12–5–95
Vol. 60 No. 233
Pages 62189–62318

federal register

Tuesday
December 5, 1995

Briefings on How To Use the Federal Register
For information on briefings in Washington, DC, Long Beach, CA, and Seattle, WA, see announcement on the inside cover of this issue.

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

The Federal Register provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The seal of the National Archives and Records Administration authenticates this issue of the Federal Register as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the Federal Register shall be judicially noticed.

The Federal Register is published in paper, 24x microfiche and as an online database through *GPO Access*, a service of the U.S. Government Printing Office. The online database is updated by 6 a.m. each day the Federal Register is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward. Free public access is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. Internet users can access the database by using the World Wide Web; the Superintendent of Documents home page address is http://www.access.gpo.gov/su__docs/, by using local WAIS client software, or by telnet to swais.access.gpo.gov, then login as guest, (no password required). Dial-in users should use communications software and modem to call (202) 512–1661; type swais, then login as guest (no password required). For general information about *GPO Access*, contact the *GPO Access* User Support Team by sending Internet e-mail to help@eids05.eids gpo.gov; by faxing to (202) 512–1262; or by calling (202) 512–1530 between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except for Federal holidays.

The annual subscription price for the Federal Register paper edition is $494, or $544 for a combined Federal Register, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the Federal Register including the Federal Register Index and LSA is $433. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $8.00 for each issue, or $8.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA or MasterCard. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the Federal Register.

How To Cite This Publication: Use the volume number and the page number. Example: 60 FR 12345.

Printed on recycled paper containing 100% post consumer waste

SUBSCRIPTIONS AND COPIES

PUBLIC	
Subscriptions:	
Paper or fiche	202–512–1800
Assistance with public subscriptions	512–1806
General online information	202–512–1530
Single copies/back copies:	
Paper or fiche	512–1800
Assistance with public single copies	512–1803
FEDERAL AGENCIES	
Subscriptions:	
Paper or fiche	523–5243
Assistance with Federal agency subscriptions	523–5243

For other telephone numbers, see the Reader Aids section at the end of this issue.

THE FEDERAL REGISTER

WHAT IT IS AND HOW TO USE IT

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

WHO: Sponsored by the Office of the Federal Register.

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

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

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

WASHINGTON, DC

[Two Sessions]

WHEN: January 9, 1996 at 9:00 am and January 23, 1996 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)

RESERVATIONS: 202–523–4538

LONG BEACH, CA

WHEN: December 12, 1995 at 9:00 am

WHERE: Glenn M. Anderson Federal Building, Conference Room—Room 3470, 501 West Ocean Boulevard, Long Beach, CA 90802

RESERVATIONS: 310–980–3447

SEATTLE, WA

[Two Sessions]

WHEN: December 13, 1995 at 9:00 am and 1:00 pm

WHERE: National Archives—Pacific Northwest Region, Conference Room, 6125 Sand Point Way, NE., Seattle, WA 98115

RESERVATIONS: 206–526–6507

Contents

Federal Register
Vol. 60, No. 233
Tuesday, December 5, 1995

Agricultural Marketing Service
PROPOSED RULES
Sheep and wool promotion, research, education, and information order, 62298–62314
Spearmint oil produced in Far West, 62229

Agriculture Department
See Agricultural Marketing Service
See Federal Crop Insurance Corporation
See Food and Consumer Service
NOTICES
Import quotas and fees:
Sugar, raw cane, 62243

Antitrust Division
NOTICES
National cooperative research notifications:
CommerceNet Consortium, 62259
Corporation for Open Systems International, 62259
Fieldbus Foundation, 62259–62260
Financial Services Technology Consortium, Inc., 62260
Hart Communication Foundation, 62260
Minnesota Mining & Manufacturing Co., 62260
Petroleum Environmental Research Forum, 62260–62261
PowerOpen Association, Inc., 62261
Sawtek, Inc., et al., 62261
Semiconductor Research Corp., 62261–62262
Southwest Research Institute, 62262
United Technologies Corp. et al., 62262

Assassination Records Review Board
NOTICES
Meetings; Sunshine Act, 62293–62294

Centers for Disease Control and Prevention
NOTICES
Agency information collection activities under OMB review, 62250–62251
Agency information collection activities under OMB review:
Proposed agency information collection activities; comment request, 62251–62253
Passenger cruise ships; sanitation inspections; fees; correction, 62295

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration

Drug Enforcement Administration
NOTICES
Applications, hearings, determinations, etc.:
Roth, Michael J., M.D., 62262–62267

Energy Department
See Energy Research Office
See Federal Energy Regulatory Commission
RULES
Federal regulatory review
Electric and hybrid vehicle and methane transportation research; CFR parts removed, 62316–62317
PROPOSED RULES
Federal regulatory review
Electric and hybrid vehicle and methane transportation research, 62318
NOTICES
Environmental statements; availability, etc.:
Hanford Site, WA—
Plutonium finishing plant stabilization, 62244–62245

Energy Research Office
NOTICES
Grants and cooperative agreements; availability, etc.:
National user facilities; development of new capabilities and upgrade of existing capabilities, 62246–62247

Environmental Protection Agency
PROPOSED RULES
Air quality planning purposes; designation of areas:
Pennsylvania, 62236–62237
NOTICES
Meetings:
Grand Canyon Visibility Transport Commission, 62247–62248

Federal Aviation Administration
RULES
Airworthiness directives:
Boeing, 62192–62194
Class E airspace, 62194–62195
NOTICES
Airport noise compatibility program:
Southwest Florida International Airport, FL, 62285–62287
Exemption petitions; summary and disposition, 62287–62288
Meetings:
Research, Engineering, and Development Advisory Committee, 62288
Passenger facility charges; applications, etc.:
Ogdensburg International Airport, NY, 62288–62289

Federal Communications Commission
RULES
Radio stations; table of assignments:
Arkansas et al., 62218–62219
Missouri, 62219–62221
Pennsylvania, 62220
Television stations; table of assignments:
Tennessee et al., 62220

Federal Crop Insurance Corporation
RULES
Crop insurance regulations:
Florida citrus endorsement, 62189–62190

Federal Emergency Management Agency
RULES
Flood insurance program:
Buildings or mobile homes located in special flood hazard area; contested determination, 62213–62218
NOTICES
Disaster and emergency areas:
Florida, 62248

Federal Energy Regulatory Commission
NOTICES
Applications, hearings, determinations, etc.:
Texas Gas Transmission Corp., 62245–62246
Transcontinental Gas Pipe Line Corp., 62246
West Allegheny Biomass Energy Corp., 62246

Federal Reserve System
NOTICES
Meetings; Sunshine Act, 62294
Applications, hearings, determinations, etc.:
CCB Financial Corp., 62248
First Bank System, Inc.; correction, 62248–62249
James River Bankshares, Inc., 62249
SouthTrust Corp. et al., 62249
Thorne, Ruth Cain, 62249

Federal Trade Commission
RULES
Trade regulation rules:
Used motor vehicle; Regulatory Flexibility Act review, 62195–62206

Food and Consumer Service
PROPOSED RULES
Child nutrition programs:
Child and adult care food program; overclaim authority, 62227–62229

Food and Drug Administration
RULES
Food additives:
Paper and paperboard components—
Silver chloride-coated titanium dioxide, 62207–62208
GRAS or prior-sanctioned ingredients:
Japan wax, 62208–62209
NOTICES
Biological product licenses:
Establishment license for manufacture of biological products (Form 2830) and product listing (8/95) revision; availability, 62253–62254
Committees; establishment, renewal, termination, etc.:
Science Board, 62254

Health and Human Services
See Health Resources and Services Administration

Health and Human Services Department
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Care Financing Administration
See Health Resources and Services Administration

Health Care Financing Administration
PROPOSED RULES
Medicare:
Skilled nursing facilities and home health agencies; uniform electronic cost reporting requirements, 62237–62241

Health Resources and Services Administration
NOTICES
Committees; establishment, renewal, termination, etc.:
Rural Health National Advisory Committee, 62254–62255

Inter-American Foundation
NOTICES
Meetings; Sunshine Act, 62294

Interior Department
See Land Management Bureau
See National Park Service
See Surface Mining Reclamation and Enforcement Office

Internal Revenue Service
RULES
Excise taxes:
Charitable organizations; political expenditures, 62209–62213
PROPOSED RULES
Income taxes:
Consolidated groups—
Intercompany temporary transactions and related rules; hearing, 62229

International Trade Administration
NOTICES
Antidumping:
Bicycles from—
China; correction, 62295

Interstate Commerce Commission
NOTICES
Rail carriers:
Non-coal proceedings; rate guidelines, 62256–62257
Railroad services abandonment:
Illinois Central Railroad Co., 62257
Southern Pacific Transportation Co., 62257

Justice Department
See Antitrust Division
See Drug Enforcement Administration
See Parole Commission
NOTICES
Pollution control; consent judgments:
Colorado Refining Co., 62258
Illinois Public Interest Research Group et al., 62258
Louisiana-Pacific, Inc., et al., 62258–62259

Labor Department
NOTICES
Agency information collection activities under OMB review, 62267–62268

Land Management Bureau
NOTICES
Alaska Native claims selection:
Chugach Alaska Corp., 62255
Coalbed methane ownership; affected States; list, 62255
Meetings:
Southeastern Oregon Resource Advisory Council, 62255–62256

Legal Services Corporation
NOTICES
Grant and cooperative agreement awards:
Legal Services of the Virgin Islands, Inc., et al., 62268–62269

National Highway Traffic Safety Administration
RULES
Rulemaking procedures:
Petitions for reconsideration and extension of comment period, 62221–62224

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
American lobster, 62224–62226
Atlantic surf clam and ocean quahog, 62226
PROPOSED RULES
Fishery management councils; hearings:
Gulf of Mexico—
King and Spanish mackerel, cobia and dolphin, 62241–62242
NOTICES
Marine mammals:
Incidental taking; authorization letters, etc.—
Murphy Exploration & Production Co., 62243–62244
Meetings:
Modernization Transition Committee, 62244

National Park Service
PROPOSED RULES
National Park System:
Alaska; protection of wildlife and other values and purposes on all navigable waters within park boundaries, regardless of ownership of submerged lands, 62233–62236
NOTICES
National Register of Historic Places:
Pending nominations, 62256

Nuclear Regulatory Commission
NOTICES
Meetings; Sunshine Act, 62293
Applications, hearings, determinations, etc.:
Advacare Management Services, Inc., 62269–62270
Duke Power Co. et al.; correction, 62270
PECO Energy Co., 62270–62272
Wisconsin Electric Power Co., 62272–62273

Parole Commission
NOTICES
Meetings; Sunshine Act, 62293

Prospective Payment Assessment Commission
NOTICES
Meetings, 62273

Public Health Service
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Resources and Services Administration

Securities and Exchange Commission
RULES
Practice and procedure:
Administrative proceedings; evidentiary hearings before administrative law judges, etc.
Correction, 62295
NOTICES
Self-regulatory organizations; proposed rule changes:
Chicago Board Options Exchange, Inc., 62273–62274
Municipal Securities Rulemaking Board, 62275–62284
Applications, hearings, determinations, etc.:
San Diego Gas & Electric Co., 62284

Sentencing Commission, United States
See United States Sentencing Commission

Small Business Administration
RULES
Federal claims collection, 62190–62192
NOTICES
Disaster loan areas:
Alaska, 62284–62285

Surface Mining Reclamation and Enforcement Office
PROPOSED RULES
Permanent program and abandoned mine land reclamation plan submissions:
Illinois, 62229–62233

Transportation Department
See Federal Aviation Administration
See National Highway Traffic Safety Administration
NOTICES
Aviation proceedings:
Certificates of public convenience and necessity and foreign air carrier permits; weekly applications, 62285

Treasury Department
See Internal Revenue Service

United States Sentencing Commission
NOTICES
Sentencing guidelines and policy statements for Federal courts, 62289–62292

Separate Parts In This Issue

Part II
Department of Agriculture, Agricultural Marketing Service, 62298–62314

Part III
Department of Energy, 62316–62318

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

New Feature in the Reader Aids!
Beginning with the issue of December 4, 1995, a new listing will appear each day in the Reader Aids section of the Federal Register called ''Reminders''. The Reminders will have two sections: ''Rules Going Into Effect Today'' and ''Comments Due Next Week''. Rules Going Into Effect Today will remind readers about Rules documents published in the past which go into effect ''today''. Comments Due Next Week will remind readers about impending closing dates for comments on Proposed Rules documents published in past issues. Only those documents published in the Rules and Proposed Rules sections of the Federal Register will be eligible for inclusion in the Reminders.
The Reminders feature is intended as a reader aid only. Neither inclusion nor exclusion in the listing has any legal significance.
The Office of the Federal Register has been compiling data for the Reminders since the issue of November 1, 1995. No documents published prior to November 1, 1995 will be listed in Reminders.

Electronic Bulletin Board

Free Electronic Bulletin Board service for Public Law numbers, Federal Register finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

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

7 CFR
401.....62189
Proposed Rules:
226.....62227
985.....62229
1280.....62298

10 CFR
475.....62316
476.....62316
478.....62316
Proposed Rules:
475.....62318
476.....62318
478.....62318

13 CFR
140.....62190

14 CFR
39.....62192
71.....62194

16 CFR
455.....62195

17 CFR
200.....62295

21 CFR
176.....62207
182.....62208
186.....62208

26 CFR
1.....62209
53.....62209
301.....62209
Proposed Rules:
1.....62229

30 CFR
Proposed Rules:
913.....62229

36 CFR
Proposed Rules:
1.....62233
13.....62233

40 CFR
Proposed Rules:
81.....62236

42 CFR
Proposed Rules:
413.....62237

44 CFR
65.....62213

47 CFR
73 (6 documents) 62218, 62219, 62220

49 CFR
553.....62221

50 CFR
649.....62224
650.....62224
651.....62224
652.....62226
Proposed Rules:
642.....62241

Rules and Regulations

Federal Register
Vol. 60, No. 233
Tuesday, December 5, 1995

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 401

RIN 0563–AB29

General Crop Insurance Regulations; Florida Citrus Endorsement

AGENCY: Federal Crop Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (''FCIC'') hereby amends the Florida Citrus Endorsement that supplements the General Crop Insurance Policy. The intended effect of this rule is to require that the insured crop unit suffer at least a fifty percent (50%) average percent of damage before an indemnity would be due for any catastrophic risk protection policy.

EFFECTIVE DATE: December 5, 1995.

FOR FURTHER INFORMATION CONTACT: Diana Moslak, Regulatory and Procedural Development Staff, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250. Telephone (202) 254–8314.

SUPPLEMENTARY INFORMATION: This action has been reviewed under United States Department of Agriculture (''USDA'') procedures established by Executive Order 12866 and Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is May 1, 2000.

This rule has been determined to be ''exempt'' for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (''OMB'').

The information collection requirements contained in these regulations (7 CFR part 401) were previously approved by OMB pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) under OMB control numbers 0563–0003, 0563–0014, and 0563–0016. The amendments set forth in this rule do not revise the content or alter the frequency of reporting for any of the forms cleared under the above mentioned dockets. The public reporting burden for the collection of information is estimated to range from 10 to 90 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

It has been determined under section 6(a) of Executive Order 12612, Federalism, that this rule does not have sufficient federalism implication to warrant the preparation of a Federalism Assessment. The policies and procedures contained in this rule will not have a substantial direct effect on states or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

This regulation will not have a significant impact on a substantial number of small entities. This action neither increases nor decreases the paperwork burden on the insured and the reinsured company. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605) and no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which require intergovernmental consultation with state and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

The Office of the General Counsel has determined that these regulations meet the applicable standards provided in subsections (2)(a) and 2(b)(2) of Executive Order 12778. The provisions of this rule will preempt state and local laws to the extent such state and local laws are inconsistent herewith. The administrative appeal provisions promulgated by the National Appeals Division under Pub. L. No. 103–354 must be exhausted before judicial action may be brought.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

On Tuesday, June 6, 1995, FCIC published an interim rule in the Federal Register at 60 FR 29749, to amend the Florida Citrus Endorsement by revising the Catastrophic Risk Protection (CAT) loss adjustment provisions contained in section 9 of the endorsement.

Following publication of the interim rule, the public was afforded 60 days to submit written comments, data, and opinions. The comments received and FCIC responses are as follows:

Comment: One comment received from an insurance company maintains that the rule is incomplete because it only addresses the loss adjustment deductible aspect of the program and does not address the dollar amount of insurance.

Response: FCIC revised Section 9 (Claim for Indemnity) because the language did not conform with the requirements of Section 508(b) of the Federal Crop Insurance Reform Act (Act) of 1994 which states that CAT shall offer a producer coverage for a 50 percent loss of yield. Under the Florida Citrus Endorsement, loss payments began once the damage exceeded 10 percent. FCIC added language to bring Section 9 in compliance with the Act. This language only addresses the 50 percent deductible. The dollar amount of insurance for CAT coverage, as determined by FCIC, is stipulated in the actuarial table. Therefore, FCIC has addressed the dollar amount of insurance for CAT coverage and the formula used to determine CAT coverage indemnities will not be changed.

Comment: One comment received from an insurance company stated that the rule was not necessary because the same result could be achieved by multiplying the maximum value FCIC assigns to a given variety of citrus by 50%, then multiplying this product by 60%.

Response: FCIC disagrees with the comment. The determination of an appropriate CAT dollar amount of

insurance is a separate issue from establishing the amount of loss that must be sustained before an indemnity is due.

Comment: One comment received from an insurance company suggested that the Act specifically addresses CAT coverage for production based programs but leaves discretion as to how to apply CAT to dollar amount of insurance crops.

Response: The Act stipulates that CAT coverage shall offer a producer coverage for a 50 percent loss in yield on an individual basis, indemnified at 60 percent of the expected market price, or comparable coverage (as determined by the Corporation). For dollar amount of insurance crops like Florida Citrus, the CAT dollar amount of insurance is stated in the actuarial table. The 50% loss threshold for CAT is not discretionary and applies to dollar amount of insurance crops.

Comment: One comment received from an insurance company suggested that changing the loss calculation for CAT represents a material change in the program and essentially creates a second Florida Citrus program.

Response: Changing the Florida Citrus CAT loss calculation did not create another program. CAT coverage was a new insurance coverage level that was required to be implemented by the Act. The change explains how CAT losses will be calculated.

Comment: One comment received from an insurance company stated their belief that CAT payment values are far short of 60% of the market value called for in the Act. Consequently, loss guidelines which result in a CAT producer being indemnified once they have sustained a loss greater than 10% helped to compensate for the insufficient CAT dollar amount of coverage.

Response: FCIC believes that it would be inappropriate to compensate for a perceived insufficient dollar amount of coverage by manipulating loss calculations, since it would violate crop loss guidelines established in the Act.

Comment: One comment received from an insurance company suggested that the rule change would not reduce paperwork nor simplify the program and could cost more money to administer since agents would have two quoting systems.

Response: FCIC disagrees with this comment. The rule change is not expected to either increase or decrease paperwork. The change does not create two quoting systems, it only informs the CAT policyholder how a claim for indemnity is calculated for this new coverage level.

Comment: One comment received from an insurance company suggested that the rule will spread confusion and bad will among their growers and creates additional work for companies and agents who are already ''undercompensated'' for CAT.

Response: The Act mandates guidelines for implementing CAT coverage and FCIC does not have the liberty to deviate from the guidelines. Therefore, Florida citrus producers with CAT policies will be treated the same as CAT policyholders of other crops.

Comment: One comment received from an insurance company stated that while they believed the rule change was required to bring the program in compliance with legislation, the change was made well after the April 15, 1995 contract change date, and thus it was inappropriate to implement it for the 1996 crop year.

Response: FCIC's position is that CAT was implemented when the interim rules, Catastrophic Risk Protection Endorsement and Subpart T-Regulations for Implementation, were published in the Federal Register on January 6, 1995. The Florida Citrus interim rule was a continuation of implementing CAT. Implementing legislation (the Act) takes precedence over a crop policy's contract change date.

Comment: One comment received from an insurance company stated that the only changes allowable after the April 15, 1995 contract change date would be a liberalization which would benefit the policyholders, as described in section 11 of the General Provisions of the MPCI Policy. Furthermore a 500% increase in the CAT policy deductible does not qualify as a liberalization.

Response: Implementing legislation takes precedence over a crop policy's contract change date. CAT insureds who sustain a complete loss of their Florida citrus can realize 100% of their CAT coverage, while under the previous loss calculation, based on 10% deductible, they would have received only 90% of their CAT coverage.

List of Subjects in 7 CFR Part 401

Crop insurance, Florida citrus.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*) the Federal Crop Insurance Corporation hereby adopts as a final rule, the interim rule as published at 60 FR 29749 on June 6, 1995.

Done in Washington, DC, on November 29, 1995.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 95–29570 Filed 12–4–95; 8:45 am]

BILLING CODE 3410–FA–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 140

Debt Collection Through Offset

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: In response to President Clinton's regulatory review directive, the Small Business Administration has completed a page-by-page and line-by-line review of its regulations. As a result, SBA is proposing to clarify and streamline its regulations, revising or eliminating any duplicative, outdated, inconsistent, or confusing provisions. This rule reorganizes all of Part 140 covering agency debt collection, clarifying it and making it easier to use through the use of ''plain language.'' It also amends the Part by removing redundant provisions and applying, where permitted by applicable statute, uniform procedural rights to all debt collection procedures. The name of the regulation has been changed from simply Debt Collection to Debt Collection Through Offset. There are no substantive changes.

EFFECTIVE DATE: This rule is effective January 4, 1996.

FOR FURTHER INFORMATION CONTACT: Cheri Wolff, Chief Counsel for General Litigation, Office of General Counsel, at (202) 205–6643.

SUPPLEMENTARY INFORMATION: 13 CFR Part 140 establishes procedures for the collection of debts owed to SBA. This rule reorganizes the entire Part, clarifying it and making it easier to use. Where permitted by relevant statute, it also amends Part 140 to give all debtors similar procedural rights.

Currently, Part 140 does not give all debtors the same procedural rights. Where a salary deduction or administrative offset procedure is used, debtors have thirty days to present evidence in response to SBA's notice of intent to collect a debt. On the other hand, where the deduction from income tax refund procedure is used, debtors are given sixty days to present evidence in response to SBA's notice. The rule eliminates this distinction and provides all debtors with the same procedural rights. All debtors will be given sixty days to present their relevant evidence.

Section-by-Section Analysis

The authority citations are amended by specifying the statutory authority for each of the three debt collection procedures.

The following is a section by section analysis of each provision of this Rule affected by these changes:

140.1: Revises section 140.1 by inserting clear language as to coverage of the regulation.

140.2: Deletes, in most respects, section 140.2 (the definition section). The definitions of administrative offset and salary offset are now included in proposed section 140.2 (''What is a debt and how can the SBA collect it through offset?''). Several other definitions are retained for clarity, but are defined as the terms appear in the text. Section 140.2 also clarifies the three debt collection procedures.

140.3: Current sections 140.3 (''Information disclosure''), 140.4 (''Salary offset''), 140.5 (''Administrative offset''), and 140.6 (''Income tax refund offset'') are deleted and replaced with new Section 140.3 (''What rights do you have when SBA tries to collect a debt from you through offset?''). Section 140.3 specifies, in clear language, debtors' rights. These rights apply to all persons affected by SBA debt collection offset procedures.

Compliance With Executive Orders 12612, 12778, and 12866, the Regulatory Flexibility Act (5 U.S.C. 601, et seq.), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

SBA certifies that this rule involves internal administrative procedures and would not be considered a significant rule within the meaning of Executive Order 12866 and would not 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.* It is not likely to have an annual economic effect of $100 million or more, result in a major increase in costs or prices, or have a significant adverse effect on competition or the United States economy.

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA certifies that this rule contains no new reporting or recordkeeping requirements.

For purposes of Executive Order 12612, SBA certifies that this rule would not have any federalism implications warranting the preparation of a Federalism Assessment.

For purposes of Executive Order 12778, SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in Section 2 of that Order.

List of Subjects in 13 CFR Part 140

Claims; Government employees; Income taxes; Wages.

For the reasons set forth above, SBA revises Part 140 of Title 13 of the Code of Federal Regulations to read as follows:

PART 140—DEBT COLLECTION THROUGH OFFSET

Sec.

§ 140.1 What does this part cover?
§ 140.2 What is a debt and how can the SBA collect it through offset?
§ 140.3 What rights do you have when SBA tries to collect a debt from you through offset?

Authority: 31 U.S.C. 3711, Collection and compromise; 31 U.S.C. 3720A, Reduction of tax refund by amount of debt; 5 U.S.C. 5514, Installment deduction for indebtedness to the United States; 31 U.S.C. 3716, Administrative offset; 15 U.S.C. 634(b)(6), Small Business Act.

§ 140.1 What does this part cover?

This part establishes procedures which SBA may use in the collection, through offset, of past-due debts owed to the Government. SBA's failure to comply with any provision of the regulations in this part is not available to any debtor as a defense against collection of the debt through judicial process.

§ 140.2 What is a debt and how can the SBA collect it through offset?

(a) A debt means an amount owed to the United States from loans made or guaranteed by the United States, and from fees, leases, rents, royalties, services, sales of real or personal property, overpayments, fines, penalties, damages, interest, forfeitures, or any other source. You are a debtor if you owe an amount to the United States from any of these sources.

(b) SBA may collect past-due debts through offset by using any of three procedures: administrative offset, salary offset, or IRS tax refund offset. A past-due debt is one which has been reduced to judgment, has been accelerated, or has been due for at least 90 days.

(1) *Administrative offset.* SBA may withhold money it owes to the debtor in order to satisfy the debt. This procedure is an ''administrative offset'' and is authorized by 31 U.S.C. 3716.

(2) *Salary offset.* If the debtor is a federal employee (a civilian employee as defined by 5 U.S.C. 2105, an employee of the U.S. Postal Service or Postal Rate Commission, or a member of the Uniformed Services or Reserve of the Uniformed Services), SBA may deduct payments owed to SBA or another federal agency from the debtor's paycheck. This procedure is a ''salary offset'' and is authorized by 5 U.S.C. 5514.

(i) Any amount deducted from salary in any one pay period will not exceed 15 percent of a debtor's disposable pay, unless the debtor agrees in writing to a greater percentage.

(ii) SBA also may collect against travel advances, training expenses, disallowed payments, retirement benefits, or any other amount due the employee, including lump-sum payments.

(iii) If an employee has terminated employment after salary offset has been initiated, there are no limitations on the amount that can be withheld or offset.

(3) *IRS tax refund offset.* SBA may request that IRS reduce a debtor's tax refund by the amount of the debt, as authorized by 31 U.S.C. 3720A. Where available, administrative and salary offsets must be used before collection is attempted through income tax offset. SBA may refer a debt to the IRS for a tax refund offset and take additional action against the debtor to collect the debt at the same time or in sequence. When SBA makes simultaneous or sequential referrals (within six months of the initial notice), only one review pursuant to the rules in this part and the statutes authorizing them is required.

§ 140.3 What rights do you have when SBA tries to collect a debt from you through offset?

(a) SBA must write to you and tell you that it proposes to collect the debt by reducing your federal paycheck, withholding money the Government owes you, and/or reducing your tax refund.

(b) In its written notice to you, SBA must tell you the nature and amount of the debt; that SBA will begin procedures to collect the debt through reduction of your federal paycheck, administrative offset, or reduction of your tax refund; that you have an opportunity to inspect and copy Government records relating to the debt at your expense; and that, before collection begins, you have an opportunity to agree with SBA on a schedule for repayment of your debt.

(c) SBA also must tell you that unless you respond within 60 days from the date of the notice, it will disclose to consumer reporting agencies (also known as credit bureaus or credit agencies) that you are responsible for the debt and the specific information it intends to disclose in order to establish your identity. The amount, status, history of the debt, and agency program

under which it arose also will be disclosed.

(d) If you respond to SBA within 60 days from the date of the notice, SBA will not disclose the information to consumer reporting agencies until it considers your response and determines that you owe a past-due, legally enforceable debt.

(e) Within 60 days of the notice you may present evidence that all or part of the debt is not past due or not legally enforceable.

(1) Where a salary offset or administrative offset is proposed, you will have the opportunity to present your evidence to SBA's Office of Hearings and Appeals (''OHA''). The rules in part 134 of this title govern the procedural rights to which you are entitled. In order to have a hearing before OHA, you must request a hearing within 15 days of receipt of the written notice described in this section. An OHA judge will issue a decision within 60 days of the date you filed your petition/request for a review or hearing with OHA, unless you were granted additional time within which to file your request for review.

(2) Where an income tax refund offset is proposed, you will have the opportunity to request a review and present your evidence to the appropriate SBA Commercial Loan Servicing Center at the address provided in the notice.

(f) SBA must consider any evidence you present and must first decide that a debt is past due and legally enforceable. A debt is legally enforceable if there is any forum, including a State or Federal Court or administrative agency, in which SBA's claim would not be barred on the date of offset. Non-judgment debts are enforceable for ten years; judgment debts are enforceable beyond ten years. You will be notified of SBA's decision at least 30 days before any offset deduction is made. You also will be notified of the amount, frequency, proposed beginning date, and duration of the deductions, as well as any obligation to pay interest, penalties, and administrative costs.

(g) If there is any substantial change in the status or amount of your debt, SBA will promptly report that change to each consumer reporting agency it originally contacted.

(h) SBA will obtain satisfactory assurances from each consumer reporting agency that the consumer reporting agency has complied with all federal laws relating to provision of consumer credit information.

(i) If your debt is being repaid by reduction of your income tax refund and you make any additional payments to SBA, SBA will notify the IRS of these payments and your new balance within 10 business days of receiving your payment.

(j) When the debt of a federal employee is reduced to court judgment, the employee is not entitled to further review by SBA, but is only entitled to notice of a proposed salary offset resulting from the judgment. The amount deducted may not exceed 15% of disposable pay, except when the deduction of a greater amount is necessary to completely collect the debt within the employee's remaining period of employment.

(k) When another federal agency asks SBA to offset a debt for it, SBA will not initiate the requested offset until it has received from the creditor agency a written certification that the debtor owes a debt, its amount, and that the provisions of all applicable statutes and regulations have been complied with fully.

(l) SBA may make an offset prior to completion of the procedures described in this part, if:

(1) Failure to make an offset would substantially prejudice the government's ability to collect the debt; and

(2) The time before the payment would otherwise be made to you does not reasonably permit the completion of the procedures.

(3) Such prior offset then must be followed by the completion of the procedures described in this part.

(m) Where an IRS tax refund offset is sought, SBA must follow the Department of the Treasury's regulations governing offset of a past-due, legally enforceable debt against tax overpayment.

Dated: November 22, 1995.

Philip Lader,

Administrator.

[FR Doc. 95–29564 Filed 12–4–95; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–247–AD; Amendment 39–9449; AD 95–01–06 R1]

Airworthiness Directives; Boeing Model 737–200 and –300 Series Airplanes Equipped With Cargo Doors Installed in Accordance With Supplemental Type Certificate (STC) SA2969SO

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to certain Boeing Model 737–200 and –300 series airplanes, that currently requires inspections to detect cracking in the radii on the support angles on the lower jamb (latch lug fittings) of the main deck cargo door, and replacement of cracked parts. That amendment was prompted by reports of premature fatigue cracking on the support angles on the lower jamb of the main deck cargo door. The actions specified in that AD are intended to prevent in-flight separation of the main deck cargo door from the airplane due to fatigue cracking on the support angles on the lower door jamb. This amendment requires a change in the cognizant aircraft certification office for requesting approvals of alternative methods of compliance with the provisions of this AD.

DATES: Effective December 20, 1995.

The incorporation by reference of certain publications listed in the regulations was approved previously by the Director of the Federal Register as of January 24, 1995 (60 FR 2323, January 9, 1995).

Comments for inclusion in the Rules Docket must be received on or before February 5, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–247–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Pemco Aeroplex, Inc., P.O. Box 2287, Birmingham, Alabama 35201–2287. This information may be examined at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia; or at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Curtis Jackson, Aerospace Engineer, Airframe Branch, ACE–120A; FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia 30337–2748; telephone (404) 305–7358; fax (404) 305–7348; or Della Swartz, Aerospace Engineer, Airframe Branch,

ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2785; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: On December 29, 1994, the FAA issued AD 95–01–06, amendment 39–9117 (60 FR 2323, January 9, 1995), applicable to certain Boeing Model 737–200 and –300 series airplanes, to require repetitive visual inspections to detect cracking in the radii on the support angles on the lower jamb of the main deck cargo door, and replacement of cracked parts with new parts. For those operators requesting approval of alternative methods of compliance (AMOC) with the requirements of that AD, that AD requires that those requests be submitted to the Seattle Aircraft Certification Office (ACO).

That AD was prompted by reports of premature fatigue cracking on the support angles on the lower jamb of the main deck cargo door. The actions required by that AD are intended to prevent in-flight separation of the main deck cargo door from the airplane due to fatigue cracking on the support angles on the lower door jamb.

Since the issuance of that AD, the FAA has reviewed the requirement for operators requesting approval of an AMOC to submit those requests to the Seattle ACO. The FAA considered the physical proximity of the supplemental type certificate (STC) holder, Pemco, which is located in Birmingham, Alabama, to the Atlanta ACO, which is located in College Park, Georgia. The FAA has determined that the Atlanta ACO would be more readily accessible to Pemco than the Seattle ACO, which is located in Renton, Washington. Consequently, the FAA finds that revising this AD to change the cognizant ACO for requesting approval of an AMOC, from the Seattle ACO to the Atlanta ACO, would allow the FAA to be more responsive to the needs of its customers. Therefore, the FAA has determined that it is appropriate to take action to revise paragraph (b) of that AD to change the cognizant ACO from Seattle to Atlanta.

Since unsafe condition has been identified that is likely to exist or develop on other airplanes of this same type design, this AD revises AD 95–01–06 to continue to require repetitive visual inspections to detect cracking in the radii on the support angles on the lower jamb of the main deck cargo door and replacement of cracked parts with new parts. This AD changes the cognizant ACO for requesting approval of an AMOC from the Seattle ACO to the Atlanta ACO.

This AD merely changes, for those operators requesting approval of an AMOC, the cognizant office from the Seattle ACO to the Atlanta ACO. In light of this, the FAA has determined that this AD has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and opportunity for prior public comment hereon are unnecessary, and the amendment may be made effective in less than 30 days after publication in the Federal Register.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 94–NM–247–AD.'' The postcard will be date stamped and returned to the commenter.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 USC 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9117 (60 FR 2323, January 9, 1995), and by adding a new airworthiness directive (AD), amendment 39–9449, to read as follows:

95–01–06 R1 Boeing: Amendment 39–9449. Docket 94–NM–247–AD. Revises AD 95–01–06, Amendment 39–9117.

Applicability: Model 737–200 and –300 series airplanes equipped with main deck cargo doors installed in accordance with supplemental type certificate (STC) SA2969SO, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in

this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent in-flight separation of the main deck cargo door from the airplane, accomplish the following:

Note 2: This AD references Pemco Alert Service Letter 737–53–0003, Revision 3, dated December 22, 1994, for information concerning inspection and replacement procedures. In addition, this AD specifies replacement requirements different from those included in the service letter. Where there are differences between the AD and the service letter, the AD prevails.

(a) Within 50 flight after January 24, 1995 (the effective date of AD 95–01–06, amendment 39–9117), or within 50 flight cycles after installation of STC SA2969SO, whichever occurs later, perform a visual inspection to detect cracking in the radii on the support angles on the lower jamb of the main deck cargo door, in accordance with Pemco Alert Service Letter 737–53–0003, Revision 3, dated December 22, 1994.

(1) If no cracking is detected, repeat the visual inspection thereafter at intervals not to exceed 450 flight cycles.

(2) If any cracking is detected, prior to further flight, replace the cracked part with a new part in accordance with the service letter. Repeat the visual inspection thereafter at intervals not to exceed 450 flight cycles.

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

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

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

(d) The inspection and replacement procedures shall be done in accordance with Pemco Alert Service Letter 737–53–0003, Revision 3, dated December 22, 1994. This incorporation by reference was approved previously by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of January 24, 1995 (60 FR 2323, January 9, 1995). Copies may be obtained from Pemco Aeroplex, Inc., P.O. Box 2287, Birmingham, Alabama 35201–2287. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia 30337–2748; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on December 20, 1995.

Issued in Renton, Washington, on November 28, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–29480 Filed 12–4–95; 8:45 am]

BILLING CODE 4910–13–U

---

14 CFR Part 71

[Airspace Docket No. 95–AWP–15]

Establishment of Class E Airspace; Byron, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes a Class E airspace area at Byron, CA. The development of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 30 has made this action necessary. The intended effect of this action is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Byron Airport, Byron, CA.

EFFECTIVE DATE: 0901 UTC, February 29, 1996.

FOR FURTHER INFORMATION CONTACT: Scott Speer, Airspace Specialist, System Management Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California, 90261, telephone (310) 725–6533.

SUPPLEMENTARY INFORMATION:

History

On October 10, 1995, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing a Class E airspace area at Byron, CA (60 FR 52638). The development of a GPS SIAP at Byron Airport has made this action necessary.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. Class E airspace designations listed in this document will be published subsequently in this Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes a Class E airspace area at Byron, CA. The development of a GPS SIAP at Byron Airport has made this action necessary. The intended effect of this action is to provide adequate Class E airspace for aircraft executing the GPS RWY 30 SIAP at Byron Airport, Byron, CA.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 10034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP CA E5 Byron, CA [New]

Byron Airport, CA
(Lat. 37°49′40″ N, long. 121°37′27″ W)

That airspace extending upward from 700 feet above the surface within a 4.9-mile radius of Byron Airport.

* * * * *

Issued in Los Angeles, California, on November 21, 1995.

James H. Snow,

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

[FR Doc. 95–29350 Filed 12–4–95; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 455

Regulatory Flexibility Act and Periodic Review of Used Motor Vehicle Trade Regulation Rule

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Commission announces that its review of the Used Car Rule (the ''Rule''), which was conducted pursuant to the Regulatory Flexibility Act (''RFA''), and the Commission's review program, has been completed. Having considered all of the issues raised during the comment period, the Commission is now issuing non-substantive amendments to the Rule. The Commission is making several minor grammatical changes to the Spanish language version of the Buyers Guide. Further, the Commission is amending the Rule to permit dealers to post Buyers Guides anywhere on a used vehicle, instead of requiring that they be posted on a side window, provided the Buyers Guide is conspicuously and prominently displayed and both sides can be easily read. Finally, the Commission is amending the Rule to allow dealers the option of obtaining a consumer's signature on the Buyers Guide, if accompanied by a disclosure that the buyer is acknowledging receipt of the Buyers Guide at the close of the sale.

DATES: The effective date of these non-substantive amendments will be January 4, 1996.

ADDRESSES: Requests for copies of the regulations and the notice of final, non-substantive amendments should be sent to Public Reference Branch, Room 130, Federal Trade Commission, 6th and Pennsylvania Ave., NW, Washington D.C. 20580.

FOR FURTHER INFORMATION CONTACT: George Brent Mickum IV, Attorney, Federal Trade Commission, Division of Enforcement, Bureau of Consumer Protection, Washington, D.C. 20580, (202) 326–3132.

SUPPLEMENTARY INFORMATION:

I. Introduction

On May 6, 1994, the Commission, in accordance with the RFA's requirements, and its own program to review all its rules and guidelines periodically, published a Notice in the Federal Register soliciting comments on the Rule.[1] The Notice solicited comments about the impact of the Rule generally, and whether it had had a significant economic impact on small entities,[2] and, if so, whether the Rule should be amended to minimize any such impact. The Notice also sought comment on certain proposed changes to the Rule.

The Commission received 26 comments in response to the Notice.[3] These comments came from eight used car dealers;[4] four Attorneys General;[5] four consumer protection groups;[6] three trade associations;[7] one state government;[8] one radio station;[9] one national distributor of Buyers Guides;[10] one CPA firm that represents used car dealers;[11] and one consumer.[12]

II. The Regulation

The Commission promulgated the Used Car Rule under the authority of the Federal Trade Commission Act, 15 U.S.C. 41 *et seq.* (''FTC Act''), and the Magnuson Moss Warranty Act, 15 U.S.C. 2309, on November 19, 1984. 49 FR 45692 (1984). The Rule became effective on May 9, 1985.[13] A violation of the Rule constitutes an unfair or deceptive act or practice under the FTC Act, and one who violates the Rule is subject to civil penalties of up to $10,000 per violation.

The Used Car Rule is primarily intended to prevent and to discourage oral misrepresentations and unfair omissions of material facts by used car dealers concerning warranty coverage. The Rule provides a uniform method for written disclosure of warranty information on a window sticker called the ''Buyers Guide.'' The Rule requires sellers to disclose on the Buyers Guide the basic terms and conditions of any warranty offered in connection with the sale of a used car, including the duration of coverage, the percentage of total repair costs to be paid by the dealer, and the exact systems covered by the warranty.

The Rule also requires certain other disclosures, including: a suggestion that consumers ask the dealer if a pre-purchase inspection is permitted; a warning against reliance on spoken promises that are not confirmed in writing; and a list of fourteen major systems of an automobile and the major problems that may occur in these systems. The Rule also provides that the Buyers Guide disclosures are incorporated by reference into the sales contract and govern in the event of an inconsistency between the Buyers Guides and the sales contract.

The public comments on the questions asked in the Notice and the additional information gathered during the reviews are discussed below.

III. Non-Substantive Amendments to Spanish Language Version of the Buyers Guide

In the Notice, the Commission proposed two non-substantive amendments to the Rule involving the

[1] 59 FR 23647 (May 6, 1994) (''the Notice'').

[2] For the purpose of the RFA review, a ''small entity'' is a used motor vehicle dealer with less than $11.5 million in annual sales, as defined by the Small Business Size Standards, 13 CFR 121.601.

[3] The comments were placed on the public record under category 23 (Regulatory Flexibility Act Review Comments) of Public Record Docket No. P944202. References to the comments are made by means of the author and number of the comment and, when appropriate, the page of the comment. Two of the comments were consumer complaints that were inadvertently classified as comments. Although some comments were submitted shortly after the closing date of July 6, 1994, the Commission has included them in its analysis.

[4] Chuck Gould, J.O.A. Motors Ltd., B–03; Anonymous South Carolina dealer, B–04; Karl Kroeger, K&K Auto Sales, Inc., B–05; F. Whalen, B–06; Kenny Loveless, Northside Auto Sales, B–09; Mike Zibura, B–10; Lee S. Maas, Sun-West Audi, B–18; Duane H. Wallace, Town & Country Chevrolet Oldsmobile Inc., B–26.

[5] Alaska Attorney General, Bruce M. Botelho, B–01; Illinois Attorney General, Roland W. Burris, B–08; Iowa Attorney General, William L. Brauch, Assistant Attorney General, B–15; Washington Attorney General, Christine O. Gregoire, B–17.

[6] National Coalition for Consumer Education (''NCCE''), Carol Glade, Executive Director, B–12; Office of Consumer Credit Commissioner, Richard R. Woodward, Examiner, B–16; National Consumer Law Center (''NCLC''), B–23; National Association of Consumer Agency Administrators (''NACAA''), Lawrence A. Breeden, President, B–25.

[7] The National Independent Automobile Dealers Association (''NIADA''), B–07; the Texas Automobile Dealers Association (''TADA''), B–11; the National Automobile Dealers Association (''NADA''), B–19.

[8] Michigan Department of State, Jeff Villaire, Director, Dealer Division, Bureau of Automotive Regulation, B–14.

[9] WBBM Newsradio 78, Naomi Hood, Director, B–13.

[10] Reynolds & Reynolds, Joe Hurr, Director, Automotive Forms Marketing, B–20.

[11] Hundman & Woodward, Carl Woodward, C.P.A., B–21.

[12] Jay R. Drick, Esq., B–25. As indicated earlier, two of the comments were consumer complaints that were misclassified as comments. Warren and Irma Muncey, B–02; Sam A. Amato, B–22.

[13] Two states, Wisconsin and Maine, subsequently petitioned the Commission and received exemptions pursuant to section 455.6 of the Rule.

Spanish language version of the Buyers Guide, Section 455.5 of the Rule. The Commission received three comments favoring the changes and none in opposition.[14] The Commission has thus determined to adopt the proposed amendments.[15] The first change is grammatical: the ''As Is'' (''Como Esta-Sin Garantia'') section of the Buyers Guide reads ''El vendedor no asume ninguna responsabilidad por cualquier *las reparaciones* * * *'' (emphasis added). This language is amended to read: ''El vendedor no asume ninguna responsabilidad por cualquier reparacion * * *'' The second change appears in the ''Warranty'' (''Garantia'') section of the Buyers Guide. The word ''vendedo'' in the second full sentence is amended to ''vendedor.'' Consequently, the sentence is also amended to read ''Pida al *vendedor* una copia del documento * * *.''

IV. Responses to the Federal Register Notice

Question One

Is there a continuing need for the Rule?

a. What benefits has the Rule provided to purchasers of the products or services affected by the Rule?

b. Has the Rule imposed costs on purchasers?

i. *Summary of Comments.* The comments from the eight dealers and the CPA firm (its clients are dealers) all favored rescinding the Rule. They stated that the Rule places an enormous burden on small businesses. Generally, these dealer comments [16] and the CPA firm [17] contended that the consumer benefit derived from the Rule was not justified by the cost of displaying the form, and that consumers pay no attention to the Buyers Guide. None of these comments provided any specific information in support of their contentions.

All of the other comments, including those from dealer trade associations, stated that the Rule is beneficial and that there is a continuing need for the Rule. Both NADA and NIADA reported that the Rule has helped avoid confusion regarding warranty coverage, and that the Buyers Guide is beneficial to both customers and dealers. Both NADA and NIADA stated that the costs associated with the Rule seem to be reasonable.[18]

NCCE noted that because young people and consumers with limited resources are the major purchasers of used cars, objective, reliable, point-of-sale information is essential to an effective consumer decision. The comment stated that the FTC Used Car Rule provides information to consumers that assists them in making a wise and well informed decision, stimulates comparison shopping, and stimulates the competitive spirit of our free enterprise system.[19] Michigan's Department of State noted that the longer the Rule is in place, the more the public becomes aware of issues regarding warranty coverage and extended service agreements.[20] NCLC and NACAA noted that the Rule allows consumers an opportunity to see what warranty protection is available and to compare warranty coverage among vehicles and dealers.[21] The Iowa Attorney General noted that because motor vehicle designs are growing increasingly complex and repairs more expensive, warranty coverage is of increasing importance to motor vehicle purchasers.[22] Consequently, the Rule provides the consumer with valuable information.

ii. *Discussion.* In the original rulemaking, the Commission found that ''many used car dealers mislead consumers into believing that they have broad post-purchase warranty coverage when in fact consumers receive limited or no warranty protection * * *. In many cases dealers make verbal promises to repair defects after sale that are contradicted by final written contract terms * * *.'' [23] The Commission concluded that the ''practices are pervasive and among the chief sources of complaints received by various consumer protection organizations around the country.'' [24]

Although the trade associations asserted that some of the aforementioned problems have abated, other comments suggested that some of these problems continue to occur. Used car complaints continue to be among the most frequent type of complaints received by consumer protection groups across the country,[25] and the majority of these organizations suggested amending the Rule in ways they contend would provide even more protection to consumers.

No evidence was adduced during this review that contravenes the Commission's 1984 findings, and no persuasive reasons were advanced in the comments that would suggest that reconsideration is appropriate. The dealer comments favoring repeal of the Rule because it is burdensome are conclusory and contradicted by other comments. For example, Reynolds & Reynolds, a publisher of Buyers Guides, noted that the average cost of a Buyers Guide is 7.6 cents. It also noted that because the compliance costs are so small they are usually absorbed and rarely passed on to the purchaser.[26] Accordingly, because the Rule is achieving its objectives and is cost effective, the Commission is retaining the Rule.

Question Two

What changes, if any, should be made to the Rule to increase the benefits of the Rule to purchasers?

a. How would these changes affect the costs the Rule imposes on firms subject to its requirements?

The comments responding to this question are discussed category-by-category below.

A. Disclosing Defects

i. *Summary of Comments.* Many comments suggested general changes to the Rule to increase its effectiveness for consumers. Six comments recommended that the Rule require dealers to make written disclosure of known defects in all ''As-Is'' sales.[27] Texas's Consumer Credit Commissioner suggested amending the Rule to inform consumers that ''As-Is'' does not mean dealers can sell vehicles with material defects.[28]

ii. *Discussion.* In the original rulemaking, after carefully considering the issue, the Commission decided not to require disclosure of known defects because it ''concluded that the known

[14] NIADA, B–7 at 1; TADA, B–11 at 3; NACAA, B–24 at 3.

[15] Dealers may use up existing stocks of the current version of the Spanish Buyers Guide.

[16] B–05 at 1; B–06 at 1; B–09 at 1; B–18 at 1; B–26 at 1.

[17] B–21. Henceforward, all references to the dealer comments will include this comment.

[18] See, *e.g.*, NIADA Comment, B–7 at 2.

[19] B–12 at 1. The comment indicates that the Commission's objectives in promulgating the Rule have, in large part, been achieved.

[20] B–14 at 1.

[21] NCLC, B–23 at 1; NACAA, B–24 at 1–2.

[22] B–15 at 2.

[23] SBP, 49 FR 45692, 45702 (Nov. 19, 1984).

[24] *Id.*

[25] For example, NACAA's comment notes that ''[a]uto sales consistently rank among the most numerous consumer complaints. In surveys of NACAA members conducted in 1992 and 1993, auto sales were in the top five complaint categories. A report issued by the Council of Better Business Bureaus revealed that in 1993 auto sales problems were the fifth most frequent complaint made to BBBs nationwide. NAAG has also released 1993 statistics which list automobiles (including sales and service) as the third largest category of complaints.'' B–24 at 1.

[26] B–20 at 1.

[27] Alaska AG, B–01 at 1–2; Illinois AG, B–08 at 1; WBBM Newsradio, B–13 at 1; Michigan Department of State, B–14 at 1; Office of Consumer Credit Commissioner, B–16 at 1; NACAA, B–24 at 2–3.

[28] B–16 at 1.

defects disclosure requirement will not provide used car buyers with a reliable source of information concerning a car's mechanical condition and that the provision would be exceedingly difficult to enforce.'' [29] The Commission determined that the warranty and ''As-Is'' disclosures—along with the warnings about spoken promises and the pre-purchase inspection notice—are effective remedies for the deceptive practices occurring in the used car industry.[30] No new information was provided in this review on whether provisions requiring disclosure of known defects provide substantial information benefits in practice, nor did the Commission staff's independent review of available information contradict this determination.[31] The only pertinent evidence regarding this issue relates to Wisconsin's experience with its statute.

The SBP indicates that during the original rulemaking the Commission examined Wisconsin's experience with its used car rule, which requires dealers to inspect their cars and to disclose the results of the inspection. This examination revealed that 51% of Wisconsin consumers still ultimately experienced repair problems not identified at the time of purchase.[32]

The Commission was aware of this information when it promulgated the Rule. There is no new evidence indicating that reliable information would be disclosed if such a provision were required or that efficient enforcement would be feasible. Based on the foregoing, the Commission has determined that changing its original position on defect disclosures is unnecessary.

B. Requiring Dealers To Keep Copies of the Buyers Guide and Requiring a Signature Line

i. *Summary of Comments.* Both NACAA and the Iowa Attorney General suggested amending the Rule to require dealers to obtain a consumer signature on the Buyers Guide to ensure receipt of the document, and to retain copies of the signed Buyers Guide.[33] Both contended that enforcement of the Rule would be easier because the absence of a signed Buyers Guide in the dealer's records would create the inference that no Buyers Guide was provided. Further, the dealer copy would be evidence of the warranty disclosures that were made. On the other hand, NCLC suggested that some dealers already have consumers sign the back of the Buyers Guide at the close of the deal in an attempt to cover themselves for failing to post Buyers Guides in vehicles earlier as required by the Rule.[34] NCLC stated that such a requirement could undermine the intent of the Rule because signing a piece of paper, perhaps as part of signing a stack of papers at closing, does not prove that the Buyers Guide was posted on the vehicle, that the Buyers Guide was given to the consumer at an appropriate time, or that the buyer was apprised of the warranty terms.

ii. *Discussion.* In initially approving the form of the Buyers Guide, the Commission determined that ''a uniform method of disclosure will alleviate confusion and possible deception which might result from inconsistent versions of the Buyers Guide.'' SBP at 45709. Consequently, the Rule does not allow dealers to modify the format of the Buyers Guide. In response to dealer requests, however, staff has informed dealers, through informal staff opinion letters, that staff was not likely to recommend enforcement actions against a dealer asking for a consumer's signature on the back of the Buyers Guide.

Allowing a signature to be obtained on the back of the Buyers Guide was permitted to assist dealers who wanted protection against consumer claims that they had failed to provide Buyers Guides, as required by law.[35] From the dealers' perspective, one effective way to document that a Buyers Guide was received by a consumer is to obtain the consumer's signature and keep a copy of the signed Buyers Guide in their files. Thus, there is now considerable incentive for dealers to obtain signatures. Requiring a signature to be obtained appears unnecessarily burdensome.

The Commission also notes that the presence or absence of a signature on a Buyers Guide, by itself, does little to ensure that the Buyers Guide will be posted as required by the Rule. There is no benefit unless dealers also are required to keep signed copies, any omissions thereby demonstrating noncompliance. However, the Commission does not believe the benefits of a mandatory signing requirement along with a recordkeeping provision are likely to justify the costs those requirements would impose.[36]

Dealers, however, may want to obtain signatures and maintain copies of the Buyers Guide in their files. The Commission staff's enforcement advice permits this, but such advice is not necessarily widely known. The Commission, therefore, is amending the Rule to allow an optional signature line on the back of the Buyers Guide. To ensure that the customer's signature is not misused, and to put dealers on notice that obtaining a signature does not satisfy all of the Rule's requirements, the optional signature line is permitted only when accompanied by language in immediate proximity to the line stating: ''I hereby acknowledge receipt of the Buyers Guide at the closing of this sale.'' [37]

C. Scope of the Rule

1. Private Sales

NIADA suggested that the FTC require that everyone display a Buyers Guide in any used motor vehicle that is advertised for sale.[38] This issue was thoroughly considered during the original rulemaking. As noted in the SBP, private parties generally do not offer warranties, and therefore, at least as to this issue, it is unlikely that there would be any misunderstandings. Also,

[29] *Id.* at 45712.

[30] *Id.*

[31] For example, a literature search for economic research on ''defects disclosures'' turned up two titles, one an FTC working paper, the other a dissertation from a student at the University of Wisconsin. The two studies both use data from the 1970's (pre-Used Car Rule SBP) and neither finds a beneficial effect of the disclosures on the used car market.

[32] During the rulemaking, the Commission considered the results of a study conducted in Wisconsin, involving surveys of both dealers and consumers. See, *e.g.*, SBP at 45712.

[33] B–24 at 3; B–15 at 3–4.

[34] B–23 at 8–9.

[35] Although some dealers only give consumers the Buyers Guide at closing and do not post, Commission investigations reveal that some consumers claim that they were not provided with a copy of the Buyers Guide, when, in fact, they were.

[36] The issue of requiring dealers to maintain copies of the Buyers Guide was considered in the original proceeding. In an effort to minimize the Rule's recordkeeping requirements, the Commission decided not to require dealers to maintain copies. The primary thrust of the Rule was to provide pre-sale information about warranty coverage and to ensure that a copy of the Buyers Guide was given to the purchaser. The Commission concluded the Rule would achieve these results without a recordkeeping requirement. Dealers, of course, are free to maintain whatever records they believe are appropriate, and many in fact do keep copies. Further, recent legislation amending the Paperwork Reduction Act requires agencies to attempt to reduce the paperwork burden associated with their regulations. Adding a recordkeeping requirement would constitute a new paperwork burden.

[37] Dealers are advised that the customer's signature will be viewed merely as an acknowledgement that the customer has received the Buyers Guide, which is only one of a dealer's duties under the Rule. The dealer is still responsible for ensuring that posting occurs when a vehicle is offered for sale. Further, the dealer has the responsibility to ensure that any warranty terms that the dealer and the buyer negotiate are reflected on the Buyers Guide, as required by section 455.3(a) of the Rule. This is a non-substantive amendment that does not require Magnuson-Moss rulemaking procedures, as specified in section 18 of the FTC Act, 15 U.S.C. 57a.

[38] B–7 at 3.

enforcing the Rule in private sales would not be cost effective. NIADA offered no data that would contradict the findings in the SBP. Thus, the Commission has determined that a proceeding to amend the Rule to include private sales under the Rule is unnecessary.

2. Demonstrators

i. *Summary of Comments.* NADA suggested that Buyers Guides not be required on ''demonstrator'' vehicles, because such vehicles also are required to have a new car Monroney Label that cannot be removed until after the vehicle is sold at retail.[39] The purpose of the Monroney label is to provide consumers with the manufacturers' suggested retail price for the vehicle, and a list of the optional equipment that comes with the vehicle. NADA believes that the Buyers Guide, when combined with the Monroney Label, confuses customers without providing additional useful information. It stated that all demonstrators are covered by factory new vehicle warranties, and manufacturers require dealers to review the warranty coverage of new vehicles with the customer at the time of delivery.[40]

ii. *Discussion.* ''Demonstrator'' vehicles are considered ''used'' under the Rule because they have been driven for purposes other than test driving or moving.[41] However, for purposes of the Monroney Act they are ''new'' because they have not been titled.[42] In promulgating the Used Car Rule, the Commission expressly rejected defining whether a vehicle is new by virtue of titling laws.[43] The Commission determined that the definition of a used vehicle should be consistent with the Commission's decision in *Peacock Buick, Inc.*[44] The *Peacock* order prohibits the defendants from ''[r]epresenting * * * that any vehicle is new when it has been used in any manner, other than the limited use necessary in moving or road testing a vehicle prior to delivery of such vehicle to the customer.''[45]

Further, the rulemaking record reflected that used cars sold as demonstrators were subject to dealer oral misrepresentations. Thus, there was substantial justification on the record for including demonstrators within the scope of the Rule.[46] Consequently, the Commission defined a ''used vehicle'' as ''any vehicle driven more than the limited use necessary in moving or road testing a new vehicle prior to delivery. * * *''[47] In adopting this definition, the Commission was aware that the term would cover demonstrators, and that the definition was broader than the definition employed in some states, which rely on titling to determine whether a vehicle is used. Because of the Commission's prior consideration of this issue and the fact that the Monroney Label does not serve the purposes the Buyers Guide was designed to address, the Commission has determined that amending the Rule's coverage of demonstrators is unnecessary.

3. Salvage Vehicles

Iowa's Attorney General suggested that the Commission amend the Rule to cover sales of vehicles on salvage or equivalent certificates of title.[48] The Rule excludes from the definition of a ''used vehicle'' ''any vehicle *sold only for scrap or parts (title documents surrendered to the State and a salvage certificate issued).*''[49] Addressing this issue in the SBP, the Commission stated:

> Insofar as a vehicle is sold for its parts and not as an operating vehicle, there appears to be no need to provide consumers with the kind of information customarily used to evaluate an automobile as a means of personal transportation. Accordingly, the definition of ''used vehicle'' specifically excludes those cars sold only for salvage.[50]

Although the Iowa AG's comment does not discuss the reasons why the Rule should be extended to include salvaged vehicles, the Commission is aware that the sale of salvaged vehicles is viewed as a problem in some parts of the country. This occurs because unscrupulous individuals take advantage of state laws that do not require titling documents to show that a vehicle has been rebuilt from salvaged vehicles. These individuals obtain salvaged vehicles, restore them, and then transport them to a state that does not require the title to show that a vehicle has been salvaged. There, a clean title with no reference to the fact that a vehicle has been salvaged is obtained. The vehicle may then be taken to any state, even a state that requires a salvage disclosure, and be retitled and sold as a used vehicle without disclosing that it was a salvaged vehicle.

The Used Car Rule, however, only addresses warranty coverage, not the source of car parts, which is the underlying issue with vehicles rebuilt from salvaged parts. Even if the Rule were amended to require Buyers Guides for such vehicles, consumers still would not have information about the vehicle's history. Further, because the vehicle could be sold ''As-Is'' or with a limited warranty of short duration, a Buyers Guide is unlikely to provide the desired protection for individuals purchasing vehicles rebuilt from salvaged parts.

This problem is best addressed by the states or by federal legislation,[51] and not by an amendment to the Rule. To the extent that consumers want or need to know that the vehicle they are purchasing is constructed from a salvaged vehicle or vehicles, the more appropriate and effective remedy would be uniform laws regarding the way salvage vehicles are required to be titled. For these reasons, the Commission has determined that it is unnecessary to amend the Buyers Guide to indicate that a vehicle has been salvaged.

4. Leased Vehicles

NCLC suggested that the Rule be amended to cover leased used vehicles.[52] The comment, however, did not provide information indicating the leasing of used vehicles is particularly pervasive or fraught with the same types of problems the Commission found were associated with the sale of used cars. Other than NCLC's suggestion, there is no evidence on the record to suggest a need for the Commission to initiate a proceeding to amend the Rule. The Consumer Leasing Act, among other things, requires lessors to disclose in writing who is responsible for repairs and maintenance on the vehicle and

[39] Under the Monroney Act, 15 U.S.C. 1231–33, new vehicles must display a document (called the Monroney Label) that contains the manufacturer's price, all optional equipment on the vehicle, the location of the dealer to whom the vehicle was shipped, and the Vehicle Identification Number of the car.

[40] B–19 at 2.

[41] See 16 CFR 455.1(d)(2).

[42] 15 U.S.C. 1231(d).

[43] In adopting the Rule, the Commission stated that ''many states, for the purpose of titling laws, identify as 'new' vehicles for which title has not passed to a purchaser despite extensive use of the vehicle as a demonstrator model.'' SBP at 45707.

[44] 86 F.T.C. 1532 (1975).

[45] 86 F.T.C. at 1566.

[46] See SBP at 45707. Demonstrators include dealer-licensed vehicles that can have thousands of miles on them. These vehicles have only the period of new car warranty coverage that remains on the vehicle at the time of purchase, not the full manufacturer warranty that comes with the purchase of a new car. Thus, consumers may wish to negotiate with the dealer for additional warranty coverage.

[47] 16 CFR 455.1(d)(2).

[48] B–15 at 3.

[49] 16 CFR 455.1(d)(2)(emphasis added).

[50] SBP at 45707.

[51] The Final Report of the Motor Vehicle Title, Registration, and Salvage Advisory Committee, submitted by a Presidential Task Force on February 10, 1994, proposes federalizing the definition of a salvage vehicle to prevent the practice of allowing salvage vehicles to be retitled in states that do not require disclosure on the title certificate that a vehicle is a salvaged vehicle.

[52] B–23 at 3.

whether warranties or service contracts are available.[53] Pursuant to that Act, if a warranty is offered the complete terms must be set forth in writing. The Commission's research into the market for used leased vehicles indicates that most used vehicles that are leased come with warranties. Thus, lessors are required to provide the same type of information required by the Used Car Rule (although not via a window sticker format). Accordingly, the Commission has determined that the suggested change is unnecessary.

