or a unit-of-production method. After an election is made, the lessee may not change methods without MMS approval. A change in ownership of a processing plant will not alter the depreciation schedule established by the original processor/lessee for purposes of the allowance calculation. However, for processing plants purchased by the lessee or the lessee's affiliate that do not have a previously claimed MMS depreciation schedule, the lessee may treat the processing plant as a newly installed facility for depreciation purposes. With or without a change in ownership, a processing plant may be depreciated only once. Equipment may not be depreciated below a reasonable salvage value.

(B) MMS will allow as a cost an amount equal to the allowable initial capital investment in the processing plant multiplied by the rate of return determined under paragraph (b)(2)(v) of this section. No allowance will be provided for depreciation. This alternative will apply only to plants first placed in service after March 1, 1988.

(v) The rate of return must be the industrial rate associated with Standard and Poor's BBB rating. The rate of return must be the monthly average rate as published in Standard and Poor's Bond Guide for the first month for which the allowance is applicable. The rate must be redetermined at the beginning of each subsequent calendar year.

(3) The processing allowance for each gas plant product must be determined based on the lessee's reasonable and actual cost of processing the gas. Allocation of costs to each gas plant product must be based upon generally accepted accounting principles. The lessee may not take an allowance for the costs of processing lease production which is not royalty bearing.

(4) A lessee may apply to MMS for an exception from the requirement that it compute actual costs in accordance with paragraphs (b)(1) through (b)(3) of this section. MMS may grant the exception only if: (i) The lessee has arm's-length contracts for processing other gas production at the same processing plant; and (ii) at least 50 percent of the gas processed annually at the plant is processed under arm's-length processing contracts; if MMS grants the exception, the lessee must use as its processing allowance the volume weighted average prices charged other persons under arm's-length contracts for processing at the same plant.

(5) Upon request by MMS, the lessee must submit all data used by the lessee to determine its processing allowance. The data must be provided within a reasonable period of time, as determined by MMS.

(c) *Reporting.* Processing allowances must be reported as a separate line on the Form MMS–2014, unless MMS approves a different reporting procedure.

(d) *Interest assessments.* (1) If a lessee erroneously reports a processing allowance which results in an underpayment of royalties, interest must be paid on the amount of that underpayment.

(2) Interest required to be paid by this section must be determined in accordance with 30 CFR 218.54.

(e) *Adjustments.* (1) If the actual gas processing allowance is less than the amount the lessee has taken on Form MMS–2014 for each month during the allowance form reporting period, the lessee will be required to pay additional royalties due plus interest computed under 30 CFR 218.54, retroactive to the first day of the first month the lessee is authorized to deduct a processing allowance. If the actual processing allowance is greater than the amount the lessee has taken on Form MMS–2014 for each month during the allowance period, the lessee will be entitled to a credit without interest.

(2) For lessees processing production from onshore Federal leases, the lessee must submit a corrected Form MMS–2014 to reflect actual costs, together with any payment, in accordance with instructions provided by MMS.

(3) For lessees processing gas production from leases on the OCS, if the lessee's estimated processing allowance exceeds the allowance based on actual costs, the lessee must submit a corrected Form MMS–2014 to reflect actual costs, together with its payment, in accordance with instructions provided by MMS. If the lessee's estimated costs were less than the actual costs, the refund procedure will be specified by MMS.

(f) *Other processing cost determinations.* The provisions of this section will apply to determine processing costs when establishing value using a net back valuation

procedure or any other procedure that requires deduction of processing costs.

PART 211—LIABILITY FOR ROYALTY DUE ON FEDERAL AND INDIAN LEASES AND RESPONSIBILITY TO REPORT ROYALTY AND OTHER PAYMENTS

18. The authority citation for part 211 continues to read as follows:

Authority: 5 U.S.C. 301 *et seq.*; 25 U.S.C. 396 *et seq.*, 396a *et seq.*, 2101 *et seq.*; 30 U.S.C. 181 *et seq.*, 351 *et seq.*, 1001 *et seq.*, 1701 *et seq.*; 43 U.S.C. 1301 *et seq.*, 1331 *et seq.*, 1801 *et seq.*

Subpart C—Reporting and Paying Royalties

19. In section 211.18 as proposed to be added at 60 FR 30500 (June 19, 1995) a new paragraph (c) is added to read as follows:

§ 211.18 Who is required to report and pay royalties?

* * * * *

(c) *Persons who take production allocable to Federal or Indian leases in all other approved Federal or Indian agreements.* This paragraph provides requirements and instructions for reporting and paying royalties and other payments for Federal leases in approved Federal agreements comprised of leases with differing lessors, royalty rates, or fund distributions.

(1) Except as provided in paragraphs (c) (2) and (3) and (d) of this section, if you are an operating rights owner in a Federal lease in an agreement under this paragraph, you must report and pay royalties on your entitled share of production under the terms of the agreement. You must:

(i) File a PIF with MMS as specified in Part 210 of this title and the MMS Payor Handbooks;

(ii) Report the royalties owed for that production on a Form MMS–2014 and follow the instructions provided in Part 210 of this title and the MMS Payor Handbooks; and

(iii) Pay royalties on that production as specified in Part 218 of this title and the MMS Payor Handbooks.

(2) If you are an operating rights owner who meets the definition of a small operating rights owner in § 206.451 of this title, you may report and pay royalties each month on the volume of production you actually take subject to the following criteria:

(i) You must report your takes on Form MMS–2014 using a special code.

(ii) Within 6 months after the end of each calendar year in which you report based on takes, you must pay any additional royalties that may be due on the difference between your entitled share and the volume of production on which you reported and paid royalties in accordance with 30 CFR § 202.450(d)(1)(iv)(D).

(iii) If the volume of the production on which you reported and paid royalties for the calendar year is equal to or greater than the volume of your entitled share of production for that calendar year, you will not be assessed late payment interest for any sales month during the calendar year in which you underreported volume. However, MMS will assess interest for any reported volumes based on takes if the royalty value for those volumes was not properly reported and paid. MMS will allow a credit for any overtaken volumes in accordance with applicable procedures.

(iv) If the volume of the production on which you report and paid royalties for the calendar year is less than the volume of your entitled share of production for the calendar year, you must:

(A) Report and pay royalties on the difference between the volume of your entitled share of the production for the calendar year and the volume of the production on which you reported and paid under the takes basis; and

(B) Pay interest in accordance with MMS regulations and procedures on any underpaid royalties.

(3) You are not required to report and pay royalties on your entitled share of production under paragraph (c)(1) of this section if all operating rights owners in the agreement agree to assign reporting and payment responsibilities among themselves in an alternative manner that ensures that royalties are reported and paid properly each month on the full volume of production from or attributable to each Federal lease in the agreement.

[FR Doc. 95–27079 Filed 11–3–95; 8:45 am]

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30 CFR Part 211

RIN 1010–AB45

Liability for Royalty Due on Federal and Indian Leases; Paying and Reporting Royalty and Other Payments

AGENCY: Minerals Management Service, Interior.

ACTION: Proposed rule; notice of meeting change and further extension of comment period.

SUMMARY: The Minerals Management Service (MMS) is rescheduling a public meeting in Houston, Texas, and extending the comment period for a proposed rulemaking regarding the liability for payments due on Federal and Indian leases and the responsibility to pay and report royalty and other payments (60 FR 54321, October 23, 1995).

The proposal was published in the Federal Register on June 9, 1995 (60 FR 30492). That notice proposes to establish and clarify which persons may be held liable for unpaid or underpaid royalties, compensatory royalties, or other payments on Federal and Indian mineral leases. The proposed rule also would establish who is required to report and pay royalties on production from leases not in approved Federal or Indian agreements or leases in approved Federal or Indian agreements containing 100 percent Federal or Indian tribal leases with the same lessor, the same royalty rate, and the same royalty distribution. MMS is further extending the comment period for this rule to January 26, 1996, from January 8, 1996 (60 FR 38533, July 27, 1995, and 60 FR 45112, August 30, 1995). Also, MMS is rescheduling the public meeting announced in the Federal Register (60 FR 54321, October 23, 1995) from November 29 and 30, 1995, to January 10 and 11, 1996. The meeting is to allow all interested parties an opportunity to discuss the proposed rulemaking. Interested parties are invited to attend and participate at this meeting. The meeting has been rescheduled as shown below.

DATES: A public meeting will be held on Wednesday January 10, and if necessary Thursday, January 11, 1996, from 9:00 a.m. until 5:00 p.m. Comments must be received on or before January 26, 1996.

ADDRESSES: The meeting will be held in Room 104, first floor, at the Houston Compliance Division Office, Minerals Management Service, 4141 North Sam Houston Parkway East, Houston, Texas, 77032. Comments should be sent to: David S. Guzy, Chief, Rules and Procedures Staff, Minerals Management Service, Royalty Management Program, P.O. Box 25165, MS 3101, Denver, Colorado 80225–0165, telephone (303) 231–3432, fax (303) 231–3194, e-Mail David__Guzy@smtp.mms.gov.

FOR FURTHER INFORMATION CONTACT: David S. Guzy, Chief, Rules and Procedures Staff, Minerals Management Service, Royalty Management Program, telephone (303) 231–3432, fax (303) 231–3194, e-Mail David__Guzy@smtp.mms.gov. Please contact Betty Casey at the Houston Compliance Division Office at telephone (713) 987–6802, fax (713) 987–6804

prior to December 21 if you will be attending this meeting.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public without advance registration. Public attendance may be limited to the space available. Members of the public may make statements during the meeting, to the extent time permits, and are encouraged to file written statements for consideration.

Dated: October 31, 1995.

Donald T. Sant,

Deputy Associate Director for Valuation and Operations.

[FR Doc. 95–27419 Filed 11–3–95; 8:45 am]

BILLING CODE 4310–MR–P

National Park Service

36 CFR Part 7

Cape Cod National Seashore Off-Road Vehicle Use Negotiated Rulemaking Advisory Committee

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Committee Act (5 U.S.C., Appendix), that a meeting of the Cape Cod National Seashore Off-Road Vehicle Use Negotiated Rulemaking Advisory Committee will be held on Thursday and Friday, November 16 and 17, 1995.

DATES: The meetings will be held at 9 a.m. on November 16 and 17, 1995.

ADDRESSES: The meetings will be held at the Sheraton Eastham, Route 6, Eastham, MA.

FOR FURTHER INFORMATION CONTACT: Maria Burks, Superintendent, Cape Cod National Seashore, South Wellfleet, MA 02663, 508–349–3785 EXT 203.

SUPPLEMENTARY INFORMATION: The Committee members will meet for the third of three, two-day meetings which will be held for the following reasons:

November 16, 1995—Thursday

1. Discussion of Proposed Agenda
2. Review and Discussion of Proposed Draft Rule
3. Public Participation Period
4. Adjournment

November 17, 1995—Friday

1. Review and Discussion of Proposed Draft Rule
2. Public Participation Period
3. Adjournment

The meeting is open to the public. It is expected that 75 persons will be able to attend the meeting in addition to the Committee members.

The Committee was established pursuant to the Negotiated Rulemaking Act of 1990 (5 U.S.C. 561–570). The purpose of the Committee is to advise the National Park Service with regard to proposed rulemaking governing off-road vehicle use at Cape Cod National Seashore.

Interested persons may make oral/written presentations to the Committee during the business meeting or file written statements. Such presentations may be made to the Committee during the Public Participation Period the day of the meeting, or in writing to the Park Superintendent at least seven days prior to the meeting.

Dated: October 27, 1995.

Chrysandra L. Walter,

Deputy Field Director, Northeast Area.

[FR Doc. 95–27387 Filed 11–3–95; 8:45 am]

BILLING CODE 4310–70–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 95–164, RM–8716]

Radio Broadcasting Services; Cornell, WI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Flambeau Broadcasting Co., proposing the allotment of Channel 260C3 to Cornell, Wisconsin, as that community's first local service. Canadian concurrence will be requested for the allotment of Channel 260C3 at Cornell at coordinates 45–10–56 and 91–12–20. There is a site restriction 4.9 kilometers (3 miles) west of the community.

DATES: Comments must be filed on or before December 22, 1995, and reply comments on or before January 8, 1996.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Gary Johnson, Flambeau Broadcasting, P.O. Box 351, ladysmith, Wisconsin 54858.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making,* MM Docket No. 95–164, adopted October 20, 1995, and released October 31, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's 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 Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of l980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 95–27361 Filed 11–3–95; 8:45 am]

BILLING CODE 6712–01–F

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47 CFR Part 73

[MM Docket No. 95–163; RM–8715]

Radio Broadcasting Services; Wilson Creek, WA, and Pendleton, OR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Wilson Creek Communications, LLC, proposing the substitution of Channel 278C1 for Channel 277C3 at Wilson Creek, Washington, and the modification of Station KVYF(FM)'s license accordingly. To accommodate the upgrade, petitioner also proposes the substitution of Channel 279C1 for Channel 278C1 at Pendleton, Oregon, and the modification of Station KWHT(FM)'s license accordingly. Channel 278C1 can be allotted to Wilson Creek in compliance with the Commission's minimum distance separation requirements with a site restriction of 1.1 kilometers (0.7 miles) south to avoid a short-spacing to the proposed allotment for Channel 279B, Rock Creek, British Columbia. The

coordinates for Channel 278C1 at Wilson Creek are North Latitude 47–24–49 and West Longitude 119–07–15. *See* Supplementary Information, *infra*.

DATES: Comments must be filed on or before December 22, 1995 and reply comments on or before January 8, 1996.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultants, as follows: Peter Tennenwald, Esq., Irwin, Campbell & Tennenwald, P.C., 1320 18th Street, NW., Suite 400, Washington, DC 20036–1811 (Counsel for Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making and Order to Show Cause,* MM Docket No. 95–163, adopted October 20, 1995, and released October 31, 1995. 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.

Additionally, Channel 279C1 can be allotted to Pendleton in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction at Station KWHT(FM)'s presently licensed site. The coordinates for Channel 279C1 at Pendleton are North Latitude 45–47–51 and West Longitude 118–22–17. Since Wilson Creek is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government has been requested. In accordance with Section 1.420(g) of the Commission's Rules, we shall propose to modify the license of Station KVYF(FM) without entertaining competing expressions of interest in the use of Channel 278C1 at Wilson Creek, or requiring the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 95–27365 Filed 11–3–95; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 15

[FAR Case 95–008]

RIN 9000–AG67

Federal Acquisition Regulation; Competitive Range

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing to amend the Federal Acquisition Regulation (FAR) guidance on competitive range determinations. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

DATES: *Comment Due Date:* Comments should be submitted on or before January 5, 1996, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., Room 4037, Washington, DC 20405.

Please cite FAR case 95–008 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph De Stefano at (202) 501–1758 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAR case 95–008.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule implements a recommendation of the Department of Defense Procurement Process Reform Process Action Team. The rule amends FAR 15.609 to delete the statement that a proposal should be included in the competitive range for the purpose of conducting discussions, if there is doubt as to whether the proposal is in the competitive range.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule retains the Government's policy of including in the competitive range, all proposals which have a reasonable chance of being selected for award. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite FAR case 95–008 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 15

Government procurement.

Dated: October 31, 1995.

C. Allen Olson,

Director, Office of Federal Acquisition Policy.

Therefore, it is proposed that 48 CFR part 15 be amended as set forth below:

PART 15—CONTRACTING BY NEGOTIATION

1. The authority citation for 48 CFR part 15 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

15.609 [Amended]

2. Section 15.609 is amended in paragraph (a) by removing the last sentence.

[FR Doc. 95–27404 Filed 11–3–95; 8:45 am]

BILLING CODE 6820–EP–M

Notices

Federal Register
Vol. 60, No. 214
Monday, November 6, 1995

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

Office of the Secretary

Members of Performance Review Boards

AGENCY: Department of Agriculture.

ACTION: Notice.

SUMMARY: This notice announces the appointment of members of the Performance Review Boards (PRBs) for the U.S. Department of Agriculture (USDA). The USDA PRBs provide fair and impartial review of Senior Executive Service (SES) performance appraisals and make recommendations to the Secretary of Agriculture, regarding final performance ratings, performance awards, pay adjustments, and Presidential Rank Awards for SES members.

EFFECTIVE DATE: November 6, 1995.

FOR FURTHER INFORMATION CONTACT: Barbara Holland, Executive Resources and Services Division, Office of Personnel, U.S. Department of Agriculture, 14th Street and Independence Avenue, S.W., Washington, D.C. 20250, (202) 720–6047.

SUPPLEMENTARY INFORMATION: The publication of PRB membership is required by Section 4314(c)(4) of Title 5, U.S.C. The following membership list represents a standing register, from which specific PRBs will be constituted.

Ackerman, Kenneth D.
Acord, Bobby R.
Ahalt, J. Dawson
Aldaya, George W.
Allen, Richard Dean
Alspach, David B.
Amontree, Thomas S.
Andre, Pamela Q.
Andreuccetti, Eugene E.
Army, Thomas J.
Arnold, Richard W.
Arnoldi, John M.
Ashworth, Warren R.
Atienza, Mary E.
Baker, James Robert
Bange, Gerald A.
Barrett, Jr., Fred S.
Bartuska, Ann M.
Bauer, III, Henry A.
Bay, Donald M.
Beauchamp, Craig L.
Beck, Richard H.
Berg, Joel S.
Berry, Robert M.
Betschart, Antoinette A.
Billy, Thomas J.
Blackburn, Wilbert H.
Booth, Jerry J.
Bosecker, Raymond Ronald
Bosworth, Dale N.
Bottum, John S.
Braley, George A.
Breeze, Roger
Bristow, II, William M.
Buisch, William W.
Buntain, Bonnie J.
Buntrock, Grant B.
Burns, Denver P.
Bruse, Sr., Luther
Burt, John P.
Callstrom, Raymond C.
Calvert, Patricia
Campbell, Arthur C.
Carey, Ann E.
Carey, Priscilla B.
Carnevale, Richard A.
Carpenter, Barry L.
Cartwright, Jr., Charles W.
Chambliss, Mary T.
Cherry, John P.
Clark, Cynthia Z.F.
Clayton, Kenneth C.
Cohen, Kenneth E.
Collins, Keith J.
Comanor, Joan M.
Connelly, Kathleen H.
Conrad, Virgil L.
Conway, Roger K.
Conway, Thomas V.
Coulter, Kyle Jane
David, Irwin T.
Deloach, John R.
Dewhurst, Stephen B.
Dittrich, Suzette M.
Dooms, Elnora C.
Drazek, Paul A.
Duesterhaus, Richard L.
Duncan, Charles N.
Duncan, III, John P.
Dunkle, Richard L.
Dunn, Michael V.
Ebbitt, James R.
Elder, Alfred S.
Elias, Thomas S.
Ellis, Joanne H.
Estill, Elizabeth
Evans, Gary R.
Evans, Reba P.
Fawbush, Wayne H.
Fishman, Michael E.
Franco, Robert
Franks, Jr., William Jesse
Frazier, Gregory
Galvin, Timothy J.
Gardner, Jr., William Earl
Geasler, Mitchell Ray
Gelburd, Diane E.
Gerloff, Eldean D.
Giles, Jane L.
Gillam, Bertha C.
Gillum, Charles R.
Gippert, Michael J.
Glavin, Margaret Agnes
Glotfelty, Charles H.
Golden, John
Golodner, Adam M.
Greene, Frank C.
Greenshields, Bruce L.
Grundeman, Arnold James
Gugulis, Katherine C.
Hadlock, Earl C.
Hagy, III, William F.
Hall, David C.
Hall, John W.
Hamilton, Thomas E.
Hardy, Jr., Leonard
Hardy, Jr., Leonard
Harrington, Jr., Rube
Harris, Sharron L.
Hatamiya, Lon S.
Hatcher, Charles F.
Havlik, William J.
Hayes, Paula F.
Hebert, Thomas R.
Hefferan, Colien J.
Henneberry, Thomas J.
Hessel, David L.
Hicks, Vicki J.
Hill, Ronald W.
Hobbie, Mary Kyle
Hobbs, Alma C.
Hobbs, Ira L.
Holbrook, David M.
Hollingsworth, Jill M.
Holman, Pred Dwight
Horn, Floyd P.
Houser, Norman D.
Hudnall, Jr., William J.
Husnik, Donald F.
Jackson, Ruthie F.
Jackson, Yvette S.
Jacobs, Robert T.
Jakub, Lawrence M.
Janik, Philip J.
Johnsen, Peter B.
Johnson, Allan S.
Johnson, Judith K.
Johnson, Paul Wesley
Johnson, Phyllis E.
Jordan, John P.
Joslin, Robert C.
Kaiser, Jr., Harold F.
Kaplan, Dennis L.
Keefee, Mary Ann
Keeney, Robert C.
Keith, Roderick
Kelly, James Michael
Kelly, Michael W.
Kennedy, Eileen T.
Kennedy, Maureen Ann
King, Janet C.
King, Lonnie J.
King, R. Alan

King, Jr., Edgar G.
Kling, Lou Anne
Knipling, Edward B.
Kronenberger, Jr., Donald R.
Laster, Danny B.
Laverty, Jr., Robert L.
Lavin, Mary Jo
Lee, Warren M.
Leo, Joseph J.
Leonhardt, Barbara A.
Levinson, Sharon
Lewis, David N.
Lewis, Sherman L.
Lewis, Jr., Robert
Lilja, Janice Grassmuck
Linden, Ralph A.
Long, Richard D.
Lowe, John E.
Luchsinger, Donald W.
Ludwig, William E.
Lugo, Ariel E.
Luken, Bonnie L.
Mackie, Philip L.
Majkowski, Hollace L.
Maloney, Kathryn P.
Manning, Amanda Dew
Margheim, Gary A.
Marita, Floyd J.
Marten, Gordon C.
Martin, Christopher J.
Martinez, Wilda H.
Matz, Deborah
McCleese, William L.
McCutcheon, John W.
McDonald, Stephen E.
McDougle, Janice H.
McKee, Richard M.
Medley, Terry L.
Mengeling, William L.
Mezainis, Valdis E.
Miller, Charles R.
Mills, Thomas J.
Mina, Mark T.
Montoya, David F.
Moon, Harley W.
Moreland, Donald E.
Murrell, Kenneth D.
Nelson, Robert D.
Nervig, Robert M.
Newman, Richard Odell
Newsom, Conrad Merlain
Norcross, Marvin A.
Nordstrom, Gary R.
Novak, Jon E.
Nuri, K. R.
O'Brien, Patrick Michael
Oberlander, Herbert
Ohler, Barry A.
Okay, John L.
Oltjen, Robert R.
Oneil, Barbara T.
Oneth, Harry W.
Onstad, Charles A.
Osgood, Barbara T.
Otto, Ralph A.
Parry, Jr., Richard M.
Payton, Floy E.
Peer, Wilbur T.
Perry, James P.
Peters, Robert
Peterson, John W.
Peterson, Kenneth R.
Potts, Janet S.
Power, James F.
Powers, Joseph A.
Powers, Judy M.
Prucha, John C.
Purcell, Robert L.
Pytel, Christine
Radloff, David L.
Radzikowski, John S.
Rains, Michael T.
Rawls, Charles R.
Read, Hershel R.
Reed, Anne F.T.
Reed, Craig A.
Reed, Pearlie S.
Reginato, Robert J.
Reimers, Mark A.
Reynolds, Gray F.
Reynolds, James R.
Rhoades, James D.
Riley, Jr., William J.
Risbrudt, Christopher D.
Robertson, George S.
Robinson, Bobby H.
Rothbart, Herbert L.
Roussopoulos, Peter J.
Salwasser, Harold James
Satterfield, Steven E.
Schipper, Jr., Arthur L.
Schnoor, Kim E.
Schroeder, James W.
Schroeter, Richard B.
Schumacher, Jr., August
Schwalbe, Charles P.
Schwindaman, Dale F.
Segal, Judith A.
Sesco, Jerry A.
Seymour, Carol M.
Shackelford, Parks D.
Shands, Henry L.
Shaw, Robert R.
Shearer, P. Scott
Shipman, David R.
Simmons, Robert M.
Skeen, David
Small, Gordon H.
Smith, Dallas R.
Smith, Peter Francis
Smythe, Richard V.
Sommers, William T.
Space, James C.
Spence, Joseph
Spencer, Dorothy E.
Spory, Gene P.
Sprague, G. Lynn
Squellati, Clarence P.
St. John, Judith B.
Steele, W. Scott
Stencel, III, John
Stewart, James L.
Stewart, Ronald E.
Stockton, Jr., Blaine D.
Stolfa, Patricia F.
Stommes, Eileen S.
Strating, Alfred
Stuber, Charles W.
Tanner, Steven N.
Tatum, James E.
Taylor, Michael R.
Tharrington, Ronnie O.
Thiermann, Alejandro B.
Thomas, Irving W.
Thomas, Jack W.
Thompson, Clyde
Tidd, Peter M.
Torgerson, Randall E.
Turner, James R.
Unger, David G.
Vail, Kenneth H.
Valsing, D. Charles
Van Schilfgaarde, Jan
Vogel, Frederic A.
Vogel, Ronald J.
Vonk, Jeffrey Ronald
Wachs, Lawrence
Wagner, Lynnett M.
Walker, Larry A.
Walsh, Thomas M.
Walton, Thomas E.
Watkins, Calvin W.
Watkins, Dayton J.
Watkins, Shirley R.
Webb, Aileen
Weber, Barbara C.
Weber, Bruce R.
Weber, Thomas A.
White, Evelyn M.
Whiteman, Glenn D.
Whitmore, Charles
Wilcox, Sterling J.
Wilds, Jr., Jetie B.
Williams, John W.
Williams, Robert W.
Williamson, Robert L.
Wilson, Edward M.
Witt, Timothy Blaine
Woods, Monroe
Wright, Lloyd E.
York, Phyllis B.
Young, Jr., Robert W.
Zellers, Phillip

Dated: October 30, 1995.

Richard E. Rominger,

Deputy Secretary.

[FR Doc. 95–27393 Filed 11–3–95; 8:45 am]

BILLING CODE 3410–96–M

Animal and Plant Health Inspection Service

[Docket No. 95–047–1]

General Conference Committee of the National Poultry Improvement Plan; Renewal

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of renewal.

SUMMARY: We are giving notice that the Secretary of Agriculture has renewed the General Conference Committee of the National Poultry Improvement Plan for a 2-year period. The Secretary has determined that the Committee is necessary and in the public interest.

FOR FURTHER INFORMATION CONTACT: Mr. Andrew Rhorer, Senior Coordinator, National Poultry Improvement Plan, VS, APHIS, Suite A 102, 1500 Klondike Road, Conyers, Georgia 30207–5115, (404) 922–3496.

SUPPLEMENTARY INFORMATION: The purpose of the General Conference Committee of the National Poultry Improvement Plan (Committee) is to maintain and ensure industry involvement in Federal administration of matters pertaining to poultry health.

The Committee Chairperson and the Vice Chairperson shall be elected by the

Committee from among its members. There are seven members on the Committee with 4-year staggered terms. This Committee differs somewhat from other advisory committees in the selection process and composition of its membership. The poultry industry elects the members to the Committee. The members represent six geographic areas with one member-at-large. The membership is not subject to the U.S. Department of Agriculture's review, and a formal request for nominations for membership is not published in the Federal Register.

Done in Washington, DC, this 26th day of October 1995.

Anne F. Thomson Reed,

Acting Assistant Secretary for Administration.

[FR Doc. 95–27390 Filed 11–3–95; 8:45 am]

BILLING CODE 3410–34–P

Rural Utilities Service

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), this notice announces the Rural Utilities Service's (RUS) intentions to request an extension for and revision to currently approved information collection.

DATES: Comments on this notice must be received by January 5, 1996.

FOR FURTHER INFORMATION CONTACT: Dawn D. Wolfgang, Management Analyst, Program Support Staff, Rural Utilities Service, U.S. Department of Agriculture, 14th & Independence Ave., SW., AG Box 1522, Washington, DC 20250–1533. Telephone: (202) 720–0812. FAX: (202) 720–4120.

SUPPLEMENTARY INFORMATION:

Title: Prospective Large Power Service.

OMB Control Number: 0572–0001.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The Rural Utilities Service (RUS) makes mortgage loans and loan guarantees to electric systems to provide and improve electric service in rural areas pursuant to the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*) (RE Act). RUS electric borrowers often enter into special contracts with commercial and industrial consumers for the retail sale of electricity. These contracts typically require extensions to the borrower's electric system which may be financed with RUS loan funds, debt financing from another source, the borrower's own funds, sometimes called general funds, and/or funds provided by the consumer.

RUS review of these contracts is intended to protect the interests of the government as a secured lender and to foster the purposes of the RE Act. RUS Form 170, Prospective Large Power Service, provides RUS with information needed for this review. RUS is considering comments on a proposed rule published July 20, 1995, at 60 FR 36904, that would significantly reduce the number of retail contracts that require RUS approval. RUS is currently reexamining its policies and procedures for review of these contracts.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 4 hours per response.

Respondents: Small businesses or organizations.

Estimated Number of Respondents: 5.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 5.

Copies of this information collection, and related form and instructions, can be obtained from Dawn Wolfgang, Program Support Staff, at (202) 720–0812.

Comments: Send comments regarding this burden estimate, including suggestions for reducing this burden through the use of automated collection techniques or other information technology, to: F. Lamont Heppe, Jr., Deputy Director, Program Support Staff, Rural Utilities Service, U.S. Department of Agriculture, 14th & Independence Ave., SW., AG Box 1522, Washington, DC 20250–1522. FAX: (202) 720–4120.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: October 30, 1995.

Wally Beyer,

Administrator, Rural Utilities Service.

[FR Doc. 95–27389 Filed 11–3–95; 8:45 am]

BILLING CODE 3410–15–P

ARMS CONTROL AND DISARMAMENT AGENCY

The President's Scientific and Policy Advisory Committee; Notice of Closed Meeting

October 27, 1995.

In accordance with the Federal Advisory Committee Act, as amended 5 U.S.C. App. (1988), the U.S. Arms Control and Disarmament Agency announces the following Presidential Committee meeting:

Name: Scientific and Policy Advisory Committee (SPAC).

Date: November 20, 1995.

Time: 8:30 a.m.

Place: State Department Building, 320 21st Street, N.W., Room 4930, Washington, D.C.

Type of Meeting: Closed.

Contact: Robert Sherman, Executive Director, Scientific and Policy Advisory Committee, Room 4930, Washington, D.C. 20451, (202) 647–4622.

Purpose of Advisory Committee: To advise the President, the Secretary of State, and the Director of the U.S. Arms Control and Disarmament Agency respecting scientific, technical, and policy matters affecting arms control, nonproliferation, and disarmament.

Purpose of the Meeting: The Committee will review specific arms control, nonproliferation, and verification issues. Members will be briefed on current U.S. policy and issues regarding negotiations such as the Comprehensive Test Ban Treaty and the Conventional Weapons Convention. Members will also be briefed on issues regarding the Chemical and Biological Weapons Conventions. Members will exchange information and concepts with key ACDA personnel. The entire meeting will be held in Executive Session.

Reason for Closing: The SPAC members will be reviewing and discussing matters specifically authorized by Executive Order 12958 to be kept secret in the interest of national defense or foreign policy.

Authority to Close Meeting: The closing of this meeting is in accordance with a determination by the Director of the U.S. Arms Control and Disarmament Agency dated October 31, 1995, made pursuant to the provisions of Section 10(d) of the Federal Advisory Committee Act as amended (5 U.S.C. App.).

Cathleen Lawrence,

Director of Administration.

Determination To Close Meeting of the Scientific and Policy Advisory Committee

The Scientific and Policy Advisory Committee (SPAC) will hold a meeting in Washington, D.C., on November 20, 1995. The Arms Control and Disarmament Act, as amended (22 U.S.C. sec. 2566) provides for the SPAC to advise the President, the Secretary of State, and the Director of the U.S. Arms Control and Disarmament Agency respecting scientific, technical, and policy matters affecting arms control, nonproliferation, and disarmament.

The entire agenda of this meeting will be devoted to specific national security policy and arms control issues. In accordance with section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463), it has been determined that discussions during the meeting will necessarily involve consideration of matters recognized as not subject to public disclosure under 5 U.S.C. sec. 552(c)(1). Materials to be discussed at the meeting have been properly classified and are specifically authorized under criteria

established by Executive Order 12958 to be kept secret in the interests of national defense and foreign policy.

Therefore, in accordance with section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), I have determined that, because of the need to protect the confidentiality of such national security matters, this meeting should be closed to the public.

Dated: October 31, 1995.

John D. Holum,

Director.

[FR Doc. 95–27586 Filed 11–2–95; 4:31 pm]

BILLING CODE 6820–32–M

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Advisory Council on the National Information Infrastructure

AGENCY: National Telecommunications and Information Administration (NTIA), Commerce.

ACTION: Notice of Open Meeting. Notice is hereby given of a meeting of the United States Advisory Council on the National Information Infrastructure, created pursuant to Executive Order 12864, as amended.

SUMMARY: The President established the Advisory Council on the National Information Infrastructure (NII) to advise the Secretary of Commerce on matters related to the development of the NII. In addition, the Council shall advise the Secretary on a national strategy for promoting the development of the NII. The NII will result from the integration of hardware, software, and skills that will make it easy and affordable to connect people, through the use of communication and information technology, with each other and with a vast array of services and information resources. Within the Department of Commerce, the National Telecommunications and Information Administration has been designated to provide secretariat services to the Council.

DATES: The NII Advisory Council public teleconference will be held on Monday, November 20, 1995 from 2:00 p.m. until 5:00 p.m.

ADDRESSES: The NII Advisory Council teleconference meeting will take place in the Forum 2 Conference Room, 1320 North Courthouse Road, Arlington, VA 22201.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth Lyle, Designated Federal Officer for the Advisory Council on the National Information Infrastructure, National Telecommunications and Information Administration (NTIA); U.S. Department of Commerce, Room 4892; 14th Street and Constitution Avenue, NW., Washington, DC 20230. Telephone: 202–482–1835; Fax: 202–501–6360; E-mail: nii@ntia.doc.gov.

AUTHORITY: Executive Order 12864, signed by President Clinton on September 15, 1993, and amended on December 30, 1993 and June 13, 1994.

AGENDA: To discuss and approve KickStart, a document the Council is preparing for local leaders who want to connect their communities to the Information Superhighway.

PUBLIC PARTICIPATION: The meeting will be open to the public, with limited seating available on a first-come, first-served basis. Any member of the public requiring special services, such as sign language interpretation, should contact Elizabeth Lyle at 202–482–1835.

Any member of the public may submit written comments concerning the Council's affairs at any time before or after the meetings. Comments should be submitted through electronic mail to nii@ntia.doc.gov or to the Designated Federal Officer at the mailing address listed above.

Within thirty (30) days following the meeting, copies of the minutes of the Advisory Council meeting may be obtained through Bulletin Board Services at 202–501–1920, 202–482–1199, over the Internet at iitf.doc.gov, or from the U.S. Department of Commerce, National Telecommunications and Information Administration, Room 4892, 14th Street and Constitution Avenue, NW., Washington, DC 20230, Telephone 202–482–1835.

Larry Irving,

Assistant Secretary for Communications and Information.

[FR Doc. 95–27368 Filed 11–3–95; 8:45 am]

BILLING CODE 3510–60–M

Bureau of Export Administration

[Docket Number AB1–95]

Stair Cargo Services, Inc.; Final Decision and Order Affirming Order of the Administrative Law Judge

Before me for decision is the appeal of Respondent, Stair Cargo Services, Inc. (Stair Cargo), from the decision and order of the Administrative Law Judge (ALJ). The ALJ found that Stair Cargo violated Sections 769.2(d)(1)(iv) and 769.6 of the Export Administration Regulations (15 CFR 769.2(d)(1)(iv) and 769.6) (the ''Regulations'') when it submitted information for the Kuwait boycott office about one of the manufacturers in a shipment that Stair Cargo was forwarding to Kuwait. For violating § 769.2(d)(1)(iv), the ALJ assessed a penalty of $8,000 and for violating § 769.6, Stair Cargo was assessed a penalty of $2,000, both pursuant to § 788.3(4) of the Regulations.

I. Introduction

On December 17, 1993, the Office of Antiboycott Compliance (OAC) issued a charging letter alleging that, during December of 1988, Stair Cargo committed one violation of § 769.2(d)(1)(iv) and one violation of § 769.6 of the Regulations, issued pursuant to the Export Administration Act of 1979, as amended (hereinafter referred to as the ''Act'') (currently codified at 50 U.S.C. app. 2401–2420 (1991, Supp. 1993, and Pub. L. No. 103–277, July 5, 1994).[1] Specifically, the charging letter alleged that Stair Cargo intentionally complied with an unsanctioned foreign boycott in connection with activities involving the sale or transfer of goods (including information) between the United States and Kuwait and that these activities occurred in the foreign commerce of the United States.

Section 769.2(d)(1)(iv) provides that ''(1) No United States Person may furnish or knowingly agree to furnish information concerning his or any other person's past, present or proposed business relationships—(iv) With any other person who is known or believed to be restricted from having any business relationship with or in a boycotting country.''

Section 769.6(a)(1) provides that ''(1) A United States person who receives a request to take any action which has the effect of furthering or supporting a restrictive trade practice or boycott fostered or imposed by a foreign country against a country friendly to the United States or against any United States person must report such request to the Department of Commerce in accordance with the requirements of this section.''

OAC and Stair Cargo, on March 10, 1995 and March 16, 1995, respectively, requested that issues raised by the charges be resolved on the written record, without an oral hearing. OAC filed a reply on March 31, 1995 and Stair Cargo filed one on April 3, 1995. On April 24, 1995, Stair Cargo filed a motion for an oral argument which was denied by the ALJ.

[1] The Export Administration Act expired on August 20, 1994. Executive Order 12924 (59 FR 43437, August 23, 1994) continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. app. 1701–1706 (1991)).

II. Facts

The ALJ made Findings of Fact in his Initial Decision, and the parties entered into a Stipulation of Facts (see Exhibit 16 of the Record) dated February 22, 1995, both of which essentially set forth the following facts.

At the time of the violations alleged in the charging letter, Stair Cargo was a California-based branch of Stair Cargo Services, Inc., a Florida company engaged in freight-forwarding services, including international freight forwarding. In 1988, Stair Cargo was to forward U.S. origin goods to Palms Agro-Production (Palms Agro) in Safat, Kuwait, on behalf of Spears Manufacturing company. To finance the purchase of the goods from Spears Manufacturing, Palms Agro, on October 13, 1988, asked the National Bank of Kuwait to establish an irrevocable letter of credit in favor of Spears Manufacturing. Among the requirements set forth in the letter of credit was the following:

> Available by draft(s) without recourse at sight on you for 100 percent of the invoice value and accompanied by the following documents marked (X) below:
>
> * * * * *
>
> (X) Certificate of origin in duplicate * * * (Please see special instructions) Invoices and certificates of origin must evidence that goods have been manufactured/produced by: M/S Spear [sic] Manufacturing Co., U.S.A.

Paragraph 1 of the ''SPECIAL INSTRUCTIONS'' prescribed that the name and nationality of the manufacturing/producing company appear on the certificate of origin.

However, Spears Manufacturing was not the sole manufacturer of the goods to be shipped to Kuwait. Rather, I.P.S. Corporation of Gardena, California, produced some of the items to be sent to Palms Agro. As the terms of the letter of credit required information regarding each manufacturer or producer of goods, Stair Cargo drafted an amendment to the letter of credit, reflecting the name and nationality/origin of both Spears Manufacturing and I.P.S. Corporation. On December 19, 1988, Stair Cargo sent the amendment by fax transmission to Spears Manufacturing. The amendment provided in pertinent part:

> Credit amended to read signed invoices in triplicate showing the name and nationality/origin of manufacturers or producers of each item of manufactured or produced goods as follows:
>
> Nationality: U.S.A. origin * * * Manufactured/produced I.P.S. Corp. 17109 S. Main St. Gardena, CA 90247 U.S.A. All remaining items manufactured/produced by M/S Spears Manufacturing Co. 15853 Olden St. Sylmar, CA 91342 U.S.A.

That same day, Spears Manufacturing sent the amendment to Palms Agro so that the Kuwaiti firm could have the letter of credit amended.

Shortly thereafter, on December 22, 1988, Palms Agro sent a fax transmission to Spears Manufacturing, requesting the full name of the company that, in addition to Spears Manufacturing, was supplying products to fill Palms Agro's order. Palms Agro explained that the initials of I.P.S. Corp. were not acceptable to the boycott office and that, until the full name was provided, the National Bank of Kuwait could not clear I.P.S. Corp. with the boycott authorities. The request stated:

> Please provide complete name of M/S/I.P.S. Corp. as abrivated [sic] names are not acceptable to local boycott office, as before adding to L/C our bank will get the name cleared from boycott authorities.
>
> Please ensure that after receiving the amendment your bank will send the documents by DHL (not on our cost) to our bank because carrying vessel is due on 28/12/88.
>
> Appreciate your reply by return.

This fax was subsequently transmitted to Stair Cargo. By fax dated December 22, 1988, Stair Cargo responded directly to Palms Agro. The fax transmission stated:

> The complete name of M/S I.P.S. Corp. is as follows: Industrial Polychemical Services, Inc.

This fax transmission became the basis for the ALJ's finding that Stair Cargo ''furnished information concerning its or another person's past, present, or proposed business relationships with known or believed to be restricted from having any business relationship with or in a boycotting country,'' in violation of § 769.2(d)(1)(iv).

III. Analysis of Appeal [2]

A. Deference To Be Accorded to ALJ's Decision

As a threshold matter, Stair Cargo argues that the Under Secretary is not bound by, nor is there any deference due to, the findings of the initial decision of the ALJ, citing 5 U.S.C. 557(b). This provision provides:

> On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except on notice or by rule.

I agree that the initial decision of the ALJ is not absolutely binding on me. *Town & Country Plastics, Inc.*, Docket Number AB1–89, May 11, 1995. However, while deference to a decision may be at its strongest where credibility is at issue, I still believe that there is sufficient reason to accord great weight to the AJL's decision in a case decided on cross motions for summary judgment.

B. Denial of Stair Cargo's Request for a Hearing Was Appropriate

Stair Cargo argues that it was entitled to a hearing on questions of law and controverted material issues of fact, citing 11(c)(2)(B) of the Act, 50 U.S.C. app. 2410(c)(2)(B), which provides that an administrative sanction imposed under the antiboycott provisions ''may be imposed only after notice and opportunity for an agency hearing on the record in accordance with [the Administrative Procedure Act].'' Stair Cargo also argues that Rule 56 of the Federal Rules of Civil Procedure (FRCP) is applicable in this case because the procedures which govern enforcement proceedings do not provide for summary disposition. Accordingly, because summary judgment, as provided for in Rule 56, is a drastic measure and available only when there are no genuine issues of material fact, Stair Cargo asserts that a resolution of this case is not proper without a hearing with respect to the genuine issues that exist. Finally, Stair Cargo argues that it did not waive its right to a hearing during the course of the proceeding.

Contrary to Stair Cargo's assertions, it is clear that the FRCP do not apply to proceedings under the Act, which are, in fact, governed by the Regulations. See § 788.1. Although the Regulations do not specifically authorize motions for judgment on the pleadings, such motions fall within the discretion of the ALJ pursuant to § 788.12 of the Regulations, which grants ample discretion to dispose of matters in the most expeditious manner, provided that all other procedural requirements are followed.[3]

In addition, Stair Cargo cites *Town & Country Plastics, Inc.*, Docket Number AB1–89, May 11, 1995, for the proposition that in the absence of a specific rule under the Regulations, the FRCP ''govern.'' However, while *Town*

[2] Arguments raised by Stair Cargo not discussed have been considered and rejected as being without merit or as being immaterial to the final decision. The conclusions reached are based on consideration of the record as a whole.

[3] § 788.12 provides in pertinent part:

(a) The Administrative Law Judge, on his own motion or on the request of a party, may direct the parties to attend a pre-hearing conference to consider:

(1) simplification of issues;

(2) the necessity or desirability of amendments to pleadings;

(3) obtaining stipulations of fact and of documents to avoid unnecessary proof; or

(4) such other matters as may expedite the disposition of the proceedings * * *

& Country Plastics held that ''the procedural rules relating to antiboycott appeals should be construed in conjunction with the Federal Rules of Civil Procedure,'' the case did not hold that the FRCP ''govern'' or are binding. Rather, *Town & Country Plastics* should be read to mean that the FRCP can provide guidance or solutions on a case-by-case basis when necessary to cover a situation not specifically dealt with by the Regulations.[4] Accordingly, Rule 56 of the FRPC is not applicable to this case and therefore does not dictate that Stair Cargo was entitled to a hearing.[5]

With regard to Stair Cargo's argument that it did not waive its right to a hearing, a review of the record in this case indicates otherwise. Although Stair Cargo did request a hearing in its Answer (Exhibit 4 of the Record), circumstances changed as the litigation progressed, and, as set forth in its Motion for Summary Initial Decision (Exhibit 22 of the Record), Stair Cargo waived its right to a full blown hearing. Stair Cargo clearly stated in its motion that ''counsel for the parties have by agreement pursued this avenue of resolution in order to obviate the need for a hearing'' and that ''it is appropriate to note that motions for summary judgment are appropriate when there are no questions of material facts.'' There was obviously no mention of a desire for a hearing.

It was, moreover, agreed at a pre-hearing conference in Washington, DC, on February 22, 1995, that the essential facts were not at issue and that, because the only issues that remained to be resolved were those of a legal nature, the case could be disposed of on cross-motions for summary judgment. In fact, at the pre-hearing conference, Stair Cargo answered in the affirmative when the ALJ asked if the stipulation of facts were comprehensive enough so that he could reference it in resolving the legal issues to be presented in the parties' motions. Exhibit 24 of the Record, Transcript of Prehearing Conference, at 20.

It was not until after receiving OAC's response to its motion for summary initial decision that Stair Cargo moved to set a date for oral argument, submitting that oral argument could ''provide better exposition of the complex legal issues raised by each party in their respective memoranda and replies.'' Stair Cargo, however, did not contend that controverted facts remained. In sum, the ALJ appropriately denied the request for a hearing.

C. The ALJ Ruled Correctly That OAC Did Not Have To Present Evidence That Kuwait Maintains an Unsanctioned Boycott Against Israel or That Kuwait Maintains a Blacklist or Restrictions on Persons Because of the Boycott

In its appeal, Stair Cargo argues that the ALJ's decision is inconsistent with OAC's burden of proof when he found that it violated § 769.2(d)(1)(iv) without requiring OAC to present evidence establishing that Kuwait maintained a blacklist and further, that the ALJ was not entitled to take official notice of alleged Kuwait boycott practices, without giving notice to Stair Cargo pursuant to Section 556(e) of the Administrative Procedure Act (APA). More specifically, Stair Cargo claims that OAC failed to sustain its burden of proof by failing to establish or to provide any contemporaneous legal authorities as to Kuwait's actual boycott laws, regulations, or practices. Stair Cargo alleges that proof of a violation of § 769.2(d)(1)(iv) requires that OAC prove that Kuwait does in fact maintain and enforce a secondary or tertiary boycott by blacklisting non-Israeli firms from doing business in Kuwait because of their relations with Israel or other blacklisted firms.

The ALJ found that OAC was not required to establish that the particular request was related to an unsanctioned foreign boycott of Israel by Kuwait, nor prove that Kuwait maintains a blacklist or restrictions on persons because of the boycott. The ALJ stated:

> These are both underlying assumptions that led Congress to enact section 8(a) of the Export Administration Act which prohibits providing information under the circumstances presented here. The agency does not have to justify the statue or properly promulgated rules under which it acts when it seeks to enforce them.

Initial Decision, at 9, n. 5.

I agree with the Initial Decision. Neither the Act nor the implementing Regulations requires that OAC present evidence that Kuwait participated in blacklisting activities. Regardless of the information provided by Stair Cargo with respect to the lack of adherence by some of the countries of the Arab League to certain aspects of the boycott, the statute is unambiguous and does not provide for exceptions in instances where a country does not strictly adhere to an acknowledged boycott. It merely states that a ''United States person may [not] furnish * * * information concerning his or any other person's * * * relationships * * * with any person who is * * * believed to be restricted from having any business relationship with or in a boycotting country.''

Moreover, it is an irrefutable fact that, at the time of the violations at issue, Kuwait was a member of the Arab League which maintained an unsanctioned foreign boycott of Israel. Congressional action with respect to the Act was motivated by and responded to this very issue.[6] Congress enacted the Act as ''necessary to prevent a boycotting country from using United States persons to supply information necessary to boycott enforcement.'' *Report of the Committee on Banking, Housing and Urban Affairs,* S. Rep. No. 95–104, 95th Cong., 1st Sess. 25 (1977). Thus, Congress sought to terminate the flow of information which was commonly used for boycott enforcement purposes by making it increasingly difficult for the participating Arab states to gather such information.

Accordingly, in my view, anytime information is requested by a boycott office of a member of the Arab League, a presumption arises that such information is to be used in furtherance of the Arab League boycott. Whether Kuwait does or does not strictly enforce the voluntary provisions of the secondary and tertiary boycotts is irrelevant; the more pertinent question is whether providing the full name of the I.P.S. Corporation supplied the boycott office with information with which it could further the intent of the boycott. Until the Arab League boycott no longer exists or unless Kuwait withdraws from the Arab League, Kuwait should be presumed to be a participant and a beneficiary of the terms of the boycott.[7] Therefore, OAC does not have to establish that Kuwait itself maintained an unsanctioned boycott against Israel or that Kuwait maintains a blacklist or actively

[4] In *Town & Country Plastics*, Rule 6 of the FRCP provided guidance and resolution of an issue concerning a filing day which fell on Sunday, allowing an appeal to be timely filed on the next applicable business day, when there was nothing in the Regulations explicitly extending the time for filing documents when the last day falls on a Sunday.

[5] Moreover, as will become apparent from the subsequent discussion on waiver, there was no genuine issue of disputed material fact that would alter the current disposition of this case even if Rule 56 of the FRCP were, in fact, to apply.

[6] For an excellent discussion of the history concerning the formation of the Arab League boycott of Israel and the response of the United States Congress in enacting the antiboycott provisions of the Export Administration Act, see *Briggs & Stratton Corp.* v. *Baldridge,* 539 F. Supp. 1307, 1309 (ED Wis. 1982), *affirmed* 728 F.2d 915 (7th Cir. 1984) (adopting the district court's opinion at 916), *cert denied* 469 U.S. 826 (1984).

[7] According to information compiled by the OAC, the following Arab countries currently participate in one or more aspects of the Arab boycott of Israel: Bahrain, Iran, Iraq, Jordan, Kuwait, Lebanon, Libya, Oman, Qatar, Saudi Arabia, Syria, the United Arab Emirates, and the Yemen Arab Republic. Egypt terminated its participation in the boycott after signing a peace agreement with Israel.

participated in secondary or tertiary boycotts.[8]

D. The ALJ Found Correctly That Stair Cargo Furnished Business Relationship Information in Violation of Section 769.2(d)(1)(iv)

In its appeal, Stair Cargo argues that OAC must prove that I.P.S. Corporation was, in fact, blacklisted, or that Stair Cargo knew or believed that I.P.S. Corporation was, in fact, blacklisted. Stair Cargo's argument misconstrues both the meaning and intent of § 769.2(d)(1)(iv). Under the Act and implementing Regulations, in order to establish a violation, OAC is required to show that the information sought and subsequently furnished was information about a U.S. person's business relationship(s), or lack thereof, with someone who may be blacklisted for boycott reasons. The ALJ found that OAC had met its burden of proof.

The information that Palms Agro sought and Stair Cargo furnished was information about Stair Cargo's and/or Spears' business relationships, or lack thereof, with I.P.S. Corporation, a person that may be blacklisted for boycott reasons. Whether or not Stair Cargo or OAC knew or believed that I.P.S. Corporation was restricted within the meaning of the Regulations is irrelevant. The ''belief'' requirement is not one that either party must have; rather, it is the document in question which provides the requisite ''belief'' by the requesting party that I.P.S. Corporation may be a blacklisted person. The question thereafter is whether a reasonable person would conclude that the information being requested or subsequently furnished was for the purpose of ascertaining whether or not I.P.S. Corporation was on a blacklist.

This interpretation is supported by § 8(a)(1)(D) of the Act which provides in pertinent part:

> [f]urnishing information about whether any person has, has had or proposes to have any business relationship * * * with any other person which is known or believed to be restricted from having any business relationship with or in the boycotting country.

This section of the Act does not support Stair Cargo's proposition that it must know or believe that the person about whom it is providing the prohibited information is restricted. Rather, the wording is passive in nature; Congress was silent with regard to the source of the knowledge or belief and opted, instead, for a broad interpretation, in that the knowledge or belief had to be about someone ''known or believed'' to be blacklisted without specifying who had to have that knowledge or belief. Accordingly, this interpretation is consistent with the lack of specificity in the statute, neither expanding nor contracting its plain language and intent.[9]

Similarly, § 769.2(d)(1)(iv) specifies neither that Stair Cargo nor OAC must know or believe that the person about whom it is providing information is restricted from having a business relationship with or in a boycotting country. The Regulation is as broad as the Act that it implements. In addition, examples (x) and (xviii), which provide guidelines and illustrate the manner in which the Regulations are interpreted, do not support Stair Cargo's argument that there is a specific knowledge requirement.

Example (x) provides:

> U.S. Company A, in the course of negotiating a sale of its goods to a buyer in boycotting country Y, is asked to certify that its supplier is not on Y's blacklist.
>
> A may not furnish the information about its supplier's blacklist status, because this is information about A's business relationships with another person who is believed to be restricted from having any business relationships with or in boycotting country.

The rationable whereby A is prohibited from furnishing the requested information in the example has nothing to do with any knowledge or belief that A has. Rather, an answer to the request is prohibited because the information is about A's business relationships with a person that may be blacklisted, whether or not this belief or knowledge actually exists. Moreover, a reasonable person analysis is consistent with this application of the statute.

Example (xviii), likewise, supports the interpretation of this decision. It provides:

> U.S. company, A is asked by boycotting country Y to certify that it is not * * * in any way affiliated with any blacklisted company.
>
> A may not furnish such a certification because it is information about whether A has a business relationship with another person who is known or believed to be restricted from having any business relationship with or in a boycotting country.

As with the previous example, example (xviii) does not specify that A must know or believe that it is not affiliated with a blacklisted company. On the contrary, the implication suggests otherwise—it would be impossible for A to have any such knowledge or belief without knowing who was on any one of a number of blacklists. Given the ''negative basket'' wording of the request, it is clear that A need not have knowledge or belief about the blacklist status of any specific company. Rather, the prohibition applies because, in the context of which the information is sought, it is clear that the requesting party is seeking information about A's business relationships with anyone who may be blacklisted for boycott reasons.

Stair Cargo also claims that proof that Kuwait has blacklisted or otherwise restricted I.P.S. Corporation is essential to OAC's case and disputes the rationale that it would be too difficult to prove who is actually blacklisted. However, to require what Stair Cargo suggests would be contrary to Congressional intent in enacting the antiboycott provisions of the Act, and would make it virtually impossible to establish a violation of § 769.2(d)(1)(iv). Stair Cargo's interpretation would require that OAC establish that it had a basis for knowing or believing I.P.S. Corporation's blacklisted status. Such a showing would require an excessive level of proof and would be difficult, given that blacklists are not publicly available and are not constantly being reviewed and updated. See *Report of the Committee on International Relations*, H.R. Rep. No. 95–190, 95th Cong., 1st Sess. 49(1977). As the Arab countries participating in the boycott of Israel prepare and individually use their own blacklists, each may contain names of different persons. As the ALJ

[8] In response to Stair Cargo's argument concerning official notice, whether and to what extent Kuwait actually enforces the boycott policy of the Arab League are not material facts relevant to this proceeding, since the policy or goal of the Arab League members is to maintain such a boycott, and Kuwait remains a member of the Arab League. There is no dispute as to the existence of the boycott. OAC thus is no resting on official notice of a material fact for purposes of APA Section 556(e), and accordingly, OAC does not have to give notice with respect to the unsanctioned boycott.

[9] Stair Cargo argues that to read § 769.2(d)(1)(iv) as not requiring proof that the subject of the communication is restricted renders much of the subsection as surplusage, which is contrary to accepted principles of statutory construction. However, contrary to Stair Cargo's claim, the interpretation established in this opinion would not render the subsection meaningless. Specifically, the prohibition in subsection (iv) must be read in context with the other three sections. These subsections prevent a United States person from furnishing or agreeing to furnish information about past, present, or future relationships (i) with or in a boycotted country; (ii) with any business concern organized under the laws of a boycotted country; or (iii) with any national or resident of a boycotted country. It is self-evident that these pertain to related, but separate, violations from those under (iv). The first three are more ''direct'' violations in that the relationships are between the parties. Subsection (iv) is a broader prohibition that prevents the party in question from divulging information about any other person who may be restricted from having a relationship with or in a boycotting country, and does not affect or encroach upon the prohibitions set forth in subsections (i), (ii), and (iii).

appropriately noted in his decision, ''it is difficult to actually know who is restricted by the boycott because of the complex, pervasive, and often unpredictable, system for maintaining the boycott.'' Initial Decision, at 7, n.3. This view was recognized by the court in *Briggs & Stratton Corp. v. Baldrige, supra,* at 1309. In that case, the court found that ''[d]ecisions to blacklist a company are made haphazardly'' and that sometimes the boycott countries continue to trade with a company despite activity that could be deemed inconsistent with boycott principles.

Morever, the OAC has no statutory or regulatory responsibility to maintain copies of the numerous blacklists in use by Arab countries participating in the boycott of Israel. In fact, it would be contrary to the policy of the United States, as set forth in § 3(5) of the Act, for OAC to promulgate or maintain any document purporting to be a blacklist.

Accordingly, the fact that OAC may or may not have access to the boycott lists of any one country is not relevant and, in the event such access were to exist, would not necessitate that it be exploited for purposes of these types of proceedings. Where access to information of certain countries is available, the same cannot be said of others. Violations and enforcement of regulations obviously must be done on a uniform basis, and an interpretation of the statute requiring a level of proof suggested by Stair Cargo is impractical.

Given the foregoing analysis, the ALJ found that the information sought by Palms Agro and furnished by Stair Cargo was information about Speaker Manufacturing's and/or Stair Cargo's business relationships with I.P.S. Corporation, a person ''known or believed'' to be blacklisted. The only reasonable interpretation of the request suggests that there was uncertainty as to the blacklist status of I.P.S. Corporation.

The request stated, in relevant part:

> Please provide complete name of M/S/ I.P.S. Corp. as abrivated[sic] names are not acceptable to local boycott office as before adding to L/C our bank will get the name cleared from boycott authorities.

If it were known that I.P.S. Corporation was not blacklisted, no reason would exist to request its complete name for submission to and clearance by the boycott authorities. The sole reason stated for the request was for the purpose of getting the name ''I.P.S. Corp.'' cleared by the boycott authorities; there was no reference to any other requirement, whether it be a customs, import, or shipping requirement, to which the request pertained.[10] Thus, the request demonstrates quite conclusively that, contrary to Stair Cargo's arguments at the time of the communication, the only reason the company's full name was desired was so that it could be used for boycott purposes.[11]

Finally, Stair Cargo argues in its appeal that the decision in *Town & Country Plastics, Inc.,* AB1–89, September 21, 1990, should serve as persuasive authority in this case, although in my Final Decision and Order Affirming in Part Order of the Administrative Law Judge, AB1–89, May 11, 1995, I specifically held that the *Town & Country Plastics case* would not serve as precedent regarding the knowledge element. In *Town & Country Plastics,* the ALJ found that OAC had failed to establish that the information provided in response to a name clarification request for the Saudi Arabian Customs Office was boycott-related. Accordingly, the ALJ found that OAC had failed to establish that the company, about whom clarification was sought, was known or believed to be restricted from having any business relationships with or in a boycotting country. I do not find the *Town & Country Plastics* decision to be persuasive authority for the case at hand because the two cases are clearly distinguishable on the facts. The request in the former was for the Saudi Arabian Customs Office and contained no reference to a boycott of Israel which would raise a reasonable belief that the request was boycott-related. The request was reasonably perceived as a routine name clarification. While in this case, there was no doubt that the request was boycott-related and the information was sought for Kuwait's boycott authorities. Thus, Stair Cargo clearly knew or believed, from the context of the communications on December 22, 1988, that they related to boycott matters.

E. The ALJ Found Correctly That Section 769.3 Does Not Apply to Stair Cargo's Prohibited Furnishing of Business Relationship Information[12]

Section 769.3(b) of the Regulations provides that a United States person, in shipping goods to a boycotting country, may comply or agree to comply with the import and shipping document requirements of that country, with respect to (1) the country of origin of the goods; (2) the name of the carrier; (3) the route of the shipment; (4) the name of the supplier of the shipment; and (5) the name of the provider of other services. The only qualification that appears in the text of the Regulations is that ''all such information must be stated in positive, non-blacklisting, non-exclusionary terms.'' § 769.3(b)(2).

Arguing that the entire commercial context should be taken into account, Stair Cargo alleges that the furnishing of the complete name of a supplier of goods, regardless of boycott intent, in order to comply with the import or shipping requirements of the importing country, falls within the parameters of § 769.3(b).

However, regardless of the extent to which Stair Cargo protests that the motivation behind the supplying of the information was not boycott-related, the facts and the documentation show otherwise. It is not required that intent to comply with the boycott be the sole reason that Stair Cargo complied with the request. As long as it was one of the motivating factors, then Stair Cargo was found appropriately to have violated § 769.2(d)(1)(iv). The Regulations provide in pertinent part:

> (2) A United States person has the intent to comply with, further, or support an unsanctioned boycott when such a boycott is at least one of the reasons for that person's decision to take a particular prohibited action. So long as that is at least one of the reasons for that person's action, a violation occurs regardless of whether the prohibited action is also taken for non-boycott reasons. Stated differently, the fact that such action was taken for legitimate business reasons does not remove that action from the scope of this part if compliance with an unsanctioned foreign boycott was also a reason for the action.

[10] Stair Cargo in its Rebuttal to OAC's Reply to its Appeal argues that, looking at the entire commercial transaction, the requirement for the full name of ''I.P.S. Corp.'' was a pure simple technical clerical requirement without reference to any implied blacklist status. However, the context of the critical communications of December 22, 1988 belie that argument.

[11] See also § 769.2(d)(4) which provides that no information about business relationships with blacklisted persons may be furnished in response to a boycott request, even if the information is publicly available. Requests for such information from a boycott office will be presumed to be boycott-based.

[12] Stair Cargo argues in its appeal that the decision of the ALJ should be reversed because he ''failed to determine respondent's defense that the response was excepted from the prohibitions'' under § 769.3(b). Contrary to Stair Cargo's allegation that the ALJ did not respond to its arguments, the ALJ did discuss compliance with Kuwait shipping document requirements on page 5 of his Initial Decision and makes specific reference to Stair Cargo's underlying argument with respect to § 769.3(b) on pages five and six. The lack of a specific reference to § 769.3(b) does not translate into a determination that the ALJ did not consider the argument.

§ 769.1(e). Viewing the entire context of the commercial transaction does not change that result. Legislative history is quite illustrative on this point:

> Intent to comply with a boycott could be presumed, subject to rebuttal, where from all the circumstances it is reasonably clear that the information is sought for boycott enforcement purposes * * * On the other hand, where the information is sought in a context which does not make it reasonably clear that the purpose is boycott related, no illegal intent should be presumed.

S. Rep. No. 95–104, 95th Cong., 1st Sess. 40 (1977), *quoted in Briggs & Stratton* v. *Baldrige*, *supra*, 539 F. Supp. at 1313–14. It is clear from the nature and purpose of the request in this case that at least one of Stair Cargo's reasons for furnishing the complete name of the I.P.S. Corporation was to comply with Kuwait boycott enforcement procedures. The name was given in order to be cleared by the boycott authorities prior to being added to the letter of credit, and not to comply with Kuwait import and shipping requirements.[13] Stair Cargo, as an experienced freight forwarder participating in international trade was, or should have been, aware of the nature of the request and, therefore, was on notice with regard to the purpose for which the complete name was to be utilized.

F. The ALJ Found Correctly That Stair Cargo Failed To Report to the Department of Commerce Its Receipt of a Boycott-Related Request in Violation of Section 769.6

Stair Cargo argues that § 769.6(a)(5) sets out certain exceptions to the reporting requirements that apply regardless of whether or not the requests are boycott-related. Pursuant to § 769.6(a)(5)(iv), an exception exists where there is:

> (iv) a request to supply an affirmative statement or certificate regarding the name of the supplier or manufacturer of the goods shipped or the name of the provider of services.

According to Stair Cargo, since the request in this case was for an affirmative statement of the full name of I.P.S. Corporation, the manufacturer of goods which had already been shipped, the request from Palms Agro fits squarely within the exception set forth above.

However, Stair Cargo's attempt to latch on to the exception set forth in § 769.6(a)(5)(iv) misinterprets the language and proper application of this regulation, particularly the part preceding the listing of specific requests that are not reportable under the Regulations. The preambular language indicates that the specific exceptions to the reporting requirements came about for three reasons, one of which was that certain terms were used for boycott and non-boycott purposes. The language recognizes that certain terms, depending on their context, would in some circumstances be seen as boycott-related, while in other circumstances, they would not be. In the instant case, there are no ambiguous terms in the request from Palms Agro. It is abundantly clear that the request sought to procure the complete name of the I.P.S. Corporation for submission to the Kuwait boycott office for boycott clearance. Accordingly, Stair Cargo misconstrues the exceptions of § 769.6(a)(5) when it argues that information can be furnished regardless of whether the request is boycott-related.

G. The ALJ properly assessed the penalty

In its appeal, Stair Cargo argues that assessment of a penalty in this case is ''arbitrary, capricious and an abuse of discretion * * * [given that] FRCP Rule 56 contemplates that motions for summary judgment may be entered with respect to the liability issues only, while leaving questions relating to damages to subsequent proceedings.'' Stair Cargo further contends that it did not waive its right to a hearing and that ''the consideration of aggravating and mitigating factors, are questions of material fact with respect to which the parties have a right to a hearing under § 788.13. The denial of Respondent's request for a hearing was therefore arbitrary and capricious.''

As explained in section III.B. of this Final Decision, I have already determined that a review of the record in this case indicates that Stair Cargo did, in fact, waiver its right to a hearing. As further explained in section III.B., the FRCP are inapplicable to administrative proceedings under the Regulations, which do not provide for a separate hearing in order to determine the nature and extent of damages. Nothing in § 788.13 of the Regulations contemplates any sort of bifurcated procedure as suggested by Stair Cargo. On the contrary, § 788.16 provides that, if the ALJ finds that one or more violations have occurred, he shall order an appropriate disposition of the case and ''may issue an order imposing administrative sanctions, including civil penalties as provided in § 788.3, or take such other action as he deems appropriate.'' § 788.16(b)(1).

Addressing the aggravating and mitigating factors which it claims are disputed issues of material fact, Stair Cargo had the opportunity to include such arguments in its motion or its response to OAC's motion for summary judgment. Stair Cargo was aware that the case was going to be disposed of on the pleadings and should have taken the opportunity to make every relevant argument at that time. Stair Cargo, however, presented no mitigating factors addressing OAC's request for the imposition of a $10,000 civil penalty in its motions.

Finally, Stair Cargo argues that too much weight was given to the fact that it is a freight forwarder and that the penalty was excessive. However, my review indicates that OAC could have sought the imposition of both a $20,000 civil penalty and other administrative sanctions, the denial of Stair Cargo's export privileges and/or excluding its employees from practice before the Department of Commerce. Instead, OAC sought no more than a civil penalty commensurate with the circumstances of the violations, both as an appropriate penalty and as a deterrent to ensure future compliance with the Export Administration Act and the Regulations. After consideration of all the factors in this case, OAC did not even seek the maximum amount allowed. Thus, the ALJ properly imposed a civil penalty of $8,000 for the violation of § 769.2(d)(1)(iv), and a $2,000 penalty for the violation of § 769.6. Such penalties are not excessive.[14]

[13] It is doubtful that § 769.3(b) would be triggered by the facts of this case, as a letter of credit is neither an import document nor a shipping document. Specifically, a letter of credit does not reflect a movement of goods, as do shipping documents, but, rather, is a contract which embodies a bank's obligation to a beneficiary. It is ''an original undertaking by one party to substitute his financial strength for that of another, with that undertaking to be conditioned on the presentation of a draft or a demand for payment, and most often, other documents. John F. Dolan, *The Law of Letters of Credit*, § 2.02 (2d Ed. 1991), at 2–4. As set forth in the definition, there is a distinction between the letter of credit itself and the ''other documents'' called for in the letter of credit that may be required to satisfy it. Such documents, called ''transport documents'' in the Uniform Customs and Practices for Documentary Credits (1983 Revision), those which indicate loading on board, dispatch, or taking charge of the goods, are synonymous with the term ''shipping documents.'' However, as described in the preceding body of text, Stair Cargo furnished the full name of the I.P.S. Corporation in order to have it cleared by Kuwait boycott authorities prior to amending the letter of credit, and even if this was done to also comply with shipping requirements, as argued by Stair Cargo, § 769.1(e) would dictate that it was also done to comply with a boycott-related request in violation of § 769.2(d)(1)(iv).

[14] Guidelines for settlement negotiations have indicated that OAC would be willing to accept $4,000 for a simple furnishing of information. However, when a name is furnished, the settlement penalty is increased to $10,000. After weighing several factors, OAC opted not to seek the full

IV. Decision and Order

Based on review of the administrative record and for the reasons stated above, the order of the ALJ granting summary decision on the written record; assessing a civil penalty of $8,000 for violating § 769.2(d)(1)(iv) and a civil penalty of $2,000 for violating § 769.6 against Stair Cargo Services, Inc.; and denying Stair Cargo's request to dismiss the charges and to present oral argument and submit additional evidence is hereby AFFIRMED.

Dated: October 30, 1995.

William A. Reinsch,

Under Secretary for Export Administration.

[FR Doc. 95–27377 Filed 11–3–95; 8:45 am]

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International Trade Administration

[A–570–840]

Notice of Final Determination of Sales at Less Than Fair Value: Manganese Metal From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 6, 1995.

FOR FURTHER INFORMATION CONTACT: David Boyland or Daniel Lessard, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–4198 or (202) 482–1778.

Final Determination

We determine that manganese metal from the People's Republic of China (PRC) is being, or is likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930 (''the Act''), as amended. The estimated sales at less than fair value are shown in the ''Suspension of Liquidation'' section of this notice.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994.

Case History

Since the preliminary determination (60 FR 31282, June 14, 1995), the following events have occurred. The Department published an amended preliminary determination correcting a ministerial error (60 FR 37875, July 24, 1995). We conducted verification of the questionnaire responses in the PRC between July 24, 1995 and August 11, 1995, of the following respondents: China National Electronics Import & Export Hunan Company (CEIEC), China Hunan International Economic Development Corp. (HIED), China Metallurgical Import & Export Hunan Corporation (CMIECHN/CNIECHN), Minmetals Precious & Rare Minerals Import & Export Co. (Minmetals), and Great Wall Industry Import and Export Corporation (GWIIEC). Case and rebuttal briefs were filed by petitioners and respondents on October 2, 1995, and October 4, 1995, respectively. On October 6, 1995, the Department held a public hearing.

Scope of the Investigation

The subject merchandise in this investigation is manganese metal, which is composed principally of manganese, by weight, but also contains some impurities such as carbon, sulfur, phosphorous, iron and silicon. Manganese metal contains by weight not less than 95 percent manganese. All compositions, forms and sizes of manganese metal are included within the scope of this investigation, including metal flake, powder, compressed powder, and fines. The subject merchandise is currently classifiable under subheadings 8111.00.45.00 and 8111.00.60.00 of the Harmonized Tariff schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Period of Investigation

The period of investigation (POI) is June 1 through November 30, 1994.

Best Information Available

We have based the PRC-wide rate on best information available (BIA). In administrative proceedings involving merchandise from nonmarket economy countries, the Department's consistent practice has been to treat all exporters as part of the government and assign to them the single government rate, known as the country-wide rate, unless an exporter affirmatively demonstrates that it is separate from the government and entitled to its own rate. If a non-market economy exporter does not respond to the Department's request for information, the Department has no basis to treat that exporter separately from the government and, as a result, the government (which includes the exporter) receives a margin based on best information available because one of its entities failed to respond.

In this case, the evidence on the record indicates that the respondents identified during the investigation do not account for all of the exports of the subject merchandise to the United States. As a result, it is reasonable for the Department to conclude that it did not receive responses from all exporters. In the absence of responses from all exporters, we are basing the country-wide deposit rate on BIA, pursuant to section 776(c) of the Act. (*See, e.g., Final Determination of Sales at Less Than Fair Value: Antidumping Duty Investigation of Pure Magnesium From Ukraine* (61 FR 16433, March 30, 1995)).

In determining what to use as BIA, the Department follows a two-tiered methodology, whereby the Department normally assigns lower margins to those respondents who cooperated in an investigation and margins based on more adverse assumptions for those respondents who did not cooperate in an investigation. As outlined in the *Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate From Belgium* (58 FR 37083, July 9, 1993), when a company refuses to provide the information requested in the form required, or otherwise significantly impedes the Department's investigation, it is appropriate for the Department to assign to that company the higher of (a) the highest margin alleged in the petition, or (b) the highest calculated rate of any respondent in the investigation.

In this investigation, we are assigning to any PRC company, other than those specifically identified in the ''suspension of liquidation'' section the PRC-Wide deposit rate of 143.32 percent, *ad valorem*. This margin represents the highest margin in the petition, as recalculated by the Department for purposes of the initiation (*see Initiation of Antidumping Duty Investigation: Manganese Metal from the People's Republic of China* 59 FR 61869 (December 2, 1994)).

GWIIEC

The Department has decided to disregard the sales made by GWIIEC to the United States during the POI (*see* Comment 2 below for interested party comments on this issue). The Court of International Trade has stated the if evidence demonstrates to the Department that a respondent has

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$10,000 penalty for Stair Cargo's violation of § 769.2(d)(1)(iv) of the Regulations. See United States Department Of Commerce Reply To Respondent's Appeal From Administrative Law Judge's Order, p. 31, n. 16.

''artificially orchestrated an export scheme involving artificially set prices,'' the agency has the discretion to disregard the U.S. sales as not resulting from a bona fide transactions. *Chang Tieh Industry Co., Ltd.* v. *U.S.*, 840 F. Supp. 141, 146 (CIT 1993). The timing of these sales relative to the filing of the petition coupled with the fact that the prices were significantly higher than the world market price of this commodity and prices observed in the United States at the time of the sale, led the Department to gather additional information from the U.S. purchaser to determine whether the sales were bona fide transactions. Certain facts asserted by parties to these transactions during this subsequent inquiry did not verify. *See* the October 27, 1995, Confidential Memorandum to File Re: Bona Fide Sales. Based on the totality of the circumstances, viewed in light of the discrepancies found, the Department determines, based on substantial evidence on the record (much of which is proprietary), that these were not bona fide sales for commercial purposes and, therefore, would not provide an appropriate basis for determining GWIIEC's pricing behavior for sales to the United States. Therefore, these sales have been disregarded.

Separate Rates

CEIEC, HIED, CMIECHN, and Minmetals have requested separate antidumping duty rates. In cases involving nonmarket economies, the Department's policy is to assign a rate, separate from the country-wide rate, only when an exporter can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities. In determining whether companies should receive separate rates, we focus our attention on the exporter rather than the manufacturer, as our concern is the manipulation of dumping margins.

To establish whether a firm is sufficiently independent to be entitled to a separate rate, the Department uses criteria that were developed in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China* (56 FR 20588, May 6, 1991) (*Sparklers*) and in the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China* (59 FR 22585, May 2, 1994) (*Silicon Carbide*). Under the separate rates criteria, the Department assigns a separate rate only when an exporter can demonstrate the absence of both *de jure*[1] and *de facto*[2] governmental control over export activities.

The business licenses of all respondents being considered for separate rates indicate that they are owned ''by all the people.'' As stated in *Silicon Carbide*, ''ownership of a company by all the people does not require the application of a single rate.'' Accordingly, these respondents are eligible to be considered for a separate rate.

De Jure Control

The respondents submitted a number of documents to demonstrate the absence of *de jure* control of their business activities by the PRC central government. The documents include the following:

- *Law of the People's Republic of China on Industrial Enterprises Owned by the Whole People* (April 13, 1988) This law granted autonomy to state-owned enterprises by separating ownership and control (Article 2). It also granted enterprises the right to set prices and the right to decide what type of commodity to produce (Article 22–26).
- *Excerpts from PRC's State Council Decree: Provisions on Changing the System of Business Operation for States Owned Enterprises* (December 31, 1992) This decree superseded the April 13, 1988 law and codified existing practice. It also gave state-owned enterprises the right to establish ''production, management, and operational policies'' and the right to set prices, sell products, purchase production inputs, make investment decisions, and dispose of profits and assets. These rights apply specifically to an enterprise's import and export activities (Provision 12).
- *Order from MOFERT, No. 4, 1992* and *Temporary Provision for Administration of Export Commodities* (*Export Provisions*) (December 21, 1992) The *Export Provisions* indicate those products subject to direct government control. Electrolytic manganese metal does not appear on the *Export Provisions* list and, hence, the subject merchandise under investigation is not subject to export constraints. We note that the *Emergent Notice on Changes in Issuing Authority for Export Licenses Regarding Public Bidding Quota for Certain Commodities* (MOFTEC #140) (Effective April 1994) canceled previous export licenses for certain commodities. Manganese metal was not among these commodities.

In addition to the above laws and regulations, respondents provided the following documents:

- *PRC's Enterprise Legal Person Registration Administrative Regulations* (June 13, 1988) This regulation sets forth the procedure for registering enterprises as legal persons.
- *Law of the People's Republic of China on Enterprise Bankruptcy* (December 2, 1986) This law sets forth bankruptcy procedures for state-owned enterprises.
- *GATT Document Concerning Transparency of China's Foreign Trade Regime* (February 12, 1992) This document listed the PRC central government's response to questions by a GATT committee regarding the PRC's foreign trade regime.

Consistent with *Silicon Carbide*, we determine that the existence of the above-referenced laws and regulations demonstrates that CEIEC, HIED, CMIECHN, and Minmetals are not subject to *de jure* central government control with respect to export sales and pricing decisions. However, there is some evidence that the provisions of the above-cited laws and regulations have not been implemented uniformly among different sectors and/or jurisdictions within the PRC (*see* ''PRC Government Findings on Enterprise Autonomy,'' in Foreign Broadcast Information Service-China—93–133 (July 14, 1993)). As such, the Department has determined that a *de facto* analysis is necessary to determine whether the respondent companies are subject to central government control over export sales and pricing decisions.

De Facto Control

During verification, our examination of correspondence and sales documentation revealed no evidence that the export prices of respondents being considered for separate rates are set, or subject to approval, by any governmental authority. It was evident from our examination of correspondence and written agreements and contracts that these respondents have the authority to negotiate and sign contracts and other agreements

[1] Evidence supporting, though not requiring, a finding of *de jure* absence of central control includes: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; or (3) any other formal measures by the government decentralizing control of companies.

[2] The factors considered include: (1) Whether the export prices are set by or subject to the approval of a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses (*see Silicon Carbide*).

independent of any government authority. We also noted that the respondents retained proceeds from their export sales and made independent decisions regarding disposition of profits and financing of losses (based on our examination of financial records and purchase invoices). Finally, we have determined that these respondents have autonomy from the central government in making decisions regarding the selection of management, based on our examination of internal management selection documents.

Conclusion

Given that the record of this investigation demonstrates a *de jure* and *de facto* absence of governmental control over the export functions of all respondents being considered for separate rates, we determine that these respondents should receive a separate rate.

Surrogate Country

Section 773(c)(4) of the Act requires the Department to value the NME producers' factors of production, to the extent possible, in one or more market economies that (1) Are at a level of economic development comparable to that of the NME country, and (2) are significant producers of comparable merchandise.

The Department has determined that India is the most suitable surrogate for purposes of this investigation (*see* Comment 1). Based on available statistical information, India is at a level of economic development comparable to that of the PRC, and is a significant producer of comparable merchandise.

Fair Value Comparisons

To determine whether sales of manganese metal from the PRC by CEIEC, HIED, CMIECHN, and Minmetals were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the United States Price and Foreign Market Value sections of this notice.

United States Price

For CEIEC, HIED, CMIECHN, and Minmetals, we based USP on purchase price, in accordance with section 772(b) of the Act, because manganese metal was sold directly to unrelated parties in the United States prior to importation into the United States, and because exporter's sales price (ESP) methodology was not indicated by other circumstances.

Where appropriate, we calculated purchase price based on packed, C&F and CIF prices to unrelated purchasers in the United States. We made deductions to these prices for foreign inland freight, foreign inland insurance, brokerage and handling expenses, ocean freight, and marine insurance, as appropriate (*see* Comment 13). Generally, costs for these items were valued in the surrogate country. However, where transportation services were purchased from market economy suppliers and paid for in a market economy currency, we used the cost actually incurred by the exporter.

Foreign Market Value

In accordance with section 773(c) of the Act, we calculated FMV based on the factors of production reported by the factories in the PRC which produced the subject merchandise for the four exporters analyzed in this determination. The factors used to produce manganese metal include materials, labor and energy. To calculate FMV, the reported factor quantities were multiplied by the appropriate surrogate values.

In determining which surrogate value to use for each factor of production, we selected, where possible, an average non-export value which was representative of a range of prices within the POI, or most contemporaneous with the POI, specific to the input in question, and tax-exclusive.

We first note that because business proprietary treatment was requested by respondents for certain factor inputs, we have named these inputs (''A'' through ''F''). A key to these letter assignments is provided in the attachments to the October 27, 1995 calculation memorandum.)

With the exception of Factor F, we obtained surrogate values from the following Indian sources: *Chemical Weekly* (September–November 1994), the *Monthly Trade Statistics of Foreign Trade of India,* Volume II—Imports, August 1994, (*Indian Import Statistics*); and the *Indian Minerals Yearbook: 1993* (*see* Comments 4 through 6). For Factor F, we relied upon information submitted by the petitioners (taken from the June–October 1994 *Chemical Marketing Reporter*) for a similar input (*see* Comment 7). We are no longer using the surrogate value for manganese ore which was used at the preliminary determination. We are using a surrogate value for manganese ore from the Indian Minerals Yearbook 1993 because this ore has a manganese content that is comparable to the ore used by the PRC producers and also represents a domestic price in India. We adjusted the value of the manganese ore to reflect a delivered price (*see* Comment 4).

For the reasons outlined in the June 6, 1995 preliminary determination concurrence memorandum, we are using the April 1992 through March 1993 average tax-exclusive price for industrial electricity in India, as provided by the World Bank, to value electricity (*see* Comments 9 and 10). To value PRC labor costs, we used data on Indian wage rates from the *Yearbook of Labor Statistics* (*see* Comment 8). Because indirect labor was not reported by respondents and was not included in the surrogate value for manufacturing overhead, we have added an amount for indirect labor (*see* Comment 9).

We adjusted the factor values, when necessary, to the POI using wholesale price indices (WPI's) published by the International Monetary Fund (IMF). Labor rates have been adjusted using consumer prices indices (CPI's).

To value factory overhead, we calculated the ratio of factory overhead expenses to the cost of material, labor, and energy for industries involved in ''Processing and Manufacture—Metals, Chemicals and products thereof,'' as reported in the September 1994 Reserve Bank of India Bulletin's (RBI Bulletin) (*see* Comment 11). This same source was used to calculate selling, general and administrative (SG&A) expenses as a percentage of cost of manufacturing. Because the calculated SG&A percentage from the RBI was greater than the minimum 10 percent required by the statute, we used the SG&A percentage from the RBI Bulletin for each company (*see* Comment 12). With respect to profit, we used the statutory minimum of eight percent of materials, labor, energy, overhead, and SG&A costs calculated for each factory.

At the verification of certain producers, we learned that there were multiple suppliers of raw materials. In order to calculate the inland freight cost for these inputs, we derived the relative percentages obtained from each source and then, assuming that the input was consumed in these same proportions, used the distances from each of the sources to compute the cost per unit of output.

Interested Party Comments

As discussed above, the Department has not analyzed GWIIEC's sales for this investigation. Therefore, comments specifically related to GWIIEC have not been addressed in this notice.

Comment 1: Cometals, an interested party, argues that based on the criteria set forth in 773(c)(4), India should not be considered the surrogate country in this investigation. First, India is not at

the same level of economic development as China, as reflected in India—s lower per capita gross domestic product measured in terms of purchasing power parity. Second, India should not be considered a market economy given its protected markets and centralized control of economic activity. Third, since a surrogate country must be disqualified if the comparable merchandise is being subsidized, the Department should reject India because —the Indian economy is characterized by heavily protected markets and regulated prices of essential products including energy and industrial inputs.'' Finally, since ferromanganese (one of two products considered by the Department to be comparable to the subject merchandise) uses high grade ore, in contrast to the subject merchandise which can use lower grade ore, and also is made pursuant to a different production process, it should not be considered comparable to the subject merchandise. According to Cometals, South Africa does fit the Department's criteria pursuant to 773(c)(4) (i.e., it is at a level of economic development similar to the PRC, it is a market economy, and it produces subject merchandise without subsidies); therefore, it should be considered the surrogate country in this investigation.