D. Amend Language That the Buyers Guide Controls in the Event of a Discrepancy

i. *Summary of Comments.* NCLC suggested changing the language in Section 455.3(b) of the Rule, which incorporates the Buyers Guide into the written contract by reference and provides that the Buyers Guide controls in the event of any discrepancy. NCLC stated that the requirement that the Buyers Guide overrides any contrary provisions is too broad and might in some cases have the Buyers Guide override greater protections in the contract.[54] NCLC preferred language saying that if there are contrary provisions in the contract, the provision that offers the greatest warranty protection to the consumer is applicable.[55]

ii. *Discussion.* The purpose of the disclosure in Section 455.3(b) is to provide consumers with protection by allowing information to be considered that might otherwise not be considered under contract law. Specifically,

> By integrating the Buyers Guide within the ''four corners'' of the used car sales contract, the Commission intends that the Buyers Guide become part of the written agreement between buyer and seller, so that, in the event of disputes between buyers and sellers, the information on the Buyers Guide would fall outside the exclusions of the parol evidence rule of contract law.[56]

The NCLC comment envisions a situation where, for example, a written contract offers a warranty but the Buyers Guide is marked ''As-Is'' and then incorporated into the contract, negating or overriding the warranty described in the contract. Because the Rule states that the Buyers Guide controls, the consumer could, theoretically, be without recourse. However, the Commission has never encountered this problem, most likely because the Buyers Guide, if conforming to the Rule, should contain any extra protections set forth in the contract. In fact, the Rule places an affirmative duty on dealers to ensure that the Buyers Guide reflects the actual terms negotiated. Section 455.3(b) of the Rule states that the ''information on the *final* version of the window form is incorporated into the contract * * *'' (emphasis added),[57] and section 455.4 states that ''*[A]ny final warranty terms agreed upon * * * must be identified in the sales contract and summarized on the copy of the Buyers Guide given to the buyer.*'' [58] Accordingly, there will be no conflict where the dealer complies with the Rule. Where the dealer does not, and the Buyers Guide contains the ''As-Is'' statement, there usually will be ample evidence that this was not a ''final'' Buyers Guide reflecting the terms negotiated.[59]

For these reasons, the Commission has determined that action to amend the Rule in this regard is unnecessary.

E. ''AS-IS'' Version of the Buyers Guide May Be Depriving Consumers of Oral or Implied Warranty Rights Under UCC or State Law

i. *Summary of Comments.* NCLC recommended that the Commission clarify use of the word ''warranty,'' as used on the Buyers Guide. The comment notes that, under the UCC, oral express warranties may be given in an individual transaction, notwithstanding that written warranties are not provided.[60] Consequently, NCLC believed that the term ''As-Is No Warranty'' on the Buyers Guide is confusing, because, pursuant to the Rule's definition, the term ''No Warranty'' only means no *written* warranty.[61] Therefore, NCLC contended the ''As-Is No Warranty'' notice on the Buyers Guide could conflict with UCC protections and mislead consumers into believing that any express oral warranty is voided when the dealer provides an ''As-Is No Warranty'' Buyers Guide.[62] Moreover, NCLC contends that a dealer might make oral warranties which are recognized by state law, but later use the ''As-Is No Warranty'' language on the Buyers Guide as evidence that no oral warranties had been offered.

NACAA similarly stated that:

> In many jurisdictions, oral or written representations (other than [those found on] the ''Buyers Guide'') are enforceable. To remedy this conflict, the [R]ule should be changed to say that while dealers may not make any statements or take any actions that would be contrary to the disclosures required in §§ 455.2 and 455.3, the ''Buyers Guide'' may not be used to disclaim any rights that consumers may be able to assert under state or local law* * *.[63]

In addition, NCLC stated that the warranty section of the Buyers Guide should be changed. The comment pointed out that a warranty, as defined in § 455.1(d)(5), is an undertaking in writing to refund, repair, replace, maintain, or take other action with respect to the vehicle.[64] NCLC noted, however, that the form language written on the Guide speaks only in terms of repair. It does not appear to allow any option of refund, replacement, maintenance, or other action. NCLC suggested that the Buyers Guide be changed to reflect that these as well as other remedies are options.[65]

As a corollary to the foregoing discussion, several comments contended that the most frequently used version of the Buyers Guide—having only ''AS-IS-NO WARRANTY'' and ''WARRANTY'' designations—encourages dealers to sell cars without warranties. This version of the Buyers Guide provides dealers with two choices, either to give an express written warranty or to sell the car ''As-Is'' (with no express or implied warranties). An alternate ''Implied Warranties Only'' Buyers Guide is provided for in § 455.2(b)(ii) for use in those states that prohibit ''As-Is'' sales.

---

[53] 15 U.S.C. 1667 *et seq.*; see also 12 CFR 213.

[54] B–23 at 2.

[55] *Id.*

[56] SBP at 45710.

[57] Section 455.3(a) states that the dealer must provide the buyer with a Buyers Guide containing all of the disclosures required by the Rule, ''and reflecting the warranty coverage agreed upon.''

[58] SBP at 45711 (emphasis added).

[59] Other documents generated in used car sales transactions also would be pertinent to a decision whether a Buyers Guide reflects the ''final version'' of the deal negotiated between the buyer and the dealer. For example, the Warranty Disclosure Rule requires that consumers be given written information regarding warranty terms and coverage. It also provides that written warranty terms become ''part of the basis of the bargain between the supplier and the buyer . . .'' 16 CFR section 701.1(c)(2) Thus, if warranty documents are considered part of the contract, and a Buyers Guide indicates that a vehicle was sold ''As-Is,'' the warranty documents would appear to be evidence that the Buyers Guide did not reflect the final deal, and the language in section 455.3(b) of the Rule would not be controlling.

[60] B–23 at 2.

[61] Under the Rule, ''warranty'' means ''any undertaking in writing, in connection with the sale by a dealer of a used vehicle, to refund, repair, replace, maintain or take other action with respect to such used vehicle and provided at no extra charge beyond the price of the used vehicle.'' NCLC noted that the definition is very similar to the one that appears in the Magnuson-Moss Warranty Act, 15 U.S.C. 2301(6)(B). See SBP at 45709 (''These subsections define the terms 'warranty,' 'implied warranty,' and 'service contract' in a manner which conforms to the definitions of those terms in the Magnuson-Moss Warranty Act'').

[62] According to NCLC, the UCC allows dealers to disclaim implied warranties (i.e., sell a vehicle ''As-Is'' and still make statements about the car that create oral express warranties). B–23 at 2.

[63] B–24 at 2.

[64] B–23 at 8–9.

[65] *Id.*

To remedy the problem, NCLC suggested that the Buyers Guide be revised to include an ''Implied Warranties Only'' section on the ''As-Is'' version of the Buyers Guide.[66] If this revision were adopted, the Buyers Guide would give dealers the option of checking one of three boxes: ''As-Is No Warranty,'' ''Implied Warranties Only,'' and ''Warranty.'' The comments contended that most consumers do not know that implied warranties are available as a form of legal redress.[67] If all versions of the Buyers Guide contained an ''Implied Warranties Only'' provision, or at least alerted consumers that implied rights exist, consumers would be on notice that they may be forsaking possible legal redress to which they would otherwise be entitled but for the dealer's decision to sell the vehicle ''As-Is.'' Consumers then might attempt to negotiate a better warranty agreement with the dealer than an ''As-Is'' deal. Also, some dealers might even choose to offer implied warranties rather than use ''As-Is'' sales if they were given an easy choice and did not have to use a special form or make a substitution on the form. If their only choice is ''As-Is'' or an express warranty, NCLC contends, dealers nearly always choose to sell vehicles ''As-Is.''[68]

Washington's Attorney General asserted that the Rule should only allow use of the ''Implied Warranties Only'' version of the Buyers Guide, because, given the choice to sell with a warranty or ''As-Is,'' dealers opt simply to check off the ''As-Is'' provision. The Washington State Attorney General stated that the ''As-Is'' provision may provide an unintended shield for some unscrupulous dealerships that fail to use required procedures for disclaiming implied warranties under Washington contract law. The comment stated that Washington consumers are not generally aware that, under Washington law, their waiver of the implied warranty of merchantability must be knowing and voluntary. Warranty terms or the absence of implied warranties must be the subject of explicit negotiations between the parties (written disclaimers are not enough). The Rule does not disclose preconditions to a valid disclaimer of implied warranties peculiar to Washington State Law.[69]

ii. *Discussion*. The Buyers Guide focuses on written warranties because during the rulemaking the Commission found that oral promises made during used car sales were frequently contradicted by the written documents, and that the parol evidence rule operated to exclude the admissibility of oral promises contradicted by a written contract.[70] In the SBP, the Commission recognized that ''As-Is'' purchases could operate to exclude other contractual rights. The Commission stated that:

> consumers purchasing ''as-is'' but relying on contradictory oral promises are stripped of the protection afforded by either express or implied warranties and, at the same time, have no legal recourse against the dealer because prior or contemporaneous oral statements that contradict final written contract terms are generally not legally binding.[71]

To address this problem, the Commission sought to put consumers on notice that they should be wary of oral promises. Immediately under the words ''Buyers Guide,'' on both forms of the Buyers Guide, is the following language: ''IMPORTANT: SPOKEN PROMISES ARE DIFFICULT TO ENFORCE. ASK THE DEALER TO PUT ALL PROMISES IN WRITING. KEEP THIS FORM.'' In addition, the ''As-Is'' box contains the following statement: ''YOU WILL PAY ALL COSTS FOR ANY REPAIRS. The dealer assumes no responsibility for any repairs regardless of any oral statements about the vehicle.'' The warnings on the Buyers Guide and its admonition to put all promises in writing help consumers by giving them information they can use to ensure they have enforceable rights. Thus, the changes suggested by NCLC (e.g., to revise the ''As-Is No Warranty'' title to ''As-Is No Written Warranty'') are not necessary. Such changes could lead to more uncertainty and disputes about warranty coverage. The Commission continues to advise that consumers get any promises in writing, rather than trying to prove later that a dealer orally promised to make repairs.

NCLC also suggested that the Buyers Guide be revised to reflect that options other than repair are available. However, repair is the most common remedy offered by dealers. Dealers, of course, are free to offer other options on the Buyers Guide, if they choose. Further, the Buyers Guide does not take the place of the warranty documents that dealers must provide pursuant to rule 701. The Buyers Guide refers to these documents in the ''Warranty'' box on the Buyers Guide: ''ASK THE DEALER FOR A COPY OF THE WARRANTY DOCUMENT FOR A FULL EXPLANATION OF WARRANTY COVERAGE, EXCLUSIONS, AND THE DEALER'S REPAIR OBLIGATIONS.''

NCLC also suggested reformatting the Buyers Guide to include ''As-Is,'' ''Implied Warranties Only,'' and ''Warranty'' sections on the same Buyers Guide. The purpose would be to increase consumer awareness of implied warranty rights and the likelihood that implied warranty rights could be negotiated. There is no evidence that suggests, however, that including ''Implied Warranties Only'' as a third option on the Buyers Guide would encourage consumers to negotiate for warranty coverage more than they presently do, as NCLC suggests. Nor is there any evidence that supports the assertion that dealers would choose this option over the ''As-Is'' option if it were displayed on the Buyers Guide.

Comments such as the Washington Attorney General's indicated a desire to alert consumers that implied warranties exist. Others suggested adding language that categorically states that implied warranties are unavailable in ''As-Is'' sales.[72] The ''Warranty'' section of the Buyers Guide contains the following language: ''UNDER STATE LAW, 'IMPLIED WARRANTIES' MAY GIVE YOU EVEN MORE RIGHTS.'' The existing language alerts consumers that the other option to an ''As-Is'' sale is one with a warranty, and that, along with an express warranty, the buyer may receive even more rights (implied warranties) under state law. Similarly, amending the ''As-Is'' portion of the Buyers Guide to state that implied warranties are never available in an ''As-Is'' transaction would likely create confusion in states such as Washington, where implied warranties must be knowingly waived.[73] Further, such language would misstate the law when a service contract is sold with a vehicle.[74]

Although some consumers are not aware that implied warranties are available under state laws, many states permit ''As-Is'' sales and do not require disclosures or preconditions to such sales. The problem presented by the

[66] NCLC also suggested amending the ''As-Is'' box on the Buyers Guide to include language that made clear that an ''As-Is'' sale precludes implied warranties. B–23 at 5.

[67] An implied warranty of fitness indicates that a car ''is reasonably fit for and adapted to the purposes for which it was purchased, i.e., a vehicle that will carry a driver and passenger with reasonable safety, efficiency and comfort.'' *Berg* v. *Stromme*, 79 Wn.2d 184, 195, 484 P.2d 380 (1971). The *Berg* court uses the word fitness interchangeably with merchantability.

[68] B–23 at 8.

[69] B–17 at 2.

[70] *See* UCC 2–202.

[71] SBP at 45698 (footnote omitted).

[72] NCLC, B–27 at 5.

[73] See also discussion relating to Part IV, Question 5, infra.

[74] The Buyers Guide states: ''IF YOU BUY A SERVICE CONTRACT WITHIN 90 DAYS OF THE TIME OF SALE, STATE LAW 'IMPLIED WARRANTIES' MAY GIVE YOU ADDITIONAL RIGHTS.''

Washington Attorney General is somewhat unique insofar as it pertains to implied warranties, and might be addressed more effectively under state law. For the foregoing reasons, the Commission has determined to take no action on the suggested change.

F. Private Right of Action

i. *Summary of Comments.* NCLC and Jay Drick suggested that the Commission create a private right of action for violation of the Rule.[75] NCLC noted that currently, a consumer has a cause of action for violations of the Magnuson-Moss Warranty Act, but no equivalent cause of action for violations of the Rule.[76] These comments suggested that the Rule state that a violation of the Rule is a violation of the Magnuson-Moss Act, which affords a private legal remedy in both state and federal courts. NCLC stated that, if necessary, the language of the Magnuson-Moss Warranty Act could be amended to make this clear. According to these comments, a private right of action for violation of the Rule would increase dealers' accountability for violating the Rule.[77]

ii. *Discussion.* The actual value of a private cause of action for buyers against dealers for violating the Used Car Rule is unclear. It would be difficult for consumers to prove and quantify the injury or damages sustained as a consequence of a Rule violation for failing to post a Buyers Guide or for some other violation of the Rule.[78] In enforcing compliance with the Rule, the Commission has relied on injunctions and civil penalties to stop violations and provide deterrence.

Even if a private right of action would be useful, the Commission has no apparent authority to create one. There is no private right of action for violation of any FTC rule promulgated under the Magnuson-Moss Act. In addition, federal courts consistently have held that there is no private remedy under the FTC Act.[79]

For the foregoing reasons, the Commission is taking no action on the recommendation.

Questions Three, Four, Seven, Eight, Nine, and Eleven

Questions 3, 4, 7, 8, and 9 all deal generally with the costs and burdens that may be associated with the Rule. Consequently, they are addressed together to avoid repetition. Question 11 is also included in this section because it deals with the number of small firms that are affected by the Rule.

Question Three

What significant burdens or costs, including costs of compliance, has the Rule imposed on firms subject to its requirements?

a. Has the Rule provided benefits to such firms?

Question Four

What changes, if any, should be made to the Rule to reduce the burdens or costs imposed on firms subject to its requirements?

a. How would these changes affect the benefits provided by the Rule?

Question Seven

What significant burdens or costs, including costs of compliance, has the Rule imposed on small firms subject to its requirements?

a. How do these burdens or costs differ from those imposed on larger firms subject to the Rule's requirements?

Question Eight

To what extent are the burdens or costs that the Rule imposes on small firms similar to those that small firms would incur under standard and prudent business practices?

Question Nine

What changes, if any, should be made to the Rule to reduce the burdens or costs imposed on small firms?

a. How would these changes affect the benefits of the Rule?

b. Would such changes adversely affect the competitive position of larger firms?

Question Eleven

How many used car dealers have under $11.5 million in annual sales?

i. *Summary of Comments.* No comment furnished any information about how many dealers have sales under $11.5 million, which is how a small used motor vehicle dealer is defined by the Small Business Administration. Based on the Commission's experience in conducting inspections and investigations, the Commission believes that the overwhelming majority of independent used car dealers have annual sales under $11.5 million, and thus are small entities for purposes of the RFA analysis. Franchised dealers that sell used cars, in contrast, are likely to have annual sales in excess of $11.5 million, but their sales figures would include new car as well as used car sales.

Only a few comments addressed whether changes to the Rule—short of rescinding the Rule altogether[80]—would reduce the costs imposed on small and large firms. TADA contended that requiring a Spanish Buyers Guide to be posted on every used vehicle in addition to the English Buyers Guide, where sales are conducted in Spanish, is burdensome to dealers, and it therefore recommended that dealers be permitted to provide a Spanish Buyers Guide to the consumer only when the transaction is being consummated.[81] NIADA suggested that the burdens related to compliance are greater for small dealerships because larger dealerships have more personnel to assist in the preparation and processing of paperwork related to car sales.[82]

[75] B–23 at 1–2, B–25 at 1 (a consumer and attorney).

[76] B–23 at 1.

[77] B–23 at 1–2, B–25 at 1. Mr. Drick contends the rule should allow for enforcement by private attorneys in state courts. B–25 at 1.

[78] Consumers who have disputes with dealers about warranties generally already have recourse to the courts to resolve their disputes, and such disputes normally will involve resolving who should be responsible for making repairs. For example, section 110(d) of the Warranty Act allows consumers to bring suits on their own behalf for a warrantor's failure to honor warranties or service contracts, or to comply with any other obligation under the Act. Under the law, actions generally will be brought in state courts. If a complaint alleges at least $50,000 in damages the action may be filed in federal court.

[79] The Circuit Court for the District of Columbia, in *Holloway* v. *Bristol-Myers Corp.*, 485 F.2d 986, 988–89 (D.C. Cir. 1973), and other federal courts have held there is no implied private right of action under the FTC's franchise disclosure rules. In *Freedman* v. *Meldy's Inc.*, 587 F. Supp. 658, 662 (E.D. Pa. 1984)., the court reached its decision despite the FTC's contention that the courts should recognize private rights of action under the Franchise Rule. Citing Justice Rehnquist's opinion in *Cannon* v. *University of Chicago*, 441 U.S. 677, 718 (1978), the *Freedman* court stated: ''Congress may, if it wishes, give effect to the apparent desire of the FTC that private rights of action be afforded litigants under 16 CFR §§ 436.1–438.10. The FTC may express, as it has, its opinion that private rights of action should be provided, but the Commission's opinion cannot supplement or supply the requisite Congressional intent.'' 587 F. Supp. at 662.

[80] For example, two comments from independent dealers contended that the Rule and the posting requirement place an unnecessary burden on dealers. They stated the Rule creates extra, and unneeded, steps in processing a vehicle sale transaction. No quantification for the assertion was provided, however. B–03 at 1, B–26 at 1. One of the dealers also noted that virtually every car in his area is sold ''As-Is'' and that most consumers in the area are aware of the practice. Instead of posting Buyers Guides, he suggested posting one large sign on the lot stating: ''Unless a specific warranty is provided in writing, all used vehicles for sale at this dealership are sold As-Is; the buyer will pay all costs for any repairs.'' B–03 at 2.

[81] B–11 at 2. TADA asserted that in cities with large Spanish-speaking populations where dealers conduct a large percentage of sales in Spanish, the Rule requires each vehicle to have two Buyers Guides, one in English and another in Spanish.

[82] B–7 at 2. NIADA noted that filling out the Buyers Guide and attaching it to the car is just another part of the logging-in procedure. With

Continued

NADA stated that the Rule is meeting the objectives of the law and is not a substantial burden on small dealers.[83] Iowa's Attorney General noted that the costs associated with Rule compliance are minimal and are passed on to the consumer.[84] However, Iowa's comment also stated that larger firms are better able to absorb the costs of compliance. Reynolds & Reynolds noted that the costs of compliance include the costs of the form and the time required to fill them out properly. These costs differ from small firms to large firms because a larger firm most likely can take advantage of volume purchases and afford a computer to print out the form, while a smaller dealer would be more likely to purchase Buyers Guides in smaller quantities and fill them out by hand.[85]

The majority of the comments that responded to these questions, however, contended that the burdens or costs associated with compliance are minimal.[86] For example, Reynolds & Reynolds reported that used car dealers can purchase Buyers Guides for an average cost of 7.6 cents.[87] While Reynolds & Reynolds believes the costs are so minimal that they are not passed along to the consumer, NIADA stated that they are.[88]

Two comments from Attorneys General addressed whether the burdens and costs of the Rule would be similar to those incurred under ordinary and prudent business practice. The Iowa Attorney General noted that the Used Car Rule imposes no costs other than those a prudent dealer would incur regardless of the Rule.[89] The Washington Attorney General stated that the burdens or costs should be similar to those that would be incurred by prudent businesses.[90]

In terms of benefits, Iowa's Attorney General noted that the Rule has undoubtedly benefited both the manufacturers and dealers by fostering competition regarding warranty coverage.[91] The comments generally suggested that the Rule also has eliminated many disputes regarding oral representations made by dealers concerning warranty coverage.[92] For example, Reynolds & Reynolds noted that the Rule removes the question as to whether or not a specific vehicle has a warranty.[93] Compliance with the Rule virtually assures that consumers are aware of available warranty coverage, and therefore consumers are significantly protected against dealer misrepresentations.[94]

ii. *Discussion.* Based on the information obtained in response to the Notice, the Commission has concluded that the costs and burdens associated with Rule compliance are not substantial. Although the costs or burdens of complying with the Rule may be marginally greater on smaller dealers that have fewer employees than larger dealerships, the costs associated with compliance are still quite small. The cost for Buyers Guides averages 7.6 cents per form, and other costs associated with the Rule (i.e., filling out the Buyers Guide and posting them), although not quantified, were represented as minimal and reasonable. At the same time, the comments contended that there are benefits from Rule compliance. Accordingly, the Commission has determined that no changes are needed to reduce the costs of the Rule on small businesses.

Further, although compliance with the Rule may be more burdensome and costly to dealers who frequently conduct sales transactions in Spanish, TADA's proposed solution (elimination of the requirement to post Spanish Buyers Guides) contravenes the Commission's rationale for the posting requirement.[95] Providing a Buyers Guide at the time of sale is insufficient to protect against the unfair and deceptive practices the Rule was designed to deter. By requiring posting, the Rule affords buyers an opportunity to comparison shop. Accordingly, the Commission has decided to take no action.

Question Five

Does the Rule overlap or conflict with other federal, state, or local laws or regulations?

i. *Summary of Comments.* In terms of ''overlap,'' NCLC stated: There really is no overlap with state consumer protection laws (unfair and deceptive acts and practices statutes) because not all states' laws cover all violations of the Used Car Rule. The Used Car Rule itself merely effectuates a claim under a deceptive practices act in some states, by declaring certain conduct to be unfair or deceptive, which may then be prohibited by the state law.[96]

NIADA stated, however, that there may be possible overlap with Texas's Deceptive Trade Practices Act.[97] Iowa's Attorney General noted that the Rule overlaps with the Iowa Consumer Fraud Act, Iowa Code 714.16, to the extent that the Consumer Fraud Act requires that sellers of merchandise not fail to disclose material facts with the intent that others rely on the omission.[98] Although the two overlap, Iowa believed it presents no problem to either the Commission or the State of Iowa in the enforcement of the Rule or the Iowa Consumer Fraud Act.[99]

Alaska's Attorney General believed there is a ''gap'' in the Rule that has been addressed in state court decisions.[100] TADA noted that the Rule's definition of a ''used vehicle'' and the State of Texas's definition cause problems because the Commission's definition of ''used vehicle'' is much broader than that of some states, including Texas.[101] According to TADA this causes confusion and misunderstanding as to when a vehicle is required to display a Buyers Guide.[102]

NACAA stated that the Rule conflicts with some state laws by providing that the language in the Buyers Guide overrides contrary provisions in the contract of sale.[103] The Washington

regard to the differing costs between large and small firms, the trade association noted that both size firms need to fill out a certain number of forms for each vehicle they sell. The larger dealers have more employees to do the job.

[83] B–19 at 1.

[84] B–15 at 6.

[85] B–20 at 2.

[86] See, *e.g.,* B–20 at 1.

[87] B–20 at 1. See also NIADA, B–07 at 2. Buyers Guides may be purchased in packets of 250 for $21.00.

[88] *Id.* NIADA also noted that labor costs are associated with compliance, but did not quantify those costs.

[89] B–15 at 6.

[90] B–17 at 4. But stricter compliance with Washington law on the disclaimer of implied warranties could increase the costs of repair or recision to dealers who market unmerchantable vehicles.

[91] B–15 at 4.

[92] See NIADA Comment, B–7 at 4–5.

[93] B–20 at 1.

[94] B–15 at 4.

[95] The Commission originally considered requiring Buyers Guides to be translated into several dozen languages. However, ''[t]he evidence in the [rulemaking] record indicates that, besides English, Spanish is the language most frequently used during used car sales transaction.'' SBP at 45711 (footnote omitted). Thus, the Rule requires the window form and the content disclosures to be in Spanish, if the sale is conducted in Spanish. Dealers who conduct transactions in both English and Spanish may post both versions of the Buyers Guide.

[96] B–23 at 5.

[97] B–07 at 5.

[98] Warranty coverage on a motor vehicle is considered to be a material fact under Iowa law.

[99] B–15 at 5.

[100] The ''gap'' relates to the Rule's failure to require dealers to disclose known defects. The AG asserts that the common law of most states requires disclosure. See, *e.g., Patton* v. *McHone,* 822 S.W.2d 608 (Tenn. App. 1991). B–01 at 1.

[101] See also discussion at Part IV, Question 2, B, 2–3, *supra,* regarding the difference between the Rule's definition of a ''used vehicle,'' and the state law definitions.

[102] B–11 at 2.

[103] B–24 at 2, citing section 455.3(b) of the Rule. NACAA also contended that the provision may be used by dealers to disclaim promises of greater warranty protection in oral or written form. This

State Attorney General's Office also noted that the Commission's ''As-Is'' version of the Buyers Guide does not accurately reflect Washington contract law on valid disclaimer of implied warranties, thus creating a conflict.[104]

ii. *Discussion.* The comments indicated that to the extent there is any overlap between the Rule and state law, it is generally not a significant problem. The ''conflict'' noted by the Washington Attorney General has been addressed by the Commission staff in correspondence with the Attorney General. As was explained in the staff's letter, the purpose of the posted Buyers Guide is to show consumers what warranty coverage a dealer is offering. The Rule also requires the dealer to provide the buyer with a copy of the Buyers Guide showing the final warranty coverage agreed to. If, under Washington State law, an ''As-Is'' sale has not been properly consummated, the final version of the Buyers Guide should note that the car is being sold with implied warranties.[105] Because the Used Car Rule does not conflict with state consumer protection statutes in any significant way, there is no need for Commission action.

Questions Six and Ten

Since the Rule was issued, what effects, if any, have changes in relevant technology or economic conditions had on the Rule?

How many used vehicles (as defined by Section 455.1(d)(2) of the Rule) are sold annually in the United States?

i. *Summary of Comments.* The number of used cars sold annually is much larger now than when the Rule was promulgated.[106] Based on information NADA submitted, franchised dealerships accounted for nearly 10 million used car sales in 1993 (9,836,800) and NIADA reported another 16 million sales were made by independent dealers. NIADA's information indicated that 25.9 million used vehicles were sold by independent and franchised dealers in 1992.[107] Franchised dealers report that the biggest part of both their profit and their volume is coming from their used, not new, vehicle sales. ''New car dealers sold more used vehicles than new for the first time in 1989, and since then relative used-car volume has grown steadily.'' [108]

NIADA noted that economic conditions within the industry have improved, but was unable to quantify whether the changed conditions have had an impact on the Rule. Other comments noted changes in the relevant technology and/or economic conditions that may have affected the Rule. For example, NCLC noted a significant increase in the leasing of new and used cars in support of its recommendation that Buyers Guides be posted on leased vehicles. NCLC also pointed to the proliferation of computers and copying machines within the industry, concluding this should make it easier for dealers to comply with the Rule.[109] Reynolds & Reynolds noted that many computer systems have the ability to print the form for a dealer, thereby reducing time/energy demands upon dealers to fill out the Buyers Guide.[110] Another comment noted that car manufacturers have done a better job of conveying warranty information and covered systems to dealers.[111]

The Iowa Attorney General noted that since vehicles are more complex than ever, repair costs have increased. The Washington Attorney General noted that both the demand for and price of used vehicles have been driven up because new cars are becoming increasingly expensive.[112] Thus, warranty coverage is more important to consumers than ever before, and the need for the Rule is greater than in the past.[113] Similarly, most of the comments said there was a continuing need for the Rule because of the size of the industry.

ii. *Discussion.* The economic changes in the industry—the growth in used car sales, the increased prices of used cars,[114] and the rising cost of repairs—make warranty coverage an important consideration in a sales transaction. The changes addressed in the comments demonstrate that the reasons for promulgating the Rule continue to exist. At the same time, the comments noted that technological changes have made it easier for dealers to comply with the Rule.

Question Twelve

Should the Rule's requirement that the Buyers Guide be posted in a side window of a used vehicle, as set forth in Section 455.2(a)(1) of the Rule, be modified to allow posting in a different location (for example, in the rear window of a pickup truck or other vehicle without side rear windows), as long as the Buyers Guide is conspicuous and both sides may be readily viewed?

i. *Summary of Comments.* The comments generally supported modifying the Rule as suggested. NADA recommended that the Rule afford some flexibility in the placement of the guide, allowing it to be placed elsewhere than in a side window. NCCE suggested that enforcement focus on the availability and accessibility of the information ''and not on the trivial aspects of the regulation such as location of the information.'' [115]

One consumer protection group noted that if there are no side rear windows, the Buyers Guide should be placed in the front window.[116] One Attorney General supported the modification, noting that the Rule should allow for dealers to post the Buyers Guides in the rear windows of pick-up trucks and other vehicles lacking side rear windows to offer the dealers some flexibility.[117] The Michigan Secretary of State supported the amendment permitting the posting of Buyers Guides in other than the side window as long as the guide is prominently displayed and both sides can be readily viewed by a purchaser.[118] Other comments also supported the proposed modification of the Rule.[119]

ii. *Discussion.* The Commission is amending the Rule to delete the side window posting requirement.[120] Dealers instead will be required to post Buyers Guides prominently and in plain sight anywhere on the vehicle as long as both sides are accessible. This amendment affords dealers greater flexibility in posting Buyers Guides on all vehicles, not just pickup trucks or vehicles without side windows. For example,

issue was addressed in the discussion at Part IV, Question 2, E, *supra* .

[104] B–17 at 3. See also discussion at Part IV, Question 2, E, *supra.*

[105] See staff Opinion Letter to Robert F. Manifold, Division Chief, October 12, 1989.

[106] In the original rulemaking, the Commission noted that in 1979, ''two of every three cars sold in the United States were used. Consumers in that year spent $66.7 billion, including the value of trade-ins in purchasing 18.5 million used cars from all sources.'' SBP at 45695.

[107] B–7, see attachment to comment entitled ''Used Car Sales.'' Other sources indicate that the dollar amount of used car sales covered by the Rule reached $281.5 billion in 1993 and $289.2 billion in 1994. See Used Gold Reference Guide, Chapter 7, p. 3, CNW Marketing Research, Bandon, Oregon, 1994.

[108] *Id.*

[109] B–23 at 5.

[110] B–20 at 2.

[111] *Id.*

[112] B–17 at 3.

[113] B–15 at 5.

[114] According to CNW Marketing Research, the average sales price for a used car sold by a franchised dealer was $11,820, and $6,835 for an independent dealer, in 1994.

[115] B–12 at 2.

[116] B–23 at 6–7.

[117] B–15 at 5.

[118] B–14 at 1.

[119] B–17 at 5, B–19 at 2, B–20 at 2.

[120] Because this amendment does not change the substantive rights afforded by the Rule or significantly affect the obligations of dealers, the Commission has concluded that section 18, 15 U.S.C. 57a, rulemaking proceedings are unnecessary to issue this amendment.

dealers could hang Buyers Guides from the rear view mirror or place them under the windshield wipers or hang them from exterior side view mirrors. These options allow consumers to view the Buyers Guide easily. Putting Buyers Guides in glove boxes or on the floor or in the trunk will not satisfy the requirement that the Buyers Guide be in plain sight and conspicuous.

Question Thirteen

What changes to the format of the Buyers Guide should be considered in order to reduce compliance costs or burdens? Would such changes have any detrimental effect on the benefits provided by the Rule? Is there any empirical or other evidence to support opinions that such changes would or would not have a detrimental effect on benefits?

i. *Summary of Comments.* Some comments recommended that the Buyers Guide should be maintained in its present form.[121] Others stated that the format of the Buyers Guide should be changed, but none provided empirical evidence in support of their assertions. For example, Reynolds & Reynolds suggested allowing the Buyers Guide to be merged with other required forms. It stated that the Buyers Guide could be combined with the state lemon laws and refund rights acts forms. The result would be a form with larger dimensions. While the combined form would be higher priced, the overall cost of complying with the multiple laws would be lowered.[122]

Both NADA and NIADA recommended that the Rule allow some flexibility in the format requirements of the Buyers Guide.[123] Specifically, NIADA suggested that reducing the size requirement of the Buyers Guide to 7″ x 5″ would be useful because it would minimize the window blockage in compact cars and pickup trucks, and thus reduce what it termed a driving safety hazard.[124] NIADA contended that the present Buyers Guide contains much empty space ''that could be eliminated without destroying the eye catching qualities it now has.'' [125] NIADA also suggested putting the dealer's name and address on the front of the Buyers Guide so that the entire form could be easily filled in using an office computer printer. In addition it suggested that the language ''RECEIPT OF ORIGINAL COPY ACKNOWLEDGED'' and a signature line be placed on the front of the Buyers Guide.

NCLC, along with Iowa Attorney General,[126] opposed changing the format of the Buyers Guide, stating:

> It is important to keep the Buyers Guide at its current size and not to make it smaller. It must be prominent in order to be noticed by consumers so that the buyer can negotiate with the dealer over the terms on the Buyers Guide and know exactly what is provided in terms of warranties. Some of the type on the back of the Buyers Guide, indicating systems to check, is already very small.[127]

ii. *Discussion.* The Commission has decided not to modify the present size or format of the Buyers Guide. The only argument for reducing the size of the Buyers Guide is that the current size of the Buyers Guide may present a safety hazard during test drives. It is difficult to imagine that dealers would forego the option of temporarily removing Guides during test drives, if a true safety hazard existed. However, if such a hazard existed, it seems unlikely that reducing the dimensions of the Buyers Guide to 5″ x 7″ would significantly lessen the hazard. The Commission's amendment to allow conspicuous posting anywhere in the vehicle is likely to better address this issue than reducing the size of the Buyers Guide.

The Commission requested empirical evidence to support any proposed modifications to the size or format because, during the original rulemaking proceeding, considerable effort was expended to design a form that communicates information effectively to consumers. To evaluate the effectiveness of the Buyers Guide during the rulemaking, a series of copy comprehension tests were conducted. According to the SBP for the Rule, the results of the copy testing were incorporated into the final design of the Buyers Guide that the Commission adopted in May 1981.[128] Although the copy testing was done on prior versions of the Buyers Guide, which differed from the Buyers Guide now in use, those comprehension tests were relevant to the design of the revised format the Commission adopted in 1984. Based on those tests, certain changes to the Buyers Guide were implemented which carried through to the current version.[129]

Further, the size of the Buyers Guide was the subject of comments filed in response to the Commission's July 31, 1984 Federal Register Notice soliciting comment on a Baseline Study of the Rule and the Commission's tentative decision to adopt a revised rule. For example, NADA requested that the size of the form be reduced from 12 inches high by 7¼ inches wide to 6 x 8 inches. Following its review, the Commission concluded that the format and type size required by the Rule would easily fit onto a 7¼ x 11 sheet. Therefore, to avoid unnecessary costs, the Commission revised the Rule to require a form no smaller than 11 inches high by 7¼ inches wide. The Commission rejected NADA's proposal to reduce the form to the 6 x 8 size because the type sizes required by the Rule would have to be reduced to fit on the smaller sheet, making the Buyers Guide difficult to read. The final Rule the Commission published required a Buyers Guide no smaller than 11 inches high by 7¼ wide.[130]

Under these circumstances, the Commission has determined not to change the format of the Buyers Guide without copy testing or other reliable information showing that a reduced or revised Buyers Guide would be as easy to read and comprehend as the current Buyers Guide. For example, taking out the white space, as NIADA suggests, could reduce the effectiveness of the Buyers Guides. The empty space on the Buyers Guide was planned to make information stand out and to avoid making the form a jumble of information. For the same reasons, the Commission is also rejecting the suggestion that the format of the Buyers Guide be modified to incorporate other required forms.[131]

---

[121] Iowa Attorney General, B–15 at 7.

[122] B–20 at 1. Reynolds & Reynolds suggested that additional information could be printed on the form (i.e., standard warranty coverage) in order to save dealers from having to fill out a new form for each vehicle. There is, however, no prohibition against pre-printing information on the Buyers Guide.

[123] The Rule requires that the Buyers Guide conform to the exact wording, type style, type size, and format specified by the Rule. See Section 455.2(a)(2) of the Rule. Among other things, the Rule specifies that the form must be printed on white stock no less than 11 inches high by 7¼ inches wide. NADA stated that while the Buyers Guide does an adequate job of communicating information to consumers, ''[t]here needs to be more flexibility regarding the size, typeface, additions, etc. to the form.''

[124] B–7 at 3. The Rule provides that Buyers Guides may be removed during test drives. But, some commenters claim that removing Buyers Guides for test drives and re-posting them afterwards is burdensome.

[125] *Id.*

[126] B–15 at 7.

[127] B–23 at 4.

[128] SBP at 45709. The Commission announced the earlier version of the rule in 46 FR 41328 (1981). The 1981 Buyers Guide included information about the condition of major mechanical and safety systems of the car, which the Commission decided to omit in 1984.

[129] For example, based on the testing, the Commission increased the type size of the warning against relying on spoken promises, and prefaced it with the bold-face heading, ''Important.''

[130] 16 CFR 455.2(a)(2).

[131] Recent Commission research also suggests that the consolidation of labels may result in information overload. *See* Report to Congress by the Federal Trade Commission, Study of a Uniform National Label for Devices that Dispense Fuel to Consumers, pp. 27–30 (Oct. 1993).

Further, the Commission is rejecting the suggestion to modify the Buyers Guide to include dealer information and a signature line on the front of the Buyers Guide. NIADA noted that computer pre-printing of the Buyers Guide requires turning the page over in order to print the information. The actual burden of having to turn over the Buyers Guide to pre-print the information is quite small. Further, dealers may use an ink stamp to put this information on the back side. Both of these methods—ink stamp or turning the Buyers Guide over and pre-printing the information—are inexpensive ways of complying with the Rule.[132]

Question Fourteen

What changes to the format of the Buyers Guide should be considered in order to increase its benefits? What effect would such changes have on the costs or burdens imposed by the Rule? Is there any empirical or other evidence to support opinions that such changes would or would not increase costs or burdens?

i. *Summary of Comments.* One consumer suggested that the information be on one side only, and that a signature line be included so that the customer has a chance to read it and know he is entitled to a copy.[133] This consumer also suggested that the Buyers Guide be modified to have check boxes for the selling dealer to disclose whether or not the dealer has attempted to repair any item on the vehicle in any way, and a section for the dealer to list specifically what components or systems were found by the inspection to be in need of repair and yet were not repaired by the dealer, plus their anticipated costs.[134] NACAA noted that the Buyers Guide should be revamped to provide a checklist of symptoms and causes for auto problems, and state more strongly that consumers should have those items independently checked before committing themselves to a used car purchase.[135] Washington's Attorney General suggested that the Buyers Guide note that the Cooling-Off Rule does not apply to used car sales. Reynolds & Reynolds suggested that a customer signature box be added to the form's back to ensure that the purchaser has received warranty information (or the lack thereof) and has acknowledged it.[136]

ii. *Discussion.* The Commission has concluded that adding additional information to the Buyers Guide, such as a warning that the Cooling-Off Rule does not apply, is unnecessary.[137] The format of the present Buyers Guide achieves the Rule's objectives, and thus, for the reasons previously discussed throughout this notice, the Commission is leaving the format of the Buyers Guide essentially unchanged.[138]

V. Regulatory Flexibility Act Review

Based on its review of the record, the Commission has concluded that the Rule has not had ''a significant economic impact on a substantial number of small entities'' affected by the Rule.[139] As previously discussed, the comments indicate that the costs associated with Rule compliance are minimal. The record also suggests that these costs generally would be borne by a reasonably prudent business anyway.

VI. Conclusion

The comments and the Commission's experience indicate that the Rule is working and achieving its objectives, while imposing only minimal costs on used car dealers. For the reasons discussed above, however, the Commission is amending the Spanish Buyers Guide and amending the Rule to permit dealers to post Buyers Guides prominently and in plain view in all used vehicles being offered for sale (rather than on a side window). The Commission also is amending the Rule to permit dealers to put a signature line on the back of the Buyers Guide, if accompanied by a specific disclosure.

List of Subjects in 16 CFR Part 455

Motor vehicles, Trade practices.

Authority: The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (1980).

Text of Amendments

For the reasons set forth in this document, pertinent sections of the Used Car Rule, 16 CFR Part 455, are amended as follows:

PART 455—[AMENDED]

The authority citation for part 455 continues to read as follows:

Authority: 88 Stat. 2189, 5 U.S.C. 2309; 38 Stat. 717 as amended; 15 U.S.C. 41 et seq.

2. Section 455.2(a)(1) is revised to read as follows:

§ 455.2 Consumer sales—window form.

(a) * * *

(1) The Buyers Guide shall be displayed prominently and conspicuously in any location on a vehicle and in such a fashion that both sides are readily readable. You may remove the form temporarily from the vehicle during any test drive, but you must return it as soon as the test drive is over.

* * * * *

3. Further, § 455.2 is amended by adding paragraph (f) to read as follows:

§ 455.2 Consumer sales—window form.

* * * * *

(f) Optional Signature Line. In the space provided for the name of the individual to be contacted in the event of complaints after sale, you may include a signature line for a buyer's signature. If you opt to include a signature line, you must include a disclosure in immediate proximity to the signature line stating: ''I hereby acknowledge receipt of the Buyers Guide at the closing of this sale.'' You may pre-print this language on the form if you choose.

* * * * *

4. Further, the first page of the sample Spanish language Buyers Guide (''GUIA DEL COMPRADOR'') appearing at the end of section 455.5 is revised to read as follows:

§ 455.5 Spanish language sales.

* * * * *

BILLING CODE 6750–01–P

[132] The issue of obtaining consumer signatures was addressed earlier in this notice. See Part IV, Question 2, B, *supra.*

[133] Jay Drick, B–25 at 1–2.

[134] B–25 at 1.

[135] B–24 at 3.

[136] B–20 at 2.

[137] 16 CFR 429. The Cooling-Off Rule does not apply to the sale of vehicles, nor any other goods and services, offered at a seller's place of business. It also does not apply to sales of vehicles at auctions provided that the seller has a permanent place of business.

[138] See discussion at Part IV, Question 2, B, *supra.*

[139] 5 U.S.C. 603–605. The Commission received no information regarding the number of dealerships with annual sales of $11.5 million or less. But, the Commission's experience is that most independent used car dealers have annual sales less than $11.5 million and therefore are small entities for purposes of the RFA.

GUÍA DEL COMPRADOR

28 pt Triumvirate Bold caps

IMPORTANTE: Las promesas verbales son difíciles de hacer cumplir. Solicite al vendedor que ponga todas las promesas por escrito. Conserve este formulario.

2 pt Rule

10/10 Triumvirate Bold c & lc maximum line 38 picas

MARCA DEL VEHÍCULO MODELO AÑO NÚMERO DE IDENTIFICACIÓN

Hairline Rule

6/8 pt Triumvirate Bold caps

NÚMERO DE ABASTO DEL DISTRIBUIDOR (Opcional)

Hairline Rule

6/8 pt Triumvirate Bold caps

GARANTÍAS PARA ESTE VEHÍCULO:

10 pt Triumvirate Bold caps

2 pt Rule

☐ COMO ESTÁ—SIN GARANTÍA

28 pt Box
24 pt Triumvirate Bold c & lc

USTED PAGARÁ TODOS LOS GASTOS DE CUALQUIER REPARACIÓN QUE SEA NECESARIA. El vendedor no asume ninguna responsabilidad por cualquier reparación, sean cuales sean las declaraciones verbales que haya hecho acerca del vehículo.

10/10 Triumvirate Bold c & lc maximum line 38 picas

1 pt Rule

☐ GARANTÍA

28 pt Box
24 pt Triumvirate Bold c & lc

☐ COMPLETA ☐ LIMITADA. El vendedor pagará el ____ % de la mano de obra y el ____ % de los repuestos de los sistemos cubiertos que dejen de funcionar durante el período de garantía. Pida al vendedor una copía del documento de garantía donde se explican detalladamente la cobertura de le garantía, exclusiones y las obligaciones que tiene el vendedor de realizar reparaciones. Conforme a la ley estatal, las "garantías implícitas" pueden darle a usted incluso más derechos.

10/10 Triumvirate Bold c & lc
7½ picas indent
on runovers

SISTEMAS CUBIERTOS POR LA GARANTÍA: **DURACIÓN:**

10/10 Triumvirate Bold caps

10/12 Hairline Rule

CONTRATO DE SERVICIO. Este vehículo tiene disponible un contrato de servicio a un precio adicional. Pida los detalles en cuanto a cobertura, deducible, precio y exclusiones. Si adquiere usted un contrato de servicio dentro de los 90 días del momento de la venta, las 'garantías implícitas' de acuerdo a la ley del estado pueden concederle derechos adicionales.

10/10 Triumvirate Bold c & lc maximum line 38 picas

INSPECCIÓN PREVIA A LA COMPRA: PREGUNTE AL VENDEDOR SI PUEDE USTED TRAER UN MECÁNICO PARA QUE INSPECCIONE EL AUTOMÓVIL O LLEVAR EL AUTOMÓVIL PARA QUE ÉSTE LO INSPECCIONE EN SU TALLER.

10/10 Triumvirate Bold caps maximum line 38 picas

VÉASE EL DORSO DE ESTE FORMULARIO donde se proporciona información adicional importante, incluyendo una lista de algunos de los principales defectos que pueden ocurrir en vehículos usados.

10/10 Triumvirate Bold c & lc maximum line 38 picas

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95–27553 Filed 12–4–95; 8:45 am]

BILLING CODE 6750–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 176

[Docket No. 95F–0016]

Indirect Food Additives: Paper and Paperboard Components

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of silver chloride-coated titanium dioxide as a preservative in polymer latex emulsions used in the coating of food-contact paper and paperboard. This action is in response to a petition filed by Johnson Matthey Chemicals.

DATES: Effective December 5, 1995; written objections and requests for a hearing by January 4, 1996.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of February 13, 1995 (60 FR 8243), FDA announced that a food additive petition (FAP 5B4442) had been filed by Johnson Matthey Chemicals, c/o 1000 Potomac St. NW., Washington, DC 20007. The petition proposed to amend the food additive regulations in § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170) to provide for the safe use of silver chloride-coated titanium dioxide as a preservative in polymer latex emulsions used in the coating of food-contact paper and paperboard.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed use of the additive in paper and paperboard products in contact with food is safe and that the regulations in § 176.170 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

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

Any person who will be adversely affected by this regulation may at any time on or before January 4, 1996, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 176

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 176 is amended as follows:

PART 176—INDIRECT FOOD ADDITIVES: PAPER AND PAPERBOARD COMPONENTS

1. The authority citation for 21 CFR part 176 continues to read as follows:

Authority: Secs. 201, 402, 406, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 346, 348, 379e).

2. Section 176.170 is amended in the table in paragraph (a)(5) by alphabetically adding a new entry under the headings ''List of Substances'' and ''Limitations'' to read as follows:

§ 176.170 Components of paper and paperboard in contact with aqueous and fatty foods.

* * * * *

(a) * * *

(5) * * *

List of Substances	Limitations
* * *	* * * *
Silver chloride-coated titanium dioxide	For use only as a preservative in polymer latex emulsions at a level not to exceed 2.2 parts per million (based on silver ion concentration) in the dry coating.
* * *	* * * *

* * * * *

Dated: November 24, 1995.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 95–29476 Filed 12–04–95; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Parts 182 and 186

[Docket No. 80N–0196]

Japan Wax; Affirmation of GRAS Status as an Indirect Human Food Ingredient

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations to affirm Japan wax as generally recognized as safe (GRAS) as an indirect food ingredient for use as a constituent of cotton and cotton fabrics used in dry food packaging. The safety of this indirect food use of Japan wax has been evaluated under the comprehensive safety review conducted by the agency.

DATES: Effective December 5, 1995.

FOR FURTHER INFORMATION CONTACT: Martha D. Peiperl, Center for Food Safety and Applied Nutrition (HFS–217), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3077.

SUPPLEMENTARY INFORMATION:

In the Federal Register of June 1, 1995 (60 FR 28555), FDA published a proposal to affirm the GRAS status of the use of Japan wax as an indirect human food ingredient migrating to food from cotton and cotton fabrics used in dry food packaging. The proposal was published in accordance with the announced FDA review of the safety of GRAS and prior-sanctioned food ingredients.

In accordance with § 170.35 (21 CFR 170.35), copies of the scientific literature review and the report of the Select Committee on GRAS Substances (the Select Committee) on Japan wax, as well as documents in the possession of FDA and further evidence of the safety of Japan wax obtained by FDA since publication of the Select Committee's report, have been made available for public review in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

The proposal gave interested parties an opportunity to submit comments. FDA received no comments on its proposal. The agency is, therefore, adopting the proposal without any changes.

Environmental Impact

The agency has previously considered the environmental effects of this rule as announced in the proposed rule that published in the Federal Register of June 1, 1995 (60 FR 28555). No new information or comments have been received that would affect the agency's determination that there is no significant impact on the human environment, and that neither an environmental assessment nor an environmental impact statement is required.

Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Regulatory Flexibility Act requires analyzing options for regulatory relief for small businesses.

The agency finds that this rule is not a significant regulatory action as defined by Executive Order 12866. Furthermore, in accordance with the Regulatory Flexibility Act, the agency previously considered the potential effects that this rule would have on small entities, including small businesses, and determined that this rule will have no significant adverse impact on a substantial number of small businesses. FDA has received no new information or comments that would alter its previous determination.

Effective Date

As this rule recognizes an exemption from the food additive definition in the Federal Food, Drug, and Cosmetic Act, and from the approval requirements applicable to food additives, no delay in effective date is required by the Administrative Procedure Act (5 U.S.C. 553(d)). The rule will therefore be effective December 5, 1995 (5 U.S.C. 553(d)(1)).

List of Subjects

21 CFR Part 182

Food ingredients, Food packaging, Spices and flavorings.

21 CFR Part 186

Food ingredients, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR parts 182 and 186 are amended to read as follows:

PART 182—SUBSTANCES GENERALLY RECOGNIZED AS SAFE

1. The authority citation for 21 CFR part 182 continues to read as follows:

Authority: Secs. 201, 402, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 371).

§ 182.70 [Amended]

2. Section 182.70 *Substances migrating from cotton and cotton fabrics used in dry food packaging* is amended by removing the entry for ''Japan wax.''

PART 186—INDIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

3. The authority citation for 21 CFR part 186 continues to read as follows:

Authority: Secs. 201, 402, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 371).

4. New § 186.1555 is added to subpart B to read as follows:

§ 186.1555 Japan wax.

(a) Japan wax (CAS Reg. No. 8001–39–6), also known as Japan tallow or sumac wax, is a pale yellow vegetable tallow, containing glycerides of the C_{19}–C_{23} dibasic acids and a high content of tripalmitin. It is prepared from the mesocarp by hot pressing of immature fruits of the oriental sumac, *Rhus succedanea* (Japan, Taiwan, and Indo-China), *R. vernicifera* (Japan), and *R. trichocarpa* (China, Indo-China, India, and Japan). Japan wax is soluble in hot alcohol, benzene, and naphtha, and insoluble in water and in cold alcohol.

(b) In accordance with paragraph (b)(1) of this section, the ingredient is used as an indirect human food ingredient with no limitation other than current good manufacturing practice. The affirmation of this ingredient as generally recognized as safe (GRAS) as an indirect human food ingredient is based on the following current good manufacturing practice conditions of use:

(1) The ingredient is used as a constituent of cotton and cotton fabrics used for dry food packaging.

(2) The ingredient is used at levels not to exceed current good manufacturing practice.

(c) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

Dated: November 24, 1995.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 95–29478 Filed 12–04–95; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 53 and 301

[TD 8628]

RIN 1545–A077

Political Expenditures by Section 501(c)(3) Organizations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations regarding excise taxes, accelerated tax assessments, and injunctions imposed for certain political expenditures made by organizations that (without regard to any political expenditure) would be described in section 501(c)(3) and exempt from taxation under section 501(a). These regulations reflect changes to the law that were enacted as part of the Revenue Act of 1987.

EFFECTIVE DATE: These regulations are effective December 5, 1995.

FOR FURTHER INFORMATION CONTACT: Cynthia Morton or Paul Accettura, (202) 622–6070 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On December 14, 1994, proposed regulations §§ 53.4955–1, 301.6852–1, and 301.7409–1 under sections 4955, 6852 and 7409 were published in the Federal Register (59 FR 64359). In addition, amendments were made to regulations under other sections in order to reflect the effects of sections 4955, 6852, and 7409. Proposed regulation amendments in §§ 1.6091–2, 53.4963–1, 53.6011–1, 53.6071- 1, 53.6091–1, 301.6211–1, 301.6212–1, 301.6213–1, 301.6861–1, 301.6863–1, 301.6863–2, 301.7422–1, and 301.7611–1 were also published in the Federal Register (59 FR 64359). No public hearing was requested or held. The IRS received two comments on the proposed regulations, only one of which offered substantive suggestions. The IRS and the Treasury Department have considered the public comments on the proposed regulations, and the regulations are adopted as revised by this Treasury decision.

Explanation of Provisions

The regulations provide guidance with respect to sections 4955, 6852 and 7409. The sanctions in these sections apply to all organizations described in section 501(c)(3). Before sections 4955, 6852 and 7409 were enacted in 1987, revocation of recognition of exemption was the sole sanction available against political intervention by public charities. Section 4955 was modeled on the section 4945 excise tax on political expenditures (taxable expenditures) by private foundations, while sections 6852 and 7409 provide new sanctions against flagrant political expenditures and flagrant political intervention, respectively.

One comment on the proposed regulations requested that the regulations define in additional detail the term *political expenditure* and provide specific examples of activities that constitute intervention or participation in a political campaign for or against a candidate. Section 53.4955–1(c)(1) of the proposed regulations provides that any expenditure that would cause an organization that makes the expenditure to be classified as an action organization in accordance with § 1.501(c)(3)–1(c)(3)(iii) is a political expenditure within the meaning of section 4955(d)(1). By referring to the long standing action organization regulations, § 53.4955–1(c)(1) of the proposed regulations ties the definition of *political expenditure* in section 4955 to existing IRS and judicial interpretations of when an organization participates or intervenes in a political campaign on behalf of or in opposition to any candidate for public office in violation of the requirements of section 501(c)(3). The IRS and the Treasury Department believe this direct connection between section 4955 and section 501(c)(3) correctly implements the intent of Congress as expressed in the statute and the legislative history. To the extent that further guidance is needed on the interpretation of the terms political expenditure under section 4955 and intervening in political campaigns under section 501(c)(3), the IRS and the Treasury Department believe such guidance should be given in connection with the requirements for tax exemption under section 501(c)(3). Therefore, the final regulations have not revised § 53.4955–1(c)(1).

Another comment suggested that the regulations specify whether there were circumstances under which conduct would result in the imposition of a tax under section 4955 but not in revocation of exemption under section 501(c)(3). According to the statutory language and the legislative history of section 4955, the addition of that section to the Internal Revenue Code did not affect the substantive standards for tax exemption under section 501(c)(3). To be exempt from income tax as an organization described in section 501(c)(3), an organization may not intervene in any political campaign on behalf of any candidate for public office. Consistent with this requirement, section 4955 does not permit a de minimis amount of political intervention. Therefore, the final regulations have not been revised. However, there may be individual cases where, based on the facts and circumstances such as the nature of the political intervention and the measures that have been taken by the organization to prevent a recurrence, the IRS may exercise its discretion to impose a tax under section 4955 but not to seek revocation of the organization's tax-exempt status.

One comment raised questions about the interpretation of section 4955(d)(2), which relates to organizations formed primarily to promote the candidacy of a particular individual. The comment requested clarification of the standard for determining whether an organization ''is formed primarily for purposes of promoting the candidacy (or prospective candidacy) of an individual for public office'' under section 4955(d)(2). The comment also requested clarification of the meaning of the phrase ''availed of'' in the section 4955(d)(2) reference to organizations availed of primarily to promote an individual's candidacy for public office. The comment further requested examples of expenses which have the primary effect of promoting public recognition or otherwise primarily accruing to the benefit of a candidate or a prospective candidate.

The legislative history of section 4955 provides that the determination of whether an organization's primary purpose is the promotion of the candidacy or prospective candidacy of an individual for public office is based on all relevant facts and circumstances. The proposed regulations follow the legislative history. The IRS and the Treasury Department believe that, if more detailed guidance is necessary, it would be more appropriate to provide it in a form that allows for the consideration of a fuller range of facts and circumstances. Therefore, the final regulations have not been revised.

The comment also asked whether section 4955(d)(2) adds anything to the

range of activities that would already be deemed political expenditures under section 4955(d)(1). The plain language of the statute makes it clear that the expenditures described in section 4955(d)(2) are included within the general category of political expenditures that is described in section 4955(d)(1). Furthermore, the legislative history states that section 4955(d)(2) ''enumerates certain expenditures as political expenditures for purposes of the excise tax * * *.'' The IRS and the Treasury Department believe that organizations described in section 4955(d)(2) are subject to the same restrictions on political expenditures as all other section 501(c)(3) organizations. Therefore, the final regulations have not been revised.

One comment concluded that § 53.4955–1(b) of the proposed regulations, affecting organization managers under section 4955, imposed tax on a larger group of employees and officers than are subject to tax under chapter 42 because the section did not include language contained in § 53.4946–1(f)(1)(ii) and in § 53.4946–1(f)(2). The IRS and the Treasury Department agree that the definition of foundation manager under section 4946(b) should be incorporated into the definition of organization manager when applying section 4955(f)(2). Therefore, we have clarified the final regulations to make them consistent with the interpretation in § 53.4946–1(f)(1)(ii) and in § 53.4946–1(f)(2) by adding a sentence at the end of § 53.4955–1(b)(2)(ii)(B) and at the end of § 53.4955–1(b)(2)(iii).

One comment noted that § 53.4955–1(b)(7) of the proposed regulations provides that, in certain circumstances, if an organization manager relies on a reasoned legal opinion from legal counsel, the act of the organization manager will not be considered knowing or willful and will be considered due to reasonable cause for purposes of section 4955(a)(2). The commentator requested consideration of whether the same reasoned legal opinion would protect the organization from tax under section 4955(a)(1). Section 53.4955–1(b)(7) interprets whether an act is not willful and is due to reasonable cause for purposes of section 4955(a)(2). Unlike section 4955(a)(2), section 4955(a)(1) taxes an organization without regard to whether its act of making a political expenditure was willful or due to reasonable cause. Therefore, the final regulations have not been revised. A reasoned legal opinion from legal counsel received by the organization prior to making a political expenditure may be a factor that the IRS takes into account in determining what action to take in an individual case. Section 53.4955–1 (d) and (e) of the final regulations are also relevant where an organization has corrected a political expenditure that was not willful and flagrant.

One comment requested that the regulations provide more detail on the type of behavior that would be considered flagrant under sections 6852 and 7409. Since a determination of when a specific act or acts by an organization is flagrant depends on the facts and circumstances in individual cases, the IRS and the Treasury Department believe that, to the extent guidance is necessary on this issue, it is better rendered in a form other than through regulations. Therefore, the final regulations do not expand on the definition of flagrant.

One comment suggested that § 301.7409–1 of the proposed regulations should be modified to allow the IRS, where appropriate, to provide an organization with less than the 10 days notice required under the proposed regulations before the Commissioner would recommend that a petition for injunctive relief be filed. In light of the important considerations involved when contemplating an injunction of this sort, the IRS and the Treasury Department believe that an organization should be allowed a reasonable amount of time to respond before the IRS takes action. Therefore, the final regulations retain the 10 day notice period.

Special Analysis

It has been determined that this Treasury Decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Cynthia D. Morton, Office of Associate Chief Counsel (Employee Benefits and Exempt Organizations). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 53

Excise taxes, Foundations, Investments, Lobbying, Reporting and recordkeeping requirements.

26 CFR Part 301

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

Amendments to the Regulations

Accordingly, 26 CFR parts 1, 53, and 301 are amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. In § 1.6091–2, paragraph (g) is added to read as follows:

§ 1.6091–2 Place for filing income tax returns.

* * * * *

(g) *Returns of persons subject to a termination assessment.* Notwithstanding paragraph (c) of this section, income tax returns of persons with respect to whom an income tax assessment was made under section 6852(a) with respect to the taxable year must be filed with the district director as provided in paragraphs (a) and (b) of this section.

PART 53—FOUNDATION AND SIMILAR EXCISE TAXES

Par. 3. The authority citation for part 53 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 4. Section 53.4955–1 is added to Subpart K to read as follows:

§ 53.4955–1 Tax on political expenditures.

(a) *Relationship between section 4955 excise taxes and substantive standards for exemption under section 501(c)(3).* The excise taxes imposed by section 4955 do not affect the substantive standards for tax exemption under section 501(c)(3), under which an organization is described in section 501(c)(3) only if it does not participate or intervene in any political campaign on behalf of any candidate for public office.

(b) *Imposition of initial taxes on organization managers*—(1) *In general.* The excise tax under section 4955(a)(2)

on the agreement of any organization manager to the making of a political expenditure by a section 501(c)(3) organization is imposed only in cases where—

(i) A tax is imposed by section 4955(a)(1);

(ii) The organization manager knows that the expenditure to which the manager agrees is a political expenditure; and

(iii) The agreement is willful and is not due to reasonable cause.

(2) *Type of organization managers covered*—(i) *In general.* The tax under section 4955(a)(2) is imposed only on those organization managers who are authorized to approve, or to exercise discretion in recommending approval of, the making of the expenditure by the organization and on those organization managers who are members of a group (such as the organization's board of directors or trustees) which is so authorized.

(ii) *Officer.* For purposes of section 4955(f)(2)(A), a person is an officer of an organization if—

(A) That person is specifically so designated under the certificate of incorporation, bylaws, or other constitutive documents of the foundation; or

(B) That person regularly exercises general authority to make administrative or policy decisions on behalf of the organization. Independent contractors, acting in a capacity as attorneys, accountants, and investment managers and advisors, are not officers. With respect to any expenditure, any person described in this paragraph (b)(2)(ii)(B) who has authority merely to recommend particular administrative or policy decisions, but not to implement them without approval of a superior, is not an officer.