DOC Position: It is the Department's longstanding practice in selecting surrogate countries to rely on market-exchange-rate-based per capita income figures as a rough indicator of economic development. While some arguments can be made for relying, instead, on purchasing power parity (PPP) per capita income figures, Cometals has not provided information which demonstrates why this measure would be preferable to the data normally relied on by the Department. Therefore, the Department continues to rely primarily on exchange-rate-based per capita income figures and continues to find India (with a per capita income of approximately US$300 in 1993) at a level of economic development comparable to that of China (with a per capita income of approximately US$500 in 1993). The Department also finds on the basis of exchange-rate-based income figures that South Africa (with a per capita income of approximately US$3,000 in 1993) is not at a level of economic development comparable to that of China.

With regard to government involvement in the Indian economy, it has been and remains our longstanding practice to treat India as a market economy under the antidumping law. In antidumping cases involving Indian products, we have accepted Indian prices and costs as market determined. We do not find Cometal's arguments concerning government involvement in India's economy sufficient grounds to reject India as and appropriate surrogate market economy.

With respect to the allegation that the comparable merchandise in India is subsidized, we note that any subsidies which may be provided on the final product generally would be of concern to the Department only if foreign market value is based on export prices of the final product from the surrogate country. Here, foreign market value is not based on exports from India of the final product but rather on domestic input prices in India. There is no evidence on the record indicating that the input prices in the instant investigation are subsidized.

Finally, regarding the comparability of manganese metal and ferromanganese, the Department analyzes the comparability in terms of following four criteria: (1) Manufacturing process, (2) production inputs (3) intensity of input usage and (4) normal end-uses and applications. As noted in a May 5, 1995 Memorandum to Dave Mueller, Director of the Office of Policy, we found that ferromanganese is comparable to manganese metal based on several of the above criteria. This finding of comparability does not mean that the two products are identical in terms of the four criteria. It means that the two products are sufficiently similar that the Department can reasonably assume that commercial production of the merchandise under investigation can occur in the surrogate. Therefore, we do not agree that the possible dissimilarities between manganese metal and ferromanganese described by Cometals are sufficient to render the products non-comparable. Furthermore, the decision to select India as a surrogate country was based on its production of both ferromanganese and electrolytic manganese dioxide (EMD), the latter of which we consider to be another comparable product.

Comment 2: Petitioners contend that GWIIEC's U.S. sales are not bona-fide and should be excluded from the antidumping calculations. Petitioners argue that GWIIEC's accounting system inhibited the Department from verifying the legitimacy of the suspect terms surrounding GWIIEC's U.S. sales. Also, according to petitioners, *Chang Tieh Industry Co.* v. *United States,* 840 F. Supp 141, 146 (1993) demonstrates that the Department should disregard sales as not resulting from a bona fide transaction if evidence demonstrates that a respondent ''orchestrated an export scheme involving artificially set prices for purposes of dumping after the investigative period.''

GWIIEC argues that the Department verified the terms of its U.S. sales characteristics of the product sold. GWIIEC also argues that petitioners by conceding that Bureau of the Census import data showed imports of manganese metal in February 1995 from the PRC at a volume and average value consistent with that it reported, confirmed GWIIEC's U.S. sales.

According to respondent, the precedent cited by petitioners in *Chang Tieh* is misstated and actually supports using GWIIEC's U.S. sales. Furthermore, GWIIEC points to the U.S. International Trade Commission preliminary determination which found that ''substantial volumes of manganese metal are purchased for non-price reasons, end-users face difficulties in maintaining supplies, atypical transactions are significant in the marketplace, and prices are subject to sharp changes.''

DOC Position: As stated above, we have decided to disregard the sales made by GWIIEC (*see*, the *GWIIEC* section of this notice).

Comment 3: With respect to all respondents, petitioners argue that the record on *de facto* control remains deficient because the Department's separate rates questionnaire addressed to the central and provincial governments remains unanswered. Petitioners add that this deficiency is important in light of the National People's Congress' mandate to MOFTEC to ''take charge of the foreign trade work in the whole country,'' and in light of other administrative practices such as foreign exchange targets set by the central or local government.

Respondents CEIEC, HIED, CMIECHN, and Minmetals state that the laws placed on the record establish that the responsibility for managing the business activities of ''owned by all the people'' companies has been transferred from the central and provincial governments to the companies themselves; *i.e.*, there is an absence of *de jure* control by the central or provincial governments. Additionally, respondents contend that during the course of verification it was demonstrated that the activities of CEIEC, HIED, CMIECHN, and Minmetals ''are not subject to governmental control nor direction.'' Respondents also note that the Department confirmed at verification that they are allowed ''to borrow freely, to make independent business decisions regarding the disposition of profit or losses, and have autonomy from the central or provincial

government in making decisions regarding the selection of management.''

Finally, these respondents disagree with petitioners— claim that the responses to the government portion of the separate rates questionnaire do not reflect the totality of government knowledge. Respondents note that Department personnel met with PRC government officials and that the Department could have obtained additional information.

DOC Position: We first note that, CEIEC, HIED, CMIECHN, and Minmetals, provided certifications from both MOFTEC and the appropriate municipal authorities stating that the responses to the separate rates questionnaire were accurate. Moreover, based on the test described in *Silicon Carbide*, we have sufficient information on the record to award separate rates to the four analyzed companies.

Notwithstanding MOFTEC's mandate with respect to foreign trade work and the other administrative practices alleged by petitioners, we found no evidence of MOFTEC's or other government agencies' involvement in the export operations of these companies. While statements such as that quoted by petitioners may serve to support a presumption that a single rate should be applied to all exporters in the PRC, the specific evidence in this case rebuts that presumption for the four exporters in question.

Comment 4: The petitioners state that the Department should include an amount for freight between the PRC manganese metal producers and their ore suppliers. According to petitioners, the surrogate value for manganese ore should be viewed as an ex-mine price because there is no factual information in the record that establishes the location of the Goan mine (the Indian mine from which the surrogate value for manganese ore was derived) or its distance from the port. Petitioners also argue that for every other price quote of Indian ore, ''FOB'' meant FOB plant, which by definition, excludes freight.

Respondents claim that petitioners' argument that the surrogate value is an ex-mine price is not supported by the record. According to respondents, the manganese ore in question was shipped via a ''berth,'' which means the buyer took possession of the goods at the port, not at the plant. Accordingly, the price quoted is FOB port, as opposed to FOB plant. Therefore, the Department would be double counting freight if it were to include the distance between the PRC producers and their suppliers.

DOC Position: We have not used the same source to derive the surrogate value for manganese ore as the one used for the preliminary determination (*see Foreign Market Value* section above). Therefore, the cite by respondents stating that the surrogate value included freight is not relevant. For the reasons stated in the October 18, 1995 Memorandum from team to Susan G. Esserman, we have used a domestic price quote in India taken from the *Indian Mineral Yearbook 1993*. This publication, at page 497, states that price is quoted on a ''Free On Rail Mine Siding'' basis. Therefore, the Department is adding a freight expense to the surrogate value of manganese ore.

Comment 5: Respondents claim that the Department should use a particular form of Factor B for the surrogate value instead of the form used in the preliminary determination. Respondents argue that the form of Factor B used at the preliminary determination is incorrect because it is not the form used by the PRC producers. Further, respondents note that there is a significant price differential between the two forms of Factor B. Even if the Department uses the correct form of Factor B, respondents claim that it is still necessary to adjust the surrogate value to reflect the content levels of Factor B used by the PRC producers. Respondent suggest that the Department employ the same adjustment methodology it applied to manganese ore in the preliminary determination.

DOC Position: We agree with respondents. We verified that the input actually used by the respondents was a particular form of Factor B. Accordingly, we have used a surrogate value for this particular form. We have also adjusted the surrogate value for this factor to reflect the producer-specific content levels.

Comment 6: Respondents argue that the surrogate values for certain chemicals (Factors C and D) which were based on prices reported in a 1993 *Chemical Weekly* publication and *Indian Import Statistics*, respectively, do not comport with economic reality and, therefore, should not be used in the final determination. Furthermore, respondents note that these values are higher than the delivered factor values in the *Chemical Marketing Reporter*, as submitted by petitioners and should, therefore, be considered aberrational. Respondents suggest that the Department use the values considered reasonable by petitioners, as obtained from the *Chemical Marketing Reporter*.

Petitioners argue that respondents did not provide any information to indicate what ''economic reality'' is with respect to these surrogate values. Regarding Factor C, petitioners argue that respondents did not correct the reported *Chemical Marketing Reporter* value for content, thereby invalidating their comparison to the *Chemical Weekly*. As regards Factor *D*, petitioners assert that the form of Factor D from the *Chemical Marketing Reporter* cited by respondents is not comparable to the Factor *D* used by the Department, as obtained from *Indian Import Statistics*. Additionally, petitioners note that respondents failed to provide publicly available published information (PAPI) information, which is preferred by the Department for valuing factors, and that the *Chemical Marketing Reporter* represents U.S. prices, as opposed to PAPI from the surrogate country. Finally, petitioners argue that respondents are drawing an unfair comparison between non-delivered prices from the *Chemical Marketing Reporter* and the delivered prices from the *Chemical Weekly* and *Indian Import Statistics*.

Petitioners also argue that the Department incorrectly adjusted the input cost for Factor C for HIED in the preliminary determination.

DOC Position: We do not agree with respondents' claim that the Indian values for Factor C and D are aberrational and do not comport with economic reality. After adjusting the *Chemical Weekly* price for Factor C to account for Indian taxes, it is very close to the price reported in the *Chemical Marketing Reporter*. With respect to Factor D, the *Chemical Marketing Reporter* price suggested by respondents is not for the form used by respondents in the production of subject merchandise, as noted by petitioners. Therefore, we have used the data from the *Chemical Weekly* and the *India Import Statistics* to value these factors.

Finally, we agree with petitioners that we did not correctly adjust HIED's input cost for Factor C in the preliminary determination. We are making the correct adjustment for HIED's specific content level for Factor C, as verified by the Department.

Comment 7: According to respondents, the price of a chemical submitted by petitioners and used by the Department as a substitute for a PRC Factor of production was not properly adjusted at the preliminary determination. Respondents note that petitioners, as producers of subject merchandise, know what prices are reasonable for their industry and cannot be biased in favor of the respondents. Therefore, according to respondents, the adjusted price submitted by petitioners should be used by the Department in the final determination.

Petitioners argue that they did not provide a value for the chemical used by

respondents because this input was never specified. Petitioners assert that the Department should not adjust the price that they submitted because the figures used in their calculations were based on chemicals used in their production process. Accordingly, these values are not applicable to the PRC production process.

DOC Position: Because we have been unable to develop valuation information for the actual chemical used by PRC respondents, we are continuing to use a substitute chemical based on information provided by petitioners. Further, we agree with respondents and have made the necessary adjustments to the price of this substitute chemical to reflect the appropriate concentration level.

Comment 8: Respondents challenge the Department's valuation of skilled labor. Specifically, they argue that the surrogate value for skilled labor should be based on the upper range of the ''skilled worker'' category instead of being based on the upper range of the ''industrial worker'' category. Respondents state that ''given the fact that the lower range of the industrial category chosen by the Department for unskilled labor corresponds to the lowest monthly wage for the unskilled worker category, it would be logical and fair for the Department to use the lower range of the skilled worker category for determining the average monthly wage for skilled labor.'' Finally, they state that the Department's decision to use the upper range of the ''industrial worker'' category is not supported by the record.

Petitioners argue that the ''industrial worker'' rate should continue to be used by the Department because the production of subject merchandise is an industrial process and ''skilled workers'' represents a category which includes workers who are not engaged in an industrial process.

DOC Position: As noted in the Foreign Market Value section above, the Department is using Indian labor wages from the *Yearbook of Labor Statistics* to value PRC labor costs (*see* October 17, 1995 memorandum from David R. Boyland, Import Compliance Specialist, to case file). Therefore, because the comments above are concerned with information from a source the Department is no longer using, these comments are moot.

Comment 9: Petitioners argue that respondents incorrectly classified skilled and supervisory labor as indirect labor and did not report indirect labor hours needed to produce the merchandise. Petitioners argue that skilled, supervisory and clerical labor should be considered direct labor because they are directly related to the manufacturing operations. Petitioners support their claim by referring to *Plant Design and Economics for Chemical Engineers (Plant Design),* and note that according to this source, the cost of direct supervisory and clerical labor should be 15 percent of the cost of unskilled and skilled operating labor.

Additionally, petitioners argue that all respondents, except GWIIEC, under-reported their labor usage. Petitioners state that the respondents' production process is less automated than that of petitioners' and, hence, should reflect higher labor intensiveness. Petitioners suggest that the Department correct for this by using GWIIEC's labor hours for the other respondents.

Respondents argue that for one of the producers, the Department verified that certain workers were not involved in direct labor activities and, hence, only a part of their labor cost should be used to calculate FMV. Further, respondents argue that the skilled and unskilled labor hours were verified by the Department and, as such, should be used in the final determination. According to respondents, *Plant Design* classifies costs based on the fixed or variable nature of a particular expense, with the result that these costs are treated as direct costs. However, a cost accounting approach would define items such as ''maintenance and repairs'' and supervisory labor as a part of factory overhead. Respondents urge the Department to follow the cost accounting approach. In support of this position, respondents point out that the Department's standard cost of production questionnaire for market economies treats supervisory labor as part of factory overhead.

DOC Position: Because there is no indirect labor component in the Department—s factory overhead surrogate, we reject respondents' argument that only a portion of verified indirect labor hours be included in the FMV. With the exception of GWIIEC, all respondents, as requested by the Department in its questionnaire, reported direct labor hours, as opposed to direct and indirect labor hours. Pursuant to information gathered at verification, the Department was able to quantify some of the indirect labor hours incurred by respondents, as well as identify other indirect labor functions performed. Because we do not have complete indirect labor information for respondents and, as noted above, our factory overhead surrogate does not include a component for indirect labor, we have estimated the amount of indirect labor that was not quantified by the Department and have used this value to calculate FMV (*see* October 27, 1995 calculation memorandum).

While petitioners have argued that total labor is under-reported based on their own experience, we have not rejected the labor component of CEIEC's, HIED's, CMIECHN's and Minmetals' responses in favor of GWIIEC's data. Instead, we have relied on these companies' verified amounts of labor usage adjusted for indirect labor as discussed above in our final determination.

Comment 10: Petitioners argue that electricity consumption for the majority of respondents is unrealistically low. Petitioners claim that the use of certain inputs (*i.e.*, Factor A) does not explain respondents' low electricity consumption and that respondents' electricity consumption should not be less than the minimal amounts indicated as being necessary to produce manganese metal based on the *Kirk-Othmer Encyclopedia of Chemical Technology (2nd Edition) (Kirk-Othmer).* Additionally, according to petitioners, respondents' less efficient economies of scale should result in higher electricity consumption. Given that the production process employed and the raw materials consumed by each of the respondents are basically the same, petitioners also argue that the wide range of electricity usage rates reported by these respondents indicates that the reported electricity consumption is suspect for all of them. Petitioners contend that the Department should use the electricity consumption reported by GWIIEC's producer for all producers in this investigation since GWIIEC's manganese metal producer reported electricity consumption within minimum operational requirements. Respondents, argue that the electricity consumption extrapolated from *Kirk Othmer* by petitioners is based on the electricity consumption in 1967 of two companies no longer producing manganese metal and should be considered outdated. Therefore, the verified electricity usage of the individual producers should be used by the Department in its final determination.

DOC Position: While the domestic and PRC production processes are fundamentally the same, there are some important differences between the two. For example, the PRC producers use a certain input (Factor A) which improves electricity current efficiencies; *i.e.*, all things being equal, the electrolysis stage of the process requires relatively less electricity in the presence of Factor A.

Given the large number of variables (*e.g.*, different production processes and inputs), it is unknown whether the use of Factor A can fully explain the

difference in the electricity consumption reported by producers and the levels submitted by petitioners. However, based on information supplied by the U.S. Bureau of Mines, we have determined that the electricity usage reported by respondents is not outside the range that would be expected for a producer using Factor A (*see* the October 16, 1995 memorandum to Barbara R. Stafford, Deputy Assistant Secretary, Import Administration). Therefore, the Department has used the verified amounts of electricity consumption.

Comment 11: Respondents argue that indirect material costs were double counted by the Department when it valued minor process chemicals and also included the ''stores and spares consumed'' category from the RBI Bulletin as a component of factory overhead. Respondents argue that either the ''stores and spares consumed'' component should be eliminated from the surrogate factory overhead or the Department should avoid directly valuing process chemicals. Respondents also argue that inputs that are considered as ''consumables'' in the accounting systems of the producers should be treated as indirect materials.

Respondents also disagree with petitioners' interpretation of the term ''stores and spares consumed'' listed in the RBI Bulletin, arguing that the Department can reasonably assume that the ''stores and spares consumed'' category includes an element for indirect materials. They point out that the reference to *Plant Design* cited by petitioners distinguishes between ''raw materials,'' which are direct materials, and ''catalysts and solvents, which are not direct materials.'' The chemicals in question, according to respondents, are ''catalysts and solvents.'' Respondents also note that the Department's recognition of variable overhead in market economy cases contradicts petitioners' assertion that all variable inputs must be direct materials. Finally, since the chemicals in question are not physically incorporated into the finished goods or are used in very small quantities (*i.e.*, the antithesis of the cost accounting definition of direct materials), these chemicals should be considered indirect materials which are included in factory overhead.

Petitioners argue that the ''stores and spares consumed'' line item in the RBI Bulletin should be considered ''operating supplies,'' as the term is used in *Plant Design; i.e.*, ''miscellaneous supplies * * * needed to keep the process functioning.'' Petitioners note that *Plant Design* states that ''[r]aw materials are all items that must be supplied in the manufacturing process for each unit of product produced.'' According to petitioners, to the extent that process chemicals are variable inputs, they must be considered ''raw materials'' for which surrogate values must be attributed. Therefore, petitioners state that because these items are not included in the surrogate factory overhead in the ''stores and spares consumed'' line item, the Department should value these chemicals separately from overhead.

DOC Position: Both petitioners and respondents have attempted to explain what the RBI ''stores and spares consumed'' category contains, but neither side has persuaded us. Based upon our own analysis, we have concluded that only those chemicals used after the metal has been produced or those chemicals used for cleaning purposes unrelated to the actual production process should be included in factory overhead (*see* October 16, 1995 Memorandum to Barbara R. Stafford, Deputy Assistant Secretary, Import Administration). With respect to the other chemicals in question, while respondents' accounting systems may treat them as an element of factory overhead, these materials are more appropriately considered direct materials because they are required for a particular segment of the production process. Based on this analysis, we have treated certain of the so-called ''process chemicals'' as indirect materials which are covered by the surrogate value for factory overhead and the remainder have been valued as direct materials.

Comment 12: Petitioners argue that the Department omitted certain expense categories (*i.e*, ''selling commission,'' ''rates and taxes,'' ''other provisions,'' and ''financing interest'') which should have been included in the surrogate SG&A value. Additionally, if the Department continues to exclude ''financing interest'' from the SG&A value, it should use ''gross operating profit'' instead of ''operating profit.'' Finally, according to petitioners, regardless of how PRC producers categorize certain items, costs cannot be assigned to factory overhead or SG&A categories unless the above-referenced RBI Bulletin table attributes the cost to factory overhead or SG&A.

Respondents argue that the Department should not include ''rates and taxes'' in SG&A because the surrogate input values are exclusive of internal taxes or duties. Also, according to respondents, because the Department does not normally adjust for credit expenses in NME cases, it should not include a value for credit expenses (''financing costs''). Moreover, since the cost of producing manganese metal is determined at the producer level, ''selling commissions'' should not be included as the producer does not sell the merchandise, only the exporter does. Generally with respect to SG&A, respondents claim that because the Indian surrogate information is for a broad group of industries and India has no manganese metal industry, the Department should include in its surrogate SG&A only those expenses incurred by the PRC producers. As an alternative to determining what should be included in the surrogate SG&A value, respondents suggest that the Department use the statutory minimum of 10 percent. With respect to profit, respondents argue that the Department's normal practice is to use operating profits.

DOC Position: We agree with petitioners that we incorrectly omitted certain SG&A expense categories listed in the RBI table. We have included these amounts in our final determination.

We disagree with respondents that financing costs should be removed from the SG&A. The Department does not adjust for differences in selling expenses because we do not know enough about the selling expenses included in the surrogate SG&A to make the adjustment. However, the lack of an adjustment does not mean that these costs should be excluded from FMV. We also disagree with respondents regarding selling commissions. Section 773(c)(1) clearly requires the Department to include an amount for general expenses in the FMV. Therefore, regardless of whether the FMV is being constructed at the producer or exporter level, it is appropriate to add an amount for selling expenses.

Further, we disagree with respondents' argument that we should use only those elements of the surrogate SG&A that correspond to expenses incurred by the PRC producers. It is the Department's consistent practice to use a surrogate amount for the entirety of SG&A as calculated using the RBI Bulletin, as opposed to basing the surrogate SG&A percentage on actual expenses incurred by respondents.

Finally, following our normal practice, we considered operating rather than gross profit. Because this amount was less than 8 percent of COM and SG&A, we used the statutory minimum.

Comment 13: Respondents claim that the Department verified that certain charges deducted in the preliminary determination were not incurred by respondents. Therefore, these amounts should not be deducted for the final determination. Moreover, respondents reject petitioners' claim that it is

common practice in the PRC to include insurance as part of inland freight.

Specifically, for CEIEC, respondents claim that the Department verified that foreign brokerage charges were included in ocean freight and hence, this expense should not be valued separately. Regarding CEIEC's ocean freight, the charges were incurred in U.S. dollars. Therefore, respondents argue that CEIEC's actual shipping should be used.

For HIED, respondents claim that the Department verified that foreign inspection charges were not incurred. Hence, no deduction should be made for this expense in the final determination.

Finally, for Minmetals' ocean freight, respondents ask the Department to take the average amount Minmetals paid in U.S. dollars for shipping on most of its U.S. sales on market carriers and use that amount to value the shipping for its remaining sale.

Petitioners argue that an amount for insurance should be added to foreign inland freight because the Department found numerous situations where insurance was included as part of the freight charges paid by the respondents. Regarding the specific exporters, petitioners generally refute respondents' claims. Much of their discussion is proprietary in nature. Hence, the details are not presented here.

DOC Position: We have made deductions for all expenses incurred in shipping the merchandise to the United States (*see* CFR 353.41(d)(2)(i)). If an expense was not incurred, no deduction was made. With respect to insurance for foreign inland freight, we have made deduction only where we verified that insurance was included in the inland freight charge.

We have not used CEIEC's actual freight because an NME carrier was used. We have made the adjustment by using a surrogate ocean freight which includes brokerage and handling. No additional deduction for brokerage and handling was made. Thus, there is no double counting of brokerage and handling.

For HIED, we disagree that we made any deduction for inspection charges at the preliminary determination. As stated in Comment 12, the Department does not adjust for differences in selling expenses because we do not know enough about the selling expenses included in the surrogate SG&A to make an adjustment. Thus, for the final determination, the Department has continued not to make a deduction for this expense for any respondent.

Finally, for Minmetals, we used the shipping rate proposed by respondents for the single U.S. sale where shipping was paid in RMB.

Comment 14: Respondents argue that a type of packing material identified by the Department in its verification report of CMIECHN/CNIECHN's supplier should not be used to calculate FMV because this packing material was not used for POI sales.

DOC Position: The sales in question were not found to be outside the POI, as respondents claim. Therefore, we have calculated the FMV for these sales using the estimated weight of the packing material used for these sales.

Comment 15: According to respondents, both the statute and the Department's regulations require that internal taxes remitted or refunded upon export are to be excluded from the calculation of the constructed value. Further, these respondents argue that the Department verified that the value added tax (VAT) paid by the exporters to the manganese metal producers is reimbursed by the PRC government upon exportation of the merchandise. Therefore, according to respondents, the Department should deduct VAT from all direct material inputs used to determine the cost of manufacture and which were refunded by the PRC government when subject merchandise was exported. The respondents also submit an alternative suggestion for a VAT adjustment in which the Department increases the export price by the amount of the VAT they receive from the PRC government upon exportation of the merchandise.

The petitioners claim that the PRC government does not refund VAT on material inputs, rather, the refund is on the final product. Additionally, the VAT is not incorporated in the FMV calculation, because the inputs are valued using Indian surrogate values which do not incorporate a VAT. Petitioners claim that respondents' alternative to increase the U.S. price is without merit, and that the Department correctly excluded VAT from the U.S. price-to-FMV comparison.

DOC Position: The Department's factors of production calculation uses Indian surrogate values which are exclusive of Indian taxes. Because the FMV is net of taxes, neither a downward adjustment to FMV nor the alternative upward adjustment to USP suggested by respondents is necessary.

Continuation of Suspension of Liquidation

In accordance with section 733(d)(1) and 735(c)(4)(B) of the Act, we are directing the Customs Service to suspend liquidation of all entries of manganese metal from the PRC, as defined in the ''Scope of the Investigation'' section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the Federal Register. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated dumping margins, as shown below. This suspension of liquidation will remain in effect until further notice. The weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Margin percent
CEIEC	10.27
CMIECHN/CNIECHN	0.86
HIED	3.72
Minmetals	4.36
PRC-wide Rate	143.32

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. As our final determination is affirmative, the ITC will determine whether these imports are causing material injury, or threat of material injury to the industry in the United States, within 45 days. If the ITC determines that material injury, or threat of material injury, does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an Antidumping Duty Order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

This determination is published pursuant to section 735(d) of the Act and 19 CFR 353.20(a)(4).

Dated: October 27, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–27369 Filed 11–3–95; 8:45 am]

BILLING CODE 3510–DS–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton Textile Products Produced or Manufactured in Pakistan

October 31, 1995.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: October 31, 1995.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, 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) 927–6714. 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).

Special shift previously applied to the 1995 limit for Category 361 is being reduced. As a result the limit for Category 360 is increased.

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 59 FR 65531, published on December 20, 1994). Also see 60 FR 9014, published on February 16, 1995; and 60 FR 52898, published on October 11, 1995.

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 Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 31, 1995.

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 February 13, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Pakistan and exported during the twelve-month period beginning on January 1, 1995 and extending through December 31, 1995.

Effective on October 31, 1995, you are directed to adjust the limits for the following categories, as provided under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
360	1,630,063 numbers.
361	3,315,821 numbers.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1994.

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. 95–27409 Filed 11–3–95; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

New York Mercantile Exchange Proposed Option Contracts on Permian Basin Natural Gas Futures and Palo Verde and California/Oregon Border Electricity Futures Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity options contract.

SUMMARY: The New York Mercantile Exchange (NYMEX or Exchange) has applied for designation as a contract market in Permian Basin natural gas futures options, Palo Verde electricity futures options, and California/Oregon Border electricity futures options. The Acting Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before December 6, 1995.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. Reference should be made to the NYMEX Permian Basin natural gas option contract or the Palo Verde and California/Oregon Border electricity option contracts.

FOR FURTHER INFORMATION CONTACT: Please contact Richard Shilts of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street, NW, Washington, DC 20581, telephone 202–418–5275.

SUPPLEMENTARY INFORMATION: Copies of the terms and conditions will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street N.W., Washington, D.C. 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 418–5097.

Other materials submitted by the NYMEX in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed terms and conditions, or with respect to other materials submitted by the NYMEX, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581 by the specified date.

Issued in Washington, DC, on October 31, 1995.

Blake Imel,

Acting Director.

[FR Doc. 95–27374 Filed 11–3–95; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF EDUCATION

Federal Interagency Coordinating Council Meeting (FICC)

AGENCY: Federal Interagency Coordinating Council, Education.

ACTION: Notice of a public meeting.

SUMMARY: This notice describes the schedule and agenda of a forthcoming meeting of the Federal Interagency Coordinating Council. Notice of this meeting is required under section 685(c) of the Individuals with Disabilities Education Act, as amended, and is intended to notify the general public of their opportunity to attend the meeting. The meeting will be accessible to individuals with disabilities.

DATE AND TIME: November 16, 1995, from 1:30 p.m. to 4:30 p.m.

ADDRESS: Hyatt Regency Washington on Capitol Hill, Columbia Ballroom, 400 New Jersey Avenue, NW., Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Connie Garner, U.S. Department of Education, 600 Independence Avenue, SW., Room 3127, Switzer Building, Washington, DC 20202–2644. Telephone: (202) 205–8124. Individuals who use a telecommunications device for the deaf (TDD) may call (202) 205–8170.

SUPPLEMENTARY INFORMATION: The Federal Interagency Coordinating Council (FICC) is established under section 685 of the Individuals with Disabilities Education Act, as amended (20 U.S.C. 1484a). The Council is established to: (1) Minimize duplication across Federal, State and local agencies of programs and activities relating to early intervention services for infants and toddlers with disabilities and their families and preschool services for children with disabilities; (2) ensure effective coordination of Federal early intervention and preschool programs, including Federal technical assistance and support activities; and (3) identify gaps in Federal agency programs and services and barriers to Federal interagency cooperation. To meet these purposes, the FICC seeks to: (1) Identify areas of conflict, overlap, and omissions in interagency policies related to the provision of services to infants, toddlers, and preschoolers with disabilities; (2) develop and implement joint policy interpretations on issues related to infants, toddlers, and preschoolers that cut across Federal agencies, including modifications of regulations to eliminate barriers to interagency programs and activities; and (3) coordinate the provision of technical assistance and dissemination of best practice information. The FICC is chaired by the Assistant Secretary for Special Education and Rehabilitative Services.

At this meeting the FICC plans to: (1) Update the membership on the strategic planning process; and (2) discuss issues related to Champus and the Individuals with Disabilities Education Act.

The meeting of the FICC is open to the public. Written public comment will be accepted at the conclusion of the meeting. These comments will be included in the summary minutes of the meeting. The meeting will be physically accessible with meeting materials provided in both braille and large print. Interpreters for persons who are hearing impaired will be available. Individuals with disabilities who plan to attend and need other reasonable accommodations should contact the contact person named above in advance of the meeting.

Summary minutes of the FICC meetings will be maintained and available for public inspection at the U.S. Department of Education, 600 Independence Avenue, SW., Room 3127, Switzer Building, Washington, DC 20202–2644, from the hours of 9:00 a.m. to 5:00 p.m., weekdays, except Federal Holidays.

Judith E. Huemann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 95–27447 Filed 11–3–95; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Inertial Confinement Fusion Advisory Committee/Defense Programs; Notice of Partially Closed Meeting

AGENCY: Department of Energy.

ACTION: Notice of partially closed meeting.

Pursuant to the provision of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following meeting:

Name: Inertial Confinement Fusion Advisory Committee/Defense Programs.

Date and Time: Agenda is subject to revision.

Tuesday, November 14, 1995, 7:30 a.m.–10:45 a.m.—Open
Tuesday, November 14, 1995, 10:45 a.m.–1:00 p.m.—Closed
Tuesday, November 14, 1995, 1:00 p.m.–2:30 p.m.—Break
Tuesday, November 14, 1995, 2:30 p.m.–6:30 p.m.—Closed
Wednesday, November 15, 1995, 8:00 a.m.–10:50 a.m.—Closed
Wednesday, November 15, 1995, 10:50 a.m.–1:00 p.m.—Open

Place: General Atomics, San Diego (La Jolla), California.

For Further Information Contact: Marshall M. Sluyter, Designated Federal Officer, Office of Research and Inertial Fusion (DP–11), Defense Programs, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874, Telephone: (301) 903–5491. Persons wishing to attend the meeting should submit their names to David A. Steinman mailing address: General Atomics, P.O. Box 85608, San Diego, CA 92186–9784 or by telephone at: (619) 455–2879 on or before November 9, 1995, to obtain a visitor pass and/or escort to the meeting room(s).

Supplementary Information: Purpose of the Committee: To provide advice and guidance to the Assistant Secretary for Defense Programs on both technical and management aspects of the Inertial Confinement Fusion (ICF) program.

Purpose of the Meeting: To evaluate the progress of the target physics program and the target fabrication program with respect to their technical contracts and their capability to support the Nation's Science-Based Stockpile Stewardship Program, the National Ignition Facility (NIF) program, the Omega Upgrade program, and the KrF laser program. To be informed about the recently revised ICF Five Year Program Plan.

Tentative Agenda: subject to revision.

November 14, 1995

7:30 a.m. Opening
8:15 a.m. General Atomics Welcoming Remarks
8:30 a.m. Summary of Recent Events; Stockpile Stewardship; ICF Program Mission, Priorities, and Objectives
9:10 a.m. Omega Upgrade Status
9:25 a.m. Nike Laser Status
9:40 a.m. NIF Program Office Remarks
9:55 a.m. ICF Program Wrap-Up and Review of ICF 5–Year Program Plan
10:45 a.m. Closed Meeting (10:45 a.m.–6:30 p.m.)

November 15, 1995

8:00 a.m. Closed Meeting (8:00 a.m.–10:50 a.m.)
11:05 a.m. Opportunity for Public Comment
12:05 p.m. Committee Discussions, Wrap-Up
1:00 p.m. Adjournment

Open to the Public: On November 14, 1995, from 7:30 a.m. to 10:45 a.m., and on November 15, 1995, from 10:50 a.m. until adjournment, the meeting is open to the public. The chairman of the committee is empowered to guide the meeting in a manner that will, in the chairman's judgment, facilitate the orderly conduct of business.

Any member of the public who wishes to make an oral statement pertaining to agenda items should contact the Designated Federal Officer at the address or telephone number shown above. Requests must be received before 3:00 p.m. (eastern standard time) Thursday, November 9, 1995. Reasonable provisions will be made to include the presentation during the public comment period. Oral presenters are asked to provide 25 copies of their statements at the time of their presentations.

Written statements pertaining to agenda items may also be submitted prior to the meeting. Written statements must be received by the Designated Federal Officer at the address shown above before 3:00 p.m. (eastern standard time) Thursday, November 9, 1995, to assure they are considered by the committee during the meeting.

Closed Meeting: Pursuant to section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (title 5, United States Code, App. 2), section 7234(b), title 42, United States Code, and section 552b(c)(1), title 5, United States Code, the portions of the meeting from10:45 a.m. until 1:00 p.m. and from 2:30 p.m. until 6:30 p.m. on November 14, 1995; and from 8:00 a.m. until 10:50 a.m. on November 15, 1995 will be closed to the public in the interest of national security.

This notice is being published less than 15 days before the date of the meeting due to

programmatic issues that had to be resolved prior to publication.

Minutes: Minutes of the open portions of the meeting will be available to the public to view and for copying approximately 30 days following the meeting at the Freedom of Information Public Reading Room, Room 1E–190, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, D.C., 20585, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on November 1, 1995.

Jo Anne C. Whitman,

Deputy Advisory Committee Management Officer.

[FR Doc. 95–27551 Filed 11–2–95; 2:20 pm]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. EG96–7–000, et al.]

Indeck Pepperell Power Associates, Inc., et al.; Electric Rate and Corporate Regulation Filings

October 30, 1995.

Take notice that the following filings have been made with the Commission:

1. Indeck Pepperell Power Associates, Inc.

[Docket No. EG96–7–000]

On October 18, 1995, Indeck Pepperell Power Associates, Inc., a corporation organized and existing under the laws of the State of Delaware, with its address at 1130 Lake Cook Road, Suite 300, Buffalo Grove, Illinois 60089 (the ''Applicant''), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator (''EWG'') status pursuant to Part 365 of the Commission's Regulations.

The Applicant will be engaged directly in owning an eligible facility located in Pepperell, Massachusetts (the ''Pepperell Plant''). The Pepperell Plant consists of a nominal 38 MW combined-cycle cogeneration facility utilizing natural gas as its primary fuel and No. 2 fuel oil as a backup fuel.

Comment date: November 13, 1995, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy and accuracy of the application.

2. Compania Samalayuca II, S.A. de C.V.

[Docket No. EG96–8–000]

On October 19, 1995, Compania Samalayuca II, S.A. de C.V. (''Applicant''), whose address is c/o Ritch, Heather y Mueller, S.C., Amberes No. 5, Apdo. Postal No. 6–798, 06600 Mexico, D.F., filed with the Federal Energy Regulatory Commission an Application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

The Applicant, a Mexican limited liability company, states that it will be engaged directly, or indirectly through one or more affiliates within the meaning of Section 2(a)(11)(B) of PUHCA, and exclusively in the business of owning all or part of Samalayuca II, a 700 MW thermoelectric gas-fired generating facility to be located in Samalayuca, Chihuahua, Mexico, and selling electric energy at wholesale, as that term has been interpreted by the Commission. The Applicant requests a determination that the Applicant is an exempt wholesale generator under Section 32(a)(1) of the Public Utility Holding Company Act of 1935, as amended.

Comment date: November 13, 1995, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy and accuracy of the application.

3. Brooklyn Navy Yard Cogeneration Partners, L.P.

[Docket No. EG96–9–000]

On October 19, 1995, Brooklyn Navy Yard Cogeneration Partners, L.P., 366 Madison Avenue, Suite 1103, New York, New York 10017, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Section 32(a)(1) of the Public Utility Holding Company Act of 1935, as amended by Section 711 of the Energy Policy Act of 1992.

The applicant is a corporation that will be engaged directly and exclusively in owning and operating an eligible facility under construction in Brooklyn, New York. The facility will consist of a 315 MW (net) topping-cycle cogeneration facility fueled primarily by natural gas. The facility will include such interconnection components as are necessary to interconnect the facility with the facilities of the applicant's wholesale customers. Applicant has previously been found to be an exempt wholesale generator. This filing requests a new determination of status, in light of new financing arrangements for the eligible facility.

Comment date: November 13, 1995, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy and accuracy of the application.

4. PECO Energy Company

[Docket No. ER95–207–001]

Take notice that on October 11, 1995, PECO Energy Company (PECO) filed a compliance filing in connection with the Order Granting Intervention, Accepting for Filing Proposed Rates, As Modified, and Granting Waiver, issued September 19, 1995.

Copies of the filing have been sent to all parties to this proceeding, the Pennsylvania Public Utility Commission and the Maryland Public Service Commission.

Comment date: November 13, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. U.S. Power & Light, Inc.

[Docket No. ER96–105–000]

Take notice that on October 17, 1995, U.S. Power & Light Company tendered for filing an application for blanket authorizations, certain waivers, and order approving rate schedule.

Comment date: November 13, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Maine Public Service Company

[Docket No. ER96–106–000]

Take notice that on October 17, 1995, Maine Public Service Company (Maine Public) filed an executed Service Agreement with the Coastal Electric Service Company.

Comment date: November 13, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Maine Public Service Company

[Docket No. ER96–107–000]

Take notice that on October 17, 1995, Maine Public Service Company submitted an agreement under its Umbrella Power Sales tariff.

Comment date: November 13, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Duke/Louis Dreyfus L.L.C.

[Docket No. ER96–108–000]

Take notice that Duke/Louis Dreyfus L.L.C. on October 17, 1995, tendered for filing its FERC Electric Rate Schedule No. 1 to be effective November 8, 1995 and requested that the Commission waive certain of its regulations and grant blanket approval with respect to the issuance of securities and assumption of obligations or liabilities. DLD requests expedited treatment calling for a filing date of five business

days for interventions and protests from the day noticed, with those filings due to DLD's hands the same day filed. Responses to interventions or protests. DLD seeks an effective date of November 8, 1995 for FERC Electric Rate Schedule No. 1, but not to exceed 60 days from October 17, 1995.

DLD was formed by Duke Energy Marketing Corp., a third-tier subsidiary of Duke Power Company, and Louis Dreyfus Electric Power Inc.

Comment date: November 13, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Duke Energy Marketing Corp.

[Docket No. ER96–109–000]

Take notice that on October 17, 1995, Duke Energy Marketing Corp. (DEMC) refiled its FERC Electric Rate Schedule No. 1 to be effective November 8, 1995 and requested that the Commission waive certain of its regulations and grant blanket approval with respect to the issuance of securities and assumption of liabilities. DEMC is a subsidiary of Duke Power Company. DEMC seeks an effective date of November 8, 1995 for FERC Electric Rate Schedule No. 1, but not to exceed 60 days from October 17, 1995.

Copies of this filing were served on the parties of record in Docket No. ER95–755–000 by hand-delivery and/or overnight delivery.

Comment date: November 13, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27421 Filed 11–3–95; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 11512–000]

John H. Bigelow; Notice of Intent to Conduct Environmental Scoping Meetings and Site Visit

October 31, 1995.

The Federal Energy Regulatory Commission (FERC) has received an application for a license for the existing operating McKenzie Project, Project No. 11512–000. The McKenzie Project is located on the McKenzie River in Lane County, Oregon.

The FERC staff intends to prepare an Environmental Assessment (EA) on this hydroelectric project in accordance with the National Environmental Policy Act.

In the EA, we will consider both site-specific and cumulative environmental impacts of the project and reasonable alternatives, and will include an economic and engineering analysis.

The draft EA will be issued and circulated for review by all interested parties. All comments filed on the draft EA will be analyzed by the staff and considered in a final EA. The staff's conclusions and recommendations will then be presented for the consideration by the Commission in reaching its final licensing decision.

Scoping Meeting

Staff will hold a scoping meeting on Tuesday, November 28, 1995, at 1:00 PM, at the U.S. Forest Service, McKenzie Bridge Ranger District, Fire Ready Room, 57600 McKenzie Highway, McKenzie Bridge, Oregon.

Interested individuals, organizations, and agencies are invited to attend the meeting and assist the staff in identifying the scope of environmental issues that should be analyzed in the EA.

To help focus discussions at the meeting, a scoping document outlining subject areas to be addressed in the EA will be mailed to agencies and interested individuals on the FERC mailing list. Copies of the scoping document will also be available at the scoping meeting.

Objectives

At the scoping meeting the FERC staff will: (1) Identify preliminary environmental issues related to the proposed project; (2) identify preliminary resource issues that are not important and do not require detailed analysis; (3) identify reasonable alternatives to be addressed in the EA; (4) solicit from the meeting participants all available information, especially quantified data, on the resource issues; and (5) encourage statements from experts and the public on issues that should be analyzed in the EA, including points of view in opposition to, or in support of, the staff's preliminary views.

Procedures

The scoping meeting will be recorded by a court reporter and all statements (oral and written) will become part of the formal record of the Commission proceedings on the McKenzie Project. Individuals presenting statements at the meeting will be asked to clearly identify themselves for the record.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meeting and assist the staff in defining and clarifying the issues to be addressed in the EA.

Persons choosing not to speak at the meeting, but who have views on the issues or information relevant to the issues, may submit written statements for inclusion in the public record at the meetings. In addition, written scoping comments (original and 8 copies) may be submitted with the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1A, Washington, DC 20426, by December 28, 1995.

All written correspondence should clearly show the following caption on the first page: McKenzie Project, FERC Project No. 11512–000.

Intervenors—those on the Commission's service list for this proceeding (parties)—are reminded of the Commission's Rules of Practice and Procedure, requiring parties filing documents with the Commission, to serve a copy of the document on each person whose name appears on the official service list. Further, if a party or interceder files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Site Visit

A site visit to the McKenzie Project is planned for November 28, 1995. Those who wish to attend should plan to meet at the U.S. Forest Service, McKenzie Bridge Ranger District, Fire Ready Room, 57600 McKenzie Highway, McKenzie Bridge, Oregon at 9:00 AM, and shortly thereafter, leave for the project site located about 5 miles away. For more details, contact Mr. Phil Raab at (503) 822–338.

Any questions regarding this notice may be directed to Héctor M. Pérez,

Environmental Coordinator at FERC, (202) 219–2843.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27420 Filed 11–3–95; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 10934–003, New Hampshire]

William B. Ruger, Jr.; Notice of Availability of Draft Environmental Assessment

October 31, 1995.

A draft environmental assessment (DEA) is available for public review. The DEA reviewed the application for amendment for the Sugar River II Project (FERC No. 10934). The application proposes to shorten the bypass reach of the Sugar River by 650 feet by relocating the proposed dam in a downstream direction and replacing an open canal with a seven-foot-diameter buried steel penstock. The DEA finds that approval of the amendment application would not constitute a major federal action significantly affecting the quality of the human environment. The Sugar River II Project is located on the Sugar River, in Sullivan County, in Newport, New Hampshire.

The DEA was prepared by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the DEA can be viewed at the Commission's Reference and Information Center, Room 2A, 888 First Street, N.E., Washington, D.C. 20406. Copies can also be obtained by calling the project manager listed below.

Please submit any comments within 30 days from the date of this notice. Any comments, conclusions, or recommendations that draw upon studies, reports, or other working papers of substance should be supported by appropriate documentation.

Comments should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20406. Please denote ''Comments: Project No. 10934–003'' on all comments. For more information, please contact the project manager, Joseph C. Adamson, at (202) 219–1040.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27382 Filed 11–3–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ES96–7–000]

Edison Sault Electric Company; Notice of Application

October 31, 1995.

Take notice that on October 24, 1995, Edison Sault Electric Company filed an application under § 204 of the Federal Power Act seeking authorization to issue unsecured short-term notes, from time to time, in an aggregate amount not more than $10 million principal amount outstanding at any one time, during the period on or before December 31, 1997, with final maturities not later than December 31, 1998.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before November 24, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27380 Filed 11–3–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ES96–8–000]

New York State Electric & Gas Corporation; Notice of Application

October 31, 1995.

Take notice that on October 27, 1995, New York State Electric & Gas Corporation filed an application under § 204 of the Federal Power Act seeking authorization to issue notes and commercial paper, from time to time, in an aggregate principal amount not to exceed $275 million outstanding at any one time, prior to January 1, 1998, with a maturity of one year or less.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before November 27, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

FR Doc. 95–27381 Filed 11–3–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–36–000]

NorAm Gas Transmission Company; Notice of Application

October 31, 1995.

Take notice that on October 25, 1995, NorAm Gas Transmission Company (NorAm), 1600 Smith Street, Houston, Texas 77002, filed in Docket No. CP96–36–000 an application pursuant to Section 7(b) of the Natural Gas Act and Part 157 of the Federal Energy Regulatory Commission's Regulations for permission and approval to retire and abandon one of five compressor units at its Hobbs Compressor Station, specifically the 340 Caterpillar powered engine (Hobbs #5), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

NorAm states that Hobbs #5 is located on Line B–55 in Sebastian County, Arkansas in a 19 foot by 25 foot building on a concrete foundation. NorAm asserts that the compressor cylinders, associated piping and the building will be junked at no value. NorAm claims Hobbs #5 has not operated since 1982 due to an internal mechanical failure; however, operation of Hobbs #5 in no longer necessary. NorAm notes that during the time this compressor has been shut down, the operation of the four remaining engines has effectively allowed NorAm to receive and transport the existing upstream production, and no production will be interrupted or abandoned as a result of the retirement of this compressor engine. NorAm states that the proposed abandonment will not adversely affect its ability to continue to render certificated transportation service to its customers. Additionally, NorAm does not foresee an increase in the current production from this field, nor a reason that would justify the cost to replace Hobbs #5.

NorAm asserts that the proposed abandonment does not involve a significant environmental impact and granting the requested authorization will not constitute a major federal action

significantly affecting the quality of the human environment. NorAm states that all ground disturbance will occur within the fenced graveled lot, where the compressor is located, which exists on previously disturbed land and right-of-way. NorAm states that the building and yard piping to the compressor will be removed and the concrete foundation will remain in place. NorAm notes that upon retiring the facilities, it will revegetate any disturbed rights-of-way and will monitor the area involved to insure adequate sprouting and coverage. Further, NorAm claims that it will use its existing erosion control program originally filed with the Commission in Docket No. CP87–544–000 to insure complete revegetation and stability of the soils affected by the proposed abandonment.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 21, 1995, file with the Federal Energy Regulatory Commission (888 First Street, N.E., Washington, D.C. 20426) a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its on review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for NorAm to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27379 Filed 11–3–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–31–000]

Northern Natural Gas Company; Notice of Application

October 31, 1995.

Take notice that on October 24, 1995, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP96–31–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon a compressor station, all as more fully set forth in the application on file with the Commission and open to public inspection.

Northern proposes to abandon a compressor station in Kearny County, Kansas, since it is no longer required and would not result in any abandonment of service to any customers of Northern.

Any person desiring to be heard or to protest with reference to said application should on or before November 21, 1995, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 18 CFR 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Northern to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27378 Filed 11–3–95; 8:45 am]

BILLING CODE 6717–01–M

FEDERAL LABOR RELATIONS AUTHORITY

Senior Executive Service; Performance Review Board

AGENCY: Federal Labor Relations Authority.

ACTION: Notice.

SUMMARY: Notice is hereby given of the names on the Performance Review Board.

EFFECTIVE DATE: November 6, 1995.

FOR FURTHER INFORMATION CONTACT: James M. Cheskawich, Director, Personnel Division, Federal Labor Relations Authority (FLRA), 607 14th Street, NW., Washington, DC 20424–0001, (202) 482–6690, extension 440.

SUPPLEMENTARY INFORMATION: Section 4314(c) (1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more performance review boards. The board shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations, to the appointing authority relative to the performance of the senior executive.

The following persons will serve on the FLRA's Performance Review Board:

Solly Thomas, Office of the Executive Director, FLRA

Marjorie K. Thompson, Office of the General Counsel, FLRA

Patricia C. Johnson, Equal Employment Opportunity Commission

Gloria Joseph, National Labor Relations Board

Mary L. Jennings, Merit Systems Protection Board

James M. Cheskawich,

Director, Personnel and EEO Division.

[FR Doc. 95–27325 Filed 11–3–95; 8:45 am]

BILLING CODE 6727–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Anthem World Transport, Inc., Metro Office Park, ST. 1 #2, Ste. 304, Guaynabo, Puerto Rico 00968–1705, Officers: Anthony Emposimato, President, Leopoldo Melendez, Vice President

Caribwrap Inc. dba Five Star Forwarding, 8359 N.W. 68th Street, Miami, FL 33166–2663, Officer: George Carter Gaulding, President

Aerospan Cargo International, 3785 N.W. 82nd Ave., #403, Miami, FL 33166, Officers: Mordechai Boazia, President, Dennis Ryan, Vice President

Dated: October 31, 1995.

By the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 95–27376 Filed 11–3–95; 8:45 am]

BILLING CODE 6730–01–M

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Notice of Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Final Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of Section 3, Public Law 89–777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR Part 540, as amended:

Disney Cruise Line, Inc., 210 Celebration Place, Celebration, Florida 34747

Vessels: DISNEY VESSEL #1 and DISNEY VESSEL #2

Dated: October 31, 1995.

Joseph C. Polking,

Secretary.

[FR Doc. 95–27375 Filed 11–3–95; 8:45 am]

BILLING CODE 6730–01–M

GENERAL SERVICES ADMINISTRATION

Performance Review Boards for Small Client Agencies Serviced by the General Services Administration, Names of Members

Sec. 4314 (C) (1) through (5) of Title 5 U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more Performance Review Boards. The board shall review and evaluate the initial appraisal by the supervisor of a senior executive's performance, along with any recommendations to the appointing authority relative to the performance of the senior executive. The Performance Review Board also shall make recommendations as to whether the career executive should be recertified, conditionally recertified, or not recertified.

As provided under Section 601 of the Economy Act of 1932, amended 31 U.S.C. 1525, the General Services Administration through its Agency Liaison Division, provides various personnel management services to a number of diverse Presidential commissions, committees, boards and other agencies through reimbursable administrative support agreements. This notice is proceeded on behalf of the client agencies, and it supersedes all other notices in the Federal Register on the subject.

Because of their small size, a Performance Review Board register has been established in which SES members from the client agencies participate. The Board is composed of SES members from various agencies. From this register of names, the head of each client agency will appoint executives to a specific board to serve a particular client agency.

The members whose names appear on the Performance Review Board standing roster to serve client agencies are:

Barry M. Goldwater Scholarship and Excellence in Education Foundation

Gerald J. Smith, Executive Secretary

Committee for Purchase From People Who Are Blind or Severely Disabled

Beverly L. Milkman, Executive Director

Federal Retirement Thrift Investment Board

David L. Black, Director of Accounting
Stratos D. Valakis, Director of Contracts and Administration
John W. Witters, Director of Automated Systems
Alisone M. Clark, Director of Benefits and Program Analysis
Vera D. Charron, Director of Communications
Thomas J. Trabucco, Director of Internal Affairs
Peter B. Mackey, Director of Investments
John J. Omeara, General Counsel
James B. Petrick, Deputy General Counsel
Elizabeth S. Woodruff, Associate General Counsel

Defense Nuclear Facilities Safety Board

Kenneth M. Pusateria, General Manager
Joseph R. Neubeiser, Deputy General Manager
Robert M. Anderson, General Counsel
Richard A. Azzaro, Deputy General Counsel for Policy and Litigation
George W. Cunningham, General Engineer
Joyce P. Davis, Chief, Health Physics Branch
Wallace R. Kornack, Assistant Director for Engineering
Steven L. Krahn, Assistant Director for Weapon Programs
Lester A. Ettlinger, Assistant Director for Standards

Harry S Truman Scholarship Foundation

Louis H. Blair, Executive Secretary

Japan-United States Friendship Commission

Eric J. Gangloff, Executive Director

Office of Navajo and Hopi Indian Relocation

Christopher J. Bavasi, Executive Director
Michael J. McAlister, Deputy Executive Director

Artic Research Commission

Garrett W. Brass, Executive Director

National Mediation Board

Ronald M. Etters, General Counsel
Stephen E. Crable, Chief of Staff

Calvin R. Snowden,

Director.

[FR Doc. 95–27415 Filed 11–3–95; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Administration on Children, Youth and Families Statement of Organization, Function, and Delegations of Authority

This notice amends Part K of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human

Services, Administration for Children and Families (ACF) as follows: Chapter KB, Administration on Children, Youth and Families (ACYF) (60 FR 2766), as last amended January 11, 1995. This Notice announces the new organizational structure and assignment of responsibilities for the Children's Bureau. The Children's Bureau will be restructured with two divisions: the Policy Division and the Program Operations Division to administer the child welfare policy and operational functions presently administered within ACYF.

Amend Chapter KB as follows:

a. KB.10 Organization. Delete in its entirety and replace with the following:

KB.10 Organization. The Administration on Children, Youth and Families is headed by a Commissioner who reports directly to the Assistant Secretary for Children and Families and consists of:

Office of the Commissioner (KBA)
Division of Program Evaluation (KBB)
Head Start Bureau (KBC)
Program Operations Division (KBC 1)
Program Support Division (KBC 2)
Children's Bureau (KBD)
Policy Division (KBD 1)
Program Operations Division (KBD 2)
Family and Youth Services Bureau (KBE)
Program Operations Division (KBE 1)
Program Support Division (KBE 2)
National Center on Child Abuse and Neglect (KBF)
Program Policy and Planning Division (KBF 1)
Clearinghouse Division (KBF 2)
Child Care Bureau (KBG)
Program Operations Division (KBG 1)
Policy Division (KBG 2)

b. Delete paragraph D in its entirety and replace with the following.

D. The Children's Bureau advises the Commissioner on child welfare, foster care, adoption, family preservation and family support matters. It recommends legislative and budgetary proposals, operational planning system objectives and initiatives, and projects and issue areas for evaluation, research and demonstration activities; represents ACYF in initiating and implementing inter-agency activities and projects affecting children; and provides leadership and coordination for the programs, activities, and subordinate units of the Bureau. The Bureau manages the Adoption and Foster Care Analysis and Reporting System (AFCARS) and the Statewide Automated Child Welfare Information System (SACWIS).

1. The Policy Division manages, coordinates and provides direction and leadership in policy development and interpretation, and program development and innovation under titles IV–B and IV–E of the Social Security Act. It provides expert national leadership and direction on child welfare, foster care, adoption assistance, family preservation, family support, court improvement, and independent living matters, and direction and guidance on joint planning between regions and States. It administers the discretionary grant programs in adoption opportunities, abandoned infants, crisis nurseries, respite care, and child welfare research and demonstration.

2. The Program Operations Division manages, coordinates and provides direction and leadership in the program operation, monitoring and compliance review activities included under titles IV–B and IV–E of the Social Security Act; the Division provides advice, guidance and assistance to Regions and States on the implementation, operation, and review of programs under titles IV–B and IV–E. It is responsible for the development, implementation and oversight of corrective action plans and the provision of training and technical assistance, either directly or through Resource Centers. The Division works with appropriate other agencies and organizations on the implementation and oversight of relevant sections of the Indian Child Welfare Act.

Dated: November 1, 1995.

Mary Jo Bane,

Assistant Secretary for Children and Families.

[FR Doc. 95–27439 Filed 11–3–95; 8:45 am]

BILLING CODE 4184–01–M

Centers for Disease Control and Prevention

National Institute for Occupational Safety and Health; Meeting

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Setting a National Occupational Research Agenda.

Time and Date: 9:30 a.m.–5:00 p.m., November 30, 1995.

Place: Hubert H. Humphrey Building, Room 800, 200 Independence Avenue, SW, Washington, DC 20201.

Status: Open to the public, limited only by the space available. The room accommodates approximately 100 people.

Purpose: NIOSH seeks input into the development of a national agenda for occupational safety and health research for the next decade. The agenda will assist NIOSH and other organizations and individual scientists in the public and private sectors to coordinate research activities and target the highest scientific priorities for preventing work injuries and illnesses in the United States.

The tentative agenda of the meeting includes: (1) An initial discussion list of possible items for the national research agenda; (2) proposed criteria for establishing research priorities; and, (3) the proposed public process for developing the research agenda. The remainder of the meeting will provide interested parties with the opportunity to comment and make recommendations on research priorities, criteria, and the process. Research priorities for consideration include health effects, hazardous exposures, work environments, industries, occupations, and populations associated with significant occupational disease, injury, disability, fatalities, or topics of growing importance in the future.

Persons interested in presenting oral comments during the meeting will be limited to five minutes to allow a maximum number of presentations. Presenters are encouraged to provide written comments to accompany their oral presentations. Participants as well as persons who cannot attend are encouraged to send written comments as indicated below.

Matters to be Discussed: As the lead federal health agency for research into the causes and prevention of work injuries and diseases, NIOSH has a responsibility to continually assess the state of existing knowledge and define future research needs and priorities. The development of a national research agenda will assist NIOSH and the occupational safety and health research community in establishing priorities and targeting some of the scientific needs of the next decade that offer the greatest potential for advancing the safety and health of workers. Establishing these priorities is especially important in light of increasing fiscal constraints on occupational safety and health research in both the public and private sectors. The agenda is intended to serve decision-makers and scientists working throughout the field, employed in government, corporate, labor, university, and private research programs.

NIOSH has developed a discussion list of possible items for the national research agenda. A small group of scientists reviewed a wide array of information ranging from the scope of occupational safety and health problems to future employment projections. The results of a scientific agenda-setting process recently completed in the United Kingdom were also considered. In addition, the group agreed on the scope of agenda items it would propose. For example, it decided that a category such as ''occupational lung diseases'' would be too inclusive to serve as a research priority, that items of this breadth would result in an agenda encompassing the field rather than providing decision-makers and scientists with focussed direction to meet some of the greatest needs and opportunities for prevention. The group ultimately listed approximately 50 items:

Health response	Exposure
Traumatic Injury	Chemical Mixtures (Including Hazardous Waste).
Eye Injury	Pesticides.
Electrocutions	Solvents.
Falls	Oils and related derivatives (e.g., Cutting Fluids, Diesel).
Neck, Shoulder and Other Upper Extremity Disorders	Indoor Environment.
Low Back Disorders	Thermal stresses.
Fertility and Pregnancy Outcomes	Mineral and Synthetic Fibers.
Occupational Asthma	Metals and Related Compounds.
Pneumoconioses	Hormonally Active Substances.
Inhalation Injury	Violence/Assaults.
Hypersensitivity lung disease	Motor Vehicles.
Occupational Chronic Diseases (Selected)	Heavy Machinery.
Chronic Obstructive Lung Disease	Hand Tools.
Chronic Renal Disease	Mechanical Stressors.
Ischemic Heart Disease	Noise.
Neurodegenerative Disease (Cognitive and Movement Disorders)	Electric and Magnetic Fields.
Occupational Infectious Diseases	Behavioral Risk Factors.
Depression and Anxiety	
Immune Dysfunction	
Neuroimmune Function	
Hearing Loss	
Contact Dermatitis	
Sector—work environment—workforce	**Research process**
Construction	Intervention and Prevention.
Agriculture	Effectiveness Research.
Small Businesses	Engineering and Technologic Solutions.
Work Organization (Changing Economy and Workforce)	Exposure Assessment Methods Development.
Emerging Technologies	Hazard Surveillance.
Vulnerable Populations	Disease Surveillance.
Service Workers	Injury Surveillance.
	Risk Assessment Methodology.
	Identification of Molecular Correlates of Cancer and other Chronic Diseases.
	Occupational Health Services Research (e.g., Manpower Needs; Clinical Outcomes Research).

From this list and additional items that are recommended, NIOSH anticipates producing a final agenda of 15–25 of the highest scientific priorities for advancing safety and health. The following criteria were used in developing this initial discussion list and are proposed for the development of the research agenda:

(1) the seriousness of the hazard in terms of death, injury, disease, disability, and economic impact;

(2) the number of workers exposed or the magnitude of the risk;

(3) the potential for risk reduction;

(4) the expected trend in the importance of the subject; and,

(5) the need for research (the sufficiency of existing research) for improving worker protection.

NIOSH will be seeking input over the next five months to assure that the final agenda includes input from the broadest base of occupational safety and health expertise. The process will include the following elements:

(1) Corporate and worker liaison committees and a broader-based stakeholders outreach committee will assist NIOSH in obtaining involvement and input from employers, employees, health officials, health professionals, scientists, and public health, advocacy, scientific, industry and labor organizations;

(2) The November 30 public meeting, described in this notice, to obtain early input on the research priorities, criteria for selection of priorities, and the process for developing the agenda;

(3) Three work groups comprising researchers, health professionals, and representatives of stakeholder organizations will meet in public sessions in December and January to provide individual input and recommendations based on the communities they represent; time will be reserved to allow observers the opportunity to comment;

(4) Regional public meetings will be held in increase the opportunities for input from employers, employees, scientists, and other public stakeholders across the United States;

(5) A final public meeting in March 1996 to present a preliminary research agenda and provide the opportunity for public review and comment; and

(6) Public input throughout the process; the public is encouraged to provide oral comments at the public meetings and written comments through March 6, 1996.

(7) The final agenda will be presented at a scientific symposium commemorating the 25th anniversary of the Occupational Safety and Health Act on April 29, 1996.

NIOSH encourages the public to provide recommendations on research priorities, criteria for determining priorities, and the process of developing the research agenda as early in the process as possible. To register to attend, to register to speak, or to receive additional information on the November 30 meeting, please contact Ms. Sandy Lange as indicated below. On-site registration will be available; however, to assist in planning for the meeting, advance registration is requested.

Addresses: Comments should be mailed to Ms. Diane Manning, NIOSH, CDC, Robert A. Taft Laboratories, NIOSH, CDC, M/S C34, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

Contact Person for Additional Information: Ms. Sandy Lange, NIOSH, CDC, 200 Independence Avenue, Room 317B, Washington, DC 20201, telephone 202/401–0721.

Dated: October 31, 1995.

John C. Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–27400 Filed 11–3–95; 8:45 am]

BILLING CODE 4163–19–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. FR–3921–N–02]

Announcement of Funding Awards for Technical Assistance and Training for Public Housing Crime Prevention Through Environmental Design

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 the funding award for Fiscal Year (FY) 1995 Technical Assistance and Training for Public Housing Crime Prevention Through Environmental Design. The purpose of this document is to announce the name and address of the award winner and the amount of the award.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Cocke, Drug-Free Neighborhoods Division, Office of Community Relations and Involvement, Public and Indian Housing, Department of Housing and Urban Development, Room 4116, 451 Seventh Street, S.W., Washington, D.C. 20410, telephone (202) 708–1197. A telecommunications device for hearing or speech impaired persons (TDD) is available at (202) 708–0850. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION:

I. Authority

This grant is authorized under Chapter 2, Subtitle C, Title V of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 11901 *et. seq.*), as amended by Section 581 of the National Affordable Housing Act of 1990 (NAHA), approved November 28, 1990, Pub. L. 101–625, and Section 161 of the Housing and Community Development Act of 1992 (HCDA 1992) (Pub. L. 102–550, approved October 28, 1992).

II. Federal Fiscal Year 1995 Funding

The Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act 1995, (approved September 28, 1994, Pub. L. 103–327), (95 App. Act) appropriated $290 million for the Drug Elimination Program of which $10 million is to be used for funding technical assistance and training. The funding available under this program is a part of this $10 million.

III. Grant Award

On July 25, 1995, HUD published a Notice of Funding Availability (NOFA) announcing the availability of $500,000 in FY 1995 funds for Technical Assistance and Training for Public and Indian Housing Crime Prevention Through Environmental Design (60 FR 38214). The Department reviewed, evaluated and scored the applications received based on the criteria in the NOFA. As a result, HUD has funded the application 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 recipient of the funding award, as follows:

Grant Recipient: SPARTA Consulting Corporation Recipient contact Person: Severin Sorensen Address: P.O. Box 34469, Bethesda, Maryland, 20827. Telephone Number: (301) 656–6600 Amount Awarded: $500,000.00

General Objectives

The United States Department of Housing and Urban Development (HUD) and the SPARTA Consulting Corporation (grantee) have entered into a grant agreement for $500,000.00 of Public and Indian Housing Drug Elimination Program Technical Assistance funds to: (1) develop a technical assistance (TA) and training program to improve the capacity of public housing staff and residents in their plans for physical changes to enhance security, and (2) to provide the TA and training in a variety of formats.

This is a cost-reimbursable grant for $500,000.00 for a 2-year base period, with possible optional years. Each additional fiscal year award will be for comparable amounts based upon an evaluation of grant performance and the availability of funds.

Dated: October 31, 1995.

Kevin Emanuel Marchman,

Deputy Assistant Secretary for Distressed and Troubled Housing Recovery.

[FR Doc. 95–27407 Filed 11–3–95; 8:45 am]

BILLING CODE 4210–33–P

[Docket No. FR–3889–N–03]

Announcement of Funding Awards for Training and Technical Assistance for the Prevention of Youth Violence in Public Housing—Fiscal Year 1995

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 the funding award for Fiscal Year (FY) 1995 Technical Assistance and Training for Public Housing Crime Prevention Through Environmental Design. The purpose of this document is to announce the name and address of the award winner and the amount of the award.

FOR FURTHER INFORMATION, CONTACT: Elizabeth A. Cocke, Drug-Free Neighborhoods Division, Office of Community Relations and Involvement, Public and Indian Housing, Department of Housing and Urban Development, Room 4116, 451 Seventh Street, S.W., Washington, D.C. 20410, telephone (202) 708–1197. A telecommunications device for hearing or speech impaired persons (TDD) is available at (202) 708–0850. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION:

I. Authority

This grant is authorized under Chapter 2, Subtitle C, Title V of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 11901 *et. seq.*), as amended by Section 581 of the National Affordable Housing Act of 1990 (NAHA), approved November 28, 1990, Pub. L. 101–625, and Section 161 of the Housing and Community Development Act of 1992 (HCDA 1992) (Pub. L. 102–550, approved October 28, 1992).

II. Federal Fiscal Year 1995 Funding

The Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act 1995, (approved September 28, 1994, Pub. L. 103–327), (95 App. Act) appropriated $290 million for the Drug Elimination Program of which $10 million is to be used for funding technical assistance and training. The funding available under this program is a part of this $10 million.

III. Grant Award

On June 2, 1995, HUD published a Notice of Funding Availability (NOFA) announcing the availability of $550,000 in FY 1995 funds for Training and Technical Assistance for the Prevention of Youth Violence in Public (60 FR 29456). The Department reviewed, evaluated and scored the applications received based on the criteria in the NOFA. As a result, HUD has funded the application 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 recipient of the funding award, as follows:

Grant Recipient: Research Triangle Institute Recipient Contact Person: John W. Rintoul Address: 3040 Cornwallis Road, Research Triangle Park, NC, 27709 Telephone Number: (919) 541–6452 Amount Awarded: $550,000.00

General Objectives

The United States Department of Housing and Urban Development (HUD) and the Research Triangle Institute (grantee) have entered into a grant agreement for $550,000.00 of Public and Indian Housing Drug Elimination Program Technical Assistance funds to: (1) Develop a technical assistance (TA) and training program to improve the capacity of public housing staff and residents in their plans for developing and administering a youth violence program, and (2) to provide the TA and training in a variety of formats.

This is a cost-reimbursable grant for $550,000.00 for a 2-year base period, with possible optional years. Each additional fiscal year award will be for comparable amounts based upon an evaluation of grant performance and the availability of funds.

Dated: October 31, 1995.

Kevin Emanuel Marchman,

Deputy Assistant Secretary for Distressed and Troubled Housing Recovery .

[FR Doc. 95–27406 Filed 11–3–95; 8:45 am]

BILLING CODE 4210–33–P

[Docket No. FR–3920–N–02]

Announcement of Funding Awards for Training and Technical Assistance for Public Housing Resident Patrols Fiscal Year 1995

AGENCY: Office of the Assistant Secretary for Public and Indian Housing.

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 the funding award for Fiscal Year (FY) 1995 Technical Assistance and Training for Resident Patrols in Public Housing. The purpose of this document is to announce the name and address of the award winner and the amount of the award.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Cocke, Drug-Free Neighborhoods Division, Office of Community Relations and Involvement, Public and Indian Housing, Department of Housing and Urban Development, Room 4116, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708–1197. A telecommunications device for hearing or speech impaired persons (TDD) is available at (202) 708–0850. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION:

I. Authority

This grant is authorized under Chapter 2, Subtitle C, Title V of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 11901 *et seq.*), as amended by Section 581 of the National Affordable Housing Act of 1990 (NAHA), approved November 28, 1990, Pub. L. 101–625, and Section 161 of the Housing and Community Development Act of 1992 (HCDA 1992) (Pub. L. 102–550, approved October 28, 1992).

II. Federal Fiscal Year 1995 Funding

The Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act 1995 (approved September 28, 1994, Pub. L. 103–327), (95 App. Act) appropriated $290 million for the Drug Elimination Program of which $10 million is to be used for funding technical assistance and training. The funding available under this program is a part of this $10 million.

III. Grant Award

On July 25, 1995, HUD published a Notice of Funding Availability (NOFA) announcing the availability of $500,000.00 in FY 1995 funds for Technical Assistance to Public Housing Authorities and Public Housing Police Departments (60 FR 38208). The Department reviewed, evaluated and scored the applications received based on the criteria in the NOFA. As a result, HUD has funded the application 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 recipient of the funding award, as follows:

Grant Recipient: Virginia Crime Prevention Association Recipient Contact Person: Harold Wright Address: 4914 Radford Ave., #306, Richmond, VA, 23230 Telephone Number: (804) 359–8120 Amount Awarded: $500,000.00.

General Objectives: The United States Department of Housing and Urban Development (HUD) and the Virginia Crime Prevention Association (grantee) have entered into a grant agreement for $500,000.00 of Public and Indian Housing Drug Elimination Program Technical Assistance funds to: (1) Develop a training program to train teams of public housing residents and staff in the development and administration of resident patrols, and (2) to provide the training in a variety of venues.

This is a cost-reimbursable grant for $500,000.00 for a 2-year base period, with possible optional years. Each additional fiscal year award will be for comparable amounts based upon an evaluation of grant performance and the availability of funds.

Dated: October 31, 1995.

Kevin Emanuel Marchman,

Deputy Assistant Secretary for Distressed and Troubled Housing Recovery.

[FR Doc. 95–27408 Filed 11–3–95; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-0500–06–1610–00; 1792]

Arizona: Intent To Prepare a Resource Management Plan Amendment (Lands) and Environmental Assessment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare a resource management plan amendment/environmental assessment and invitation to participate in the identification of issues; Yuma District, Arizona.

SUMMARY: The Bureau of Land Management, Yuma District (BLM), is preparing an Amendment/Environmental Assessment to the Yuma District Resource Management Plan (RMP). The Yuma District RMP currently states that public lands within the District will be retained in Federal ownership unless specifically identified

for disposal. Acquisitions are also restricted to lands specifically identified, except when an exchange is involved. These limitations have hindered our ability to respond timely to proposals to accept donations, purchase, exchange, or dispose of lands. The proposed Amendment would provide more flexibility to consider requests for disposals and acquisitions involving parcels that have not previously been specifically identified in the RMP, providing certain criteria are met.

DATES: Written comments related to the identification of issues will be accepted on or before December 6, 1995. Due to the noncontroversial nature of the proposal, no public meetings are scheduled.

ADDRESSES: Send comments to: Bureau of Land Management, Yuma District Office, Attn: Brenda Smith, 3150 Winsor Avenue, Yuma, Arizona 85365.

FOR FURTHER INFORMATION CONTACT: Brenda Smith, Renewable Resources Advisor, Yuma District Office, Yuma, Arizona. Telephone (520) 726–6300.

SUPPLEMENTARY INFORMATION: Proposed criteria for land disposals or acquisitions have been identified. Disposal lands would serve the following purposes: (1) Community expansion and economic development; (2) local governmental needs; or (3) to facilitate Federal land management and minimize BLM administrative costs. Lands acquired would serve to: (1) Facilitate access to public lands and resources; (2) provide resource protection; (3) facilitate implementation of the RMP; (4) provide for a more manageable Federal land ownership pattern; or (5) maintain or enhance public uses and values.

Possible issues would be addressed in site-specific environmental assessments that would be completed for each land tenure adjustment. BLM anticipates that the possible loss of Federal protection for cultural resources and wildlife habitat due to land disposals may be an issue. Possible adverse socioeconomic impacts to County governments from the loss of tax revenues as a result of land acquisitions may be another issue.

Complete records of all phases of the planning process will be available for public review at the Yuma District Office, 3150 Winsor Avenue, Yuma, Arizona.

This notice is published under the authority found in 43 CFR 1610.2(c).

Dated: October 30, 1995.

Judith I. Reed,

District Manager.

[FR Doc. 95–27416 Filed 11–3–95; 8:45 am]

BILLING CODE 4310–32–P

Fish and Wildlife Service

Availability of an Environmental Assessment and Receipt of an Application for an Incidental Take Permit for the San Diego Gas & Electric Subregional Natural Community Conservation Plan in Southern California.

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: San Diego Gas and Electric (SDG&E) has applied for an incidental take permit from the Fish and Wildlife Service (Service) pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973 (Act), as amended. The application includes an implementing agreement (IA) and a habitat conservation plan/subregional natural community conservation plan (HCP/NCCP) covering the SDG&E service area in southern California. The proposed taking of threatened and endangered species would be incidental to the installation, maintenance, and operation of SDG&E facilities.

The proposed permit would authorize take of 11 animal species listed as endangered and 2 animal species listed as threatened for a period of 25 years with options for renewal. SDG&E has requested the issuance of permits (immediately or when a species is listed) under section 10(a) of the Act that would authorize incidental take, in accordance with the terms of the HCP/NCCP, of the 110 sensitive species listed in the HCP/NCCP. The Service proposes to finalize covered species agreements and offer assurances for 13 listed animal species, 5 listed plants, and 92 unlisted plants and animals, including 7 plants and 2 animals proposed for Federal listing as endangered or threatened and 7 plants that are category 1 candidates for Federal listing.

SDG&E requests coverage for impacts on up to 400 acres of natural areas containing covered species. However, based on data from past projects, SDG&E estimates a total of 124 acres of both temporary and permanent grading disturbances over the next 25 years.

To avoid or minimize potential impacts, SDG&E has developed operational protocols for workers in the field. To compensate for unavoidable impacts, SDG&E would: (1) Provide certain fee-owned rights-of-way to be available for use by wildlife, (2) establish a conservation bank of approximately 240 acres that may be replenished as needed, and (3) develop restoration protocols for temporary impacts.

The HCP/NCCP and associated Environmental Assessment (EA) are programmatic in scope. Site-specific impacts of new construction projects would be reviewed in the future per requirements of the National Environmental Policy Act (NEPA) and California Environmental Quality Act.

This notice advises the public of the availability of the permit application, HCP/NCCP, IA, and programmatic EA. Comments are requested on these documents which were prepared by the permit applicant and their consultants. All comments received, including names and addresses, will become part of the administrative record and may be made available to the public. This notice is provided pursuant to section 10(c) of the Act and NEPA regulations (40 CFR 1506.6).

The Service will evaluate the application, associated documents, and comments submitted thereon to determine whether the application meets the requirements of NEPA regulations and section 10(a) of the Act. If it is determined that the requirements are met, an incidental take permit will be issued.

DATES: Written comments should be received on or before December 6, 1995.

ADDRESSES: Comments should be addressed to Gail C. Kobetich, Field Supervisor, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California 92008. Written comments also may be sent by facsimile to (619) 431–9618.

FOR FURTHER INFORMATION CONTACT: Sherry Barrett, Endangered Species Division Chief, or Jacalyn Fleming, Fish and Wildlife Biologist, at the above address, (619–431–9440).

SUPPLEMENTARY INFORMATION:

Availability of Documents

Persons may obtain copies of the HCP/NCCP, IA, and EA by calling the above telephone number. These documents will be available for public inspection, by appointment, during normal business hours (8 am to 5 pm, Monday through Friday) at the above address.

Background

Under section 9 of the Act, and implementing regulations, taking of federally listed threatened or endangered species is prohibited.

Taking, in part, is defined as harm or harassment of federally listed species, including under certain circumstances, the destruction of habitat. Under limited circumstances, the Service may issue section 10(a)(1)(B) permits to take listed species if such taking is incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for listed species are found at Title 50 Code of Federal Regulations 17.22 and 17.32.

SDG&E has applied for a 25-year permit, with options for renewal, to authorize incidental take associated with the installation, maintenance and operation of its facilities which are or will be necessary to provide natural gas, electricity and other services to its customers. These actions include the installation of overhead and underground facilities, substations, and regulator stations, including other ground disturbance such as building and maintaining access roads, geotechnical testing, emergency repairs, and clearing for fire control. SDG&E operations and facilities cross city and county jurisdictional boundaries in San Diego, Riverside, and Orange Counties, California. The HCP/NCCP details specific project actions that may lead to incidental take of species and specific actions that will mitigate those takings. These impacts and mitigation measures are further addressed in the HCP/NCCP, IA, and EA.

The alternatives under consideration include: (1) The proposed action, (2) no action, and (3) compliance with local jurisdiction's subarea plans. Only the proposed action conserves both listed and unlisted species, restricts the use and development of certain SDG&E fee-owned rights-of-way for wildlife and preservation, and addresses all SDG&E activities over the entire service area.

All agencies and individuals are urged to provide comments and suggestions regarding the EA, IA, and the consistency of the SDG&E HCP/NCCP with regional conservation planning efforts. All comments received by the closing date will be considered in finalizing NEPA compliance and permit issuance or denial.

Dated: October 30, 1995.

Thomas Dwyer,

Deputy Regional Director, Region 1, Portland, Oregon.

[FR Doc. 95–27418 Filed 11–3–95; 8:45 am]

BILLING CODE 4310–55–P

Letters of Authorization To Take Marine Mammals

AGENCY: Notice of issuance of Letters of Authorization to take marine mammals incidental to oil and gas industry activities.

SUMMARY: In accordance with Section 101(a)(5) of the Marine Mammal Protection Act of 1972, as amended, and the U.S. Fish and Wildlife Service implementing regulations [50 CFR 18.27(f)(3)), notice is hereby given that a Letter of Authorization to take polar bears and Pacific walrus incidental to oil and gas industry exploration activities has been issued to the following company:

Company	Activity	Date issued
BP Exploration (Alaska) Inc.	Exploration ...	Sept. 20, 1995.

BP Exploration (Alaska) Inc., is authorized to take polar bears and Pacific walruses incidental to appraisal operations in the Badami Development Unit on the North Slope of Alaska. This authorization expires on July 31, 1996, and a monitoring report is due by November 1, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. David McGillivary or Mr. John W. Bridges at the U.S. Fish and Wildlife Service, Marine Mammals Management Office, 1011 East Tudor Road, Anchorage, Alaska 99503, (800) 362–5148 or (907) 786–3810.

SUPPLEMENTARY INFORMATION: This letter of Authorization was issued in accordance with U.S. Fish and Wildlife Service Federal Rules and Regulations ''Marine Mammals; Incidental Take During Specified Activities'' (58 FR 60402; November 16, 1993, amended 60 FR 42805; August 17, 1995).

Dated: October 25, 1995.

David B. Allen,

Regional Director.

[FR Doc. 95–27340 Filed 11–3–95; 8:45 am]

BILLING CODE 4310–55–M

Aquatic Nuisance Species Task Force Risk Assessment and Management Committee Meeting

AGENCY: Department of the Interior, Fish and Wildlife Service.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Risk Assessment and Management Committee, a Committee of the Aquatic Nuisance Species Task Force. The Committee meeting will focus on the following: the development of the pathway evaluation process for nonindigenous species introduction; finalize the Risk Assessment Process for presentation to the Aquatic Nuisance Species Task Force; and, prepare the black carp risk assessment process for outside review.

DATES: The Risk Assessment and Management Committee will meet from 9:00 a.m. to 3:00 p.m. on Wednesday, December 13, 1995, and from 9:00 a.m. to 12:00 noon on Thursday, December 14, 1995.

ADDRESSES: The Risk Assessment and Management Committee meeting will be held at the U.S. Fish and Wildlife Building, Room 800, 4401 N. Fairfax Drive, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Richard Orr, Risk Assessment and Management Committee Chairman, U.S. Dept. of Agriculture, Animal and Plant Health Inspection Service, 4700 River Road, Unit 117, Riverdale, MD 20737, (301) 734–8939.

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Aquatic Nuisance Species Task Force Risk Identification and Assessment Committee established under the authority of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (P.L. 101–646, 104 Stat. 4761, 16 U.S.C. 4701 *et seq.*, November 29, 1990). Minutes of the meetings will be maintained by the Coordinator, Aquatic Nuisance Species Task Force, Room 840, 4401 North Fairfax Drive, Arlington, Virginia 22203 and the Risk Assessment and Management Committee Chairman, U.S. Dept. of Agriculture, Animal and Plant Health Inspection Service, 4700 River Road, Unit 117, Riverdale, MD 20737 and will be available for public inspection during regular business hours, Monday through Friday within 30 days following the meeting.

Dated: October 30, 1995.

Gary Edwards,

Assistant Director—Fisheries, Co-Chair, Aquatic Nuisance Species Task Force.

[FR Doc. 95–27443 Filed 11–3–95; 8:45 am]

BILLING CODE 4310–55–M

Minerals Management Service

Information Collection Solicitation for Comments

AGENCY: Minerals Management Service, DOI.

ACTION: Notice of information collection solicitation.

SUMMARY: Under the Paperwork Reduction Act of 1995, the Minerals Management Service is soliciting comments on an information collection,

Net Profit Share Payments for Outer Continental Shelf Oil and Gas Leases, 30 CFR 220 (OMB Approval Number 1010–0073).

DATES: Written comments should be received on or before January 5, 1996.

SEND COMMENTS TO: David S. Guzy, Chief, Rules and Procedures Staff, Minerals Management Service, Mail Stop 3101, Building 85, Denver Federal Center, P.O. Box 25165, Denver, Colorado 80225; fax number is (303) 231–3194.

FOR FURTHER INFORMATION CONTACT: Dennis C. Jones, Minerals Management Service, Mail Stop 3101, Building 85, Denver Federal Center, P.O. Box 25165, Denver, Colorado 80225; telephone number is (303) 231–3046.

SUPPLEMENTARY INFORMATION: In compliance with the requirement of Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 each agency shall provide notice and otherwise consult with members of the public and affected agencies concerning collection of information in order to solicit comment to: (a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

To encourage exploration and development of oil and gas leases on submerged lands of the Outer Continental Shelf (OCS), regulations were promulgated at 30 CFR 260.110(4) implementing a net profit share bidding system. The net profit share lease (NPSL) bidding system was established to properly balance a fair market return to the Federal Government for the lease of its lands, with a fair profit to companies risking their investment capital. The system provides an incentive for early and expeditious exploration and development, and provides for a sharing of the risks by the lessee and the Government. The bidding system incorporates a fixed capital recovery system as the means through which the lessee recovers costs of exploration and development from production revenues, along with a reasonable return on investment.

Lessees are required (30 CFR 220.010) to maintain an NPSL capital account and to provide annual or monthly reports using data taken from the capital account (30 CFR 220.031). This collection of information is necessary in order to determine when royalty payments are due and to determine the proper amount of payment. No unique information is required by MMS. Only a minimal recordkeeping burden is imposed annually by this collection of information. MMS uses the data submitted in the annual and monthly reports to verify costs claimed, revenues earned, and profit share (royalty) payments due. No royalties are paid until lessees recover their exploration and development expenses.

When companies enter into NPSL agreements, they agree to submit the reports required by 30 CFR 220.031. Information required to complete these reports comes from records maintained by the companies for their own use. There are no reporting forms required, but the lessees must submit updates containing specific information. Before production begins, reports are required on an annual basis. These reports must document costs incurred, credits received, and the balance in the NPSL capital account. Once production begins, monthly reports are required that include the amount and disposition of oil and gas saved, removed, or sold; the amount of production revenue; the amount and description of costs and credits to the NPSL capital account; the balance in the capital account; the net profit share base and net profit share payment due the Government; and the lessee's monthly profit share.