(iii) *Employee.* For purposes of section 4955(f)(2)(B), an individual rendering services to an organization is an employee of the organization only if that individual is an employee within the meaning of section 3121(d)(2). With respect to any expenditure, an employee (other than an officer, director, or trustee of the organization) is described in section 4955(f)(2)(B) only if he or she has final authority or responsibility (either officially or effectively) with respect to such expenditure.

(3) *Type of agreement required.* An organization manager agrees to the making of a political expenditure if the manager manifests approval of the expenditure which is sufficient to constitute an exercise of the organization manager's authority to approve, or to exercise discretion in recommending approval of, the making of the expenditure by the organization. The manifestation of approval need not be the final or decisive approval on behalf of the organization.

(4) *Knowing*—(i) *General rule.* For purposes of section 4955, an organization manager is considered to have agreed to an expenditure *knowing* that it is a political expenditure only if—

(A) The manager has actual knowledge of sufficient facts so that, based solely upon these facts, the expenditure would be a political expenditure;

(B) The manager is aware that such an expenditure under these circumstances may violate the provisions of federal tax law governing political expenditures; and

(C) The manager negligently fails to make reasonable attempts to ascertain whether the expenditure is a political expenditure, or the manager is aware that it is a political expenditure.

(ii) *Amplification of general rule.* For purposes of section 4955, knowing does not mean having reason to know. However, evidence tending to show that an organization manager has reason to know of a particular fact or particular rule is relevant in determining whether the manager had actual knowledge of the fact or rule. Thus, for example, evidence tending to show that an organization manager has reason to know of sufficient facts so that, based solely upon those facts, an expenditure would be a political expenditure is relevant in determining whether the manager has actual knowledge of the facts.

(5) *Willful.* An organization manager's agreement to a political expenditure is willful if it is voluntary, conscious, and intentional. No motive to avoid the restrictions of the law or the incurrence of any tax is necessary to make an agreement willful. However, an organization manager's agreement to a political expenditure is not willful if the manager does not know that it is a political expenditure.

(6) *Due to reasonable cause.* An organization manager's actions are due to reasonable cause if the manager has exercised his or her responsibility on behalf of the organization with ordinary business care and prudence.

(7) *Advice of counsel.* An organization manager's agreement to an expenditure is ordinarily not considered knowing or willful and is ordinarily considered due to reasonable cause if the manager, after full disclosure of the factual situation to legal counsel (including house counsel), relies on the advice of counsel expressed in a reasoned written legal opinion that an expenditure is not a political expenditure under section 4955 (or that expenditures conforming to certain guidelines are not political expenditures). For this purpose, a written legal opinion is considered reasoned even if it reaches a conclusion which is subsequently determined to be incorrect, so long as the opinion addresses itself to the facts and applicable law. A written legal opinion is not considered reasoned if it does nothing more than recite the facts and express a conclusion. However, the absence of advice of counsel with respect to an expenditure does not, by itself, give rise to any inference that an organization manager agreed to the making of the expenditure knowingly, willfully, or without reasonable cause.

(8) *Cross reference.* For provisions relating to the burden of proof in cases involving the issue of whether an organization manager has knowingly agreed to the making of a political expenditure, see section 7454(b).

(c) *Amplification of political expenditure definition*—(1) *General rule.* Any expenditure that would cause an organization that makes the expenditure to be classified as an action organization by reason of § 1.501(c)(3)–1(c)(3)(iii) of this chapter is a political expenditure within the meaning of section 4955(d)(1).

(2) *Other political expenditures*—(i) For purposes of section 4955(d)(2), an organization is effectively controlled by a candidate or prospective candidate only if the individual has a continuing, substantial involvement in the day-to-day operations or management of the organization. An organization is not effectively controlled by a candidate or a prospective candidate merely because it is affiliated with the candidate, or merely because the candidate knows the directors, officers, or employees of the organization. The effectively controlled test is not met merely because the organization carries on its research, study, or other educational activities with respect to subject matter or issues in which the individual is interested or with which the individual is associated.

(ii) For purposes of section 4955(d)(2), a determination of whether the primary purpose of an organization is promoting the candidacy or prospective candidacy of an individual for public office is made on the basis of all the facts and circumstances. The factors to be considered include whether the surveys, studies, materials, etc. prepared by the organization are made available only to the candidate or are made available to the general public; and whether the organization pays for speeches and travel expenses for only one individual, or for speeches or travel expenses of

several persons. The fact that a candidate or prospective candidate utilizes studies, papers, materials, etc., prepared by the organization (such as in a speech by the candidate) is not to be considered as a factor indicating that the organization has a purpose of promoting the candidacy or prospective candidacy of that individual where such studies, papers, materials, etc. are not made available only to that individual.

(iii) Expenditures for voter registration, voter turnout, or voter education constitute other expenses, treated as political expenditures by reason of section 4955(d)(2)(E), only if the expenditures violate the prohibition on political activity provided in section 501(c)(3).

(d) *Abatement, refund, or no assessment of initial tax.* No initial (first-tier) tax will be imposed under section 4955(a), or the initial tax will be abated or refunded, if the organization or an organization manager establishes to the satisfaction of the IRS that—

(1) The political expenditure was not willful and flagrant; and

(2) The political expenditure was corrected.

(e) *Correction*—(1) *Recovery of Expenditure.* For purposes of section 4955(f)(3) and this section, correction of a political expenditure is accomplished by recovering part or all of the expenditure to the extent recovery is possible, and, where full recovery cannot be accomplished, by any additional corrective action which the Commissioner may prescribe. The organization making the political expenditure is not under any obligation to attempt to recover the expenditure by legal action if the action would in all probability not result in the satisfaction of execution on a judgment.

(2) *Establishing safeguards.* Correction of a political expenditure must also involve the establishment of sufficient safeguards to prevent future political expenditures by the organization. The determination of whether safeguards are sufficient to prevent future political expenditures by the organization is made by the District Director.

(f) *Effective date.* This section is effective December 5, 1995.

§ 53.4963–1 [Amended]

Par. 5. In § 53.4963–1, paragraphs (a), (b), and (c) are amended by adding the reference ''4955,'' immediately after the reference ''4952,'' in each place it appears.

§ 53.6011–1 [Amended]

Par. 6. In § 53.6011–1, paragraph (b) is amended as follows:

1. In the first sentence, the language ''or 4945(a),'' is removed and '', 4945(a) or 4955(a),'' is added in its place.

2. In the last sentence, the language ''or 4955(a)'' is added immediately following the language ''section 4945(a)''.

Par. 7. In § 53.6071–1, paragraph (e) is added to read as follows:

§ 53.6071–1 Time for filing returns.

* * * * *

(e) *Taxes related to political expenditures of organizations described in section 501(c)(3) of the Internal Revenue Code.* A Form 4720 required to be filed by § 53.6011–1(b) for an organization liable for tax imposed by section 4955(a) must be filed by the unextended due date for filing its annual information return under section 6033 or, if the organization is exempt from filing, the date the organization would be required to file an annual information return if it was not exempt from filing. The Form 4720 of a person whose taxable year ends on a date other than that on which the taxable year of the organization described in section 501(c)(3) ends must be filed on or before the 15th day of the fifth month following the close of the person's taxable year.

Par. 8. In § 53.6091–1, the section heading is revised and paragraph (d) is added to read as follows:

§ 53.6091–1 Place for filing chapter 42 tax returns.

* * * * *

(d) *Returns of persons subject to a termination assessment.*

Notwithstanding paragraph (c) of this section, income tax returns of persons with respect to whom a chapter 42 tax assessment was made under section 6852(a) with respect to the taxable year must be filed with the district director as provided in paragraphs (a) and (b) of this section.

PART 301—PROCEDURE AND ADMINISTRATION

Par. 9. The authority citation for part 301 continues to read in part as follows:

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

§ 301.6211–1 [Amended]

Par. 10. In § 301.6211–1, the last sentence of paragraph (b) is amended by adding ''or 6852'' immediately after ''section 6851''.

§ 301.6212–1 [Amended]

Par. 11. In § 301.6212–1, the second sentence of paragraph (c) is amended by adding ''termination assessments in section 6851 or 6852,'' immediately after ''section 6213(b)(1),''.

§ 301.6213–1 [Amended]

Par. 12. Section 301.6213–1 is amended as follows:

1. Paragraph (a)(2), first sentence, is amended by adding '', 6852,'' immediately after ''section 6851''.

2. Paragraph (e), first sentence, is amended by adding ''4955,'' immediately after ''4952,''.

Par. 13. Section 301.6852–1 is added to read as follows:

§ 301.6852–1 Termination assessments of tax in the case of flagrant political expenditures of section 501(c)(3) organizations.

(a) *Authority for making.* Any assessment under section 6852 as a result of a flagrant violation by a section 501(c)(3) organization of the prohibition against making political expenditures must be authorized by the District Director.

(b) *Determination of income tax.* An organization shall be subject to an assessment of income tax under section 6852 only if the flagrant violation of the prohibition against making political expenditures results in revocation of the organization's tax exemption under section 501(a) because it is not described in section 501(c)(3). An organization subject to such an assessment is not liable for income taxes for any period prior to the effective date of the revocation of the organization's tax exemption.

(c) *Payment.* Where a District Director has made a determination of income tax under paragraph (b) of this section or of section 4955 excise tax, notwithstanding any other provision of law, any tax will become immediately due and payable. The taxpayer is required to pay the amount of the assessment within 10 days after the District Director sends the notice and demand for immediate payment regardless of the filing of an administrative appeal or of a court petition. Regardless of filing an administrative appeal or of petitioning a court, enforced collection action may proceed after the 10-day payment period unless the taxpayer posts the bond described in section 6863. For purposes of collection procedures such as section 6331 (regarding levy), assessments under the authority of paragraph (a) of this section do not constitute situations in which the collection of such tax is in jeopardy and, therefore, do not suspend normal collection procedures.

(d) *Effective date.* This section is effective December 5, 1995.

§ 301.6861–1 [Amended]

Par. 14. In § 301.6861–1, paragraph (g) is amended by:

1. Adding the language ''4955(a),'' immediately after ''4952(a),''.

2. Adding the language ''4955(b),'' immediately after ''4952(b),''.

§ 301.6863–1 [Amended]

Par. 15. Section 301.6863–1 is amended as follows:

1. Paragraph (a)(1) is amended by adding the language '', or under section 6852 (referred to as a political assessment for purposes of this section)'' immediately after ''for purposes of this section)''.

2. Paragraphs (a)(3) first sentence, (a)(4) last sentence, and (b) first sentence are amended by adding the language ''or political assessment'' immediately after ''jeopardy assessment'' in each place it appears.

3. Paragraph (b) is amended by adding the language ''(or political assessment)'' immediately after ''jeopardy'' in the last sentence.

§ 301.6863–2 [Amended]

Par. 16. In § 301.6863–2, paragraph (a) introductory text, the first sentence is amended by adding the language ''6852,'' immediately after ''section 6851,''.

Par. 17. Section 301.7409–1 is added under the undesignated centerheading ''Civil Actions by the United States'' to read as follows:

§ 301.7409–1 Action to enjoin flagrant political expenditures of section 501(c)(3) organizations.

(a) *Letter to organization.* When the Assistant Commissioner (Employee Plans and Exempt Organizations) concludes that a section 501(c)(3) organization has engaged in flagrant political intervention and is likely to continue to engage in political intervention that involves political expenditures, the Assistant Commissioner (Employee Plans and Exempt Organizations) shall send a letter to the organization providing it with the facts based on which the Service believes that the organization has been engaging in flagrant political intervention and is likely to continue to engage in political intervention that involves political expenditures. The organization will have 10 calendar days after the letter is sent to respond by establishing that it will immediately cease engaging in political intervention, or by providing the Service with sufficient information to refute the Service's evidence that it has been engaged in flagrant political intervention. The Internal Revenue Service will not proceed to seek an injunction under section 7409 until after the close of this 10-day response period.

(b) *Determination by Commissioner.* If the organization does not respond within 10 calendar days to the letter under paragraph (a) of this section in a manner sufficient to dissuade the Assistant Commissioner (Employee Plans and Exempt Organizations) of the need for an injunction, the file will be forwarded to the Commissioner of Internal Revenue. The Commissioner of Internal Revenue will personally determine whether to forward to the Department of Justice a recommendation that it immediately bring an action to enjoin the organization from making further political expenditures. The Commissioner may also recommend that the court action include any other action that is appropriate in ensuring that the assets of the section 501(c)(3) organization are preserved for section 501(c)(3) purposes. The authority of the Commissioner to make the determinations described in this paragraph may not be delegated to any other persons.

(c) *Flagrant political intervention.* For purposes of this section, *flagrant political intervention* is defined as participation in, or intervention in (including the publication and distribution of statements), any political campaign by a section 501(c)(3) organization on behalf of (or in opposition to) any candidate for public office in violation of the prohibition on such participation or intervention in section 501(c)(3) and the regulations thereunder if the participation or intervention is flagrant.

(d) *Effective date.* This section is effective December 5, 1995.

§ 301.7422–1 [Amended]

Par. 18. In § 301.7422–1, paragraphs (a) introductory text, (c) introductory text and (d) are amended by adding the language ''4955,'' immediately after ''4952,''.

§ 301.7611–1 [Amended]

Par. 19. In § 301.7611–1, A–6, the first sentence is amended by adding the language ''or 6852,'' immediately after ''section 6851''.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: October 26, 1995.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 95–29094 Filed 12–4–95; 8:45 am]

BILLING CODE 4830–01–U

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

RIN 3067–AC38

Review of Determinations for Required Purchase of Flood Insurance

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This final rule establishes the procedures for FEMA's review of determinations whether a building or manufactured home is located in an identified Special Flood Hazard Area. The determination review process will provide an opportunity for borrowers and lenders of loans secured by improved real estate to resolve disputes regarding contested determinations.

EFFECTIVE DATE: January 2, 1996.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–2756, or by facsimile (202) 646–4596 (not toll-free calls).

SUPPLEMENTARY INFORMATION: As part of its implementation of the National Flood Insurance Reform Act of 1994 (NFIRA), FEMA published a proposed rule (60 FR 31442, June 15, 1995) to establish the procedures for its review of determinations whether a building or mobile home is located in an identified Special Flood Hazard Area. The comment period ended on August 14, 1995. The proposed rule used the term ''mobile home'' for consistency with the statute. However, the term ''manufactured home'' is preferred in the industry, and is specifically defined in both the National Flood Insurance Program (NFIP) regulations at 44 CFR part 59, and in the standard flood insurance policy. Therefore, the term ''manufactured home'' will be used in this final rule.

This final rule addresses FEMA's requirement under 42 U.S.C. 4012a(e)(3) to review a determination whether a building or manufactured home is located in an identified Special Flood Hazard Area (SFHA) if jointly requested by the borrower and lender for a loan secured by improved real estate or a manufactured home. FEMA will begin accepting requests for determination reviews under this regulation on January 2, 1996. Requests should be mailed to the following locations:

For Minnesota and locations east of the Mississippi River: Determination Review Coordinator, c/o Dewberry &

Davis, P.O. Box 2020, Merrifield VA 22116–2020.

For Louisiana and locations west of the Mississippi River: Determination Review Coordinator, c/o Michael Baker Jr., Inc., 3601 Eisenhower Avenue, Alexandria VA 22304–6439.

We received comments from 25 organizations and individuals, as follows: 12 lenders, 9 associations, 3 third party determinators, and 1 consultant. The greatest number of comments related to who pays the requested fee (12 comments). Others commented on whether FEMA will accept individual requests (9 comments), whether and when borrowers are required to purchase flood insurance (6 comments). We also received 6 comments stating that FEMA should not require copies of NFIP maps to be submitted because it should already have them on file. Summarized below are the comments we received and our responses to them.

Fees

The $60.00 fee for FEMA's review of determinations, contained in the proposed rule, has been increased to $80.00, based on FEMA's anticipated costs to process reviews of determinations. The $80.00 fee does not completely cover FEMA's costs, and contains some subsidy to the requestor. The costs for this service will be monitored and revised at the beginning of FY 1997, if necessary.

Determination of fee. Two responders asked how the fee was determined.

Response. The amount of time required to handle, record, document, and respond to these requests was estimated based on our experience with high volumes of similar types of requests. Using current $40 per hour fee rates for the existing Letter of Map Revision (LOMR) review process, we estimated the $80 fee based on the anticipated steps and time required to review a determination and process the request.

Fee is excessive. Five responders felt that the fee is excessive and more than commercial third party determinators charge for the same service.

Response. The vast majority of flood determinations made by third party determinators are for structures well away from the SFHA. These determinations can be done very quickly using automated processes at very low cost. For example, a third party determinator may determine that the only area of a community having SFHAs has a specific zip code. Any time that a third party determinator gets a request for a determination in that community it first checks the zip code. If it is any zip code other than the one having SFHAs, a determination of ''Not in SFHA'' can be made quickly. This determination takes only minutes and costs are minimal. Only when a request for a determination is for a property with the zip code containing SFHAs is more effort required. Most of these determinations are for structures well away from the boundary of the SFHA and are clearly shown in or out of the SFHA.

Determinations where a structure is located near the edge of a mapped SFHA are the most complex because additional review is often required to locate the structure accurately on the NFIP map. While these latter determinations cost the determinator more, the inexpensive determinations comprise the vast majority of determinations made. We expect that FEMA's determination reviews will cost more because we anticipate receiving primarily requests for structures near the boundary of mapped flood hazards, where a review of the technical data used in making the determination and comparing it to the printed map will be required in order to issue a response.

Multiple structures. One commenter asked how the fee would apply to multiple structures.

Response. One fee will apply to each Standard Flood Hazard Determination Form (SFHDF) submitted. Generally, an SFHDF is prepared for a single structure used as loan collateral. If a request for a determination review includes multiple buildings, the fee will be based on the number of SFHDFs included in the request.

Authority. Two responders requested that FEMA cite the specific authority for imposing a fee.

Response. The authority for FEMA to charge a fee is at 31 U.S.C. 9701, which allows Federal agencies to recover costs associated with providing something of value to a customer.

Responsibility and Disclosure. Almost half of the responders asked who would pay the fee. Two responders asked how the fee for a determination review related to the Real Estate Settlement Procedures Act, if this fee was considered a finance charge, and if the fee needed to be disclosed.

Response. These issues were sent to the Federal Financial Institutions Examination Council for the Council's review and advice. We understand that they will be considered by the Council during the comment period (October 18–December 18, 1995) following the publication of the proposed rule for loans in areas having special flood hazards (60 FR 53962, October 18, 1995).

Notification. One commenter indicated that FEMA should not rely on the Federal Register for notification of the initial fee or subsequent increases or decreases in the amount, and suggested that all interested parties be notified directly regarding fee changes.

Response. Publication in the Federal Register is a legally acceptable method to notify the public of rule changes. Notifying individual parties is not FEMA's role, and cannot be provided within the constraints of FEMA's budget and staff. We expect that organizations and trade associations that serve the banking industry will provide such notification to their constituents.

Payment Method. The proposed rule included an option of payment by credit card. On further investigation this option will not be available because of the expense that would be incurred by FEMA to process credit card payments. Payment for requests for review must be made by check or by money order, in U.S. funds, payable to the National Flood Insurance Program.

Insurance Purchase Requirements

Forced placement. Five responders questioned how the request for review of lender determinations impacts the 45-day clock for forced placement of flood insurance. One responder asked whether a lender could force place insurance during the 90-day window (45 days to submit, 45 days to review) without liability or penalty, and whether new extensions of credit should be postponed pending FEMA's Response.

Response. Section 524 of the NFIRA states that if the request is made in connection with the origination of a loan and if FEMA fails to respond before the later of the expiration of the 45-day period after receiving the request or closing of the loan, then flood insurance is not required until such a letter is provided. Thus, section 524 only temporarily delays the flood insurance purchase requirement. If the closing of the loan occurs *prior to* 45 days after FEMA receives a request, then the flood insurance purchase requirement is not waived under section 524 because FEMA has not failed to respond within the 45-day period. If loan closing occurs *after* FEMA's 45-day response period, then the mandatory flood insurance purchase requirement is waived only if FEMA's response is not issued by loan closing. We plan to respond to requests within 45 days.

However, if we do not respond within 45 days and the mandatory purchase requirement is delayed until we do respond, it is nevertheless a prudent business practice to require the

purchase of flood insurance to protect the collateral. The lender always retains the prerogative to require flood insurance even when its purchase is not Federally mandated. Flood insurance premiums can be refunded if it is determined by FEMA that the structure is not located in the SFHA and the lender waives the flood insurance purchase requirement.

Mandatory purchase. We received comments noting that the proposed rule did not address when borrowers are or are not required to purchase flood insurance. Another commenter asked whether the lender could waive the flood insurance purchase requirement while the determination is under review. Others noted that FEMA's review of lender determinations should not delay flood insurance purchase requirements.

Response. As stated above, section 524 temporarily delays the flood insurance purchase requirement only when FEMA fails to respond within its allotted 45-day period. At all other times, the mandatory purchase of flood insurance for structures located in SFHAs remains in effect.

Requirement for Joint Request

Individual requests. Seven responders indicated that individual requests for determination reviews should be accepted, and that joint requests would be too time consuming.

Response. The NFIRA states that the borrower and lender of a loan secured by improved real estate or a manufactured home *may jointly* request the Director to review a determination whether the building or manufactured home is located in an area having special flood hazards. FEMA interprets the statute to require a joint request from both the borrower and the lender for this review. If an individual submits a request for a determination review, FEMA will make a reasonable attempt to obtain the needed signature. However, if it is not possible to obtain both parties' signatures for the request, FEMA will not review the request under 44 CFR 65.17, and will return the request promptly in its entirety. FEMA will notify the requestor that the data submitted with the request do not meet the requirements of 44 CFR 65.17; therefore, the lender's obligation to require the purchase of flood insurance remains in effect. Further, we shall notify the requestor that other procedures are available to individuals under 44 CFR parts 70 and 65, commonly known as the Letter of Map Amendment (LOMA) and the Letter of Map Revision (LOMR) processes, if the requestor believes that a structure has been incorrectly included in the SFHA, or if conditions have changed since the NFIP map was issued.

Signatures. One responder asked whether all borrowers had to sign the request.

Response. The request for a determination review must be signed by at least one of the borrowers, or the borrowers' legal representative for the loan. Likewise, the lender must also sign the request. To ensure the involvement of all appropriate parties as intended by the legislation, and to ensure an objective process, FEMA will not accept the signature of a third party determinator as a representative for the borrower or the lender.

Responsibility. Several requestors also asked who is responsible for the preparation of the joint submittal and whether others may join in on requests or submit on behalf of the borrower and lender.

Response. The responsibility for the preparation of the request for review of a determination is held jointly, by both the borrower and the lender. The data package may be prepared by others, but the request itself must be an original (not photocopied), and signed by the borrower and lender, as discussed above.

Time Frames

Submittal. We received many comments on the requirement to submit the request for a determination review within 45 days of the lender's notification to the borrower that flood insurance is required. Two commenters questioned FEMA's authority for limiting the time frame and five commented that the time allotted was too short or should be eliminated. Other comments indicated that the combined submission and processing time was too long or that the lender and borrower should be allowed to submit at any time, and that FEMA should expedite its review.

Response. We limited the time frame for submittal to permit us to provide reviews in a timely manner. The 45-day period is also within the time period in which loans are generally closed. This time frame avoids a protracted period of time before a final determination is made whether the property is or is not located in a SFHA. Processing times may be minimized if a request for review is submitted immediately after the lender notifies the borrower that flood insurance is required, and if a complete data package is submitted to FEMA.

Available options. One responder asked what options are available if the 45-day window for the submittal of a request for determination review is missed.

Response. In this case, flood insurance should be purchased if required. The procedures for a LOMA or LOMR are available to individuals if a structure has been inadvertently included in the SFHA or if conditions have changed since the NFIP map was issued.

Resubmittals. Two commenters asked about the charge for resubmissions. Two others asked what effect a request returned for insufficient data would have on the 45-day clock.

Response. Requests returned because the 45-day deadline was missed cannot be resubmitted. Requests returned for insufficiency of information will have the fee returned with the package. FEMA will return the entire package to the borrower with the fee and a letter explaining what information is needed for the review to be accomplished. The borrower will have 14 days from date of FEMA's letter or 45 days from the date of lender notification, whichever is later, to send the request back to FEMA. A fee must be provided with any resubmission; there is no second charge. The date of postmark from the sender will determine the timeliness of the resubmission.

Start of 45 days for FEMA review and response. Two responders asked when the 45-day FEMA review clock would begin and what effect, if any, an uncollected fee would have on the clock.

Response. The 45-day timeframe for FEMA to complete the review will begin on the day that FEMA receives a complete request supported by technical information at the proper location (addresses given above). Uncollected fees may be turned over to the Treasury Department for handling and such action will not have an impact on the processing of the review.

Definitions. One responder asked for clarification of the word ''submitted'' as in ''submitted within 45 days of the lender's notification''.

Response. Submitted means postmarked. This is defined in 44 CFR 65.17 (b) (3).

Timing of LOMAs and Determination Reviews. One responder asked how the 45-day time limit is impacted if a LOMA or LOMR is requested before the request for a determination review.

Response. The determination review procedures provide a mechanism for FEMA to review a lender's or its agent's determination of whether a structure is within a *mapped* SFHA. LOMA and LOMR procedures allow the submittal of more detailed, site-specific information than was available when

the maps were initially prepared. After reviewing this information, and if warranted, FEMA can revise the mapped SFHAs by LOMA or LOMR. If the question is whether the NFIP map was read correctly, the determination review procedure is appropriate. If the question is whether the SFHA should be changed, LOMA or LOMR procedures are appropriate. In most instances, only one procedure is applicable. However, should both procedures be underway simultaneously, most likely they will be addressed separately. While FEMA has 45 days to respond to a request for determination review, FEMA has 60 or 90 days, respectively, to respond to LOMA and LOMR requests because a more detailed review is necessary. Any determination made through the determination review procedure will consider only effective LOMAs or LOMRs, and the submittal and response timeframes for the determination review process will not change as a result of any ongoing LOMA or LOMR reviews.

Providing a Copy of the NFIP Map

Seven responders questioned why a copy of the NFIP map must be submitted with the request when FEMA already has the maps on file.

Response. The purpose of FEMA's review is to judge whether the determination presented by the lender is appropriate. If the location of the structure on the NFIP map used in that determination is not provided with the submitted data, FEMA would have to make an independent determination, which was not the intent of the NFIRA. Further, if a copy of the NFIP map used to make the determination is not provided, it would be unclear whether the current NFIP map panel was used to make the determination. A full copy of the map panel is not required. The title block, including map date, scale bar, and north arrow, and the portion of the map including the property location (with the property location noted) are the only portions of the NFIP map that need to be provided.

FEMA Processing

Effective date. Four responders had concerns about the effective date for the use of the Standard Flood Hazard Determination Form (SFHDF) and the commencement of FEMA's reviews under 44 CFR 65.17, and two responders suggested that any form be admissible before January 1996.

Response. FEMA is currently developing a system to handle requests for determination reviews and will begin accepting requests under § 65.17 on January 2, 1996. The mandatory use of the SFHDF by lenders also begins on January 2, 1996.

Technical data requirements. Five responders expressed the need for FEMA to define the technical data requirements and provide examples.

Response. FEMA needs the same technical data that were used by the lender or third party determinator to make the determination. Items that typically complete this requirement include, but are not limited to, a copy of the tax assessor's map showing the property, a map showing the location of the structure on the property, a copy of the plat for the subdivision/tract or similar document, and information showing the relationship of the NFIP map and the location of the structure on the property. Structures located in rural areas or areas where the NFIP map contains few physical features may need additional data so that the structure can be definitively located on the property and the property located relative to reference features. Multiple-unit structures would need data for the entire building. Properties with multiple buildings must show data for all structures. If a building has a porch or deck, this should be indicated in detail.

Incomplete submittals. One responder asked what happens to incomplete submissions and three asked when the fee is returned.

Response. Incomplete submissions are returned in their entirety, with the fee, to the borrower. Requests received with a postmark more than 45 days after the date the lender notified the borrower that flood insurance is required will also be returned to the borrower with the fee. The only data retained by FEMA are the database record of the receipt and disposition of the request. There are no circumstances when the fee can be reimbursed to the lender or borrower.

Format for requests. Five responders requested that FEMA provide a form or a format for requesting the reviews.

Response. FEMA will provide guidance on how to request a review, but does not plan to develop an official form to be used when requesting determination reviews. This issue has been discussed with the lending industry trade associations and they are willing to develop a recommended format that can be used.

Publication of Letters of Determination Review. One responder asked whether FEMA will publish public notices of determination reviews similar to LOMAs and LOMRs.

Response. No publication by FEMA is contemplated because the determination review does not change the effective map.

Distribution of correspondence. One responder suggested that copies of the correspondence be provided to the borrower and the lender.

Response. Copies of the Letter of Determination Review will be sent to the lender and the borrower, as well as to the third party determinator, if known. Packages returned for insufficiency will be sent to the borrower with notice of return to the lender.

Review of Accuracy of NFIP Map. One responder asked whether FEMA's review would include verification of the accuracy of the NFIP map.

Response. No. The purpose of the review is to determine whether or not the security property has been accurately located on the effective NFIP map. If the accuracy of the NFIP map is in question, procedures under 44 CFR parts 70 and 65 must be used to request a LOMA or LOMR.

Review for Letters of Map Change. One responder asked whether FEMA would review for LOMAs and LOMRs, how it would perform this task, and what LOMA/LOMR information would be provided back to the borrower and lender.

Response. When reviewing a lender's or its agent's determination, FEMA will check its Community Information System database for LOMAs and LOMRs that would affect the determination. If the original determination overlooked a LOMA or LOMR, FEMA's final response will so state and will provide the date of the letter. LOMAs and LOMRs are available through the community's map repository. In addition, FEMA publishes a compendium of all map changes semi-annually in the Federal Register.

Initiation of LOMA/LOMR process. Two responders promoted the automatic initiation of the LOMA/LOMR process.

Response. There will not be an automatic initiation of the LOMA/LOMR procedures from the 44 CFR 65.17 submission. Elevation data are not considered in the determination review process, but are frequently required for the LOMA/LOMR process. The § 65.17 procedure has been designed for fast response and the review of extra data will not be performed at this time. FEMA's response to a request for determination review that includes elevation data will include information regarding other procedures that are available to consider the elevation data.

Format of FEMA's Response. One responder asked whether FEMA's review would result in a Standard Flood Hazard Determination Form prepared by FEMA.

Response. No. The intent of these procedures is to provide a review of a

lender's or its agent's determination. Section 524 of the NFIRA states that FEMA shall provide to the borrower and the lender a letter stating whether or not the building or manufactured home is in an area having special flood hazards.

Status inquiries. One responder wanted to know how to obtain the status of the request after submission.

Response. Due to the anticipated volume of requests, such inquiries will not be accommodated. We plan to acknowledge receipt of the request within five days and to issue the final response within 45 days.

Elevation data. A responder asked that the final rule explicitly state that FEMA will not consider elevation data for this review. The same responder advocated that the determination review process not result in the initiation of the LOMA/LOMR process.

Response. This is stated in the final rule under 44 CFR 65.17(a).

Miscellaneous Comments

Definition of ''in SFHA'' and ''partially in SFHA''. One responder asked that ''in the SFHA'' be defined and another responder asked how we would deal with reviews of ''part in, part out''.

Response. The SFHA is delineated on the NFIP map for the community. For purposes of this procedure, if any part of the structure is indicated to be in the SFHA on the NFIP map, the structure is considered to be in the SFHA and flood insurance is required. The flood insurance purchase requirement applies to *insurable structures.* If a portion of the land lies in the SFHA, the purchase of flood insurance is not Federally mandated unless the structure itself is indicated to be in or partially in the SFHA.

Determinations ''Pursuant to a Revision.'' Several responders asked us to clarify whether these determination review procedures were available in the case of a FEMA remapping.

Response. These procedures are available for the review of lender determinations when requested within 45 days after the borrower was notified that flood insurance is required, regardless of the impetus of the request. However, the intent of the determination review procedures is to allow a mechanism for FEMA to review a lender's or its agent's determination when specifically requested. FEMA will return requests at the outset if the submitted Standard Flood Hazard Determination Form is based on an outdated map panel. After the lender conducts or obtains a determination using the current map panel in effect, FEMA will review the determination upon request if the request meets the stipulated criteria.

Applicability of Process. One responder asked if the procedure would apply to existing loans as well as loan originations.

Response. The process is available within 45 days after the lender advises the borrower that flood insurance is required as a condition for the loan. Therefore, this procedure applies to all loans.

Guarantee. One responder asked whether FEMA would guarantee its determination.

Response. No. A guarantee is only required if a third party completes the Standard Flood Hazard Determination Form for a lender. FEMA is not authorized to guarantee these determinations. However, FEMA will review the available data and ensure that the determinations are as accurate as possible.

Initial Determinations. One responder suggested that FEMA should provide initial flood hazard determinations.

Response. Although the NFIRA does not prohibit FEMA from providing initial flood hazard determinations, we interpret section 524 as providing a mechanism for FEMA to review and resolve appeals on others' determinations. As indicated in the NFIRA, FEMA's determination shall be final. As stated earlier, FEMA's review of a determination is based on the data provided by others that allowed the original determination to be made. FEMA's review of the determination will correct an error, if one was made in locating a structure relative to a mapped SFHA, but does not change the map, the location of the property on the map, or the findings of a third party determinator or lender if they correctly used the available data. Other procedures with additional data requirements are available through FEMA's LOMA and LOMR processes.

Upholding original determinations due to insufficient information. One responder asked for clarification on why the original determination would be ''upheld'' instead of ''withheld'' if insufficient information was submitted to review the determination.

Response. FEMA will presume the lender or lender's agent has made the correct determination and predicts that most determinations will not be submitted to FEMA for review. Therefore, the lender's determination is considered valid until found to be in error. We have revised the language in 44 CFR 65.17(c)(2) to clarify this issue.

Unusual cases. A responder asked for clarification of the term ''unusual cases.''

Response. This may have been a poor choice of words in the proposed rule. If the lender or third party determinator uses prudent and reasonable judgment in their evaluations, disputes should not arise that would require a determination review by FEMA.

Use of term ''mobile home.'' One responder stated that 44 CFR 65.17 should use the term ''manufactured home'' instead of ''mobile home'' to be consistent with the NFIP regulations.

Response. Section 65.17 has been changed to use the term ''manufactured home.''

National Environmental Policy Act

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

Regulatory Flexibility Act

The Associate Director for Mitigation certifies that this rule would not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because it would not be expected (1) to have significant secondary or incidental effects on a substantial number of small entities, nor (2) to create any additional burden on small entities. Moreover, establishing a procedure for FEMA's review of determinations is required by the National Flood Insurance Reform Act of 1994, 42 U.S.C. 4012a. A regulatory flexibility analysis has not been prepared.

Regulatory Planning and Review

This final rule would not be a significant regulatory action under Executive Order 12866 of September 30, 1994, Regulatory Planning and Review, 58 FR 51735. To the extent possible this rule adheres to the principles of regulation as set forth in Executive Order 12866. This rule has not been reviewed by the Office of Management and Budget under the provisions of Executive Order 12866.

Paperwork Reduction Act

This final rule does not involve any collection of information for the purposes of the Paperwork Reduction Act.

Executive Order 12612, Federalism

This final rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended as follows:

PART 65—IDENTIFICATION AND MAPPING OF SPECIAL HAZARD AREAS

1. The authority citation for part 65 is revised to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

2. Section 65.17 is added to read as follows:

§ 65.17 Review of determinations.

This section describes the procedures that shall be followed and the types of information required by FEMA to review a determination of whether a building or manufactured home is located within an identified Special Flood Hazard Area (SFHA).

(a) *General conditions.* The borrower and lender of a loan secured by improved real estate or a manufactured home may jointly request that FEMA review a determination that the building or manufactured home is located in an identified SFHA. Such a request must be submitted within 45 days of the lender's notification to the borrower that the building or manufactured home is in the SFHA and that flood insurance is required. Such a request must be submitted jointly by the lender and the borrower and shall include the required fee and technical information related to the building or manufactured home. Elevation data will not be considered under the procedures described in this section.

(b) *Data and other requirements.* Items required for FEMA's review of a determination shall include the following:

(1) Payment of the required fee by check or money order, in U.S. funds, payable to the National Flood Insurance Program;

(2) A request for FEMA's review of the determination, signed by both the borrower and the lender;

(3) A copy of the lender's notification to the borrower that the building or manufactured home is in an SFHA and that flood insurance is required (the request for review of the determination must be postmarked within 45 days of borrower notification);

(4) A completed Standard Flood Hazard Determination Form for the building or manufactured home, together with a legible hard copy of all technical data used in making the determination; and

(5) A copy of the effective NFIP map (Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM)) panel for the community in which the building or manufactured home is located, with the building or manufactured home location indicated. Portions of the map panel may be submitted but shall include the area of the building or manufactured home in question together with the map panel title block, including effective date, bar scale, and north arrow.

(c) *Review and response by FEMA.* Within 45 days after receipt of a request to review a determination, FEMA will notify the applicants in writing of one of the following:

(1) Request submitted more than 45 days after borrower notification; no review will be performed and all materials are being returned;

(2) Insufficient information was received to review the determination; therefore, the determination stands until a complete submittal is received; or

(3) The results of FEMA's review of the determination, which shall include the following:

(i) The name of the NFIP community in which the building or manufactured home is located;

(ii) The property address or other identification of the building or manufactured home to which the determination applies;

(iii) The NFIP map panel number and effective date upon which the determination is based;

(iv) A statement indicating whether the building or manufactured home is within the Special Flood Hazard Area;

(v) The time frame during which the determination is effective.

Dated: November 22, 1995.

Robert H. Volland,

Acting Deputy Associate Director for Mitigation.

[FR Doc. 95–29561 Filed 12–4–95; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

Radio Broadcasting Services; Various Locations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, on its own motion, editorially amends the Table of FM Allotments to specify the actual classes of channels allotted to various communities. The changes in channel classifications have been authorized in response to applications filed by licensees and permittees operating on these channels. This action is taken pursuant to *Revision of Section 73.3573(a)(1) of the Commission's Rules Concerning the Lower Classification of an FM Allotment*, 4 FCC Rcd 2413 (1989), and the *Amendment of the Commission's Rules to Permit FM Channel and Class Modifications [Updates] by Applications*, 8 FCC Rcd 4735 (1993).

EFFECTIVE DATE: December 5, 1995.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 414–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, adopted November 8, 1995, and released November 24, 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 Arkansas, is amended by removing Channel 232C3 and adding Channel 232C2 at Rogers.

3. Section 73.202(b), the Table of FM Allotments under Hawaii, is amended

by removing Channel 224C3 and adding Channel 224C2 at Hilo, and by removing Channel 299C1 and adding Channel 299C3 at Volcano.

4. Section 73.202(b), the Table of FM Allotments under Minnesota, is amended by removing Channel 294A and adding Channel 294C2 at Babbitt.

5. Section 73.202(b), the Table of FM Allotments under Mississippi, is amended by removing Channel 269C3 and adding Channel 269C2 at Gluckstadt.

6. Section 73.202(b), the Table of FM Allotments under Montana, is amended by removing Channel 281C1 and adding Channel 281C3 at East Helena.

7. Section 73.202(b), the Table of FM Allotments under New Mexico, is amended by removing Channel 275C and adding Channel 275C1 at Hobbs.

8. Section 73.202(b), the Table of FM Allotments under North Dakota, is amended by removing Channel 244A and adding Channel 244C2 at Devils Lake.

9. Section 73.202(b), the Table of FM Allotments under Ohio, is amended by removing Channel 282B1 and adding Channel 282A at Richwood.

10. Section 73.202(b), the Table of FM Allotments under South Dakota, is amended by removing Channel 257A and adding Channel 258C2 at Sisseton.

11. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 290A and adding Channel 290C3 at San Diego.

12. Section 73.202(b), the Table of FM Allotments under Utah, is amended by removing Channel 233C1 and adding Channel 233C at Logan.

13. Section 73.202(b), the Table of FM Allotments under Washington, is amended by removing Channel 265A and adding Channel 265C3 at Grandview and by removing Channel 226C2 and adding Channel 224C2 at Omak.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 95–29481 Filed 12–4–95; 8:45 am]

BILLING CODE 6712–01–F

---

47 CFR Part 73

[MM Docket No. 90–195; RM–7152]

Radio Broadcasting Services; Brookline, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 271A to Brookline, Missouri, as that community's first local FM service, at the request of Laurie L. Ankarlo. *See* 55 FR 10791, March 23, 1990. Channel 271A can be allotted to Brookline in compliance with the Commission's minimum distance separation requirements with a site restriction of 11.9 kilometers (7.4 miles) northeast (37–15–26 and 93–21–19). With this action, this proceeding is terminated.

DATES: Effective January 12, 1996. The window period for filing applications will open on January 12, 1996, and close on February 12, 1996.

FOR FURTHER INFORMATION CONTACT: Arthur D. Scrutchins, Mass Media Bureau, (202) 776–1660.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MM Docket No. 90–195, adopted November 3, 1995, and released November 28, 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: 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 Missouri, is amended by adding Brookline, Channel 271A.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 95–29482 Filed 12–4–95; 8:45 am]

BILLING CODE 6712–01–F

---

47 CFR Part 73

[MM Docket No. 92–214; RM–8062; RM–8144; RM–8145; RM–8146; RM–8147]

Radio Broadcasting Services; Columbia, Bourbon, Leasburg, Gerald, Dixon, and Cuba, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 244C1 for Channel 244C3 at Columbia, Missouri, and modifies the construction permit for Station KCMQ(FM) to specify operation on the higher class channel in response to a petition filed by The Greenfield Group. *See* 57 FR 44547, September 28, 1992. The coordinates for Channel 244C1 at Columbia are 38–37–40 and 92–07–00. To accommodate the Columbia upgrade, we shall substitute Channel 231A for Channel 244A at Bourbon, Missouri, at coordinates 38–05–00 and 91–15–00. In response to a counterproposal filed by Central Missouri Broadcasting, Inc., we shall allot Channel 221A to Dixon, Missouri, at coordinates 37–58–30 and 92–10–10. Lake Broadcasting counterproposed the substitution of Channel 297C3 for Channel 271A at Cuba, Missouri, and modification of its construction permit accordingly. However, since another party filed comments indicating it would file an application for Channel 297C3 and no other channels are available, we shall allot Channel 297C3 to Cuba and open a filing window. The coordinates for Channel 297C3 are 38–03–54 and 91–24–12. Jeff Weinhaus withdrew his counterproposal for Leasburg, Missouri, and Tony Knipp withdrew his counterproposal for Leasburg, Missouri, in accordance with Section 1.420(j) of the Commission's Rules. With this action, this proceeding is terminated.

DATES: Effective January 9, 1996. The window period for filing applications will open on January 9, 1996, and close on February 9, 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. 92–214, adopted October 27, 1995, and released November 24, 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 Missouri, is amended by removing Channel 244C3 and adding Channel 244C1 at Columbia, by removing Channel 244A and adding Channel 231A at Bourbon, by adding Cuba, Channel 297C3, and by adding Dixon, Channel 221A.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 95–29483 Filed 12–4–95; 8:45 am]

BILLING CODE 6712–01–F

---

47 CFR Part 73

[MM Docket No. 91–253; RM–6882]

Radio Broadcasting Services; Tioga, PA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Europa Communications, Inc., substitutes Channel 234B1 for Channel 234A at Tioga, Pennsylvania, and modifies the license of Station WPHD to specify the higher class channel. *See* 56 FR 42967, September 6, 1991. Channel 234B1 can be allotted to Tioga in compliance with the Commission's minimum distance separation requirements with a site restriction of 10.3 kilometers (6.4 miles) southwest, at coordinates 41–51–00 NL; 77–13–49 WL, to avoid short-spacings to Stations WLVY, Channel 232A, Elmira, NY, WYYY, Channel 233B, Syracuse, NY, and WIYN, Channel 234A, Deposit, NY. Canadian concurrence in the allotment has been received since Tioga is located within 320 kilometers (200 miles) of the U.S.-Canadian border. With this action, this proceeding is terminated.

EFFECTIVE DATE: January 2, 1996.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MM Docket No. 91–253, adopted November 3, 1995, and released November 24, 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.

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 Pennsylvania, is amended by removing Channel 234A and adding Channel 234B1 at Tioga.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 95–29484 Filed 12–4–95; 8:45 am]

BILLING CODE 6712–01–F

---

47 CFR Part 73

[MM Docket No. 95–97; RM–8651]

Television Broadcasting Services; Tazewell, TN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of James F. Stair, II, allots Channel 48 to Tazewell, Tennessee, as the community's first local commercial television service. *See* 60 FR 35372, July 7, 1995. Channel 48 can be allotted to Tazewell with a plus offset in compliance with the Commission's minimum distance separation requirements with a site restriction of 1.9 kilometers (1.2 miles) west. In order to accommodate the new TV station at Tazewell, the Commission also changes the offset designations for vacant Channel 48 at Greenwood, South Carolina, and vacant Channel 48 at Columbus, Georgia. The coordinates for Channel 48+ at Tazewell are 36–27–32 and 83–35–07. With this action, this proceeding is terminated.

EFFECTIVE DATE: January 12, 1996.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MM Docket No. 95–97, adopted November 9, 1995, and released November 28, 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, ITS, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Television 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.

§ 73.606 [Amended]

2. Section 73.606(b), the Table of TV Allotments under Tennessee, is amended by adding Tazewell, Channel 48+.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 95–29485 Filed 12–4–95; 8:45 am]

BILLING CODE 6712–01–F

---

47 CFR Part 73

[MM Docket No. 91–352; RM–7866]

Radio Broadcasting Services; Ava, Branson and Mountain Grove, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 292C2 for Channel 292C3 at Branson, Missouri, and modifies the construction permit for Station KRZK(FM) to specify operation on the

higher class channel in response to a petition filed by Turtle Broadcasting Co. of Branson. *See* 56 FR 65206, December 16, 1991. In accordance with Section 1.420(g) of the Commission's Rules we shall modify the construction permit for Station KRZK(FM) to specify operation on Channel 292C2. The coordinates for Channel 292C2 are 36–43–00 and 93–05–00. To accommodate the upgrade at Branson, we substituted Channel 221A for Channel 222A at Ava, Missouri, at coordinates 36–55–48 and 92–39–19 and modified the license for Station KKOZ-FM and substituted Channel 223A for Channel 293A at Mountain Grove, Missouri, at coordinates 37–08–07 and 92–14–59 and modified the license for Station KCMG-FM. With this action, this proceeding is terminated.

EFFECTIVE DATE: January 12, 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. 91–352, adopted November 3, 1995, and released November 28, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., 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 Missouri, is amended by removing Channel 222A and adding Channel 221A at Ava, by removing Channel 292C3 and adding Channel 292C2 at Branson, and by removing Channel 293A and adding Channel 223A at Mountain Grove.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 95–29486 Filed 12–4–95; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 553

RIN 2127–AG04

Rulemaking Procedures; Petitions for Reconsideration; Petitions for Extension of Comment Period

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

ACTION: Final Rule.

SUMMARY: This rule makes two amendments to NHTSA's procedural rules. The first amendment requires petitions for extension of the period for submitting written comments on a notice such as a notice of proposed rulemaking to be submitted at least 15 days before the closing date for the comment period. Previously, petitions could be submitted up to 10 days before the closing date. This change will give NHTSA additional time to process these petitions and thus ensure that, when a petition is granted, the notice extending the comment period can be published well before the original closing date.

The second amendment provides that the agency will accept petitions for reconsideration of a final rule if they are received not more than 45 days after the publication of the final rule. Previously, petitions for reconsideration had to be received not more than 30 days following publication of a final rule. NHTSA believes that the extension is warranted by the complexity of many of its final rules. The additional time will allow interested parties to review the rules more effectively and better prepare their petitions for reconsideration.

DATES: The amendments made in this rule are effective January 4, 1996.

FOR FURTHER INFORMATION CONTACT: Mary L. Versailles, Office of the Chief Counsel, NCC–20, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. Telephone: (202) 366–2992.

SUPPLEMENTARY INFORMATION: This notice makes two amendments to Part 553, Rulemaking Procedures, Title 49 of the Code of Federal Regulations (CFR). Part 553 prescribes rulemaking procedures that apply to the issuing, amending, and revoking of motor vehicle safety, damageability, domestic content labeling, fuel economy, and theft rules pursuant to the authorizing legislation formerly known as the National Traffic and Motor Vehicle Safety Act of 1966 and the Motor Vehicle Information and Cost Savings Act. The amendments change the requirements concerning the deadlines for petitions for extension of comments period and for petitions for reconsideration.

Petitions for Extension of Comment Period

Section 553.19 specifies procedures for petitions for extension of the period for submitting written comments on a notice such as a notice of proposed rulemaking. For some time, the procedures prescribed that petitions for extension must be received by NHTSA not later than 10 days before the comment closing date stated in the notice.

In this final rule, NHTSA amends the procedures so that petitions for extension of the time period must be received by NHTSA not later than 15 days before the comment closing date. This amendment is necessary to provide NHTSA additional time to process such petitions. As stated in section 553.19, the filing of the petition does not automatically extend the time deadline for petitioner's comments. With the additional time, NHTSA will be able to more effectively consider and process the petitions.

The longer interval between the petition deadline and the comment closing date will make it easier for the agency to publish a Federal Register document informing the public of the extension well before the closing date. As has sometimes occurred under the previous 10-day deadline, the notice of extension of the comment period is published only a day or two before the initial scheduled closing date. The lateness of the publication reduces the value of the extension for many commenters. By two days before the initial comment closing date, most commenters will already have prepared comments. For these reasons, NHTSA amends the time period for accepting petitions for extension of time to comment on rulemakings.

Petitions for Reconsideration

Section 553.35 establishes procedures for petitions of reconsideration of a final rule. The procedures require that petitions for extension must be received by NHTSA not later than 30 days after publication of the rule in the Federal Register. Petitions received after that deadline are treated as petitions for rulemaking.

In this final rule, NHTSA amends the procedures to provide 45 days for the receipt of petitions for reconsideration. NHTSA believes that, by providing the public additional time to review final rules, particularly complicated ones, the

amendment will enable them to identify potential issues more thoroughly and thus petition for reconsideration more effectively.

Effective Date

The amendments made in this final rule are effective 30 days after publication in the Federal Register. If there is a document with an open comment period on that date of publication, and there are 15 or more days remaining in the comment period, the deadline for filing a petition for extending the comment period is the 15th day before the end of that comment period. If there are less than 15 days remaining, the deadline for such a petition is the 10th day before the end of the comment period. For any final rule published less than 30 days before date of publication, the deadline for submitting petitions for reconsideration will be extended 15 days.

Other Amendments

The agency is republishing the entirety of Part 553 to consolidate the authority citations in one area. No other substantive amendments have been made to Part 553.

NHTSA is not soliciting public comment on this amendment to part 553, since it is a rule of agency procedure, and an opportunity for public comment is therefore not required under the Administrative Procedure Act.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed under E.O. 12866, ''Regulatory Planning and Review.'' This action has been determined to be not ''significant'' under the Department of Transportation's regulatory policies and procedures. This final rule merely makes a procedural change, by amending the deadlines by which a petition for extension of comment period and a petition for reconsideration must be received by NHTSA. The final rule will have no effect on the substantive rights of any public commenters or other interested parties. For these reasons, NHTSA has determined that the effects of this rule are so minimal that a full regulatory evaluation is not required.

Regulatory Flexibility Act

NHTSA has also considered the impacts of this final rule under the Regulatory Flexibility Act. For the reasons discussed above, I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (P.L. 96–511), there are no requirements for information collection associated with this final rule.

National Environmental Policy Act

NHTSA has also analyzed this final rule under the National Environmental Policy Act and determined that it will not have a significant impact on the human environment.

Executive Order 12612 (Federalism)

NHTSA has analyzed this rule in accordance with the principles and criteria contained in E.O. 12612, and has determined that this rule will not have significant federalism implications to warrant the preparation of a Federalism Assessment.

Civil Justice Reform

This final rule does not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the State requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 553

Administrative practice and procedure.

In consideration of the foregoing, 49 CFR Part 553 is revised to read as follows:

PART 553—RULEMAKING PROCEDURES

Subpart A—General

Sec.
553.1 Applicability.
553.3 Definitions.
553.5 Regulatory docket.
553.7 Records.

Subpart B—Procedures for Adoption of Rules

553.11 Initiation of rulemaking.
553.13 Notice of proposed rulemaking.
553.15 Contents of notices of proposed rulemaking.
553.17 Participation of interested persons.
553.19 Petitions for extension of time to comment.
553.21 Contents of written comments.
553.23 Consideration of comments received.
553.25 Additional rulemaking proceedings.
553.27 Hearings.
553.29 Adoption of final rules.
553.31–553.33 [Reserved]
553.35 Petitions for reconsideration.
553.37 Proceedings on petitions for reconsideration.
553.39 Effect of petition for reconsideration on time for seeking judicial review.

Appendix to Part 553—Statement of Policy: Action on Petitions for Reconsideration

Authority: 49 U.S.C. 322, 1657, 30101, *et seq.*, 30301, *et seq.*, 30501, *et seq.*, 32101, *et seq.*, 32301, *et seq.*, 32501, *et seq.*, 32701, *et seq.*, 32901, *et seq.*, and 33101, *et seq.*; delegation of authority at 49 CFR 1.50.

Subpart A—General

§ 553.1 Applicability.

This part prescribes rulemaking procedures that apply to the issuance, amendment, and revocation of rules pursuant to Title 49, Subtitle VI of the United States Code (49 U.S.C. 30101, *et seq.*).

§ 553.3 Definitions.

Administrator means the Administrator of the National Highway Traffic Safety Administration or a person to whom he has delegated final authority in the matter concerned.

Rule includes any order, regulation, or Federal motor vehicle safety standard issued under Title 49.

Title 49 means 49 U.S.C. 30101, *et seq.*

§ 553.5 Regulatory docket.

(a) Information and data deemed relevant by the Administrator relating to rulemaking actions, including notices of proposed rulemaking; comments received in response to notices; petitions for rulemaking and reconsideration; denials of petitions for rulemaking and reconsideration; records of additional rulemaking proceedings under § 553.25; and final rules are maintained in the Docket Room, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590.

(b) Any person may examine any docketed material at the Docket Room at any time during regular business hours after the docket is established, except material ordered withheld from the

public under applicable provisions of Title 49 and section 552(b) of title 5 of the U.S.C., and may obtain a copy of it upon payment of a fee.

§ 553.7 Records.

Records of the National Highway Traffic Safety Administration relating to rulemaking proceedings are available for inspection as provided in section 552(b) of title 5 of the U.S.C. and Part 7 of the regulations of the Secretary of Transportation (Part 7 of this title).

Subpart B—Procedures for Adoption of Rules

§ 553.11 Initiation of rulemaking.

The Administrator may initiate rulemaking either on his own motion or on petition by any interested person after a determination in accordance with Part 552 of this title that grant of the petition is advisable. The Administrator may, in his discretion, also consider the recommendations of other agencies of the United States.

§ 553.13 Notice of proposed rulemaking.

Unless the Administrator, for good cause, finds that notice is impracticable, unnecessary, or contrary to the public interest, and incorporates that finding and a brief statement of the reasons for it in the rule, a notice of proposed rulemaking is issued and interested persons are invited to participate in the rulemaking proceedings under applicable provisions of Title 49.

§ 553.15 Contents of notices of proposed rulemaking.

(a) Each notice of proposed rulemaking is published in the Federal Register, unless all persons subject to it are named and are personally served with a copy of it.

(b) Each notice, whether published in the Federal Register or personally served, includes

(1) A statement of the time, place, and nature of the proposed rulemaking proceeding;

(2) A reference to the authority under which it is issued;

(3) A description of the subjects and issues involved or the substance and terms of the proposed rule;

(4) A statement of the time within which written comments must be submitted; and

(5) A statement of how and to what extent interested persons may participate in the proceedings.

§ 3.17 Participation of interested persons.

(a) Any interested person may participate in rulemaking proceeding by submitting comments in writing containing information, views or arguments.

(b) In his discretion, the Administrator may invite any interested person to participate in the rulemaking procedures described in § 553.25.

§ 553.19 Petitions for extension of time to comment.

A petition for extension of the time to submit comments must be received not later than 15 days before expiration of the time stated in the notice. The petitions must be submitted to: Administrator, National Highway Traffic Safety Administration, U.S. Department of Transportation, 400 Seventh Street SW, Washington, DC, 20590. It is requested, but not required, that 10 copies be submitted. The filing of the petition does not automatically extend the time for petitioner's comments. Such a petition is granted only if the petitioner shows good cause for the extension, and if the extension is consistent with the public interest. If an extension is granted, it is granted to all persons, and it is published in the Federal Register.

§ 553.21 Contents of written comments.

All written comments shall be in English. Unless otherwise specified in a notice requesting comments, comments may not exceed 15 pages in length, but necessary attachments may be appended to the submission without regard to the 15-page limit. Any interested person shall submit as a part of his written comments all material that he considers relevant to any statement of fact made by him. Incorporation by reference should be avoided. However, if incorporation by reference is necessary, the incorporated material shall be identified with respect to document and page. It is requested, but not required, that 10 copies and attachments, if any, be submitted.

§ 553.23 Consideration of comments received.

All timely comments are considered before final action is taken on a rulemaking proposal. Late filed comments may be considered as far as practicable.

§ 553.25 Additional rulemaking proceedings.

The Administrator may initiate any further rulemaking proceedings that he finds necessary or desirable. For example, interested persons may be invited to make oral arguments, to participate in conferences between the Administrator or his representative and interested persons at which minutes of the conference are kept, to appear at informal hearings presided over by officials designated by the Administrator, at which a transcript or minutes are kept, or participate in any other proceeding to assure informed administrative action and to protect the public interest.

§ 553.27 Hearings.

(a) Sections 556 and 557 of title 5, United States Code, do not apply to hearings held under this part. Unless otherwise specified, hearings held under this part are informal, nonadversary, fact-finding proceedings, at which there are no formal pleadings or adverse parties. Any rule issued in a case in which an informal hearing is held is not necessarily based exclusively on the record of the hearing.

(b) The Administrator designates a representative to conduct any hearing held under this part. The Chief Counsel designates a member of his staff to serve as legal officer at the hearing.

§ 553.29 Adoption of final rules.

Final rules are prepared by representatives of the office concerned and the Office of the Chief Counsel. The rule is then submitted to the Administrator for its consideration. If the Administrator adopts the rule, it is published in the Federal Register, unless all persons subject to it are named and are personally served with a copy of it.

§ 553.31–553.33 [Reserved]

§ 553.35 Petitions for reconsideration.

(a) Any interested person may petition the Administrator for reconsideration of any rule issued under this part. The petition shall be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC, 20590. It is requested, but not required, that 10 copies be submitted. The petition must be received not later than 45 days after publication of the rule in the Federal Register. Petitions filed after that time will be considered as petitions filed under Part 552 of this chapter. The petition must contain a brief statement of the complaint and an explanation as to why compliance with the rule is not practicable, is unreasonable, or is not in the public interest. Unless otherwise specified in the final rule, the statement and explanation together may not exceed 15 pages in length, but necessary attachments may be appended to the submission without regard to the 15-page limit.

(b) If the petitioner requests the consideration of additional facts, he must state the reason they were not

presented to the Administrator within the prescribed time.

(c) The Administrator does not consider repetitious petitions.

(d) Unless the Administrator otherwise provides, the filing of a petition under this section does not stay the effectiveness of the rule.

§ 553.37 Proceedings on petitions for reconsideration.

The Administrator may grant or deny, in whole or in part, any petition for reconsideration without further proceedings. In the event he determines to reconsider any rule, he may issue a final decision on reconsideration without further proceedings, or he may provide such opportunity to submit comment or information and data as he deems appropriate. Whenever the Administrator determines that a petition should be granted or denied, he prepares a notice of the grant or denial of a petition for reconsideration, for issuance to the petitioner, and issues it to the petitioner. The Administrator may consolidate petitions relating to the same rule.

§ 553.39 Effect of petition for reconsideration on time for seeking judicial review.

The filing of a timely petition for reconsideration of any rule issued under this part postpones the expiration of the 60-day period in which to seek judicial review of that rule, as to every person adversely affected by the rule. Such a person may file a petition for judicial review at any time from the issuance of the rule in question until 60 days after publication in the Federal Register of the Administrator's disposition of any timely petitions for reconsideration.

Appendix to Part 553—Statement of Policy: Action on Petitions for Reconsideration

It is the policy of the National Highway Traffic Safety Administration to issue notice of the action taken on a petition for reconsideration within 90 days after the closing date for receipt of such petitions, unless it is found impracticable to take action within that time. In cases where it is so found and the delay beyond that period is expected to be substantial, notice of that fact, and the date by which it is expected that action will be taken, will be published in the Federal Register.

Issued on: November 28, 1995.

Ricardo Martinez,

Administrator.

[FR Doc. 95–29394 Filed 12–4–95; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 649, 650, and 651

[Docket No. 950824215–5275–03; I.D. 050295B]

RIN 0648–AH37

American Lobster Fishery; Atlantic Sea Scallop Fishery; Northeast Multispecies Fishery; Vessel Ownership Requirements

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement measures contained in Framework Adjustment 1 to the American Lobster Fishery Management Plan (FMP), Framework Adjustment 3 to the Atlantic Sea Scallop FMP, and Framework Adjustment 7 to the Northeast Multispecies FMP. This rule implements framework adjustments that revise a provision in each of the FMPs that requires all permit applicants to own a fishing vessel at the time they apply for or renew a limited access permit. The intent of this rule is to allow certain applicants who have owned vessels that meet the various limited access permit qualification criteria, but who do not currently own a vessel, to preserve their eligibility to apply for a Federal limited access permit for a replacement vessel in subsequent years by obtaining a Confirmation of Permit History.

EFFECTIVE DATE: December 4, 1995.

ADDRESSES: Copies of the Framework Adjustments, Amendment 5 to the American Lobster FMP, Amendment 4 to the Atlantic Sea Scallop FMP, and Amendment 5 to the Northeast Multispecies FMP, including regulatory impact reviews, initial regulatory flexibility analyses, and final supplemental environmental impact statements are available upon request from Douglas Marshall, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906–1097; telephone 617–231–0422.

FOR FURTHER INFORMATION CONTACT: E. Martin Jaffe, Fishery Policy Analyst, 508–281–9272.