MMS estimates that approximately 16 hours are required per report to extract the data required by 30 CFR 220.031 from company records. One additional hour for recordkeeping is required as companies set up files for each lease. A $25 hourly rate estimate is used in the calculation of the annual cost to industry.

Dated: October 31, 1995.

Donald T. Sant,

Deputy Associate Director for Valuation and Operations.

[FR Doc. 95–27417 Filed 11–3–95; 8:45 am]

BILLING CODE 4310–MR–P

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 388 (Sub-No. 29)]

Intrastate Rail Rate Authority—South Carolina

AGENCY: Interstate Commerce Commission.

ACTION: Notice of recertification.

SUMMARY: Pursuant to 49 U.S.C. 11501(b), the Commission recertifies the State of South Carolina to regulate intrastate rail rates, classifications, rules, and practices for a 5-year period.

DATES: Recertification will become effective on December 6, 1995 and will expire on December 5, 2000.

FOR FURTHER INFORMATION CONTACT: Elaine Sehrt-Green, (202) 927–5269 or Beryl Gordon, (202) 927–5610. [TDD for the hearing impaired: (202) 927–5721.]

Decided: October 30, 1995.

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

Vernon A. Williams,

Secretary.

[FR Doc. 95–27432 Filed 11–3–95; 8:45 am]

BILLING CODE 7035–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 95–099]

National Environmental Policy Act; Shuttle Laser Altimeter

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Finding of no significant impact.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321 et seq.), the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500–1508), and NASA policy and procedures (14 CFR Part 1216 Subpart 3), NASA has made a finding of no significant impact (FONSI) with respect to the proposed Shuttle Laser Altimeter (SLA) to be constructed at the Goddard Space Flight Center, in Greenbelt, Maryland. SLA involves the precise global measurement of the topography of the distance from the Earth's surface with respect to the Space Shuttle.

DATES: Comments in response to this notice must be provided in writing to NASA on or before December 6, 1995.

ADDRESSES: Comments should be addressed to Dr. Jack L. Bufton, Associate Chief for Sensor Physics, Laboratory for Terrestrial Physics, Code 920, NASA Goddard Space Flight Center, Greenbelt, MD 20771. The Environmental Assessment (EA) prepared for the proposed SLA which supports this FONSI may be reviewed at:

(a) Prince George's County Memorial Library System—Bowie Branch, 15210 Annapolis Rd., Bowie, Maryland.
(b) NASA Headquarters Information Center, Room 1H23, 300 E. Street S.W., Washington, DC.
(c) NASA, Ames Research Center, Moffet Field, CA 94035 (415–604–4191).
(d) NASA, Dryden Flight Research Center, Edwards, CA 93523 (805–258–3047).
(e) NASA, Goddard Space Flight Center, Greenbelt, MD 20771 (301–286–7216).
(f) Jet Propulsion Laboratory, Visitors Lobby, Building 49, 4800 Oak Grove Drive, Pasadena, CA 91109 (818–354–5011).
(g) NASA, Johnson Space Center, Houston, TX 77058 (713–483–8612).
(h) NASA, Langley Research Center, Hampton, VA 23665 (804–864–6125).
(i) NASA, Kennedy Space Center, FL 32899 (407–867–2622).
(j) NASA, Lewis Research Center, 21000 Brookpark Road, Cleveland, OH 44135 (215–433–2902).
(k) NASA, Marshall Space Flight Center, AL 35812 (205–544–5252).
(l) NASA, Stennis Space Center, MS 39529 (601–688–2164).

A limited number of copies of the EA are available by contacting Jack L. Bufton, NASA Goddard Space Flight Center, Greenbelt, MD 20771, telephone 301–286–8591.

FOR FURTHER INFORMATION CONTACT: Dr. Jack L. Bufton, 301–286–8591.

SUPPLEMENTARY INFORMATION: NASA has reviewed the EA prepared for the proposed SLA and has determined that it represents an accurate and adequate analysis of the scope and level of its associated environmental impacts. The EA, including the ''Shuttle Laser Altimeter Ground Observer Eye Safety Analysis'', is incorporated by reference in this FONSI.

NASA is proposing to test a low power laser altimeter instrument in space as a pathfinder instrument for global measurement of the topography of the Earth's land surface. Laser altimeter instruments have been in use for several decades from airborne instrument platforms for the purpose of terrain mapping and previous laser altimeters have flown in space. Research results from these earlier programs indicate the advantages of a spacebased global observations of Earth land surface topography using the high spatial resolution and vertical precision offered by the laser altimeter technique. Accurate topographic information on the Earth's landforms is essential in a wide variety of Earth science disciplines, agriculture, land-use studies, and natural disaster (e.g., floods, erosion, landslides, volcanoes, earth quakes, etc.) mitigation.

The principal components of a laser altimeter system are the laser transmitter, optical receiver, and data system. The laser transmitter sends a low powered pulsed laser bean of 1064 nano meter wavelength radiation throughout the Earth's atmosphere toward the Earth's surface. Each laser pulse has a temporal duration of 10 nano seconds and forms a spot of approximately 100 meters (m) in diameter on the Earth's surface. Reflection of laser radiation from this spot is detected at the laser altimeter instrument by the combination of an optical telescope and detector that constitute the optical receiver package and covert the optical pulse into an electronic pulse. The laser pulse time-of-flight for the round-trip from the laser altimeter instrument to the Earth's surface and return is measured. This data then is used to compute distance between the instrument and the Earth's surface. The data system performs the computation of distance from pulse time-of-flight and communicates the altimeter data to external systems and on-board data recorders.

For laser altimeter operations, the instrument must be pointed perpendicular to the Earth's surface in order to make accurate distance measurements. The optical receiver is quite sensitive, since most of the pulse laser radiation is scattered in the reflection of light from the spot on the Earth's surface or scattered and absorbed in the Earth's atmosphere. By using pulsed laser energy to make a series of distance measurements (profiles) along the ground track of a spacecraft, laser altimeter instrument can build up a global grid of accurate surface topography.

The proposed SLA experiment will entail flying a laser altimeter instrument as a small attached payload on the Space Shuttle. The first flight is scheduled for November 1995 and will be a 9-day mission to gain experience in operating a laser altimeter in space environment, and to evaluate the sensitivity of the laser altimeter instrument for performing the surface elevation measurement mission. The current flight plan calls for seven operational periods of approximately 10 to 15 hours duration each during which the SLA will continuously profile the Earth and ocean surface topography along the ground track (nadir track) of the Shuttle. The SLA instrument operates continuously at 10 pulses per second (pps) during each period. This results in a continuous profile of 120 m diameter optical spots (i.e., altimeter sensor footprints) that are separated by approximately 740 m along the ground-track of the Space Shuttle. At least one SLA operational period is scheduled on each Shuttle flight day after flight day 2. The planned orbit for these SLA operations is a 300 kilometer (160 nautical miles) circular orbit at 28.5° inclination. Thus the SLA measurements will be conducted between 28.5° North latitude and 28.5° South latitude. Among the land masses crossed will be Africa, most of Latin America, Southland Southeast Asia, and much of Australia. Consequently, no SLA operations will be conducted over the continental US north of Cape Canaveral, Florida.

The proposed action and the no-action alternative were considered in this Environmental Assessment (EA). The no-action alternative will not fulfill the objective of advancing the Nation's topographic measurement capability. Under the No-Action alternative, it will not be possible to fully develop or space test the laser altimeter instrument technology for an operational space-based topography system. It will then be necessary to rely on existing photogrammetric and radar mapping instruments which have limitations in accuracy and in interpretation of topography data.

A review by the North American Defense Command and United States Space Command SPADOC Laser Clearinghouse found that the SLA laser transmitter does not produce sufficient laser energy to exceed their damage threshold and, therefore, does not require clearinghouse screening.

The only potential source of environmental impact from the proposed action is the portion of the laser pulse energy which will pass through the Earth's atmosphere and reach the surface. The SLA laser energy is negligible compared to natural sources of optical radiation. A ground observer safety analysis was performed for the SLA experiment and found no substantial risk of human eye or skin injury from operation of the SLA instrument within the range of possible Shuttle orbital altitudes.

No other environmental impacts have been identified as a result of the EA. On the basis of the SLA EA and underlying reference documents, NASA has determined that the environmental impacts associated with this project will not individually or cumulatively have a significant effect on the quality of the environment. NASA will take no final action prior to the expiration of the 30-day comment period.

Dated: November 1, 1995.

William F. Townsend,

Deputy Associate Administrator for Mission to Planet Earth.

[FR Doc. 95–27449 Filed 11–3–95; 8:45 am]

BILLING CODE 7510–01–M

[Notice 95–098]

Notice of Prospective Patent License

SUMMARY: NASA hereby gives notice that Estee Lauder Companies of Melville, New York 11747, has requested a partially exclusive license to practice the invention protected by U.S. Patent No. 4,902,769, entitled ''Low Dielectric Fluorinated Poly (Phenylene Ether Ketone) film and coating,'' which was issued on February 20, 1990, to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Mr. George F. Helfrich, Patent Counsel, Langley Research Center.

DATES: Responses to this Notice must be received by January 5, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. George F. Helfrich, Patent Counsel, NSAS Langley Research Center, Mail Code 212, Hampton, VA 23681–0001; telephone (804) 864–3521.

Dated: October 27, 1995.

Edward A. Frankle,

General Counsel.

[FR Doc. 95–27448 Filed 11–3–95; 8:45 am]

BILLING CODE 7510–01–M

NUCLEAR REGULATORY COMMISSION

Communications Between the NRC and Licensees; Policy Statement

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy statement.

SUMMARY: This policy statement presents the Nuclear Regulatory Commission (NRC) policy that informs both the nuclear industry and the NRC staff of the Commission's expectations regarding communications, including the reporting of perceived inappropriate regulatory actions by the NRC staff. The Commission encourages and expects open communications at all levels between its employees and those it regulates. Licensees should feel unconstrained in communicating with the NRC. Additionally, the NRC will not tolerate inappropriate regulatory actions by the NRC staff, nor will it tolerate retaliation or the threat of retaliation against those licensees who communicate concerns to the agency.

EFFECTIVE DATE: November 6, 1995.

FOR FURTHER INFORMATION CONTACT: Cynthia A. Carpenter, Office of the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC. 20555, telephone: (301) 415-1733.

SUPPLEMENTARY INFORMATION:

Background

COMSECY–95–008, dated February 21, 1995, forwarded to the Commission a draft NRC policy that would inform both the nuclear industry and the NRC staff of the Commission's expectations regarding communications, including the reporting of perceived inappropriate regulatory actions by the NRC staff. COMSECY–95–008 also forwarded a proposed procedure for handling such concerns within the Office of the Executive Director for Operations (OEDO) if reported by a senior power reactor manager (licensee official).

In a Staff Requirements Memorandum dated March 21, 1995, the Commission directed the NRC staff to discuss the concepts in COMSECY–95–008 with the Agency Labor-Management Partnership (ALMP) and to meet with the Nuclear Energy Institute (NEI) to discuss communication issues. In addition, the Commission provided items for further NRC staff consideration in its evaluation of the proposed policy and guidance documents.

The NRC staff discussed the proposed NRC policy and the draft procedure for handling perceived inappropriate regulatory actions during the Regional Labor-Management Partnership Subcommittee (Partnership) meeting on March 29, 1995, and at the ALMP meeting on April 21, 1995. There was consensus within the Partnership that the procedure was necessary. The Partnership also provided several suggested wording changes to clarify the procedure.

On May 11, 1995, the NRC staff met with NEI representatives regarding the NRC staff's actions in response to the Towers Perrin Nuclear Regulatory Review Study and to discuss communications between the NRC and the nuclear industry. NEI believed that the NRC's initiatives would enhance the effectiveness of communications between NRC and the nuclear industry and encourage the NRC staff to communicate this policy and procedure to the industry.

SECY–95–149, dated June 8, 1995, forwarded to the Commission the revised NRC policy that would inform both the nuclear industry and the NRC staff of the Commission's expectations regarding communications, including the reporting of perceived inappropriate regulatory actions by the NRC staff. As recommended by the Commission, the procedure was expanded to address the broad range of communications between the NRC and licensees. The NRC staff clarified the definition of inappropriate regulatory actions, including changes recommended by the Partnership. The procedural steps were also reordered as recommended by the Commission.

In a Staff Requirements Memorandum dated June 28, 1995, the Commission did not object to issuance of the policy regarding communications between the NRC and industry.

Statement of Policy

In 1991, the Commission established the ''NRC Principles of Good Regulation,'' a copy of which is presented as Appendix A to this document. The Commission believes that good regulation must be transacted publicly and candidly and that open communications must be maintained with Congress, other Government agencies, licensees, and the public.

The Commission encourages and expects open communications at all levels between its employees and those it regulates. Licensees should feel unconstrained in communicating with the NRC. The Commission also expects the NRC staff to exercise initiative in maintaining open lines of communication and to ensure that its regulatory activities are appropriate and consistent. The Commission recognizes that honest, well-intentioned differences in opinions between the NRC staff and the licensee will occasionally occur. Therefore, the Commission encourages open communications to foster an environment where such differences receive constructive and prompt resolution.

Open communication also extends to the reporting of perceived inappropriate regulatory actions by the NRC staff when dealing with licensees. The Commission encourages licensees to provide specific information regarding such concerns.

The NRC will not tolerate inappropriate regulatory actions [1] by the

[1] Inappropriate regulatory actions include activities that exceed the agency's regulatory authority, involve improper application of agency requirements, or adversely affect the agency's regulatory functions. Examples of inappropriate regulatory actions include, but are not limited to, unjustified inconsistent application of regulations and guidance by NRC staff or management that significantly affect licensee activities and inappropriate action on the part of NRC staff and management that disrupts effective communications with the licensee.

NRC staff, nor will it tolerate retaliation or the threat of retaliation against those licensees who communicate concerns to the agency. NRC staff whose actions are found to be contrary to this policy could be subject to disciplinary actions in accordance with the NRC Management Directive 10.99, ''Discipline, Adverse Actions and Separations'' (formerly Manual Chapter 4171), or in accordance with the Collective Bargaining Agreement Between the U.S. Nuclear Regulatory Commission and National Treasury Employees Union.

Dated at Rockville, Maryland, this 31st day of October 1995.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

Appendix A to This Document—NRC Principles of Good Regulation

NRC Principles of Good Regulation

Independent. Nothing but the highest possible standards of ethical performance and professionalism should influence regulation. However, independence does not imply isolation. All available facts and opinions must be sought openly from licensees and other interested members of the public. The many and possibly conflicting public interests involved must be considered. Final decisions must be based on objective, unbiased assessments of all information, and must be documented with reasons explicitly stated.

Open. Nuclear regulation is the public's business, and it must be transacted publicly and candidly. The public must be informed about and have the opportunity to participate in the regulatory processes as required by law. Open channels of communication must be maintained with Congress, other government agencies, licensees, and the public, as well as with the international nuclear community.

Efficient. The American taxpayer, the rate-paying consumer, and licensees are all entitled to the best possible management and administration of regulatory activities. The highest technical and managerial competence is required, and must be a constant agency goal. NRC must establish means to evaluate and continually upgrade its regulatory capabilities. Regulatory activities should be consistent with the degree of risk reduction they achieve. Where several effective alternatives are available, the option which minimizes the use of resources should be adopted. Regulatory decisions should be made without undue delay.

Clear. Regulations should be coherent, logical, and practical. There should be a clear nexus between regulations and agency goals and objectives where explicitly or implicitly stated. Agency positions should be readily understood and easily applied.

Reliable. Regulations should be based on the best available knowledge from research and operational experience. Systems interactions, technological uncertainties, and the diversity of licensees and regulatory activities must all be taken into account so that risks are maintained at an acceptably low level. Once established, regulation should be perceived to be reliable and not unjustifiably in a state of transition. Regulatory actions should always be fully consistent with written regulations and should be promptly, fairly, and decisively administered so as to lend stability to the nuclear operational and planning processes.

[FR Doc. 95–27411 Filed 11–3–95; 8:45 am]

BILLING CODE 7590–01–P

Knowledge and Abilities Catalog Revision; Notice of Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Availability.

SUMMARY: NUREG–1122, ''Knowledge and Abilities Catalog for Nuclear Power Plant Operators: Pressurized Water Reactors,'' and NUREG–1123, ''Knowledge and Abilities Catalog for Nuclear Power Plant Operators: Boiling Water Reactors,'' were developed in 1985 to assist operator licensing examiners in the development of content valid written and operating examinations to administer to reactor plant operators and senior operators.

The Knowledge and Abilities (K/A) catalogs have been revised to resolve inconsistencies between the two catalogs and inconsistencies in content within the K/A catalogs. The revision also incorporates evolutionary changes in the operator licensing program and revised definition of operator's tasks within facility licensee's organizations. NRC will fully integrate NUREG–1122, Revision 1 and NUREG–1123, Revision 1 into the operator licensing program with the next revision of the Examiner Standards (NUREG–1021, Revision 8) in the fall of 1996.

Copies of NUREG–1122, Revision 1 and NUREG–1123, Revision 1 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy is also available for inspection and/or copying for a fee in the NRC Public Document Room. Copies of NUREG–1122, Revision 1 and NUREG 1123, Revision 1 are available on the Tech Specs Plus BBS, the data line number is 1–800–679–5784. The files are also available in the NRC-PDR library at FedWorld through November 30, 1995. FedWorld is accessible via internet (http://www.fedworld.gov) as well as pc/modem (1–800–303–9672). The filenames are: NREG1122.ZIP and NREG1123.ZIP. Both files are compressed using PKzip.

FOR FURTHER INFORMATION CONTACT: Frank Collins, Mail Stop 010–D22, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, telephone (301) 415–3173.

Dated at Rockville, Maryland, this 30th day of October, 1995.

For the Nuclear Regulatory Commission.

Stuart A. Richards,

Chief, Operator Licensing Branch, Division of Reactor Controls and Human Factors, Office of Nuclear Reactor Regulation.

[FR Doc. 95–27412 Filed 11–3–95; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–366]

Georgia Power Company, et al. (Edwin I. Hatch Nuclear Plant, Unit 2); Exemption

I.

Georgia Power Company, et al. (GPC or the licensee), is the holder of Facility Operating License No. NPF–5, which authorizes operation of the Hatch Nuclear Plant, Unit 2. The license provides, among other things, that the licensee is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (the Commission) now and hereafter in effect. The facility consists of one boiling water reactor located in Appling County, Georgia.

II.

Section 50.54(o) of 10 CFR Part 50 requires that primary reactor containments for water cooled power reactors be subject to the requirements of Appendix J to 10 CFR Part 50. Appendix J contains the leakage test requirements, schedules, and acceptance criteria for tests of the leak tight integrity of the primary reactor containment and systems and components that penetrate the containment. Sections II.H.4 and III.C.2 of Appendix J to 10 CFR Part 50 require leak rate testing of the Main Steam Isolation Valves (MSIVs) at the calculated peak containment pressure related to the design- basis accident, and Sections III.A.5, III.B.3, and III.C.3 require that the measured leak rates be included in the combined leak rate test results.

By letter dated June 20, 1995, the licensee requested an exemption from the Commission's regulations. The subject exemption is from the requirements of 10 CFR Part 50, Appendix J, ''Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors,'' Sections III.A.5(b)(1), III.A.5(b)(2), III.B.3, and III.C.3 to exclude the MSIV leakage from

the combined local leak rate test results. This request was needed after the MSIV leakage rate was increased by the issuance of Amendment No. 132 on March 17, 1994. In addition, the Commission is granting another exemption from the requirements of Section III.C.2(a) to account for a previously granted exemption, stated in the Hatch Unit 2 Technical Specifications (TS), which allows the leak rate testing at a reduced pressure.

The licensee's June 20, 1995, request stated that a plant-specific radiological analysis of a postulated design-basis loss-of-coolant accident (LOCA) has been performed, and is documented in Section 15.1.39 of the Hatch Unit 2 Final Safety Analysis Report (FSAR). The radiological analysis calculated the effect of the maximum leakage rate from the containment volume in terms of onsite and offsite doses, which were evaluated against the dose limits of 10 CFR 50, Appendix A, General Design Criterion (GDC) 19 and 10 CFR Part 100, respectively. The analysis accounted for the radiological effect from MSIV increased leakage and other containment leakages following a postulated LOCA in terms of the doses that could be received by personnel in the technical support center (TSC), the main control room (MCR), and at the site boundary. The analysis results demonstrated that the dose from all the leakage, including the MSIV leakage rate limit of 100 standard cubic feet per hour (scfh) per MSIV not to exceed 250 scfh for all four main steam lines, results in an acceptable value when evaluated against the regulatory limits for the off-site doses, TSC and MCR doses contained in 10 CFR Part 100, and 10 CFR Part 50, Appendix A, GDC–19, respectively.

The staff concluded that the exemption requested is acceptable based on: the method of MSIV testing (i.e., 28.8 psig test pressure when applied between MSIVs on a single steam line); a radiological analysis that assumes a 100 scfh per MSIV leak rate not to exceed 250 scfh for all four steam lines; and the requirement that the MSIVs would be periodically tested to ensure the validity of the radiological analysis (i.e., verify that the MSIV leakage rate during testing is accounted for separately in the radiological analysis of the site).

For the reasons set forth above, the NRC staff concludes that there is reasonable assurance that: the current MSIV leak testing method (i.e., test pressure of 28.8 psig when applied between MSIVs) is an acceptable method; and the calculated doses obtained by performing radiological analysis (calculated using an MSIV leakage rate limit of 100 scfh per MSIV, not to exceed 250 scfh for all four main steam lines), are within the limits of 10 CFR Part 100 and GDC–19. The staff finds it acceptable to continue to exclude the measured MSIV leakage rate from the combined leak rate test results, since the leakage is accounted for separately and continues to meet the underlying purpose of the rule. Therefore, the staff finds that the requested exemption presented in the licensee's June 20, 1995, submittal is acceptable.

III.

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health and safety, and are consistent with the common defense and security; and (2) when special circumstances are present. Special circumstances are present whenever, according to 10 CFR 50.12(a)(2)(ii), ''Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule.''

The underlying purpose of the rule is to assure that leakage through systems and components penetrating the primary containment should not exceed allowable leakage rates, so that the dose due to the total leakage, including that due to the MSIVs, is within the limits of 10 CFR Part 100 and GDC–19. The licensee's analysis has demonstrated that an adequate margin can be maintained even if leakage from the MSIVs is considered separately and subject to a leakage restriction of 100 scfh per MSIV, not to exceed a total of 250 scfh for all four main steam lines.

IV.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, an exemption is authorized by law and will not present an undue risk to the public health and safety, and that there are special circumstances present, as specified in 10 CFR 50.12(a)(2). An exemption is hereby granted from the requirements of Sections III.A.5(b)(1), III.A.5(b)(2), III.B.3, III.C.2(a), and III.C.3 of Appendix J to 10 CFR Part 50. The exemption allows (1) leakage testing of the MSIVs, after deletion of the LCS, using a test pressure of 28.8 psig applied between MSIVs, and (2) exclusion of the measured MSIV leakage rate from the combined local leak rate test results.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the quality of the human environment (60 FR 54709).

This exemption is effective upon issuance and will be implemented prior to startup of Cycle 13 for Hatch, Unit 2.

For the Nuclear Regulatory Commission

Dated at Rockville, Maryland this 1st day of November 1995.

Steven A. Varga,

Director, Division of Reactor Projects—I/II Office of Nuclear Reactor Regulation.

[FR Doc. 95–27414 Filed 11–3–95; 8:45 am]

BILLING CODE 7590–01–P

[Docket Number 40–0299]

UMETCO Minerals Corporation

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Receipt of Application from Umetco Minerals Corporation to change a site-reclamation milestone in Condition 59 of Source Material License SUA–648 for the Gas Hills, Wyoming Uranium Mill site Notice of Opportunity for a Hearing.

SUMMARY: Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC) has received, by letter dated October 11, 1995, an application from Umetco Minerals Corporation (Umetco) to amend License Condition (LC) 59 A.(3) of Source Material License No. SUA–648 for the Gas Hills Wyoming uranium mill site. The license amendment application proposes to modify LC 59 A.(3) to change the completion date for a site-reclamation milestone. The new date proposed by Umetco would extend completion of placement of final radon barrier on the Heap Leach Impoundment by two years.

FOR FURTHER INFORMATION CONTACT: Mohammad W. Haque, High-Level Waste and Uranium Recovery Projects Branch, Division of Waste Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 415–6640.

SUPPLEMENTARY INFORMATION: The portion of LC 59 A.(3) with the proposed change would read as follows:

A. (3) Placement of final radon barrier designed and constructed to limit radon emissions to an average flux of no more than 20 pCi/m^2/s above background:

For the Heap Leach Impoundment—December 31, 1997.

Umetco's application to amend LC 59 A.(3) of Source Material License SUA–648, which describes the proposed change to the license condition and the

reason for the request is being made available for public inspection at the NRC's Public Document Room at 2120 L Street, NW (Lower Level), Washington, DC 20555.

The NRC hereby provides notice of an opportunity for a hearing on the license amendment under the provisions of 10 CFR Part 2, Subpart L, ''Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings.'' Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing. In accordance with § 2.1205(c), a request for hearing must be filed within 30 days of the publication of this notice in the Federal Register. The request for a hearing must be filed with the Office of the Secretary, either:

(1) By delivery to the Docketing and Service Branch of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

In accordance with 10 CFR 2.1205(e), each request for a hearing must also be served, by delivering it personally or by mail, to:

(1) The applicant, Umetco Minerals Corporation, P.O. Box 1029, Grand Junction, Colorado 81502, Attention: Pat Lyons; and

(2) The NRC staff, by delivery to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852 or by mail addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor in the proceeding;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(g);

(3) The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(c).

The request must also set forth the specific aspect or aspects of the subject matter of the proceeding as to which petitioner wishes a hearing.

Dated at Rockville, Maryland, this 30th day of October 1995.

Joseph J. Holonich,

Chief, High-Level Waste and Uranium Recovery Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 95–27413 Filed 11–3–95; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Cancellation of 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 the meeting of the Federal Prevailing Rate Advisory Committee scheduled for Thursday, November 16, 1995, has been canceled.

Information on other meetings can be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 5559, 1900 E Street, NW., Washington, DC 20415 (202) 606–1500.

Dated: October 30, 1995.

Anthony F. Ingrassia,

Chairman, Federal Prevailing Rate Advisory Committee.

[FR Doc. 95–27396 Filed 11–3–95; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–36434; File Nos. SR–Amex–95–41; SR–CBOE–95–32; SR–NYSE–95–30; SR–PHLX–95–65; and SR–PSE–95–21]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to the Proposed Rule Change by the Chicago Board Options Exchange, Inc., and Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Changes by the American Stock Exchange, Inc., the New York Stock Exchange, Inc., the Philadelphia Stock Exchange, Inc., and the Pacific Stock Exchange, Inc. and Amendment No. 1 to the Pacific Stock Exchange's Proposal, Relating to the Listing and Maintenance Criteria for Options on American Depository Receipts

October 30, 1995.

I. Introduction

On July 12, 1995, the Chicago Board Options Exchange, Inc. (''CBOE'') filed with 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 proposal to amend Interpretation and Policy .03 to CBOE Rule 5.3, ''Criteria for Underlying Securities,'' and Interpretation and Policy .09 to CBOE Rule 5.4, ''Withdrawal of Approval of Underlying Securities,'' to revise the listing and maintenance criteria for options on American Depository Receipts (''ADRs'').

Notice of the proposed rule change appeared in the Federal Register on August 8, 1995.[3] No comments were received on the proposed rule change.

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] *See* Securities Exchange Act Release No. 36049 (August 2, 1995), 60 FR 40401. The CBOE amended the proposed maintenance criteria to provide that if an ADR was initially deemed appropriate for options trading on the grounds that 50% or more of the worldwide trading volume in the ADR and other related ADRs and securities takes place in U.S. markets or in markets with which the CBOE has an effective surveillance sharing agreement, or if an ADR was initially deemed appropriate for options trading based on the daily trading volume in U.S. markets, as provided in the proposal, then the CBOE may not open for trading additional series of options on that ADR unless the percentage of worldwide trading volume in the ADR and other related securities that takes place in the U.S. and in markets with which the CBOE has in place surveillance sharing agreements for any consecutive three month period is either (1) at least 30% without regard to the average daily trading volume in the ADR, or (2) at least 15% when the average

Continued

The Commission thereafter received identical proposals from the American Stock Exchange, Inc. (''Amex''),[4] the New York Stock Exchange, Inc. (''NYSE''),[5] the Philadelphia Stock Exchange, Inc. (''PHLX''),[6] and the Pacific Stock Exchange, Inc. (''PSE''),[7] (hereafter referred to collectively with the CBOE as the ''Exchanges'' and each individually referred to as an ''Exchange'').

II. Description of the Proposals

Listing Criteria for Options on ADRs

Currently, the Exchanges' rules allow the Exchanges to list options on an ADR that meets or exceeds the Exchanges' established uniform options listing standards if the ADR also satisfies any of the following conditions: (1) The Exchange has in place an effective surveillance agreement[8] with the primary exchange in the home country where the security underlying the ADR is traded; (2) the combined trading volume of the ADR, the security underlying the ADR, other classes of common stock related to the security underlying the ADR, and ADRs overlying such other classes of common stock (collectively, ''other related ADRs and securities'') occurring in the U.S. ADR market[9] represents (on a share equivalent basis) at least 50% of the combined world-wide trading volume in the ADR and other related ADRs and securities over the three month period preceding the date of selection of the ADR for options trading (''50% Test''); or (3) the Commission otherwise authorizes the listing.[10]

The Exchanges propose to amend their ADR listing criteria by (1) revising the manner in which the applicable percentage of world-wide trading volume is calculated under the 50% Test; and (2) adding new criteria for the listing of options on ADRs, based on daily trading in the U.S. Specifically, the Exchanges proposes to revise the 50% Test so that trading in ADRs and other related ADRs and securities in any market with which the applicable Exchange has in place a comprehensive/effective surveillance sharing agreement will be added to U.S. ADR market volume for the purpose of determining whether the 50% test has been met. Currently, only trading in the U.S. ADR market counts towards satisfying the 50% Test.

In addition, the Exchanges propose to add a fourth alternative set of criteria under which the Exchanges may list options on ADRs. The new standard (the ''Daily Trading Volume Standard'') will permit the Exchanges to list options on ADRs if each of the following three conditions is satisfied: (1) The combined trading volume for the ADR and other related ADRs and securities occurring in the U.S. ADR market or in any market with which the Exchange has in place a comprehensive/effective surveillance agreement represents (on a share equivalent basis) at least 20% of the combined world-wide trading volume in the ADR and other related ADRs and securities over the three month period preceding the date of selection of the ADR for options trading; (2) the average trading volume for the ADR in the U.S. ADR market over the three months preceding the date of selection of the ADR for options trading is at least 100,000 shares per day; and (3) the trading volume for the ADR in the U.S. ADR market is at least 60,000 shares per day for a majority of the trading days for the three months preceding the date of selection of the ADR for options trading.

The Exchanges note that, like the 50% Test, the Daily Trading Volume Standard will allow the listing of options on ADRs in the absence of a comprehensive/effective surveillance sharing agreement between the applicable Exchange and the home country where the security underlying the ADR is traded. The Exchanges believe that the Daily Trading Volume Standard is justified because it will enable the Exchanges to list options on ADRs that are widely followed by U.S. investors but that do not meet the 50% Test. The Exchanges note that although the Daily Trading Volume Standard reduces from 50% to 20% the percentage of world-wide trading that must occur in the U.S. ADR market and in markets with which an Exchange has a comprehensive/effective surveillance sharing agreement, it also requires the ADRs to have trading volume in the U.S. ADR market. The Exchanges believe that the Daily Trading Volume Standard's requirement of observable, high trading volume should ameliorate regulatory concerns regarding investor protection.

Maintenance Criteria for Options on ADRs

The proposals also revise the maintenance criteria for listing additional series of options on ADRs. Currently, the Exchanges' rules prohibit the Exchanges from opening trading on any additional series of options on an ADR that was listed initially under the 50% Test if the U.S. trading volume over a subsequent three month period is less than 30% of worldwide trading volume, unless either (1) the Exchange has in place a comprehensive/effective surveillance agreement with the primary exchange in the home country where the security underlying the ADR is traded, or (2) the Commission has otherwise authorized the listing.

The Exchanges propose to amend the maintenance criteria to prohibit an Exchange from opening trading in any additional series of options on an ADR that was listed initially pursuant to the 50% test or the Daily Trading Volume standard unless the percentage of worldwide trading volume in the ADR and other related securities takes place in U.S. markets and in markets with which the applicable Exchange has in place a comprehensive/effective surveillance sharing agreements for any consecutive three month period is either (1) at least 30% without regard to the average daily trading volume in the ADR, or (2) at least 15% when the average U.S. daily trading volume in the ADR for the previous three months is at

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U.S. daily trading volume in the ADR for the previous three months is at least 70,000 shares. *See* Letter from Timothy Thompson, CBOE, to Jim McHale, Division of Market Regulation (''Division''), Commission, dated September 7, 1995 (''Amendment No. 1'').

[4] *See* File No. SR–Amex–95–41, submitted on October 11, 1995.

[5] *See* File No. SR–NYSE–95–30, submitted on September 26, 1995.

[6] *See* File No. SR–PHLX–95–65, submitted on September 19, 1995.

[7] *See* File No. SR–PSE–95–21, submitted on September 7, 1995. The PSE amended its proposal to conform its maintenance standards to the maintenance standards proposed by the CBOE. *See* Letter from Michael D. Pierson, Senior Attorney, Market Regulation, to Yvonne Fraticelli, Attorney, Office of Market Supervision, Division, Commission, dated October 13, 1995 (''Amendment No. 1'').

[8] The Commission defines an effective (*i.e.*, comprehensive) surveillance agreement as one pursuant to which the Exchange can obtain relevant surveillance information, including, among other things, the identity of the customers of securities transactions. The term ''effective'' surveillance sharing agreement is interchangeable with ''comprehensive'' surveillance sharing agreement.

[9] The U.S. ADR market includes the U.S. self-regulatory organizations that are members of the Intermarket Surveillance Group (''ISG'') and whose members are linked together by the Intermarket Trading System (''ITS''). The ISG, which is comprised of the Amex, the Boston Stock Exchange, Inc., the CBOE, the Chicago Stock Exchange, Inc., the Cincinnati Stock Exchange, Inc., the National Association of Securities Dealers, Inc. (''NASD''), the NYSE, the PSE, and the PHLX, was formed on July 14, 1983, to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. ITS is a communications system designed to facilitate trading among competing markets by providing each market with order routing capabilities based on current quotation information. *See* Securities Exchange Act Release No. 33554 (January 31, 1994), 59 FR 5622 (February 7, 1994), (order approving File No. SR–CBOE–93–81).

[10] The Commission generally would only provide such authorization in the context of approving a rule filing submitted under Section 19 of the Act and Rule 19b–4 thereunder.

least 70,000 shares.[11] The Exchanges believe that the proposed 15% requirement, together with the significant average daily trading volume requirement (70,000 shares) should be adequate to address concerns regarding the Exchanges' ability to investigate possible options manipulation involving the underlying ADRs without being so high as to unduly interfere with the continued trading of option products that have become established on an Exchange.

The Exchanges believe that the proposed rule changes are consistent with Section 6(b) of the Act, in general, and further the objectives of Section 6(b)(5), in particular, in that they are designed to remove impediments to and perfect the mechanism of a free and open market and a national market system by enabling the Exchanges to list options on widely followed ADRs without compromising investor protection concerns.

III. Discussion

The Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5).[12] The Commission believes, as it has concluded previously,[13] that the listing of options on ADRs, among other things, provides investors with a better means to hedge their positions in the underlying ADRs, as well as enhanced market timing opportunities.[14] Further, the pricing of the ADRs underlying ADR options may become more efficient and market makers in these ADRs, by virtue of enhanced hedging opportunities, may be able to provide deeper and more liquid markets.[15] In sum, options on ADRs likely engender the same benefits to investors and the marketplace that exist with respect to options on common stock.[16]

The Commission believes that the proposed amendments to the listing and maintenance standards for options on ADRs will benefit investors by effectively increasing the number of available options-eligible ADRs. At the same time, the proposals provide safeguards designed to prevent manipulations and other abusive trading strategies in connection with the trading of ADR options and their underlying securities. Accordingly, the Commission believes that the proposals will extend the benefits associated with ADR options to additional ADRs and provide market participants with opportunities to trade a greater number of ADR options without compromising the effectiveness of the Exchanges' listing and maintenance standards for options on ADRs.

Currently, the 50% Test allows an Exchange to list options on an ADR in the absence of a comprehensive/effective surveillance sharing agreement with the primary exchange where the security underlying the ADR trades if the combined trading volume of the ADR and other related ADRs occurring in the U.S. ADR market during the three month period preceding the selection of the ADR for options trading represents (on a share equivalent basis) at least 50% of the combined worldwide trading volume in the ADR and other related ADRs.

In its orders approving the 50% Test, the Commission concluded that the 50% Test helped to ensure that the relevant pricing market for the options on ADRs is the U.S. ADR market rather than the market where the security underlying the ADR trades. In such cases, the Commission found that the U.S. ADR market is the instrumental market for purposes of deterring and detecting potential manipulations or other abusive trading strategies in conjunction with transactions in the overlying ADR options market. Because the U.S. self-regulatory organizations which comprise the U.S. ADR market are members of the ISG, the Commission concluded that there exists an effective surveillance sharing arrangement to permit the exchanges and the NASD to adequately investigate any potential manipulations of the ADR options or their underlying securities.[17]

The Exchanges propose to modify the 50% Test to include in the U.S. ADR market volume calculation the trading volume in ADRs and other related securities that occurs in any market with which the applicable Exchange has in place a comprehensive/effective surveillance sharing agreement. The Commission believes that this proposed modification of the 50% Test is consistent with the Act and with the Commission's approach in the 1994 ADR Approval Orders because it will continue to ensure that the majority of world-wide trading volume in the ADR and other related ADRs and securities occurs in trading markets with which the applicable Exchange has in place a comprehensive/effective surveillance sharing agreement. The existence of such agreements should function as a deterrent in preventing manipulations or other abusive trading strategies and also provide an adequate mechanism for obtaining market and trading information from the ADR markets underlying the Exchanges' options. As a result, the Exchanges should continue to be able to adequately investigate any potential manipulations of ADR options or their underlying securities.

In addition, the Commission finds that the proposed Daily Trading Volume Standard is consistent with the Act and with the 1994 ADR Approval Orders. As noted above, the Daily Trading Volume Standard will allow the Exchanges to list options on an ADR if, over the three month period preceding the date of selection of the ADR for options trading (1) the combined trading volume of the ADR and other related ADRs and securities occurring in the U.S. ADR market, and in markets where the applicable Exchange has in place a comprehensive/effective surveillance agreement, represents (on a share equivalent basis) at least 20% of the combined world-wide trading volume in the ADR and other related ADRs and securities; (2) the average daily trading volume for the security in U.S. markets is 100,000 or more shares; and (3) the trading volume is at least 60,000 shares per day in U.S. markets on a majority of the trading days.

The Commission believes that these requirements present a reasonable

[11] Consistent with the proposed amendments to the listing standards, the Exchanges propose to modify the calculation of world-wide trading volume in the maintenance standards to include the trading of the ADR and other related ADRs and securities in markets with which the applicable Exchange has in place an effective surveillance sharing agreement.

[12] 15 U.S.C. § 78f(b)(5) (1988 & Supp. V 1993).

[13] *See* Securities Exchange Act Release Nos. 33555 (January 31, 1994), 59 FR 5619 (February 7, 1994) (order approving File No. SR–Amex–95–38); 33554 (January 31, 1994), 59 FR 5622 (February 7, 1994) (order approving File No. SR–CBOE–93–38); 33552 (January 31, 1994), 59 FR 5626 (February 7, 1994), (order approving File No. SR–NYSE–93–43); 33553 (January 31, 1994), 59 FR 5634 (February 7, 1994) (order approving File No. SR–PHLX–93–54); and 33551 (January 31, 1994), 59 FR 5631 (February 7, 1994) (order approving File No. SR–PSE–93–33) (''1994 ADR Approval Orders'').

[14] For example, if an investor wants to invest in ADRs but does not have sufficient cash available until a future date, he can purchase an ADR option now for less money and exercise the option to purchase the ADRs at a later date.

[15] *See e.g.*, Report of the Special Study of the Options Markets to the Securities and Exchange Commission, 96th Cong., 1st Sess. (Comm. Print No. 96–IFC3, December 22, 1978).

[16] Pursuant to Section 6(b)(5) of the Act, the Commission must predicate approval of any new securities product upon a finding that the introduction of such new product is in the public interest. Such a finding would be difficult for a derivative instrument that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the market, and other valid regulatory concerns.

[17] *See* 1994 ADR Approval Orders, *supra* note 14.

alternative to the 50% Test by limiting the listing of options on ADRs to only those ADRs that have both (1) a significant amount of U.S. market trading volume and (2) a substantial (albeit not majority) volume of trading covered by a comprehensive/effective surveillance sharing agreement. This will ensure that, if a majority of trading volume in the ADR occurs in markets with a comprehensive/effective surveillance agreement, the U.S. ADR market is sufficiently active to serve as a relevant pricing market for the ADR.

Accordingly, the Daily Trading Volume Standard should help to ensure that the U.S. markets (and the markets with which the applicable Exchange has in place a comprehensive/effective surveillance sharing agreement) serve a significant role in the price discovery of the applicable ADR and are generally deep, liquid markets.

The Commission also believes that the proposed maintenance criteria (which will apply to an ADR option regardless of whether the option was listed under the 50% Test or the Daily Trading Volume Standard) will provide for continued trading of ADR options that have become established on an Exchange while ensuring that the U.S. markets (and the markets with which the applicable Exchange has in place a comprehensive/effective surveillance sharing agreement) remain a significant price discovery market for options on the ADRs.

The Commission also notes that the existing ADR option listing requirements related to the protection of investors will continue to apply. Specifically, the ADRs underlying the options must meet the Exchanges' uniform options listing standards, including initial and maintenance criteria, in all respects.[18] These criteria ensure, among other things, that the underlying ADRs will maintain adequate price and float to prevent the ADR options from being readily susceptible to manipulation.

In addition, the Exchanges are required to make a reasonable inquiry to evaluate foreign securities underlying the ADR options to ensure that these securities are generally consistent with the requirements set forth in each Exchange's options listing standards.[19] In the ADR Approval Orders, the Commission recognized that in some cases, an ADR underlying an option could meet the options listing standards while the foreign security on which the ADR is based may not meet those standards in every respect. For example, in the case of ADRs overlying certain foreign securities, one ADR could represent several shares of a specific stock. For this reason, it is possible that the price of the ADR will meet exchange listing standards even though the market price of the foreign security underlying the ADR may be less than the Exchange's standard. The Commission continues to believe, however, that requiring the Exchanges to review the foreign securities underlying the ADR options to ensure that they are generally consistent with the Exchanges' options listing standards, along with other market safeguards, will adequately protect investors from the possibility that the ADR options will be listed on illiquid or narrowly held securities.[20]

IV. Conclusion

The Commission notes that the Exchanges have not reported any problems associated with the trading of options on ADRs. Based on the Exchanges' experience trading ADR options, on the safeguards provided in the proposals, and on the requirement that ADR options comply with the Exchanges' uniform options listing standards, the Commission believes that the proposed amendments to the listing and maintenance standards for options on ADRs will allow the Exchanges to list options on widely followed ADRs while providing adequate mechanisms to ensure investor protection.

The Commission finds good cause for approving Amendment No. 1 to the CBOE's proposal and Amendment No. 1 to the PSE's proposal prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register. CBOE Amendment No. 1 and PSE Amendment No. 1 strengthens the Exchange's proposals by providing a single maintenance standard that applies to ADR options listed under both the 50% Test and the Daily Trading Volume Standard. The Commission believes that it is reasonable for the Exchanges to apply this maintenance standard to ADR options listed under either the 50% Test or Daily Trading Volume Standard.

In addition, the Commission finds good cause for approving the proposals submitted by the Amex, the NYSE, the PSE, and the PHLX prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register because their proposals are consistent with the CBOE's proposal, which, with the exception of Amendment No. 1, was subject to the full notice and comment period. As noted above, the Commission received no comment letters concerning the CBOE's proposal. Accordingly, the Commission finds that it is consistent with Sections 19(b)(2) and 6(b)(5) of the Act[21] to approve Amendment No. 1 to the CBOE's proposal, and the proposals submitted by the Amex, the NYSE, the PHLX, and the PSE, on an accelerated basis.

V. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1 to the CBOE's proposal and Amendment No. 1 to the PSE's proposal and concerning the proposals by the Amex, the NYSE, the PHLX, and the PSE. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and

[18] The Exchanges' initial listing standards require, among other things, that the ADRs underlying the Exchange-listed options are registered securities, have a ''float'' of 7,000,000 ADRs outstanding, 2,000 shareholders, trading volume of at least 2,400,000 over the prior twelve month period, and a minimum price of $7½ for a majority of the business days during the preceding three month period. The Exchanges' maintenance criteria require that the ADRs underlying Exchange-listed options maintain a ''float'' of 6,300,000 ADRs, 1,600 shareholders, trading volume of at least 1,800,000 over the prior twelve month period, and a minimum price of $5 on a majority of the business days during the preceding six month period.

[19] *See* Securities Exchange Act Release Nos. 31529 (November 27, 1992), 57 FR 57248 (December 3, 1992) (order approving File No. SR–Amex–91–26); 31531 (November 27, 1992), 57 FR 57250 (December 3, 1992) (order approving File No. SR–CBOE–91–34); 31528 (November 27, 1992), 57 FR 57256 (December 3, 1992) (order approving File No. SR–NYSE–92–25); 31532 (November 27, 1992), 57 FR 57264 (December 3, 1992) (order approving File No. SR–PHLX–91–40); and 31530 (November 27, 1992), 57 FR 57262 (December 3, 1992) (order approving File No. SR–PSE–91–33) (''ADR Approval Orders''). *See also* 1994 ADR Approval Orders, *supra* note 14.

[20] For example, the Commission would expect the exchanges to consider delisting an option on an ADR if the price and public float of the underlying security did not meet trading or size maintenance standards, or if the security underlying the ADR failed to meet other standards that raised manipulative concerns. *See* ADR Approval Orders, *supra* note 20.

[21] 15 U.S.C. 78s(b)(2) and 78f(b)(5) (1988).

copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by November 27, 1995.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[22] that the proposed rule changes (File Nos. SR–Amex–95–41; SR–CBOE–95–32; SR–NYSE–95–30; SR–PHLX–95–65; and SR–PSE–95–21) are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[23]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–27385 Filed 11–3–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36439; File No. SR–CBOE–95–56]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Modifications of the Position and Exercise Limits for Narrow-Based Index Options

October 31, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on October 10, 1995, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is approving this proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend CBOE Rules 24.4A, ''Position Limits for Industry Index Options,'' and 24.5, ''Exercise Limits,'' to increase the position and exercise limits[2] for narrow-based (or industry) index options from the current levels of 5,500, 7,500, or 10,500 contracts[3] to 6,000, 9,000, or 12,000 contracts. The Commission recently approved an identical proposal by the Philadelphia Stock Exchange, Inc. (''PHLX'').[4]

The text of the proposed rule change is available at the office of the Secretary, CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The CBOE proposes to amend CBOE Rules 24.4A and 24.5 to increase the position and exercise limits for narrow-based (or industry) index options from the current levels of 5,500, 7,500, or 10,500 contracts to 6,000, 9,000, or 12,000 contracts. The CBOE notes that the Commission recently approved an identical proposal by the PHLX.[5]

Currently, CBOE Rule 24.4A establishes 5,500, 7,500, and 10,500 contract levels as position limits for industry index options. The CBOE proposes to increase these limits to 6,000, 9,000, and 12,000 contracts, respectively. If the Commission approves the proposed increase in position limits for industry index options, the exercise limits set forth in CBOE Rule 24.5 for industry index options will increase correspondingly since they reference CBOE Rule 24.4A.

The CBOE trades options on the following narrow-based indexes, with limits as shown:

(1) S&P Banking Index—10,500 contracts;
(2) S&P Chemical Index—5,500 contracts;
(3) S&P Health Care Index—7,500 contracts;
(4) S&P Insurance Index—7,500 contracts;
(5) S&P Retail Index—5,500 contracts;
(6) S&P Transportation Index—7,500 contracts;
(7) CBOE Software Index—7,500 contracts;
(8) CBOE Environmental Index—7,500 contracts;
(9) CBOE Gaming Index—7,500 contracts;
(10) CBOE Global Telecommunications Index—10,500 contracts;
(11) CBOE Israel Index—7,500 contracts;
(12) CBOE Mexico Index—10,500 contracts;
(13) CBOE REIT Index—10,500 contracts;
(14) CBOE Telecommunications Index—10,500 contracts;
(15) CBOE Biotech Index—10,500 contracts;
(16) CBOE Latin 15 Index—10,500 contracts;
(17) CBOE High Technology Index—10,500 contracts.

The CBOE notes that the current levels have been in place since 1993.[6] The CBOE believes that the proposed limits of 6,000, 9,000, and 12,000 contracts will increase the depth and liquidity of the market for industry index options without causing any market disruption. The Exchange represents that it will continue to surveil for manipulation. In addition, the Exchange states that it has not opened any manipulation inquiries to date as a result of any increase in position and exercise limits.

The Exchange believes that the proposal to increase narrow-based index option position limits is consistent with Section 6 of the Act, in general, and, in particular, with Section 6(b)(5), in that it will allow investors to utilize industry index options more fully as part of their investment portfolios, provide uniform limits among the exchanges listing such options and increase the depth and

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[22] 15 U.S.C. § 78s(b)(2) (1982).

[23] 17 CFR 200.30–3(a)(12) (1994).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Position limits impose a ceiling on the number of option contracts which an investor or group of investors acting in concert may hold or write in each class of options on the same side of the market (*i.e.,* aggregating long calls and short puts or long puts and short calls). Exercise limits prohibit an investor or group of investors acting in concert from exercising more than a specified number of puts or calls in a particular class within five consecutive business days.

[3] Under CBOE Rule 24.4A, the current position limits for industry index options are as follows: (1) 5,500 contracts if the CBOE determines in its semi-annual review that any single underlying stock accounted, on average, for 20% or more of the index value or that any five underlying stocks together accounted, on average, for more than 30% or more of the index value during the 30-day period immediately preceding the review; (2) 7,500 contracts if the Exchange determines in its semi-annual review that any single underlying stock accounted, on average, for more than 20% of the index value or that any five underlying stocks accounted, on average, for more than 50% of the index value, but that no single stock in the group accounted, on average, for 30% or more of the index value during the 30-day period immediately preceding the review; or (3) 10,500 contracts if the CBOE determines that the conditions requiring the establishment of a lower limit have not occurred.

[4] *See* Securities Exchange Act Release No. 36194 (September 6, 1995), 60 FR 47637 (September 13, 1995) (order approving File No. SR–PHLX–95–16) (''PHLX Approval Order'').

[5] *Id.*

[6] *See* Securities Exchange Act Release No. 33283 (December 3, 1993), 58 FR 65204 (December 13, 1993) (order approving File No. SR–CBOE–93–43).

liquidity of the market, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system in a manner consistent with the protection of investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The CBOE has requested that the proposed rule change be given accelerated effectiveness pursuant to Section 19(b)(2) of the Act. As noted above, the Commission has previously approved an identical proposal submitted by the PHLX.[7]

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, the requirements of Section 6(b)(5).[8] Specifically, the Commission finds that the proposed position and exercise limits for narrow-based index options should accommodate the needs of investors and market participants and should increase the potential depth and liquidity of the options market as well as the underlying cash market without significantly increasing concerns regarding intermarket manipulations or disruptions of the market for the options or the underlying securities.

As noted above, the Commission believes that although the position and exercise limits for options must be sufficient to protect the options and related markets from disruptions by manipulation, the limits must not be established at levels that are so low as to discourage participation in the options market by institutions and other investors with substantial hedging needs or to prevent market makers from adequately meeting their obligations to maintain a fair and orderly market. In this regard, the CBOE has stated that it believes that the proposal will increase the depth and liquidity of the market for industry index options without causing any market disruption. In addition, the CBOE represents that it will continue to conduct surveillance for manipulation, and that the Exchange has not opened any manipulation inquiries to date as a result of an increase in position and exercise limits.

The Commission notes that the proposal, while increasing the applicable position limits for narrow-based index options, continues to reflect the unique characteristics of each index option and maintains the structure of the current three-tiered system. Specifically, the lowest proposed limit, 6,000 contracts, will apply to narrow-based index options in which a single underlying stock accounts for 30% or more of the index value during the 30-day period immediately preceding the Exchange's semi-annual review of industry index option positions limits. A position limit of 9,000 contracts will apply if any single underlying stock accounts, on average, for 20% or more of the index value or any five underlying stocks account, on average for more than 50% of the index value, but no single stock in the group accounts, on average, for 30% or more of the index value during the 30-day period immediately preceding the Exchange's semi-annual review of industry index option position limits. The 12,000-contract limit will apply only if the Exchange determines that the conditions requiring either the 6,000-contract limit or the 9,000-contract limit have not occurred. Accordingly, the proposal allows the Exchange to avoid placing unnecessary restraints on those narrow-based index options where the manipulative potential is the least and the need for increased positions, both by traders and institutional investors, may be the greatest.

The Commission believes that the proposed increases for the three tiers of 9%, 20%, and 15%, for lowest to highest, respectively, appear to be appropriate and consistent with the Commission's evolutionary approach to position and exercise limits. In this regard, the absence of discernible manipulative problems under the current three-tiered position and exercise limit system for narrow-based index options leads the Commission to conclude that the modest increases proposed by the Exchange are warranted. The Commission recognizes that there are no ideal limits in the sense that options positions of any given size can be stated conclusively to be free of any manipulative concerns. However, based upon the absence of discernible manipulation or disruption problems under current limits, the Commission believes that the proposed limits can be safely considered. Accordingly, the Commission believes that the liberalization of existing position and exercise limits for narrow-based index options is now appropriate.[9]

The Commission notes that the Exchange has had considerable experience monitoring the current three-tiered framework in narrow-based stock index options. The Commission has not found that differing position and exercise limit requirements based on the particular options product to have created programming or monitoring problems for securities firms, or to have led to significant customer confusion. Based on the current experience in handling position and exercise limits, the Commission believes that the proposed increase in position and exercise limits for narrow-based index options will not cause significant problems.

Finally, the CBOE has indicated that it will continue to conduct surveillance for manipulation. The Commission believes that the Exchange's surveillance programs are adequate to detect and deter violations of position and exercise limits as well as to detect and deter attempted manipulative activity and other trading abuses through the use of such illegal positions by market participants.

For the foregoing reasons, the Commission finds that the proposal to increase the position and exercise limits for narrow-based index options to 6,000, 9,000, or 12,000 contracts, depending on the percentage stock concentrations within the index, is consistent with the requirements of the Act and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register. As noted above, the Commission has previously approved an identical proposal submitted by the PHLX.[10] The PHLX's proposal was published for the full notice and comment period and the Commission received no comments on the PHLX's proposal. The CBOE's proposal raises no new regulatory issues. Accordingly, the Commission

[7] *See* PHLX Approval Order, *supra* note 4.

[8] 15 U.S.C. 78f(b) (1988 & Supp. V 1993).

[9] The Commission continues to believe that proposals to increase position limits and exercise limits must be justified and evaluated separately. After reviewing the proposed exercise limits, along with the eligibility criteria for each tier, the Commission has concluded that the proposed exercise limit increases for the three-tiered framework do not raise manipulation problems or increase concerns over market disruption in the underlying securities.

[10] *See* PHLX Approval Order, *supra* note 4.

believes it is consistent with Sections 6(b)(5) and 19(b)(2) of the Act to approve the proposed rule change on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by November 27, 1995.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (SR–CBOE–95–56) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

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BILLING CODE 8010–01–M

[11] 15 U.S.C. § 78f(b)(2) (1988).

[12] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–36441; File No. SR–CBOE–95–64]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change by the Chicago Board Options Exchange, Incorporated and Amendment Nos. 1 and 2 to the Proposed Rule Change, Relating to Position Limits on the S&P 500/Barra Growth Index and the S&P 500/Barra Value Index

October 31, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 20, 1995 the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange submitted to the Commission Amendment Nos. 1 and 2 to the proposal on October 26, 1995.[3] The Commission is approving this proposal, as amended, on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to revise the positions limits applicable to the S&P 500/Barra Growth Index and the S&P 500/Barra Value Index.[4] (The S&P 500/Barra Growth Index is sometimes hereinafter referred to as the ''Growth Index,'' the S&P/500 Barra Value Index is sometimes hereinafter referred to as the ''Value Index,'' and the Growth Index and the Value Index are sometimes hereinafter collectively referred to as the ''Indexes.'') The position limits are being revised to account for the rebasing of the Indexes. The text of the proposed rule change is available at the Office of the Secretary of CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to reduce the contract position limits for the Indexes consistent with the recent rebasing of the Indexes by Standard & Poor's (''S&P''). The Indexes are maintained by Barra, Inc. (''Barra'') pursuant to an agreement between Barra and Standards & Poor's (''S&P''). The Value Index and Growth Index represent a partition of the S&P 500 Stock Index and, like options on the S&P 500 (''SPX options''), Value options and Growth options are cash-settled, European-style and A.M.-settled. The Indexes are described in more detail in File No. SR–CBOE–93–36 and in the Commission order approving the Indexes for options trading on the Exchange.[5] The Exchange represents that it intends to begin trading options on both Indexes on or about November 7, 1995.

Rebasing of the Indexes. On July 20, 1995, Standard & Poor's announced that the S&P 500/Barra Growth Index and the S&P 500/Barra Value Index will be rebased effective Friday, July 28, 1995. The Indexes were set at a base value of 10 for December 31, 1974. The new base value for the Indexes will be 35 and all historical values of the Indexes will be adjusted accordingly by a factor of 3.5. The rebasing serves to bring the value of the combined Indexes into line with the value of the S&P 500, the index from which the Indexes are derived.

As an example, the Growth Index and the Value Index closed at 78.64 and 84.59, respectively, on Tuesday, July 25, 1995. On an adjusted basis those levels are 275.24 and 296.07. The sum of those values is 571.31, as compared to the closing level of the S&P 500 on that date of 561.10.

Position Limits. Currently, under CBOE Rule 24.4(a), position limits for Growth options and position limits for Value options are 125,000 contracts on the same side of the market, with no more than 75,000 contracts in the series with the nearest expiration date. Positions in both classes of options must be aggregated, pursuant to the Rule, in determining compliance with the position limits. In addition, currently under Interpretation .01 to Rule 24.4, the maximum combined position in the Indexes may not exceed 225,000 same-side of the market option contracts

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange submitted Amendment No. 1 to its proposed rule change to reduce the position limits originally proposed in this filing to position limits consistent with the rebasing of the Growth Index and Value Index. The Exchange proposes to amend the contract position limits for the Indexes: (1) From 40,000 contracts on the same side of the market as originally proposed to 36,000 contracts; (2) from 25,000 contracts in the nearest expiration series as originally proposed to 21,500 contracts; and (3) from a 75,000 contract hedge exemption limit as originally proposed to 65,000 contracts. Additionally, Amendment No. 2 changes the name of each Index from S&P/Barra Growth and S&P/Barra Value to S&P 500/Barra Growth and S&P 500/Barra Value, respectively. See Letter from Timothy Thompson, Attorney, CBOE, to John Ayanian, Attorney, Office of Market Supervision, Division of Market Regulation, Commission, dated October 26, 1995.

[4] Exercise limits will be set at the same level as position limits. See CBOE Rule 24.5.

[5] See Securities Exchange Act Release No. 34124 (May 27, 1994), 59 FR 29310 (June 6, 1994).

under CBOE's hedge exemption rule provisions.

The rebasing of the Growth Index and the Value Index now makes it necessary to reduce the contract position limits to maintain the appropriate same maximum dollar value afforded under the originally approved limits. In order to reflect the same dollar value as that originally approved, the current position limits would need to be divided by 3.5. Dividing the current level of 125,000 contracts on the same side of the market by 3.5 would yield 35,714 contracts. However, in order to establish position limits of a round number for ease of administration and compliance, the Exchange is proposing an aggregate position limit of 36,000 contracts on the same side of the market for the Growth and Value Indexes. In addition, the Exchange is proposing to similarly reduce the amount of contracts in the series that may be in the nearest expiration date from 75,000 contracts to 21,500 contracts.[6]

The Exchange is also proposing to revise the 225,000 hedge exemption limit under Interpretation .01, as this amount was also designed to have a numerical relationship to the general position limits. The Exchange is proposing that this limit be reduced to 65,000 contracts. The 65,000 contract position limit is 1.805 times the new proposed position limit of 36,000 contracts. Similarly, under the current rule, the 225,000 contract hedge exemption position limit is 1.8 times the 125,000 contract position limit.

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it will promote just and equitable principles of trade by revising position limits in light of the recent rebasing of the two Indexes.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The proposed amendments will not impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

[6] This new proposed nearest expiration date limit of 21,500 contracts is slightly less than 60% of the new proposed 36,000 contract limit, just as the current nearest expiration date restriction of 75,000 contracts is 60% of the current position limit of 125,000 contracts.

III. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Exchange has requested that the proposed rule change, as amended, be given accelerated effectiveness pursuant to Section 19(b)(2) of the Act to accommodate for the trading of Index options on or about November 7, 1995. 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 the requirements of section 6(b)(5) thereunder. Specifically, the Commission believes that the CBOE proposal to reduce the contract position and exercise limits applicable to the Indexes should enhance investor protection and protect the public interest by helping to ensure that market participants cannot control unduly large positions in the Indexes in light of the Indexes' adjusted base values which, otherwise, would increase the manipulation potential of trading options thereon.

The Commission finds good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of the notice thereof in the Federal Register. As noted above, the Commission has approved the Value Index and the Growth Index for options trading, and the Exchange intends to list each Index for options trading on or about November 7, 1995. By accelerating approval, the proposed rule change, as amended, can become effective before the Exchange begins trading the applicable Index options and provide market participants adequate notice of the applicable position and exercise limits. Accordingly, the Commission believes that it is consistent with Sections 6(b)(5) and 19(b)(2) of the Act to approve this proposed rule change on an accelerated basis.

For the same reasons, the Commission finds good cause for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of the notice thereof in the Federal Register. Specifically, Amendment No. 1 proposes to reduce the position limits as originally proposed in this filing to position limits more in line with the rebasing of the Growth Index and Value Index.[7] The Commission believes that these position limits are appropriate in light of the rebasing of the Indexes by a factor of 3.5. Accordingly, the Commission believes that it is consistent with Sections 6(b)(5) and 19(b)(2) of the Act to approve Amendment No. 1 to the CBOE proposal on an accelerated basis.

[7] See supra note 3.

The Commission also finds good cause for approving Amendment No. 2 to the proposed rule change prior to the thirtieth day after the date of publication of the notice thereof in the Federal Register. Specifically, Amendment No. 2 proposes to change the name of each Index from S&P/Barra Growth and S&P/Barra Value to S&P 500/Barra Growth and S&P 500/Barra Value, respectively. The Commission notes that changing the name of each Index does not raise any new regulatory issues. Accordingly, the Commission believes that it is consistent with Sections 6(b)(5) and 19(b)(2) of the Act to approve Amendment No. 2 to the CBOE proposal on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing proposal including Amendment Nos. 1 and 2. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to SR–CBOE–95–64 and should be submitted by November 27, 1995.

It is therefore ordered, pursuant to Section 19(b)(2) of Act,[8] that the proposed rule change (File No. SR–CBOE–95–64), as amended, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

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[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

[Release No. 34–36436; File No. SR–DTC–95–14]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of a Proposed Rule Change Seeking Depository Eligibility of Fractional Shares and Cent-Denominated Securities

October 30, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on August 4, 1995, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change (File No. SR–DTC–95–14) as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

DTC is filing the proposed rule change to make fractional shares and cent-denominated securities eligible for book-entry delivery and other DTC services.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to make cent-denominated securities and fractional shares eligible for book-entry delivery and other DTC services. The proposal is being made in response to numerous requests made by DTC participants.[3] This proposal anticipates the accelerated securities processing environment that will be triggered by the conversion of DTC's money settlement system to an entirely same-day funds settlement (''SDFS'') system. DTC is proposing to implement the eligibility of fractional shares on a voluntary basis.[4]

1. Cent-Denominated Securities

DTC estimates that approximately 6,000 cent-denominated issues exist for which DTC eligibility will become possible if the Commission approves DTC's proposed rule change. Of those 6,000 issues, DTC estimates that 350 are treasury receipts.[5]

Under the proposed rule change, participants will deposit cent-denominated securities at DTC by using DTC's Deposit Automation Management (''DAM'') service. DTC will in turn submit such securities to the appropriate transfer agent. However, the cents portion of the aggregate dollar figure for the deposited securities will be ''truncated'' (*i.e.*, cut off). Having eliminated the cents portion from the position, DTC only will reflect the whole dollar amount of deposits in the participant's account at DTC. For example, if a participant deposits ten certificates at $1.15, $11.00 will credited to the participant's DTC account, and the remaining fifty cents will be truncated. All related services and transactions thereafter will be effected in whole dollar increments, including principal and income payments.

The truncated amounts will be collected in an internal DTC account. The sum is not expected to be significant at first and therefore will not warrant the expense of developing a complex system to credit the truncated cents to each respective depositing participant as the amounts accumulate. Instead, the cents and any income derived therefrom will become part of DTC's general revenues. Because DTC refunds revenues in excess of its costs to its participants, DTC in effect will pass along the value of the truncated cents to participants as part of DTC's general refund when and if refunds of excess revenues are distributed.[6] Participants also will forfeit any voting rights on truncated cents. In time, depending on the size of the accumulated truncated amounts, DTC may reconsider developing a tacking mechanism to credit these amounts to the accounts of depositing participants.

DTC believes that the actual financial effect on its participants of the cent truncation will be negligible and well within industry practice for reconciling de minimis differences in such things as deliveries and deposits. DTC estimates that if all cent-denominated certificates held by its participants were deposited at DTC, the scale of the financial impact of the cent truncation would be as set forth below.

According to a 1992 survey, thirty-one DTC participants held cent-denominated securities represented by 57,114 certificates and more than 8,000 CUSIP numbers. The value of these positions in 1992 was approximately $37 million. Distributed among the DTC's entire participant base, the total value of the truncated cents is estimated to be less than $22,000. This figure is the result of three calculations:

(i) The average number of certificates for a DTC registered deposit is four; therefore, assuming that an average of four certificates is included in each deposit, the estimated number of deposits for the surveyed participants would be 14,278 (57,114 certificates ÷ 4 certificates per deposit).

(ii) Assuming that the average truncation for each deposit is fifty cents,[7] the aggregate value of the cents portion would be $7,139 for the surveyed participants ($.50 × 14,278).

(iii) The surveyed participants represent approximately thirty-three percent of DTC's monthly billing total. Extrapolating from this percentage for all DTC participants depositing cent-denominated securities into their DTC accounts, the estimated total truncated portion of cents would be $21,631 ($7,139 × 3.03 [mathematical inverse of thirty-three percent] = $21,631).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] The Commission has modified the text of the summaries prepared by DTC.

[3] In 1992, the results of a survey of DTC participants showed that most responding participants wished to have certain types of issues not then eligible for depository services made DTC-eligible including cent-denominated securities and fractional shares.

[4] *Infra* note 13.

[5] This estimate is based on information compiled by a DTC participant. Treasury receipts are proprietary products of broker-dealers created by stripping the coupons from U.S. Treasury securities (''Treasuries'') with the resulting instrument representing an interest in the stripped coupons or in the remaining principal (*i.e.*, zero coupon products). Subsequently, the U.S. Treasury began issuing STRIPS (Separate Trading of Registered Interest and Principle of Securities) bonds which essentially replaced the Treasury receipt in function. The Treasury issues STRIPS in a form that allows dealers to sell them immediately as zero-coupon products and do not require the repackaging steps that are necessary to transform straight Treasuries into zero-coupon instruments. Other newly eligible issues will include church bonds and various other securities types. Church bonds are securities issued by a religious organization to finance building or renovation projects. These securities typically are issued in small dollar amounts within a confined geographical area.

[6] Any refunds from the truncation program will be distributed to all DTC participants not only those participants depositing cent-denominated securities.

[7] This is the median between the lowest possible truncation amount (zero cents) and the highest possible truncation amount (99 cents).

If the $21,631 were distributed equally among all DTC participants as part of a general refund, the following distributions can be projected. DTC's last excess revenue refund to its participants was $8,000,000, and the largest portion returned to a participant was $372,876, which represented 4.7 percent of the total refund. The smallest portion returned was $8, which represented .0001 percent of the total refund. Using these percentages, the largest possible refund would be $1,016 (4.7 percent of $21,631); the smallest possible refund would be two cents (.0001 percent of $21,631); and the average refund would be approximately $49 ($21,631 ÷ 441 direct participants = $49.05).[8]

2. Fractional Shares

DTC also wishes to make securities denominated in fractional shares eligible for deposit.[9] DTC proposes to carry the fractional portions under a contra-CUSIP number, with full shares being reflected in the primary CUSIP. Delivery orders and pledges will not initially be permitted to be denominated in fractional shares.[10] However, DTC participants will have the option as the fractional shares accumulate to full shares under the contra-CUSIP to add them to the preliminary CUSIP where they will be eligible for all activities.[11] Alternatively, the fractional shares can be left in the contra-CUSIP. DTC also will provide enhanced physical processing so that deposits and withdrawals-by-transfer containing both whole and fractional shares can be combined, and DTC will handle the process of separating the whole shares to the primary CUSIP and the fractional shares to the contra-CUSIP.

DTC believes the proposed rule change is consistent with the requirements of Section 17A(b)(3)(F)[12] of the Act and the rules and regulations thereunder applicable to DTC in that it promotes efficiencies in the clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Responses to DTC's current proposal were generally favorable. Participants that commented were pleased to learn of DTC's initiative to extend depository services to fractional shares and cent-denominated securities and indicated that the effort will be beneficial to their individual firms as well as to the securities industry overall. They indicated that they viewed the initiative as being consistent with the industry's long-term goal of achieving a centralized processing environment for physical securities, particularly with the goals of DTC's DAM Program and the Vision 2000 Committee's recommendations.[13]

In August 1994, a memorandum detailing DTC's proposal for handling cent-denominated securities was issued for participant comment. Responding participants generally agreed with the proposal. Participants attending a forum on this subject on August 18, 1994, were also largely in agreement.

The current contra-CUSIP approach for fractional shares is a realistic near-term improvement on the status quo.[14] It enables DTC to accommodate those participants that wish to reduce or eliminate their vault holdings and permits DTC to provide at least limited services for fractional shares. At the same time, participants choosing not to use the service will not be obliged to make the substantial system changes necessitated by the inauguration of a book-entry delivery capability for these securities.[15]

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which DTC consents, the Commission will:

(a) By order approve such proposed rule change or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street 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 in the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to the file number SR–DTC–95–14 and should be submitted by November 27, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[16]

[8] Participants will also garner the benefit of administrative efficiencies that will attend the elimination of pennies. Specifically, fewer keystrokes will be required to enter penny amounts, and less record surveillance will be required to account for and reconcile penny amounts.

[9] A fractional share is a unit of stock less than one full share.

[10] DTC is also investigating the possibility of developing and providing a limited delivery capability that would require receiver authorization prior to a delivery being made.

[11] DTC participants will also have the ability to break up full shares under the primary CUSIP into fractional shares under the contra-CUSIP although the resulting fractional shares will not be initially eligible for deliver orders or for pledging purposes.

[12] 15 U.S.C. 78q–1(b)(3)(F) (1988).

[13] The Vision 2000 Committee is comprised of representatives from the Boards of Directors of DTC and the National Securities Clearing Corporation. Its focus is on the elimination of inefficiencies and redundancies, the maximization of technology, and the reduction in costs in the clearance and settlement industry both within and without the United States. The Vision 2000 Committee's recommendations are discussed in the Report of the Vision 2000 Committee (September, 1994).

[14] DTC's initial proposal for handling fractional shares, communicated to participants in August 1994, did not contemplate implementing the contra-CUSIP approach on a voluntary basis. Participants responding at that time expressed reservations about anticipated difficulties in reconciliation as well as in providing programming resources given that such resources were seen as already fully committed to the upcoming change to a same-day funds settlement system and to a T+3 settlement cycle. To address its participants' concerns, DTC devised the current proposal that provides for voluntary implementation. This newer, more flexible approach was described to participants in a notice dated December 14, 1994.

[15] Offering DTC participants the ability to make book-entry deliveries of fractional shares will be the first step in the development of processing capabilities for fractional shares. DTC will continue to monitor its participants' need for book-entry delivery as experience with this service is gained. The use of a single, primary CUSIP for entire positions will also be explored.

[16] 17 CFR 200.30–3(a)(12) (1994).

Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 95–27426 Filed 11–3–95; 8:45 am]
BILLING CODE 8010–01–M

[Release No. 34–36437; File No. SR–DTC–95–15]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of a Proposed Rule Change Relating to Processing Securities With Indexed Principal Features Through the Receiver Authorized Delivery Facility

October 30, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on August 23, 1995, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change (File No. SR–DTC–95–15) as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

DTC is filing the proposed rule change to require transactions in securities issued under a Money Market Instrument (''MMI'') program having an indexed principal[2] feature and settling in DTC's Same Day Funds Settlement (''SDFS'') system to be directed to DTC's Receiver Authorized Delivery facility (''RAD'').[3] RAD requires the receiver to authorize the transaction prior to it being processed by DTC.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[4]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to ensure that DTC participants receiving a valued delivery of MMI securities with an indexed principal feature will receive complete and accurate information about whether or not such securities have an indexed principal feature. The value of MMI securities with an indexed principal feature may change dramatically in a short period of time; therefore, DTC's participants have asked DTC to develop controls to ensure that participants have accurate information about this feature before accepting delivery of such a security. DTC has responded to these concerns by developing procedural changes that will reduce the likelihood that a DTC participant will purchase this type of security without full knowledge of its indexed principal feature.

Under the proposal, DTC will require mandatory authorization from receivers of securities having an indexed principal feature before DTC will process the transaction. DTC participants will transmit such authorization via DTC's RAD facility.[5] In addition, DTC will revise its twenty and forty-eight character CUSIP descriptions to include a unique identifier that will indicate that an issue has an indexed principal feature.

DTC believes the proposed rule change is consistent with the requirements of Section 17A of the Act[6] and the rules and regulations thereunder because it promotes the prompt and accurate clearance and settlement of transactions in securities that settle in same-day funds. The proposed rule change will be implemented in a manner designed to safeguard the securities and funds in DTC's custody or under its control.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

In June 1995, DTC released a memorandum to its participants about DTC's efforts to provide more complete information regarding the indexed principal feature of MMI securities. Written comments from DTC participants or others have not been solicited on the proposed change; however, State Street Bank and Trust Company (''State Street'') submitted a comment letter to DTC expressing two concerns regarding the proposed rule change. First, State Street wrote that it currently uses DTC's Main Frame Dual Host System (''MDH'') for daily settlement purposes rather than DTC's Participant Terminal System (''PTS''). State Street explained that because the new RAD authorization function only is available on PTS and not MDH, it would be forced to process the new RAD authorizations manually. DTC responded to State Street's concern by agreeing to enable them to process the new RAD authorizations through MDH.

Secondly, State Street commented that DTC should be able to provide accurate and complete issuance information without the need for an additional RAD control. DTC responded in its letter to State Street that DTC participants and the Public Securities Association (''PSA'') asked DTC to develop a method of identifying securities with an indexed principal feature and a procedure to affirmatively notify participants when they take delivery of securities having such a feature. DTC participants and the PSA requested the development of these procedures to ensure that DTC participants know before taking delivery that a particular security has an indexed principal feature. DTC believes that the proposed rule change effectively addresses these requests.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which DTC consents, the Commission will:

(a) By order approve such proposed rule change or

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] An ''indexed principal'' is principal directly derived by reference to a currency, composite currency, commodity, or other financial index.

[3] For a description of DTC's RAD facility, refer to Securities Exchange Act Release Nos. 25886 (July 8, 1988), 53 FR 26698 [File No. SR–DTC–88–07] (notice of filing and immediate effectiveness of the RAD facility) and 35720 (May 16, 1995), 60 FR 27360 [File No. SR–DTC–95–07] (order granting accelerated approval of a $15 million per transaction minimum threshold to utilize the RAD facility for approval or cancellation of deliveries).

[4] The Commission has modified the text of the summaries prepared by DTC.

[5] The transactions will be directed to DTC's existing RAD facility; however, they will be subject to a separate approval and reporting process.

[6] 15 U.S.C. 78q–1 (1988).

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to the file number SR–DTC–95–15 and should be submitted by November 27, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–27427 Filed 11–3–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 36435; File No. SR–GSCC–95–04]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Notice of Filing of a Proposed Rule Change Modifying GSCC's By-laws to Provide Indemnification Protection for Members of Committees

October 30, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on August 25, 1995, Government Securities Clearing Corporation (''GSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change (File No. SR–GSCC–95–04) as described in Items I, II, and III below, which items have been prepared primarily by GSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to amend GSCC's by-laws to provide indemnification protection for members of committees established by GSCC's Board of Directors who are not officers or directors of GSCC.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. GSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed filing seeks to amend GSCC's by-laws to provide indemnification protection for members of committees established by GSCC's Board of Directors who are not officers or directors of GSCC. Article IV, Section 4.1, of GSCC's by-laws currently requires, among other things, that GSCC indemnify to the full extent permitted by law a present or past director or officer of GSCC who is made a party to any action or proceeding, whether civil or criminal, by reason of the fact that such person is or was a director or officer of GSCC.

The indemnification obligation does not extend to members of committees established by GSCC's Board of Directors if the members of the committees are not directors or officers of GSCC. Thus, for example, the indemnification protection in GSCC's by-laws does not cover most of the members of GSCC's Risk Management Committee who are senior credit officers of GSCC member firms.

In order to ensure that GSCC can obtain the services of qualified individuals on committees established by its Board of Directors and to ensure that such individuals freely are able to provide guidance to GSCC's Board of Directors and to GSCC management, GSCC believes it appropriate to provide members of such Board-established committees with indemnification protection comparable to the protection currently given to GSCC's directors and officers. This indemnification will facilitate GSCC's ability to obtain directors and officers liability insurance that covers committee members who are not GSCC directors or officers.

GSCC believes the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because the rule proposal will help ensure that GSCC obtains the services of qualified individuals on its Board-established committees.

(B) Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not believe that the proposed rule will have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments on the proposed rule change have not yet been solicited. GSCC members will be notified of the rule filing and comments will be solicited by an important notice. GSCC will notify the Commission of any written comments received by GSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change or;

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule

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[7] 17 CFR 200.30–3(a) (12) (1994).

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] The Commission has modified the text of the summaries prepared by GSCC.

change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of GSCC. All submissions should refer to the file number SR–GSCC–95–04 and should be submitted by November 27, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–27386 Filed 11–3–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36440; File No. SR–CHX–95–19]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Amendment No. 1 to the Proposed Rule Change Relating to the Chicago Match

October 31, 1995.

I. Introduction

On July 27, 1995, the Chicago Stock Exchange, Inc. (''CHX'' 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 Article XXXVII of the Exchange's Rules to increase the number of daily matches in the Chicago Match to two. On August 22, 1995, the CHX submitted Amendment No. 1 to the proposed rule change.[3]

The proposed rule change, including Amendment No. 1, was published for comment in Securities Exchange Act Release No. 36139 (August 23, 1995), 60 FR 45196 (August 30, 1995). No comments were received on the proposal.

II. Background and Description of the Proposal

On November 30, 1994, the Commission approved a proposed rule of the Exchange that created the Chicago Match, an institutional trading system that integrates an electronic order match system with a facility for brokering trades.[4] The Chicago Match electronically crosses orders entered by users during regular trading hours for securities that are listed on the CHX or for which the CHX has unlisted trading privileges.[5] Orders that are matched electronically will be priced at the market price, which is equal to the mid-point between the Consolidated Best Bid and Offer, at a random time within a pre-determined ten minute period and will be executed at that time. Currently, the Chicago Match rules permit only one match to occur per trading day.[6]

The proposed rule change amends the Chicago Match rules to accommodate two matches per trading day.[7] As before, the matches will occur mid-day during the Exchange's primary trading session.

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 Section 6(b).[8] In particular, the Commission believes the proposal is consistent with the Section 6(b)(5) requirements 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 a national market system, and, in general, to protect investors and the public.

The Commission historically has encouraged the creation of new electronic trading systems such as the Chicago Match that may contribute to increased execution alternatives available to investors. At the same time, the Commission requires that these exchange trading systems be consistent with the investor protection and fair and orderly market standards contained in the Act. In the Original Approval Order, the Commission found that the Chicago Match was consistent with these objectives. Nevertheless, in the Original Approval Order, the Commission raised concerns over the issue of non-member access to the Exchange. The Commission, however, found that several factors, including the fact that CHX matches will occur only once a day, served to assure sufficient control by CHX members over the activities of non-members to satisfy the requirements of the Act. The Commission also noted that any proposal increasing the number of matches would have to be considered and approved by the Commission.

After careful review, the Commission believes that the amended Chicago Match is consistent with the investor protection and fair and orderly market standards contained in the Act for the same reasons that are set forth in the Original Approval Order. The limited increase to two matches per trading day will continue to assure that CHX members have adequate controls over non-members to satisfy the requirements of the Act.[9] At the same time, the Commission believes that the additional match each day will benefit investors by providing them with an additional execution opportunity. In this context, the additional match will provide more flexibility to investors and allow them to utilize the Chicago Match one more time during the trading day in response to changing market conditions.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–CHX–95–19),

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[3] 17 CFR 200.30–3(a)(12) (1994).

[1] U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from David T. Rusoff, Attorney, Foley & Lardner, to Elisa Metzger, Attorney, SEC, dated August 22, 1995. In Amendment No. 1 to the proposed rule change, the Exchange clarifies that there will be two matches per day, which will occur midday during the Exchange's primary trading session. Moreover, the Exchange defines the term ''Cross Window'' to mean up to two ten minute intervals during the Primary Trading Session.

[4] Securities Exchange Act Release No. 35030 (November 30, 1994), 59 FR 63141 (''Original Approval Order'').

[5] Users may be CHX members or non-members. When a non-member, however, is given access to Chicago match, it must enter into several agreements to ensure that a member has responsibility and control over the non-member's activities.

[6] *See* Securities Exchange Act Release No. 35923 (June 30, 1995), 60 FR 35756 (approving an amendment to the Chicago Match that lowered the disclosure threshold for display of orders from 10,000, 5,000 or 2,000 shares depending on the security involved to 500 shares so that more orders in the Chicago Match would be displayed).

[7] There will be two announced ten minute periods for matching of orders. Orders that are entered by users prior to the first ten-minute period will participate in the first match of the day and orders that are entered by users after the first ten-minute period, but before the second ten-minute period will participate in the second match of the day. Orders that are not matched during the first match of the day will not automatically participate in the second match. Conversation between David Rusoff, Foley, & Lardner, and Jennifer S. Choi, Division of Market Regulation, SEC, on October 31, 1995.

[8] 15 U.S.C. 78f(b).

[9] The CHX has indicated that it may wish to add more matches, upon Commission approval. The CHX would have to submit a proposal pursuant to Section 19(b)(2) of the Act to add additional matches during the trading day.

[10] 15 U.S.C. 78s(b)(2).

including Amendment No. 1, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–27428 Filed 11–3–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36442; File No. SR–Phlx–95–32]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 to Proposed Rule Change Relating to Broker-Dealer Orders on PACE

October 31, 1995.

I. Introduction

On June 12, 1995, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Exchange Rule 229 to allow non-agency orders on the Philadelphia Stock Exchange Automated Communication and Execution (''PACE'') system [3] under certain circumstances. On September 19, 1995, the Exchange submitted to the Commission Amendment No. 1 to the proposed rule change.[4]

The proposed rule change was published for comment in Securities Exchange Act Release No. 36263 (Sept. 21, 1995), 60 FR 50226 (Sept. 28, 1995). No comments were received on the proposal. On October 25, 1995, the Exchange submitted to the Commission Amendment No. 2 to the proposed rule change.[5]

This order approves the proposed rule change, including Amendment No. 2 on an accelerated basis.

II. Description of Proposal

Currently, the PACE system only accepts agency orders.[6] The orders accepted under the system may be executed on a fully automated or manual basis in accordance with Rule 229.