SUPPLEMENTARY INFORMATION:

Background

In 1994, NMFS implemented major amendments, developed by the New England Fishery Management Council (Council), to the FMPs for the Atlantic sea scallop, northeast multispecies and the American lobster fisheries. These amendments, which were intended to address overfishing in these fisheries, implemented measures that limited access to these fisheries based upon historical participation. The Council did not, however, intend to force vessel owners to remain active in currently overfished fisheries in order to retain fishing rights for the future. To address this problem, the Council requested NMFS to implement this action, which will allow an applicant who has owned a vessel that meets the various limited access permit qualification criteria, but who does not own a vessel at the time of application, to preserve his/her right to qualify for a Federal limited access permit for a replacement vessel in subsequent years in the Atlantic sea scallop and northeast multispecies fisheries, and in the American lobster fishery. Qualified applicants will be allowed to apply for a Confirmation of Permit History and will need to apply for such annually to preserve the permit and fishing history of the qualifying vessel. See the proposed rule, which was published in the Federal Register on September 1, 1995 (60 FR 45690), for further background and rationale for this action.

Comments and Responses

The Council had discussed and heard public comment on this issue at the September 21–22, 1994, Council meeting, at which time the Council initiated this framework action. The public was notified of this Council meeting, and of the final Council meeting held on October 28–29, 1994, at which time this action was further discussed. No public comments were received. The proposed rule, however, which was published in the Federal Register on September 1, 1995 (60 FR 45690), provided the public with 15 additional days to comment. No additional comments were received by the September 15, 1995, closing date.

Classification

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

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration when this rule was proposed that it would not have a significant economic impact on a substantial number of small entities. As a result, a regulatory flexibility analysis was not prepared.

Under 5 U.S.C. 553(d)(1), because this rule relieves a restriction on the industry, it is not subject to a 30-day delay in effective date.

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

This rule contains a collection-of-information requirement subject to the PRA that has been approved by OMB under OMB Control Number 0648–0202. The public reporting burden for completing an application for a Confirmation of Permit History is estimated at 0.5 hours per response. This estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

List of Subjects

50 CFR Part 649

Fisheries.

50 CFR Part 650

Fisheries, Reporting and recordkeeping requirements.

50 CFR Part 651

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: November 28, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 649, 650, and 651 are amended as follows:

PART 649—AMERICAN LOBSTER FISHERY

1. The authority citation for part 649 continues to read as follows:

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

2. In § 649.4, paragraph (b)(6) is added to read as follows:

§ 649.4 Vessel permits.

* * * * *

(b) * * *

(6) *Confirmation of Permit History.* Notwithstanding any other provisions of this part, a person who does not currently own a fishing vessel, but who has owned a qualifying vessel that has sunk, been destroyed, or transferred to another person, may apply for and receive a Confirmation of Permit History if the fishing and permit history of such vessel has been retained lawfully by the applicant. To be eligible to obtain a Confirmation of Permit History, the applicant must show that the qualifying vessel meets the eligibility requirements, as applicable, in this part. Issuance of a valid and current Confirmation of Permit History preserves the eligibility of the applicant to apply for or renew a limited access permit for a replacement vessel based on the qualifying vessel's fishing and permit history at a subsequent time, subject to the replacement provisions specified at § 649.4. A Confirmation of Permit History must be applied for and received on an annual basis in order for the applicant to preserve the fishing rights and limited access eligibility of the qualifying vessel. If fishing privileges have been assigned or allocated previously under this part based on the qualifying vessel's fishing and permit history, the Confirmation of Permit History also preserves such fishing privileges. Any decision regarding the issuance of a Confirmation of Permit History for a qualifying vessel that has applied for or been issued previously a limited access permit under this part is a final agency action subject to judicial review under 5 U.S.C. 704. Applications for a Confirmation of Permit History shall be accepted by the Regional Director on or before December 31, 1995. For subsequent years, applications must be received by the end of the calendar year in which the Confirmation of Permit History expires. Information requirements for the Confirmation of Permit History application shall be the same as those for a limited access permit with any request for information about the vessel being applicable to the qualifying vessel that has been sunk, destroyed, or transferred. Vessel permit applicants who hold a Confirmation of Permit History and who wish to obtain a vessel permit for a replacement vessel based upon the previous vessel history may do so pursuant to paragraph (b) of this section.

* * * * *

PART 650—ATLANTIC SEA SCALLOP FISHERY

3. The authority citation for part 650 continues to read as follows:

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

4. In § 650.4, the introductory text is revised and paragraph (a)(10) is added to read as follows:

§ 650.4 Vessel permits.

Any vessel of the United States that fishes for, possesses, or lands per trip Atlantic sea scallops in quantities greater than 40 lb (18.14 kg) shucked scallops or 5 bushels (176.2 l) in-shell, except vessels that fish exclusively in state waters for sea scallops, must have been issued and carry on board a valid limited access scallop permit or a valid general scallop permit, issued under this section.

(a) * * *

(10) *Confirmation of Permit History.* Notwithstanding any other provisions of this part, a person who does not currently own a fishing vessel, but who has owned a qualifying vessel that has sunk, been destroyed, or transferred to another person, may apply for and receive a Confirmation of Permit History if the fishing and permit history of such vessel has been retained lawfully by the applicant. To be eligible to obtain a Confirmation of Permit History, the applicant must show that the qualifying vessel meets the eligibility requirements, as applicable, in this part. Issuance of a valid and current Confirmation of Permit History preserves the eligibility of the applicant to apply for or renew a limited access permit for a replacement vessel based on the qualifying vessel's fishing and permit history at a subsequent time, subject to the replacement provisions specified at § 650.4. A Confirmation of Permit History must be applied for and received on an annual basis in order for the applicant to preserve the fishing rights and limited access eligibility of the qualifying vessel. If fishing privileges have been assigned or allocated previously under this part based on the qualifying vessel's fishing and permit history, the Confirmation of Permit History also preserves such fishing privileges. Any decision regarding the issuance of a Confirmation of Permit History for a qualifying vessel that has applied for or been issued previously a limited access permit under this part is a final agency action subject to judicial review under 5 U.S.C. 704. Applications for a Confirmation of Permit History shall be accepted by the Regional Director on or before December 31, 1995. For subsequent years, such applications must be received by the end of the calendar year in which the Confirmation of Permit History expires. Information requirements for the Confirmation of Permit History application shall be the same as those for a limited access permit with any request for information about the vessel being applicable to the qualifying vessel that has been sunk, destroyed or transferred. Vessel permit applicants who hold a Confirmation of Permit History and who wish to obtain a vessel permit for a replacement vessel based

upon the previous history may do so pursuant to paragraph (a) of this section.

* * * * *

PART 651—NORTHEAST MULTISPECIES FISHERY

5. The authority citation for part 651 continues to read as follows:

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

6. In § 651.4, paragraph (a) introductory text is revised and paragraph (a)(10) is added to read as follows:

§ 651.4 Vessel permits.

* * * * *

(a) *Limited access multispecies permits.* Beginning on May 1, 1994, any vessel of the United States that possesses or lands more than the possession limit of regulated species specified under § 651.27(a), except vessels fishing with fewer than 4,500 hooks that have been issued a hook-gear-only permit as specified in paragraph (b) of this section, vessels fishing for regulated species exclusively in state waters, and recreational fishing vessels, must have been issued and carry on board a valid Federal limited access multispecies permit, or an authorizing letter issued under paragraph (a)(8)(v) of this section. To qualify for a limited access multispecies permit, a vessel must meet the following criteria, as applicable:

* * * * *

(10) *Confirmation of Permit History.* Notwithstanding any other provisions of this part, a person who does not currently own a fishing vessel, but who has owned a qualifying vessel that has sunk, been destroyed, or transferred to another person, may apply for and receive a Confirmation of Permit History if the fishing and permit history of such vessel has been retained lawfully by the applicant. To be eligible to obtain a Confirmation of Permit History, the applicant must show that the qualifying vessel meets the eligibility requirements, as applicable, in this part. Issuance of a valid and current Confirmation of Permit History preserves the eligibility of the applicant to apply for or renew a limited access permit for a replacement vessel based on the qualifying vessel's fishing and permit history at a subsequent time, subject to the replacement provisions specified at § 651.4. A Confirmation of Permit History must be applied for and received on an annual basis in order for the applicant to preserve the fishing rights and limited access eligibility of the qualifying vessel. If fishing privileges have been assigned or allocated previously under this part based on the qualifying vessel's fishing and permit history, the Confirmation of Permit History also preserves such fishing privileges. Any decision regarding the issuance of a Confirmation of Permit History for a qualifying vessel that has applied for or been issued previously a limited access permit under this part is a final agency action subject to judicial review under 5 U.S.C. 704. Applications for a Confirmation of Permit History shall be accepted by the Regional Director on or before December 31, 1995. For subsequent years, such applications must be received by the end of the calendar year before the year for which the Confirmation of Permit History expires. Information requirements for the Confirmation of Permit History application shall be the same as those for a limited access permit with any request for information about the vessel being applicable to the qualifying vessel that has been sunk, destroyed or transferred. Vessel permit applicants who hold a Confirmation of Permit History and who wish to obtain a vessel permit for a replacement vessel based upon the previous vessel history may do so pursuant to paragraph (a) of this section.

* * * * *

[FR Doc. 95–29518 Filed 12–4–95; 8:45 am]

BILLING CODE 3510–22–F

---

50 CFR Part 652

[Docket No. 900124–0127; I.D. 110795D]

Atlantic Surf Clam and Ocean Quahog Fishery; Suspension of Minimum Size Limit for Surf Clams in 1996

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

ACTION: Suspension of surf clam minimum size limit.

SUMMARY: NMFS informs the public that the minimum size limit of 4.75 inches (12.065 cm) for Atlantic surf clams is suspended for the 1996 fishing year. The intended effect is to reduce a regulatory burden while still safeguarding the resource by assuring that the vast majority of surf clams are larger than maximum-yield-per-recruit size.

EFFECTIVE DATE: January 1, 1996, through December 31, 1996.

FOR FURTHER INFORMATION CONTACT: Myles Raizin, Resource Policy Analyst, 508-281-9104.

SUPPLEMENTARY INFORMATION:

A final rule implementing Amendment 8 to the Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fishery was published on June 14, 1990 (55 FR 24184). Section 652.22(a)(1) allows the Regional Director to suspend, annually, by publication of a document in the Federal Register, the minimum size limit for Atlantic surf clams. This action may be taken unless discard, catch, and survey data indicate that as much as 30 percent of the Atlantic surf clam resource is smaller than 4.75 inches (12.065 cm), and the overall reduced size is not attributable to beds where growth of the individual clams has been reduced because of density-dependent factors.

At its August 1995 meeting, the Mid-Atlantic Fishery Management Council (Council) accepted the recommendations of its Statistical and Scientific Committee and Surf Clam/Ocean Quahog Committee and voted to recommend that the Director, Northeast Region, NMFS (Regional Director), suspend the minimum size limit for surf clams in 1996. NMFS port agents conducted a random sample of surf clams landed in 1995. Results indicate that only 10.67 percent of the sample was composed of clams that were less than 4.75 inches (12.065 cm). Based on the sampling results, the Regional Director adopts the Council's recommendation and publishes this document to suspend the minimum size limit for Atlantic surf clams for the period January 1, 1996, through December 31, 1996.

Classification

This action is authorized by 50 CFR part 652 and is exempt from review under E.O. 12866.

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

Dated: November 16, 1995.

Richard W. Surdi,

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

[FR Doc. 95–29517 Filed 12–4–95; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 60, No. 233
Tuesday, December 5, 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

Food and Consumer Service

7 CFR Part 226

RIN 0584–AB19

Child and Adult Care Food Program: Overclaim Authority

AGENCY: Food and Consumer Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes an amendment to the Child and Adult Care Food Program (CACFP) regulations which would explicitly authorize the Department and State agencies to assess overclaims against institutions that fail to abide by CACFP recordkeeping requirements. This authority has been successfully challenged in several judicial rulings on the grounds that such authority was not specifically established in program regulations. This rule serves to affirm the Department's authority to assess overclaims for recordkeeping infractions and to clarify any regulatory ambiguities or inconsistencies regarding overclaims authority.

DATES: To be assured of consideration, comments must be postmarked no later than February 5, 1996.

ADDRESSES: Comments should be addressed to Mr. Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Consumer Service, Department of Agriculture, 3101 Park Center Drive, Room 1007, Alexandria, Virginia 22302. Comments in response to this rule may be inspected at the address above during normal business hours, 8:30 a.m. to 5:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Eadie or Mr. Edward Morawetz at the above address or by telephone at 703–305–2620.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been determined to be not significant for purposes of Executive Order 12866, and, therefore, has not been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

This action has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The Administrator of the Food and Consumer Service has certified that this action will not have a significant economic impact on a substantial number of small entities. There will be no significant impact because this rule represents only a clarification of current procedures.

Executive Order 12372

This Program is listed in the Catalog of Federal Domestic Assistance under No. 10.558 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V, and final rule related notice published in 48 FR 29114, June 24, 1983).

Information Collection

This proposed rule contains no new information collection requirements. In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), current reporting and recordkeeping requirements for Part 226 were approved by the Office of Management and Budget under Control Number 0584–0055.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the ''Effective Date'' section of the preamble of the final rule. All available administrative procedures must be exhausted prior to any judicial challenge to the provisions of this rule or the application of its provisions. In the Child and Adult Care Food Program, the administrative procedures are set forth under the following regulations: (1) Institution appeal procedures in 7 CFR § 226.6(k); and (2) Disputes involving procurement by State agencies and institutions must follow administrative appeal procedures to the extent required by 7 CFR § 226.22 and 7 CFR Part 3015.

Background

The Child and Adult Care Food Program (CACFP) is authorized by section 17 of the National School Lunch Act, as amended (42 U.S.C. 1766). Section 17(n) of that Act stipulates that ''States and institutions participating in the program shall keep accounts and records as may be necessary to enable the Secretary to determine whether there has been compliance with the requirements of this section.'' Furthermore, the CACFP regulations include a number of requirements relating to recordkeeping: Section 226.7(m) requires State agencies to establish standards for institutional recordkeeping; Section 226.15(e) prescribes the minimum recordkeeping requirements for institutions in the CACFP; Section 226.10(c) requires institutions to certify that records are available to support reimbursement claims; and Section 226.10(d) establishes a timeframe for record retention. Moreover, Section 226.6(f)(1) requires that the Program agreement between the State agency and each institution stipulate that each participating institution must agree to comply with all regulatory requirements including these recordkeeping requirements. Finally, the importance with which the Department views an institution's recordkeeping responsibilities is found in Section 226.6(c)(4), where failure to maintain adequate records is specifically listed as a serious deficiency for which termination of an institution's participation may be appropriate.

On numerous occasions, the Department and State agencies have used the authority in the regulatory provisions cited above to recover funds paid to institutions which did not have records necessary to support claims for reimbursement. However, this authority has been successfully challenged in court cases in Arkansas and California. In both cases, assessment of overclaims against institutions which were based on inadequate or missing records were

overturned by the courts on the grounds that the CACFP regulations do not specifically authorize overclaims for those reasons.

In recognition of the fact that State agencies may review an institution's performance under the CACFP as infrequently as once every four years, effective administration depends on access to complete documentation of program activities for an entire review period. Such documentation is necessary for the Department and State agencies to maintain a check on possible fraud, abuse and mismanagement in the Program. Without proper records concerning the content and number of meals served, and documentation of participants' income category, there is no evidence that such participants were fed in accordance with basic program requirements, and no assurance that program funds were spent as mandated in the law and in the regulations.

Accordingly, the Department is proposing to amend Sections 226.14(a), 226.15(e) and 226.16(e), and to add new Sections 226.17(c), 226.18(g), 226.19(c), and 226.19a(c) to the CACFP regulations to clarify that failure to adhere to CACFP recordkeeping requirements may be used as a basis for State agencies to assess overclaims against sponsors.

This rulemaking also contains a technical change to the CACFP regulations which would transfer two recordkeeping responsibilities established for sponsoring organizations from Section 226.16(e) to Section 226.15(e).

Accordingly, the Department proposes to amend Sections 226.15(e) and 226.16(e) by moving Section 226.16(e) (1)–(2) to Section 226.15(e) under redesignated paragraphs (10) and (12).

List of Subjects in 7 CFR Part 226

Day care, Food assistance programs, Grant programs-health, infants and children, Records, Reporting and recordkeeping requirements, Surplus agricultural commodities.

Accordingly, 7 CFR Part 226 is proposed to be amended as follows:

PART 226—CHILD AND ADULT CARE FOOD PROGRAM

1. The authority citation for Part 226 continues to read as follows:

Authority: Secs. 9, 11, 14, 16, and 17, National School Lunch Act, as amended (42 U.S.C. 1758, 1759a, 1762a, 1765 and 1766).

2. In § 226.14, the introductory text of paragraph (a) is amended by adding a new sentence after the first sentence to read as follows:

§ 226.14 Claims against institutions.

(a) * * * State agencies may consider claims for reimbursement not properly payable if an institution does not comply with the recordkeeping requirements contained in this part. * * *

* * * * *

3. In § 226.15:

a. The introductory text of paragraph (e) is revised;

b. Paragraphs (e)(10), (e)(11) and (e)(12) are redesignated as paragraphs (e)(11), (e)(13) and (e)(14);

c. New paragraphs (e)(10) and (e)(12) are added;

d. Newly redesignated paragraph (e)(11) is amended by removing the word ''and'' at the end of the paragraph;

e. Newly redesignated paragraph (e)(13) is amended by adding the word ''and'' after the semicolon at the end of the paragraph; and

f. Newly redesignated paragraph (e)(14) is amended by removing the first word ''Maintain'' from the paragraph.

The additions and revisions specified above read as follows:

§ 226.15 Institution provisions.

* * * * *

(e) *Recordkeeping.* Each institution shall establish procedures to collect and maintain all necessary program records. Failure to maintain such records shall be grounds for denial of reimbursement for meals served during the period covered by the records in question and for the denial of reimbursement for costs associated with such records. At a minimum, the following records shall be collected and maintained:

* * * * *

(10) Information concerning the dates and amounts of disbursement to each child care facility or adult day care facility with which it has a program agreement;

* * * * *

(12) Information concerning the location and dates of each child care or adult day care facility review, any problems noted, and the corrective action prescribed and effected;

* * * * *

4. In § 226.16, paragraph (e) is revised to read as follows:

§ 226.16 Sponsoring organization provisions.

* * * * *

(e) Each sponsoring organization shall comply with the recordkeeping requirements established in §§ 226.10(d) and 226.15(e) and any recordkeeping requirements established by the State agency in order to justify the administrative payments made in accordance with § 226.12(a). Failure to maintain such records shall be grounds for the denial of reimbursement for the costs associated with those records during the period covered by the records in question.

* * * * *

5. In § 226.17, a new paragraph (c) is added to read as follows:

§ 226.17 Child care center provisions.

* * * * *

(c) Each child care center shall comply with the recordkeeping requirements established in §§ 226.10(d) and 226.15(e), and the recordkeeping requirements contained in this section. Failure to maintain such records shall be grounds for the denial of reimbursement for meals served during the period covered by the records in question and for the denial of reimbursement for costs associated with such records.

6. In § 226.18, a new paragraph (g) is added to read as follows:

§ 226.18 Day care home provisions.

* * * * *

(g) Each day care home shall comply with the recordkeeping requirements established in §§ 226.10(d) and 226.15(e), and the recordkeeping requirements contained in this section. Failure to maintain such records shall be grounds for the denial of reimbursement for meals served during the period covered by the records in question.

7. In § 226.19, a new paragraph (c) is added to read as follows:

§ 226.19 Outside-school-hours care center provisions.

* * * * *

(c) Each outside-school-hours care center shall comply with the recordkeeping requirements established in §§ 226.10(d) and 226.15(e), and the recordkeeping requirements contained in this section. Failure to maintain such records shall be grounds for the denial of reimbursement for meals served during the period covered by the records in question and for the denial of reimbursement for costs associated with such records.

8. In § 226.19a, a new paragraph (c) is added to read as follows:

§ 226.19a Adult day care center provisions.

* * * * *

(c) Each adult day care center shall comply with the recordkeeping requirements established in §§ 226.10(d) and 226.15(e), and the recordkeeping requirements contained in this section. Failure to maintain such records shall

be grounds for the denial of reimbursement for meals served during the period covered by the records in question and for the denial of reimbursement for costs associated with such records.

Dated: November 27, 1995.

William E. Ludwig,

Administrator.

[FR Doc. 95–29569 Filed 12–4–95; 8:45 am]

BILLING CODE 3410–30–U

Agricultural Marketing Service

7 CFR Part 985

[Docket No. AO–79–2; FV95–985–4]

Spearmint Oil Produced in the Far West; Proposed Amendment of Marketing Order No. 985

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of order filed on proposed rulemaking.

SUMMARY: The purpose of this document is to inform all interested parties that an order was filed by the presiding Administrative Law Judge in this matter stating that briefs, proposed findings, and conclusions may be filed no later than December 22, 1995. A hearing to consider amendments to the Federal marketing order covering the handling of spearmint oil grown in the Far West and to receive evidence on whether portions of the States of California and Montana should continue to be regulated under the order, was held on November 14, 1995, in Spokane, Washington.

DATES: Proposed findings and conclusions and written arguments or briefs must be filed by December 22, 1995.

ADDRESSES: Proposed findings and conclusions and written arguments or briefs should be sent to the office of the hearing clerk, U.S. Department of Agriculture, Room 1079–South Building, Washington, DC 20250–9200.

FOR FURTHER INFORMATION CONTACT:

(1) Caroline C. Thorpe, Marketing Order Administration Branch, Fruit and Vegetable Division, Room 2523–S, AMS, USDA, PO Box 96456, Washington, DC 20090–6456; telephone number (202) 720–5127.

(2) Robert Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 1220 SW. Third Avenue, Room 369, Portland, Oregon, 97204; telephone: (503) 326–2725.

SUPPLEMENTARY INFORMATION: A public hearing was held November 14, 1995, in Spokane, Washington to receive evidence on whether the marketing order regulating the handling of spearmint oil produced in the Far West should be amended to exclude from the area of regulation portions of the States of California and Montana.

Pursuant to the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900), the Administrative Law Judge assigned to conduct the proceeding established December 22, 1995, as the date by which proposed findings and conclusions and written arguments or briefs must be filed. Any proposed findings and conclusions and written arguments or briefs must be based upon the evidence received at the hearing. Factual material other than that adduced at the hearing or subject to official notice shall not be alluded to, and will not be considered in determining whether the marketing order should be amended.

Authority: 7 U.S.C. 607–674.

Dated: November 30, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–29571 Filed 12–4–95; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[CO–24–95]

RIN 1545–AT51

Consolidated Groups—Intercompany Transactions and Related Rules; Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Change of date and time for public hearing on proposed regulations.

SUMMARY: This document changes the date and time of the public hearing on proposed regulations that provide rules for disallowing loss and excluding gain for certain dispositions and other transactions involving stock of the common parent of a consolidated group.

DATES: The public hearing has changed to Monday, December 11, 1995, beginning at 1:00 p.m.

ADDRESSES: The public hearing will be held in the Internal Revenue Service Auditorium, Seventh floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue NW. Washington, DC. Submit requests to speak and outlines of oral comments to CC:DOM:CORP:R [CO–24–95], room 5228, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Christina Vasquez of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622–6803 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and notice of public hearing appearing in the Federal Register for Tuesday, July 18, 1995 (60 FR 36755), announced that the Service would hold a public hearing on proposed regulations that provide rules for disallowing loss and excluding gain for certain dispositions and other transactions involving stock of the common parent of a consolidated group on Thursday, November 16, 1995, beginning at 10:00 a.m. in the IRS Auditorium.

The date and time of the public hearing has changed. The hearing is scheduled for Monday, December 11, 1995, beginning at 1:00 p.m. The requests to speak and outlines of oral comments were due October 26, 1995. Because of controlled access restrictions, attenders are not admitted beyond the lobby of the Internal Revenue Building until 12:45 p.m.

The service will prepare an agenda showing the scheduling of the speakers and make copies available free of charge at the hearing.

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 95–29510 Filed 12–4–95; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 913

[SPATS No. IL–089–FOR]

Illinois Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening and extension of public comment period on proposed amendment.

SUMMARY: OSM is announcing receipt of revisions and additional explanatory information pertaining to a previously proposed amendment to the Illinois

regulatory program (hereinafter referred to as the ''Illinois program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The revisions and additional explanatory information for Illinois' proposed regulations pertain to termination of jurisdiction, permit fees, definitions, coal exploration, permitting, environmental resources, reclamation plans, special categories of mining, small operator assistance, bonding, performance standards, inspection, enforcement, civil penalties, administrative and judicial review, and certification of blasters. The amendment is intended to revise the Illinois program to be consistent with the corresponding Federal regulations, incorporate the additional flexibility afforded by recently revised Federal regulations, provide additional safeguards, clarify ambiguities, and improve operational efficiency.

DATES: Written comments must be received by 4:00 p.m., e.s.t., January 4, 1996. If requested, a public hearing on the proposed amendment will be held on January 2, 1996. Requests to speak at the hearing must be received by 4:00 p.m., e.s.t., on December 20, 1995.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand delivered to Roger W. Calhoun, Director, Indianapolis Field Office at the address listed below.

Copies of the Illinois program, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Indianapolis Field Office.

Roger W. Calhoun, Director Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, Indiana, 46204, Telephone: (317) 226–6700.

Illinois Department of Natural Resources, Office of Mines and Minerals, 524 South Second Street, Springfield, Illinois, 62701–1787, Telephone: (217) 782–4970.

FOR FURTHER INFORMATION CONTACT: Roger W. Calhoun, Director Indianapolis Field Office, Telephone: (317) 226–6700.

SUPPLEMENTARY INFORMATION:

I. Background on the Illinois Program

On June 1, 1982, the Secretary of the Interior conditionally approved the Illinois program. Background information on the Illinois program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the June 1, 1982, Federal Register (47 FR 23883). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 913.15, 913.16, 913.17.

II. Discussion of the Proposed Amendment

By letter dated February 3, 1995 (Administrative Record No. IL–1615), Illinois submitted a proposed amendment to its program pursuant to SMCRA. Illinois submitted the proposed amendment in response to an August 5, 1993, letter (Administrative Record No. IL–1400) that OSM sent to Illinois in accordance with 30 CFR 732.17(c), in response to the required program amendments at 30 CFR 913.16(s), (t), and (u), and at its won initiative. The provisions of Title 62 of the Illinois Administrative Code (IAC) that Illinois proposes to amend are 62 IAC 1700, General; 62 IAC 1701.Appendix A, Definitions; 62 IAC 1761.11, Areas where mining is prohibited or limited, 62 IAC 1772, Requirements for coal exploration; 62 IAC 1773, Requirements for permits and permit processing; 62 IAC 1774.13, Permit revisions; 62 IAC 1778.15, Right of entry information; 62 IAC 1779, Surface mining permit applications—minimum requirements for information on environmental resources; 62 IAC 1780.23, Reclamation plan: per-mining and post-mining information; 62 IAC 1783, Underground mining permit applications—minimum requirements for information on environmental resources; 62 IAC 1784.15, Reclamation plan: pre-mining and post-mining information; 62 IAC 1785, Requirements for permits for special categories of mining; 62 IAC 1795, Small operator assistance; 62 IAC 1800, Bonding and insurance requirements for surface coal mining and reclamation operations; 62 IAC 1816, Permanent program performance standards—surface mining activities; 62 IAC 1817, Permanent program performance standards—underground mining activities; 62 IAC 1825.14, High capability lands: soil replacement; 62 IAC 1840, Department inspections; 62 IAC 1843, State enforcement; 62 IAC 1845.12, When penalty will be assessed; 62 IAC 1847, Administrative and judicial review; 62 IAC 1845.5, Notice of hearing; and 62 IAC 1850, Training, examination and certification of blasters.

OSM announced receipt of the proposed amendment in the February 27, 1995, Federal Register (60 FR 10522) and invited public comment on its adequacy. The public comment period ended March 29, 1995.

During its review of the amendment, OSM identified concerns relating to 62 IAC 1701. Appendix A, definition of wetlands; 62 IAC 1773.20, general procedures for improvidently issued permits; 62 IAC 1773.23, review of ownership or control and violation information; 62 IAC 1773.24, procedures for challenging ownership or control shown in the Applicant Violator System; 62 IAC 1785.17, prime farmlands; 62 IAC 1816/1817.13 and 1816/1817.15, casing and sealing of drilled holes; 62 IAC 1816/1817.116(a)(3)(F) and 62 IAC 1816.116(a)(4)(A)(ii), revegetation standards for small isolated areas; 62 IAC 1816.116(a)(4)(D), revegetation standards for hay production; 62 IAC 1816/1817.116(a)(5), wetlands revegetation; 62 IAC 1816/1817.116(c), revegetation reference areas; and 62 IAC 1816.Appendix A, permit specifics yield standards. OSM notified Illinois of the concerns by letters dated April 28 and August 3, 1995 (Administrative Record Nos. IL–1649 and IL–1660, respectively). Illinois responded in a letter dated November 1, 1995 (Administrative Record No. IL–1663), by submitting a revised amendment and additional explanatory information.

Throughout the revised amendment, Illinois proposes to change its references of the ''Illinois Department of Mines and Minerals'' to the ''Illinois Department of Natural Resources, Office of Mines and Minerals'' in order to reflect a reorganization change which was effective July 1, 1995, and to change its references of the ''Soil Conservation Service'' and ''S.C.S.'' to the ''Natural Resources Conservation Service.'' Illinois, also, corrected typographical errors, revised cross-references, and revised paragraph notations to reflect organizational changes within the amended regulations. In addition, Illinois proposes revisions to and/or additional explanatory information for the following specific regulations.

A. 62 IAC 1701.Appendix A Definition of Wetlands

In its letter dated April 28, 1995 (Administrative Record No. 1649), OSM requested Illinois to provide a statement which explains the meaning of the last sentence of the ''wetlands'' definition [Areas which are restored or created as

the result of mitigation or planned construction projects and which function as a wetland are included within this definition even when all three wetland parameters are not present]. At the May 31, 1995, meeting (Administrative Record No. 1654), Illinois stated that it was using the definition of wetlands contained in the Illinois Interagency Wetland Policy Act of 1989 (20 ILCS 830/1–6). Illinois explained that the definition applies to created wetlands which are functioning as a wetland ''* * * even when all three wetland parameters are not present.'' Illinois further explained that generally the ''hydric'' soil profile may not be fully developed in an artificial wetland.

Illinois submitted a copy of the ''Interagency Wetlands Policy Act of 1989'' to OSM (Administrative Record No. 1650A).

B. 62 IAC 1773.20 Improvidently Issued Permits: General Procedures

At 62 IAC 1773.20(c)(4), Illinois proposes to change the word ''rescind'' in the sentence ''If the Department decides to rescind the permit, it shall give at least 30 days written notice to the permittee'' to the word ''suspend.''

C. 62 IAC 1773.23 Review of Ownership or Control and Violation Information

At 62 IAC 1773.23(a), Illinois proposes to change its regulation reference from ''1773.22(b)'' to ''1773.22.''

At 62 IAC 1773.23(b)(2)(B), Illinois proposes to change its regulation reference from ''1773.15(b)'' to ''1773.15(b)(1).''

D. 62 IAC 1773.24 Procedures for Challenging Ownership or Control Links Shown in the Applicant Violator System

At 62 IAC 1773.34(a)(1), Illinois proposes to change the regulation reference from ''subsections (b) through (d) below and Section 1773,25'' to ''30 CFR 773.24(b) through (d) and 30 CFR 773.25.''

At 62 IAC 1773.24(a)(2), Illinois proposes to change the regulation reference from ''subsections (b) through (d)'' to ''30 CFR 773.24 (b) through (d).''

At 62 IAC 1773.24(a)(3), Illinois proposes to replace the language ''the State program for the State that issued the violation notice'' with subsections (b) through (d) below and Section 1 773.25.''

At 62 IAC 1773.24 (b) through (d), Illinois proposes to replace the originally proposed procedures for those persons eligible under subsections (a)(1) or (a)(2) to challenge the status of an ownership or control link shown in the AVS or the status of federal violations with procedures for those persons eligible under subsection (a)(3) to challenge the status of state violations. The revised regulations read as follows:

(b) Any applicant or other person who wishes to challenge an ownership or control link shown in AVS or the status of a state violation, and who is eligible to do so under the provisions of subsection (a)(3) above, shall submit a written explanation of the basis for the challenge, along with any relevant evidentiary materials and supporting documents.

(c) The Department shall review any information submitted under subsection (b) above and shall make a written decision whether or not the ownership or control link has been shown to be erroneous or has been rebutted and/or whether the violation covered by the notice remains outstanding, has been corrected, is in the process of being corrected, or is the subject of a good faith appeal within the meaning of Section 1773.15(b)(1).

(d) Notice to applicant.

(1) If, as a result of the decision reached under subsection (c) above, the Department determines that the ownership or control link has been shown to be erroneous or has been rebutted and/or that the violation covered by the notice has been corrected, is in the process of being corrected, or is the subject of a good faith appeal, the Department shall so notify the applicant or other person and, if an application is pending, OSM, and shall correct the information in AVS.

(2) If, as a result of the decision reached under subsection (c) above, the Department determines that the ownership or control link has not been shown to be erroneous and has not been rebutted and that the violation covered by the notice remains outstanding, the Department shall so notify the applicant or other person and, if an application is pending, OSM, and shall update the information is AVS, if necessary.

(3) The Department shall serve a copy of the decision on the applicant or other person by certified mail, or by any means consistent with the rules governing service of a summons and complaint under Rule 4 of the Federal Rules of Civil Procedure. Service shall be complete upon tender of the notice or of the mail and shall not be deemed incomplete because of a refusal to accept.

(4) The applicant or other person may appeal the Department's decision within 30 days of service of the decision in accordance with 62 Ill. Adm. Code 1847.3. The Department's decision shall remain in effect during the pendency of the appeal, unless temporary relief is granted in accordance with 62 Ill. Adm. Code 1847.3(k).

E. 62 IAC 1785.17 Prime Farmlands

At 62 IAC 1785.17(d)(1), Illinois proposes to reinstate the sentence ''The State recognizes that the permit cannot be issued without the required consultation with USDA.''

F. 62 IAC 1816 (Surface Mining Activities) and 1817 (Underground Mining Activities) Permanent Program Performance Standards

Since most of the surface mining and underground mining regulations in these parts are identical, the revisions are being combined for discussion purposes, unless otherwise noted.

1. 62 IAC 1816.13 and 1816.15 Casing and Sealing of Drilled Holes and 62 IAC 1817.13 and 1817.15 Casing and Sealing or Exposed Underground Openings

Illinois proposes to withdraw its originally proposed requirements that exposed underground openings be backfilled.

2. IAC 1816.116(a)(2)(F)/1817.116(a)(2)(F) Revegetation Standards for Success: Augmentation

a. At 62 IAC 1816/1817.116(a)(2)(F)(i), Illinois proposes to reinstate the existing language from 62 IAC 1816/1817.116(a)(2)(F)(ii) and add some clarification language. This revised provision reads as follows:

The five (5) year period of responsibility shall not recommence after deep tillage on areas where the operator has met the revegetation success standards of subsection (a)(3)(E) below.

b. Originally proposed 62 IAC 1816/1817.116(a)(2)(F) is redesignated 62 IAC 1816/1817.116(a)(2)(F)(ii), and Illinois proposes to add the follow exception to its provision that considers the application of chemical treatments or fertilizers to wetland areas as augmentation.

Except that wetlands managed as wildlife food plot areas using agricultural techniques shall not be considered augmented when normal husbandry practices, such as routine liming and fertilization, are used.

3. 62 IAC 1816.116(a)(3)(F)/1817.116(a)(3)(F) Revegetation Standards for Success: Non-contiguous Areas

If response to issues raised in OSM's letters dated April 28 and August 3, 1995 (Administrative Record Nos. IL–1649 and IL–1660, respectively), Illinois proposes to revise 62 IAC 1816/1817.116(a)(3)(F) to read as follows.

Non-contiguous areas less than or equal to four acres which were disturbed from activities such as, but not limited to, signs, boreholes, power poles, stockpiles and substations shall be considered successfully revegetated if the operator can demonstrate that the soil disturbance was minor, i.e., the majority of the subsoil remains in place, the soil has been returned to its original capability and the area is supporting its approved post-mining land use at the end of the responsibility period.

Also, Illinois' amendment transmittal letter dated November 1, 1995, contains a justification statement with an attached map (Administrative Record No. IL–1663). The map, which is marked as Exhibit #4, shows an example of several small substations which served an underground mine and which had minor disturbances and which were returned to cropland use. In its statement, Illinois references *In Re: Permanent Surface Mining Regulation Litigation* (Civil Action No. 79–1144, May 16, 1980) as justification for the proposed regulation. Illinois also attached a memorandum dated September 1, 1995, from the Illinois Department of Agriculture which concurred with the four acre threshold relative to the testing of small isolated areas for revegetation success.

4. 26 IAC 1816.116(a)(4)(A)(ii) Revegetation Standards for Success: Proof of Productivity for Non-Contiguous Areas

Illinois proposes to revise its proposed provision at 62 IAC 1816.116(a)(4)(A)(ii) which would allow the productivity results of a larger field to represent small isolated areas to read as follows.

The Department may approve a field to represent non-contiguous areas less than or equal to four acres of the same capability if it determines that the field is representative of reclamation of such areas. These areas shall be managed and vegetated in the same manner as the representative field.

In its letter dated November 1, 1995 (Administrative Record No. IL–1663), Illinois stated that ''* * * These areas will be vegetated and managed in the same manner as their associated larger field under approved and proper management practices.''

5. 62 IAC 1816.116(a)(4)(D) Revegetation Standards for Hay Production

At 62 IAC 1816.116(a)(4)(D), Illinois proposes to withdraw the following previously proposed language.

Prior successful hay production shall not be affected by deep tillage for crop production.

6. 62 IAC 1816.116(a)(5)/1817.116(a)(5) Wetland Revegetation

In its letter dated April 28, 1995 (Administrative Record No. 1649), OSM requested Illinois to provide a statement and technical support for 62 IAC 1816/1817.116(a)(5) which justifies why a minimum areal coverage of 30 percent for wetlands will be consistent with the revegetation standards for ground cover for areas to be developed for fish and wildlife habitat at 30 CFR 816/817.116(a)(3)(iii).

At the May 31, 1995, meeting (Administrative Record No. 1654), Illinois described a U.S. Fish and Wildlife Service, Biological Services Program, publication on the qualitative values of wetlands with various degrees of emergent vegetation at the 20 to 70 percent levels. The study ranked 70 percent cover as having the lowest value, 50 percent as having the highest value, and 30 percent as having a middle value. Illinois stated its belief that attainment of the 30 percent level of areal vegetation cover is adequate to establish a valuable wetland which is likely to improve with time, justifying its use as a revegetation success standard.

Illinois submitted the publication, which was entitled ''Classification of Wetlands and Deepwater Habitats of the United States,'' U.S. Department of the Interior, Fish and Wildlife Service, Biological Services Program, FWS/OBS–79/31, December 1979, to OSM on June 8, 1995 (Administrative Record No. 1653). Illinois, also, submitted two additional reference documents in support of its wetlands revegetation standards: (1) Vol. II of ''Wetland Creation and Restoration—The Status of the Science,'' U.S. Environmental Protection Agency, Environmental Research Laboratory, EPA 600/3–89/038b, October 1989, (Administrative Record No. IL–1650) and (2) Journal of Wildlife Management, 1981, University of Michigan Study, Dabbling Duck and Aquatic Macroinvertebrate Responses to Manipulated Wetland Habitat, J. Wildl. Manage.45(1):1981 (Administrative Record No. IL–1650B).

7. 62 IAC 1816.116(c) and 1817.116(c) Use of Reference Areas for Determining Revegetation

Illinois proposes to withdraw its proposed regulations at 62 IAC 1816.116(c) and 1817.116(c) concerning the use of a reference area in lieu of the Agricultural Lands Productivity Formula Target Yields to determine the success of revegetation for cropland and hayland.

8. 62 IAC 1816.Appendix A Agricultural Land Productivity Formula

a. Under the heading ''Permit Specifics—Yield Standard'', Illinois proposes to modify sections (a) and (b) to clarify that target yields are calculated by ''pit'' rather than ''permit.'' Therefore, Illinois proposes to change the words ''permit,'' ''mine permit area,'' and ''permit area'' to ''pit.''

Illinois, also, submitted examples for the justification of consolidating yield targets by pit rather than permit in its November 1, 1995, submittal (Administrative Record No. IL–1663). Exhibit #1 is a composite map identifying 18 pits which are included in ten permits whose reclamation plans are developed on a pit basis to balance prime farmland, and high capability land liability. Exhibit #2 is a printout of the base yield targets from a mine with a pit which was originally contained under three separate contiguous permits. Later, all three permits were repermitted under one large permit. As a result, the yield targets were consolidated due to the repermitting. The yield differences between permits and the mean varied approximately 5 percent. Exhibit #3 is a printout of the base yield targets from a mine with a pit which was originally contained under two separate contiguous permits. These permits were not consolidated under one permit; however, as the small acreage permit represented just the last few years of mining and included the final cut impoundment, some of the cropland liability was located into the older permit. In other words, the actual soils and liability accrued were moving across permit lines. A composite yield target based on a pit concept reflects the actual way the soil was handled.

b. Illinois proposes to change previously proposed section (e) to (c) and proposes to revise the language as follows:

After mining operations have ceased, the Department shall recalculate the yield standards for the pit based solely on the soils which were disturbed. Recalculated targets shall be applicable to all areas tested for productivity subsequent to the recalculation. Approved significant revisions after permanent cessation of mining shall cause the targets to be recalculated and applied to productivity fields tested after the recalculation.

c. Illinois proposes to withdraw previously proposed sections (c), (d), and (f).

G. 62 IAC 1848.5 Notice of Hearing

At 62 IAC 1848.5(f), Illinois proposes to withdraw the following previously proposed sentence.

Any deviations from the requirements of this subsection attributable to the publishing newspaper shall not be grounds for postponement or continuance of the hearing, nor will such errors necessitate that the notice be republished.

III. Public Comment Procedures

OSM is reopening the comment period on the proposed Illinois program amendment to provide the public an opportunity to reconsider the adequacy of the proposed amendment in light of the additional materials submitted. In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Illinois program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under ''DATES'' or at locations other than the Indianapolis Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., e.s.t., on December 20, 1995. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to speak at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES.** A written summary of each meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This proposed rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 913

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 20, 1995.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 95–29509 Filed 12–4–95; 8:45 am]

BILLING CODE 4310–05–M

National Park Service

36 CFR Parts 1 and 13

RIN 1024–AC21

General Regulations for Areas Administered by the National Park Service and National Park System Units in Alaska

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The National Park Service (NPS) is proposing to revise portions of its general regulations for areas administered by the National Park Service which define the primary scope and applicability and contain definitions for terms used in the text of the regulations. NPS is also modifying regulations which relate to National Park System units in Alaska. This revision clarifies the applicability of those NPS regulations that apply in all National Park System areas to navigable waters located within park boundaries.

In order to protect wildlife and the other values and purposes of the National Park System, the NPS developed general regulations intended

to be applicable on navigable waters located within park boundaries irrespective of ownership of submerged lands. However, a recent court case concerning a seal shot in the navigable waters of a national park revealed that a 1987 editorial correction to 36 CFR 1.2(b), aimed at clarifying a separate and distinct application of the regulations, had the unforeseen and unintended effect of arguably linking federal title to submerged lands with the exercise of management authority over activities occurring on navigable waters. Rather than litigate this issue, this rulemaking will clarify the regulations thereby ensuring the continued protection of wildlife and other National Park System values and purposes on all navigable waters within parks, regardless of ownership of submerged lands. Accordingly, the revision clarifies that NPS regulations continue to apply on navigable waters, as they have for years. Two definitions, ''park area'' and ''boundary,'' would be modified as a part of this revision. The proposed rule clarifies and interprets existing NPS regulatory intent, practices and policies, and generally would not place new or additional regulatory controls on the public.

DATES: Written comments will be accepted until February 5, 1996.

ADDRESSES: Comments should be addressed to: Associate Director, Operations, National Park Service, Department of the Interior, 18th and C Streets, NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Dennis Burnett, Ranger Activities Division, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127, Telephone (202) 208–4874.

SUPPLEMENTARY INFORMATION:

Background

The NPS Organic Act of 1916 directs the Secretary of the Interior and the NPS to manage national parks and monuments to ''conserve the scenery and the natural and historic objects and the wildlife therein and to provide for the enjoyment of same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.'' 16 U.S.C. 1. The Organic Act also grants the Secretary the authority to implement ''rules and regulations as he may deem necessary or proper for the use and management of the parks, monuments and reservations under the jurisdiction of the National Park Service.'' 16 U.S.C. 3. In addition, the Organic Act was amended in 1978 to provide:

> The authorization of activities shall be construed and the protection, management and administration of [NPS] areas shall be conducted in light of the high public value and integrity of the National Park System and shall not be exercised in derogation of the values and purposes for which these various areas have been established, except as may have been or shall be directly and specifically provided by Congress. 16 U.S.C. 1a–1.

In addition to general regulatory authority delegated in 16 U.S.C. 3, the NPS has been authorized to ''[p]romulgate and enforce regulations concerning boating and other activities on or relating to waters located within areas of the National Park System, including waters subject to the jurisdiction of the United States * * *.'' 16 U.S.C. 1a–2(h). ''Waters subject to the jurisdiction of the United States'' include navigable waters. See, H. Rep. No. 1569, 94th Cong., 2nd Sess., 4292 (1976). Under these authorities the NPS has managed and regulated activities occurring on and in the waters of the National Park System.

Prior to 1966, NPS regulations for boating, sanitation and other regulations affecting waters were scattered throughout 36 CFR Parts 1 and 2. In 1966, consolidated boating regulations were published as 36 CFR Part 3. The regulations provided for the enforcement of U.S. Coast Guard regulations by the NPS ''on navigable waters of the United States'' located within park boundaries (31 FR 16650). In 1983, water-use activity regulations were moved from Part 2 to Part 3 (48 FR 30290). In addition to regulations generally applicable in all national park areas, special park-specific regulations have also been promulgated for, and enforced on and in navigable waters within the boundaries of National Park System units. See, e.g., 36 CFR 7.45 (f)–(h) (Everglades National Park, fishing and boating); 36 CFR 7.83(a)(Ozark National Scenic Riverways, boating); 36 CFR 13.65(b) (Glacier Bay National Park, Vessel Management/whale protection).

Applicability and Scope Provision

In 1982–83 the NPS undertook a comprehensive review of general regulations that apply in virtually all NPS administered areas (47 FR 11598). The applicability and scope provisions adopted pursuant to the 1983 rulemaking included navigable waters. In that rulemaking, 36 CFR 1.2(a) provided that the regulations contained in 36 CFR chapter 1 would apply: (1) on federally owned waters, and (2) on waters ''controlled, * * * administered or otherwise subject to the jurisdiction of the National Park Service * * *.'' (48 FR 30252). In some park areas, the United States holds title to the submerged lands under navigable waters. In other park areas, the United States does not hold title to the submerged lands beneath navigable waters within the boundaries of the park; Federal authority to regulate within the ordinary reach of these waters is based on the commerce clause, not ownership. Like the United States Coast Guard, the NPS exercises authority over navigable waters irrespective of ownership of submerged lands. 16 U.S.C. 1a–2(h). 36 CFR 1.2(a)(2) reflects the congressional intent that NPS regulations will also apply in these waters.

The 1983 regulations also provided that—except in park areas under the legislative jurisdiction of the United States, where 10 specifically enumerated provisions were intended to apply regardless of ownership—the regulations were ''not applicable on privately owned lands and waters * * *.'' (48 FR 30252); 36 CFR 1.2(b). While 36 CFR 1.2(b) was specific as to the applicability of the 10 enumerated provisions on privately owned lands, it was silent as to the applicability of those 10 regulations on lands and waters owned by a state or other government entity. In 1987, in response to questions concerning this issue, and in order to clarify the original NPS intent (i.e., that the 10 specifically enumerated provisions were meant to apply on all lands and waters regardless of land ownership) the term ''privately owned lands and waters'' was replaced with the term ''non-federally owned lands and waters''. (52 FR 35238; see also, 52 FR 12037). The 1987 rulemaking emphasized that it was only an editorial change and not a substantive change, the sole purpose of which was to clarify the originally intended reach of the 10 enumerated provisions; there was no change intended concerning state lands.

However, in its effort to ensure that (in areas of legislative jurisdiction) the 10 enumerated regulations clearly apply on all ''non-federally owned lands and waters'' within the boundaries of park areas, the 1987 revision to Section 1.2(b) inadvertently incorporated language that seems ambiguous and could preclude park regulation of ''non-federally owned * * * waters.'' See, 52 FR 35238, September 18, 1987. The NPS recognizes that regulations must provide an ordinary person a reasonable opportunity to know what is prohibited. Accordingly, this rulemaking is proposed to clarify that NPS regulations otherwise applicable within the boundaries of a National Park System unit apply on and within waters subject

to the jurisdiction of the United States located within that unit, including navigable waters and areas within their ordinary reach (up to the mean high water line in places subject to the ebb and flow of the tide, or up to the ordinary high water mark in other places that are navigable), irrespective of ownership of submerged lands, tidelands or lowlands.

This rulemaking also proposes to revise the definition of ''boundary.'' ''Boundary,'' as revised, would better cover the many and diverse sites that have been placed under the care and administration of the NPS. The revision would afford comprehensive protection to persons and property at NPS sites such as maintenance facilities and warehouses, administrative sites, ranger stations, visitor information centers and associated parking lots, which, though located outside a park proper, are managed and administered by the NPS as components of the National Park System. The definition is also tailored to cover the various NPS-administered sites in the District of Columbia. The term ''park area'' would be revised to mean the same as the term ''National Park System.'' The proposed definition for ''National Park System'' repeats the statutory definition from 16 U.S.C. 1c.

The proposed revision to Section 13.2 serves three purposes: (1) Paragraph (c) is revised to clarify that Alaska National Interest Lands Conservation Act (ANILCA) Title VIII subsistence regulations apply ''on the public lands within'' those parks where subsistence is authorized; (2) paragraph (e) is revised to clarify that, pursuant to proposed § 1.2(a)(3), NPS general regulations are specifically applicable within the reach of navigable waters located within the boundaries of park areas in Alaska; and (3) paragraph (e) is revised to clarify that the Part 13 modifications (that generally are relaxations of prohibitions contained in the general regulations) also apply on the navigable waters of national parks in Alaska (e.g., ANILCA § 1110(a) special authorization for motorboat travel to villages).

Section-by-Section Analysis

Section 1.2 paragraph (a) is proposed as it currently exists. This paragraph limits the applicability of NPS regulations to within park boundaries and interests.

Proposed subparagraphs (a)(1) and (a)(2) provide that the regulations apply, respectively, on lands and waters located within park system boundaries that are federally owned, or administered as park lands by the NPS (in whole or in part) through an agreement with the owner, party of interest, or the person, corporation, company, organization, state or political subdivision holding an interest in, or title to, such land. An agreement could be in the form of a lease, public use easement, memorandum (of agreement), or some other written form. Lands and waters administered under this subparagraph would usually be subject to the same general regulations as federally owned lands (Parts 1 through 5, and Parts 7 and 13 as applicable). An owner or party of interest who wishes to retain certain rights or uses could do so as part of the written agreement, otherwise NPS general regulations will apply equally to the owner or party of interest as they would to third parties. Without such an agreement, NPS regulations would not apply on non-federally owned lands within park boundaries, the exception being particular regulations containing a provision that makes them specifically applicable to such lands. See, e.g., 36 CFR 2.2(g) (regulation applicable to lands and waters under legislative jurisdiction within a park); See also, 36 CFR Part 6 (59 FR 65948). Two other provisions that are contained in existing subparagraph (a)(2) are, in this rulemaking, proposed separately as subparagraphs (a)(3) and (a)(4).

Proposed subparagraph (a)(3) more clearly defines and includes waters subject to federal jurisdiction that are located within National Park System boundaries, including navigable waters, within the scope of NPS regulations. Subparagraph (a)(4) contains a provision for the NPS to administer lands and waters in the District of Columbia (pursuant to the Act of March 17, 1948 (62 Stat. 81)), that was added to the existing subparagraph (2) in 1986 (51 FR 37010). The less-than-fee interests provision, currently subparagraph (a)(3), has been revised, renumbered and proposed as subparagraph (a)(5). This provision encompasses scenic easements (sometimes referred to as negative easements) and other federal interests where NPS administration of the site is shared or limited.

Proposed paragraph (b) continues to limit the applicability of NPS general regulations to federally owned lands in the absence of an agreement or a superseding provision. Similarly, in order for NPS general regulations to apply on Indian tribal trust lands located within National Park System boundaries, the NPS must enter into an agreement with the benefiting Indian nation, tribe, band or pueblo (pursuant to proposed subparagraph (a)(2)). Without such an agreement, and regardless of jurisdictional status, NPS authority on Indian lands located within National Park System units is limited to federal laws and implementing regulations made applicable at the express direction of Congress.

Proposed paragraph (d) would extend existing administrative exceptions to include Part 13 regulations.

Section 1.4 proposes a revision to the definition of the terms ''boundary'' and ''park area.'' ''Boundary,'' as revised, would afford comprehensive coverage to the many and diverse sites that have been placed under the care and administration of the NPS, particularly those sites located in the District of Columbia. The term ''park area'' would be revised to mean the same as the term ''National Park System.'' The proposed definition for ''National Park System'' repeats the statutory definition from 16 U.S.C. 1c.

Section 13.2 proposed paragraph (c) has been revised to clarify that subsistence regulations for Alaska apply only ''on the public lands within'' those parks where subsistence is authorized. Paragraph (e) has been revised to clarify that NPS general regulations (*e.g.*, Part 2), as modified by Part 13, apply to waters subject to federal jurisdiction, including navigable waters, located within the boundaries of park areas in Alaska.

Drafting Information

The primary authors of this revision are Michael Tiernan, Division of Conservation and Wildlife, Office of the Solicitor, Department of the Interior, Washington, D.C., and Steve Shackelton and Russel J. Wilson of the Alaska Field Area, National Park Service. Richard G. Robbins, Division of Conservation and Wildlife, Office of the Solicitor, Department of the Interior, Washington, D.C., also contributed.

Paperwork Reduction Act

This rule does not contain collections of information requiring approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Compliance With Other Laws

This rule was not subject to Office of Management and Budget review under Executive Order 12866. The Department of the Interior has determined that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 USC 601 *et seq.*). The economic effects of this rulemaking are local in nature and negligible in scope.

The NPS has determined that this proposed rulemaking will not have a significant effect on the quality of the

human environment, health and safety because it is not expected to:

(a) Increase public use to the extent of compromising the nature and character of the area or causing physical damage to it;
(b) Introduce incompatible uses that may compromise the nature and characteristics of the area, or cause physical damage to it;
(c) Conflict with adjacent ownerships or land uses; or
(d) Cause a nuisance to adjacent owners or occupants.

Based on this determination, this proposed rulemaking is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental guidelines in 516 DM 6, (49 FR 21438). As such, neither an Environmental Assessment (EA) nor an Environmental Impact Statement (EIS) has been prepared.

List of Subjects

36 CFR Part 1

National parks, Reporting and recordkeeping requirements.

36 CFR Part 13

Alaska, National parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, it is proposed to amend 36 CFR Chapter I, Parts 1 and 13, as follows:

PART 1—GENERAL PROVISIONS

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

Authority: 16 U.S.C. 1, 3, 9a, 460 l–6a(e), 462(k); D.C. Code 8–137, 40–721 (1981).

2. Section 1.2 is amended by revising paragraphs (a), (b) and (d) to read as follows:

§ 1.2 Applicability and scope.

(a) The regulations contained in this chapter apply to all persons entering, using, visiting or otherwise within:
(1) The boundaries of federally owned lands and waters administered by the National Park Service; or
(2) The boundaries of lands and waters administered by the National Park Service for public use purposes pursuant to the terms of a written instrument; or
(3) Waters subject to the jurisdiction of the United States located within the boundaries of the National Park System, including navigable waters and areas within their ordinary reach (up to the mean high water line in places subject to the ebb and flow of the tide and up to the ordinary high water mark in other places) and without regard to the ownership of submerged lands, tidelands or lowlands; or
(4) Lands and waters in the environs of the District of Columbia, policed with the approval or concurrence of the head of the agency having jurisdiction or control over such reservations, pursuant to the provisions of the Act of March 17, 1948 (62 Stat. 81); or
(5) Other lands and waters over which the United States holds a less-than-fee interest, to the extent necessary to fulfill the purpose of the National Park Service administered interest and compatible with the nonfederal interest.

(b) The regulations contained in Parts 1 through 5 and Part 7 and Part 13 of this chapter do not apply on non-federally owned lands and waters or on Indian tribal trust lands located within National Park System boundaries, except as provided in paragraph (a) of this section or in regulations specifically written to be applicable on such lands and waters.

* * * * *

(d) The regulations contained in parts 2 through 5 and parts 7 and 13 of this chapter shall not be construed to prohibit administrative activities conducted by the National Park Service, or its agents, in accordance with approved general management and resources management plans, or in emergency operations involving threats to life, property or park resources.

* * * * *

3. Section 1.4 is amended in paragraph (a) by revising the definition of *Boundary*, by adding a definition for *National Park System*, and by revising the definition of *Park area* to read as follows:

§ 1.4 Definitions.

(a) * * *

Boundary means the limits of lands or waters administered by the National Park Service as specified by Congress, or denoted by Presidential Proclamation, or recorded in the records of a state or political subdivision in accordance with applicable law, or published pursuant to law, or otherwise published or posted by the National Park Service.

* * * * *

National Park System (Park area) means any area of land and water now or hereafter administered by the Secretary of the Interior through the National Park Service for park, monument, historic, parkway, recreational, or other purposes.

* * * * *

Park area. See the definition for *National Park System* in this section.

* * * * *

PART 13—NATIONAL PARK SYSTEM UNITS IN ALASKA

4. The authority citation for part 13 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 462(k), 3101 *et seq.*; subpart D also issued under 16 U.S.C. 20, 3197; § 13.65(b) also issued under 16 U.S.C. 1361, 1531.

5. Section 13.2 is amended by republishing the first sentence of paragraph (c) and revising the second sentence of paragraph (c), and by revising paragraph (e) to read as follows:

§ 13.2 Applicability and Scope.

* * * * *

(c) Subpart B of this part 13 contains regulations applicable to subsistence activities. Such regulations apply on public lands within park areas except Kenai Fjords National Park, Katmai National Park, Glacier Bay National Park, Klondike Gold Rush National Historical Park and parts of Denali National Park.* * *

* * * * *

(e) For purposes of this chapter, ''federally owned lands'' does not include those land interests:
(1) Tentatively approved to the State of Alaska; or
(2) Interim conveyed to a Native Corporation.

Dated: October 20, 1995.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 95–29565 Filed 12–4–95; 8:45 am]

BILLING CODE 4310–70–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[AD–FRL–5341–1]

Clean Air Act Reclassification; Pennsylvania—Liberty Borough Nonattainment Area; PM–10; Reopening of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; reopening of the comment period.

SUMMARY: EPA is reopening the comment period for a proposed rule published on September 19, 1995 (60 FR 48439). In the September 19 notice, EPA proposed to find that the Liberty Borough, Pennsylvania nonattainment area for particulate matter of nominal aerodynamic diameter smaller than 10 micrometers (PM–10) did not attain national ambient air quality standards

for that pollutant by the statutory attainment date. At the request of the Allegheny Health Department, EPA is reopening the comment period through December 20, 1995. (The comment period had been previously extended through November 20, 1995 (60 FR 53729).) All comments received on or before December 20, including those received between the close of the comment period on November 20 and the publication of this document, will be entered into the public record and considered by EPA before taking final action on the proposed rule.

DATES: Comments must be received on or before December 20, 1995.

ADDRESSES: Comments may be mailed to Marcia L. Spink, Associate Director, Air Programs, Mailcode 3AT00, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107.

FOR FURTHER INFORMATION CONTACT: Thomas A. Casey, U.S. EPA Region III, (215) 597–2746.

Dated: December 1, 1995.

William Wisniewski,

Acting Regional Administrator, Region III.

[FR Doc. 95–29713 Filed 12–4–95; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 413

[BPD–788–P]

RIN 0938–AH12

Medicare Program; Uniform Electronic Cost Reporting for Skilled Nursing Facilities and Home Health Agencies

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would add the requirement that, for cost reporting periods beginning on or after October 1, 1995, all skilled nursing facilities and home health agencies must submit cost reports currently required under the Medicare regulations in a standardized electronic format. This proposed rule would also allow a delay or waiver of this requirement where implementation would result in financial hardship for a provider. The proposed provisions would allow for more accurate preparation and more efficient processing of cost reports.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on February 5, 1996.

ADDRESSES: Mail written comments (one original and three copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPD–788–P, P.O. Box 7517, Baltimore, MD 21207–0517.

If you prefer, you may deliver your written comments (one original and three copies) to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, DC 20201, or

Room C5–11–17, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code BPD–788–P. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Avenue, SW, Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

For comments that relate to information collection requirements, mail a copy of comments to: Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Allison Herron Eydt, HCFA Desk Officer.

FOR FURTHER INFORMATION CONTACT: Tom Talbott, (410) 786–4592.

SUPPLEMENTARY INFORMATION:

I. Background

Generally, under the Medicare program, skilled nursing facilities (SNFs) and home health agencies (HHAs) are paid for the reasonable costs of the covered items and services they furnish to Medicare beneficiaries. Sections 1815(a) and 1833(e) of the Social Security Act (the Act) provide that no payments will be made to a provider unless it has furnished the information, requested by the Secretary, needed to determine the amount of payments due the provider. In general, providers submit this information through cost reports that cover a 12-month period. Rules governing the submission of cost reports are set forth at 42 CFR 413.20 and 42 CFR 413.24.

Under § 413.20(a), all providers participating in the Medicare program are required to maintain sufficient financial records and statistical data for proper determination of costs payable under the program. In addition, providers must use standardized definitions and follow accounting, statistical, and reporting practices that are widely accepted in the health care industry and related fields. Under §§ 413.20(b) and 413.24(f), providers are required to submit cost reports annually, with the reporting period based on the provider's accounting year. Additionally, under § 412.52, all hospitals participating in the prospective payment system must meet cost reporting requirements set forth at §§ 413.20 and 413.24.

Section 1886(f)(1)(B)(I) of the Act required the Secretary to place into effect a standardized electronic cost reporting system for all hospitals participating in the Medicare program. This provision was effective for hospital cost reporting periods beginning on or after October 1, 1989. On May 25, 1994, we published a final rule with comment period implementing the electronic cost reporting requirement for hospitals (59 FR 26960). On June 27, 1995, we published a final rule that responded to comments on the May 25, 1994 final rule with comment period (60 FR 33123).

II. Provisions of the Proposed Regulations

Currently, § 413.24(f)(4) provides that for cost reporting periods beginning on or after October 1, 1989, all hospitals must submit cost reports in a standardized electronic format. While the existing regulations do not require any other provider types to file their cost reports electronically, more than 75 percent of SNFs and HHAs currently submit a hard copy of an electronically prepared cost report rather than a manually prepared cost report. HCFA's fiscal intermediaries then review the information from these cost reports for completeness and manually enter the data into their automated data reporting systems. This process takes substantially longer than processing cost reports submitted in a standardized electronic format that allows data to be automatically entered into the intermediary's system.