The Exchange proposes to amend Supplementary Material .02 to Phlx Rule 229 to permit specialists to accept non-agency orders through PACE under certain circumstances. To do so, Phlx specialists must file with the Exchange a Specialist Agreement, which is an Exchange form signed by a Phlx equity specialist who has agreed to accept non-agency orders through PACE. The Specialist Agreement must identify the member firm that is interested in submitting orders through the PACE system and set forth the order size parameters applicable to such orders.[7]

Under the proposed rule change, the specialist may agree to execute non-agency orders accepted under the PACE system on an automatic or manual basis. Specialists that choose to execute non-agency orders automatically through PACE must provide the same PACE executions to non-agency orders as they provide to agency orders.[8] Specialists that choose to execute non-agency orders manually must do so in accordance with existing Exchange rules governing orders not on the system.

Moreover, the proposed rule change provides that any specialist who has agreed to facilitate broker-dealer orders on PACE must provide all broker-dealers with the opportunity to submit non-agency orders for execution through PACE on equal terms. As a result, a specialist may not provide a certain order size guarantee to one broker-dealer and then refuse to provide an equal size guarantee to another broker-dealer. Similarly, a specialist may not agree to provide automatic execution for one broker-dealer but not for another. Finally, under the proposed rule change, the Exchange will utilize the ''P'' order designator on the PACE system to indicate when an order is for the account of a broker-dealer.

The Exchange states that the purpose of permitting non-agency orders onto PACE is to extend the benefits of PACE to Phlx member firms for the proprietary as well as customer orders.

The Exchange believes that allowing such orders onto PACE should serve the important function of adding liquidity and trading opportunities to the Phlx marketplace. Moreover, the Exchange believes that PACE provides efficiencies to the Exchange's marketplace, which reduces costs incurred through the handling of orders on a more manual basis. The Exchange believes that such savings can now be realized for proprietary as well as customer orders.

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 Section 6(b).[9] The Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest.

Under new Supplementary Material .02 of Rule 229, non-agency orders may be routed through the PACE system for an automatic or manual execution. The Commission believes that the proposed rule change will be beneficial because it will allow broker-dealers to take advantage of the increased speed and reduced costs associated with the use of the Phlx's PACE system. Moreover, the Commission believes that the Exchange's proposal is consistent with the Act in that it does not discriminate between broker-dealers: all broker-dealer orders in a particular stock will receive the same treatment once a specialist has agreed to accept non-agency orders through PACE.

The Commission finds good cause for approving Amendment No. 2 to the rule change prior to the thirtieth day after the date of publication of notice of filing thereof. The Exchange's original proposal was published in the Federal Register for the full statutory period and no comments were received. In addition to clarifying and codifying the execution options of non-agency orders routed through PACE as originally proposed, Amendment No. 2 further restricts the scope of the proposed rule change by prohibiting specialists from providing

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[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] PACE is the Exchange's system for the automatic delivery and execution of orders on the Phlx equity floor.

[4] See Letter from Gerald D. O'Connell, First Vice President, Phlx, to Glen Barrentine, Team Leader, Division of Market Regulation, SEC, dated September 7, 1995.

[5] See Letter from Gerald D. O'Connell, First Vice President, Phlx, to Jennifer S. Choi, Division of Market Regulation, SEC, dated October 25, 1995.

[6] For purposes of the PACE system, an agency order is any order entered on behalf of a public customer, and does not include any order entered for the account of a broker-dealer, or any account in which a broker-dealer or an associated person of a broker-dealer has any direct or indirect interest. See Supplementary Material. 02 to Phlx Rule 229.

[7] Pursuant to Amendment No. 2, a specialist may agree to order size parameters for non-agency orders that are equal to or smaller than the order size parameters provided for agency orders.

[8] Provided that, in accordance with Amendment No. 2, a specialist may agree to order size parameters of non-agency orders that are smaller than the order size parameters provided to agency orders.

[9] 15 U.S.C. 78f(b).

greater order size guarantees to non-agency orders than to agency orders.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2 to the proposed rule change. 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 Section, 450 Fifth Street NW., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Phlx–95–32 and should be submitted by November 27, 1995.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–Phlx–95–32) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–27429 Filed 11–3–95; 8:45 am]

BILLING CODE 8010–01–M

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

[File No. 1–9222]

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Response Technologies, Inc., Common Stock, $.002 Par Value)

October 31, 1995.

Response Technologies, Inc. (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security (''Security'') from listing and registration on the American Stock Exchange, Inc. (''Amex'').

The reasons alleged in the application for withdrawing the Security from listing and registration include the following:

According to the Company, the Board of Directors of the Company unanimously approved a resolution on August 30, 1995 to withdraw the Security from listing on the Amex. Various investment bankers advised the Company of advantages and potentially improved valuations by listing the Security on another marketplace. On October 26, 1995, trading in the Security began on the Nasdaq National Market System.

Any interested person may, on or before November 21, 1995, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–27384 Filed 11–3–95; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Comments should be submitted by no later than January 5, 1996.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Management Analyst, Small Business Administration, 409 3rd Street SW., Suite 5000, Washington, D.C. 20416. Phone Number: 202–205–6629. Copies of this collection can also be obtained.

SUPPLEMENTARY INFORMATION:

Title: Request for Eligibility Reconsideration.

Type of Request: Extension of a currently approved information collection.

Description of Respondents: 8(a) applicants seeking eligibility reconsideration.

Annual Responses: 600.

Annual Burden: 2,400.

Comments: Send all comments regarding this information collection to Krupakar Revanna, Office of Minority Enterprise Development, 409 3rd Street, S. W., Suite 8000, Washington, D. C. 20416. Phone Number: 202–205–6416. Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

Jacqueline White,

Acting Chief, Administrative Information Branch.

[FR Doc. 95–27438 Filed 11–3–95; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ending 10/28/95

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–95–763
Date filed: October 24, 1995
Parties: Members of the International Air Transport Association
Subject: TC23 Reso/P 0711 dated September 22, 1995, Europe-Southeast Asia Resos r–1 to r–24, Intended effective date: April 1, 1996, necessary government action Date: No later than February 1, 1996.

Paulette V. Twine,

Chief, Documentary Services Division.

[FR Doc. 95–27445 Filed 11–3–95; 8:45 am]

BILLING CODE 4910–62–P

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending October 28, 1995

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to modify Scope are set forth

below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–95–766
Date filed: October 24, 1995
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 21, 1995
Description: Application of American Airlines, Inc., pursuant to 49 U.S.C. Section 41108 and Subpart Q, applies for renewal of authority to serve Barcelona, Spain and Austria on segment 3 of its certificate for Route 602, issued in the American/TWA Route Transfer by Order 91–4–47, April 25, 1991.

Docket Number: OST–95–771
Date filed: October 26, 1995
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 24, 1995
Description: Application of Laker Airways Inc., pursuant to 49 U.S.C. Sections 41101(a) and 41102(a)(b), and Subpart Q of the Regulations, applies for a certificate of public convenience and necessity for Scheduled Interstate and Overseas air transportation of passengers, cargo and mail and Worldwide Charter Authority

Paulette V. Twine,
Chief, Documentary Services Division.
[FR Doc. 95–27444 Filed 11–3–95; 8:45 am]
BILLING CODE 4910–62–P

Maritime Administration

Notice of Approval of Applicant as Trustee

Notice is hereby given that Commercial National Bank in Shreveport, with offices at 333 Texas Street, Shreveport, Louisiana 71101, has been approved as Trustee pursuant to Public Law 100–710 and 46 CFR Part 221.

Dated: October 31, 1995.

By Order of the Maritime Administrator.

Joel C. Richard,
Acting Secretary.
[FR Doc. 95–27401 Filed 11–3–95; 8:45 am]
BILLING CODE 4910–81–P

Notice of Approval of Applicant as Trustee

Notice is hereby given that Norwest Bank Minnesota, N.A., with offices at Norwest Center, Sixth and Marquette, Minneapolis, Minnesota 55479–0069, has been approved as Trustee pursuant to Public Law 100–710 and 46 CFR Part 221.

Dated: October 31, 1995.

By Order of the Maritime Administrator.

Joel C. Richard,
Acting Secretary.
[FR Doc. 95–27402 Filed 11–3–95; 8:45 am]
BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Agency Information Collection Activities; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Environmental Information and Supplemental Information on Water Quality Considerations.

DATES: Written comments should be received on or before January 5, 1996, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–7768.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to David W. Brokaw, Wine, Beer and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8230.

SUPPLEMENTARY INFORMATION:

Title: Environmental Information and Supplemental Information on Water Quality Considerations.

OMB Number: 1512–0100.

Form Number: ATF F 1740.1 and ATF F 1740.2.

Abstract: The environmental forms are necessary in order to comply with the provisions of the National Environmental Policy Act, 42 U.S.C. 4332 (ATF F 1740.1) and the Clean Water Act, 33 U.S.C. 1341(a) (ATF 1740.2).

Information regarding solid and liquid waste, air pollution, noise, etc. as collected on ATF F 1740.1 is evaluated to determine if a formal environmental impact statement or an environmental permit is necessary for a proposed operation. This environmental type information is collected from manufacturers, namely distilled spirits plants, wineries breweries and tobacco products factories. ATF F 1740.2 is also submitted by manufacturers but only those who discharge a solid or liquid effluent into navigable waters.

Applicants are required to describe any biological, chemical thermal or other characteristic of the discharge as well as any methods or equipment used to monitor the condition of the discharge. Based upon this data, ATF makes a determination as to whether a certification or waiver by the applicable state water quality agency is required. Should a manufacturer be required to submit both forms (ATF F 1740.1 and 1740.2) he may incorporate by reference any redundant information especially regarding solid and waste.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 8,000.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 4,400.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Written comments should address the accuracy of the burden estimates and ways to minimize burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection request.

Dated: October 31, 1995.

Daniel R. Black,
Acting Director.
[FR Doc. 95–27357 Filed 11–3–95; 8:45 am]
BILLING CODE 4810–31–P

Proposed Agency Information Collection Activities; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Report of Wine Premises Operations.

DATES: Written comments should be received on or before January 5, 1996, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–7768.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Marjorie D. Ruhf, Wine, Beer and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202)927–8202.

SUPPLEMENTARY INFORMATION:

Title: Report of Wine Premises Operations.

OMB Number: 1512–0216.

Form Number: ATF F 5120.17.

Abstract: ATF collects this information in order to monitor activities at bonded wine premises. Information on production, removals and raw materials used is analyzed to ensure compliance with tax and consumer protection laws enforced by ATF. ATF then uses the same information to compile and publish statistics for use of the wine industry and the public.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 1,722 (1,022 annual and 700 monthly).

Estimated Time Per Respondent: One hour and six minutes.

Estimated Total Annual Burden Hours: 10,364.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Written comments should address the accuracy of the burden estimates and ways to minimize burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection request.

Dated: October 31, 1995.

Daniel R. Black,

Acting Director.

[FR Doc. 95–27358 Filed 11–3–95; 8:45 am]

BILLING CODE 4810–31–P

Proposed Agency Information Collection Activities; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Application for Importer's and/or Wholesaler's Basic Permit Under the Federal Alcohol Administration Act.

DATES: Written comments should be received on or before January 5, 1996, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–7768.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Timothy DeVanney, Tax Compliance Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8220.

SUPPLEMENTARY INFORMATION:

Title: Application for Importer's and/or Wholesaler's Basic Permit Under the Federal Alcohol Administration Act.

OMB Number: 1512–0220.

Form Number: ATF F 5170.4.

Abstract: ATF F 5170.4 is completed by persons intending to engage in the business of importing and/or wholesaling alcohol beverages. The information provided allows ATF to identify the applicant and the location of the business and to determine whether the applicant qualifies for a basic permit under the Federal Alcohol Administration Act.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 1300.

Estimated Time Per Respondent: 3 hours.

Estimated Total Annual Burden Hours: 3900.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Written comments should address the accuracy of the burden estimates and ways to minimize burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection request.

Dated: October 31, 1995.

Daniel R. Black,

Acting Director.

[FR Doc. 95–27359 Filed 11–3–95; 8:45 am]

BILLING CODE 4810–31–P

Proposed Agency Information Collections Activities; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Consent of Surety.

DATES: Written comments should be received on or before January 5, 1996, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–7768.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Mary A. Wood, Wine, Beer and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Consent of Surety.

OMB Number: 1512–0078.

Form Number: ATF F 1533 (5000.18).

Abstract: The Consent of Surety form is executed by both the bonding company and proprietor and acts as a binding legal agreement between the two parties to entend the terms of a bond. A bond is necessary to cover specific liabilities on the revenue produced from untaxpaid commodities. The Consent of Surety is filed with ATF and a copy is retained by ATF as long as it remains current and in force.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 2,000.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 2,000.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Written comments should address the accuracy of the burden estimates and ways to minimize burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection request.

Dated: October 31, 1995.

Daniel R. Black,

Acting Director.

[FR Doc. 95–27360 Filed 11–3–95; 8:45 am]

BILLING CODE 4810–31–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences; Pakistan; Internationally Recognized Worker Rights

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and opportunity for public comment.

SUMMARY: The Administration has decided to suspend some of Pakistan's GSP benefits because of insufficient progress on internationally recognized worker rights. This notice invites public comments on whether the Administration should suspend GSP benefits for sporting goods, surgical instruments and/or certain hand-knotted and woven carpets.

DATES: Comments are due Wednesday, December 6, 1995.

FOR FURTHER INFORMATION CONTACT: GSP Subcommittee, Office of the United States Trade Representative, 600 17th Street, N.W., Room 518, Washington, D.C. 20508. The telephone number is (202) 395–6971.

SUPPLEMENTARY INFORMATION:

I. The GSP Program

The GSP program grants duty-free treatment to designated eligible articles that are imported from designated beneficiary developing countries. The program is authorized by Title V of the Trade Act of 1974, as amended (''Trade Act'') (19 U.S.C. 2461 *et seq.*). The GSP program expired on July 31, 1995. A bill to renew the program is pending in Congress. This notice solicits public comments, but the Administration cannot take any action unless and until the GSP program is reauthorized.

To qualify for GSP privileges, each beneficiary country must comply with a number of eligibility requirements. One such requirement is that the beneficiary country must be ''taking steps'' (i.e., *making progress*) to provide ''internationally recognized worker rights'' (19 U.S.C. 2462(b)(7) and (c)(7)).

The GSP statute defines ''internationally recognized worker rights'' as: (1) The right of association; (2) the right to organize and bargain collectively; (3) a prohibition against any form of forced or compulsory labor; (4) a minimum age for the employment of children; and (5) acceptable conditions of work with respect to minimum wages, hours of work and occupational safety and health (19 U.S.C. 2462(a)(4)).

Each year, the Administration conducts a public review process in which a beneficiary's compliance with the eligibility requirements can be reviewed.

II. Worker Rights in Pakistan

In June 1993, the Administration received three petitions that requested a review of labor law and practice in Pakistan under the auspices of the GSP program. In October 1993, the Administration announced that the petitions were being accepted for review (see USTR Press Release 93–63). Since that time, the United States Government and the Government of Pakistan have been working cooperatively to seek improved labor law and practice in Pakistan. The principal issues have concerned the exemption of the Karachi export processing zone from the labor law of Pakistan, the application of the Essential Services Act and child and bonded labor.

In July 1994, the Administration acknowledged the commitment of the Government of Pakistan, and the review was continued (see USTR Press Release 94–39 and Pakistan Worker Rights Review Summary (July 1994), available from USTR). Since that time, consultations have continued and the Government of Pakistan has considered a number of actions to bring its labor rights regime into closer compliance with international labor norms.

In July 1995, the Administration announced that the review would be continued until October to give the Government of Pakistan time to fulfill our expectations and understanding that they would take actions that would improve labor law and practice in Pakistan (see USTR Press Release 95–54).

Notwithstanding our constructive dialogue with the Government of Pakistan and their evident commitment to improve labor law and practice in Pakistan, the Administration has now decided to suspend some of Pakistan's GSP benefits because of insufficient progress on internationally recognized worker rights. Specifically, the Administration is considering whether to suspend GSP benefits for sporting goods, surgical instruments and/or certain hand-knotted and woven carpets, sectors in which child labor is reportedly used.

III. Public Comments

This notice solicits public comments on which benefits should be suspended because Pakistan has made insufficient progress on improving labor law and practice. All written comments should be addressed to: GSP Subcommittee, Office of the U.S. Trade Representative, 600 17th Street, N.W., Room 518, Washington, D.C. 20508. All

submissions must be in English and should conform to the information requirements of 15 CFR 2007. Each submission should indicate the relevant subheading of the Harmonized Tariff Schedule of the United States, if any. A party must provide fourteen copies of its statement which must be received by the Chairman of the GSP Subcommittee no later than 5 p.m., Wednesday, December 6, 1995. Comments received after the deadline will not be accepted.

If the comments contain business confidential information, fourteen copies of a non-confidential version must also be submitted. A justification as to why the information contained in the submission should be treated confidentially must be included in the submission. In addition, the submissions containing confidential information should be clearly marked ''confidential'' at the top and bottom of each page of the submission. The version that does not contain confidential information should also be clearly marked, at the top and bottom of each page, ''public version'' or ''non-confidential''.

Written comments submitted in connection with these decisions, except for information granted ''business confidential'' status pursuant to 15 CFR 2007.7, will be available for public inspection shortly after the filing deadline by appointment only with the staff of the USTR Public Reading Room. Other requests and questions should be directed to the GSP Information Center at USTR by calling (202) 395–6971.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 95–27435 Filed 11–3–95; 8:45 am]

BILLING CODE 3190–01–M

Sunshine Act Meetings

Federal Register
Vol. 60, No. 214
Monday, November 6, 1995

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).

DEPARTMENT OF ENERGY

FEDERAL ENERGY REGULATORY COMMISSION

The following notice of meeting is published pursuant to section 3(A) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552B:

DATE AND TIME: November 8, 1995, 10:00 a.m.

PLACE: 888 First Street, N.E., Room 2C, Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, telephone (202) 208–0400. For a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the Agenda; however, all public documents may be examined in the reference and information center.

Consent Agenda—Hydro, 640th Meeting—November 8, 1995, Regular Meeting (10:00 a.m.)

CAH–1.
Docket # P–1494, 108, Grand River Dam Authority
CAH–2.
Docket # P–2360, 026, Minnesota Power & Light Company
Other #S P–2360, 027, Minnesota Power & Light Company
CAH–3.
Docket # P–2376, 012, Appalachian Power Company
CAH–4.
Docket # P–9709, 044, Trafalgar Power Limited Partnership
CAH–5.
Docket # P–2471, 002, Wisconsin Electric Power Company
Other #S P–2471, 003, Wisconsin Electric Power Company
CAH–6.
Docket # P–10661, 013, Indiana Michigan Power Company
Other #S P–10661, 012, Indiana Michigan Power Company
CAH–7.
Docket # P–11076, 002, City of Tacoma, Washington
Other #S P–2016, 025, City of Tacoma, Washington
CAH–8.
Docket # P–11471, 002, South Fork Irrigation District and Hot Springs Valley Irrigation District
CAH–9.
Docket # RM90–4, 000, Petition to Amend Rule 11.2
CAH–10.
Docket # RM96–2, 000, Correction of Annual Charges Formula

Consent Agenda—Electric

CAE–1.
Docket # ER95–1782, 000, New England Power Pool
CAE–2.
Docket # ER95–1514, 000, Astra Power, Inc.
CAE–3.
Docket # ER95–1775, 000, Tampa Electric Company
CAE–4.
Docket # FA91–65, 001, Kentucky Utilities Company
CAE–5.
Docket # ER95–1383, 001, Virginia Electric and Power Company
CAE–6.
Docket # EL95–35, 001, Kootenai Electric Cooperative, Inc., et al v. Public Utility District No. 2 of Grant County, Washington
CAE–7.
Docket # ER95–1561, 001, Montaup Electric Company
CAE–8.
Docket # EG95–94, 000, Coastal Wuxi Power Ltd.
CAE–9.
Docket # EG95–95, 000, PCI Queensland Corporation
CAE–10.
Docket # EG95–96, 000, Queensland Unit 1 Generating Trust I
CAE–11.
Docket # EG95–97, 000, Queensland Unit 1 Generating Trust II
CAE–12.
Docket # EG95–98, 000, Queensland Unit 1 Generating Trust III
CAE–13.
Docket # EG95–99, 000, Queensland Unit 2 Generating Trust I
CAE–14.
Docket # EG95–100, 000, Queensland Unit 2 Generating Trust II
CAE–15.
Docket # EG95–101, 000, Queensland Unit 2 Generating Trust III
CAE–16.
Docket # EG95–92, 000, The New World Village Power Company
CAE–17.
Docket # EG95–93, 000, UCH Power Limited

Consent Agenda—Gas And Oil

CAG–1.
Docket # RP95–206, 002, Tennessee Gas Pipeline Company
Other #S RP95–206, 003, Tennessee Gas Pipeline Company
CAG–2.
Docket # RP95–432, 001, Columbia Gas Transmission Corporation
CAG–3.
Docket # RP96–10, 000, ANR Pipeline Company
CAG–4.
Docket # RP96–11, 000, Transcontinental Gas Pipe Line Corporation
CAG–5.
Docket # TM96–2–20, 000, Algonquin Gas Transmission Company
CAG–6.
Docket # RP96–7, 000, Northwest Pipeline Corporation
Other #S RP96–8, 000, Northwest Pipeline Corporation
CAG–7.
Docket # PR94–2, 000, Enron Storage Company
CAG–8.
Docket # PR95–8, 000, Arkansas Western Gas Company
Other #S PR95–8, 001, Arkansas Western Gas Company
CAG–9.
Docket # RP95–380, 000, Tennessee Gas Pipeline Company
CAG–10.
Docket # TM96–4–23, 000, Eastern Shore Natural Gas Company
Other #S TM96–4–23, 001, Eastern Shore Natural Gas Company
TM96–4–23, 002, Eastern Shore Natural Gas Company
CAG–11.
Docket # RP95–446, 000, Northwest Pipeline Corporation
CAG–12.
Docket # RP95–460, 000, Northwest Pipeline Corporation
CAG–13.
Docket # RP95–422, 002, Great Lakes Gas Transmission Limited Partnership
CAG–14.
Docket # RP95–98, 002, Columbia Gas Transmission Corporation
Other #S CP95–186, 002, Tennessee Gas Pipeline Company
CP95–231, 002, Ozark Gas Transmission System
CP95–232, 002, Ozark Gas Transmission System
RP95–144, 002, Tennessee Gas Pipeline Company
CAG–15.
Docket # RP94–425, 001, Tennessee Gas Pipeline Company
CAG–16.
Docket # RP95–173, 006, Koch Gateway Pipeline Company
Other #S RP95–173, 005, Koch Gateway Pipeline Company
CAG–17.

Docket # IS90–11, 000, Amerada Hess Pipeline Corporation
Other #S IS90–12, 000, Arco Transportation Alaska, Inc.
IS90–13, 000, BP Pipelines (Alaska) Inc.
IS90–14, 000, Exxon Pipeline Company
IS90–15, 000, Mobil Alaska Pipeline Company
IS90–16, 000, Phillips Alaska Pipeline Corporation
IS90–17, 000, Unocal Pipeline Company
IS91–6, 000, Amerada Hess Pipeline Corporation
IS91–7, 000, Arco Pipe Line Company
IS91–8, 000, BP Pipeline (Alaska) Inc.
IS91–9, 000, Exxon Pipeline Company
IS91–10, 000, Mobil Alaska Pipeline Corporation
IS91–11, 000, Phillips Alaska Pipeline Corporation
IS91–12, 000, Unocal Pipeline Company
IS93–6, 001, Amerada Hess Pipeline Corporation
IS93–7, 001, Arco Transportation Alaska, Inc.
IS93–8, 001, BP Pipelines (Alaska) Inc.
IS93–9, 001, Exxon Pipeline Company
IS93–10, 001, Mobil Alaska Pipeline Company
IS93–11, 001, Phillips Alaska Pipeline Corporation
IS93–12, 001, Unocal Pipeline Company
IS93–38, 001, Mobil Alaska Pipeline Company
IS94–3, 001, Mobil Alaska Pipeline Company
IS94–10, 001, Amerada Hess Pipeline Corporation
IS94–31, 001, Unocal Pipeline Company
IS94–34, 001, Arco Transportation Alaska, Inc.
IS95–13, 000, Amerada Hess Pipeline Corporation
IS95–14, 000, Arco Transportation Alaska, Inc.
IS95–15, 000, BP Pipelines (Alaska) Inc.
IS95–16, 000, Exxon Pipeline Company
IS95–17, 000, Mobil Alaska Pipeline Company
IS95–18, 000, Phillips Alaska Pipeline Corporation
IS95–19, 000, Unocal Pipeline Company
CAG–18.
Docket # MG94–4, 004, Alabama-Tennessee Natural Gas Company
CAG–19.
Docket # CP94–183, 002, El Paso Natural Gas Company
CAG–20.
Docket # CP95–118, 001, East Tennessee Natural Gas Company
CAG–21.
Docket # CP95–284, 001, National Fuel Gas Supply Corporation
CAG–22.
Docket # CP95–304, 001, Shell Western E&P Inc.
CAG–23.
Docket # CP95–341, 000, Texas Gas Transmission Corporation
CAG–24.
Docket # CP94–771, 000, Ashland Exploration, Inc.
Other #S CP94–757, 000, CNG Transmission Corporation
CP94–757, 001, CNG Transmission Corporation
RP96–9, 000, CNG Transmission Corporation
CAG–25.
Omitted
CAG–26.
Docket # RP95–182, 000, ANR Pipeline Company

Hydro Agenda

H–1.
Reserved

Electric Agenda

E–1.
Reserved

Oil and Gas Agenda

I. Pipeline Rate Matters

PR–1.
Reserved

II. Pipeline Certificate Matters

PC–1.
Reserved

Dated: November 1, 1995.

Lois D. Cashell,

Secretary.

[FR Doc. 95–27523 Filed 11–2–95; 11:25 am]

BILLING CODE 6717–01–P

INTERSTATE COMMERCE COMMISSION

Commission Voting Conference

TIME AND DATE: 10:00 a.m., Wednesday, November 8, 1995.

PLACE: Hearing Room A, Interstate Commerce Commission, 12th & Constitution Avenue, N.W., Washington, D.C. 20423.

STATUS: A notice was served on October 26, 1995, scheduling a Voting Conference to be held on November 7, 1995. This Conference has been rescheduled and will now be held on November 8, 1995.

The Commission will meet to discuss among themselves the agenda items listed below. Although the conference is open for public observation, no public participation is permitted.

MATTERS TO BE DISCUSSED:

Finance Docket No. 28905 (Sub-No. 27), *CSX Transportation, Inc.—Control—Chessie System, Inc. and Seaboard Coast Line Industries, Inc., et al., (Arbitration Review).*

Finance Docket No. 32240, *Bradford Industrial Rail, Inc.—Acquisition and Operation Exemption—Consolidated Rail Corporation, et al.*[2]

Docket No. 40294, *Amtrol, Inc.* v. *American Freight System, Inc.*

Ex Parte No. 347 (Sub-No. 2), *Rate Guidelines—Non-Coal Proceedings.*

[2] Because they are related by subject matter, the Commission also will handle Finance Docket No. 32241, *Genesee & Wyoming Industries, Inc.—Continuance in Control Exemption—Bradford Industrial Rail, Inc.* and Finance Docket No. 32256, *Consolidated Rail Corporation—Control and Operation Exemption—Clearfield and Mahoning Railway Company.*

CONTACT PERSONS FOR MORE INFORMATION: Alvin H. Brown or A. Dennis Watson, Office of Congressional and Press Services, Telephone: (202) 927–5350, TDD: (202) 927–5721.

Vernon A. Williams,

Secretary.

[FR Doc. 95–27557 Filed 11–2–95; 2:26 pm]

BILLING CODE 7035–01–P

LEGAL SERVICES CORPORATION

Operations and Regulations Committee Meeting

TIME AND DATE: The Operations and Regulations Committee of the Legal Services Corporation's Board of Directors will meet on November 17–18, 1995. The meeting will begin at 10:00 a.m. on November 17, 1995. It is possible the Committee will conclude its deliberations on November 17, 1995. Should this not occur, however, the Committee will reconvene on November 18, 1995, at 9:00 a.m.

PLACE: Legal Services Corporation, 750 First Street NE, 11th Floor, Washington, DC 20002, (202) 336–8800.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda.
2. Approval of Minutes of September 8–9, 1995, Joint Meeting of the Operations and Regulations Committee and the Provision for the Delivery of Legal Services Committee.
3. Consider proposed regulation restricting representation in certain eviction proceedings and public comments thereon, and formulate a recommendation to make to the Board of Directors on the adoption of such a regulation.
4. Consider proposed regulation requiring timekeeping by LSC grantees and public comments thereon, and formulate a recommendation to make to the Board of Directors on the adoption of such a regulation.
5. Consider proposed regulation governing competitive bidding of grants and contracts and public comments thereon, and formulate a recommendation to make to the Board of Directors on the adoption of such a regulation.
6. Consider for publication as a Proposed Rule revisions to 45 C.F.R. Part 1617, the Corporation's regulation on class actions.
7. Consider and act on other business.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, General Counsel, (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Barbara Asante at (202) 336–8800.

Dated: November 2, 1995.

Victor M. Fortuno,

General Counsel.

[FR Doc. 95–27536 Filed 11–2–95; 1:00 pm]

BILLING CODE 7050–01–P

Corrections

Federal Register
Vol. 60, No. 214
Monday, November 6, 1995

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.

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 36

Section 4(c) Contract Market Transactions

Correction

In rule document 95–23940 beginning on page 51323, in the issue of Monday, October 2, 1995, make the following correction:

On page 51336, in the 2d column, under the heading c. Combination Transactions, in the 1st paragraph, in the 13th line insert the following line, ''that ''it is inappropriate, in the case where transactions can occur both in the pit and off the floor, to not require a potential trade to be exposed to the pit.'' ''.

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-36407; File No. SR-NYSE-95-32]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Additions to the ''List of Exchange Rule Violations and Fines Applicable Thereto Pursuant to Rule 476A''

Correction

In notice document 95–26895 beginning on page 55403 in the issue of Tuesday, October 31, 1995, make the following correction:

On page 55404, in the third column, insert the following signature before the FR Doc. line:

Margaret H. McFarland,

Deputy Secretary.

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-36385; File No. SR-OCC-95-10]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving a Proposed Rule Change to Enhance Saturday Expiration Date Processing Procedures

Correction

In notice document 95–26285 beginning on page 54557 in the issue of Tuesday, October 24, 1995, make the following correction:

On page 54558, in the second column, insert the following signature before the FR Doc. line:

Margaret H. McFarland,

Deputy Secretary.

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 21439; 811-4365]

Dreyfus Target Maturities Fund; Notice of Application

October 23, 1995.

Correction

In notice document 95–26835 appearing on page 55291 in the issue of Monday, October 30, 1995, the date should read as set forth above.

BILLING CODE 1505–01–D

federal register

Monday
November 6, 1995

Part II

Department of Housing and Urban Development

Interest Rate for the Section 235(r) Mortgage Insurance Program; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–3724–N–04]

Office of the Assistant Secretary for Housing-Federal Housing Commissioner; Interest Rate for the Section 235(r) Mortgage Insurance Program

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of change in interest rate.

SUMMARY: This notice announces a change in the maximum interest rate for mortgages to be insured under section 235(r) of the National Housing Act. The section 235(r) maximum interest rate is to be determined by the Secretary of HUD and published in the Federal Register. Mortgage market conditions now dictate that the Secretary decrease the section 235(r) maximum rate from 8.50 percent to 8.00 percent. There is no change being made in the maximum margin of additional percentage points that may be added to the maximum rate if the established conditions are met. Therefore, the maximum for the premium section 235(r) interest rate will be 9.50 percent (8.00 percent for the rate of interest and 1.50 percent for the margin of additional percentage points).

EFFECTIVE DATE: November 6, 1995.

FOR FURTHER INFORMATION CONTACT: John N. Dickie, Director, Program Evaluation Division, Room B–133, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 755–7470, Ext. 117; (TDD) (202) 708–4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: Section 235(r) of the National Housing Act (12 U.S.C. 1715z) authorizes the Secretary to insure mortgages that refinance existing mortgages insured under section 235. The purpose of the program is to reduce the interest rate insured and assisted under section 235 in order that the assistance payments the Department pays on behalf of mortgagors may be reduced. The regulations implementing the program are contained in subpart H of 24 CFR part 235—refinancing of mortgages under section 235(r).

The interest rate for these loans is set by the Secretary and published in the Federal Register as authorized by 24 CFR 235.1202(b)(3). The previous section 235(r) interest rate of 8.50 percent was published in the Federal Register on July 5, 1995 (60 FR 35040). The Department has determined that market conditions dictate a change in the section 235(r) interest rate. The change will take effect on the date of publication of this notice.

The most recent HUD survey of Mortgage Market conditions (i. e., Secondary Market Prices and Yields), an OMB-designated Principal Federal Indicator, found that the dominant national FHA rate being quoted to potential homebuyers for ''lock-in'' commitments of 90 days or more was 8.00 on August 1, 1995, with an average of .33 points, and an effective interest rate of 8.05 percent.

Most FHA mortgages are funded in the GNMA mortgage-backed securities market. There is a 50 basis point spread between FHA contract interest rates and GNMA coupon rates (this covers the GNMA guarantee fee and servicing cost). On August 24, 1995, the GNMA 7.50 percent coupon securities (8.00 percent FHA loans) were priced in the two month forward market at less than a 1 point discount. On the other hand, the 8.00 percent GNMA coupons (8.50 percent FHA mortgages) traded at between 1 and 2 points over par (i.e., premium), while the 7.00 percent GNMA coupons (7.50 percent FHA mortgages) traded at about 3 points below par.

Adjusting the section 235(r) rate to 8.00 percent will bring this rate back into line with the rest of the FHA current production loans. Therefore, the maximum rate for section 235(r) mortgages is 8.00 percent beginning with the publication date of this notice. The maximum margin of additional percentage points that may be added to the maximum rate under 24 CFR 235.1202(b)(3)(i)(B) will remain at 1.50 percent.

The subject matter of this notice is categorically excluded from HUD's environmental clearance procedures, in accordance with 24 CFR 50.20(l). For that reason, no environmental finding has been prepared for this notice.

Dated: September 11, 1995.

James E. Schoenberger,

Associate General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 95–27403 Filed 11–3–95; 8:45 am]

BILLING CODE 4210–27–P

federal register

Monday
November 6, 1995

Part III

Department of Agriculture

Cooperative State Research, Education, and Extension Service

Special Research Grants Program, Pest Management Alternatives Research; Fiscal Year 1996; Solicitation of Proposals; Notice

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

Special Research Grants Program, Pest Management Alternatives Research; Fiscal Year 1996; Solicitation of Proposals

Purpose

Proposals are invited for competitive grant awards under the Special Research Grants Program—Pest Management Alternatives Research (the ''Program'') for fiscal year (FY) 1996. The purpose of this Program is to develop alternatives for critical needs to ensure that farmers, foresters, ranchers and urban pest management specialists and other users have reliable methods of managing pest problems. Emphasis is placed on current and potential loss of select pesticides due to increased worker and food safety and environmental concerns leading to regulator review and actions, and the loss of pest management practices due to performance failures such as those caused by genetic changes in pests.

Authority

The authority for the Program is contained in section 2(c)(1)(A) of the Act of August 4, 1965, Public Law 89–106, as amended (7 U.S.C. 450i(c)(1)(A)). Under this program, subject to the availability of funds, the Secretary may make grants, for periods not to exceed five years, to State agricultural experiment stations, all colleges and universities, other research institutions and organizations, Federal agencies, private organizations or corporations, and individuals for the purpose of conducting research to facilitate or expand promising breakthroughs in areas of the food and agricultural sciences of importance to the United States.

Proposals from scientists at non-United States organizations are not eligible for funding nor are scientists who are directly or indirectly engaged in the registration of pesticides for profit; however, their collaboration with funded projects is encouraged.

Available Funding

Subject to the availability of funds, the anticipated amount available for support of the program in FY 1996 is $1,584,000. Proposals should be for no more than a two-year period.

It is expected that Congress, in the final version of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1996 (H.R. 1976), will prohibit CSREES from using the funds available for FY 1996 to pay indirect costs exceeding 14 per centum of the total Federal funds provided under each award on competitively-awarded research grants.

In addition, it is expected that, pursuant to the final version of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1996 (H.R. 1976), in the case of any equipment or product that may be authorized to be purchased with the funds provided under this Program, entities will be encouraged to use such funds to purchase only American-made equipment or products.

Program Description

This program implements the Memorandum of Understanding (MOU) between the U.S. Department of Agriculture (USDA) and the U.S. Environmental Protection Agency (USEPA) signed August 15, 1994, that establishes a coordinated framework for collaborative efforts to develop, implement, and make available pest management alternatives and practices. In this MOU, the USDA and USEPA agreed to: (1) Cooperate in providing for agricultural pest management that is conducted in the most environmentally-sound manner possible, with sufficient pest management alternatives to reduce risks to human health and the environment, to reduce the incidence of pest resistance to pesticides, and to ensure economical agricultural production; and (2) cooperate in establishing a process to conduct the research, technology transfer and registration activities necessary to ensure adequate pest management alternatives are available to agricultural users to meet important agricultural needs for situations in which regulatory action would result in pest management problems.

Applicable Regulations

This Program is subject to the administrative provisions for the Special Research Grants Program found in 7 CFR part 3400 (56 FR 58147, November 15, 1991), which set forth procedures to be followed when submitting grant proposals, rules governing the evaluation of proposals, the awarding of grants, and post-award administration of such grants. Several other Federal statutes and regulations apply to grant proposals considered for review or to grants awarded under the Program. These include, but are not limited to:

7 CFR Part 1.1—USDA implementation of the Freedom of Information Act;

7 CFR Part 1c—USDA implementation of the Federal Policy for the Protection of Human Subjects;

7 CFR Part 3—USDA implementation of OMB Circular A–129 regarding debt collection;

7 CFR Part 15, Subpart A—USDA implementation of Title VI of the Civil Rights Act of 1964;

7 CFR Part 3015, as amended—USDA Uniform Federal Assistance Regulations, implementing OMB directives (i.e., Circular Nos. A–21, and A–122) and incorporating provisions of 31 U.S.C. 6301–6308 (formerly, the Federal Grant and Cooperative Agreement Act of 1977, Pub. L. No. 95–224), as well as general policy requirements applicable to recipients of Departmental financial assistance;

7 CFR Part 3016—USDA Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments; 7 CFR Part 3017, as amended—USDA implementation of Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants);

7 CFR Part 3018—USDA implementation of New Restrictions on Lobbying. Imposes new prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans;

7 CFR Part 3019—USDA Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations implementing OMB Circular A–110;

7 CFR Part 3051—Audits of Institutions of Higher Education and Other Nonprofit Institutions;

7 CFR Part 3407—CSREES implementation of the National Environmental Policy Act;

29 U.S.C. 794 section 504—Rehabilitation Act of 1973, and 7 CFR Part 15B (USDA implementation of the statute), prohibiting discrimination based upon physical or mental handicap in federally assisted programs;

35 U.S.C. 200 et seq.—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR part 401).

Research Categories for FY 1996

The following priority areas have been identified by USDA and USEPA through interaction with State agricultural experiment station research and extension faculty via the National Pesticide Impact Assessment Program and state and regional Integrated Pest Management program. In addition, commodity groups and producers of affected crops were involved in the identification of project areas. Needs were identified to address replacement technologies for pesticides under current and potential regulatory review for which producers and other users do not have effective alternatives or where regulatory actions trigger pest resistance problems that limit Integrated Pest Management options. Replacements for methyl bromide or pesticide registrations under regulatory consideration because of the Delaney clause are not addressed by this request for proposals. The identified priority areas for FY 1996 projects are:

Commodity	Pest
Alfalfa	Alfalfa weevil.
Artichokes	Aphids.
	Lygus bugs.
Banana/plaintain	Banana root borer.
Carrots	Nematodes.
Celery	Aphids.
	Leafminer.
Chinese vegetables	Aphids.
Cole crops	Aphids.
Cucurbits	Cucumber beetle.
	Bacterial wilt.
Eggplant	Verticillium wilt.
Ginger	Nematodes.
Grapes	Grape phlloxera.
	Mealybugs.
Leafy vegetables	Aphids.
Lettuce	Aphids.
	Downey mildew.
Mushrooms	Phoridae and sciaridae flies.
Parsley	Aphids.
Pecans	Pecan scab.
Rice	Rice water weevils.
Sorghum	Chinch bug.
Spinach	Aphids.
	Grasshoppers.
	Webworm.
Sugar beets	White grubs.
	Cercospora leaf spot.
Sugar cane	Weeds.
Sweetpotatoes	Nematodes.
Tropical fruits	Weeds.
Turf	Weeds.
Wheat	Grasshoppers.

Mite management in alfalfa seed production, apples, apricots, beans-green, beans-dry, citrus, clover seed production, cranberry, figs, grapes, hops, mint, nectarines, peaches, peanut, potatoes, plums, prunes, strawberries in some locations.

Projects dealing with other crops and pest combinations will be considered. The critical need of the alternative based on current or potential regulatory status or pest resistance will have to be clearly documented and justified for all proposals.

The proposal should address:

(1) Identification, estimation of economic value, and documentation of the pest management problem and losses associated with the pest(s).

(2) Analysis of the availability of options and their applicability as possible solutions including their compatibility with integrated management systems.

(3) Explicit documentation is needed to qualify the project emphasizing environmental issues, human safety, or resistance management concerns which make the present management options impractical.

(4) A summary of past research or extension activities that demonstrate the practicability of the proposed alternative(s).

(5) A detailed plan for the research, education and technology transfer to achieve the alternative development and field implementation with identified milestones.

(6) An analysis of the durability of the proposed option and the technologic and economic feasibility of the proposed solution.

(7) Demonstrated growers' involvement in the identification of potential approaches to solutions and the opportunity for public/private partnerships and matching resources from grower or commodity groups.

(8) An overview of the availability of natural controls (biological, cultural, and host resistance) as solutions or partial solutions to the pest management problem and compatibility with IPM or crop management systems. This Program will not support basic plant breeding or other tactics where significant progress toward implementation cannot be accomplished within two years. However, this program will support research on the incorporation of pest resistant cultivars into a production system.

(9) Where registrations of new management options by state and Federal agencies are required, the proposal should describe the collaborative actions being taken with regulators which leads toward registration and use of Good Laboratory Practices (GLP).

(10) Demonstrate appropriate budget and collaborative funding to accomplish the proposed project.

All projects that involve a new registration of a product or expanded labelling, must be done in compliance with GLP Standards (40 CFR part 160). IR–4 coordinators are available in every state to advise or assist with GLP and registration requirements. Projects involving collaborative registration and funding are encouraged.