This proposed rule would revise existing § 413.24(f)(4) to require SNFs and HHAs to submit cost reports in a standardized electronic format for cost reporting periods beginning on or after October 1, 1995. We note that the electronic cost reports would not be due until 5 months after the end of the provider's cost reporting period. Thus, for a provider with a 12-month cost reporting period beginning October 1,

1995, the first electronic cost report would be due February 28, 1997.

The use of electronically prepared cost reports would be beneficial for SNFs and HHAs because the cost reporting software for these reports would virtually eliminate computational errors and substantially reduce preparation time. Preparation time would be decreased because providers would no longer have to perform mathematical computations to complete the cost report. Instead, the provider would only need to enter the correct costs and statistics, and the software would determine the appropriate amount of Medicare payment due the provider based on these figures. We note that the costs and statistics that would be entered into the electronic software are the same as those that are currently required for Medicare cost reports. This proposed rule would not require the reporting of any additional information.

The use of cost reporting software would also save time when the provider discovers that it needs to change individual entries in the cost report. Rather than recalculating the entire cost report, the provider would merely enter the new figures, and the software would generate a new cost report that would reflect all necessary recalculations. The use of cost reporting software would also eliminate the need for several administrative tasks associated with filing a cost report. Specifically, the provider would no longer be required to photocopy, collate, and mail a hard copy of the cost report, which is a relatively large, cumbersome document. Instead, the completed cost report would be electronically filed with the fiscal intermediary. That is, the provider would submit a disk containing the required cost report data to the fiscal intermediary.

In all, we estimate that the use of electronically prepared cost reports would result in an average of 4 to 5 hours less preparation time for an HHA and 8 to 10 hours less time for an SNF. We recognize that, initially, the preparation time saved may not be as great as we have estimated for providers that need time to become familiar with the cost reporting software. However, we believe that once providers overcome this small ''learning curve,'' the accuracy of cost reports would increase and the preparation time would decrease in line with this estimate. We welcome comments on our estimate of time savings as well as on other advantages or disadvantages of electronic cost reporting.

We propose that the provider's software must be able to produce a standardized output file in American Standard Code for Information Interchange (ASCII) format. All intermediaries have the ability to read this standardized file and produce an accurate cost report. SNFs and HHAs would be required to use HCFA-approved software to submit cost reports to the intermediary. HCFA's approval process requires each vendor to submit for review a hard copy cost report produced from their software. The purpose of this review process is to establish that the commercial vendor's software can produce a completed cost report in accordance with the Medicare rules and instructions.

There are approximately 17 commercial software vendors servicing HHAs and SNFs that have developed HCFA-approved software programs capable of producing an electronic cost report. In addition, HCFA has developed a software package that will enable SNFs and HHAs to file an electronic data set to the fiscal intermediary in order to generate an electronic cost report. Providers would be able to use either these existing commercial software packages or HCFA's free software to comply with the requirements in this proposed rule. To receive the free software, providers may contact their intermediaries or send a written request to the following address: Health Care Financing Administration, Division of Cost Principles and Reporting, Room C5–02–23, Central Building, 7500 Security Blvd., Baltimore, Maryland 21244–1850.

We also propose that if a SNF or HHA believes that implementation of the electronic submission requirement would cause a financial hardship, it may submit a written request for a waiver or a delay of these requirements. This request, including supporting documentation, would have to be submitted to a provider's intermediary at least 120 days before the end of the provider's cost reporting period. The intermediary would review the request and forward it, with a recommendation for approval or denial, to the HCFA central office within 30 days of such request. HCFA central office would either approve or deny the request by response to the intermediary within 60 days of receipt of the request. Each delay or waiver would be considered on a case-by-case basis.

We considered proposing set criteria (possibly based on a provider's bed size or capacity, for example) under which a SNF or HHA could be exempted automatically from the electronic cost reporting requirement. However, we have not done so because we do not believe that a characteristic such as a provider's size is necessarily a reliable indicator that electronic cost reporting would impose a financial hardship, since even the smallest SNFs and HHAs are quite likely to already be using computer equipment. We welcome comments on the process for obtaining a waiver, whether set criteria for obtaining a waiver would be beneficial, as well as on the number of providers that may request a waiver.

We note that the electronic cost reporting provision would only apply to those providers that are required to file a full Medicare cost report. Those providers that are not required to file a full cost report (for example, a SNF that furnishes fewer than 1500 Medicare covered days in a cost reporting period) would not be subject to the electronic cost reporting requirement, and therefore would not have to request a waiver.

If a SNF or HHA (not granted a hardship exemption) does not submit its cost report electronically, Medicare payments to that provider may be suspended under the provisions of sections 1815(a) and 1833(e) of the Act. These sections of the Act provide that no Medicare payments will be made to a provider unless it has furnished the information, requested by the Secretary, that is needed to determine the amount of payments due the provider under the Medicare program. Section 405.371(d) provides for suspension of Medicare payments to a provider by the intermediary if the provider fails to submit information requested by the intermediary that is needed to determine the amount due the provider under the Medicare program.

The general procedures that are followed when Medicare payment to a provider is suspended for failure to submit information needed by the intermediary to determine Medicare payment are located in section 2231 of the Medicare Intermediary Manual (HCFA Pub. 13). Those procedures include timeframes for ''demand letters'' to providers. Demand letters remind providers to file timely and complete cost reports and explain possible adjustments of Medicare payments to a provider and the right to request a 30-day extension of the due date.

Under this proposed rule, we essentially would apply the current hospital reporting requirements to SNFs and HHAs. In our final rule with comment period published May 25, 1994, we required that, in accordance with section 1886(f)(1)(B)(I) of the Act, all hospitals must submit cost reports in a uniform electronic format for cost reporting periods beginning on or after October 1, 1989 (59 FR 26960). All

hospital cost reports must be electronically transmitted to the intermediary in ASCII format. In addition to the electronic file, existing § 413.24(f)(4)(iii) requires hospitals to submit a hard copy of a settlement summary, a statement of certain worksheet totals found in the electronic file, and a statement signed by the hospital's administrator or chief financial officer certifying the accuracy of the electronic file.

Further, to preserve the integrity of the electronic file, we implemented provisions regarding the processing of the electronic cost report once submitted to the intermediary. Specifically, existing § 413.24(f)(4)(ii) provides that the intermediary may not alter the cost report once it has been filed by the provider. That is, the intermediary must maintain an unaltered copy of the provider's electronic cost report. This provision is not intended to prohibit the intermediary from making audit adjustments to the provider's cost report. Additionally, this section provides that the intermediary must reject a cost report that does not pass all specified edits. Finally, the provider's electronic program must be able to disclose that changes have been made to the provider's filed cost report. Again, we would apply these same provisions to SNFs and HHAs.

As stated above, the electronic cost reporting requirement for hospitals has been a statutory requirement for over 5 years. Our experience with the process of hospitals submitting cost reports to the intermediary in ASCII format has been uniformly positive. These cost reports are processed more expeditiously and efficiently than manually prepared cost reports or hard copies of electronically prepared cost reports. In fact, based on comments from hospitals, we amended § 413.24(f)(4) in our June 27, 1995 final rule to eliminate the requirement that hospitals submit a hard copy of the cost report in addition to the electronic file (60 FR 33123). In conclusion, based on our experience with the submission of electronic cost reports by hospitals, we believe that electronic filing would reduce the administrative burden on most SNFs and HHAs, with a waiver available in financial hardship cases. Therefore, we propose to amend § 413.24 accordingly:

- Add a new paragraph (f)(4)(i) to define the word ''provider'' as a hospital, SNF, or HHA;
- Redesignate existing paragraphs (f)(4)(i) through (f)(4)(iv) as (f)(4)(ii) through (f)(4)(v);
- Revise redesignated paragraph (f)(4)(ii) to state that SNFs and HHAs must submit cost reports in a standardized electronic format for cost reporting periods beginning on or after October 1, 1995; and
- In redesignated paragraphs (f)(4)(iii) through (f)(4)(v), replace the word ''hospital'' wherever it appears with the word ''provider.''

III. Impact Statement

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless we certify that a proposed rule such as this would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all providers and small businesses that distribute cost-report software to providers are considered small entities. HCFA's intermediaries are not considered small entities for purposes of the RFA.

In addition, section 1102(b) of the Social Security Act requires us to prepare a regulatory impact analysis for any proposed rule that may have a significant impact on the operation of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds. We are not preparing a rural impact statement since we have determined, and certify, that this proposed rule would not have a significant impact on the operations of a substantial number of small rural hospitals.

As stated above, under §§ 413.20(b) and 413.24(f), providers are required to submit cost reports annually, with reporting periods based on the provider's accounting year. This proposed rule would require SNFs and HHAs, like hospitals, to submit their Medicare cost reports in a standardized electronic format. We anticipate that this requirement would take effect for cost reporting periods beginning on or after October 1, 1995, meaning that the first electronic cost reports would be due February 28, 1997.

Currently, approximately 75 percent of all SNFs and HHAs submit a hard copy of an electronically prepared cost report to the intermediary. We believe that the provisions of this proposed rule would have little or no effect on these providers, except to reduce the time involved in copying and collating a hard copy of the report for intermediaries. In addition to the 75 percent of providers that currently use electronic cost reporting, this rule would not affect those providers that do not file a full cost report and, as stated above, would not be required to submit cost reports electronically.

This proposed rule may have an impact on those providers who do not prepare electronic cost reports, some of whom may have to purchase computer equipment, obtain the necessary software, and train staff to use the software. However, as discussed below, we believe that the potential impact of this proposed rule on those providers who do not prepare electronic cost reports would be insignificant.

First, a small number of providers that do not submit electronic cost reports may have to purchase computer equipment to comply with the provisions of this proposed rule. However, even among the 25 percent of SNFs and HHAs that do not submit electronically prepared cost reports, we believe that most providers already have access to computer equipment, which they are now using for internal recordkeeping purposes, as well as for submitting electronically generated bills to their fiscal intermediaries, for example. Thus, we do not believe that obtaining computer equipment would be a major obstacle to electronic cost reporting for most providers. For those providers that would have to purchase computer equipment, we note that, in accordance with current regulations governing payment of provider costs, Medicare would pay for the cost of the equipment as an overhead cost.

We recognize that a potential cost for providers that do not submit electronic cost reports would be that of training staff to use the software. Since most SNFs and HHAs currently use computers, we do not believe that training staff to use the new software would impose a large burden on providers. An additional cost would be the cost of the software offered by commercial vendors. However, providers could eliminate this cost by obtaining the free software from HCFA.

The requirement that hospitals submit cost reports in a standardized electronic format has been in place since October, 1989. Since that time, the accuracy of cost reports has increased and we have received very few requests for waivers. Additionally, we have not received any comments from the hospital industry indicating that the use of electronic cost reporting is overly burdensome. We believe that electronic cost reporting would be equally effective for SNFs and HHAs, with the benefits (such as increased accuracy and decreased

preparation time) outweighing the costs of implementation for most providers.

In conclusion, we have determined that this proposed rule would not have a significant effect on SNF and HHA costs because these providers would not be required to collect any additional data beyond that which the regulations currently specify; cost reporting software is available at no cost from HCFA to any provider that requests it; most SNFs and HHAs have some type of computer equipment through which they currently prepare electronic cost reports; and a waiver of the electronic cost reporting requirement would be available to providers for whom the requirement would impose a financial hardship. SNFs and HHAs would only be affected to the extent that, absent a waiver, all would be required to submit cost reports in a standardized electronic format to their intermediary. A provider that does not comply with the provisions of this rule, as specified in the preamble, would be subject to sections 1815(a) and 1833(e) of the Act, which provide that no payments will be made to a provider unless it has furnished the information requested by the Secretary that is needed to determine the amount of payments due the provider under Medicare.

We welcome comments on the effect of the electronic cost reporting requirement, its benefits or disadvantages, the proposed implementation date, and issues related to the waiver process.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget (OMB).

IV. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, agencies are required to provide 60-day notice in the Federal Register and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- Whether the information collection is necessary and useful to carry out the proper functions of the agency;
- The accuracy of the agency's estimate of the information collection burden;
- The quality, utility, and clarity of the information to be collected; and
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Therefore, we are soliciting public comment on each of these issues for the information collection requirements discussed below.

As discussed in detail above, this proposed rule would require that SNFs and HHAs submit cost reports in a standardized electronic format for cost reporting periods beginning on or after October 1, 1995. That is, providers would be required to file a diskette containing the required cost report data in a standardized electronic format. We believe that this requirement would reduce the paperwork and information collection burden for those SNFs and HHAs that currently do not submit electronically prepared cost reports. Specifically, we estimate that the number of hours each provider would save by submitting an electronically prepared cost report instead of manually preparing, and photocopying, the cost report would be an average of 9 hours for each affected SNF and 4.5 hours for each affected HHA. Assuming that approximately 25 percent of all SNFs and HHAs would be affected, that is roughly 3,000 SNFs and 2,000 HHAs, we estimate that SNFs would save approximately 27,000 hours per year completing cost reports, and HHAs would save about 9,000 hours per year.

We note that the overall information collection and recordkeeping burden associated with filing SNF costs reports has been approved by OMB through January 1998 (OMB approval number 0938–0463). Additionally, OMB has approved the information collection burden for HHA cost reports through October 1997 (approval number 0938–0022). We would not require SNFs and HHAs to report any information on the electronic cost report that is not already required in the Medicare cost reports currently submitted by these providers.

The information collection and recordkeeping requirements contained in § 413.24 are not effective until they have been approved by OMB. A notice will be published in the Federal Register when approval is obtained. Organizations and individuals that wish to submit comments on the information and recordkeeping requirements set forth in § 413.24 should direct them to the OMB official whose name appears in the **ADDRESSES** section of this preamble.

V. Response to Comments

Because of the large number of items of correspondence we normally receive on Federal Register documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the ''DATES'' section of this preamble, and, if we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

List of Subjects in 42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR part 413 is amended as set forth below:

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES

1. The authority citation for part 413 continues to read as follows:

Authority: Secs. 1102, 1861(v)(1)(A), and 1871 of the Social Security Act (42 U.S.C. 1302, 1395x(v)(1)(A), and 1395hh).

2. Section 413.24 is amended by redesignating existing paragraphs (f)(4)(i) through (f)(4)(iv) as paragraphs (f)(4)(ii) through (f)(4)(v); adding a new paragraph (f)(4)(i); and revising redesignated paragraphs (f)(4)(ii) through (f)(4)(v) to read as follows:

§ 413.24 Adequate cost data and cost finding.

* * * * *

(f) Cost reports. * * *

(4) *Electronic submission of cost reports.* (i) As used in this paragraph, *provider* means a hospital, skilled nursing facility, or home health agency.

(ii) Effective for cost reporting periods beginning on or after October 1, 1989, for hospitals and cost reporting periods beginning on or after October 1, 1995, for skilled nursing facilities and home health agencies, a provider is required to submit cost reports in a standardized electronic format. The provider's electronic program must be capable of producing the HCFA standardized output file in a form that can be read by the fiscal intermediary's automated system. This electronic file, which must contain the input data required to complete the cost report and the data required to pass specified edits, is forwarded to the fiscal intermediary for processing through its system.

(iii) The fiscal intermediary stores the provider's as-filed electronic cost report and may not alter that file for any reason. The fiscal intermediary makes a ''working copy'' of the as-filed electronic cost report to be used, as necessary, throughout the settlement process (that is, desk review, processing audit adjustments, final settlement, etc). The provider's electronic program must

be able to disclose if any changes have been made to the as-filed electronic cost report after acceptance by the intermediary. If the as-filed electronic cost report does not pass all specified edits, the fiscal intermediary rejects the cost report and returns it to the provider for correction. For purposes of the requirements in paragraph (f)(2) of this section concerning due dates, an electronic cost report is not considered to be filed until it is accepted by the intermediary.

(iv) Effective for cost reporting periods ending on or after September 30, 1994, for hospitals and cost reporting periods beginning on or after October 1, 1995, for skilled nursing facilities and home health agencies, a provider must submit a hard copy of a settlement summary, a statement of certain worksheet totals found within the electronic file, and a statement signed by its administrator or chief financial officer certifying the accuracy of the electronic file or the manually prepared cost report. The following statement must immediately precede the dated signature of the provider's administrator or chief financial officer:

I hereby certify that I have read the above certification statement and that I have examined the accompanying electronically filed or manually submitted cost report and the Balance Sheet Statement of Revenue and Expenses prepared by _____ (Provider Name(s) and Number(s)) for the cost reporting period beginning _____ and ending _____ and that to the best of my knowledge and belief, this report and statement are true, correct, complete and prepared from the books and records of the provider in accordance with applicable instructions, except as noted. I further certify that I am familiar with the laws and regulations regarding the provision of health care services, and that the services identified in this cost report were provided in compliance with such laws and regulations.

(v) A provider may request a delay or waiver of the electronic submission requirement in paragraph (f)(4)(ii) of this section if this requirement would cause a financial hardship. The provider must submit a written request for delay or waiver with necessary supporting documentation to its intermediary at least 120 days prior to the end of its cost reporting period. The intermediary reviews the request and forwards it with a recommendation for approval or denial, to HCFA central office within 30 days of receipt of the request. HCFA central office either approves or denies the request and notifies the intermediary within 60 days of receipt of the request.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: June 21, 1995.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 95–29542 Filed 12–4–95; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 642

[I.D. 110795H]

Gulf of Mexico Fishery Management Council; Public Hearings

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

ACTION: Public hearings; requests for comments.

SUMMARY: The Gulf of Mexico Fishery Management Council (Gulf Council) will convene nine public hearings on Draft Amendment 8 to the Fishery Management Plan for Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP) and its draft supplemental environmental impact statement (draft SEIS).

DATES: Written comments will be accepted until January 5, 1996. The hearings will be held from December 11 to December 14, 1995. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: Written comments should be sent to and copies of the draft amendment are available from Mr. Wayne E. Swingle, Executive Director, Gulf of Mexico Council, 5401 West Kennedy Boulevard, Tampa, FL 33609.

The hearings will be held in AL, FL, LA, MS and TX. See **SUPPLEMENTARY INFORMATION** for locations of the hearings and special accommodations.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, 813–228–2815; Fax: 813–225–7015.

SUPPLEMENTARY INFORMATION:

Background

The Gulf and South Atlantic Fishery Management Councils will be holding public hearings on Draft Amendment 8 to the FMP and its draft SEIS. Amendment 8 proposes management measures for the fisheries for king and Spanish mackerel, cobia and dolphin (fish). Amendment 8 proposes some measures that (1) apply only to the South Atlantic Council's jurisdiction, (2) apply only to the Gulf Council's jurisdiction, or (3) apply to both Councils' jurisdictions. Proposed actions that would affect only the stocks and area under the jurisdiction of the Gulf of Mexico Council are as follows: Allow Gulf group king mackerel that can be taken only by hook-and-line (including longline) and run-around gill nets to be possessed on vessels with other gear aboard; require commercial dealer permits to buy and sell coastal pelagic fish managed under the FMP and require that dealers keep and make available records of purchase by vessel; establish a 5-year moratorium, beginning on October 16, 1995, on the issuance of both commercial vessel permits with a king mackerel endorsement and charter vessel permits; provide for transfer of vessel permits to other vessels; require that anyone applying for a commercial vessel permit demonstrate that 25 percent of annual income, or $5,000, be from commercial fishing; and require, that, as a condition for a Federal commercial or charter vessel permit, the applicant agrees to comply with the more restrictive of state or Federal rules when fishing in state waters. Amendment 8 also includes the following measures that apply to both Councils' jurisdictions: Recreational bag and commercial trip limit alternatives for cobia and dolphin (fish); retention of king mackerel damaged by barracuda bites by vessels under commercial trip limits; alternatives for Atlantic king mackerel commercial trip limits off Monroe County, FL of either 50 fish or 125 fish; changes to the procedure used to set total allowable catch; and changes to definitions of overfishing and optimum yield. Proposed measures in Amendment 8 applying only to the area and stocks under the jurisdiction of the South Atlantic Council will be summarized in news releases for public hearings to be held in the South Atlantic area during January 1996.

The hearings are scheduled from 7 p.m. to 10 p.m. as follows:

1. Monday, December 11, 1995, Larose—Larose Regional Park, 2001 East 5th Street, Larose, LA 70373
2. Monday, December 11, 1995, Port Aransas—Visitor's Center Auditorium, University of Texas, 750 Channel View Drive, Port Aransas, TX 78373
3. Monday, December 11, 1995, Key West—Lions Club, 2405 North Roosevelt Boulevard, Key West, FL 33040
4. Tuesday, December 12, 1995, Biloxi—J.L. Scott Marine Education

Center and Aquarium, 115 East Beach Boulevard, Biloxi, MS 39530

5. Tuesday, December 12, 1995, Galveston—Best Western Beachfront Inn, 5914 Seawall Boulevard, Galveston, TX 77551

6. Wednesday, December 13, 1995, Gulf Shores—Quality Inn Beachside, 931 West Gulf Shores Boulevard, Gulf Shores, AL 36547

7. Wednesday, December 13, 1995, Panama City—National Marine Fisheries Service, Panama City Laboratory, 3500 Delwood Beach Road, Panama City, FL 32408

8. Wednesday, December 13, 1995, Cameron—Police Jury Annex, Courthouse Square, Cameron, LA 70631

9. Thursday, December 14, 1995, Madeira Beach—City Hall Auditorium, 3001 Municipal Drive, Madeira Beach, FL 33708

Special Accommodations

These hearings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council office (see **ADDRESSES**) by December 4, 1995.

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

Dated: November 28, 1995.

Richard W. Surdi,

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

[FR Doc. 95–29516 Filed 12–4–95; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 60, No. 233
Tuesday, December 5, 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

Modification of Total Amount of Tariff-Rate Quota for Imported Raw Cane Sugar

AGENCY: Office of the Secretary, USDA.

ACTION: Notice.

SUMMARY: This notice modifies the aggregate quantity of raw cane sugar that may be entered under subheading 1701.11.10 of the Harmonized Tariff Schedule of the United States (HTS) during fiscal year 1996 (FY 96). As modified, such aggregate quantity is 1,417,195 metric tons, raw value.

EFFECTIVE DATE: November 9, 1995.

ADDRESSES: Inquiries may be mailed or delivered to the Sugar Team Leader, Import Policy and Programs Division, Foreign Agricultural Service, Room 5531, South Building, U.S. Department of Agriculture, Washington, DC 20250–1000.

FOR FURTHER INFORMATION CONTACT: Stephen Hammond (Sugar Team Leader); telephone: 202–720–1061.

SUPPLEMENTARY INFORMATION: Paragraph (a)(i) of additional U.S. note 5 to chapter 17 of the HTS provides that ''the aggregate quantity of raw cane sugar entered, or withdrawn from warehouse for consumption, under subheading 1701.11.10, during any fiscal year, shall not exceed in the aggregate an amount (expressed in terms of raw value), not less than, 1,117,195 metric tons, as shall be established by the Secretary of Agriculture (hereinafter referred to as ''the Secretary''), and the aggregate quantity of sugars, syrups and molasses entered, or withdrawn from warehouse for consumption, under subheadings 1701.12.10, 1701.91.10, 1701.99.10, 1702.90.10 and 2106.90.44, during any fiscal year, shall not exceed in the aggregate an amount (expressed in terms of raw value), not less than 22,000 metric tons, as shall be established by the Secretary of Agriculture (hereinafter referred to as ''the Secretary'').'' On August 3, 1995, the Secretary established the aggregate quantity of 1,117,195 metric tons, raw value, of raw cane sugar that may be entered under subheading 1701.11.10 of the HTS and the aggregate quantity of 22,000 metric tons (raw value basis) for certain sugars, syrups and molasses that may be entered under subheadings 1701.12.10, 1701.91.10, 1701.99.10, 1702.90.10, and 2106.90.44 of the HTS during FY 96. (60 FR 42142)

Paragraph (a)(i) of additional U.S. note 5 to chapter 17 of the HTS provides that ''[w]henever the Secretary believes that domestic supplies of sugars may be inadequate to meet domestic demand at reasonable prices, the Secretary may modify any quantitative limitations which have previously been established * * *.'' The U.S. sugar production forecast for FY '96 released on November 9, 1995 in the World Agricultural Supply and Demand Estimates (WASDE) was reduced by 80,000 short tons raw value (STRV) to 7.6 million STRV from the WASDE production forecast released on July 12, 1995. During this period, the U.S. FY '96 forecast of beginning stocks for sugar was reduced to nearly 1.2 million STRV, a decline of 90,000 STRV from the earlier forecast. The domestic wholesale refined sugar prices in the midwest market have been increasing since the tariff-rate quota amount was announced by the Secretary. During the last week of July 1995 the refined sugar price was 24.50 cents per pound. The refined sugar price during the first week of November 1995 was 26.50 cents per pound, which represents a 2 cent per pound increase.

Paragraph (b)(i) of U.S. additional note 5 provides that ''the quota amounts established [by the Secretary] may be allocated among supplying countries and areas by the United States Trade Representative.''

Notice

Notice is hereby given that I have determined, in accordance with paragraph (a)(ii) of additional U.S. note 5 to chapter 17 of the HTS, that an aggregate quantity of up to 1,417,195 metric tons, raw value, of raw cane sugar described in subheading 1701.11.10 of the HTS may be entered or withdrawn from warehouse for consumption during the period from October 1, 1995 through September 30, 1996.

This modified quota amount will be allocated among supplying countries and areas by the United States Trade Representative.

Signed at Washington, DC on November 28, 1995.

Daniel Glickman,

Secretary of Agriculture.

[FR Doc. 95–29526 Filed 12–4–95; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 112095B]

Incidental Take of Marine Mammals; Bottlenose Dolphins and Spotted Dolphins

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

ACTION: Notice of issuance of letter of authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA) as amended, and implementing regulations, notification is hereby given that a letter of authorization to take bottlenose and spotted dolphins incidental to oil and gas structure removal activities was issued on November 27, 1995 to the Murphy Exploration & Production Company, 131 South Robertson St., P.O. Box 61780, New Orleans, LA 70161.

EFFECTIVE DATE: The letter of authorization is effective from November 27, 1995 until November 27, 1996.

ADDRESSES: The application and letter are available for review in the following offices: Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910 and the Southeast Region, NMFS, 9721 Executive Center Drive N, St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, Office of Protected Resources, NMFS, (301) 713–2055 or Charles Oravetz, Southeast Region (813) 570–5312.

SUPPLEMENTARY INFORMATION:

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs NMFS to allow, on request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region, if certain findings are made, and regulations are issued. Under the MMPA, the term ''taking'' means to harass, hunt, capture or kill or to attempt to harass, hunt, capture or kill marine mammals.

Permission may be granted for periods up to 5 years if the Secretary of Commerce finds, after notification and opportunity for public comment, that the taking will have a negligible impact on the species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. In addition, NMFS must prescribe regulations that include permissible methods of taking and other means effecting the least practicable adverse impact on the species and its habitat, and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds and areas of similar significance. The regulations must include requirements pertaining to the monitoring and reporting of such taking. Regulations governing the taking of bottlenose and spotted dolphins incidental to oil and gas structure removal activities in the Gulf of Mexico were published on October 12, 1995 (60 FR 53139) and remain in effect until November 13, 2000.

Summary of Request

NMFS received a request for a letter of authorization on November 8, 1995, from the Murphy Exploration and Production Company. This letter requests a take by harassment of a small number of bottlenose and spotted dolphins incidental to the above mentioned activity. Issuance of the letter of authorization is based on a finding that the total takings will have a negligible impact on the bottlenose and spotted dolphin stocks of the Gulf of Mexico.

Dated: November 27, 1995

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 95–29515 Filed 12–4–95; 8:45 am]

BILLING CODE 3510–22–F

Modernization Transition Committee (MTC)

ACTION: Notice of Public Meeting.

TIME AND DATE: December 14, 1995 from 8:00 a.m. to 5:00 p.m.

PLACE: This meeting will take place at the Double Tree Hotel, 1750 Rockville Pike, Rockville, MD, 20852.

STATUS: The meeting will be open to the public. There will be a public comment period from 1:30-2:30 p.m. Seating is available for approximately 50 people.

MATTERS TO BE CONSIDERED: This meeting will cover: Consultation on the FY 1997 National Implementation Plan (NIP) and proposed Consolidation Certifications for WSOs Helena, MT; Havre, MT; Detroit, MI; Kansas City, MO; Concordia, KS; Worcester, MA; Providence, RI; New York City, NY; Waco, TX; West Palm Beach, FL; Daytona Beach, FL; Knoxville, TX; and Beaumont/Port Arthur, TX.

CONTACT PERSON FOR MORE INFORMATION: Mr. Nicholas Scheller, National Weather Service, Modernization Staff, 1325 East-West Highway, SSMC2, Silver Spring, Maryland 20910. Telephone: (301) 713–0454.

Dated: November 29, 1995.

Nicholas R. Scheller,

Manager, National Implementation Staff.

[FR Doc. 95–29488 Filed 12–4–95; 8:45 am]

BILLING CODE 3510–12–M

DEPARTMENT OF ENERGY

Draft Environmental Impact Statement for the Plutonium Finishing Plant Stabilization, Hanford Site, Richland, Benton County, WA, Notice of Availability and Announcement of Public Hearing

AGENCY: Department of Energy.

ACTION: Notice of Availability.

SUMMARY: The Department of Energy (DOE) announces the availability of the Plutonium Finishing Plant Stabilization Draft Environmental Impact Statement (DOE/EIS–0244–D). The Draft Environmental Impact Statement (EIS) was prepared pursuant to the National Environmental Policy Act (NEPA) of 1969, and its implementing regulations. The continued presence of relatively large quantities of chemically reactive materials in their present form and location within the Plutonium Finishing Plant (PFP) Facility poses an unacceptable long-term risk to workers, the public, and the environment. DOE has identified the need to expeditiously and safely reduce radiation exposure to workers and the risk to the public; reduce future resources to safely manage the Facility; and remove, stabilize, store, and manage plutonium, pending DOE's future use and disposition decisions.

DATES: DOE invites comments on the Draft PFP Stabilization EIS from all interested parties. Written comments or suggestions regarding the adequacy, accuracy, and completeness of the Draft EIS will be considered in preparing the Final EIS and should be submitted (postmarked) by January 16, 1996. Written comments received after that date will be considered to the degree practicable.

DOE will also hold one public hearing at which agencies, organizations, and the general public will be invited to present oral comments or suggestions on the Draft EIS. Location, date, and time for the public hearing is provided in the section of this notice entitled ''PUBLIC HEARING.'' Written and oral comments will be given equal weight and will be considered in preparing the Final EIS. Requests for copies of the Draft EIS or questions concerning the project should be sent to Mr. Ben F. Burton, DOE, at the address listed in the section of this notice entitled **ADDRESSES.**

ADDRESSES: Written comments on the Draft EIS should be submitted (postmarked) by January 16, 1996, for incorporation into the public hearing record. Oral comments will be accepted at the public hearing. Written comments, requests to speak at the hearing, or questions concerning the PFP EIS should be directed to: Mr. Ben F. Burton, U.S. Department of Energy, Richland Operations Office, Attn: PFP Stabilization EIS, P.O. Box 550, MSIN B1–42, Richland, Washington 99352, (509) 946–3609, 1–800–249–8181.

FOR FURTHER INFORMATION CONTACT: For general information on DOE's EIS process and other matters related to NEPA, please contact: Ms. Carol Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION:

Background, Purpose and Need for Agency Action

In the late 1980s, a sudden halt in the production of weapons-grade plutonium froze the existing PFP Facility manufacturing pipeline in a state that was unsuited for long-term storage. On January 24, 1994, the Secretary of Energy commissioned a comprehensive assessment to identify and prioritize the environmental, safety, and health vulnerabilities that arise from the storage of plutonium in DOE facilities and determine which are the most dangerous and urgent. The DOE-wide assessment, commonly referred to as

The Plutonium Vulnerability Study, identified 15 environmental, safety, and health vulnerabilities at the PFP Facility. These included storage of unstable forms of plutonium, a potential for criticality accidents, and seismic weaknesses. DOE has determined that a feasible alternative for resolution of the safety issues is removal of readily retrievable plutonium-bearing material in hold-up at the PFP Facility and stabilization of these and other plutonium-bearing materials at the PFP Facility through the following four treatment processes: (1) Ion exchange, vertical calcination and thermal stabilization of plutonium-bearing solutions; (2) thermal stabilization of oxides, fluorides, and process residues in a continuous furnace; (3) repackaging of metals and alloys; and (4) pyrolysis of polycubes and combustibles.

Environmental Impact Statement Preparation

The Draft EIS has been prepared in accordance with Section 102(2)(C) of the NEPA, as implemented in regulations promulgated by the Council on Environmental Quality (40 Code of Federal Regulations [CFR] Parts 1500–1508) and by DOE's Implementing Procedures (10 CFR Part 1021). The Draft EIS has been prepared to assess the potential impacts of both the proposed action, and reasonable alternatives to the proposed action, on the human and natural environment.

A Notice of Intent (Notice) to prepare the PFP EIS and hold public scoping meetings in Spokane, Richland, and Bellevue, Washington, and Hood River and Portland, Oregon, was published by DOE in the Federal Register on October 27, 1994. A subsequent Notice was published by DOE in the Federal Register on November 23, 1994, announcing additional meetings in Portland, Oregon and Seattle, Washington. The Notice invited oral and written comments and suggestions on the proposed scope of the EIS, including environmental issues and alternatives, and invited public participation in the NEPA process. Overall, scoping comments were received that assisted in identifying major issues for subsequent in-depth analysis in the Draft EIS. As a result of the scoping process, an Implementation Plan for the PFP Stabilization EIS was developed to define the scope and provide further guidance for preparing the Draft EIS.

The Draft EIS considers the proposed action, other reasonable alternatives, and the no action alternative.

Comment Procedures

Availability of Draft EIS

Copies of the Draft PFP Stabilization EIS are being distributed to federal, state, tribal and local officials and agencies, as well as organizations and individuals known to be interested in or affected by the proposed project. Additional copies may be obtained by contacting Mr. Burton as provided in the section of this notice entitled **ADDRESSES.** Copies of the Draft PFP Stabilization EIS, including appendices and reference material will be available for public review at the locations listed below.

(1) U.S. Department of Energy, Headquarters, Freedom of Information Reading Room, Forrestal Building, 1000 Independence Avenue, S.W., Washington D.C. 20585, (202) 586–3142

(2) U.S. DOE Public Reading Room, 100 Sprout Road, Room 130 West, Richland, WA 99352, (509) 376–8583

(3) Government Publications, University of Washington Library, Box 352900, Seattle, WA 98185–2900, (206) 543–1937

(4) Gonzaga University, Foley Center, East 502 Boone Avenue, Spokane, WA 99258, (509) 328–4220

(5) Portland State University, Branford Price Millar Library, SW Harrison and Park, Portland, OR 97207, (503) 725–3690

You may also receive a copy of the Draft EIS by calling the PFP Stabilization EIS toll-free line at 1–800–249–8181.

Written Comment

Interested parties are invited to provide comments to DOE on the content of the Draft EIS as indicated in the section of this notice entitled **ADDRESSES.** Comments submitted (postmarked) after January 16, 1996, will be considered to the extent practicable.

Public Hearing

Procedures

The public is invited to provide oral comments to DOE on the Draft EIS at the scheduled public hearing. Advance registration for the presentation of oral comments at the hearing will be accepted up to the day prior to the scheduled meeting by calling 1–800–249–8181 (prior to 3:00 p.m. Pacific Time). Requests to speak at a specific time will be honored, if possible. Registrants are only allowed to register themselves to speak and must confirm the time they are scheduled to speak at the registration desk the day of the hearing. Persons who have not registered in advance may register to speak when they arrive at the hearing to the extent that time is available. To ensure that as many persons as possible have the opportunity to present comments, five minutes will be allotted to each speaker. Persons presenting comments at the hearing are requested to provide DOE with written copies of their comments at the hearing, if possible. Written comments sent by mail to the office listed in the **ADDRESSES** section above, must be submitted (postmarked) no later than January 16, 1996.

Hearing Schedule and Location

A public hearing will be held at the following location, date and time:

Red Lion Inn—Pasco, 2525 N. 20th, Pasco, Washington 99301, (509) 547–0701

Thursday, January 11, 1996, 6:00 p.m.–9:00 p.m.

Conduct of Hearing

DOE's rules and procedures for the orderly conduct of the hearing will be announced by the presiding officer at the start of the hearing. The hearing will not be of an adjudicatory or evidentiary nature. Speakers will not be cross-examined, although the presiding officer and the DOE hearing panel members will respond to comments and questions from the public. In addition, DOE representatives will be available to discuss the project in informal conversations. A transcript of the hearing will be prepared, and the entire record of the hearing, including the transcript, will be placed on file by DOE for inspection at the public locations given above in the ''COMMENT PROCEDURES'' section.

Signed in Richland, WA this 21st day of November 1995, for the United States Department of Energy.

John D. Wagoner,

Manager, U.S. Department of Energy, Richland Operations Office.

[FR Doc. 95–29578 Filed 12–4–95; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. CP96–79–000]

Texas Gas Transmission Corporation; Notice of Request Under Blanket Authorization

November 29, 1995.

Take notice that on November 20, 1995, Texas Gas Transmission

Corporation (Texas Gas), P.O. Box 20008, Owensboro, Kentucky 42304, filed in Docket No. CP96–79–000, a request pursuant to Section 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to construct and operate a delivery point for Gibbs Die Casting Corporation (Gibbs) in Henderson County, Kentucky. Texas Gas makes such request, under its blanket certificate issued in Docket No. CP82–407–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Texas Gas indicates that Gibbs' natural gas requirements for its plant in Henderson County, Kentucky, are presently supplied on an interruptible sales basis by the Henderson Municipal Gas Department (City of Henderson, Kentucky), a municipal customer of Texas Gas. It is stated that Gibbs has requested that Texas Gas construct a new delivery point in Henderson County to enable Gibbs to receive natural gas transportation service directly from Texas Gas. The proposed new delivery point for Gibbs will be known as the Gibbs-Henderson Meter Station. The estimated cost to construct said facilities is $66,850, and it is stated that Gibbs will reimburse Texas Gas in full for the cost of the facilities to be installed by Texas Gas.

It is stated that Gibbs is requesting up to 2,300 MMBtu of natural gas per day to be supplied by a combination of firm transportation, interruptible transportation and released capacity for plant usage at its Henderson plants. It is further stated that this service will be provided by Texas Gas pursuant to the authority of its blanket certificate issued in Docket No. CP88–686–000 and Sections 248.223 of the Commission's Regulations. The rate schedules applicable to the proposed service will be Texas Gas' FT and IT Rate Schedules, as contained in First Revised Volume No. 1 of Texas Gas' FERC Gas Tariff.

It is indicated that because of the relatively small amount of firm natural gas service involved, that this proposal will have no significant impact on Texas Gas' peak day and annual deliveries.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–29522 Filed 12–4–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP95–197–000 and RP95–197–001]

Transcontinental Gas Pipe Line Corporation; Notice of Informal Settlement Conference

November 29, 1995.

Take notice that an informal settlement conference will be convened in this proceeding on Monday, December 11, 1995, at 11:00 a.m., for the purpose of exploring the possible settlement of the above-referenced proceeding. The conference will be held at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's Regulations. *See* 18 CFR 385.214.

For additional information, please contact Warren C. Wood at (202) 208–2091 or Donald A. Heydt at (202) 208–0740.

Lois D. Cashell,

Secretary.

[FR Doc. 95–29523 Filed 12–4–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EG96–16–000]

West Allegheny Biomass Energy Corp.; Notice of Application for Determination of Exempt Wholesale Generator Status

November 29, 1995.

On November 16, 1995, West Allegheny Biomass Energy Corp. (Applicant), of 327 Winding Way, King of Prussia, Pennsylvania 19406, filed with the Federal Energy Regulatory Commission an application for a determination of exempt wholesale generator status pursuant to 18 CFR Part 365 of the Commission's Regulations.

Applicant, a Pennsylvania corporation, states that it intends to own and operate a generating facility (Facility), to be located in Butler County, Pennsylvania, that will consist of a 12 mw biomass-fueled combustion turbine and related interconnection facilities. The facility will be located in a new industrial park being developed in Allegheny Township, Pennsylvania.

Any person desiring to be heard concerning this application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before December 11, 1995 and must be served on the Applicant. 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. 95–29524 Filed 12–4–95; 8:45 am]

BILLING CODE 6717–01–M

Office of Energy Research

Energy Research Financial Assistance Program Notice 96–02; Enhanced Research Capabilities at DOE User Facilities

AGENCY: Department of Energy (DOE).

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Basic Energy Sciences (BES) of the Office of Energy Research (ER), U.S. Department of Energy, hereby announces its interest in receiving grant applications for new capabilities or for upgrading existing research capabilities for innovative *fundamental* research at DOE-supported synchrotron light sources and neutron sources, and the Combustion Research Facility. Such instrumentation should employ state-of-the-art technology so that the photon and neutron beams are utilized more effectively. Applications for the development of new capabilities, as well as upgrading of existing capabilities are encouraged.

DATES: Potential applicants are strongly encouraged to submit a brief preapplication. All preapplications, referencing Program Notice 96–02, should be received by DOE by 4:30 p.m.

E.S.T., December 29, 1995. A response discussing the potential program relevance of a formal application generally will be communicated to the applicant within 30 days of receipt. The deadline for receipt of formal applications is 4:30 p.m., E.S.T., February 8, 1996, in order to be accepted for merit review and to permit timely consideration for award in fiscal year 1996.

ADDRESSES: All preapplications, referencing Program Notice 96–02, should be sent to Dr. William T. Oosterhuis, Office of Basic Energy Sciences, Division of Materials Sciences, ER–13, U.S. Department of Energy, 19901 Germantown Road, Germantown, Maryland 20874–1290.

After receiving notification from DOE concerning successful preapplications, applicants may prepare formal applications and send them to: U.S. Department of Energy, Office of Energy Research, Grants and Contracts Division, ER–64, 19901 Germantown Road, Germantown, Maryland 20874–1290, Attn: Program Notice 96–02. The above address for formal applications also must be used when submitting formal applications by U.S. Postal Service Express Mail, any commercial mail delivery service, or when handcarried by the applicant.

FOR FURTHER INFORMATION CONTACT: Dr. William T. Oosterhuis, Office of Basic Energy Sciences, Division of Materials Sciences, ER–13, U.S. Department of Energy, 19901 Germantown Road, Germantown, Maryland 20874–1290. Telephone: (301) 903–3426.

SUPPLEMENTARY INFORMATION: As part of the President's Science Facilities Utilization Enhancement to make more efficient use of the National User Facilities listed below, the instrumentation (such as optics, detectors, and data collection electronics) needed to increase the experimental throughput at these powerful sources has to be at the state-of-the-art. At some user facilities, there is a distinct need to upgrade the instrumentation to increase the resolution, to detect more photons or neutrons per unit time, and increase the quality of the data so that more and better experiments can be carried out. At other user facilities, there is a need to put more beamlines on the experimental floor to make more experiments possible while the facility is operating. The National User Facilities supported by the Office of Basic Energy Sciences are the National Synchrotron Light Source (NSLS), High Flux Beam Reactor (HFBR), Combustion Research Facility (CRF), High Flux Isotope Reactor (HFIR), Intense Pulsed Neutron Source (IPNS), Stanford Synchrotron Radiation Laboratory (SSRL), Advanced Light Source (ALS), Advanced Photon Source (APS), and Los Alamos Neutron Scattering Center (LANSCE). These facilities have the capabilities of extreme flux, or brightness, to make certain experiments possible which would otherwise be impossible. The interest is in exploiting these capabilities to the maximum extent possible.

The Department's intention for this program is to support fundamental research which will include the upgrade and/or development of new instrumentation to optimize the use of these National User Facilities operated by the Department. The ability to conduct innovative fundamental research should be emphasized in each application. Applicants are encouraged to collaborate with industry and to incorporate cost sharing and consortia wherever feasible. The extent of the collaboration and cost sharing will be factors, along with the principal criterion of the scientific merit of the application, in the selection process by the Department.

Grant applications are encouraged from all disciplines (including solid state physics, materials chemistry, metals and ceramics, chemical sciences, structural biology, geosciences, and environmental sciences) for energy-relevant research which make use of the DOE-supported user facilities. Instrumentation appropriate for consideration would include, but not be limited to, the following: beamline optics and transport guides, monochromators of much greater resolution, more efficient detectors to reduce the background noise, electronics and data processing equipment to enable investigators to carry out new or more difficult experiments and/or more experiments in the same amount of time.

The brief preapplication, in accordance with 10 CFR 600.10(d)(2), should consist of two to three pages of narrative describing the research objectives and methods of accomplishment. The preapplications will be reviewed relative to the scope and research needs of the DOE's fundamental research programs at these facilities. Telephone and FAX numbers are required parts of the preapplication, and electronic mail addresses are desirable.

It is anticipated that approximately $5,000,000 will be available for grant awards during FY 1996 which will enable innovative fundamental research through major enhancements in instrumentation or capabilities at these user facilities, contingent upon the availability of appropriated funds. The number of awards and the range of funding will depend on the number of applications received and selected for award. Information about the development, submission, and the selection process, and other policies and procedures may be found in 10 CFR Part 605, and in the Application Guide for the Office of Energy Research Financial Assistance Program. The Application Guide is available from the U.S. Department of Energy, Materials Sciences Division, Office of Energy Research, ER–13, 19901 Germantown Road, Germantown, Maryland 20874–1290. Telephone requests may be made by calling (301) 903–3426. Electronic access to ER's Financial Assistance Guide is possible via the Internet using the following E-mail address: http://www.er.doe.gov/.

The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR Part 605.

Issued in Washington, DC on November 16, 1995.

D.D. Mayhew,

Associate Director, Office of Resource Management, Office of Energy Research.

[FR Doc. 95–29577 Filed 12–4–95; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5338–4]

Technical Forum on the Grand Canyon Visibility Transport Commission

AGENCY: Environmental Protection Agency.

ACTION: Notice of meeting.

FOR FURTHER INFORMATION CONTACT: Mr. John T. Leary, Project Manager for the Grand Canyon Visibility Transport Commission, Western Governor's Association, 600 17th Street, Suite 1705, South Tower, Denver, Colorado 80202; telephone number (303) 623–9378; facsimile machine number (303) 534–7309.

SUMMARY: The United States Environmental Protection Agency (U.S. EPA) is announcing a public forum to address technical issues relating to the assessment of emissions management scenarios being performed by the Grand Canyon Visibility Transport Commission (Commission).

The Forum will convene at Desert Research Institute, 755 East Flamingo Road, Las Vegas, Nevada Las Vegas on

December 13 through 15, 1995 to address technical issues that feed into the Commission's assessment process and thus form a part of the basis for its recommendations to the U. S. Environmental Protection Agency. In addition, the Commission's Technical Committee wishes to afford interested persons an opportunity for an exchange of ideas with its members regarding databases and analytical tools and the application thereof that the Commission's Alternatives Assessment Committee will use in carrying out its integrated assessment.

Interested persons are asked to submit comments and additional technical issues to be considered at the meeting to the Technical Committee. Submissions should be made on forms which can be obtained from the Grand Canyon Visibility Transport Commission, c/o Western Governors' Association, 600 17th Street, Suite 1705 S. Tower, Denver, CO 80202. Issues must be submitted by November 17, 1995 to be considered.

The Commission was established by the EPA on November 13, 1991 (see 56 FR 57522, November 12, 1991). All meetings are open to the public. These meetings are not subject to provisions of the Federal Advisory Committee Act, Public Law 92–463, as amended.

Dated: November 21, 1995.

Felicia Marcus,

Regional Administrator, U.S. Environmental Protection Agency, Region 9.

[FR Doc. 95–29556 Filed 12–4–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1069–DR]

Florida; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Florida (FEMA–1069–DR), dated October 4, 1995, and related determinations.

EFFECTIVE DATE: November 14, 1995.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for Lee and Collier Counties is closed effective October 31, 1995.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

William C. Tidball,

Associate Director, Response and Recovery Directorate.

[FR Doc. 95–29562 Filed 12–4–95; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL RESERVE SYSTEM

CCB Financial Corporation; Notice of Proposal to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has given notice under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether commencement of the activity can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.'' Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 19, 1995.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. CCB Financial Corporation, Durham, North Carolina; to engage *de novo* through its subsidiary, CCB Financial Corporation, Durham, North Carolina, in making, acquiring, or servicing loans or other extensions of credit, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 29, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–29547 Filed 12–4–95; 8:45 am]

BILLING CODE 6210–01–F

First Bank System, Inc.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 95-28825) published on pages 58363 and 58364 of the issue for Monday, November 27, 1995.

Under the Federal Reserve Bank of Minneapolis heading, the entry for First Bank System, Inc., is revised to read as follows:

1. First Bank System, Inc., Minneapolis, Minnesota; to acquire, through its wholly owned subsidiary, Eleven Acquisition Corp., Minneapolis, Minnesota, 100 percent of the voting shares of First Interstate Bancorp, Los Angeles, California, and thereby indirectly acquire First Interstate Bank of California, Los Angeles, California, First Interstate Bank of Montana, National Association, Kalispell, Montana, First Interstate Bank, Ltd., Los Angeles, California, First Interstate Bank of Englewood, National Association, Englewood, Colorado, First Interstate Bank of Alaska, National Association, Anchorage, Alaska, First Interstate Bank of Arizona, National Association, Phoenix, Arizona, First Interstate Bank of Denver, National Association, Denver, Colorado, First Interstate Bank of Idaho, National Association, Boise, Idaho, First Interstate Bank of New Mexico, National Association, Santa Fe, New Mexico, First Interstate Bank of Nevada, National Association, Las Vegas, Nevada, First Interstate Bank of Oregon, National Association, Portland, Oregon, First Interstate Bank of Texas, National Association, Houston, Texas, First Interstate Bank of Utah, National Association, Salt Lake City, Utah, First Interstate Bank of Washington, National Association, Seattle, Washington, First Interstate Bank of Wyoming, National Association, Casper, Wyoming, and First Interstate Central Bank, Calabasas, California.

In connection with this application, First Bank System, Inc., also has applied to acquire First Interstate Resource Finance Associates, Newport Beach,

California, a venture capital firm, and thereby engage in making, acquiring, or servicing loans or other extensions of credit (including issuing letters of credit and accepting drafts) for the company's account or for the account of others, pursuant to § 225.25(b)(1) of the Board's Regulation Y, and to acquire First Interstate Bancorp's voting interest in Star System, Inc., a California nonprofit mutual benefit corporation, and thereby provide data transmission services through an electronic funds transfer network, pursuant to § 225.25(b)(7) of the Board's Regulation Y.

First Bank System also has applied to exercise an option to acquire up to 19.9 percent of the voting shares of First Interstate Bancorp.

Comments on this application must be received by December 21, 1995.

Board of Governors of the Federal Reserve System, November 29, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–29548 Filed 12–4–95; 8:45 am]

BILLING CODE 6210–01–F

James River Bankshares, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than December 29, 1995.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. James River Bankshares, Inc., Suffolk, Virginia; to acquire 100 percent of the voting shares of Bank of Isle of Wight, Smithfield, Virginia.

Board of Governors of the Federal Reserve System, November 29, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–29549 Filed 12–4–95; 8:45 am]

BILLING CODE 6210–01–F

SouthTrust Corporation; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has given notice under § 225.23(a)(2) or (e) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (e)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.'' Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding this application must be received not later than December 19, 1995.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. SouthTrust Corporation, Birmingham, Alabama, and SouthTrust of Georgia, Inc., Atlanta, Georgia; to acquire Bankers First Corporation, and its subsidiary, Bankers First Savings Bank, both of Augusta, Georgia, and thereby engage in operating a savings association, pursuant to § 225.25(b)(9) of the Board's Regulation Y. At consummation, Bankers First Corporation will merge into SouthTrust of Georgia, Inc., and Bankers First Savings Bank, FSB, will merge into SouthTrust of Georgia's bank subsidiary, SouthTrust Bank of Georgia, N.A., Atlanta, Georgia.

Board of Governors of the Federal Reserve System, November 29, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–29550 Filed 12–4–95; 8:45 am]

BILLING CODE 6210–01–F

Ruth Cain Thorne; Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than December 19, 1995.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Ruth Cain Thorne, Belmont, Mississippi; as Trustee of The Weatherford Foundation of Red Bay, Alabama, Inc., Red Bay, Alabama, to retain a total of 60.90 percent of the voting shares of Independent Bancshares, Inc., Red Bay, Alabama, and thereby indirectly retain shares of Bank of Red Bay, Red Bay, Alabama.

Board of Governors of the Federal Reserve System, November 29, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–29551 Filed 12–4–95; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–02]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Office on (404) 639–3453.

The following requests have been submitted for review since the last publication date on November 29, 1995.

Proposed Projects

1. National Home and Hospice Care Survey—(0920–0298)—Reinstatement—The National Home and Hospice Care Survey (NHHCS) was conducted in 1992, 1993, and 1994. It is part of the Long- Term Care Survey. Section 306 of the Public Health Service Act States that the National Center for Health Statistics ''shall collect statistics on health resources * * * [and] utilization of health care, including utilization of * * * services of hospitals, extended care facilities, home health agencies, and other institutions.'' NHHCS data are used to examine this most rapidly expanding sector of the health care industry. Data from the NHHCS are widely used by the health care industry and policy makers for such diverse analyses as the need for various medical supplies; minority access to health care; and planning for the health care needs of the elderly. The NHHCS also reveals detailed information on utilization patterns, as needed to make accurate assessments of the need for and costs associated with such care. Data from earlier NHHCS collections have used by the Congressional Budget Office, the Bureau of Health Professionals, the Maryland Health Resources Planning Commission, the National Association for Home Care, and by several newspapers and journals. Additional uses are expected to be similar to the uses of the National Nursing Home Study. NHHCS data cover: Baseline data on the characteristics of hospices and home health agencies in relation to their patients and staff, Medicare and Medicaid certification, costs to patients, sources of payment, patient's functional status and diagnoses, and categories of staff employees. Data collection is planned for the period July- October, 1996. Survey design is in process now.

Sample selection and preparation of layout forms will precede the data collection by several months.

Respondents	No. of respondents	No. of responses/respondent	Avg. burden/response (in hrs.)
Facility	1200	1	0.333
Current Patient	8400	1	0.19
Discharged Patient	8400	1	0.214

The total annual burden is 3,792. Send comments to Allison Eydt; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503.

2. National Hospital Discharge Survey—(0920–0212)—Extension—The National Hospital Discharge Survey (NHDS), which has been conducted continuously by the National Center for Health Statistics, CDC, since 1965, is the principal source of data on inpatient utilization of short-stay, non-Federal hospitals and is the only annual source of nationally representative estimates on the characteristics of discharges, the lengths of stay, diagnoses, surgical and non-surgical procedures, and the patterns of use of care in hospitals in various regions of the country. It is the benchmark against which special programmatic data sources are compared. Data collected through the NHDS are essential for evaluating health status of the population, for the planning of programs and policy to elevate the health status of the Nation, for studying morbidity trends, and for research activities in the health field. NHDS data have been used extensively in the production of goals for the Year 2000 Health Objectives and the subsequent monitoring of these goals. In addition, NHDS data provide annual updates for numerous tables in the Congressionally-mandated NCHS report, Health, United States. Data from the NHDS are collected annually on approximately 250,000 discharges from a nationally representative sample of Federal hospitals. The data items collected are the basic core of variables contained in the Uniform Hospital Discharge Data Set (UHDDS). Data for approximately half of the responding hospitals are abstracted from medical records while the remainder of the hospital supply data through commercial abstract service organizations, state data systems, in-house tapes of printouts.

Respondents	No. of respondents	No. of responses/respondent	Avg. burden/response (in hrs.)
Primary Procedure Hospitals	77	251	0.083
Alternate Procedure Hospitals	136	250	0.016
Update (Abstract Service Hospitals)	150	2	0.033
Quality Control Forms (Hospitals)	50	40	0.016
Induction Forms (Hospitals)	40	1	2

The total annual burden is 2,269. Send comments to Allison Eydt; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503.

3. Functional Outcome and Use of Services Following Firearm Injuries—New—Patients admitted to an urban hospital for treatment of a firearm injury will be followed in order to: (1) Examine the nature and extent of functional limitations and disability following a

firearm injury, (2) examine the factors that influence patient recovery, and (3) document the use of post-acute services and barriers to receiving those services. The following data will be collected: (1) Patients will be interviewed in person prior to discharge and by phone at three months and nine months after discharge, and (2) the medical record will also be abstracted.

Respondents	No. of respondents	No. of responses/respondent	Avg. burden/response (in hrs.)
Patients with firearms injuries	320	3	0.60

The total annual burden is 576. Send comments to Allison Eydt, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: November 29, 1995.

Wilma G. Johnson,

Acting Associate Director for Policy Planning And Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–29559 Filed 12–4–95; 8:45 am]

BILLING CODE 4163–18–P

[INFO–95–07]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–3453.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Wilma Johnson, CDC Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Projects

1. Resources and Services Database of the CDC National AIDS Clearinghouse (NAC)—(0920–0255)—Extension—This is a request to extend this project for three years. NAC will mail the Resource Organization Questionnaire along with a cover letter once an organization is identified as providing AIDS-related services. Each organization will also receive a stamped, self-addressed envelope for the return of the questionnaire. If there is no response a follow-up letter will be sent along with another questionnaire and return envelope. A telephone call will be made to those organizations who respond but whose responses need clarification. Approximately one third of the entire Resources and Services Database is verified each year. As part of this process, 40 percent of these organizations will receive a copy of their current database entry by mail, including a cover letter, a list of instructions, and a stamped, self-addressed envelope. The remaining 60 percent will receive a telephone call to review their record.

The Centers for Disease Control and Prevention (CDC) National AIDS Clearinghouse (NAC), is a critical member of the network of government agencies, community organizations, businesses, health professionals, educators, and human services providers that educate the American public about Acquired immunodeficiency syndrome (AIDS) and provide services for persons infected with human immunodeficiency virus (HIV). NAC's Resources and Services Database contains records of approximately 18,000 organizations and is the most comprehensive listing of AIDS resources and services available throughout the country.

NAC's reference staff rely on the Resources and Services Database to respond to more than 100,000 requests for information or referral each year. The Database is also the main information source for the CDC National AIDS Hotline which refers approximately 1.8 million callers from the general public each year to appropriate organizations for information, services, and treatment.

In its continuing efforts to maintain an up-to-date, comprehensive database, NAC is seeking renewal of approval of the survey instrument and proposed methods. The total cost to respondents is estimated at $94,466.00.

Respondents	No. of respondents	No. of responses/respondent	Avg. burden/response (in hrs.)	Total burden (in hrs.)
Questionnaire	2,400	1	0.33	800
Clarification follow-up	360	1	0.17	60
Verification	10,636	1	0.33	3545
Verif. follow-up	993	1	0.17	166
Total	.....	.....	.....	3771

2. Evaluation of a Training Curriculum for Hemophilia Nurses Who Teach Home Infusion and Infection Control—New—The Hematologic Disorders Branch at CDC has plans to develop, pilot, and evaluate training curricula for hemophilia health care providers to improve their knowledge and skills in teaching home infusion of

Factors VII and IX (coagulating agents which reduce the bleeding resulting from a deciciency of natural clotting agents in the blood of people with hemophilia) and infection control related to the infusion. CDC has initiated the development of a self-learning manual for nurses with responsibility of teaching hemophilia patients and their families about home infusion and infection control (HI/IC). The goals of the manual are (1) to facilitate nurses' understanding of content that should be covered when teaching HI/IC techniques, and (2) to assist nurses in determining how they can best teach HI/IC to patients and their families. The purpose of the proposed data collection is to assess the efficacy of the manual in achieving those goals.

An experimental design will be employed in this study in which 100 randomly sampled nurses will be assigned to either an experimental condition (n=50) or to a control group (n=50). Nurses in the experimental condition will be asked to use the manual, while those in the control condition will continue their current practices and engage in any naturally-occuring learning experiences related to HI/IC. Baseline and follow-up surveys administered to both groups will yield data that will be used to determined the difference in knowledge, attitudes, and skills that can be attributed to use of the self-learning guide.

Respondents	No. of respondents	No. of responses/respondent	Avg. burden/response (in hrs.)	Total burden (in hrs.)
Nurses in experimental condition	50	2	0.50	50
Nurses in control condition	50	2	0.50	50
Total	.....	.....	.....	100

3. Complications Associated with Home Infusion Therapy: The Nature and Frequency of Blood Contacts Among Health Care Workers—NEW—Occupational blood contact and the potential for transmission of bloodborne pathogens is a serious concern for health care workers (HCWs) who provide care to patients. There are no data on the frequency of occupational percutaneous injuries and mucocutaneous blood contact among HCWs who provide home infusion therapy.

The Hospital Infections Program, National Center for Infectious Diseases, will conduct prospective, active surveillance of HCWs who provide home infusion therapy. The objectives of the surveillance project are to (1) estimate the procedure-specific frequency of and assess risk factors for percutaneous, mucous membrane, or cutaneous blood contacts sustained by HCWS during the delivery of home infusion therapy and the performance of related procedures, such as phlebotomy and blood culture collection; (2) describe and evaluate the effectiveness of infection control precautions and safety devices to prevent blood contacts; and (3) evaluate the impact of HCWs' knowledge of universal precautions on the use of protective equipment, safety devices, and the frequency of blood contacts.

The population under surveillance will be nurses and phlebotomists from three home health care agencies. Before beginning data collection, HCWs will complete a background questionnaire to provide basic demographic information as well as information about previous blood contacts. HCWs will then complete an exposure questionnaire after each home visit for a two-four week data collection period. This questionnaire will include information about the reason for the visit, the types of procedures performed, the length of the visit, the number and types of blood contacts sustained, and the use of infection control precautions and any safety devices. At the end of their individual data collection period, each HCW will complete an infection control questionnaire to assess knowledge and attitudes related to blood contacts and the use of universal precautions. The total cost to respondents is estimated at $24,633.

Respondents (HCWs)	No. of respondents	No. of responses/respondent	Avg. burden/response (in hrs.)	Total burden
Background questionnaire	1337	1	.083	111
Exposure questionnaire	1337	41	.0167	915
Infection control questionnaire	1337	1	.083	111
Total	.....	.....	.....	1137

4. Surveillance and Epidemiology Study Core Questionnaire and Supplement Modules—(0923–0010)—Revision—ATSDR is revising and renewing the project which follows populations exposed to specific hazardous substances over a period of time to determine if they are experiencing elevated occurrence of diseases. In addition to demographic information, additional core information is collected on behavioral characteristics and health conditions. The supplemental modules are also included in the request that may be used, depending on the organ system targeted or the type of respondent (renal, liver, occupational, respiratory, etc). The total cost to respondents is estimated at $53,153.64.

Respondents	No. of Respondents	No. of responses/respondent	Avg. burden/responses (in hrs.)	Total burden (in hrs.)
Households	2667	7	.369	4908

Dated: November 29, 1995.

Wilma G. Johnson,

Acting Associate Director for Policy Planning And Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–29558 Filed 12–4–95; 8:45 am]

BILLING CODE 4163–18–P

Food and Drug Administration

[Docket No. 95N–0358]

Revised FDA Form 2830 Blood Establishment Registration and Product Listing (8/95); Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the revised FDA Form 2830 Blood Establishment Registration and Product Listing (8/95). This form replaces the previous edition of FDA Form 2830 (7/93). FDA Form 2830 is used for blood establishment registration and product listing, in accordance with the agency's regulations. FDA has made minor changes to the blood establishment registration and product listing which are intended to update the form, simplify processing, provide for efficient and effective use of the data base, and decrease expenditure of resources for both FDA and industry.

DATES: FDA will continue to accept submissions using the previous FDA Form 2830 (7/93) until June 5, 1996.

FOR FURTHER INFORMATION CONTACT: Valerie A. Windsor, Center for Biologics Evaluation and Research (HFM–630), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–594–3074.

ADDRESSES: Submit written requests for single copies of the revised FDA Form 2830 Blood Establishment Registration and Product Listing (8/95) to the Congressional and Consumer Affairs Branch (HFM–12), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, or call FDA's automated information system at 800–835–4709. Send two self-addressed adhesive labels to assist that office in processing your requests. The revised FDA Form 2830 Blood Establishment Registration and Product Listing (8/95) may also be obtained by calling the CBER FAX Information System (FAX—ON—DEMAND) at 301–594–1939 from a touch tone phone. Submit written comments on the revised FDA Form 2830 Blood Establishment Registration and Product Listing (8/95) to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. Two copies of any comments are to be submitted, except that individuals may submit one copy. Requests and comments should be identified with the docket number found in brackets in the heading of this document. The revised FDA Form 2830 Blood Establishment Registration and Product Listing (8/95) and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

SUPPLEMENTARY INFORMATION: FDA is making available revised FDA Form 2830 Blood Establishment Registration and Product Listing (8/95), used in accordance with part 607 (21 CFR part 607), by owners or operators of establishments that engage in the manufacturing of blood products. Minor revisions have been made to the format of the form and the information solicited which include, but are not limited to, the following: (1) Revised FDA Form 2830 was reformatted into a single copy form, which replaces the previous four-copy form; (2) item 15, products, was revised by: (a) Adding Red Blood Cells Rejuvenated Frozen and Red Blood Cells Rejuvenated Deglycerolized and (b) adding a column to identify irradiated blood products; (3) item 13, type establishment, was revised by adding product testing laboratory, with the subheadings: Independent and associated with community or hospital blood bank; and (4) instructions for completing blood registration FDA Form 2830, were revised and included on a separate page.

In addition, the revised form continues to solicit the following information: (1) Registration number; (2) legal name and location; (3) reporting official; (4) type of ownership; (5) type establishment; (6) listing of products collected, processed, prepared, tested, and stored for distribution; and (7) human immunodeficiency virus (HIV) and hepatitis B surface antigen (HBsAg) proficiency test program name.

In accordance with § 607.20, owners or operators of all establishments that engage in the manufacture of blood products are required to register and to submit a list of every blood product in commercial distribution, whether or not the output of such blood product establishment or any particular blood product so listed enters interstate commerce.

Owners or operators of establishments that engage in the manufacturing of blood products that are currently registered with FDA need not request the revised form. In accordance with § 607.22, FDA Form 2830 will be distributed by FDA before November 15 of each year to establishments whose product registration for that year was validated, pursuant to § 607.35. In addition, these establishments are required to update their blood product listing information every June and December. New owners or operators of establishments that engage in the manufacturing of blood products may request the revised form as instructed under the **ADDRESSES** caption (see above).

Owners or operators of establishments that engage in the manufacturing of blood products that are preparing to submit applications for blood establishment registration and product listing should now utilize the revised FDA Form 2830 (8/95). FDA will continue to accept submissions using the previous FDA Form 2830 (7/93) until June 5, 1996.

Under the Paperwork Reduction Act of 1995 (Pub. L. 104–13), all forms requesting a collection of information on identical items from 10 or more public respondents must be approved by the Office of Management and Budget (OMB) and must display a valid OMB control number and expiration date. OMB approval for FDA Form 2830 was obtained on February 9, 1993, and given OMB approval number 0910–0052; expiration date February 28, 1996, however, the expiration date has been extended by OMB to May 31, 1996. Since these minor revisions to FDA Form 2830 did not increase burden to the public, OMB approval was not required.

Dated: November 28, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–29479 Filed 12–4–95; 8:45 am]

BILLING CODE 4160–01–F

Request for Nominations for Members on Public Advisory Committees; Science Board to the Food and Drug Administration

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for members to serve on the Science Board to the Food and Drug Administration (the board). Nominations will be accepted for current vacancies and vacancies that will or may occur on the board during the next 24 months.

FDA has a special interest in ensuring that women, minority groups, and individuals with disabilities are adequately represented on advisory committees, and therefore, extends particular encouragement to nominations for appropriately qualified female, minority, or physically disabled candidates. Final selections from among qualified candidates for each vacancy will be determined by the expertise required to meet specific agency needs and in a manner to ensure appropriate balance of membership.

DATES: Nominations should be received by January 15, 1996.

ADDRESSES: All nominations and curricula vitae from academia, industry, and government representatives, except for general public representatives (consumer-nominated members), should be sent to Zelma S. Rein (address below). All nominations for general public representatives (consumer-nominated members) should be sent to Annette J. Funn (address below).

FOR FURTHER INFORMATION CONTACT:

Regarding all nominations for membership, except for general public representatives: Zelma S. Rein, Office of Science (HF–33), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3340.

Regarding all nominations for general public representatives: Annette Funn, Office of Consumer Affairs, (HFE–50), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5006.

SUPPLEMENTARY INFORMATION: FDA is requesting nominations for members to serve on the board for two vacancies occurring December 31, 1995, and four vacancies occurring December 31, 1996.

Function

The function of the board is to provide advice primarily to the agency's Senior Science Advisor and, as needed, to the Commissioner of Food and Drugs and other appropriate officials on specific complex and technical issues as well as emerging issues within the scientific community in academia and industry. Additionally, the board provides advice to the agency on keeping pace with technical and scientific evolutions in the field of regulatory science, on formulating an appropriate research agenda and on upgrading its scientific and research facilities to keep pace with these changes. The board also provides the means for critical review of agency-sponsored intramural and extramural scientific research programs.

Criteria for Members

Persons nominated for membership from academia, industry, and government representatives shall be knowledgeable in the fields of chemistry, pharmacology, toxicology, clinical research, and other scientific disciplines. The term of office is up to 4 years, depending on the appointment date.

General Public Representatives (Consumer-nominated Members)

FDA currently attempts to place members on advisory committees who are nominated by consumer organizations. These members are recommended by a consortium of 12 consumer organizations that has the responsibility for screening, interviewing, and recommending consumer-nominated candidates with appropriate scientific credentials. Candidates are sought who are aware of the consumer impact of committee issues, but who also possess enough technical background to understand and contribute to the committee's work. The agency notes, however, that for some advisory committees, it may require such nominees to meet the same technical qualifications and specialized training required of other expert members of the committee. The term of office for these members is up to 4 years, depending on the appointment date. Nominations are invited for consideration for membership as openings become available.

Nomination Procedures

Any interested person may nominate one or more qualified person for membership on the board. Nominations shall state that the nominee is aware of the nomination, is willing to serve as a member of the board, and appears to have no conflict of interest that would preclude board membership. Potential candidates will be asked by FDA to provide detailed information concerning such matters as financial holdings, consultancies, and research grants or contracts in order to permit evaluation of possible sources of conflict of interest.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: November 27, 1995.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 95–29572 Filed 12–4–95; 8:45 am]

BILLING CODE 4160–01–F

Health Resources and Services Administration

Request for Nominations to the National Advisory Committee on Rural Health

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) is requesting nominations to fill five vacancies on the Secretary's National Advisory Committee on Rural Health.

DATES: Nominations must be received by close-of-business on Friday, January 5, 1996.

ADDRESSES: Nominations and the curricula vitae of nominees should be sent to Dena S. Puskin, Sc.D., Executive Secretary to the National Advisory Committee on Rural Health, Room 9–05, 5600 Fishers Lane, Rockville, Maryland 20857.

FOR FURTHER INFORMATION CONTACT: Lisa Shelton at the above address, or phone (301) 443–0835 for further information.

SUPPLEMENTARY INFORMATION: The HRSA is requesting nominations under the authorities that established the National Advisory Committee on Rural Health: the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–473) and Section 22 of the Public Health Service Act.

The National Advisory Committee on Rural Health is an 18-member citizens' panel appointed by the U.S. Secretary of Health and Human Services to provide advice on rural health needs. Drawing from committee members' diverse experience with rural health care issues,

the committee annually reports to the Secretary on the rural impact of the Department's policies and regulations. It also offers recommendations for strategies that could improve the provision and financing of health care services in rural areas.

Each appointee serves a four-year term and is a voting member of the committee. Appointees to the five seats becoming vacant will serve July 1, 1996 through June 30, 2000.

This year the Department is requesting nominations for five members whose expertise would include experience in one or more of the following: (1) The development and delivery of health services in rural areas; (2) state government and state-wide development of rural health programs; (3) rural mental health/substance abuse; (4) health economics and health care financing; (5) rural health professions education; and (6) rural health research.

Nomination Procedure

Any interested person may nominate for consideration one or more qualified individuals for membership on the committee. Nominators shall note that the nominee is willing to serve as a member of the committee for the full, four-year term, and that such person appears to have no conflict of interest that would preclude this service. For each nominee, nominations must include a complete curriculum vitae, a current business address, and a daytime telephone number. Nominators are invited to state why they believe a nominee to be particularly well-qualified. Please note that due to time constraints, incomplete nominations (such as those without a curriculum vitae) will not be considered.

The Department has a special interest in assuring that appropriately qualified citizens who are women, members of a minority, or who have a physical disability are adequately represented on advisory bodies. It therefore encourages the nomination of such candidates to the National Advisory Committee on Rural Health. The Department will also give close consideration to an equitable geographic representation.

Appointments shall be made without discrimination on the basis of age, race, sex, culture, religion, or socioeconomic status.

Dated: November 30, 1995.

Ciro V. Sumaya,

Administrator.

[FR Doc. 95–29531 Filed 12–4–95; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–962–1410–00–P; AA–50379–27]

Notice for Publication; Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Section 14(e) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(e), will be issued to Chugach Alaska Corporation for 3,182.31 acres. The lands involved are in the vicinity of Cordova, Alaska.

Copper River Meridian, Alaska

T. 13 S., R. 5 W.;
T. 14 S., R. 5 W.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Anchorage Daily News. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until January 4, 1996, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Chris Sitbon,

Land Law Examiner, Branch of Gulf Rim Adjudication.

[FR Doc. 95–29560 Filed 12–4–95; 8:45 am]

BILLING CODE 4310–JA–P

[ES–930–06–1320–020241A]

Amendment to the List of Affected States Under Federal Coalbed Methane Recovery Regulations

AGENCY: Bureau of Land Management.

ACTION: Removal of Indiana from the List of Affected States.

SUMMARY: The Energy Policy Act of 1992 (the Act) (P.L. 102–486) requires that the Secretary of the Interior (Secretary) administer a Federal program to regulate coalbed methane development in states where coalbed methane development has been impeded by disputes or uncertainty over ownership of coalbed methane gas. As required by the Act, the Department of the Interior, with the participation of the Department of Energy, developed a List of Affected States to which this program would apply (58 FR 21589, April 22, 1993). The List of Affected States is currently comprised of the States of Illinois, Indiana, Kentucky, and Tennessee.

The legislative body of the State of Indiana, in the form of a resolution passed on March 6, 1995, petitioned the Secretary of the Interior for removal from the List of Affected States. The resolution stated that the General Assembly of the State of Indiana petitions the Secretary of the interior to delete Indiana from the List of Affected States for the purposes of section 1339 of the Energy Policy Act of 1992. Section 1339 of the Act provides three mechanisms by which a state may be removed from the List of Affected States:

1. A state may pass a law or resolution requesting removal;
2. The governor of a state may petition for removal, but only after giving the legislature 6-months notice, during a legislative session, of his intention to submit the petition; or
3. The state legislature implements a law or regulation permitting and encouraging the development of coalbed methane.

Since the State of Indiana has met the condition for removal from the List of Affected States by passing a resolution requesting removal, the State of Indiana is officially removed from the List of Affected States.

FOR FURTHER INFORMATION CONTACT: David R. Stewart, Chief, Branch of Resources Planning and Protection, Bureau of Land Management, Eastern States, 7450 Boston Boulevard, Springfield, Virginia 22153, or telephone (703) 440–1728; or Charles W. Byrer, U.S. Department of Energy, 3610 Collins Ferry Road, Morgantown, West Virginia 26507, or telephone (304) 291–4547.

Dated: November 27, 1995.

Gary D. Bauer,

Acting State Director.

[FR Doc. 95–29543 Filed 12–4–95; 8:45 am]

BILLING CODE 4310–GJ–M

[OR–030–06–1220–00; GP6–0030]

Notice of Meeting of Southeastern Oregon Resource Advisory Council

AGENCY: Vale District, Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is given that a meeting of the Southeastern Oregon Resource Advisory Council will be held January 8, 1996 from 1:00 p.m. to 9:00 p.m. and January 9, 1996 from 8:00 a.m. to 12:00 p.m. at the Harney County Museum Club Room, 18 West ''D'' Street, Burns, Oregon.

At an appropriate time, the Council will recess for approximately one hour for lunch and one and one-half hours for dinner. Public comments will be received from 6:00 p.m. to 7:00 p.m., January 8. Topics to be discussed are administrative activities of the Council, the Southeastern Oregon Resource Management Plan, and standards and guidelines for livestock grazing on public lands.

DATES: The meeting will begin at 1:00 p.m. to 9:00 p.m. January 8, 1996 and 8:00 a.m. to 12:00 p.m. January 9, 1996.

ADDRESSES: The meeting will take place in the Harney County Museum Club Room 18 West ''D'' Street, Burns, Oregon.

FOR FURTHER INFORMATION CONTACT: Jonne Hower, Bureau of Land Management, Value District, 100 Oregon Street, Vale, OR 97918, (telephone 503 473–3144).

Lynn Findley,

Assistant District Manager, Operations.

[FR Doc. 95–29508 Filed 12–4–95; 8:45 am]

BILLING CODE 4310–33–M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before November 25, 1995. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127. Written comments should be submitted by December 20, 1995.

Carol D. Shull,

Keeper of the National Register.

ARKANSAS

Crawford County

No. 12 School,
E of Co. Rd. 402, approximately 6 mi. W of Chester,
Chester vicinity, 95001481

Washington County

Shelton, Lynn, American Legion Post No. 27,
28 S. College Ave.,
Fayetteville, 95001480

COLORADO

Denver County

Romeo Block,
2944 Zuni St.,
Denver, 95001485

LOUISIANA

Orleans Parish

Arabella Station,
5600 Magazine St.,
New Orleans, 95001484

MARYLAND

Worcester County

Friendship United Methodist Church, Old,
Meadow Bridge Rd.,
West Post Office vicinity, 95001490

MISSOURI

Cape Girardeau County

Miller–Seabaugh House and Dr. Seabaugh Office Building,
341 Market St.,
Millersville, 95001494

Newton County

Second Baptist Church,
430 W. Grant St.,
Neosho, 95001495

Sullivan County

Milan Railroad Depot,
Jct. of E. Third St. and Short St.,
Milan, 95001493

NEBRASKA

Saline County

Rad Saline Center cis. 389 Z. C. B. J.,
Off NE 15, about 9 mi. N of Western,
Western vicinity, 95001483

NEW YORK

St. Lawrence County

Russell Town Hall,
Jct. of Main and Mill Sts., NW corner,
Russell, 95001492

Suffolk County

Sherrill, Stephen, House,
4 Fireplace Rd.,
East Hampton, 95001486

NORTH DAKOTA

Traill County

Plummer, Amos and Lillie, House,
306 W. Caledonia Ave.,
Hillsboro, 95001488

OHIO

Tuscarawas County

Cooper, Katherine, House,
118 W. 7th St.,
Dover, 95001487

SOUTH CAROLINA

Richland County

South Carolina Penitentiary,
1511 Williams St.,
Columbia, 95001489

TENNESSEE

Fayette County

Marathon Motor Works,
1200–1310 and 1305 Clinton St.,
Nashville, 95001482

WISCONSIN

Oneida County

Lake Tomahawk Site,
Address Restricted,
Lake Tomahawk vicinity, 95001496

Richland County

Tippesaukee Farm Rural Historic District (Boundary Increase),
Jct. of WI Trunk Hwy. 60 and Co. Trunk Hwy. X, Town of Richwood,
Port Andrew, 95001491

In order to assist in the preservation of the following property, the commenting period is being waived:

MASSACHUSETTS

Suffolk County

Riviera, The
270 Huntington Ave.
Boston, 95001450

[FR Doc. 95–29553 Filed 12–4–95; 8:45 am]

BILLING CODE 4310–70–P

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 347 (Sub-No. 2)]

Rate Guidelines—Non-Coal Proceedings

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed guidelines.

SUMMARY: The Commission seeks comments on simplified decisional guidelines that can be used to resolve rail rate reasonableness cases in proceedings where the Constrained Market Pricing (CMP) method is unsuitable. The Commission finds that the Simplified Stand-Alone Cost Model proposed by the Association of American Railroads, as currently formulated, does not appear to be an acceptable tool for determining maximum reasonable rail rates, and that, unless it is modified, it would not be appropriate for use in future rate cases. Comments are requested on two proposals that would jointly apply a ''revenue shortfall allocation method'' (RSAM) test, an ''average revenue-to-variable cost percentage above 180%'' (R/VC>180) test, and a ''revenue-to-variable cost comparison'' (R/VC_{COMP}) test as a guide in determining the reasonableness of the rates charged captive shippers in those cases that are too small for use of our CMP guidelines. Comments are also invited on whether

to define in this proceeding those cases that would qualify for processing under simplified procedures or whether it is more desirable to have that determination made on a case-by-case basis.

DATES: Comments must be filed by February 5, 1996. Replies must be filed by March 4, 1996.

ADDRESSES: An original and 20 copies of all documents must refer to Ex Parte No. 347 (Sub-No. 2) and be sent to the Office of the Secretary, Case Control Branch, Attn: Ex Parte No. 347 (Sub-No. 2), Interstate Commerce Commission, 1201 Constitution Ave., N.W., Washington, DC 20423. Parties are encouraged also to submit all pleadings and attachments on a 3.5-inch diskette in WordPerfect 5.1 format.

FOR FURTHER INFORMATION CONTACT: Ellen D. Hanson or Thomas J. Stilling, (202) 927–7312. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DC News & Data, Inc., Room 2229, Interstate Commerce Commission Building, 1201 Constitution Ave., N.W., Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services at (202) 927–5721.]

The Commission tentatively concludes that the proposed action, which seeks to develop standards for small rate cases, will not have a substantial impact upon a significant number of small entities, and that any impact it might have on such entities will be favorable.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Decided: November 22, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen and Commissioner Simmons.

Vernon A. Williams,

Secretary.

[FR Doc. 95–29546 Filed 12–04–95; 8:45 am]

BILLING CODE 7035–01–P

[Docket No. AB–43 (Sub-No. 162)]

Illinois Central Railroad Company—Abandonment—in Jackson, Hinds County, MS

The Commission has found that the public convenience and neccesity permit Illinois Central Railroad Company (IC) to abandon a 5.8-mile segment of rail line known as the Little J line, between milepost LN–0.2 and milepost LN–6.0 (together with 2.14 miles of side track, for a total of 7.94 track-miles), within the City of Jackson, Hinds County, MS, subject to standard employee protective conditions.

A certificate will be issued authorizing abandonment unless, within 15 days after publication of this Notice, the Commission also finds that: (1) A financially responsible person has offered financial assistance, through subsidy or purchase, to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any offers of financial assistance must be filed with the Commission and IC no later than 10 days from publication of this Notice. The offer, referring to Docket No. AB–43 (Sub-No. 162), must be addressed to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Avenue, N.W., Washington, D.C. 20423; and (2) Myles L. Tobin, Illinois Central Railroad Company, 455 North Cityfront Plaza Drive, Chicago, IL 60611–5504. The following notation must be typed in bold face on the lower left-hand corner of the envelope containing the offer: ''Office of Proceedings, AB–OFA.'' Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27. Additional information is contained in the Commission's Decision. To purchase a copy of the full Decision, write to, call, or pick up in person from: DC NEWS & DATA, INC., Interstate Commerce Commission Building, 1201 Constitution Avenue, N.W., Room 2229, Washington, D.C. 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services at (202) 927–5721.]

Decided: November 22, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioner Simmons.

Vernon A. Williams,

Secretary.

[FR Doc. 95–29545 Filed 12–4–95; 8:45 am]

BILLING CODE 7035–01–P

[Docket No. AB–12 (Sub-No. 152X)]

Southern Pacific Transportation Company—Abandonment Exemption—in Orange County, CA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission, pursuant to 49 U.S.C. 10505, exempts from the prior approval requirements of 49 U.S.C. 10903–04 the abandonment by Southern Pacific Transportation Company of 1.64 miles of railroad in Orange County, CA, subject to standard labor protective conditions and a public use condition.

DATES: Provided no formal expression of intent to file a financial assistance offer has been received, this exemption will be effective on January 4, 1996. Formal expressions of intent to file financial assistance offers [1] under 49 CFR 1152.27(c)(2) must be filed by December 15, 1995. Petitions to stay must be filed by December 20, 1995. Petitions to reopen must be filed by January 2, 1996.

ADDRESSES: Send pleadings referring to Docket No. AB–12 (Sub-No. 152X) to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Avenue, N.W., Washington, DC 20423; and (2) Petitioner's representative: Gary A. Laakso, Southern Pacific Building, One Market Plaza, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call, or pick up in person from: DC NEWS & DATA, INC., Interstate Commerce Commission Building, 1201 Constitution Avenue, N.W., Room 2229, Washington, DC 20423. Telephone: (202) 289–4357. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Decided: November 22, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioner Simmons.

Vernon A. Williams,

Secretary.

[FR Doc. 95–29544 Filed 12–4–95; 8:45 am]

BILLING CODE 7035–01–P

---

[1] See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Colorado Refining Company,* Civil Action No. 95–WY–2608 (D. Colo.), was lodged on October 13, 1995, with the United States District Court for the District of Colorado.

The settlement concerns the petroleum refinery owned and operated by Colorado Refining Company (''CRC'') in Commerce City, Colorado. CRC's refinery is subject to a Clean Air Act ''Prevention of Significant Deterioration'' or ''PSD'' permit which limits sulfur dioxide emissions from a ''Claus Plant,'' and also requires CRC to maintain a continuous emission monitoring (''CEM'') system to measure SO_2 emissions from the Claus Plant. The settlement resolves civil claims that CRC violated the permit limit on sulfur dioxide emissions from the Claus Plant numerous times between July 1990 and March, 1994, and that CRC failed to operate at all times a continuous emissions monitoring (''CEM'') device to measure SO_2 in the gases discharged to the atmosphere.

The settlement includes a civil penalty of $320,000. In addition, CRC is required to obtain a report from a nationally recognized expert in the field of sulfur recovery technology regarding modifications and/or upgrades of the existing Claus Plant to make it effectively operate given the existing and anticipated sulfur ''flowthrough'' at the refinery, and, subject to EPA's approval, implement the recommendations of such expert report.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Colorado Refining Company,* Civil Action No. 95–WY–2608 (D. Colo.), DOJ Ref. #90–5–2–1–1356A. The proposed consent decree may be examined at the Office of the United States Attorney, 1961 Stout Street, Suite 1200, Federal Building, Denver, Colorado 80294; the Region VIII Office of the Environmental Protection Agency, 999 18th Street, Suite 700 South, Denver, Colorado 80202; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $4.75 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Acting Chief, Environment and Natural Resources Division, Environmental Enforcement Section.

[FR Doc. 95–29491 Filed 12–4–95; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to 28 CFR 50.7

Notice is hereby given that a proposed consent decree in *Illinois Public Interest Research Group, et al., and United States of America* v. *115th Street Corporation*, Civil Action No. 92–C–5564, was lodged on November 9, 1995 with the United States District Court for the Northern District of Illinois, Eastern Division. The proposed consent decree resolves the plaintiffs' claims against 115th Street Corporation for violations of pretreatment standards enforceable under the Clean Water Act at its organic chemicals manufacturing facility located in Chicago, Illinois.

In the proposed settlement 115th Street Corporation agrees to: Achieve full compliance with the pretreatment requirements of the Act by not later than August 19, 1996; pay a civil penalty of $1,645,000; and refrain from chemical synthesis of pigments at its Chicago facility until three years after termination of the decree unless it satisfies the specific technical requirements contained in the proposed decree.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *Illinois Public Interest Research Group, et al., and United States of America* v. *115th Street Corporation*, DOJ Ref #90–5–1–1–5004.

The proposed consent decree may be examined at the office of the United States Attorney, 219 South Dearborn Street, Chicago, Illinois 60604; the Region 5 Office of the Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $18.75 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–29492 Filed 12–4–95; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of First Amendment to Consent Decree in United States v. Louisiana-Pacific, Inc. and Kirby Forest Industries, Inc.

In accordance with Departmental policy, 28 CFR 50.7, (38 FR 19029, March 29, 1984), notice is hereby given that a proposed First Amendment to Consent Decree in *United States* v. *Louisiana-Pacific, Inc. and Kirby Forest Industries, Inc.*, Civil Action No. 93–0869, was lodged with the United States District Court for the Western District of Louisiana on October 6, 1995.

The original Consent Decree in this action, lodged on May 24, 1993 and entered by the Court on September 30, 1993, required the installation of improved pollution control devices at fourteen Louisiana-Pacific, and Kirby Forest Industries' plants located in eleven states. The Decree also required Defendants to conduct an environmental audit of all of their facilities and management and to employ corporate and plant environmental managers responsible for compliance with environmental statutes at their wood panel plants.

The First Amendment to Consent Decree reflects changes resulting from additional experience with and analysis of the Regenerative Thermal Oxidation (''RTO'') pollution control devices required by the Decree, from testing which determined that additional Louisiana-Pacific facilities were major emitting facilities under the Clean Air Act, thus requiring the installation of RTOs, and from permitting, construction scheduling and other developments since entry of the original Decree.

The Department of Justice will receive, for thirty (30) days from the date of publication of this notice, written comments relating to the proposed First Amendment to Consent Decree. Comments should be addressed

to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Washington, D.C. 20530 and should refer to *United States* v. *Louisiana-Pacific, Inc. and Kirby Forest Industries, Inc.*, D.O.J. Ref. No. 90–5–2–1–1823.

The proposed First Amendment to Consent Decree may be examined at the office of the United States Attorney, 705 Jefferson Street, Room 305, Lafayette, Louisiana, 70501; the Region VI Office of the Environmental Protection Agency, 1445 Ross Avenue, 12th Floor, Suite 1200, Dallas, Texas 75202; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed First Amendment to Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $4.25 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel Gross,

Acting Chief, Environmental Enforcement Section.

[FR Doc. 95–29493 Filed 12–4–95; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—CommerceNet Consortium

Notice is hereby given that, on June 9, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* (''the Act''), CommerceNet Consortium, (the ''Consortium'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing certain changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the identities of the additional members at the sponsor level are: Anderson Consulting LP, San Francisco, CA; BellSouth, Atlanta, GA; Spyglass, Inc., Naperville, IL; and Loral Space & Range Systems, Sunnyvale, CA.

The following organizations have joined the Consortium as associate members: IEEE Computer Society, Washington, DC; Knight Ridder Information, Inc., Mountain View, CA; Pangea Network Technologies, Sunnyvale, CA; Personal Library Software, Inc., Rockville, MD; Cable & Wireless Innovations, Inc., Menlo Park, CA; and Mitsubishi International, Palo Alto, CA. The following organizations have joined as international associate members: CSIRO Division of Information, Anu, AUSTRALIA; European Union Bank, Antigua, WEST INDIES; Fujitsu Limited, Tokyo, JAPAN; Industry Canada, Ottawa, Ontario, CANADA; and Kokusai Denshin Denwa Co., Ltd. (KDD), Tokyo, JAPAN. The following organization was formally a sponsor but is now an associate: Mastercard International. Spry, Inc. was formally an associate but has been acquired by a sponsor, CompuServe, and the two memberships have been consolidated into one membership. Santa Cruz Operations, Inc. is no longer a member.

No other changes have been made in either the membership or planned activities of the Consortium. Membership remains open, and the Consortium intends to file additional written notifications disclosing all changes in membership.

On June 13, 1994, the Consortium filed its original notification pursuant to Section 6(b) of the Act. The Department of Justice published a notice in the Federal Register pursuant to Section 6(b) of the Act on August 31, 1994 (59 FR 45012).

The last notification was filed with the Department on January 18, 1995. A notice was published in the Federal Register pursuant to Section 6(b) of the Act on June 27, 1995 (60 FR 33232).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–29501 Filed 12–4–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Corporation for Open Systems International

Notice is hereby given that, on August 7, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the Corporation for Open Systems International (''COS'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in COS and its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Pacific Gas & Electric Company ceased its membership in COS effective June 30, 1995. Sharp Corporation, Osaka, JAPAN, became an associate of the Digital Video Home Terminal (DVHT) Executive Interest Group effective August 3, 1995. The Cooperative Router Executive Interest Group was discontinued effective May 18, 1995.

No other changes have been made in either the membership or planned activities of COS. Membership in COS remains open, and COS intends to file additional written notification disclosing all changes in membership or planned activities.

On May 14, 1986, COS filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to Section 6(b) of the Act on June 11, 1986 (51 FR 21260).

The last notification was filed with the Department on June 22, 1995. This notice has not yet been published in the Federal Register.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–29499 Filed 12–4–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Fieldbus Foundation

Notice is hereby given that, on June 26, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the Fieldbus Foundation (''Fieldbus'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the identities of the new members are as follows: Bently Nevada Corporation, Minden, NV; Masoneilan-Dresser Industries, Avon, MA; Relcom, Inc., Forest Grove, OR; Ronan Engineering Company, Woodland Hills, CA; Groupe Schneider, Rueil-Malmaison, FRANCE; and Yamaha Corporation, Toyooka-mura, Iwata-gun, JAPAN.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Fieldbus intends to file additional written notifications disclosing all changes in membership.

On May 7, 1993, Fieldbus filed its original notification pursuant to Section

6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to Section 6(b) of the Act on September 23, 1993 (58 FR 49529).

The last notification was filed with the Department on April 6, 1995. A notice was published in the Federal Register pursuant to Section 6(b) of the Act on June 9, 1995 (60 FR 30591, 30592).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–29498 Filed 12–4–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Financial Services Technology Consortium, Inc.

Notice is hereby given that, on June 15, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Financial Services Technology Consortium, Inc. (the ''Consortium'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. The following parties were admitted as Associate Members of the Consortium: Beneficial Technology Corp., Peapack, NJ; Deluxe Corp., Shoreview, NM; Premenos Corporation, Concord, CA; Broadway & Seymour, Charlotte, NC; NEC Planning Research, Ltd., Tokyo JAPAN; and Telequip Corp., Nashua, NH. The following parties were admitted as Advisory Members of the Consortium: Copyright Clearance Center, Inc., Danvers, MA; and National Automated Clearing House Association, Herndon, VA.

No other changes have been made in either the membership or planned activity of the Consortium. Membership remains open, and the consortium intends to file additional written notifications disclosing all changes in membership.

On October 21, 1993, the Consortium filed its original notification pursuant to Section 6(b) of the Act. The Department of Justice published a notice in the Federal Register pursuant to Section 6(b) of the Act on December 14, 1993 (58 FR 65399).

The last notification was filed with the Department on April 20, 1995. A notice was published in the Federal Register pursuant to Section 6(b) of the Act on June 28, 1995 (60 FR 33432).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–29503 Filed 12–4–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Hart Communication Foundation

Notice is hereby given that, on June 26, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Hart Communication Foundation (''HCF'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the identities of the new members are: Anderson Instrument Co., Inc., Fultonville, NY; Honeywell, Inc., Fort Washington, PA; Instrumenfirman INOR AB, Malmo, SWEDEN; Lars Jakob Neilsen, Aabyhoj, DENMARK; Saab Tank Control, Gothenburg, SWEDEN; and Wireless Scientific, Inc., Amelia Island, FL.

The following have changed their addresses: Arcom Control Systems is now located at 13510 South Oakley Street, Kansas City, MO, and Rosemount Analytical Inc. is now located at 2400 Barranca Parkway, Irvine, CA.

The companies formerly known as Fischer & Porter and Elsag-Bailey Controls are now known as Bailey-Fischer & Porter.

The following are no longer members of HCF: Fairchild Industrial Products; Ohkura Electric Co., Ltd.; and Termiflex Corporation.

No other changes have been made in the membership, nature and objectives of the consortium. Membership in HCF remains open, and HCF intends to file written notifications disclosing all changes in membership.

On March 17, 1994, HCF filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the Federal Register Pursuant to Section 6(b) of the Act on May 5, 1994 (59 FR 23234). The last notification was filed with the Department on March 16, 1995. A notice was published in the Federal Register pursuant to Section 6(b) of the Act on May 24, 1995 (60 FR 27558).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–29506 Filed 12–4–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Minnesota Mining and Manufacturing Company, Seagate Tape Technology, Inc., and Advanced Research Corporation

Notice is hereby given that, on October 19, 1995, pursuant to Section 6(a) of the National Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* (''the Act''), Minnesota Mining and Manufacturing Company (''3M'') filed notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to a research and development venture and (2) the nature and objective of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties to the joint venture are Minnesota Mining and Manufacturing Company, St. Paul, MN; Seagate Tape Technology, Inc., Santa Clara, CA; and Advanced Research Corporation, Minneapolis, MN. The general area of planned activity is to develop technologies for a small, reliable, low cost, high bandwidth, high capacity, fast access tape recorder and cartridge media.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–29507 Filed 12–4–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993 Petroleum Environmental Research Forum Project 94–12

Notice is hereby given that, on September 14, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* (''the Act''), Petroleum Environmental Research Forum (''PERF'') Project 94–12, titled ''Sewer Inspection and Repair Technologies for Application to Refineries and Chemical Plants'' has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identifies

of the parties and (2) the nature and objectives of the project. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are Exxon Research and Engineering Company, Florham Park, NJ; Hess Oil Virgin Islands, St. Croix, U.S. Virgin Islands; Marathon Oil Company, Findlay, OH; and Chevron Research and Technology Company, Richmond CA. The nature and objective of the project is to provide identification and field testing of technologies for inspection of sewers in refinery and chemical plant operations and matrices of potential sewer inspection and repair technologies with their advantages and disadvantages.

Participation in this project will remain open until issuance of the final project report anticipated approximately 27 months after the project commences. The participants intend to file additional written notifications disclosing all changes in its membership. Information about participating in Project 94–12 may be obtained by contacting Mr. William Hacker, Exxon Research and Engineering Company, P.O. Box 101, Florham Park, NJ 07932.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 94–29505 Filed 12–04–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Petroleum Environmental Research Forum

Notice is hereby given that on September 18, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301, *et seq.* (''the Act''), Petroleum Environmental Research Forum (''PERF'') Project No. 93–11 filed written notifications simultaneously with the Attorney General and with the Federal Trade Commission disclosing changes in the membership of PERF Project No. 93–11. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following additional party has become a participant in PERF Project 93–11: Exxon Production Research Company, Houston, TX.

No other changes have been made in either the membership or planned activity of PERF.

On October 18, 1994, PERF Project No. 93–11 filed it original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to Section 6(b) of the Act on December 1, 1994 (59 FR 61638).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–29494 Filed 12–4–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—PowerOpen Association, Inc.

Notice is hereby given that, on December 28, 1994, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), PowerOpen Association, Inc. (''PowerOpen''), has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the identities of the new members of PowerOpen are: Aspect Communications, Inc., San Jose, CA; Bolt Bernack and Newman, Inc., Cambridge, MA; CelsiusTech Systems AB, Jarfalla, SWEDEN: and Gradient Technologies, Inc., Marlboro, MA.

No other changes have been made in either the membership or planned activity of the project. Membership remains open and PowerOpen intends to file additional written notification disclosing all changes in membership.

On April 21, 1993, PowerOpen filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to Section 6(b) of the Act on June 22, 1993 (58 Fed. Reg. 33954).

The last notification was filed with the Department on September 30, 1994. A notice for this filing has yet been published in the Federal Register.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–29502 Filed 12–4–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Intelligent Modular Array System

Notice is hereby given that, on October 11, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Sawtek, Inc. filed notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are Sawtek, Inc., Apopka, FL; and General Atomics, San Diego, CA. The nature and objectives of the venture are to engage in cooperative research toward the development of an Intelligent Modular-Array System (IMAS) for Monitoring of Volatile Organic Compounds (VOCs) to address the detection, differentiation and quantification of VOCs at the class level.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–29495 Filed 12–4–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Semiconductor Research Corporation

Notice is hereby given that, on March 10, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Semiconductor Research Corporation has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following companies have joined membership with the consortium: IntelliSense Corporation, Wilmington, MA as an affiliate member and Ford Motor Company, Dearborn, MI as a science area member. Praxair, Inc.; M/A–COM, Inc. and Matrix Integrated Systems, Inc. have withdrawn their membership with the joint venture.

No other changes have been made in either the membership or planned activity of the group research project.

Membership in this group research project remains open, and Semiconductor Research Corporation intends to file additional written notification disclosing all changes in membership.

On January 7, 1985, Semiconductor Research Corporation filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to Section 6(b) of the Act on January 30, 1985 (50 FR 4281).

The last notification was filed with the Department on March 22, 1994. A notice was published in the Federal Register pursuant to Section 6(b) of the Act on April 20, 1994 (59 FR 18830).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–29496 Filed 12–4–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Transguide System Media Services Software Project

Notice is hereby given that, on August 23, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Southwest Research Institute (''SwRI'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are: Harte-Hanks Television KENS-Channel 5, San Antonio, TX; KISS Radio of San Antonio, Ltd., San Antonio, TX; KMOL-Channel 4, San Antonio, TX; KSAT-TV12, San Antonio, TX; KSMG, San Antonio, TX; KTFM, San Antonio, TX; KTSA, San Antonio, TX; San Antonio, TX; San Antonio Express News, San Antonio, TX; Southwest Research Institute, San Antonio, TX; and State of Texas, acting by and through the Texas Department of Transportation, San Antonio, TX.

The purpose of the venture is to facilitate the transmission of information for the Texas Department of Transportation Operational Control Center of the TransGuide System to media outlets through the development of personal computer based software which will list current traffic incident scenarios, list current scheduled lane closures and provide a display of a high level and schematic map of the major highways and road segments where the TransGuide System is active in Bexar County.

Membership in the program remains open, and SwRI intends to file additional written notifications disclosing all changes in the membership or planned activities.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–29504 Filed 12–4–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Affordable High Performance Computing Cooperative Arrangement

Notice is hereby given that, on June 29, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the Pratt & Whitney Division of United Technologies Corporation has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of a cooperative arrangement known as the ''Coordinated Research Agreement for Development of Affordable High-Performance Computing'' (the ''AHPC''). The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are: United Technologies Corporation, Hartford, CT; The Massachusetts Institute of Technology, Cambridge, MA; CFD Research Company, Huntsville, AL; Platform Computing Company, Newbury, MA; The Research Foundation of the State University of New York, Amherst, NY; and The MacNeal-Schwendler Corporation, Los Angeles, CA.

The purpose of the AHPC is to pursue a coordinated research and development effort leading to development of affordable distributed computing software for use in design of advanced aircraft engine components, while providing technology for commercial and military uses.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–29497 Filed 12–4–95; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

[Docket No. 94–10]

Michael J. Roth, M.D.; Continuation of Registration

On October 27, 1994, the Deputy Assistant Administrator (formerly Director), Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Michael J. Roth, M.D. (Respondent), of Santa Monica, California, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, AR8354425, under 21 U.S.C. 824(a)(4) and deny any pending applications under 823(f), as being inconsistent with the public interest. Specifically, the Order to Show Cause alleged that:

(1) During the period March 1988 through December 1989, the Respondent prescribed, administered, and dispensed excessive amounts of controlled substances to a single patient, including Demerol, Dilaudid, Xanax, Ativan, Percordan, Tylenol with Codeine, Valium, Percocet, Methodone, and Doriden, without a legitimate medical purpose and while not acting in the usual course of professional practice;

(2) During the same time period, the Respondent further prescribed narcotic drugs to the same narcotic dependent patient for the purpose of maintenance treatment, and engaged in detoxification treatment of that patient without holding a separate DEA registration to conduct a narcotic treatment program; and

(3) During the period January 1991 through February 1993, the Respondent prescribed excessive amounts of controlled substances to two patients, including Chloral Hydrate, Ativan, Dalmane, Tylenol with Codeine, and Fiorinal, without a legitimate medical purpose and while not acting in the usual course of professional practice.

On November 19, 1993, the Respondent, through counsel, filed a timely request for a hearing. On February 23, 1994, the case was consolidated for hearing with *Michael S. Gottlieb, M.D.*, Docket No. 93–53, and *William J. Skinner, M.D.*, Docket No. 93–39. Following prehearing procedures, a hearing was held in Los Angeles, California, on March 29–30 and May 10–12, 1994, before Administrative Law Judge Paul A. Tenney. At the hearing both the Government and the Respondent called witnesses to testify and introduced documentary evidence, and after the hearing, counsel for both sides submitted proposed findings of fact, conclusions of law and argument. On October 17, 1994, Judge Tenney

issued his Findings of Fact, Conclusions of Law, and Recommended Ruling, finding that the Respondent's registration was not inconsistent with the public interest, and recommending that no action be taken with respect to the Certificate of Registration of Respondent, Dr. Roth. The Government filed exceptions to his decision, and the Respondent filed responses to the Government's exceptions. On December 12, 1994, Judge Tenney transmitted the record of these proceedings to the Deputy Administrator.

The Deputy Administrator has considered the record in its entirety and the filings of the parties, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts, in full, the opinion of Judge Tenney, and his adoption is in no manner diminished by any recitation of facts, issues and conclusions herein, or of any failure to mention a matter of fact or law.

The Deputy Administrator finds that the Respondent is licensed to practice as a physician and surgeon in the State of California. The DEA's allegations concern the Respondent's treatment of two patients, ''Patient A'' and ''Patient B.'' Patient A had a number of significant physical conditions which caused severe pain, including pressure on the nerves from cervical degenerative joint disease; degenerative osteoarthritis of the lumbar vertebrae above a previous area where fusion surgery had been performed; spinal stenosis which occurs when the spinal canal narrows, in some cases putting pressure on a nerve; severe temporal mandibular joint degenerative disease; compression fracture of the patient's spine at L–1 and L–2; and trochanteric bursitis of the hip.

During the time period of March through October 1988, the government contended that the Respondent prescribed controlled substances to Patient A for other than a legitimate medical purpose. During this period, Dr. Skinner was the primary treating physician for Patient A. The Respondent and Dr. Michael Gottlieb were partners in a medical practice in Los Angeles, and Dr. Gottlieb would care for Patient A when Dr. Skinner was not available, and the Respondent cared for Patient A when neither Dr. Skinner nor Dr. Gottlieb was available. Respondent testified that he did not keep independent medical records of the patient while he was in partnership with Dr. Gottlieb, but when he issued prescriptions to Patient A, he followed the medical regimen established by Dr. Gottlieb and Dr. Skinner.

During the period of March 26, 1988, through October 13, 1988, the Respondent prescribed Schedule II controlled substances to Patient A on 13 occasions, and Schedules III through V controlled substances to Patient A on 23 occasions. The Respondent testified that when Patient A was in acute pain, he would prescribe Percodan, but that he would then try to taper her off that substance once the acute pain diminished. In July 1988, Patient A suffered a fall and injured her back. Dr. Gottlieb admitted the patient to the hospital on July 25, 1988, with a diagnosis of severe degenerative disc disease with marked fact hypertrophy from L3 to S1, a history of sciatica and foot drop, premature atrial contractions, and degenerative disc disease of the cervical spine. Dr. Gottlieb noted on the patient's history that she was currently using Percodan, Ativan, and Xanaz. Percodan, a Schedule II controlled substance, contains oxycodone and aspirin; Ativan, a Schedule IV controlled substance, contains lorazepam; and Xanaz, a Schedule IV controlled substance, contains alprazolam. Upon admission to the hospital, Dr. Gottlieb ordered, and Patient A was given, 150 milligrams (mg.) of Demerol and 1 mg. of Ativan. Demerol is a brand name for meperidine hydrochloride and is a Schedule II controlled substance.

On July 26, 1988, following a CAT scan, Dr. Joyce issued a report, writing that Patient A had a mild compression fracture at L1, mild stenosis at L2–3, moderate stenosis at L3–4, and a post-posterior bony fusion from L4 to the sacrum. Patient A was discharged on August 18, 1988, and the Respondent ordered administration of 100 mg. of Demerol, and then issued a prescription 70 Percodan. On August 25, 1988, the Respondent prescribed 20 Percodan and 5 Dilaudid. Dilaudid is a brand name of hydromorphone hydrochloride and is a Schedule II controlled substance.

During the period from September 1, 1988, to October 13, 1988, the Respondent prescribed to Patient A 210 Percodan and 300 mg. of Demerol. On September 29, 1988, Patient A was admitted to the hospital by Dr. Skinner, and she was discharged on October 4, 1988, with a diagnosis of a compression fracture, osteoporosis, and congenital scoliosis. On October 17, 1988, Patient A was again admitted with a complaint of severe left leg pain, and on October 23, 1988, she was discharged with the diagnosis of acute back pain secondary compression fracture of L1, acute lumbosacral spinal sprain and strain secondary to severe osteoarthritis at L2–3 with neuroforaminal narrowing, sciatica (resolved) and osteoporosis with high risk of possible spontaneous hip fracture. On October 31, 1988, Patient A was admitted to the Betty Ford Clinic with an initial diagnosis of opiate, alcohol, sedative, and amphetamine dependent (continuous), and she was discharged on December 10, 1988.

As Judge Tenney noted, ''[t]here is a 'debate' or difference of opinion between those specialized in addiction medicine and those in pain management regarding the use of narcotics for the treatment of severe pain.'' He also noted that Dr. Smith and Dr. Ling, the Government expert witnesses, were primarily experts in addiction medicine, and Dr. Margoles and Dr. Brechner, the Respondent's expert witnesses, were primarily experts in pain management. Dr. Smith and Dr. Margoles agreed that there exists a difference of opinion within the medical community as to the appropriate level of prescribing of controlled substances for the treatment of chronic pain patients. Also significant is the fact that the opinions of Dr. Brechner, Dr. Dodge, Dr. Horacek, and Dr. Woods were supported by either their personal examination, treatment, or both, of Patient A, during the relevant time period, whereas the opinions of Dr. Smith and Dr. Ling were based upon their review of Patient A's treatment records and relevant prescription documentation.

On March 3, 1990, Dr. Smith wrote in a report for the District Attorney: ''[the] spectrum of medications [prescribed to Patient A] was not justified by the medical pathology and, in fact, the medications caused the patient far more harm than benefit. The dosage of medication was clearly excessive and the duration over the several month period as outlined in the medical records was both excessive and not justified by the medical pathology.'' He concluded that ''[a]s a result of this analysis it is my opinion then, that Dr. Skinner and his colleagues were not prescribing a narcotic medication primarily for the management of pain but, in fact, were maintaining her addiction.'' During the hearing before Judge Tenney, Dr. Smith testified, after reviewing the quantities of controlled substances prescribed on selected dates, that those quantities were excessive in light of the standard therapeutic dosage. He then adopted the conclusion reached in his 1990 letter to the District Attorney.

Dr. Ling, a medical expert in the areas of neurology, psychiatry, addiction, and pain medicine, opined that, based upon his review of Patient A's treatment record and pharmacy records, the Respondent's prescribing practices

during 1988 did not meet the standard of care of the average practitioner. He stated, ''If this was the only records there [were], then I don't think it meets the standard of care.'' He also testified that, in 1988, the standard of care was not to prescribe a large amount of narcotics, for such practice could result in the patient's developing a tolerance to a controlled substance: ''You'd be treating the tolerance. You'd be treating addiction, you're no longer treating the [diagnosed medical condition].'' Further, Dr. Ling recommended that a physician treating a patient with a potential drug dependency problem should consult with a specialist in drug addiction. Both Dr. Smith and Dr. Ling concluded that Patient A was an addict who was opiate dependent and benzodiazipine dependent.

The Respondent presented evidence from consulting physicians, who had concluded that Patient A was not an addict, but that she was dependent upon controlled substances to treat her chronic and sometimes acute pain. Specifically, after having reviewed Patient A's medical history and having interviewed her twice, Dr. Margoles, a medical expert in pain management, testified, that throughout the years 1986 to 1988, Patient A had experienced intractable pain as a result of numerous medical problems and degenerative changes. He concluded that Patient A was a chronic pain patient, as opposed to an opioid abuser, and that she sought and was given medications to control her pain, not for euphoria. He found that, although Patient A received an increase in amounts of opioids prescribed for her use, such an increase resulted from the severity of her pain, not addiction. ''It was obvious that the medication was being used to keep her going in her professional career.'' Also, he noted that there was no evidence in the patient's records that she sought drugs in order to obtain euphoria, no evidence of abstinent syndrome, nor clinical or laboratory evidence of toxicity. Dr. Margoles testified that the lack of toxicity evidence meant that the ''patient obviously tolerated the medication that she had, that was used in her case, and evidently benefitted her and [that] she had no toxic side effects * * * no slurred speech, inability to have cognitive speech, straight speaking.''

As to the Respondent's specific involvement in 1988, Dr. Mangoles also opined that the 13 prescriptions Dr. Roth wrote during a seven month period were needed to control the patient's pain problems. He also noted that the Respondent appeared ''to be tapering her down all the time,'' and that such tapering was within the usual course of professional practice. Dr. Smith agreed with Dr. Margoles concerning the propriety of tapering Patient A, under the circumstances. Further, Dr. Margoles testified that the Respondent ''acted in good faith and prescribed medication that was adequate for a given diagnosis and following good faith examination.''

Finally, Dr. Margoles noted that in the 1980's, guidelines were established in prescribing controlled substances for chronic conditions. These guidelines were endorsed by various medical and legal groups, to include the California Board of Medical Quality Assurance and the California Bureau of Narcotic Enforcement. Dr. Margoles testified that the Respondent's prescribing to Patient A met these standards. Thus, he concluded that the Respondent prescribed controlled substance in the appropriate course of his professional conduct, and not for the purpose of maintaining Patient A's condition as an addict.

Also, the Respondent produced an affidavit from Dr. Dodge, a consulting neurosurgeon involved with the treatment of Patient A from 1986 through 1988, who wrote:

> In my opinion, although the amounts of drugs were large compared to the average patient, they were necessary in order to treat the patient's pain. Although the patient clearly had a drug dependence problem, I do not believe the pain was controllable by other means besides narcotics. The amounts of narcotics tended to increase at the time of the acute events . . . Dr. Skinner and the other physicians responsible for her care always attempted to minimize the amounts of drugs that she took and sought to detoxify her from those drugs when the acute phase of pain and muscle spasm from the injuries passed.
>
> In my opinion, Dr. Skinner and the other physicians responsible for her care did not violate the standard of practice in prescribing narcotic analgesics to this patient.

Further, in an affidavit, Dr. Woods, a neurologist who treated Patient A from January 1987 to January 1988, made similar observations as Dr. Dodge, and concluded: ''In my opinion, Dr. Skinner and the other physicians responsible for her care did not violate the standard of practice in prescribing narcotic analgesics to this patient, in that the drugs were prescribed to control the patient's pain not to maintain her addiction.''

As to the legitimacy of the quantities of the controlled substances prescribed, Dr. Brechner, a medical expert in the field of pain management and anesthesiology, testified that in 1988 he was consulted concerning an aspect of Patient A's treatment, for he had performed a facet block procedure to aid in the diagnosis of the source of Patient A's back pain. In the course of performing that procedure, he administered narcotic analgesics, observing that Patient A had ''an extraordinary tolerance to narcotics, even when potentiated with the tranquilizers.'' Dr. Brechner also noted that Patient A suffered from severe chronic pain and from periods of acute, intractable pain. Dr. Brechner concluded that Patient A had received narcotics prescribed in amounts that were ''extraordinary compared to the average patient,'' because of her extreme tolerance for narcotics, and that she needed the narcotics in the amounts prescribed in order to control her pain. He testified that prescribing the narcotics in lower doses was not effective, and thus, she was not ''over-dosed.''

Also, Dr. Brechner testified that alternative means of treatment were tried to control Patient A's pain, but that he did not believe such treatment was effective alone in treating the pain resulting from her acute pain-inducing incidents, such as the automobile accident or the fall down the stairway. Finally, Dr. Brechner testified that the doctors treating Patient A prescribed narcotics for a legitimate medical purpose, to treat her pain, and not to maintain her condition as an addict.

Further, Dr. Skinner, the Medical Director of St. John's Chemical Dependency Center from 1981 to 1990, and a medical expert in chemical dependency, testified that he had begun treating Patient A at the Respondent's request in 1983. Dr. Skinner testified extensively about the acute pain incidents experienced by Patient A through 1988, the consulting physicians' diagnoses resulting from these incidents, and the various narcotic and non-narcotic treatment regimen implemented to control her pain. He also stated that there was no evidence that drug intoxication caused any of Patient A's acute events, and that he had made an extra effort to insure her lack of toxicity throughout his treatment of her. Further, Dr. Skinner testified that all narcotics were either administered in the hospital or under the supervision of a private duty nurse selected by him from the nursing staff of the Chemical Dependency Center at Saint John's Hospital, and that the nurses were familiar with Patient A's case, her tolerances, and with treating patients who had Patient A's type of problems. As a result of his treatment of Patient A, Dr. Skinner concluded that she was not an addict: ''She did not demonstrate typical findings of addiction behavior. * * * never did she evidence toxicity, never did she evidence any abstinence

withdrawal syndrome, and never did she evidence, while under my care at home or in the hospitals, any evidence of street-like drug seeking behavior.''

The Respondent also testified before Judge Tenney, stating that Patient A was ''opiate dependent'' or ''opiate reliant,'' but not addicted. ''I don't feel she was addicted to the medication from the point of view that she needed the medication every so many hours as an addict would for maintenance of the use of the drug. But she relied on the medication to take away her pain. In that sense, I'm saying she was reliant on the medication. But she could go days without having medication, even weeks, when her pain wasn't bad. Then the pain would get bad and she was reliant, again, on the medication to take away the pain.'' He concluded by stating that, although he was not the primary treating physician during 1988, he issued prescriptions in good faith and as part of the regimen established by her primary treatment physicians. Further, he affirmed that he did not issue any prescriptions for the purpose of enabling Patient A to reach a state of euphoria.

As to his prescribing practices during 1991 through 1993, the Respondent testified that Patient A complained that her pain was causing her insomnia. He first referred Patient A to the sleep clinic at Cedars Sinai Hospital, but she did not follow up on that referral. Next, the Respondent consulted with the director of that clinic and used the treatment regimen he suggested to try to provide Patient A relief from both her insomnia and her pain. The recommended regimen involved trying to rotate insomnia medications to determine what medication would provide Patient A relief. He prescribed benzodiazepines, to include Restoril, Prosom, Chloral Hydrate, and Dalmane. The Respondent testified that he would give Patient A three prescriptions at one time for small dosages of different substances, stating ''the reason that we gave her the three medications at one time was to give her the alternative to try one and if one didn't work to try a second.'' The Respondent testified that he cautioned Patient A about the addictive nature of these substances, and Patient A affirmed that she was just trying to get some sleep so she could work. The Respondent affirmed that it was never his intention that Patient A would take all three prescribed medications at the same time, and that ''[Patient A] knew absolutely that that wasn't the indication.'' Finally, the Respondent testified that he was prescribing these substances in good faith to assist Patient A in trying to obtain some sleep, not to obtain a state of euphoria.

Dr. Margoles agreed with the Respondent, testifying that Patient A needed the medications prescribed during this time period to control her pain and to help her sleep, given the pain she was experiencing. Dr. Smith, however, testified generally about sedative-hypnotic dependence, and, after reviewing the prescriptions issued during 1992 through 1993, he concluded that the Respondent's prescriptions to Patient A were beyond therapeutic use and were issued for the purpose of sustaining her addiction. However, undisputed in the record was the Respondent's testimony that Patient A's medical records reflecting his treatment of her during this time period had been stolen from the Respondent's office. Acknowledging the lack of medical records, Dr. Smith admitted that if he had been able to review the medical records ''[he] could have a better understanding of what was going on in the physician's mind and whether it was appropriate prescribing.''

However, the Respondent submitted letters written between September 1990 and February 1993, reflecting his referral of Patient A to other physicians for consultation. Dr. Ling, after reviewing the consulting physician's opinions, conceded that the letters supported the Respondent's opinion that Patient A suffered intractable pain during this time period. Dr. Ling also testified that he did not see any overall strategy for the treatment of Patient A, but he conceded that, lacking the medical treatment record, he could not render an opinion as to whether the Respondent's medical practices were consistent with the skill and knowledge of the average practitioner.

Also in dispute was the adequacy of the medical treatment records for Patient A during the 1988 time period. The Respondent testified that, since he shared a practice with Dr. Gottlieb, he had not kept a separate medical record, but rather he had followed the treatment regimen of Dr. Gottlieb and Dr. Skinner. Dr. Smith testified that Dr. Gottlieb's treatment records did not meet the usual medical standard of practice regarding prescription of controlled substances. Yet Dr. Brechner also reviewed Patient A's treatment records provided by Dr. Skinner and Dr. Gottlieb, as well as the hospital records, and he testified that the acute and chronic medical conditions were well documented in the medical records. Also, Dr. Margoles testified that the records sufficiently supported the Respondent's prescribing practices, for Dr. Gottlieb's records included diagnoses and a treatment plan for Patient A. Finally, there was no expert witness testimony to establish that the Respondent's recordkeeping practices, under the circumstances, failed to meet the usual medical standard.

As to Patient B, the Government's attorney stated on the record that ''the government will really not submit any argument to the issue of . . . whether Patient B had legitimate medical conditions that were being treated,'' but noted that the Respondent's recordkeeping practices as to Patient B were deficient. Patient B's medical chart was of record, and in it the Respondent had listed several diagnoses, including ''migraine v. cluster'' headaches and insomnia. The Respondent also testified that a cluster headache could incapacitate someone and could cause insomnia. Three times in June, twice in July, and once in September 1992, the Respondent prescribed Fiorinal, a barbiturate containing butalbital, a Schedule III controlled substance, for Patient B's headaches. For Patient B's insomnia condition, the Respondent prescribed Prosom, a triazolobensodiazepine derivative, which is a Schedule IV controlled substance. The Respondent also testified that Patient B's medical problems were documented in his medical record, and that given the small amount of medication prescribed for Patient B, he felt it was not relevant to go into a long, lengthy work-up for this patient.

Dr. Margoles testified that Fiorinal was a medication that was used to control cluster headaches, and that the Respondent prescribed this medication to Patient B in appropriate dosages. He also testified that the Prosom was prescribed to Patient B in appropriate dosages to help him sleep, and that there was no evidence in the medical records that Patient B sought either of these medications for the purpose of euphoria. Therefore, he concluded that the medications were prescribed for a legitimate medical purpose and in the appropriate course of normal medical practice.

Pursuant to 21 U.S.C. 823(f) and 824(a)(4), the Deputy Administrator may revoke a DEA Certificate of Registration if he determines that the continued registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered in determining the public interest:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health or safety.

These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration denied. See Henry J. Schwarz, Jr., M.D., Docket No. 88–42, 54 FR 16422 (1989).

In this case, factors two, four, and five are relevant in determining whether the Respondent's continued registration would be inconsistent with the public interest. As to factor two, the Respondent's ''experience in dispensing * * * controlled substances,'' and factor four, the Respondent's compliance with ''Federal, State, or local law,'' the Government contends that during the periods March through October 1988, and 1991 through 1993, the Respondent prescribed controlled substances in the treatment of Patient A not for a legitimate medical purpose and not in the usual course of his professional practice, in violation of State and Federal law. Specifically, the Government argues that controlled substances were prescribed to Patient A during these periods to maintain her addiction, and that the amount of narcotics prescribed far exceeded what Patient A needed for pain relief.

An ''addict'' is defined in 21 U.S.C. 802(1) as ''any individual who habitually uses any narcotic drug so as to endanger the public morals, health, safety, or welfare, or who is so far addicted to the use of narcotic drugs as to have lost the power of self-control with reference to [one's] addiction.'' There was no dispute that very high doses of narcotic analgesics were administered to Patient A, but the evidence also demonstrated that she had a high tolerance to the controlled substances and required this dosage to effectively treat her pain. Patient A's medical records and the statements and testimony of medical experts establish that Patient A had several injuries and was plausibly experiencing severe and chronic pain. Further, the evidence did not adequately establish that Patient A was an ''addict.'' No evidence was presented to show that Patient A had acted to ''endanger the public morals, health, safety, or welfare,'' or that she had a compulsion to use drugs, had lost control over the drugs, or that she continued to use the drugs in spite of adverse consequences. Also, medical testimony was presented to establish that, although considered, there was no evidence of abstinent syndrome, slurred speech, inability to have cognitive speech, nor clinical or laboratory evidence of toxicity. However, there was expert testimony to establish that use of the controlled substances helped Patient A to function and participate in her professional activities in spite of chronic pain. Although the Respondent did not deny that Patient A had a chemical dependency, he testified that he was not prescribing controlled substances to Patient A to maintain an addiction, for she did not present any addictive behavior to him. Therefore, the Deputy Administrator concurs with Judge Tenney's finding that Patient A is a chronic pain patient being maintained on opioids for treatment of pain, and that she is not an ''addict.''

The Government also asserted that the Respondent's practices violated California Health and Safety Code Sections 11153 and 11154. Pursuant to Section 11153(a), a ''prescription for a controlled substance shall only be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his or her professional practice,'' and a prescription issued ''for an addict or habitual user of controlled substances, which is issued not in the course of professional treatment * * * but for the purpose of providing the user with controlled substances, sufficient to keep him or her comfortable by maintaining customary use'' would not be a legal prescription pursuant to this section. Section 11154 provides in relevant part that ''[e]xcept in the regular practice of his or her profession, no person shall knowingly prescribe, administer, dispense, or furnish a controlled substance to or for any person * * * which is not under his or her treatment for a pathology or condition other than addiction to a controlled substance. * * *''

The Respondent asserted that prescribing in good faith was an absolute defense to an allegation of violation of these provisions. Dr. Ling testified that he accepted that the Respondent believed Patient A was in pain, and that he was treating her in good faith. Dr. Margoles also testified to the Respondent's good faith treatment of Patient A.