Proposal Evaluation

Proposals will be evaluated by the Administrator of CSREES assisted by a peer panel with Integrated Pest Management expertise. CSREES seeks proposals which address the following issues: (1) Significant reduction of risk to human health or the environment would result; (2) no viable alternatives presently exist and significant potential losses can be documented; (3) there is significant producer involvement; (4) natural controls are included as partial or effective solutions to pest management problems; and (5) solutions can rapidly be brought to bear on critical problems. Registration considerations must be addressed where they are required for solution implementation.

1. Executive Summary—10 points
   (An evaluation of how well the proposal summary can be understood by a diverse audience of university personnel, producers, various public and private groups, budget staff and the general public)
2. Appropriateness of the Budget—5 points
   (An evaluation of appropriate and detailed budget request and collaborative funding to accomplish the proposed project; collaborative arrangements clearly document)
3. Problem Statement, Background and Rationale—15 points
   (Includes the evaluation of significant reduction of risk to human health or the environment; no viable alternatives presently exist; and significant potential losses would occur without the alternative(s) being developed under this proposal)
4. Research, Education & Technology Transfer Plan—40 points
   (In addition to the evaluation of a detailed plan for research, education, and technology transfer and summary of past research or extension activities that demonstrate the practicability of the proposed alternative(s), includes the evaluation of whether the proposed solutions could rapidly be brought to bear on critical problems and registration considerations are addressed where they are required for solution implementation)

5. Producer Involvement—15 points
(Evaluation includes growers' involvement in the identification of potential approaches to solutions and the opportunity for public/private partnerships and matching resources from grower or commodity groups)
6. Professional Competence of the Project Team—5 points
7. Integration of Natural Control Solutions—10 points
(Includes the evaluation that natural controls are included as partial or effective solutions to the pest management problems being addressed and an analysis of the durability of the proposed option and the technologic and economic feasibility of the proposed solution)

Programmatic Contact

For additional information on the Program, please contact: Dr. Barry Jacobsen, Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture, Ag Box 2220, Washington, DC 20250–2220, Telephone: (202) 401–6627.

How To Obtain Application Materials

Copies of this solicitation, the administrative provisions for the Program (7 CFR part 3400), and the Application Kit, which contains required forms, certifications, and instructions for preparing and submitting applications for funding, may be obtained by contacting:

Proposal Services Branch, Awards Management Division, Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture, Ag Box 2245, Washington, DC 20250–2245, Telephone: (202) 401–5048.

Application materials may also be requested via Internet by sending a message with your name, mailing address (not e-mail) and telephone number to psb@reeusda.gov that states that you wish to receive a copy of the application materials for the FY 1996 Special Research Grants Program—Pest Management Alternatives Research. The materials will then be mailed to you (not e-mailed) as quickly as possible.

Proposal Format

Members of review committees and the staff expect each project description to be complete in itself. The administrative provisions governing the Special Research Grants Program, 7 CFR part 3400, set forth instructions for the preparation of grant proposals. The following proposal format requirements deviate from these contained in section 3400.4(c). The provisions of this solicitation shall apply.

Proposals submitted to the Program should address the described criteria. Each proposal should provide a detailed plan for the research, education and technology transfer required to implement the alternative solution in the field. Involvement of growers or other users in the project is essential and should be clearly identified.

Proposals should adhere to the following format: items 3–6 should not exceed 12 single spaced/single-sided pages altogether, using 12 point (10 cpi) letter quality type with 1 inch margins. The pages should be numbered.

(1) *Application for Funding (Form CSREES–661).* All full proposals submitted by eligible applicants should contain an Application for Funding, Form CSREES–661, which must be singed by the proposed principal investigator(s) and endorsed by the cognizant Authorized Organizational Representative who possesses the necessary authority to commit the applicant's time and other relevant resources. Investigators who do not sign the full proposal cover sheet will not be listed on the grant document in the event an award is made. The title of the proposal must be brief (80-character maximum), yet represent the major emphasis of the project. Because this title will be used to provide information to those who may not be familiar with the proposed projected, highly technical words or phraseology should be avoided where possible. In addition, phrases such as ''investigation of'' or ''research on'' should not be used.

(2) *Executive Summary.* Describe the project in terms that can be understood by a diverse audience of university personnel, producers, various public and private groups, budget staff and the general public. This should be no more than one page in length.

(3) *Problem Statement.* Identify the pest management problem addressed, its significance and options for solution. Define the production area addressed by the proposed solution and the potential applicability to other production regions.

(4) *Rationale and Significance.* Provide information on the basis and rationale for the proposed project. Compatibility with current Integrated Pest Management and crop production practices, technologic economic feasibility and potential durability should be addressed. Explicit documentation is needed to qualify the project emphasizing environmental issues, human safety, or resistance management concerns that make present management options impractical.

(5) *Research, Education and Technology Transfer Plan.* Provide a detailed plan with milestones identified.

(6) *Producer Involvement.* Provide information on producer or other user involvement in identification of the proposed solution and involvement in implementing the proposed solution.

(7) *Facilities and Equipment.* All facilities and major items of equipment that are available for use or assignment to the proposed research project during the requested period of support should be described. In addition, items of nonexpendable equipment necessary to conduct and successfully conclude the proposed project should be listed.

(8) *Collaborative Arrangements.* If the nature of the proposed project requires collaboration or subcontractual arrangements with other research scientists, corporations, organizations, agencies, or entities, the applicant must identify the collaborator(s) and provide a full explanation of the nature of the collaboration. Evidence (i.e., letters of intent) should be provided to assure peer reviewers that the collaborators involved have agreed to render this service. In addition, the proposal must indicate whether or not such collaborative arrangement(s) has the potential for conflict(s) of interest.

(9) *Personnel Support.* To assist peer reviewers in assessing the competence and experience of the proposed project staff, key personnel who will be involved in the proposed project must be identified clearly. For each principal investigator involved, and for all senior associates and other professional personnel who expect to work on the project, whether or not funds are sought for their support, the following should be included:

(i) An estimate of the time commitments necessary;

(ii) *Curriculum vitae.* The curriculum vitae should be limited to a presentation of academic and research credentials, e.g., educational, employment and professional history, and honors and awards. Unless pertinent to the project, to personal status, or to the status of the organization, meetings attended, seminars given, or personal data such as birth date, marital status, or community activities should not be included. The vitae shall be no more than two pages each in length, excluding the publication lists. The Department reserves the option of not forwarding for further consideration a proposal in which each vitae exceeds the two-page limit; and

(iii) *Publication List(s).* A chronological list of all publications in referred journals during the past five years, including those in press, must be provided for each professional project

member for whom a curriculum vitae is provided. Authors should be listed in the same order as they appear on each paper cited, along with the title and complete reference as these items usually appear in journals.

(10) *Budget.* A detailed budget is required for each year of requested support. In addition, a summary budget is required detailing requested support for the overall project period. A copy of the form which must be used for this purpose, Form CSREES–55, along with instructions for completion, is included in the Application Kit and may be reproduced as needed by applicants. Funds may be requested under any of the categories listed, provided that the item or service for which support is requested may be identified as necessary for successful conduct of the proposed project, is allowable under applicable Federal cost principles, and is not prohibited under any applicable Federal statute.

(11) *Research Involving Special Considerations.* A number of situations encountered in the conduct of research require special information and supporting documentation before funding can be approved for the project. If any such situation is anticipated, the proposal must so indicate. It is expected that a significant number of proposals will involve the following:

(i) *Recombinant DNA and RNA molecules.* All key personnel identified in a proposal and all endorsing officials of a proposed performing entity are required to comply with the guidelines established by the National Institutes of Health entitled, ''Guidelines for Research Involving Recombinant DNA Molecules,'' as revised. The Application Kit contains a form which is suitable for such certification of compliance (Form CSREES–622).

(ii) *Human subjects at risk.* Responsibility for safeguarding the rights and welfare of human subjects used in any proposed project supported with grant funds provided by the Department rests with the performing entity. Regulations have been issued by the Department under 7 CFR Part 1c, Protection of Human Subjects. In the event that a project involving human subjects at risk is recommended for award, the applicant will be required to submit a statement certifying that the project plan has been reviewed and approved by the Institutional Review Board at the proposing organization or institution. The Application Kit contains a form which is suitable for such certification (Form CSREES–662).

(iii) *Experimental vertebrate animal care.* The responsibility for the human care and treatment of any experimental vertebrate animal, which has the same meaning as ''animal'' in section 2(g) of the Animal Welfare Act of 1966, as amended (7 U.S.C. 2132(g)), used in any project supported with grant funds rests with the performing organization. In this regard, all key personnel associated with any supported project and all endorsing officials of the proposed performing entity are required to comply with the applicable provisions of the Animal Welfare Act of 1966, as amended (7 U.S.C. 2131 *et seq.*) and the regulations promulgated thereunder by the Secretary of Agriculture in 9 CFR parts 1, 2, 3, and 4. The applicant must submit a statement certifying that the proposed project is in compliance with the aforementioned regulations, and that the proposed project is either under review by or has been reviewed and approved by an Institutional Animal Care and Use Committee. The application Kit contains a form which is suitable for such certification (Form CSREES–662).

(12) *Current and Pending Support.* All proposals must list any other current public or private research support (including in-house support) to which key personnel identified in the proposal have committed portions of their time, whether or not salary support for the person(s) involved is included in the budget. Analogous information must be provided for any pending proposals that are being considered by, or that will be submitted in the near future to, other possible sponsors, including other USDA programs or agencies. Concurrent submission of identical or similar proposals to other possible sponsors will not prejudice proposal review or evaluation by the Administrator for this purpose. However, a proposal that duplicates or overlaps substantially with a proposal already reviewed and funded (or that will be funded) by another organization or agency will not be funded under this program. The Application Kit contains a form which is suitable for listing current and pending support (Form CSREES–663).

(13) *Additions to Project Description.* Each project description is expected by the Administrator, the members of peer review groups, and the relevant program staff to be complete while meeting the page limit established in this section (Proposal Format). However, if the inclusion of additional information is necessary to ensure the equitable evaluation of the proposal (e.g., photographs that do not reproduce well, reprints, and other pertinent materials that are deemed to be unsuitable for inclusion in the text of the proposal), 14 copies of the materials should be submitted. Each set of such materials must be identified with the name of the submitting organization, and the name(s) of the principal investigator(s). Information may not be appended to a proposal to circumvent page limitations prescribed for the project description. Extraneous materials will not be used during the peer review process.

(14) *Organizational Management Information.* Specific management information relating to an applicant shall be submitted on a one-time basis prior to the award of a grant for this Program if such information has not been provided previously under this or another program for which the sponsoring agency is repsonsible. The Department will contact an applicant to request organizational management information once a proposal has been recommended for funding.

Compliance With the National Environmental Policy Act (NEPA)

As outlined in 7 CFR part 3407 (the CSREES regulations implementing NEPA), environmental data or documentation for any proposed project is to be provided to CSREES in order to assist CSREES in carrying out its responsibilities under NEPA. In some cases, however, the preparation of environmental data or documentation may not be required. Certain categories of actions are excluded from the requirements of NEPA. The applicant shall review the following categorical exclusions and determine if the proposed project may fall within one or more of the exclusions.

(1) Department of Agriculture Categorical Exclusions (7 CFR 1b.3)

(i) Policy development, planning and implementation which are related to routine activities such as personnel, organizational changes, or similar administrative functions;

(ii) Activities which deal solely with the funding of programs, such as program budget proposals, disbursements, and transfer or reprogramming of funds;

(iii) Inventories, research activities, and studies, such as resource inventories and routine data collection when such actions are clearly limited in context and intensity;

(iv) Educational and informational programs and activities;

(v) Civil and criminal law enforcement and investigative activities;

(vi) Activities which are advisory and consultative to other agencies and public private entities; and

(vii) Activities related to trade representation and market development activities abroad.

(2) CSREES Categorical Exclusions (7 CFR 3407.6)

Based on previous experience, the following categories of CSREES actions are excluded because they have been found to have limited scope and intensity and to have no significant individual or cumulative impacts on the quality of human environment:

(i) The following categories of research programs or projects limited size and magnitude with only short-term effects on the environment:

(A) Research conducted within any laboratory, greenhouse, or other contained facility where research practices and safeguards prevent environmental impacts;

(B) Surveys, inventories, and similar studies that have limited context and minimal intensity in terms of changes in the environment; and

(C) Testing outside of the laboratory, such as in small isolated field plots, which involves the routine use of familiar chemicals or biological materials.

(ii) Routine renovation, rehabilitation, or revitalization of physical facilities, including the acquisition and installation of equipment, where such activity is limited in scope and intensity.

In order for CSREES to determine whether any further action is needed with respect to NEPA (e.g., preparation of an environmental assessment (EA) or environmental impact statement (EIS)), pertinent information regarding the possible environmental impacts of a proposed project is necessary; therefore, the National Environmental Policy Act Exclusions Form (Form CSREES–1234) provided in the Application Kit must be included in the proposal indicating whether the applicant is of the opinion that the project falls within one or more of the categorical exclusions listed above.

Even though a project may fall within the categorical exclusions, CSREES may determine that an EA or an EIS is necessary for a proposed project should substantial controversy on environmental grounds exist or if other extraordinary conditions or circumstances are present that may cause a project to have a significant environmental effect.

Proposal Submission

What To Submit

An original and 14 copies of a proposal must be submitted. Each copy of each proposal must be stapled securely in the upper lefthand corner (DO NOT BIND). All copies of the proposal must be submitted in one package.

Where and When To Submit

Proposals must be received by 4:30 p.m. Eastern Standard Time on December 12, 1995. Proposals sent by First Class mail must be sent to the following address: Proposal Services Branch, Awards Management Division, Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture, Ag Box 2245, Washington, D.C. 20250–2245, Telephone: (202) 401–5048.

Proposals that are delivered by Express mail, a courier service, or by hand must be submitted to the following address (note that the zip code differs from that shown above): Proposal Services Branch, Awards Management Division, Cooperative State Research, Education and Extension Service, U.S. Department of Agriculture, Room 303, Aerospace Center, 901 D Street SW., Washington, D.C. 20024, Telephone: (202) 401–4048.

Supplementary Information

The Special Research Grants Program is listed in the Catalog of Federal Domestic Assistance Under No. 10.200. For reasons set forth in the final rule-related Notice to 7 CFR Part 3015, Subpart V (48 FR 29115, June 24, 1983), this Program is excluded from the scope of Executive Order No. 12372 which requires intergovernmental consultation with State and local officials. Under the provisions of the Paperwork Reduction Action of 1980 (44 U.S.C. 3504(h)), the collection of information requirements contained in this Notice have been approved under OMB Document No. 0524–0022.

Done at Washington, D.C., on this 31st day of October 1995.

Colien Hefferan,

Acting Administrator, Cooperative State Research, Education, and Extension Service.

[FR Doc. 95–27436 Filed 11–2–95; 8:45 am]

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November 6, 1995

Part IV

Department of Housing and Urban Development

24 CFR Part 570

Community Development Work Study Program; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Policy Development and Research

24 CFR Part 570

[Docket No. FR–3902–P–01]

RIN 2528–AA05

Community Development Work Study Program; Proposed Amendments

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise HUD's regulations governing the Community Development Work Study Program (CDWSP). Under the CDWSP, HUD awards grants to institutions of higher education, either directly or through areawide planning organizations (APOs) or States, for the purpose of providing assistance to economically disadvantaged and minority students who participate in a community development work study program while enrolled in a full-time graduate or undergraduate Community Development Academic Program. This rule proposes to make several revisions to the CDWSP so that it can more effectively and efficiently meet its program objectives. Among other changes, this proposed rule would limit the number of students assisted under CDWSP to 5 students per participating institution of higher education, limit the CDWSP to graduate-level programs, and permit institutions of higher learning to apply individually or through APOs.

DATES: Comments Due Date: January 5, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Office of the General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410–0500. Communications should refer to the above docket number and title and to the specific sections of the regulation. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: John Hartung, Office of University Partnerships, Department of Housing and Urban Development, Room 8130, 451 Seventh Street SW., Washington, D.C. 20410, telephone (202) 708–1537. Hearing or speech-impaired individuals may call HUD's TDD number (202) 708–0770, or 1–800–877–8399 (Federal Information Relay Service TDD). (Other than the ''800'' number, these are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act Statement

The information collection requirements contained in this proposed rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The public reporting burden is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information in instances where such action would be necessary. Information on the estimated public reporting burden is provided under the Preamble heading, *Other Matters.* Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street SW., Room 10276, Washington, D.C., 20410–0500; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for HUD, Washington, D.C. 20503.

II. Background

Section 501(b)(2) of the Housing and Community Development Act of 1987 (Pub. L. 100–242, approved February 5, 1988) added a new section 107(c) to the Housing and Community Development Act of 1974 (42 U.S.C. 5301 *et seq.*), authorizing the Community Development Work Study Program (CDWSP). Under the CDWSP, HUD is authorized to award grants to institutions of higher education, either directly or through areawide planning organizations (APOs) or States, for the purpose of providing assistance to economically disadvantaged and minority students who participate in a community development work study program while enrolled in a full-time graduate or undergraduate Community Development Academic Program.

On June 27, 1989 (54 FR 27128), HUD published a final rule implementing section 107(c) at 24 CFR 570.415. Since that date, HUD has published Notices of Funding Availability (NOFAs) for the purpose of soliciting applications for CDWSP grant awards. Based on its experience in administering the CDWSP, HUD is proposing to make several amendments to 24 CFR 570.415 so that the CDWSP can more effectively and efficiently meet its program objectives.

A. CDWSP Limited to Graduate Programs

The Secretary of HUD is authorized by 24 CFR 570.415(a) to fund both graduate and undergraduate students through CDWSP. However, experience has convinced HUD that graduate-level programs are better suited to CDWSP. Graduate programs in community and economic development and related fields almost always include an internship or related component that introduces most of the program's students to professional work experience.

Moreover, the master's degree has become the accepted credential for professional positions in community and economic development and related fields. Graduate-level CDWSP students are, therefore, qualified to immediately assume positions enabling substantial contributions in these fields. Accordingly, HUD has determined that CDWSP funds can be utilized more effectively by limiting CDWSP to graduate-level programs. HUD proposes to amend § 570.415 to limit CDWSP to provide opportunities for relevant graduate-level study.

B. Proposed Amendments to 24 CFR 570.415(b)

Paragraph (b) of § 570.415 sets forth the program's definitions. This proposed rule would clarify the definition of ''areawide planning organization''. Language in the current definition of that term referencing the ''metropolitan or nonmetropolitan area'' served by an APO was confusing inasmuch as no specific ''nonmetropolitan'' areas are delineated for census purposes. The definition would be amended to make clear that the relevant geographic area for purposes of the APO is the area defined by the State law or interlocal agreement creating it.

Amendments to 24 CFR 570.415(b) would also clarify HUD's interpretation of the statutory phrase ''community and economic development, community planning or community management'' with reference to the types of employment opportunities and academic programs the CDWSP addresses. Specifically, the term ''community building'' would be added

and would be defined to include all the disciplines the statutory phrase ''community and economic development, community planning or community management'' was meant to encompass. The term ''community building academic program'' would replace ''community development academic program'' and would be defined to encompass academic programs whose purpose and focus is to prepare students for careers in community building. Finally, the definition of the term ''Institution of higher education'' would be amended to reference ''community building academic program'' rather than ''community development academic program.''

C. Proposed Amendments to 24 CFR 570.415(c)

Several changes to 24 CFR 570.415(c) are proposed. First, 24 CFR 570.415(c)(1)(A) would be amended to specify that the student's hourly rate should be sufficiently high to permit the student to earn the full stipend by working no more than 20 hours per week during the school year and 40 hours per week in the summer. HUD's experience suggests that some CDWSP students have worked at hourly rates which make it difficult to exhaust the stipend. HUD, however, intends that students be able to earn the full stipend if the specified hours are worked.

Furthermore, 24 CFR 570.415(c)(2) would be amended to limit the number of students assisted under the CDWSP to five students per participating institution of higher education. HUD is interested in funding economically disadvantaged and minority students who show strong potential for academic and professional success in community development and related fields. Given the large number of institutions of higher education interested in the CDWSP, HUD's experience suggests that the strongest overall group of CDWSP students would be recruited by having numerous institutions of higher education select their few most qualified economically disadvantaged and minority students, rather than channeling the funds so that any single institution of higher education distributes up to ten awards. The minimum number of students to be assisted by a grant would remain unchanged, so that the students earn adequate funds to pursue their degree.

D. Proposed Amendments to 24 CFR 570.415(d)

This proposed rule would amend 24 CFR 570.415(d)(1) to permit each eligible institution of higher education to choose whether to apply individually or participate in an APO or State's CDWSP application. Through this approach, a State or an APO could apply with some participating institutions of higher education at the same time that other institutions of higher education in the area or State submit separate applications. The current rule prohibits institutions of higher education from applying individually if they are located within the jurisdiction of an APO or State that is applying.

HUD has found that many institutions of higher education are pleased to participate in the application of an APO. However, HUD also recognizes that some institutions of higher education might submit stronger applications and administer a program as well or better than their area APO. HUD's experience suggests that such institutions of higher education should be permitted to determine whether it is to their advantage to apply separately or to participate in the application of an APO or State. HUD, however, does not intend to permit an institution of higher education to apply both separately and as part of an APO or State's application during a single funding cycle. The proposed rule would amend § 570.415(d)(1)(iii) to set forth the procedure for disregarding an application under such circumstances.

Without this amendment, an institution of higher education that might be an excellent candidate for CDWSP funding could be denied an opportunity for funding simply because its APO or State unsuccessfully applies. Giving institutions this option would also strongly encourage APOs to develop or maintain excellent work study programs which are capable of attracting the participation of the area's institutions of higher education.

Paragraph (d)(2)(i)(D) of § 570.415 sets forth a requirement of periodic seminars. HUD continues to believe that seminars can often be a useful means of relating CDWSP work experience to the student's academic program. Nevertheless, HUD is proposing that CDWSP seminars no longer be mandatory, for several reasons. First, many graduate programs in community building have a professional practice seminar as a requirement of the graduate program itself. Second, the experience of many students in CDWSP involves ongoing, informal mentoring and work-related counseling from the program director and other faculty. Discussions with CDWSP recipients and students have convinced HUD that the recipients are best positioned to determine how administrative funds can be used most effectively to further the program's objectives.

Paragraph (d)(2)(i)(F) of § 570.415 would be amended to state that the recipient must encourage participating students to seek post-graduation employment with specified types of employers engaged in community building. The current regulation requires that students be encouraged to seek employment with specified types of employers receiving community development funds. This proposed change recognizes that a CDWSP student's post-graduation employment in community building comports with CDWSP objectives even if his or her particular employer is not receiving community development funds.

E. Elimination of the Repayment Requirements in 24 CFR 570.415(g) and 24 CFR 570.415(k)

The repayment requirements in paragraphs (g)(3)(i) and (k)(3)(ii) of § 570.415 would be eliminated. Currently, 24 CFR 570.415(g)(3)(i) states that students who are terminated from CDWSP participation without having completed their academic program must repay to the recipient any tuition and non-stipend assistance received through CDWSP. Paragraph (k)(3)(ii) of § 570.415, in turn, requires that the recipient repay to the Federal Government the tuition and other non-stipend assistance the student has received, and imposes this requirement *regardless* of whether the recipient collects the funds from the student.

Based on experience and discussions with recipients, HUD has determined that these repayment requirements should be eliminated, for several reasons. First, HUD believes that a repayment requirement is unnecessary as an incentive to select highly motivated students. Recipients already have a strong incentive to select highly motivated students since their CDWSP funding in any funding cycle depends in significant part on the graduation rate of students to whom the recipient provided CDWSP or similar funding.

Moreover, as noted above, the program is to be revised to further limit the number of students funded per institution of higher education. The increased selectivity that institutions of higher education will necessarily exercise suggests that the academic potential and motivation of CDWSP students can be expected to be even higher than in the past. Furthermore, the requirement may discourage students from seeking to participate in CDWSP since the financial risk of failure to complete the program may appear substantial.

HUD further notes that the repayment requirements also impose a substantial cost (administrative burden and repayment costs) to recipients who attempt to collect funds for academic credit hours and other support the student has already been provided. Because a CDWSP student is *necessarily* economically disadvantaged, the student cannot generally repay the debt other than in small payments over a long period of time involving considerable administrative burden to the recipient. HUD is aware of occasions in which institutions of higher education have had to either ''write off'' the debt as uncollectible or collect small periodic payments.

F. Proposed Amendments to 24 CFR 570.415(i)

Paragraph (i) of § 570.415 would be amended in several respects. The initial sentence in 24 CFR 570.415(i)(2) would be amended to clarify that a threshold review for applicant eligibility occurs *before* applications are rated and placed in priority funding order.

Paragraph (i)(5) of § 570.415, concerning the ranking of otherwise eligible applicants, would be amended to clarify the selection criteria, eliminate duplication of issues among criteria, and make the criteria consistent with other proposed changes. Paragraph (i)(2)(i) of § 570.415, which establishes the quality of the academic program as a ranking factor, would be clarified so as to set forth a non-exhaustive list of academic program quality indicators. The issue of the graduation rate among the applicant's past CDWSP students, which is currently part of the academic quality factor, would be set forth as a separate factor to reflect that factor's independent significance.

A new factor would be added as 24 CFR 570.415(i)(2)(iii), dealing with the recipient's commitment to meeting the needs of CDWSP-funded students. This consideration is already partially encompassed in 24 CFR 570.415(i)(2)(vi), dealing with the applicant's ''relative commitment to meeting the needs of minority economically disadvantaged students.'' However, 24 CFR 570.415(i)(2)(vi) has lacked clarity, and applicants have responded to it in varying and inconsistent ways, with some applicants referring to their indirect costs, others referring to additional tuition support, and still others simply restating information used in responding to other ranking factors.

HUD intends to have this new, separate factor address the institution of higher education's commitment to help the CDWSP student see his or her way through the program financially. HUD is aware, from communications with recipients and students, that the CDWSP award leaves many CDWSP-funded students significantly short of funds to pursue their degree, even though they are working twenty hours per week. HUD believes a student's ability to pursue the academic program without undue financial stress is of great importance to the student's success.

Proposed 24 CFR 570.415(i)(2)(v) would address the likelihood that an applicant's program will lead students to permanent employment in community building, a consideration currently addressed in 24 CFR 570.415(i)(2)(iv). HUD would clarify this factor by setting forth several primary determinants of how well the factor is met. Proposed 24 CFR 570.415(i)(2)(vi) would be identical to the current 24 CFR 570.415(i)(2)(v).

Proposed 24 CFR 570.415(i)(2)(vii) would address the applicant's commitment to meeting the needs of economically disadvantaged and minority students. This factor, a modification of the present 24 CFR 570.415(i)(2)(vi), would clarify that the program is intended to address the needs of both minority and nonminority economically disadvantaged students.

III. Other Matters

A. Environmental Impact

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 implements section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA). This Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street SW., Washington, DC 20410–0500.

B. Regulatory Flexibility

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this proposed rule, and in so doing certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. This rule only affects applicants and participants in HUD's Community Development Work Study Program, and will not have any meaningful economic impact on any entity.

C. Public Reporting Burden

This rule does not propose to add to the overall information collection requirements of the Community Development Work Study Program. Nevertheless, because the proposed rule would alter the specific information requirements for applying for the program, the information collection requirements of this program, as amended, are being submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. Information on these requirements is provided as follows:

ANNUAL REPORTING BURDEN—24 CFR 570.415, COMMUNITY DEVELOPMENT WORK STUDY

	Number of respondents	Total annual responses	Hours per response	Total hours
Application	75	75	20	1,500
Annual reports	30	30	6	180
Final reports	30	30	8	240
Recordkeeping	30	30	5	150
				2,070

D. Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism,* has determined that the policies contained in this proposed rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. Specifically, the requirements of this proposed rule are

directed toward applicants and participants in HUD's Community Development Work Study Program (CDWSP). It effects no changes in the current relationships between the Federal government, the States and their political subdivisions in connection with CDWSP.

E. Family Impact

The General Counsel, as the Designated Official under Executive Order 12606, *The Family,* has determined that this proposed rule does not have the potential for significant impact on family formation, maintenance and general well-being, and, thus, is not subject to review under the Order. No significant changes in existing HUD policies or programs will result from promulgation of this proposed rule, as those policies and programs relate to family concerns.

F. Executive Order 12866

This proposed rule was reviewed by the Office of Management and Budget under Executive Order 12866, *Regulatory Planning and Review.* Any changes made to the proposed rule as a result of that review are clearly identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, Room 10276, 451 Seventh Street SW., Washington, DC 20410–0500.

List of Subjects in 24 CFR Part 570

Administrative practice and procedure, American Samoa, Community development block grants, Grant programs—education, Grant programs—housing and community development, Guam, Indians, Lead poisoning, Loan programs—housing and community development, Low and moderate income housing, New communities, Northern Mariana Islands, Pacific Islands Trust Territory, Pockets of poverty, Puerto Rico, Reporting and recordkeeping requirements, Small cities, Student aid, Virgin Islands.

The Catalog of Federal Domestic Assistance program number is 14.234.

Accordingly, 24 CFR part 570 is proposed to be amended as follows:

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

1. The authority citation for 24 CFR part 570 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 5300–5320.

Subpart E—Special Purpose Grants

2. Section 570.415 is amended by:

a. Revising paragraph (a);

b. Revising paragraph (b);

c. Revising paragraphs (c)(1)(i) (A), (B), and (C), and (c)(2);

d. Revising paragraphs (d)(1)(i) (A) and (B), (d)(1)(ii), and (d)(1)(iii);

e. Revising paragraph (d)(2)(i)(A);

f. Removing paragraph (d)(2)(i)(D) and redesignating paragraphs (d)(2)(i) (E) through (I) as paragraphs (d)(2)(i) (D) through (H), respectively;

g. Revising newly designated (d)(2)(i)(E);

h. Revising paragraphs (f)(1) and (f)(2)(i);

i. Revising paragraphs (g)(1) (ii) and (iii), (g)(2)(ii), and (g)(3) (i) and (ii);

j. Revising paragraphs (i)(1)(iii) and (i)(2);

k. Revising paragraph (k)(3)(ii); and

l. Removing paragraph (k)(3)(iii) and redesignating paragraph (k)(3)(iv) as paragraph (k)(3)(iii), to read as follows:

§ 570.415 Community Development Work Study Program.

(a) *Applicability and objectives.* HUD makes grants under CDWSP to institutions of higher education, either directly or through areawide planning organizations or States, for the purpose of providing assistance to economically disadvantaged and minority students who participate in a work study program while enrolled in full-time graduate programs in community and economic development, community planning, and community management. The primary objectives of the program are to attract economically disadvantaged and minority students to careers in community and economic development, community planning, and community management, and to provide a cadre of well-qualified professionals to plan, implement and administer local community development programs.

(b) *Definitions.* The following definitions apply to CDWSP:

Applicant means an institution of higher education, a State, or an areawide planning organization that submits an application for assistance under CDWSP.

Areawide planning organization (APO) means an organization authorized by law or by interlocal agreement to undertake planning and other activities for a particular geographic area.

CDWSP means the Community Development Work Study Program.

Community building means community and economic development, community planning, community management, land use and housing activities.

Community building academic program or academic program means a graduate degree program whose purpose and focus is to educate students in community building. ''Community building academic program'' or ''academic program'' includes but is not limited to graduate degree programs in community and economic development, community planning, community management, public administration, public policy, urban economics, urban management, and urban planning. ''Community building academic program'' or ''academic program'' excludes social and humanistic fields such as law, economics (except for urban economics), education and history. ''Community building academic program'' or ''academic program'' excludes joint degree programs except where both joint-degree fields have the purpose and focus of educating students in community building.

Economically disadvantaged and minority students means students who satisfy all applicable guidelines established at the participating institution of higher education to measure financial need for academic scholarship or loan assistance, including, but not limited to, students who are Black, American Indian/Alaskan Native, Hispanic, or Asian/Pacific Island, and including students with disabilities.

Institution of higher education means a public or private educational institution that offers a community building academic program and that is accredited by an accrediting agency or association recognized by the Secretary of Education under 34 CFR part 602.

Recipient means an approved applicant that executes a grant agreement with HUD.

Student means a student enrolled in an eligible full-time academic program. He/she must be a first-year student in a two-year graduate program. Students enrolled in Ph.D. programs are ineligible.

Student with disabilities means a student who meets the definition of ''person with disabilities'' in the Americans with Disabilities Act of 1990.

(c) * * *

(1) * * *

(i) * * *

(A) *Student stipend.* The amount of the student stipend is based upon the prevailing hourly rate for initial entry positions in community building and the number of hours worked by the student at the work placement assignment, except that the hourly rate used should be sufficiently high to allow a student to earn the full stipend without working over 20 hours per week during the school year and 40 hours per week during the summer. The amount of the stipend the student receives may not exceed the actual amount earned, up to $9,000 per year.

(B) *Tuition support.* The amount of the tuition support may not exceed the tuition charged at the participating institution of higher education up to a maximum of $3,500 per year.

(C) *Additional support.* The amount of additional support may not exceed the actual costs incurred, up to a maximum of $1,500 per year. The recipient may provide additional support for:

(*1*) Books;

(*2*) Travel related to the academic program, work placement assignment, or attendance at conferences sponsored by professional organizations in community building; and

(*3*) Costs associated with reasonable accommodations for students with disabilities including, but not limited to, interpreters for the deaf/hard of hearing, special equipment, and braille materials.

* * * * *

(2) *Number of students assisted.* The minimum number of students that may be assisted is three students per participating institution of higher education. If an APO or State receives assistance for a program that is conducted by two or more institutions of higher education, each participating institution must have a minimum of three students in the program. The maximum number of students that may be assisted under CDWSP is five students per participating institution of higher education.

(d) * * *

(1) * * *

(i) * * *

(A) *Institutions of higher education.* Institutions of higher education offering a community building academic program are eligible for assistance under CDWSP.

(B) *Areawide planning organizations and States.* An APO or a State may apply for assistance for a program to be conducted by two or more institutions of higher education. Institutions participating in an APO program must be located within the particular area that is served by the APO and is identified by the State law or interlocal agreement creating the APO. Institutions of higher education participating in a State program must be located within the State.

(ii) To be eligible in future funding competitions for CDWSP, recipients are required to maintain a 50-percent rate of graduation from a CDWSP-funded academic program.

(iii) If an institution of higher education that submits an individual application is also included in the application of an APO or State, then the separate individual application of the institution of higher education will be disregarded. Additionally, if an institution of higher education is included in the application of *both* an APO and a State, then the references to the institution in the application of the State will be stricken. The State's application will then be ineligible if fewer than two institutions of higher education remain as participants in the State's application.

(2) * * *

(i) * * *

(A) Recruit and select students for participation in CDWSP. The recipient shall establish recruitment procedures that identify economically disadvantaged and minority students pursuing careers in community building, and make such students aware of the availability of assistance opportunities. Students must be selected before the beginning of the semester for which funding has been provided.

* * * * *

(E) Encourage participating students to obtain employment for a minimum of two years after graduation with a unit of State or local government, Indian tribe or nonprofit organization engaged in community building.

* * * * *

(f) *Work placement agencies eligibility and responsibilities* (1) *Eligibility.* To be eligible to participate in the CDWSP, the work placement agencies must be involved in community building and must be an agency of a State or unit of local government, an APO, an Indian tribe, or a nonprofit organization.

(2) * * *

(i) Provide practical experience and training in community building.

* * * * *

(g) * * *

(1) * * *

(ii) Must be a full-time student enrolled in the first year of graduate study in a community building academic program at the participating institution of higher education. Individuals enrolled in doctoral programs are ineligible.

(iii) Must demonstrate an ability to maintain a satisfactory level of performance in the community building academic program and in work placement assignments, and to comply with the professional standards set by the recipient and the work placement agencies.

* * * * *

(2) * * *

(ii) An interest in, and commitment to, a professional career in community building.

* * * * *

(3) * * *

(i) Enroll in a two-year program. A student's academic and work placement responsibilities include: Full-time enrollment in an approved academic program; maintenance of a satisfactory level of performance in the community building academic program and in work placement assignments; and compliance with the professional conduct standards set by the recipient and the work placement agency. A satisfactory level of academic performance consists of maintaining a B average. A student's participation in CDWSP shall be terminated for failure to meet these responsibilities and standards. If a student's participation is terminated, the student is ineligible for further CDWSP assistance.

(ii) Agree to make a good-faith effort to obtain employment in community building with a unit of State or local government, an Indian tribe, or a nonprofit organization. The term of employment should be for at least two consecutive years following graduation from the academic program. If the student does not obtain such employment, the student is not required to repay the assistance received.

* * * * *

(i) * * *

(1) * * *

(iii) The applicant must demonstrate that each institution of higher education participating in the program as a recipient has the required academic programs and faculty to carry out its activities under CDWSP. Each work placement agency must have the required staff and community building work study program to carry out its activities under CDWSP.

(2) *Rating.* All applications that meet the threshold requirements for applicant eligibility will be rated based on the following selection criteria:

(i) *Quality of Academic Program.* The quality of the academic program offered by the institution of higher education, including without limitation the:

(A) Quality of course offerings;

(B) Appropriateness of course offerings for preparing students for careers in community building; and

(C) Qualifications of faculty and percentage of their time devoted to teaching and research in community building.

(ii) *Rates of Graduation.* The rates of graduation of students previously enrolled in a community building academic program at the institution of

higher education, specifically including (where applicable) graduation rates from any previously funded CDWSP academic programs or similar programs.

(iii) *Extent of Financial Commitment.* The commitment and ability of the institution of higher education to assure that CDWSP students will receive sufficient financial assistance (including loans, where necessary) above and beyond the CDWSP funding to complete their academic program in a timely manner and without working in excess of 20 hours per week during the school year.

(iv) *Quality of Work Placement Assignments.* The extent to which the participating students will receive a sufficient number and variety of work placement assignments, the assignments will provide practical and useful experience to students participating in the program, and the assignments will further the participating students' preparation for professional careers in community building.

(v) *Likelihood of Fostering Students' Permanent Employment in Community Building.* The extent to which the proposed program will lead participating students directly and immediately to permanent employment in community building, as indicated by, without limitation:

(A) The past success of the institution of higher education in placing its graduates (particularly CDWSP-funded and similar program graduates where applicable) in permanent employment in community building; and

(B) The amount of faculty and staff time and institutional resources devoted to assisting students (particularly students in CDWSP-funded and similar programs where applicable) in finding permanent employment in community building.

(vi) *Effectiveness of Program Administration.* The degree to which an applicant will be able effectively to coordinate and administer the program. HUD will allocate the maximum points available under this criterion equally among the following considerations set forth in paragraphs (i)(2)(vi)(A), (B), and (C) of this section. Except that the maximum points available under this criterion will be allocated equally between the considerations set forth in paragraphs (i)(2)(vi)(A) and (B) of this section only where the applicant has not previously administered a CDWSP-funded program.

(A) The strength and clarity of the applicant's plan for placing CDWSP students on rotating work placement assignments and monitoring CDWSP students' progress both academically and in their work placement assignments;

(B) The degree to which the individual who will coordinate and administer the program has clear responsibility, ample available time, and sufficient authority to do so; and

(C) The effectiveness of the applicant's prior coordination and administration of a CDWSP-funded program, where applicable (including the timeliness and completeness of the applicant's compliance with CDWSP reporting requirements).

(vii) *Commitment to Meeting Economically Disadvantaged and Minority Students' Needs.* The applicant's commitment to meeting the needs of economically disadvantaged and minority students as demonstrated by policies and plans regarding, and past effort and success in, recruiting, enrolling and financially assisting economically disadvantaged and minority students. If the applicant is an APO or State, then HUD will consider the demonstrated commitment of each institution of higher education on whose behalf the APO or State is applying; HUD will then also consider the demonstrated commitment of the APO or State to recruit and hire economically disadvantaged and minority students.

* * * * *

(k) * * *

(3) * * *

(ii) If a student's participation in CDWSP is terminated before the completion of the two-year term of the student's program, the recipient may substitute another student to complete the two-year term of a student whose participation has terminated. The substituted student must have a sufficient number of academic credits to complete the degree program within the remaining portion of the terminated student's two-year term.

* * * * *

Dated: June 8, 1995.

Michael A. Stegman,

Assistant Secretary for Policy Development and Research.

[FR Doc. 95–27431 Filed 11–3–95; 8:45 am]

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federal register

Monday
November 6, 1995

Part V

The President

Proclamation 6847—National American Indian Heritage Month, 1995

Federal Register
Vol. 60, No. 214
Monday, November 6, 1995

Presidential Documents

Title 3—

The President

Proclamation 6847 of November 2, 1995

National American Indian Heritage Month, 1995

By the President of the United States of America

A Proclamation

November is traditionally the season for thanksgiving in America, the time when we reflect on the abundance with which we have been blessed. It is especially fitting, then, that we set aside this month to pause and reflect on the many gifts bestowed on our land and our heritage by American Indians and Alaska Natives.

American Indians have a great reverence for the earth and its bounty, and they generously shared their knowledge and their food with the early European settlers in our country. We still enjoy that harvest today, with an agricultural industry that supports America and the world with the corn, potatoes, beans, cotton, and countless other crops first cultivated on this continent by American Indians.

A second and equally precious gift is that of courage. American Indians and Alaska Natives have fought and died for the United States of America in time of war, answering the call to service to defend our freedoms. The Navajo, Lakota, and Dakota Codetalkers were crucial to our victory in the Pacific during World War II, and it was a Pima Indian, Ira Hayes, who helped to raise the American flag on Iwo Jima. They and so many others have endured separation, hardship, and sacrifice so that the world might know peace.

The gift of wisdom is one that our society has struggled to learn. Living in harmony with nature instead of seeking domination, American Indians have shown us how to be responsible for our environment, to treasure the beauty and resources of the land and water for which we are stewards, and to preserve them for the generations who will come after us. They have taught us as well the value of sharing, of recognizing that there must be room at America's table for all her peoples.

American Indians and Alaska Natives have made invaluable contributions to our common heritage; in every field of human endeavor, from the arts, sciences, and humanities to politics, religion, and public service, they have added immeasurably to the strength of our civilization.

As we celebrate National American Indian Heritage Month, we give thanks for these contributions and acknowledge the special legal relationship that exists between the tribes and the Government of the United States of America.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim November 1995 as National American Indian Heritage Month. I urge all Americans, as well as their elected representatives at the Federal, State, local, and tribal levels, to observe this month with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this second day of November, in the year of our Lord nineteen hundred and ninety-five, and of the Independence of the United States of America the two hundred and twentieth.

William J. Clinton

[FR Doc. 95–27594
Filed 11–2–95; 4:36 pm]
Billing code 3195–01–P

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H.R. 402/P.L. 104–42

To amend the Alaska Native Claims Settlement Act, and for other purposes. (Nov. 2, 1995; 109 Stat. 353)

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CFR CHECKLIST

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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1995. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1995. The CFR volume issued July 1, 1991, should be retained.

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