The Deputy Administrator agrees with the conclusion of Judge Tenney, that the Respondent did not violate these State code provisions. See *People* v. *Lonergan,* 219 Cal.App.3d 82, 90 (1990) (acting in ''good faith,'' as defined by California Health and Safety Code 11210, exempts a physician from criminal liability under the provision of 11153). In response to the Government's exceptions relevant to the standard applicable in this administrative proceeding, the Deputy Administrator also finds that the preponderance of the evidence establishes that the Respondent prescribed controlled substances to Patient A for a legitimate medical purpose while acting in the usual course of his professional practice, and thus, he did not violate the cited State law.

Next, the Government asserted that the Respondent performed detoxification or maintenance treatment of a narcotic drug-dependent patient without obtaining a registration for that purpose in violation of Federal law. Pursuant to 21 U.S.C. 802(30), ''detoxification treatment'' is

> The dispensing for a period not in excess of one hundred and eighty days of a narcotic drug in decreasing doses to an individual in order to alleviate adverse physiological or psychological effects incident to withdrawal from the continuous or sustained use of a narcotic drug and as a method of bringing the individual to a narcotic drug-free state within such period. (Emphasis added).

Further, the statute defines ''maintenance treatment'' as the dispensing, ''for a period in excess of twenty-one days, of a narcotic drug in the treatment of an individual for dependence upon heroin or other morphine-like drugs.'' 21 U.S.C. 802(29) (emphasis added). However, the applicable implementing regulation states in pertinent part:

> This section is not intended to impose any limitations on a physician * * * to administer or dispense narcotic drugs in a hospital to maintain or detoxify a person as an incidental adjunct to medical or surgical treatment of conditions other than addiction, or * * * to persons with intractable pain in which no relief or cure is possible or none has been found after reasonable efforts.

21 C.F.R. 1306.07(c).

The preponderance of the evidence supports a finding that the Respondent was tapering the drugs prescribed to Patient A after acute pain resolved. Dr. Ling, as well as others, testified that such tapering would be appropriate under such circumstances. Further, the record does not establish that Patient A experienced ''adverse physiological or psychological effects incident to withdrawal'' nor that, in fact, Patient A exhibited behavior consistent with the finding that she was an ''addict.'' Therefore, the Deputy Administrator agrees with Judge Tenney that the

''Respondent made a reasonable effort to manage the patient's intractable pain and limit the use of controlled substances in terms of treatment of [Patient A's] other medical conditions, and did not prescribe controlled substances primarily to wean the patient from dependence on narcotic analgesics.'' Thus, the Respondent was not maintaining Patient A's addiction nor detoxifying Patient A without a proper registration.

Next, the Government asserts that the Respondent violated 21 C.F.R. 1306.04 and California Health and Safety Code 11168, 11190, and 11191, by failing to keep adequate medical records in the course of his treatment of Patient A during 1988, and 1991 through 1993. The primary treatment records during 1988 were the records of Dr. Skinner and Dr. Gottlieb, and there was no dispute that Dr. Roth did not maintain separate treatment records recording his treatment of Patient A during this time period. Although Dr. Smith testified that Dr. Gottlieb's records were inadequate, Dr. Margoles and Dr. Brechner testified that the records sufficiently supported the Respondent's prescribing practices, for Dr. Gottlieb's records included diagnoses and a treatment plan for Patient A. Further, the Respondent testified that he merely followed the treatment regimen of Dr. Gottlieb and Dr. Skinner when he ''covered'' for them in treating Patient A. No expert witness testimony was presented to discredit the Respondent's professional practice of recordkeeping under these circumstances.

As to the records from 1991 through 1993, the Respondent testified, and no evidence was presented to the contrary, that Patient A's treatment records covering his treatment of her during this time period were stolen from his office. Further, the Deputy Administrator concurs with Judge Tenney's finding that the Respondent's explanation for the missing records was credible. Given the loss of these medical records, the hearing record is devoid of evidence sufficient to establish the inadequacy of the Respondent's contemporaneous recordkeeping practices. Thus, the Deputy Administrator agrees with Judge Tenney's conclusion that the inadequacies of the medical records were not clearly supported.

As to factor five, ''such other conduct which may threaten the public health and safety,'' the Government argued that the Respondent's pattern of prescribing to Patient A caused a threat to the public health and safety. As Judge Tenney noted, this is an unusual case for it involved the Respondent's prescribing practices for a single patient, and no evidence was provided to show a pattern of excessive prescribing to any other patients. Further, as to that single patient, the Deputy Administrator concurs with Judge Tenney's finding that the ''overriding purpose of [the] Respondent's prescribing practices was the treatment of Patient A's pain,'' a legitimate medical purpose. Also, a relevant factor in determining the public's interest is the nature of the Respondent's current practice, for the Respondent testified that the majority of his patients in 1994 were living with AIDS and in many cases in need of controlled substances to relieve their incurable pain. In the balance, the Deputy Administrator finds that it is in the public interest for the Respondent to retain his DEA Certificate of Registration.

Yet the Deputy Administrator notes with concern the large quantities of controlled substances prescribed to Patient A over an extended period of time. However, the conflicting expert opinion evidence presented leads to the conclusion that the medical community has not reached a consensus as to the appropriate level of prescribing of controlled substances in the treatment of chronic pain patients. Given this dispute, the Deputy Administrator is reluctant to conclude that the Respondent's prescribing of controlled substances to Patient A lacked a legitimate medical purpose or was outside the usual course of professional practice. It remains the role of the treating physician to make medical treatment decisions consistent with a medical standard of care and the dictates of Federal and State law. Here, the preponderance of the evidence established that the Respondent so acted.

Therefore, the Deputy Administrator finds that the public interest is best served by taking no action with respect to the continued registration of the Respondent. Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824, and 21 C.F.R. 0.100(b) and 0.104, hereby orders DEA Certificate of Registration AR8354425, issued to Michael J. Roth, M.D., be, and it hereby is, continued, and that any pending applications, be, and they hereby are, granted. This order is effective January 4, 1996.

Dated: November 24, 1995.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 95–29487 Filed 12–4–95; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

November 29, 1995.

The Department of Labor has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (P.L. 104–13, 44 U.S.C. Chapter 35). Copies of these individual ICRs, with applicable supporting documentation, may be obtained by calling the Department of Labor Acting Departmental Clearance Officer, Theresa M. O'Malley ((202) 219–5095). Comments and questions about the ICRs listed below should be directed to Ms. O'Malley, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–1301, Washington, DC 20210 within 30 days from the date of this publication in the Federal Register. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OAW/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 10325, Washington, DC 20503 ((202) 395–7316). Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 219–4720 between 1:00 p.m. and 4:00 p.m. Eastern time, Monday through Friday.

Agency: Bureau of Labor Statistics.

Title: Application for BLS Occupational Safety and Health Statistics Cooperative Agreements.

OMB Number: 1220–0149.

Form	Respondents	Frequency	Average time per response
BLS–OSHA1	57	Annually	2 hours.
BLS–OSHA2	57	Quarterly	1 hour.

Affected Public: States.

Total Burden Hours: 342.

Description: The BLS enters into cooperative agreements with States and political subdivisions thereof, to assist them in developing and administering programs dealing with occupational safety and health statistics and to arrange through these agreements for research to further the objectives of the Occupational Safety and Health Act.

Agency: Bureau of Labor Statistics.

Title: Comp200 Test.

Frequency: One-time.

Affected Public: Within Albuquerque, NM, and Allentown, PA, metropolitan areas; Business or other for-profit; Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 574.

Estimated Time Per Respondent: 2 hours.

Total Burden Hours: 1,148.

Description: This collection is a test of a new method of identifying and classifying occupations within an establishment. If successful the new method could ultimately allow for joint collection of three separate surveys of wage and benefit data—the Occupational Compensation Survey Program, the Employment Cost Index, and the Employee Benefit Survey. In addition to evaluating the results of the test for use in future surveys, the BLS will also publish a bulletin for each area containing the occupational earnings data collected.

Agency: Employment Standards Administration.

Title: Application for Continuation of Death Benefit for Student.

OMB Number: 1215–0073.

Agency Number: LS–266.

Frequency: On occasion.

Affected Public: Individuals or households; Business or other for-profit.

Number of Respondents: 43.

Estimated Time Per Respondent: 30 minutes.

Total Burden Hours: 22.

Description: The Office of Workers' Compensation Programs, Division of Longshore and Harbor Workers' Compensation, provides for continuation of death benefit for a child or certain other surviving dependents if the dependent qualifies as a student. This form is used as an application for these benefits.

Agency: Employment Standards Administration.

Title: Black Lung Provider Enrollment Form.

OMB Number: 1215–0137.

Agency Number: CM–1168.

Frequency: On occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 6,500.

Estimated Time Per Respondent: 3 to 7 minutes.

Total Burden Hours: 525.

Total Estimated Costs for Operation and Maintenance: $2,080.

Description: 20 CFR 725.705 sets forth specific requirements for the Federal Black Lung Program to provide medical services to black lung beneficiaries and stipulates that these medical services will be performed by authorized medical providers. the CM–1168 is designed to facilitate the collection of information about medical providers and the payment of bills for the medical services they perform for the program.

Agency: Employment and Training Administration.

Title: Worker Profiling and Reemployment Service Systems Administrator Survey.

Frequency: One-time.

Affected Public: State, Local or Tribal Government.

Number of Respondents: 126.

Estimated Time Per Respondent: 10–50 minutes.

Total Burden Hours: 49.

Description: The Department of Labor is conducting a comprehensive evaluation of the operation and effectiveness of State Worker Profiling and Reemployment Service (WPRS) systems, as mandated by P.L. 103–152. The survey information will be used to describe how States have designed and implemented WPRS systems, and to identify distinct groupings or modes of State operational approaches. Respondents are State Unemployment Insurance, Employment Service and Economic Dislocated and Worker Adjustment Act administrators.

Theresa M. O'Malley,

Acting Departmental Clearance Officer.

[FR Doc. 95–29554 Filed 12–4–95; 8:45 am]

BILLING CODE 4510–24–M

LEGAL SERVICES CORPORATION

Grant Awards to Applicants for Funds To Provide Civil Legal Services to Eligible Low-Income Clients Effective as Early as January 1, 1996, or as Soon Thereafter as Feasible, Consistent With Pending Congressional Appropriations

AGENCY: Legal Services Corporation.

ACTION: Announcement of Grant Awards.

SUMMARY: The Legal Services Corporation (LSC/Corporation) hereby announces its intention to award grants and contracts to provide economical and effective delivery of high quality civil legal services to eligible low-income clients effective as early as January 1, 1996, or as soon thereafter as feasible consistent with pending Congressional appropriations.

DATES: All comments and recommendations must be received on or before the close of business on January 4, 1996.

ADDRESSES: Office of Program Services, Legal Services Corporation, 750 First Street, N.E., 11th Floor, Washington, D.C. 20002–4250.

FOR FURTHER INFORMATION CONTACT: Patricia M. Hanrahan, Office of Program Services, 202/336–8846.

SUPPLEMENTARY INFORMATION: Pursuant to the Corporation's announcement of funding availability on September 21, 1995 (60 FR 48951), the LSC will award funds to one or more of the following organizations to provide civil legal services in the indicated service areas.

Name of Organization—Service areas identified in LSC RFP (Oct. 1995)

Lgl Svcs of the Virgin Islands Inc—VI–1

Puerto Rico Lgl Svcs Inc.—PR–1, PR–2, MPR

These grants and contracts will be awarded under the authority conferred on LSC by the Legal Services Corporation Act, as amended (42 U.S.C. 2996e(a)(1)). Awards will be made so that each service area indicated is served by one of the organizations listed above, although each of the listed organizations is not necessarily guaranteed an award or contract. This public notice is issued pursuant to the LSC Act (42 U.S.C. 2996f(f)), with a

request for comments and recommendations concerning the potential grantees within a period of thirty (30) days from the date of publication of this notice. Grants will become effective as early as January 1, 1996, and funds will be distributed as soon thereafter as possible, consistent with pending Congressional appropriations.

Merceria L. Ludgood,

Director, Office of Program Services.

[FR Doc. 95–29574 Filed 12–4–95; 8:45 am]

BILLING CODE 7050–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–30947; License No. 37–28331–01 EA 94–089]

Advacare Management Services, Inc., Bala Cynwyd, Pennsylvania; Order Imposing Civil Monetary Penalty

I

Advacare Management Services, Inc. (Licensee) is the holder of Materials License No. 37–28331–01 issued by the Nuclear Regulatory Commission (NRC or Commission), issued April 4, 1989, renewed most recently on May 9, 1994. The license authorizes the Licensee to possess and use byproduct material for diagnostic nuclear medicine studies in accordance with the conditions specified therein.

II

An inspection of the Licensee's activities was conducted on April 26–28, 1994. Subsequently, an investigation was conducted by the NRC Office of Investigations. The results of the inspection and investigation indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated August 30, 1995. The Notice states the nature of the violations, the provisions of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violations.

The Licensee responded to the Notice in two letters, dated September 21, 1995. In its responses, the Licensee admits the violations as stated in the Notice, but requests mitigation of the civil penalty.

III

After consideration of the Licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined, as set forth in the Appendix to this Order, that the violations occurred as stated and that the penalty proposed for the violations designated in the Notice should be imposed.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, It is hereby ordered that:

The Licensee pay a civil penalty in the amount of $2,500 within 30 days of the date of this Order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to Mr. James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

V

The Licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a ''Request for an Enforcement Hearing'' and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, with a copy to the Commission's Document Control Desk, Washington, D.C. 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

Whether on the basis of the violations admitted by the Licensee, this Order should be sustained.

Dated at Rockville, Maryland, this 28th day of November 1995.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

Appendix—Evaluations and Conclusion

On August 30, 1995 a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for violations identified during an NRC inspection and subsequent investigation by the NRC Office of Investigations. Advacare Management Services, Inc. (Licensee) responded to the Notice on September 21, 1995. The Licensee admitted the Violations, but requested mitigation of the civil penalty. The NRC's evaluation and conclusion regarding the licensee's requests are as follows:

1. Summary of Licensee's Request for Mitigation

In its responses, the Licensee contends that mitigating circumstances were not fully considered by the NRC. In support of its contention, the Licensee noted the following:

a. A prior inspection at the Bala Cynwyd facility identified few items of non-compliance and thus provided a level of managerial assurance that the radiation protection/compliance program was acceptable.

b. The term ''promptly'', as used on page 3 of Mr. Martin's letter dated August 30, 1995, is clearly a subjective word. The Licensee stated that its audit reports were received in January 1994 and the NRC inspection was on April 26–28, 1994. The Licensee stated that it was in the process of correcting the multiple minor areas of non-compliance identified in the audits and although some of the corrections were not completed by April 1, 1994, the majority were corrected by the enforcement conference and by subsequent spot check inspections by Region I inspectors between the June 1994 enforcement conference and the time of the Licensee's responses. The Licensee contends that its response was, in fact, reasonably prompt.

Therefore, the licensee requests that the combination of these factors should result in a modification of the proposed civil penalty from $2,500 to $1,250.

The Licensee further noted that it recognized and self-identified material weaknesses in its radiation safety program and contracted a consultant medical radiation physicist to assist the RSO in correcting those weaknesses and that the correction process was in place at the time of the inspection.

2. NRC Evaluation of Licensee's Request for Mitigation

The fact that an inspection was conducted at the Bala Cynwyd facility, one of several Licensee facilities, and in which only a few items of noncompliance were noted, three years prior to the inspection conducted on April 26–28, 1994, does not alleviate the need for aggressive managerial oversight of the radiation safety program. In order to assure continued acceptable performance in the area of radiation safety, the Licensee is required to not only perform periodic audits of its radiation safety program in accordance with its commitments under the ALARA program, but in accordance with 10 CFR 35.23, through its Radiation Safety Officer (RSO) identify radiation safety problems, as well as initiate corrective actions and verify the implementation of those corrective actions.

Although the Licensee had corrected some of the individual violations identified by the NRC, it had not corrected the majority of

them by the Enforcement Conference. The day prior to that Conference, the Licensee submitted a lengthy letter addressing the violations and the status of corrective actions. The information in this letter was not completely accurate and at the Conference several corrections were requested. These corrections were later submitted by the Licensee. In addition, the NRC staff had questioned the RSO's ability to meet his responsibilities for the numerous facilities and Licensee management had indicated that it intended to request a separate license for a New Jersey facility in order to relieve the RSO of some responsibilities, but it had not yet done so. In addition, the Licensee did not consider the need to apply similar corrective actions at the other facilities covered by the license.

Although the Licensee had recognized that it had weaknesses in its program and had engaged a consultant to assist the RSO, and these actions led to eventual good comprehensive corrective action, they were not sufficiently prompt and comprehensive as of the time of the Enforcement Conference to provide a basis for mitigating the civil penalty.

3. NRC Conclusion

The NRC has concluded that the violations occurred as stated and an adequate basis for mitigation of the civil penalty was not provided by the licensee. Consequently, the proposed civil penalty in the amount of $2,500 should be imposed.

[FR Doc. 95–29539 Filed 12–4–95; 8:45 am]

BILLING CODE 7590–01–P

[Docket Nos. 50–413 and 50–414]

Duke Power Company, et al., Catawba Nuclear Station, Units 1 and 2; Correction to Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission published a Notice of Consideration of Issuance of Amendments in the Federal Register (60 FR 58109 dated November 24, 1995), to Duke Power Company, et al., for the Catawba Nuclear Station, Units 1 and 2. Correction is being made on page 58110, third column, last paragraph, first sentence; the 30-day notice period ending date should read ''By December 26, 1995, * * *'' instead of ''By December 18, 1995, * * *''

Dated at Rockville, Maryland, this 28th day of November 1995.

For the Nuclear Regulatory Commission.

Robert E. Martin,

Senior Project Manager, Project Directorate II–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–29536 Filed 12–4–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–277 and 50–278]

Peco Energy Company; Notice of Consideration of Issuance of Amendments to Facility Operating License, Proposed no Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR–44 and DPR–56 issued to the PECO Energy Company (the licensee) for operation of the Peach Bottom Atomic Power Station, Units 2 and 3, located in York County, Pennsylvania.

The proposed amendments would revise surveillance requirements for the high pressure coolant injection and reactor core isolation cooling systems and would make an administrative change to Section 5.5.7 of the technical specifications to eliminate reference to a section which was previously eliminated.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated because the changes will not alter assumptions relative to initiation and mitigation of analyzed events. These changes will not alter the operation of process variables, or SSC [system, structure or component] as described in the safety analysis. These changes do not involve any physical changes to plant SSC or the manner in which these SSC are operated, maintained, modified or inspected. Routine testing is not assumed to be an initiator of any analyzed event. The proposed changes will not alter the operation of equipment assumed to be available for the mitigation of accidents or transients by the plant safety analysis or licensing basis. These changes have been confirmed to ensure no previously evaluated accident has been adversely affected. The proposed lower test pressure for the HPCI [high pressure coolant injection] and RCIC [reactor core isolation cooling] system flow testing is consistent with the minimum EHC [electro-hydraulic control] pressure setpoint at which reactor power can be increased without the need to adjust the EHC pressure setpoint during operation in MODE 1. Increasing the lower test pressure from 920 psig to 940 psig does not impact when the performance of the test is required. The proposed upper test pressure for the HPCI and RCIC system flow testing is consistent with the Reactor Steam Dome Pressure Limit in Specification 3.4.10. Additionally, the HPCI and RCIC systems are both designed to provide adequate core cooling at reactor pressures from 150 psig to 1150 psig. SR [surveillance requirement] 3.5.1.8 and SR 3.5.3.3 still will require verifying HPCI and RCIC pumps can develop the required flow rates against system head corresponding to reactor pressure. Therefore, the proposed changes provide adequate assurance that the HPCI and RCIC systems will be maintained operable. In addition, these proposed changes eliminate the need to adjust reactor pressure from normally stable plant conditions to perform the test. As such, the probability of plant transients is expected to be reduced. Therefore, the proposed changes will not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed changes do not alter the plant configuration (no new or different type of equipment will be installed or removed) and will not alter the method used by any system to perform its design function. The proposed changes do not allow plant operation in any mode that is not already evaluated in the SAR [safety analysis report]. Therefore, these changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The proposed changes do not involve a significant reduction in a margin of safety. The proposed change to the VFTP [ventilation filter test program] in Section 5.5.7 is administrative in nature and does not involve any technical changes. This proposed change will not reduce a margin of safety because it has no impact on any safety analysis assumptions. Because this change is administrative in nature, no question of safety is involved. The proposed changes also revise the upper and lower test pressure for the HPCI and RCIC system high pressure flow tests. These changes do not impact safety analysis assumptions or the ability of the HPCI and RCIC systems to perform their design functions. The HPCI and RCIC systems are designed to provide adequate core cooling at reactor pressures from 150 psig to 1150 psig. SR 3.5.1.8 and SR 3.5.3.3 still will require verifying HPCI and RCIC pumps can develop the required flow rates against system head corresponding to reactor pressure. The proposed lower test pressure for the HPCI and RCIC system flow testing is

consistent with the minimum EHC pressure setpoint that provides adequate steam flow at which reactor power can be increased without the need to adjust the EHC pressure setpoint during operation in MODE 1. Increasing the lower test pressure from 920 psig to 940 psig does not impact when the performance of the test is required. The proposed upper test pressure for the HPCI and RCIC system flow testing is consistent with the initial condition for the reactor vessel overpressure protection analysis. In addition, the proposed changes provide the benefit of eliminating the need to adjust reactor pressure from normally stable plant conditions to perform the test, thereby reducing the potential for a plant transient. Therefore, these changes will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the Federal Register a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By January 3, 1996, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Government Publications Section, State Library of Pennsylvania, (Regional Depository) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to John F. Stolz, Director, Project Directorate I–2: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to J.W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, PECO Energy Company, 2301 Market Street, Philadelphia, Pennsylvania 19101, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated November 21, 1995, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Dated at Rockville, Maryland, this 29th day of November 1995.

For the Nuclear Regulatory Commission.

Joseph W. Shea,

Project Manager, Project Directorate I–2, Division of Reactor Projects–I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–29537 Filed 12–4–95; 8:45 am]

BILLING CODE 7590–01–P

[Docket Nos. 50–266 and 50–301]

Wisconsin Electric Power Company; (Point Beach Nuclear Plant, Units 1 and 2); Exemption

I

Wisconsin Electric Power Company (WEPCo, the licensee) is the holder of Facility Operating License Nos. DPR–24 and DPR–27 which authorize operation of the Point Beach Nuclear Plant (PBNP), Unit Nos. 1 and 2. The units are pressurized water reactors (PWR) located in Manitowoc County, Wisconsin. The licenses provide, among other things, that the facilities are subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

II

Section 50.54(q) of 10 CFR Part 50 requires a licensee authorized to operate a nuclear power reactor to follow and maintain in effect Emergency Plans that meet the standards of 10 CFR 50.47(b) and the requirements of Appendix E to 10 CFR Part 50. Section IV.F.2.b of Appendix E requires that each licensee annually exercise its Emergency Plan.

The NRC may grant exemptions from the requirements of the regulations which, pursuant to 10 CFR 50.12, are (1) authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security; and (2) present special circumstances. Special circumstances exist when the 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 [10 CFR 50.12(a)(2)(ii)]. The underlying purpose of 10 CFR Part 50, Appendix E Section IV.F.2.b is to demonstrate that the state of emergency preparedness provides reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency.

III

By letters dated October 6, 1995 and November 3, 1995, the licensee requested a one-time exemption from the requirements of 10 CFR 50.47 and Appendix E to conduct an annual exercise of the Point Beach Emergency Plan in 1995. The Point Beach utility-only annual emergency exercise is currently scheduled for December 13, 1995. The licensee requested an exemption from the annual exercise requirement for 1995 based on: (1) their continued excellent performance in the area of emergency preparedness, (2) their conduct, earlier in the year, of a comprehensive drill involving major elements of the emergency plan, and (3) the potential for the 1995 exercise to have a negative impact on dry cask fuel storage activities.

The Point Beach Nuclear Plant, in conjunction with the State of Wisconsin, and Manitowoc and Kewaunee counties, conducted a full participation emergency preparedness exercise on December 6, 1994. Offsite emergency response activities were evaluated by the Federal Emergency Management Agency (FEMA) and the onsite emergency response activities were evaluated by the NRC. The NRC's evaluation is documented in NRC Inspection Report Nos. 50–266/94023 and 50–301/94023, dated December 16, 1994. The report states that no violations or deviations were identified and overall performance during the exercise was good. The licensee has implemented actions to correct the one exercise weakness, concerning offsite monitoring team vehicle readiness, identified during the December 6, 1994, exercise. The licensee has received an ''excellent'' rating on the last two Systematic Assessment of Licensee Performance reports in the area of emergency preparedness (Inspection Report Nos: 266/93001; 301/93001, dated July 16, 1993, and 266/94001; 301/94001 dated October 21, 1994).

The licensee performed an emergency drill on August 29, 1995, involving major elements of the Point Beach Emergency Plan. All emergency response facilities were activated for the drill and communications were made to the State. The licensee performed a thorough critique of the drill to identify strengths, deficiencies, weaknesses, and areas for improvement. No deficiencies, three weaknesses, and several areas for improvement were identified during the drill. The licensee has a program for correcting the weaknesses and for implementing actions to address the areas for improvement. The licensee plans to correct weaknesses identified during the drill prior to the 1996 full-participation exercise.

Appendix E to Part 50 requires that licensees shall enable any State or local government located within the plume exposure pathway emergency planning zone (EPZ) to participate in annual exercises when requested by such State or local government. The licensee has discussed the request for exemption from the 1995 annual emergency preparedness exercise with the State and local governments within the EPZ. The State and local governments within the EPZ have informed the licensee that

they do not regard the exemption as a missed opportunity for them to exercise their emergency plan. The State and local governments within the Point Beach EPZ participated in the October 11, 1995, exercise at the nearby Kewaunee Nuclear Power Plant. The licensee's next emergency preparedness exercise is scheduled for August 1996 and will include the participation of State and local government emergency response organizations.

The licensee states that the 1995 exercise, as planned, is anticipated to have a negative impact on the licensee's oversight of the storage of spent fuel in an independent spent fuel storage installation at the Point Beach Nuclear Plant. The licensee had hoped to load their first dry storage container prior to mid-September. However, due to various reasons, they are now planning to load the first container in early December following the Point Beach Unit 2 refueling outage which is scheduled to be completed by the end of November. The licensee states that it is prudent to load a dry storage container as soon as possible in order to minimize the time that Point Beach will not have the capacity for a full-core offload. In addition, the licensee states that emergency response personnel who would be involved in the emergency exercise will be involved in oversight of the process for loading the storage containers.

IV.

Based upon a review of the licensee's request for an exemption for the requirement to conduct an exercise of the Point Beach Nuclear Plant Emergency Plan in 1995, the NRC staff finds that performance of the 1995 utility-only annual exercise is not needed to achieve the underlying purpose of the regulation, that is, to demonstrate that the state of emergency preparedness provides reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency. The licensee has demonstrated excellent performance in the emergency preparedness area. The integrated emergency preparedness drill in August of 1995 provided a good test of the emergency preparedness program. The licensee performed a thorough critique of the drill and no deficiencies were identified during the drill. The licensee plans to correct weaknesses which were identified during the drill prior to the 1996 full-participation exercise.

The Commission has determined, pursuant to 10 CFR Part 50.12, that this exemption as described in Section II above is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Furthermore, the Commission has determined that special circumstances as provided in 10 CFR 50.12(a)(2)(ii) are present in that application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule.

The Commission hereby grants a one-time exemption from the requirements of 10 CFR Part 50, Appendix E, Section IV.F.2.b, for annually exercising the onsite Emergency Plan at the Point Beach Nuclear Plant in the year 1995.

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 58685).

This exemption is effective upon issuance.

For the Nuclear Regulatory Commission.

Jack W. Roe,

Director, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–29538 Filed 12–4–95; 8:45 am]

BILLING CODE 7590–01–P

PROSPECTIVE PAYMENT ASSESSMENT COMMISSION

Meetings

Notice is hereby given of the meetings of the Prospective Payment Assessment Commission on Tuesday and Wednesday, December 12 and 13, 1995 at the Madison Hotel, 15th & M Streets, NW, Washington, DC, 202/862–1600.

The Full Commission will convene at 9:00 a.m. on December 12, 1995, and adjourn at approximately 5:15 p.m. On Wednesday, December 13, 1995, the meeting will convene at 8:30 a.m. and adjourn at approximately 3:30 p.m. The meetings will be held in Executive Chambers 1, 2, and 3 each day.

All meetings are open to the public.

Donald A. Young,

Executive Director.

[FR Doc. 95–29489 Filed 12–4–95; 8:45 am]

BILLING CODE 6820–BW–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–36513; File No. SR–CBOE–95–59]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 to Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Requirement to Make Prior Arrangements or Obtain Other Assurances Before Engaging in Short Sales

November 27, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. § 78s(b)(1), notice is hereby given that on October 19, 1995, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. On October 31, 1995, the Exchange submitted Amendment No. 1 (''Amendment No. 1'') to the proposal to reduce the number of days in which a customer must assure delivery of the subject securities from five days to three days.[1] The Commission is publishing this notice to solicit comments on the proposed rule change and Amendment No. 1 from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to make certain changes to its rules relating to the requirement to make prior arrangements to borrow stock or to obtain other assurances that delivery can be made on settlement date before a member or person associated with a member may sell short. 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 CBOE 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 CBOE has

[1] Letter from Timothy Thompson, CBOE, to Michael Walinskas, SEC, dated October 31, 1995.

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 purpose of this rule proposal is to establish procedures and rules regarding the need to make prior arrangements to borrow stock, warrants, or other securities that trade subject to Chapter 30 of the Exchange's rules, or to otherwise ensure availability of the subject securities before engaging in short sales. The change involves the adoption of Interpretation .04 to Rule 30.20, *''Long'' and ''Short'' Sales.* Interpretation .04 is similar to rules of other securities exchanges [2] and would require that member organizations who effect short sales for their own account or for the accounts of customers to make an affirmative determination that delivery of the subject securities can be made on settlement date. The purpose for this rule proposal is to ensure that borrowings and short sales do not outpace the supply of deliverable stock, thus, leading to potential systematic problems. In the case of the short selling of members' proprietary positions, the proposal is intended to address unnecessary speculation in connection with the short selling of broker-dealers' proprietary positions caused by the members' ability to go short without securities to cover the short position. The proposed amendment, as with the rules of the other securities exchanges, would not apply to bona fide market making transactions by a member in securities in which it is a registered market-maker. This market-maker exemption recognizes that many short selling transactions are engaged in by market-makers to enhance market liquidity, which is beneficial to the market and thus should not be unduly restricted.

Interpretation .04 also describes the type of ''affirmative determinations'' that must be obtained by the member or person associated with the member to ensure that the securities will be available. The member or person associated with the member is obligated to keep a written record of each ''affirmative determination.'' If a customer assures delivery, the written affirmative determination must record the present location of the securities in question, whether they are in good deliverable form and the customer's ability to deliver them to the member within three business days.[3] If the member or person associated with a member locates the stock, the affirmative determination must record the identity of the individual and firm contacted who offer assurance that the shares would be delivered or that were available for borrowing by settlement date and the number of shares needed to cover the short sale. The requirement to keep a written record of each affirmative determination serves two purposes: first, the written record allows the Exchange to audit compliance with the Rule, and second, the written record provides the member firm with evidence to pursue its own resolution in the event of a default.

By ensuring that securities are available for borrowing and for delivery, the Exchange believes the rule proposal will help to prevent situations where there is a shortage of deliverable stock as well as failures to deliver. By facilitating short sales and decreasing the likelihood of a fail, the Exchange believes the rule proposal is consistent with Section 6(b) of the Act in general and Section 6(b)(5) in particular by providing rules that facilitate transactions in securities, remove impediments to a free and open market and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; (3) was provided to the Commission for its review at least five business days prior to the filing date; and (4) does not become operative for 30 days from October 31, 1995, the rule change proposal has become effective pursuant to Section 19 (b)(3)(A) of the Act and Rule 19b–4(e)(6) thereunder. In particular, the Commission believes the proposal qualifies as a ''noncontroversial filing'' in that the proposed amendments do not significantly affect the protection of investors or the public interest and do not impose any significant burden on competition. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–95–59 and should be submitted by December 26, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–29511 Filed 12–4–95; 8:45 am]

BILLING CODE 8010–01–M

[2] *See e.g.,* New York Stock Exchange (''NYSE'') Rule 440C (and NYSE Information Memo 91–10, *Deliveries Against Short Sales,* (Oct. 18, 1991)) and Interpretation of the Board of Governors of the National Association of Securities Dealers, Inc. (''NASD''), *Prompt Receipt and Delivery of Securities,* under Article III, Section 1 of the NASD Rules of Fair Practice.

[3] *See* Amendment No. 1. This reduction from five days to three days complies with the normal settlement schedule for equity securities.

[4] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–36522; File No. SR–MSRB–95–15]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Consultants

November 28, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 28, 1995,[1] the Municipal Securities Rulemaking Board (MSRB'' or ''Board'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the MSRB. The Board has requested that the Commission delay the effective date of the proposed rule change until sixty (60) days after the Commission's approval thereof. 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 Board proposes to amend rules G–8[2] and G–9,[3] on recordkeeping and record retention, rule G–27,[4] on political contributions and prohibitions on municipal securities business, and add a new rule G–38 regarding consultants. The Board also proposes to amend its Form G–37, and redesignate it as Form G–37/G–38.

Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

Rule G–8. Books and Records To Be Made by Brokers, Dealers and Municipal Securities Dealers

(a) Description of Books and Records Required to be Made.

* * * * *

(xvi) Records Concerning Political Contributions and Prohibitions on Municipal Securities Business Pursuant to Rule G–37, Records reflecting: * * *

(D) a listing of the issuers with which the broker, dealer or municipal securities dealer has engaged in municipal securities business, along with the type of municipal securities business engaged in, during the current year and separate listings for each of the previous two calendar years[. Where applicable, a listing of the name, company, role and compensation arrangement of any person employed by the broker, dealer or municipal securities dealer to obtain or detain municipal securities business with such issuers also shall be made]; * * *

(xvii) Records Concerning Consultants Pursuant to Rule G–38. Each broker, dealer and municipal securities dealer shall maintain: (i) A listing of the name, company, role and compensation arrangement of each consultant; (ii) a copy of each Consultant Agreement referred to in rule G–38(b); (iii) a listing of the compensation paid in connection with each such Consultant Agreement; (iv) where applicable, a listing of the municipal securities business obtained or retained through the activities of each consultant; (v) a listing of issuers and a record of disclosures made to such issuers, pursuant to rule G–38(c), concerning each consultant used by the broker, dealer or municipal securities dealer to obtain or retain municipal securities business with each such issuer; and (vi) the date of termination of any consultant arrangement

* * * * *

(f) Compliance with Rule 17a–3. Brokers, dealers and municipal securities dealers other than bank dealers which are in compliance with rule 17a–3 of the Commission will be deemed to be in compliance with the requirements of this rule, provided that the information required by subparagraph (a)(iv)(D) of this rule as it relates to uncompleted transactions involving customers; paragraph (a)(viii); paragraph (a)(xi); paragraph (a)(xii); paragraph (a)(xiii); paragraph (a)(xiv); paragraph (a)(xv); paragraph (a)(xvi); [and] paragraph (a)(xvii)*; and paragraph (a)(xviii)* shall in any event be maintained.

Rule G–9. Preservation of Records

(a) Records to be Preserved for Six Years. Every broker, dealer and municipal securities dealer shall preserve the following records for a period of not less than six years. * * *

(x) the records required to be maintained pursuant to rule G–8(a)(xviii).

* * * * *

Rule G–37. Political Contributions and Prohibitions on Municipal Securities Business

* * * * *

(e)(i) Each broker, dealer or municipal securities dealer shall submit to the Board, by certified or registered mail, or some other equally prompt means that provides a record of sending, and the Board shall make public, reports on contributions to officials of issuers and on payments to political parties of states and political subdivisions that are required to be recorded pursuant to rule G–8(a)(xvi). Such reports shall include information concerning the amount of contributions to officials of issuers and payments to political parties of states and political subdivisions *and an indication of the contributor category of each contribution or payment* made by: * * *

Such reports also shall include information on municipal securities business engaged in and certain other information specified in this section (e), as well as other identifying information as may be determined by the Board from time to time [in accordance with Board rule G–37 filing procedures].

(ii) *Two copies of the* [R]reports referred to in paragraph (i) of this section (e) must be submitted to the Board on Form G–37/*G–38* [in accordance with Board rule G–37 filing procedures, quarterly with due dates determined by the Board,] *within thirty (30) calendar days after the end of each calendar quarter (these dates correspond to January 31, April 30, July 31 and October 31),* and must include, in the prescribed format, by state, the following information on contributions to each official of an issuer and payments to each political party of a state or political subdivision made and municipal securities business engaged in during the reporting period: (A) name and title (including any city/county/state or political subdivision) of each official of an issuer and political party receiving contributions or payments; (B) [total number and dollar amount of contributions or payments made by] *contribution or payment amount made and the contributor category of* the persons and entities described in paragraph (i) of this section (e); and (C) such other identifying information required by Form G–37/*G–38*. Such reports also must include a list of issuers with which the broker, dealer or municipal securities dealer has engaged in municipal securities business, along with the type of municipal securities business [and the name, company, role and compensation arrangement of any person, other than a municipal finance

[1] On November 15, 1995, the MSRB filed Amendment No. 1 with the Commission. Amendment No. 1 was a minor technical amendment, the text of which may be examined in the Commission's Public Reference Room, *See* Letter from Jill C. Finder, Assistant General Counsel, MSRB, to Ethan D. Corey, Senior Counsel, Division of Market Regulation, Commission, dated November 15, 1995.

[2] *MSRB Manual,* General Rules, G–8 (CCH) ¶ 3536.

[3] *MSRB Manual,* General Rules, G–9 (CCH) ¶ 3541.

[4] *MSRB Manual,* General Rules, G–37 (CCH) ¶ 3681.

professional, employed by the broker, dealer or municipal securities dealer to obtain or retain municipal securities business with such issuers].

(f) The Board will accept additional information related to contributions made to officials of issuers and payments to political parties of states and political subdivisions voluntarily submitted by brokers, dealers, or municipal securities dealers or others provided that such information is submitted in accordance with [Board rule G–37 filing procedures] *section (e) of this rule.*

* * * * *

[Rule G–37 Filing Procedures. Each dealer is required to file two copies of Form G–37. Each dealer is required to file Form G–37 within thirty (30) calendar days after the end of each calendar quarter. (These dates correspond to January 31, April 30, July 31, and October 31).]

Rule G–38. Consultants

(a) Definitions.

(i) The term ''consultant'' means any person used by a broker, dealer or municipal securities dealer to obtain or retain municipal securities business through direct or indirect communication by such person with an issuer on behalf of such broker, dealer or municipal securities dealer where the communication is undertaken by such person in exchange for, or with the understanding of receiving, payment from the broker, dealer or municipal securities dealer or any other person; provided, however, that the following persons shall not be considered consultants for purposes of this rule: (A) a municipal finance professional of the broker, dealer or municipal securities dealer; and (B) any person whose sole basis of compensation from the broker, dealer or municipal securities dealer is the actual provision of legal, accounting or engineering advice, services or assistance in connection with the municipal securities business that the broker, dealer or municipal securities dealer is seeking to obtain or retain.

(ii) The term ''issuer'' shall have the same meaning as in rule G–37(g)(ii).

(iii) The term ''municipal finance professional'' shall have the same meaning as in rule G–37(g)(iv).

(iv) The term ''municipal securities business'' shall have the same meaning as in rule G–37(g)(vii).

(v) The term ''payment'' shall have the same meaning as in rule G–37(g)(viii).

(b) Written Agreement. Each broker, dealer or municipal securities dealer that uses a consultant shall evidence the consulting arrangement by a writing setting forth, at a minimum, the name, company, role and compensation arrangement of each such consultant (''Consultant Agreement''). Such Consultant Agreement must be entered into before the consultant engages in any direct or indirect communication with an issuer on behalf of the broker, dealer or municipal securities dealer.

(c) Disclosure to Issuers. Each broker, dealer or municipal securities dealer shall submit in writing to each issuer with which the broker, dealer or municipal securities dealer is engaging or is seeking to engage in municipal securities business, information on consulting arrangements relating to such issuer, which information shall include the name, company, role and compensation arrangement of any consultant used, directly or indirectly, by the broker, dealer or municipal securities dealer to attempt to obtain or retain municipal securities business with each such issuer. Such information shall be submitted to the issuer prior to the selection of any broker, dealer or municipal securities dealer in connection with such municipal securities business.

(d) Disclosure to Board. Each broker, dealer or municipal securities dealer shall submit to the Board by certified or registered mail, or some other equally prompt means that provides a record of sending, and the Board shall make public, reports of all consultants used by the broker, dealer or municipal securities dealer during each calendar quarter. Two copies of the reports must be submitted to the Board on Form G–37/G–38 within thirty (30) calendar days after the end of each calendar quarter (these dates correspond to January 31, April 30, July 31, and October 31). Such reports shall include, for each consultant, in the prescribed format, the consultant's name, company, role and compensation arrangement. In addition, such reports shall indicate the dollar amount of payments made to each consultant during the report period and, if any such payments are related to the consultant's efforts on behalf of the broker, dealer or municipal securities dealer which resulted in particular municipal securities business, then that business and the related dollar amount of the payment must be separately identified.

* * * * *

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 Board 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 Board 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

Over the last few years, the Board has been concerned about abuses associated with the awarding of municipal securities business. Rule G–37, which became effective in April 1994, prohibits a dealer from engaging in municipal securities business with an issuer within two years after any contribution to an official of such issuer made by the dealer, any municipal finance professional associated with the dealer, or any political action committee controlled by the dealer or any municipal finance professional.[5] The rule also prohibits a dealer from doing anything indirectly which would result in a violation of the rule if done directly by the dealer. For example, a violation would result if a dealer engages in municipal securities business with an issuer after directing third parties (such as consultants) to make contributions to that issuer. In addition to recording and disclosing political contributions, rule G–37 currently requires dealers to record and disclose on Form G–37 those issuers with which the dealer has engaged in municipal securities business and, where applicable, the name, company, role and compensation arrangement of any person employed by the dealer to obtain or retain business with such issuers.

Rule G–20, on gifts and gratuities, prohibits dealers from, directly or indirectly, giving or permitting to be given any thing or service of value in excess of $100 per year to any person, other than an employee or partner of the dealer, in relation to the municipal securities activities of the person's employer. All gifts given by the dealer and its associated persons, or by consultants at the direction of the dealer, are used to compute the $100 limitation and this limitation applies to gifts and gratuities to customers, individuals associated with issuers, and employees of other dealers.[6]

[5] Rule G–37(b) contains *de minimis* exception for certain contributions made by municipal finance professionals.

[6] Rule G–20(b) exempts ''normal business dealings'' from the $100 annual limit. These payments are defined as occasional gifts of meals

The Board believes that rules G–37 and G–20, along with rule G–17, on fair dealing,[7] set appropriate standards for dealer conduct in the municipal securities industry. However, the Board is concerned about dealers' increasing use of consultants to obtain or retain municipal securities business. While the Board believes that in many instances the use of consultants is appropriate, it also believes that, in a number of instances, the use of consultants may be in response to limitations placed on dealer activities by rule G–37 and rule G–20.[8] While both of these rules prohibit dealers from doing indirectly what they are precluded from doing directly, indirect activities often are difficult to prove. The Board recognizes that vigorous enforcement of its rules, as well as the antifraud provisions of the federal securities laws, will be effective in uncovering improper conduct, as well as deterring further violations, in connection with municipal securities business. Notwithstanding such efforts, or the current rule G–37 requirement that dealers disclose certain information about consultant arrangements, the Board believes that additional information about such arrangements should be made available to issuers and the public. Currently, the limited amount of information regarding consulting arrangements and the role of consultants in helping dealers obtain or retain municipal securities business makes it difficult to determine the extent to which payments to consultants influence the issuer's selection process in connection with municipal securities business, as well as the extent to which such payments increase the cost of bringing municipal securities issues to market. The Board believes that disclosure of consulting arrangements (even those that would not result in any rule violations) is necessary. Furthermore, the Board believes that disclosure requirements regarding consultants should be embodied in a separate rule in order to highlight the importance of this information and to facilitate its disclosure to, and accessibility by, the municipal securities market and the public. Accordingly, the Board is proposing new rule G–38, on consultants. At this time, the board is not proposing any substantive restrictions on arrangements between dealers and consultants. If, at a later date, the Board learns of specific dealer practices regarding the use of consultants that it believes should be addressed, then the Board may proceed with additional rulemaking in this area.

Background

In April 1995, the Board published for comment draft rule G–38 (''April 1995 Draft Rule'').[9] The April 1995 Draft Rule would have required dealers to have written agreements with consultants and to disclose such arrangements to issuers and to the public through disclosure to the Board. It defined the term ''consultant'' very broadly, and included, among others, persons that acted as ''finders'' for municipal securities business or that lobbied state and local government officials. The term also included persons who engaged in legal, accounting or financial advisory services if such persons were engaged, even in part, because they could assist a dealer in efforts to obtain or retain municipal securities business with an issuer, and included persons engaged by a dealer at the request or direction of the issuer (*e.g.*, underwriter's counsel).

While most of the commenters responding to the April 1995 Draft Rule supported the Board's goal of making additional information on consultants available to the market, many expressed concern that the definition of consultant was too broad and included a number of categories of persons who did not perform ''traditional'' consulting roles or services.[10] The Board carefully considered these and other concerns and suggestions expressed by the commenters, and adopted the proposed rule change. Proposed rule G–38 differs in certain respects from the April 1995 Draft Rule, particularly with regard to the definition of consultant. By making such changes, the Board believes that the proposed rule effectively addresses concerns raised by the commenters without sacrificing the Board's goal of making information about consultants available to issuers and the public.

Summary of Proposed Rule G–38

Definition of Consultant

Proposed rule G–38 defines consultant as any person used by a dealer to obtain or retain municipal securities business through direct or indirect communication by such person with an issuer on the dealer's behalf where the communication is undertaken by such person in exchange for, or with the understanding of receiving, payment from the dealer or any other person.[11] The definition specifically excludes ''municipal finance professionals,'' as that term is defined in rule G–37(g)(iv), because such individuals are covered by the requirements of rule G–37. The definition also excludes any person whose sold basis of compensation from the dealer is the actual provision of legal advice, accounting or engineering assistance in connection with the municipal securities business that the dealer is seeking to obtain or retain. The exclusion would apply, for example, to a lawyer retained to conduct a legal analysis on a particular transaction contemplated by the dealer, or to review local regulations; an accountant retained to conduct a tax analysis or to scrutinize financial reports; or an engineer retained to perform a technical review or feasibility study. The exemption is intended to ensure that professionals who are engaged by the dealer solely to perform substantive work in connection with municipal securities business are not brought within the definition of consultant as long as their compensation is in consideration of only those professional services actually

or tickets to theatrical, sporting, and other entertainments, as well as the sponsoring of legitimate business functions that are recognized by the IRS as deductible business expenses, and gifts of reminder advertising. However, the rule also provides that such gifts can not be so frequent or so expensive as to raise a suggestion of unethical conduct.

[7] Rule G–17 provides that, in the conduct of its municipal securities business, each broker, dealer, and municipal securities dealer shall deal fairly with all persons and shall not engage in any deceptive, dishonest, or unfair practice.

[8] For example, the Commission has charged that kickbacks and conflicts of interest have occurred in connection with municipal securities offerings. In one instance, the Commission alleged that dealer personnel paid a large kickback to the issuer's financial advisor and inflated the underwriters' discount to fund the kickback. *See* SEC Litigation Release No. 14421 (February 23, 1995) regarding *SEC v. Nicholas A. Rudi, Joseph C. Salema, Public Capital Advisors, Inc. (formerly known as Consolidated Financial Management, Inc.), George L. Tuttle, Jr. and Alexander S. Williams.* In another instance, the SEC alleged that dealer personnel provided loans and direct payments to an employee of an issuer that had an important role in selecting the underwriter. *See* SEC Litigation Release No. 14397 (January 23, 1995) regarding *SEC v. Terry D. Busbee and Preston C. Bynum.*

[9] *MSRB Reports*, Vol. 15, No. 1 (April 1995) at 3–10.

[10] A summary of these comments is discussed *infra* Section II.C.

[11] ''Person'' is defined in Section 3(a)(9) of the Securities Exchange Act of 1934 as ''a natural person, company, government, or political subdivision, agency, or instrumentality of a government.''

''Municipal securities business'' has the same meaning as in rule G–37(g)(vii), *i.e.*, (A) the purchase of a primary offering (as defined in rule A–13(d)) of municipal securities from the issuer on other than a competitive bid basis (*i.e.*, negotiated underwriting); (B) the offer or sale of a primary offering of municipal securities on behalf of any issuer (*i.e.*, private placement); (C) the provision of financial advisory or consultant services to or on behalf of an issuer with respect to a primary offering of municipal securities on other than a competitive basis; or (D) the provision of remarketing agent services to or on behalf of an issuer with respect to a primary offering of municipal securities on other than a competitive bid basis.

''Payment'' has the same meaning as in rule G–37(g)(viii), *i.e.*, any gift, subscription, loan, advance, or deposit of money or anything of value.

provided in connection with such municipal securities business. However, any attorney or other professional used by the dealer as a ''finder'' for municipal securities business would be considered a consultant under the proposed rule.

Written Agreement

Proposed rule G–38 requires dealers who use consultants to evidence the consulting arrangement in writing (referred to as a ''Consultant Agreement''), and that, at a minimum, the writing must include the name, company, role and compensation arrangement of each consultant used by the dealer. Such written agreements must be entered into before the consultant engages in any direct or indirect communication with an issuer on the dealer's behalf.

Disclosure to Issuers

Proposed rule G–38 requires each dealer to disclose to an issuer with which it is engaging or seeking to engage in municipal securities business, in writing, information on consulting arrangements relating to that issuer. The written disclosure must include, at a minimum, the name, company, role and compensation arrangements with the consultant or consultants. Dealers are required to make such written disclosures prior to the issuer's selection of any dealer in connection with the municipal securities business sought, regardless of whether the dealer making the disclosure ultimately is the one to obtain or retain that business. Thus, while dealers have an obligation to disclose their consulting arrangements to all issuers from which they are seeking municipal securities business, they have more leeway in the timing of their disclosures as long as the disclosure is made before the issuer selects a dealer for the municipal securities business sought.

Disclosure to the Board

Proposed rule G–38 requires dealers to submit to the Board, on a quarterly basis, reports of all consultants used by the dealer. For each consultant, dealers must report, in the prescribed format, the consultant's name, company, role and compensation arrangement, as well as the dollar amount of any payment made to the consultant during the quarterly reporting period. If any payment made during the reporting period is related to the consultant's efforts on the dealer's behalf which resulted in particular municipal securities business, whether the municipal securities business was completed during that or a prior reporting period, then the dealer must separately identify that business and the dollar amount of the payment. In addition, as long as the dealer continues to use the consultant to obtain or retain municipal securities business (*i.e.*, has a continuing arrangement with the consultant), the dealer must report information concerning such consultant every quarter, whether or not compensation is paid to the consultant during the reporting period. The Board believes that the reporting of these continuing consulting arrangements each quarter will assist enforcement agencies and the public in their review of such arrangements.

For ease of compliance and reporting, the Board has determined to delete the current reporting requirements regarding consultants from rule G–37. It also has determined to merge the reporting requirements for both rules into a single form—Form G–37/G–38. Dealers must submit two copies of such reports on proposed Form G–37/G–38.[12] The quarterly due dates are the same as the due dates currently required under the rule G–37 (*i.e.*, within 30 calendar days after the end of each calendar quarter, which corresponds to each January 31, April 30, July 31, and October 31). Finally, consistent with current rule G–37, dealers are required to submit these reports to the Board by certified or registered mail, or some other equally prompt means that provides a record of sending.[13] The Board will then make these documents available to the public for inspection and photocopying at its Public Access Facility in Alexandria, Virginia, and for review by agencies charged with enforcement of Board rules.

Recordkeeping Requirements

To facilitate compliance with, and enforcement of, proposed rule G–38, the Board also proposes to amend existing rules G–8 and G–9, concerning recordkeeping and record retention, respectively. The proposed amendments to rule G–8 require dealers to maintain: (i) A listing of the name, company, role and compensation arrangement of each consultant; (ii) a copy of each Consultant Agreement; (iii) a listing of the compensation paid in connection with each Consultant Agreement; (iv) where applicable, a listing of the municipal securities business obtained or retained through the activities of each consultant; (v) a listing of the issuers and a record of disclosures made to such issuers concerning each consultant used by the dealer to obtain or retain municipal securities business with each such issuer; and (vi) the date of termination of any consultant arrangement. The amendment to rule G–9 requires dealers to maintain these records for a six-year period.

The Board believes the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act, which provides that the Board's rules shall:

> Be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, setting, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

The proposed rule change serves a number of the Board's enumerated purposes, including promoting just and equitable principles of trade, by ensuring that dealers compete for, and are awarded, municipal securities business on the basis of merit, and not political or financial influence. Such healthy competition will act to lower artificial barriers to those dealers not willing or able to hire consultants to obtain or retain municipal securities business, thereby maintaining the integrity of the municipal securities market, as well as the public trust and confidence that is essential to the long-term health and liquidity of the market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board 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 since the proposed rule change would apply equally to all brokers, dealers and municipal securities dealers. The Board believes that the proposed rule change will improve competition in the awarding of municipal securities business by ensuring that dealers compete for, and are awarded, such business on the basis of merit, not political or financial influence.

[12] Proposed Form G–37/G–38 is included in Exhibit 3 to the proposed rule change, along with instructions for filing the Form. In addition to the new rule G–38 consultant reporting requirements, Form G–37/G–38 includes revisions to the rule G–37 political contribution reporting requirements. Such revisions include, for each contribution, a required notation of the category of the contributor (*e.g.*, municipal finance professional or executive officer) and the amount of the contribution, as well as a separate section for the reporting of ''payments'' to political parties distinct from ''contributions'' to issuer officials.

[13] For ease of compliance, the Board has included the Rule G–37 Filing Procedures within the language of rule G–37, and has included the Rule G–38 Filing Procedures within the language of new rule G–38.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Board received 17 comment letters in response to its April 1995 Draft Rule from the following commenters.[14]

A.G. Edwards & Sons, Inc.
American Government Financial Services Company
American Institute of Certified Public Accounts
Artemis Capital Group
Broward County, FL Finance and Administrative Services Dept.
Chapman and Cutler
Chemical Securities, Inc.
Gilmore & Bell
Goldman Sachs & Co.
Government Finance Officers Association
JP Morgan Securities Inc.
Morgan Stanley & Co., Inc.
National Association of Bond Lawyers
Public Securities Association
Seattle-Northwest Securities Corporation
Smith Barney Inc.
Willkie Farr & Gallagher

Summary and Discussion of Comments

The April 1995 Draft Rule would have required dealers (1) to have written agreements with persons who are used by a dealer for the purpose of seeking to obtain or retain municipal securities business, and (2) to disclose such arrangements with consultants directly to issuers and to the public through disclosure to the Board.

Necessity of a New Rule

Certain commenters believe that the April 1995 Draft Rule is unnecessary and should not be adopted.[15] The majority of commenters believe that the Board's goals in proposing the rule can more readily be accomplished by amending existing rule G–37, on political contributions and prohibitions on municipal securities business.[16] One commenter states that ''duplicative regulation should be avoided'' noting that rules G–37 and G–20 already address the use of consultants by dealers for impermissible purposes.[17] This commenter states that:

To the extent the market sees Rule G–38 as a rule without a needed purpose and as increasing compliance costs without any corresponding benefit, it will erode overall market support for the more important efforts to reform and improve the municipal securities markets * * *. Changes are occurring rapidly in the regulation of municipal securities, and there may be considerable merit in allowing the market to respond to Rule G–37, the [SEC's] 1994 Interpretive Release and similar efforts to see if they are effective in limiting influence peddling in the industry before additional rules are adopted.[18]

Another commenter believes that in attempting to address concerns about the possible circumvention of rules G–37 and G–20, the April 1995 Draft Rule ''is overly broad, mandating disclosure about a host of professionals whose activities and terms of engagement raise no legitimate specter of 'pay-to-play' abuses and often constitute proprietary and confidential business arrangements.'' [19]

One commenter ''strongly believes that proposed rule G–38 is not necessary'' and argues that the rule ''would seriously impair and discourage the traditional business relationships among professionals in the industry which have made the municipal securities market uniquely efficient in raising capital for states and localities.'' [20] This commenter believes that ''[i]n lieu of an additional and duplicative regulatory reporting regime'' the Board should amend rule G–37 to ''target those consulting relationships that are used for the exclusive purpose of retaining or obtaining municipal securities business.'' [21] In this regard, the commenter recommends that the Board provide a focused definition of consultant, as more fully discussed below.

One of the commenters states that, pursuant to the requirements of rule G–37, basic information is filed with the MSRB about consultants with whom a dealer has a business relationship.[22] Thus, this commenter questions the need for the April 1995 Draft Rule, ''which will impose significant new compliance burdens that will increase issuer borrower costs.'' [23] The commenter suggests that the Board review rule G–37 and Form G–37 ''to determine whether they might be modified to capture additional information.'' [24] Instead of a new rule, the commenter favors vigorous enforcement of existing Board rules for deterring improper conduct in the municipal securities industry.

One commenter believes that the April 1995 Draft Rule will create confusion with existing disclosure requirements under rule G–37, and that any required disclosures relating to consultant activity should be embodied in the same rule.[25] Thus, this commenter suggests amending rule G–37 or, in the alternative, removing the consultant disclosure requirements currently under rule G–37 and incorporating them into a modified version of the April 1995 Draft Rule.

Board Response

In response to commenters' concerns, the Board has modified the April 1995 Draft Rule, particularly with regard to the definition of consultant, as more fully discussed below. In addition, the Board is proposing to delete from rule G–37 the current disclosure requirements regarding consultants and to include all such requirements under new rule G–38. The Board also is proposing to replace Form G–37 with a new Form G–37/G–38, to consolidate dealers' reporting requirements under both rules G–37 and G–38. The Board believes that, by modifying the definition of consultant and including all disclosure requirements within a single rule, the proposed rule effectively addresses concerns raised by the commenters, including those relating to the need for a new rule, without sacrificing the Board's goal of making information about consultants available to issuers and the public in order to ensure the integrity of the municipal securities market.

Definition of ''Consultant''

The April 1995 Draft Rule defined ''consultant'' as any person, other than an employee or partner of a dealer, who is used by a dealer for the purpose of seeking to obtain or retain municipal securities business, including any person performing services for such dealer at the request or direction of an issuer. Fifteen of the 17 commenters expressed concern over this definition.[26] In general, the commenters are opposed to extending the definition to the following:

Professional service providers who are not actively engaged in assisting the underwriter to obtain or retain municipal securities business (*e.g.*, an accounting firm retained to conduct a tax analysis; a certified public

[14] *MSRB Reports*, Vol. 15, No. 1 (April 1995) at 3–10. Copies of the Notice Requesting Comment and the comment letters received are included in Exhibit 2.

[15] Gilmore & Bell; Goldman Sachs.

[16] A.G. Edwards; Artemis; Broward County; Chemical; GFOA; Gilmore & Bell; JP Morgan; PSA; and Smith Barney.

[17] Gilmore & Bell.

[18] *Id.*

[19] Goldman Sachs.

[20] PSA.

[21] *Id.*

[22] GFOA.

[23] *Id.*

[24] *Id.*

[25] A.G. Edwards.

[26] A.G. Edwards; AICPA; Artemis; Broward County; Chapman & Cutler; Chemical; GFOA; Gilmore & Bell; Goldman Sachs; JP Morgan; Morgan Stanley; NABL; PSA; Seattle-Northwest; and Smith Barney.

accountant retained to provide audit and attestation services; and a law firm retained to conduct a legal analysis on a particular transaction contemplated).[27]

Professionals designated by an issuer to provide services to the dealer (*e.g.*, underwriter's counsel).[28]

Professional from whom a dealer seeks substantive or technical advice in connection with an issuer presentation with no intention of seeking their intercession with the issuer (*e.g.*, engineers who perform technical reviews or feasibility studies; lawyers who review local regulations; and accountants who scrutinize financial reports).[29]

Any individual retained as a consultant but treated by a dealer as a municipal finance professional (*e.g.*, a limited partner or other retired employee of the dealer).[30]

Lobbyists who are not acting to obtain or retain business (*e.g.*, a lobbyist employed to keep the dealer apprised of legislation that could impact the dealer or its issuer clients).[31]

PSA recommends the following definition of consultant:

Any person, other than a municipal finance professional, who is employed by the broker, dealer or municipal securities dealer on an exclusive basis with respect to either an issuer or a particular transaction to obtain or retain municipal securities business, provided that such employment (A) includes any direct or indirect communication with the issuer by such person which is made on behalf of the broker, dealer or municipal securities dealer to obtain or retain such municipal securities business, and (B) is undertaken with the understanding of receiving compensation from such broker, dealer or municipal securities dealer.

Another commenter is concerned about the Board's definition of consultant because ''any third party with whom a dealer discusses any issue which might bear on the firm's decision to seek business could qualify as a consultant. After all, since firms are in business to do business, they have little reason to talk to anyone unless it is to help get business.'' [32] This commenter endorses PSA's definition of consultant, and believes that at least two factors are relevant to the creation of a consulting relationship: (1) The person will actively promote the underwriter—and only that underwriter—to an issuer; and (2) the person will be compensated in some way by the underwriter. Two other commenters also endorse PSA's proposed definition of consultant, and believe that it should be incorporated into rule G-37.[33] Another commenter, without criticizing the commenter's proposed definition, recommends a modified version thereof.[34] On the other hand, Morgan Stanley is critical of certain elements of PSA's definition.[35] With respect to the definition proposed in the April 1995 Draft Rule, this commenter argues that that definition inappropriately applies to three groups of professionals: (1) Professionals designated by an issuer to provide services to the dealer; (2) professionals from whom a dealer seeks substantive or technical advice in connection with an issuer presentation with no intention of seeking their intercession with the issuer; and (3) ''professionals who may in fact recommend a broker-dealer to an issuer—on the basis of substantive professional familiarity and respect and not on the expectation or promise of *quid pro quo* recompense.'' Morgan Stanley is concerned that the Board's definition could ''cause disruptions in an industry currently undergoing contraction * * * [and] may lead larger firms, with other sources of revenue, finally to conclude that the burden of ensuring municipal market compliance outweights the benefit of what, frankly, is currently a marginal business for many of them.'' Morgan Stanley believes the definition of consultant ''should be restored to its common-sense meaning in the context of the municipal securities business. * * * [and] should reflect * * * the two essential elements of disclosable consulting relationships in the municipal securities business: compensation and the proposed intercession with an issuer by the consultant in exchange for such compensation.'' [36] The commenter notes that its proposed definition incorporates ''not only direct but also indirect consultant use and issuer intercession and * * * [alludes] to the possibility of compensation from persons other than the dealer.'' Thus, Morgan Stanley recommends the following definition of consultant:

Any person or entity used, directly or indirectly, by a broker, dealer or municipal securities dealer to obtain or retain municipal securities business through direct or indirect intercession by such person or entity with the relevant municipal issuer on behalf of such broker, dealer or municipal securities dealer where such intercession is undertaken by such person or entity in exchange for, or with the understanding of receiving, payment (as defined in rule G–37) from such broker, dealer or municipal securities dealer or any other person.

---

[27] A.G. Edwards; PSA. PSA does not believe that ''persons or firms which offer other professional services commonly employed in a municipal securities transaction should be treated as consultants merely because a . . . dealer engages in conversations or discussions with such persons or firms about concepts or ideas which might be offered to an issuer to achieve or encourage a particular financing.'' PSA argues that the definition ''is so broad as to interfere with traditional and appropriate methods of developing new business opportunities.''

[28] Artemis; GFOA; Gilmore & Bell; JP Morgan; Morgan Stanley; and NABL. NABL believes that the rule ''should make clear that providers of substantive professional advice and services are not 'consultants' . . . and that a law firm which is selected as counsel to the underwriter, even if 'designated' as such by the issuer, does not become a 'consultant' to the underwriter. . . .'' The GFOA states that ''there are many instances where issuers make designations using merit-based criteria and it would not be appropriate to assume that such 'designated' persons should be treated as if they were used by a dealer to obtain or retain business . . .'' and that the April 1995 Draft Rule should distinguish between ''merit-based and nonmerit-based designations.'' Broward County shares this position. Gilmore & Bell is ''not comfortable with the entire concept of calling issuer-designated persons 'consultants' to the dealer. . . .'' They believe that the ''whole concept of a consultant under the Rule is someone who assists the dealer in obtaining or retaining municipal securities business. In no sense is an issuer-designated representative of the dealer a person who helped the dealer get the business; rather, that issuer-designated person or firm is imposed on the dealer as a condition to participating in the offering.'' Morgan Stanley does not believe that issuer-designated professionals should be defined as consultants. ''Far from helping dealers to solicit or win business, issuer-designated professionals are all too often imposed on dealers * * *.'' Morgan Stanley supports the disclosure of such relationships, and suggests removing such persons from the scope of the definition and adding a disclosure requirement to a separate section of the draft rule. JP Morgan also supports the disclosure of such relationships ''once an underwriting has been won, * * * but that in no way should these * * * professionals be deemed to be 'consultants' to the dealer.'' A.G. Edwards, on the other hand, believes that even those persons who may be engaged by the dealer as a ''precondition'' to obtaining an issuer's business (*e.g.*, underwriter's counsel designated by the issuer), ''are the type of 'consultants' to which the disclosure rule should apply.''

[29] Morgan Stanley; PSA; and Smith Barney.

[30] Goldman Sachs. Presumably the dealer has deemed the person to be subject to rules G–37 and G–20, and is recording information on political contributions and gifts and gratuities, as required by those rules.

[31] Seattle-Northwest.

[32] Smith Barney.

[33] Chemical Securities; JP Morgan.

[34] Artemis recommends a version that would not include the elements of exclusivity or indirect communication with the issuer.

[35] Morgan Stanley opposes PSA's requirement for ''exclusivity'' which ''is intended to disqualify a relationship under the definition if a putative consultant has also been retained to solicit the same business on behalf of another firm.'' Morgan Stanley does not understand ''why exclusivity makes any difference. * * * [and is concerned that] the phrase could be read to disqualify a consultant who is soliciting business from more than one issuer and a consultant hired by two dealers to solicit the same piece of business on their joint behalf.'' Morgan Stanley also is concerned that PSA's proposal, which would limit the definition of consultant to persons hired ''with respect to either an issuer or a particular transaction,'' will ''inappropriately limit the number of consultants required to be disclosed * * * [for example,] by excluding consultants who are hired not with respect to particular issuers and transactions but according to other organizing principles: by type of transaction (*e.g.*, student loan deals), by type of issuer, by geographic area * * *.''

[36] Morgan Stanley further suggests defining ''compensation'' to mirror the definition of ''payment'' under rule G–37.

Several other commenters share Morgan Stanley's view that compensation is a relevant factor in determining the existence of a consulting relationship. For example, one of the commenters does not believe the draft rule should apply to ''persons who are merely engaged by a dealer *in connection with* municipal securities business * * * [but rather] should apply only to persons engaged by a dealer with the expectation of receiving compensation for seeking to obtain or retain municipal securities business.'' [37] Another commenter believes that ''a dealer may 'use' a person in a broad sense (and in a perfectly permissible sense) without that person being a consultant to the dealer in any common sense meaning of the word.'' [38] But if a dealer compensates a person for services in obtaining or retaining municipal securities business, ''then obviously such person is working for the dealer and a 'consulting' relationship exists. * * *'' [39] In this regard, the commenter argues that, at a minimum, the definition of consultant should include any person who is paid or compensated (rather than ''used'') by a dealer for the purpose of seeking to obtain or retain municipal securities business. Another commenter notes that such compensation ''can take various forms, such as payment of a finder's fee, a percentage of revenues or fees earned on the transaction, a fee for services in excess of the industry standard for such services, and political contributions.'' [40]

One of the commenters believes the definition should extend to private entities that construct or develop facilities from the proceeds of municipal financings, including nursing home and retirement center projects, housing issues, and land-based development financings.[41] This commenter believes that ''it is quite common for such private parties, after making large political contributions, to bring their own finance teams, including underwriters, onto the scene and to pressure issuers to use those teams. * * * [t]hus, the private parties can be viewed as acting on behalf of the underwriters. * * *''

Board Response

In response to the commenters' concerns over the definition of consultant in the April 1995 Draft Rule, the proposed rule now defines consultant as any person used by a dealer to obtain or retain municipal securities business through direct or indirect communication by such person with an issuer on the dealer's behalf where the communication is undertaken by such person in exchange for, or with the understanding of receiving, payment from the dealer or any other person. The definition specifically excludes ''municipal finance professionals,'' as that term is defined in rule G–37(g)(iv), because such individuals are covered by the requirements of rule G–37. The definition also excludes any person whose sole basis of compensation from the dealer is the actual provision of legal advice, accounting or engineering assistance in connection with the municipal securities business that the dealer is seeking to obtain or retain. The exclusion would apply, for example, to a lawyer retained to conduct a legal analysis on a particular transaction contemplated by the dealer, or to review local regulations; an accountant retained to conduct a tax analysis or to scrutinize financial reports; or an engineer retained to perform a technical review or feasibility study. The exemption is intended to ensure that professionals who are engaged by the dealer solely to perform substantive work in connection with municipal securities business are not brought within the definition of consultant as long as their compensation is in consideration of only those professional services actually provided in connection with such municipal securities business. However, any attorney or other professional used by the dealer as a ''finder'' for municipal securities business would be considered a consultant under the proposed rule.

Also, in response to certain commenters' concerns, the Board has eliminated ''issuer-designated'' professionals from the definition of consultant. The Board agrees with these commenters that persons who are engaged by a dealer at the request or direction of the issuer (*e.g.*, underwriter's counsel) are not, in fact, consultants because they do not assist the dealer in obtaining or retaining municipal securities business. However, the Board continues to believe that the subject of issuer involvement in the underwriting process merits review, and will address this subject, including the question of requiring disclosure of issuer-designated persons, at a future time.

Requirement of a Written Agreement

The April 1995 Draft Rule would have required dealers to have written agreements with their consultants before the consultants could provide any services on their behalf. The April 1995 Draft Rule would have provided that the ''Consultant Agreement'' must indicate the role to be performed by the consultant and the compensation arrangement. One of the commenters opposes the requirement of a written agreement, arguing that it could ''hinder the effective and timely rendering of legal services due to the proposed rule's prohibition of services until the execution of a contract. The prospect of depriving a client of substantive legal advice for any reason, and even for a modest timeframe, is by itself troubling.'' [42] Another commenter also opposes this requirement, arguing that whether or not a consultant and a dealer enter into a written agreement ''is a business decision best left to the interested parties.'' [43] One commenter, while not opposed to memorializing traditional consultant agreements, believes that the content of such agreements ''is best left to private negotiation between the parties, and not subject to any specific regulatory strictures.'' [44] Another commenter shares this view.[45]

A number of commenters are concerned about the timing of the requirement of a written agreement. One commenter ''strongly objects'' to the requirement that a written agreement be in place before using the services of professional service providers, such as lawyers, accountants, and printers, and believes that such a requirement ''will disrupt traditional and legitimate business relationships and impede the ability of dealers to respond to issuer's needs, particularly in the case of ad-hoc inquiries from issuers in response to which dealers routinely make use of professional providers such as lawyers or accountants.'' [46] Another commenter states that ''it would be a legal and logistical nightmare if every firm was required to enter into a contract with the entire universe of persons and entities who provide information to underwriters in the normal course of business. It would be much less burdensome—though still in our view an unnecessary intrusion into business relationships—to limit the requirement of a written agreement to those situations in which the firm is retaining a third party to promote the firm to an issuer for a fee or other compensation.'' [47]

[37] A.G. Edwards.
[38] Gilmore & Bell.
[39] *Id.*
[40] Artemis.
[41] American Government Financial Services.
[42] Goldman Sachs.
[43] PSA.
[44] A.G. Edwards.
[45] Chemical Securities.
[46] A.G. Edwards.
[47] Smith Barney.

Other commenters support the requirement of a written agreement.[48] One of these commenters believes such a requirement represents a way of discouraging the hiring of consultants solely for their personal or political influence with issuers.[49] However, this commenter conditions its support on the Board limiting the definition of consultant.[50]

Board Response

The requirement of a written agreement embodied in proposed rule G–38 is similar to the April 1995 Draft Rule, and requires dealers who use consultants to evidence the consulting arrangement in writing (referred to as a ''Consultant Agreement''). At a minimum, the writing must include the name, company, role and compensation arrangement of each consultant used by the dealer. Such written agreements must be entered into before the consultant engages in any direct or indirect communication with an issuer on the dealer's behalf. Although certain commenters were opposed to the requirement of a written agreement, the Board believes that this requirement is necessary to ensure that dealers are aware of arrangements that their branch offices or local personnel may have with consultants. The requirement also will assist dealers in developing mechanisms to monitor such arrangements, and will assist enforcement agencies to inspect for compliance with rule G–38. With regard to commenters' concern over the timing of this requirement (*i.e.*, that a written agreement must be entered into before the consultant provides any services on behalf of the dealer), the Board believes that by limiting the scope of the definition of consultant (as discussed above) and by revising the timing of the agreement (*i.e.*, before any communication by the consultant with an issuer on the dealer's behalf), it has ameliorated many, if not all, of these concerns.

Disclosure of Consulting Arrangements to Issuers

The April 1995 Draft Rule would have required dealers to disclose to issuers in writing all consultants with which they have entered into a Consultant Agreement in connection with an effort to obtain or retain municipal securities business with that issuer, along with the basic terms of the Consultant Agreement. The April 1995 Draft Rule required dealers to make such disclosures when they become involved in the issuer's process for selecting a dealer for municipal securities business, whether or not the issuer requests such information in a Request for Proposal.

Most commenters agree that disclosure to issuers of consulting arrangements is appropriate. However, one of these commenters believes that the timing of the disclosure requires clarification.[51] This commenter notes that financing ideas frequently are discussed informally prior to the beginning of ''the issuer's selection process,'' and that it would be ''imprudent to stifle'' such discussion.[52] Similarly, another commenter supports disclosure to issuers, but is concerned that the timing of such disclosures ''is too vague.''[53] This commenter believes that ''it is sufficient to require that the disclosure be made at least prior to a dealer's acceptance of business from an issuer, on the theory that at that time the issuer is still in a position to rescind the award of business if the disclosed facts are sufficiently unpalatable.''[54] The commenter also believes that ''[l]imiting the disclosure obligation to consultants with whom the dealer has already entered into an agreement * * * would seem to create unnecessary timing issues as well as unnecessary opportunities for manipulation.''[55] Accordingly, the commenter proposes extending the disclosure requirement to all consultants used by the dealer in connection with the relevant issuer or the relevant securities offering, regardless of the status of the written agreement between them.

One of the commenters believes that the disclosure of consultant relationships should only be made upon the request of the issuer, and notes that issuers can include a request for such information in their Request for Proposal and that if the issuer wants additional information, it can simply ask the dealer for further details.[56] The commenter also believes that ''a specific description of a consultant's role is difficult to set forth at the onset of a relationship'' and therefore disclosure of a consultant relationship should include only a general description of the role to be performed by the consultant.[57] Furthermore, the commenter believes that certain information, such as the details of the compensation arrangement, should remain confidential.

Another commenter believes that disclosure to the public is of greater importance than disclosure to issuers; ''[i]ssuers are aware of the activities of consultants; the public often is not. The most powerful tool for preserving the integrity of the market is the public disclosure by the MSRB of the consulting relationships reported to it.''[58] However, the commenter believes that consultants hired on the dealer's initiative should be disclosed to an issuer and the Board ''only when (i) the issuer is engaged in a formal process of either reviewing its underwriting relationships or placing a specific piece of debt and (ii) the dealer is actually selected for the program or the specific underwriting.''[59] The commenter states that ''this two-part test will result in meaningful information regarding the actual involvement of consultants in completed municipal finance transactions being made available.''[60] Another commenter also is concerned about disclosure reaching the public domain, and states that any disclosure to issuers should be made to their governing bodies ''for inclusion in the publicly available records thereof'' otherwise the goal of public disclosure of consultant relationship can easily be frustrated.[61]

Board Response

In response to commenters' concerns, particularly over timing, the Board has modified the proposed rule's requirement concerning disclosure of consulting arrangements to issuers. Proposed rule G–38 now requires each dealer to disclose to an issuer with which it is engaging or seeking to engage in municipal securities business, in writing, information on consulting arrangements relating to such issuer. The written disclosure must include, at a minimum, the name, company, role and compensation arrangement with the consultant or consultants. Dealers are required to make such written disclosures no later than the issuer's selection of any dealer in connection with the municipal securities business sought, regardless of whether the dealer making the disclosure ultimately is the one to obtain or retain that business.

[48] Artemis; Morgan Stanley.

[49] Morgan Stanley.

[50] In its Request for Comments, the Board asked whether it should require that all written agreements with consultants be approved by the head of the dealer's municipal finance group and the general counsel's office. Morgan Stanley supports such a requirement, while Chemical ''believes it is not beneficial or necessary. . . .'' Artemis supports a requirement that the agreement be approved by the head of the municipal finance group.

[51] PSA. Artemis shares this view.

[52] PSA.

[53] Morgan Stanley.

[54] *Id.*

[55] *Id.*

[56] Chemical Securities.

[57] *Id.*

[58] JP Morgan.

[59] *Id.*

[60] *Id.*

[61] Willkie Farr.

Thus, while dealers have an obligation to disclose their consulting arrangements to all issuers from which they are seeking municipal securities business, they have more leeway in the timing of their disclosures as long as the disclosure is made before the issuer selects a dealer for the municipal securities business sought. However, the Board cautions dealers that the time period set forth in the proposed rule represents the last possible opportunity to comply with the disclosure requirement, and therefore strongly recommends that dealers make such disclosures as early as possible. For example, a dealer seeking certain municipal securities business may not be aware of the issuer's selection of another dealer for that business. So too, an issuer may select a pool or group of dealers from which the issuer intends to choose underwriters for particular issues over the next few years. If a dealer has used a consultant to help secure any of this business, the Board believes that dealers should make their required disclosures to issuers as soon as possible to ensure that the disclosure is received by the issuer prior to the selection of any dealer for the municipal securities business.

Disclosure of Consulting Arrangements to the Public Through Disclosure to the Board

The April 1995 Draft Rule would have required a dealer to submit reports to the Board of all consultants with which the dealer entered into Consultant Agreements, not just those consultants that are connected with particular municipal securities business awarded during the reporting period (*i.e.*, as currently required under rule G–37). These reports would have been submitted on Form G–38 on a quarterly basis, within one month after the end of each calendar quarter. Form G–38 would have required dealers to list the names of all consultants and complete for each consultant an Attachment to Form G–38 that provides in the prescribed format the consultant's company, the role to be performed by the consultant, and the compensation arrangement. Dealers also would have been required to report all dollar amounts paid to each consultant during the reporting period and, if any amounts paid were connected with particular municipal securities business, such issue and the amount paid would have been separately identified.

A number of commenters believe that disclosures to the Board should be merged with the reporting requirements of rule G–37.[62] In the alternative, two of these commenters suggest removing the disclosure requirements from rule G–37 and incorporating them into a modified version of the April 1995 Draft Rule.[63] One such commenter believes that ''consolidation and combination is sensible not only from an administrative and compliance point of view but will help ensure * * * consistency in terminology and interpretation in this complex area.'' [64]

Another commenter notes that rule G–37 currently requires disclosure of consulting relationships if business is obtained or retained, *i.e.*, ''after the fact.'' [65] This commenter believes that the public would benefit if information were available ''before a piece of business was awarded or a transaction completed'' and thus recommends that dealers be required to report all consulting relationships entered into by (or ongoing with) firms during quarterly reporting periods, regardless of whether business is obtained during that reporting period.[66] Similarly, another commenter believes that dealers should be required to report all consultant arrangements whether or not such arrangements result in the awarding of business to the dealer.[67] And another commenter also supports disclosure of ''*all* existing business consulting arrangements * * * whether or not they have resulted in a particular transaction. * * *'' [68] This commenter further suggests that ''such 'bulk disclosure' be organized by reference to the jurisdictions (from largest to smallest) in which each consultant is directly or indirectly employed to operate and, if applicable, to the issuers with which such consultant is employed, directly or indirectly, to intercede.'' [69] Finally, the commenter supports linking particular consulting relationships with particular transactions in order to avoid ''a blizzard of accurate but general information [that] could conceal more than it reveals.'' [70]

One of the commenters suggests that dealers be required to report ''a continuing arrangement, rather than report it repeatedly, each quarter.'' [71] Another commenter ''believes that dealers should be required to list continuing arrangements each quarter and to note when any such arrangement has concluded * * *. However, if the compensation arrangements remain the same * * * [the commenter recommends] that dealers not be required to restate these terms quarterly.'' [72]

Board Response

The proposed rule's requirement concerning disclosure to the Board is similar to the April 1995 Draft Rule. The proposed rule requires dealers to submit to the Board, on a quarterly basis, reports of all consultants used by the dealer. For each consultant, dealers must report, in the prescribed format, the consultant's name, company, role and compensation arrangement, as well as the dollar amount of any payment made to the consultant during the quarterly reporting period. If any payment made during the reporting period is related to the consultant's efforts on the dealer's behalf which resulted in particular municipal securities business, whether the municipal securities business was completed during that or a prior reporting period, then the dealer must separately identify that business and the dollar amount of the payment. In addition, as long as the dealer continues to use the consultant to obtain or retain municipal securities business (*i.e.*, has a continuing arrangement with the consultant), the dealer must report information concerning such consultant every quarter, whether or not compensation is paid to the consultant during the reporting period. The Board believes that the reporting of these continuing consulting arrangements each quarter will assist enforcement agencies and the public in their review of such arrangements.

As recommended by certain commenters, the Board has determined, for ease of compliance and reporting, to delete the current reporting requirements regarding consultants from rule G–37. It also has determined to merge the reporting requirements of both rules G–37 and G–38 into a single form—Form G–37/G–38. Dealers must submit two copies of such reports on proposed Form G–37/G–38.[73] The quarterly due dates are the same as the due dates currently required under rule G–37 (*i.e.* within 30 calendar days after the end of each calendar quarter, which corresponds to each January 31, April 30, July 31, and October 31). Finally, consistent with current rule G–37,

[62] A.G. Edwards; Artemis; Chemical; GFOA; PSA; and Smith Barney.

[63] A.G. Edwards; Morgan Stanley.

[64] Morgan Stanley.

[65] Smith Barney.

[66] *Id.*

[67] Chemical Securities.

[68] Morgan Stanley.

[69] *Id.*

[70] *Id.*

[71] Chemical Securities.

[72] Artemis.

[73] Proposed Form G–37/G–38 is included in Exhibit 3 to the proposed rule change, along with instructions for filing the Form.

dealers are required to submit these reports to the Board by certified or registered mail, or some other equally prompt means that provides a record of sending.[74] The Board will then make these documents available to the public for inspection and photocopying at its Public Access Facility in Alexandria, Virginia, and for review by agencies charged with enforcement of Board rules.

Recordkeeping Requirements

To facilitate compliance with, and enforcement of, proposed rule G–38, the Board also proposes to amend existing rules G–8 and G–9, concerning recordkeeping and record retention, respectively. The proposed amendments to rule G–8 require dealers to maintain: (i) A listing of the name, company, role and compensation arrangement of each consultant; (ii) a copy of each Consultant Agreement; (iii) a listing of the compensation paid in connection with each Consultant Agreement; (iv) where applicable, a listing of the municipal securities business obtained or retained in connection with each Consultant Agreement; (v) a listing of the issuers and a record of disclosures made to such issuers concerning consultants used by the dealer to obtain or retain municipal securities business with each such issuer; and (vi) the date of termination of any consultant arrangement. The amendment to rule G–9 requires dealers to maintain these records for a six-year period.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 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 90 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. The Commission requests that, in addition to any general comments concerning whether the proposed rule change is consistent with Section 15(b)(2)(C) of the Act, commentators address whether the proposed definition of consultant needs to be amended to encompass instances in which third parties initiate contact with prospective underwriters to offer their services in obtaining or retaining municipal securities business through direct or indirect communications by such person with an issuer official. 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 submissions, 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 they 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. Copies of the filing will also be available for inspection and copying at the Board's principal offices. All submissions should refer to File No. SR–MSRB–95–15 and should be submitted by December 26, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority, 17 U.S.C. 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–29513 Filed 12–4–95; 8:45 am]

BILLING CODE 8010–01–M

[74] For ease of compliance, the Board has included the Rule G–37 Filing Procedures within the language of rule G–37, and has included the Rule G–38 Filing Procedures within the language of new rule G–38.

[File No. 1–3779]

Issuer Delisting; Notice of Application to Withdraw From Listing and Registration; San Diego Gas & Electric Company, (5.0% Cumulative Preferred, $20 Per Value, 4.5% Cumulative Preferred Stock, $20 Par Value, 4.4% Cumulative Preferred Stock, $20 Par Value, Cumulative Preferred Stock, $7.20 Series, No Par Value, Cumulative Preferred Stock, $1.82 Series, No Par Value)

November 28, 1995.

San Diego Gas & Electric Company (''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 securities (''Securities'') from listing and registration on the Pacific Stock Exchange Incorporated (''PSE'').

The reasons alleged in the application for withdrawing the Securities from listing and registration include the following:

According to the Company, it cannot justify the direct and indirect costs and expenses attendant to maintaining the dual listing of the Securities on the American Stock Exchange, Inc. (''AMEX'') and on the PSE. The Company is paying $2,000.00 per year to maintain its listings on the PSE with no significant benefit to its shareholders. The Company believes that a single listing on the Amex will be sufficient to serve the needs of its shareholders.

Any interested person may, on or before December 19, 1995, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., 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. 95–29512 Filed 12–4–95; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2821]

Alaska; Declaration of Disaster Loan Area

Kenai Peninsula Borough and the contiguous areas of Lake and Peninsula Borough, Matanuska-Susitna Borough, the Municipality of Anchorage, the Chugach Regional Education Attendance Area and the Iditarod Regional Education Attendance Area in the State of Alaska constitute a disaster area as a result of damages caused by flooding which occurred from September 18 through September 24, 1995. Applications for loans for physical damages as a result of this disaster may be filed until the close of business on *January 29, 1996,* and for economic injury until the close of business on *August 28, 1996,* at the

address listed below: U.S. Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, CA 95853–4795 or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	8.000
Homeowners Without Credit Available Elsewhere	4.000
Businesses With Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	7.125
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 282106 and for economic injury the number is 868700.

Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.

Dated: November 28, 1995.

Philip Lader,

Administrator.

[FR Doc. 95–29525 Filed 12–4–95; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending September 15, 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–95–634.

Date filed: September 11, 1995.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 9, 1995.

Description: Application of Horizon Air Industries, Inc. d/b/a Horizon Air pursuant to 49 U.S.C. Section 41102, applies for a certificate of public convenience and necessity authorizing service between any point in the United States and any point in Canada, subject however to the restrictions on service to Toronto, Montreal and Vancouver contained in the most recent bilateral air service treaty between the United States and Canada.

Myrna F. Adams,

Acting Chief, Documentary Services Division.

[FR Doc. 95–29500 Filed 12–04–95; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

Approval of Noise Compatibility Program, Southwest Florida International Airport, Ft. Myers, FL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the Lee County Port Authority under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR Part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96–52 (1980). On November 21, 1994, the FAA determined that the noise exposure maps submitted by the Lee Country Port Authority under Part 150 were in compliance with applicable requirements. On May 17, 1995, the FAA determined that the revised future noise exposure map was in compliance with applicable requirements. On November 13, 1995, the Administrator approved the Southwest Florida International Airport noise compatibility program. All of the recommendations of the program were approved.

EFFECTIVE DATE: The effective date of the FAA's approval of the Southwest Florida International Airport noise compatibility program is November 13, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Tommy J. Pickering, P.E., Federal Aviation Administration, Orlando Airports District Office, 9677 Tradeport Drive, Suite 130, Orlando, Florida 32827–5397, (407) 648–6583, Extension 29. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for Southwest Florida International Airport, effective November 13, 1995.

Under Section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as ''the Act''), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) Part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measure should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act, and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical users, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal government; and

d. Program measures relating to the use of light procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in

FAR Part 150, Section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where Federal funding is sought, requests for project grants must be submitted to the FAA Airports District Office in Orlando, Florida.

The Lee County Port Authority submitted to the FAA on November 7, 1994, the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from January 1994 through April 1995. The Southwest Florida International Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on November 21, 1994. The revised future noise map was determined by FAA to be in compliance with applicable requirements on May 17, 1995. Notice of these determinations was published in the Federal Register.

The Southwest Florida International Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to the year 2000. It was requested that FAA evaluate and approve this material as a noise compatibility program as described in Section 104(b) of the Act. The FAA began its review of the program on May 17, 1995, and was required by a provision of the Act to approve or disapprove the program within 180-days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained fifteen (15) proposed actions for noise mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The overall program, therefore, was approved by the Administrator effective November 13, 1995.

The noise compatibility program, pages VII–1 through VII–4, incorporate by reference all of the noise compatibility program measures previously approved by the FAA in 1990. A copy of the FAA's 1990 Record of Approval is included as Appendix H to this noise compatibility program. The airport operator proposes to maintain as effective all previously approved measures except a modification to reduce thrust on departures (page VII–2).

Out right approval was granted for all of the specific program controls. The approval action was for the following program controls:

OPERATIONAL MEASURES

Operational control No.	Description	NCP pages
1	The Alico One SID is recommended to continue. Adjustments to account for drift should be made by ATC to avoid drift into residential communities. FAA Action: Approved.	pgs. VII–2 to VII–6; Exhibit 17; Tables 11 & 12; and Appendix G.
2	It is recommended that once a full Stage 3 fleet occurs at the Airport, destination turns related to the Alico One SID should not begin until the aircraft reach an altitude of 4,000 feet to increase use of the Alico Corridor and increase altitude over residential areas. FAA Action: Approved.	pgs. VII–2 to VII–6; Exhibit 17; Tables 11 & 12; and Appendix G.
3	In ATC's upcoming airspace evaluation, include in the evaluation the directing of commuter aircraft departing on Runway 24 to northern destinations to turn over I–75 to reduce noise over residential areas north of the Alico Corridor. In the interim, use the Alico Corridor as much as possible for commuter departures. FAA Action: Approved.	pgs. VII–6 to VII–7; Exhibit 17; Tables 11 & 12; and Appendix G.
4	Establish a 1,600 foot minimum altitude to be maintained over the outer marker for IFR arrivals to Runway 6. This will maintain altitude over residential areas. FAA Action: Approved.	pgs. VII–7 to VII–8 and Table 12.
5	It is recommended that the Airport maintain the current ILS approach until the GPS is available. At that time, the GPS should be analyzed for possible implementation of GPS arrival procedures. This will provide for future flexibility in reducing arrival noise by avoiding densely developed residential areas. FAA Action: Approved.	pgs. VII–7 to VII–9 and Table 12.
6	Eliminate the close-in turn for departures off Runway 6 to reduce impacts on Gateway Elementary School by having ATC tower personnel delay switching to departure control until aircraft have cleared the northeast end of the Runway. FAA Action: Approved.	pgs. VII–8 to VII–9; Exhibit 17; and Tables 11 & 12.
7	It is recommended that the ''distant'' procedures for departures from RSW be implemented consistent with FAA Advisory Circular No. 91–53A, Noise Abatement Departure Profiles. FAA Action: Approved.	pg. VII–10 and Table 12.
8	When operating simultaneous departures, divergence should occur on Runways 6L and 24L to maximize the use of noise abatement procedures. With the proposed divergence, departures on Runway 6 would continue to follow noise abatement turns north of Gateway. FAA Action: Approved.	pgs. VII–10 and VII–11.

LAND USE MEASURES

Land use control measure No.	Description	NCP pages
1	This measure is recommended to provide for noise and avigation easements over property within the extended Airport Noise Overlay Zones 2 and 3 to be dedicated to Lee County for any use permitted by these zoning codes. This results in notification to those proposing future development within the Noise Overlay Zones and will provide protection to the airport from development near the airport. FAA Action: Approved.	pgs. VII–12 to –13, VII–25 to –26, VII–33 to –34, VII–40 to –42 & VII–44 to –45; Exhibits 16, 20 & 21; and Table 13.
2	It is recommended that Noise Overlay Zones 2 and 3 be extended in the Airport vicinity based on the 1999 (with parallel runway and runway extensions) NEM. Zone 2 and Zone 3 consists of those areas of land encompassed by the 60 DNL and 65 DNL respectively. No mobile homes are permitted in Zone 2. Zone 3 does not allow homes, churches, libraries, schools, hospitals, correctional institutions or nursing homes in the area. This will help promote future land use compatibility development in new areas in Lehigh Acres, Timber Trails and south of Alico Road, will extend protection within Alico Corridor, and will assist in the implementation of Land Use Control Measures 1 and 4. Noise Overlay Zones in Southeast Gateway should be maintained. FAA Action: Approved.	pgs. VII–12 to –13, VII–17, VII–25 to –26, VII–40 to –46; Exhibits 16, 20 & 21; and Table 13.
3	It is recommended that current and future land use designations in the Lee Plan be maintained within the Alico Corridor and Timber Trails areas. This will maintain areas for future compatible development (Alico Corridor) and effectively discourage incompatible residential development (Timber Trails). FAA Action: Approved.	pgs. VII–12 to –16, VII–41, VII–43 & VII–45, Exhibits 14 & 21; and Table 13.
4	It is recommended that the building code be amended to provide the property owner with optional sound attenuation specifications for new dwellings located with the boundary of Noise Overlay Zone 3. This will address noise impacts on new noise sensitive uses that are vested and can be constructed in both the Alico Corridor and Timber Trails areas. FAA Action: Approved The FAA strongly discourages any new noncompatible construction within the DNL 65 dB noise contour. Any new construction within this noise contour may not be eligible for Federal funding for airport noise mitigation..	pgs. VII–14 to –15, VII–37 to –38 & VII–44 to –45; and Table 13.
5	It is recommended that the Lee Plan Future Land Use Designation be amended to designate an area south of Alico Road and immediately east and west of I–75 for Industrial Commercial use (University spin-off area). This will promote land use compatibility and allow for a more logical and cohesive development in an area that will experience aircraft overflights and noise from the proposed new parallel runway. FAA Action: Approved.	pgs. VII–17, VII–26 to –32 and VII–42 to –43; Exhibits 14 & 20; and Table 13.
6	It is recommended that the Lee County Zoning regulations be amended to support commercial use zoning in areas south of Alico Road and immediately east and west of I–75. This will ensure that residential development does not occur in areas that will be subject to overflights and sideline noise from the proposed new parallel runway. FAA Action: Approved.	pgs. VII–17, VII–21 to 25 and VII–42; Exhibits 15 & 20; and Table 13.
7	It is recommended that information regarding noise exposure in the vicinity of the Airport and sample disclosure statements be distributed to all real estate agents in the area. This will provide the agents with a written notice of a property's location relative to the Airport and certain aircraft noise levels that may be incompatible with residential and other noise-sensitive land uses. The dissemination of this information may also enhance the Airport's position in the event of legal action. FAA Action: Approved.	pgs. VII–34 to –35 & VII–46; and Table 13.

These determinations are set forth in detail in a Record of Approval endorsed by the Administrator on November 13, 1995. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative office of the Lee County Port Authority.

Issued in Orlando, Florida on November 28, 1995.

Charles E. Blair,

Manager, Orlando, Airports District Office.

[FR Doc. 95–29566 Filed 12–4–95; 8:45 am]

BILLING CODE 4910–13–M

[Summary Notice No. PE–95–43]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before December 26, 1995.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–

200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address: nprmcmts@mail.hq.faa.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. D. Michael Smith, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7470.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on November 30, 1995.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Docket No.: 127CE.

Petitioner: Beech Aircraft Corporation.

Sections of the FAR Affected: 14 CFR 23.807(d)(1)(l).

Description of Relief Sought: To allow a single emergency exit, in addition to the cabin door, for Models B300 and B300C aircraft having nine passenger seats or less.

Docket No.: 28296.

Petitioner: FlightSafety International.

Sections of the FAR Affected: 14 CFR 61.57(c) and (d), 61.58(b), and 61.157(a) and (f)(1).

Description of Relief Sought: To permit FlightSafety International to establish a continuous qualification training program for pilots flying for operations conducted under part 91 that would allow the participants to (1) satisfy certain training and recent flight experience requirements in Level B, Level C, and Level D simulators; (2) act as pilot in command of aircraft type certificated for more than one required pilot by satisfactorily completing an approved aircraft-specific recurrent training program, with the previous 24 calendar months, in lieu of the pilot in command evaluation required in § 61.58(b); and (3) obtain an airline transport pilot certificate or an additional type rating without passing the practical test prescribed in § 61.157(a).

Docket No.: 28355.

Petitioner: National Transportation Safety Board.

Sections of the FAR Affected: 14 CFR 121.359(a).

Description of Relief Sought: To permit, as part of a 6-month NTSB investigation, USAir, Southwest Airlines, and Continental Airlines Boeing 737 flightcrews experiencing an uncommanded flight control input to deactivate the cockpit voice recorder upon clearing the active runway after landing.

Docket No.: 28370.

Petitioner: Cessna Aircraft Co.

Sections of the FAR Affected: 14 CFR 25.562.

Description of Relief Sought: To permit Cessna exemption from the emergency landing dynamic conditions of FAR for side-facing multiple seating as applied to their new Model 750 (Citation X) airplane.

[FR Doc. 95–29573 Filed 12–4–95; 8:45 am]

BILLING CODE 4910–13–M

Research, Engineering and Development Advisory Committee; Challenge 2000 Subcommittee

Pursuant to section 10(A)(2) of the Federal Advisory Committee Act (Public Law 92–463; 5 U.S.C. App. 2), notice is hereby given of a meeting of the Challenge 2000 Subcommittee of the Federal Aviation Administration (FAA) Research, Engineering and Development Advisory Committee to be held Monday, December 18, 1995, 1 p.m. to 3 p.m. The meeting will take place at the FAA, 800 Independence Avenue, SW., Rooms 8AB, Washington, DC.

This purpose of this meeting is to present preliminary findings of the Challenge 2000 subcommittee.

Attendance is open to the interest public but limited to the space available. With the approval of the subcommittee chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements, obtain information, or attend the meeting should contact Ms. Nancy Lane, AIR–510, 800 Independence Ave., SW., Washington, DC at (202) 267–7061, the FAA Designated Federal Official to the Subcommittee.

Members of the public may present a written statement to the Subcommittee at any time.

Issued in Washington, DC, on November 28, 1995.

Clyde A. Miller,

Manager, Research Division.

[FR Doc. 95–29568 Filed 12–4–95; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent to Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Ogdensburg International Airport, Ogdensburg, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Ogdensburg International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before January 4, 1996.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. Philip Brito, Manager; New York Airports District Office; 600 Old Country Road, Suite 446; Garden City, New York 11530.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Danny L. Duprey, Executive Director of the Ogdensburg Bridge and Port Authority at the following address: Bridge Plaza; Ogdensburg, New York 13669.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Ogdensburg Bridge and Port Authority under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Philip Brito, Manager, New York Airports District Office; 600 Old Country Road, Suite 446; Garden City, New York 11530; telephone number (516) 227–3803. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Ogdensburg International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On October 20, 1995, the FAA determined that the application to impose and use the revenue from a PFC submitted by Ogdensburg Bridge and Port Authority was substantially complete within the requirements of

section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than January 27, 1996.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00

Proposed charge effective date: April 1, 1996

Proposed charge expiration date: February 28, 2006

Total estimated PFC revenue: $125,050

Brief description of proposed project(s):

—Passenger Facility Charge Application
—Runway 9–27 Rehabilitation (Design)
—Runway 9–27 Rehabilitation (Construction)

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Not Applicable, all requested to collect PFCs.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at Fitzgerald Federal Building #111; John F. Kennedy International Airport; Jamaica, New York 11430.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Ogdensburg Bridge and Port Authority.

Issued in Jamaica, New York on November 24, 1995.

Anthony P. Spera,

Manager, Airports Division, Eastern Region.

[FR Doc. 95–29567 Filed 12–4–95; 8:45 am]

BILLING CODE 4910–13–M

UNITED STATES SENTENCING COMMISSION

Revisions to the Sentencing Guidelines for the United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of final action regarding amendments to sentencing guidelines and policy statements effective November 1, 1995.

SUMMARY: The Sentencing Commission hereby gives notice of several amendments to policy statements and commentary made pursuant to its authority under section 217(a) of the Comprehensive Crime Control Act of 1984 (28 U.S.C. 994(a) and (u)). The Commission has reviewed amendments submitted to Congress on May 1, 1995, that may result in a lower guideline range and has designated one such amendment for inclusion in policy statement § 1B1.10 (Retroactivity of Amended Guideline Range). An earlier amendment (effective November 1, 1994) was also designated for inclusion in policy statement § 1B1.10. Two amendments, previously passed by the Commission, concerning crack cocaine and money laundering were disapproved by Congress (Pub. L. 104–38, 109 Stat. 34 (Oct. 30, 1995)).

DATES: The effective date of these policy statement and commentary amendments is November 1, 1995.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Information Specialist, Telephone: (202) 273–4590.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent agency in the judicial branch of the U.S. Government. The Commission is empowered by 28 U.S.C. 994(a) to promulgate sentencing guidelines and policy statements for federal sentencing courts. Sections 994(o) and (p) of title 28, United States Code, further direct the Commission to periodically review and revise guidelines and policy statements previously promulgated, and require that guideline amendments be submitted to Congress for review. Absent action of the Congress to the contrary, guideline amendments become effective following 180 days of Congressional review on the date specified by the Commission (i.e., November 1, 1995). Unlike new guidelines and amendments to existing guidelines issued pursuant to 28 U.S.C. 994(a) and (p), sentencing policy statements, commentary, and amendments thereto promulgated by the Commission are not required to be submitted to Congress for 180 days' review prior to their taking effect.

In connection with its ongoing review of the Guidelines Manual, the Commission continues to welcome comment on any aspect of the sentencing guidelines, policy statements, and official commentary. Comments should be sent to: United States Sentencing Commission, One Columbus Circle, N.E., Suite 2–500, Washington, DC 20002–8002, Attn: Office of Communications.

Authority: Section 217(a) of the Comprehensive Crime Control Act of 1984 (28 U.S.C. 994(a)).

Richard P. Conaboy,

Chairman.

Additional Revisions to the Guidelines Manual

1. The replacement guideline for § 2H1.1 (see 60 FR 25082 (1995)) is amended by deleting Application Note 1 of the Commentary as follows:

''1. 'Offense guideline applicable to any underlying offense' means the offense guideline applicable to any conduct established by the offense of conviction that constitutes an offense under federal, state, or local law (other than an offense that is itself covered under Chapter Two, Part H, Subpart 1).

In certain cases, conduct set forth in the count of conviction may constitute more than one underlying offense (e.g., two instances of assault, or one instance of assault and one instance of arson). In such cases, determine the number and nature of underlying offenses by applying the procedure set forth in Application Note 5 of § 1B1.2 (Applicable Guidelines). If the Chapter Two offense level for any of the underlying offenses under subsection (a)(1) is the same as, or greater than, the alternative base offense level under subsection (a)(2), (3), or (4), as applicable, use subsection (a)(1) and treat each underlying offense as if contained in a separate count of conviction. Otherwise, use subsection (a)(2), (3), or (4), as applicable, to determine the base offense level.'',

and inserting in lieu thereof:

''1. 'Offense guideline applicable to any underlying offense' means the offense guideline applicable to any conduct established by the offense of conviction that constitutes an offense under federal, state, or local law (other than an offense that is itself covered under Chapter Two, Part H, Subpart 1).

In certain cases, conduct set forth in the count of conviction may constitute more than one underlying offense (e.g., two instances of assault, or one instance of assault and one instance of arson). In such cases, use the following comparative procedure to determine the applicable base offense level: (i) determine the underlying offenses encompassed within the count of conviction as if the defendant had been charged with a conspiracy to commit multiple offenses. See Application Note 5 of § 1B1.2 (Applicable Guidelines); (ii) determine the Chapter Two offense level (i.e., the base offense level, specific offense characteristics, cross references, and special instructions) for each such underlying offense; and (iii) compare each of the Chapter Two offense levels determined above with the alternative base offense level under subsection (a)(2), (3), or (4). The determination of the applicable alternative base offense level is to be based on the entire conduct underlying the count of conviction (i.e., the conduct taken as a whole). Use the alternative base offense

level only if it is greater than each of the Chapter Two offense levels determined above. Otherwise, use the Chapter Two offense levels for each of the underlying offenses (with each underlying offense treated as if contained in a separate count of conviction). Then apply subsection (b) to the alternative base offense level, or to the Chapter Two offense levels for each of the underlying offenses, as appropriate.''.

This amendment clarifies the operation of this guideline in cases involving multiple underlying offenses.

2. Section 5G1.3 is amended by deleting:

''(c) (Policy Statement) In any other case, the sentence for the instant offense shall be imposed to run consecutively to the prior undischarged term of imprisonment to the extent necessary to achieve a reasonable incremental punishment for the instant offense.'',

and inserting in lieu thereof:

''(c) (Policy Statement) In any other case, the sentence for the instant offense may be imposed to run concurrently, partially concurrently, or consecutively to the prior undischarged term of imprisonment to achieve a reasonable punishment for the instant offense.''.

The Commentary to § 5G1.3 captioned ''Application Notes'' is amended in Note 1 by inserting ''Consecutive sentence—subsection (a) cases.'' immediately before ''Under''; and by deleting ''where the instant offense (or any part thereof)'' and inserting in lieu thereof ''when the instant offense''.

The Commentary to § 5G1.3 captioned ''Application Notes'' is amended by deleting:

''2. Subsection (b) (which may apply only if subsection (a) does not apply), addresses cases in which the conduct resulting in the undischarged term of imprisonment has been fully taken into account under § 1B1.3 (Relevant Conduct) in determining the offense level for the instant offense. This can occur, for example, where a defendant is prosecuted in both federal and state court, or in two or more federal jurisdictions, for the same criminal conduct or for different criminal transactions that were part of the same course of conduct.

When a sentence is imposed pursuant to subsection (b), the court should adjust for any term of imprisonment already served as a result of the conduct taken into account in determining the sentence for the instant offense. Example: The defendant has been convicted of a federal offense charging the sale of 30 grams of cocaine. Under § 1B1.3 (Relevant Conduct), the defendant is held accountable for the sale of an additional 15 grams of cocaine that is part of the same course of conduct for which the defendant has been convicted and sentenced in state court (the defendant received a nine-month sentence of imprisonment, of which he has served six months at the time of sentencing on the instant federal offense). The guideline range applicable to the defendant is 10–16 months (Chapter Two offense level of 14 for sale of 45 grams of cocaine; 2-level reduction for acceptance of responsibility; final offense level of 12; Criminal History Category I). The court determines that a sentence of 13 months provides the appropriate total punishment. Because the defendant has already served six months on the related state charge, a sentence of seven months, imposed to run concurrently with the remainder of the defendant's state sentence, achieves this result. For clarity, the court should note on the Judgment in a Criminal Case Order that the sentence imposed is not a departure from the guidelines because the defendant has been credited for guideline purposes under § 5G1.3(b) with six months served in state custody.

3. Where the defendant is subject to an undischarged term of imprisonment in circumstances other than those set forth in subsections (a) or (b), subsection (c) applies and the court shall impose a consecutive sentence to the extent necessary to fashion a sentence resulting in a reasonable incremental punishment for the multiple offenses. In some circumstances, such incremental punishment can be achieved by the imposition of a sentence that is concurrent with the remainder of the unexpired term of imprisonment. In such cases, a consecutive sentence is not required. To the extent practicable, the court should consider a reasonable incremental penalty to be a sentence for the instant offense that results in a combined sentence of imprisonment that approximates the total punishment that would have been imposed under § 5G1.2 (Sentencing on Multiple Counts of Conviction) had all of the offenses been federal offenses for which sentences were being imposed at the same time. It is recognized that this determination frequently will require an approximation. Where the defendant is serving a term of imprisonment for a state offense, the information available may permit only a rough estimate of the total punishment that would have been imposed under the guidelines. Where the offense resulting in the undischarged term of imprisonment is a federal offense for which a guideline determination has previously been made, the task will be somewhat more straightforward, although even in such cases a precise determination may not be possible.

It is not intended that the above methodology be applied in a manner that unduly complicates or prolongs the sentencing process. Additionally, this methodology does not, itself, require the court to depart from the guideline range established for the instant federal offense. Rather, this methodology is meant to assist the court in determining the appropriate sentence (e.g., the appropriate point within the applicable guideline range, whether to order the sentence to run concurrently or consecutively to the undischarged term of imprisonment, or whether a departure is warranted). Generally, the court may achieve an appropriate sentence through its determination of an appropriate point within the applicable guideline range for the instant federal offense, combined with its determination of whether that sentence will run concurrently or consecutively to the undischarged term of imprisonment.

Illustrations of the Application of Subsection (c):

(A) The guideline range applicable to the instant federal offense is 24–30 months. The court determines that a total punishment of 36 months' imprisonment would appropriately reflect the instant federal offense and the offense resulting in the undischarged term of imprisonment. The undischarged term of imprisonment is an indeterminate sentence of imprisonment with a 60-month maximum. At the time of sentencing on the instant federal offense, the defendant has served ten months on the undischarged term of imprisonment. In this case, a sentence of 26 months' imprisonment to be served concurrently with the remainder of the undischarged term of imprisonment would (1) be within the guideline range for the instant federal offense, and (2) achieve an appropriate total punishment (36 months).

(B) The applicable guideline range for the instant federal offense is 24–30 months. The court determines that a total punishment of 36 months' imprisonment would appropriately reflect the instant federal offense and the offense resulting in the undischarged term of imprisonment. The undischarged term of imprisonment is a six-month determinate sentence. At the time of sentencing on the instant federal offense, the defendant has served three months on the undischarged term of imprisonment. In this case, a sentence of 30 months' imprisonment to be served

consecutively to the undischarged term of imprisonment would (1) be within the guideline range for the instant federal offense, and (2) achieve an appropriate total punishment (36 months).

(C) The applicable guideline range for the instant federal offense is 24–30 months. The court determines that a total punishment of 60 months' imprisonment would appropriately reflect the instant federal offense and the offense resulting in the undischarged term of imprisonment. The undischarged term of imprisonment is a 12-month determinate sentence. In this case, a sentence of 30 months' imprisonment to be served consecutively to the undischarged term of imprisonment would be the greatest sentence imposable without departure for the instant federal offense.

(D) The applicable guideline range for the instant federal offense is 24–30 months. The court determines that a total punishment of 36 months' imprisonment would appropriately reflect the instant federal offense and the offense resulting in the undischarged term of imprisonment. The undischarged term of imprisonment is an indeterminate sentence with a 60-month maximum. At the time of sentencing on the instant federal offense, the defendant has served 22 months on the undischarged term of imprisonment. In this case, a sentence of 24 months to be served concurrently with the remainder of the undischarged term of imprisonment would be the lowest sentence imposable without departure for the instant federal offense.

4. If the defendant was on federal or state probation, parole, or supervised release at the time of the instant offense, and has had such probation, parole, or supervised release revoked, the sentence for the instant offense should be imposed to be served consecutively to the term imposed for the violation of probation, parole, or supervised release in order to provide an incremental penalty for the violation of probation, parole, or supervised release (in accord with the policy expressed in §§ 7B1.3 and 7B1.4)'',

and inserting in lieu thereof:

''2. Adjusted concurrent sentence—subsection (b) cases. When a sentence is imposed pursuant to subsection (b), the court should adjust the sentence for any period of imprisonment already served as a result of the conduct taken into account in determining the guideline range for the instant offense if the court determines that period of imprisonment will not be credited to the federal sentence by the Bureau of Prisons. Example: The defendant is convicted of a federal offense charging the sale of 30 grams of cocaine. Under § 1B1.3 (Relevant Conduct), the defendant is held accountable for the sale of an additional 15 grams of cocaine, an offense for which the defendant has been convicted and sentenced in state court. The defendant received a nine-month sentence of imprisonment for the state offense and has served six months on that sentence at the time of sentencing on the instant federal offense. The guideline range applicable to the defendant is 10–16 months (Chapter Two offense level of 14 for sale of 45 grams of cocaine; 2-level reduction for acceptance of responsibility; final offense level of 12; Criminal History Category I). The court determines that a sentence of 13 months provides the appropriate total punishment. Because the defendant has already served six months on the related state charge as of the date of sentencing on the instant federal offense, a sentence of seven months, imposed to run concurrently with the three months remaining on the defendant's State sentence, achieves this result. For clarity, the court should note on the Judgment in a Criminal Case Order that the sentence imposed is not a departure from the guideline range because the defendant has been credited for guideline purposes under § 5G1.3(b) with six months served in state custody that will not be credited to the federal sentence under 18 U.S.C. § 3585(b).

3. Concurrent or consecutive sentence—subsection (c) cases. In circumstances not covered under subsection (a) or (b), subsection (c) applies. Under this subsection, the court may impose a sentence concurrently, partially concurrently, or consecutively. To achieve a reasonable punishment and avoid unwarranted disparity, the court should consider the factors set forth in 18 U.S.C. § 3584 (referencing 18 U.S.C. § 3553(a)) and be cognizant of:

(a) The type (e.g., determinate, indeterminate/parolable) and length of the prior undischarged sentence;

(b) The time served on the undischarged sentence and the time likely to be served before release;

(c) The fact that the prior undischarged sentence may have been imposed in state court rather than federal court, or at a different time before the same or different federal court; and

(d) Any other circumstance relevant to the determination of an appropriate sentence for the instant offense.

4. Partially concurrent sentence. In some cases under subsection (c), a partially concurrent sentence may achieve most appropriately the desired result. To impose a partially concurrent sentence, the court may provide in the Judgment in a Criminal Case Order that the sentence for the instant offense shall commence (A) when the defendant is released from the prior undischarged sentence, or (B) on a specified date, whichever is earlier. This order provides for a fully consecutive sentence if the defendant is released on the undischarged term of imprisonment on or before the date specified in the order, and a partially concurrent sentence if the defendant is not released on the undischarged term of imprisonment by that date.

5. Complex situations. Occasionally, the court may be faced with a complex case in which a defendant may be subject to multiple undischarged terms of imprisonment that seemingly call for the application of different rules. In such a case, the court may exercise its discretion in accordance with subsection (c) to fashion a sentence of appropriate length and structure it to run in any appropriate manner to achieve a reasonable punishment for the instant offense.

6. Revocations. If the defendant was on federal or state probation, parole, or supervised release at the time of the instant offense, and has had such probation, parole, or supervised release revoked, the sentence for the instant offense should be imposed to run consecutively to the term imposed for the violation of probation, parole, or supervised release in order to provide an incremental penalty for the violation of probation, parole, or supervised release. See § 7B1.3 (Revocation of Probation or Supervised Release) (setting forth a policy that any imprisonment penalty imposed for violating probation or supervised release should be consecutive to any sentence of imprisonment being served or subsequently imposed).''.

The Commentary to § 5G1.3 captioned ''Background'' is amended by deleting:

''This guideline provides direction to the court when a term of imprisonment is imposed on a defendant who is already subject to an undischarged term of imprisonment. See 18 U.S.C. § 3584. Except in the cases in which subsection (a) applies, this guideline is intended to result in an appropriate incremental punishment for the instant offense that most nearly approximates the sentence that would have been imposed had all the sentences been imposed at the same time.'',

and inserting in lieu thereof:

''In a case in which a defendant is subject to an undischarged sentence of imprisonment, the court generally has

authority to impose an imprisonment sentence on the current offense to run concurrently with or consecutively to the prior undischarged term. 18 U.S.C. § 3584(a). Exercise of that authority, however, is predicated on the court's consideration of the factors listed in 18 U.S.C. § 3553(a), including any applicable guidelines or policy statements issued by the Sentencing Commission.''.

This is a two-part amendment. First, this amendment clarifies the application of subsections (a) and (b) of this guideline. Second, in circumstances covered by the policy statement in subsection (c), this amendment affords the sentencing court additional flexibility to impose, as appropriate, a consecutive, concurrent, or partially concurrent sentence in order to achieve a reasonable punishment for the instant offense.

Authority to impose a partially concurrent sentence is found in the Sentencing Reform Act of 1984 (SRA). In enacting 28 U.S.C. § 994(l)(1), Congress contemplated that 18 U.S.C. § 3584 would allow imposition of partially concurrent sentences, in addition to fully concurrent or consecutive sentences. (''It is the Committee's intent that, to the extent feasible, the sentences for each of the multiple offenses be determined separately and the degree to which they should overlap be specified.'') S. Rep. No. 225, 98th Cong., 1st Sess. 177 (1983). Without the ability to fashion such a sentence, the instruction to the Commission in 28 U.S.C. § 994(l)(1) to provide a reasonable incremental penalty for additional offenses could not be implemented successfully in certain situations, particularly when the defendant's release date on an undischarged term of imprisonment cannot be determined readily in advance (e.g., in the case of an indeterminate sentence subject to parole release).

Prior to the SRA, only the Bureau of Prisons had the authority to commence a federal sentence prior to the defendant's release from imprisonment on a state sentence. See, e.g., United States v. Segal, 549 F.2d 1293, 1301 (9th Cir. 1977). SRA legislative history pertaining to 18 U.S.C. § 3584 indicates that this new section was intended to authorize imposition of a federal prison sentence to run concurrently or consecutively to a state prison sentence. ''This * * * [section 3584] changes the law that now applies to a person sentenced for a Federal offense who is already serving a term of imprisonment for a state offense.'' S. Rep. No. 225, supra at 127. ''Thus, it is intended that this provision be construed contrary to the holding in United States v. Segal. * * *'' Id. (at 127 n.314). See United States v. Hardesty, 958 F.2d 910, 914 (stating that, under section 3584, ''Congress has expressly granted federal judges the discretion to impose a sentence concurrent to a state prison term''), aff'd en banc, 977 F.2d 1347 (9th Cir. 1992).

3. Section 1B1.10(c) is amended by deleting ''and 506'' and inserting in lieu thereof ''505, 506, and 516''.

The Commentary to § 1B1.10 captioned ''Background'' is amended in the fourth paragraph by inserting an asterisk immediately following ''old guidelines''; and by inserting, as a note, following the Background Commentary:

''*So in original. Probably should be 'to fall above the amended guidelines'.''.

This amendment expands the listing in § 1B1.10(d) to implement the directive in 28 U.S.C. § 994(u) in respect to guideline amendments that may be considered for retroactive application. The amendment also makes an editorial addition to the Commentary to § 1B1.10 (Retroactivity of Amended Guideline Range).

In addition, the Commission has updated the ''Historical Notes'' following the amended guideline sections, and has made a number of additional minor conforming and editorial revisions to improve the internal consistency and appearance of the Manual.

[FR Doc. 95–29514 Filed 12–4–95; 8:45 am]
BILLING CODE 2210–40–P

Sunshine Act Meetings

Federal Register

Vol. 60, No. 233

Tuesday, December 5, 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 JUSTICE

UNITED STATES PAROLE COMMISSION

Public Announcement

Pursuant To The Government In the Sunshine Act

(Public Law 94–409) [5 U.S.C. Section 552b]

DATE AND TIME: 9:30 a.m., Tuesday, December 5, 1995, by telephone conference call.

PLACE: 5550 Friendship Boulevard, Suite 400, Chevy Chase, Maryland 20815.

STATUS: Closed—Meeting.

MATTERS CONSIDERED: The following matter will be considered during the closed portion of the Commission's Business Meeting:

Appeals to the Commission involving approximately 6 cases decided by the National Commissioners pursuant to a reference under 28 C.F.R. 2.27. These cases were originally heard by an examiner panel wherein inmates of Federal prisons have applied for parole or are contesting revocation of parole or mandatory release.

AGENCY CONTACT: Tom Kowalski, Case Operations, United States Parole Commission, (301) 492–5962.

Dated: November 30, 1995.

Michael A. Stover,

General Counsel, U.S. Parole Commission.

[FR Doc. 95–29621 Filed 11–30–95; 4:15 pm]

BILLING CODE 4410–01–M

DEPARTMENT OF JUSTICE

UNITED STATES PAROLE COMMISSION

Public Announcement

Pursuant To The Government In the Sunshine Act

(Public Law 94–409) [5 U.S.C. Section 552b]

TIME AND DATE: 1:30 p.m., Tuesday, December 5, 1995, by telephone conference call.

PLACE: 5550 Friendship Boulevard, Suite 400, Chevy Chase, Maryland 20815.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the open Parole Commission meeting:

1. Approval of minutes of previous Commission meeting.
2. Reports from the Chairman, Commissioners, Legal, Chief of Staff, Case Operations, and Administrative Sections.
3. Revisiting the twelve-month custody reduction program under 28 C.F.R. § 2.60.
4. Discussion of the application of the Ninth Circuit policy on street time forfeiture at FTC, Oklahoma City, Oklahoma.

AGENCY CONTACT: Tom Kowalski, Case Operations, United States Parole Commission, (301) 492–5962.

Dated: November 30, 1995.

Michael A. Stover,

General Counsel, U.S. Parole Commission.

[FR Doc. 95–29622 Filed 11–30–95; 4:25 pm]

BILLING CODE 4410–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of December 4, 11, 18, and 25, 1995.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public.

MATTERS TO BE CONSIDERED:

Week of December 4

Friday, December 8

1:30 p.m.
Meeting with Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting)
(Contact: John Larkins, 301–415–7360)

Week of December 11—Tentative

Tuesday, December 12

2:00 p.m.
Briefing on Materials Events Data Base (Public Meeting)
(Contact: Samuel Pettijohn, 301–415–6822)

Thursday, December 14

10:00 a.m.
Briefing on Industry Restructuring and Deregulation (Pubic Meeting)
2:00 p.m.
Briefing on EEO Program (Public Meeting)
(Contact: Vandy Miller, 301–415–7380)

Week of December 18—Tentative

Tuesday, December 19

10:00 a.m.
Briefing on Mechanism for Addressing Generic Safety Issues (Public Meeting)
(Contact: Denny Crutchfield, 301–415–1199)
2:00 p.m.
Briefing on Generic Implications of Recent Events Involving Ingestion of Radioactive Material at Research Facilities (Public Meeting)

Week of December 25—Tentative

There are no meeting schedule for the Week of December 25.

Note: The Nuclear Regulatory Commission is operating under a delegation of authority to Chairman Shirley Ann Jackson, because with three vacancies on the Commission, it is temporarily without a quorum. As a legal matter, therefore, the Sunshine Act does not apply; but in the interests of openness and public accountability, the Commission will conduct business as though the Sunshine Act were applicable.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 415–1292.

CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415–1661.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like4 to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1963).

In addition, distribution of this meeting notice over the internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to alb@nrc.gov or gkt@nrc.gov.

Dated: November 30, 1995.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 95–29659 Filed 12–1–95; 12:27 pm]

BILLING CODE 7590–01–M

ASSASSINATION RECORDS REVIEW BOARD

DATES: December 12–13, 1995

PLACE: ARRB, 600 E Street, NW, Washington, DC.

STATUS: Closed.

MATTERS TO BE CONSIDERED: December 12–13, 9:00 a.m.

1. Review and Accept Minutes of Closed Meetings.
2. Review of Assassination Records.
3. Other Business.

CONTACT PERSON FOR MORE INFORMATION: Thomas Samoluk, Associate Director for Communications, 600 E Street, NW, Second Floor, Washington, DC 20530.

Telephone: (202) 724–0088; Fax: (202) 724–0457.

David G. Marwell,

Executive Director.

[FR Doc. 95–29684 Filed 12–1–95; 12:27 pm]

BILLING CODE 6118–01–P

INTER-AMERICAN FOUNDATION BOARD MEETING

TIME AND DATE: December 15, 1995, 10:00 a.m.

PLACE: 901 N. Stuart Street, Tenth Floor, Arlington, Virginia 22203.

STATUS: Closed session as provided in 22 CFR Part 1004.4(b).

MATTERS TO BE CONSIDERED: Executive Session on Personnel Implications in Fiscal Year 1996 (closed session).

CONTACT PERSON FOR MORE INFORMATION: Evan M. Koster, Assistant Secretary to the Board of Directors, (703) 841–3812.

Dated: November 1, 1995.

Evan M. Koster,

Acting Sunshine Act Officer.

[FR Doc. 95–29707 Filed 12–1–95; 1:25 pm]

BILLING CODE 7023–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, December 11, 1995.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 2lst Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: December 1, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–29765 Filed 12–1–95; 3:22 pm]

BILLING CODE 6210–01–P

Corrections

Federal Register
Vol. 60, No. 233
Tuesday, December 5, 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.

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-843]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China

Correction

In notice document 95–27832, beginning on page 56567, in the issue of Thursday, November 9, 1995, make the following correction:

On page 56574, in the third column, in the table, in the second column, the PRC-wide rate, ''61.7'' should read ''61.67.''

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Center for Disease Control and Prevention

Fees for Sanitation Inspections of Cruise Ships

Correction

In notice document 95–28164 beginning on page 57433 in the issue of Wednesday, November 15, 1995, make the following correction:

On page 57434, in the first column, in Appendix A, in the tables, in the entries for Extra large, in the second column, ''(≤60,000)'' should read ''(>60,000)'' each time it appears.

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release No. 34-35833; File No. S7-40-92]

Rules of Practice

Correction

In rule document 95–14750 beginning on page 32738, in the issue of Friday, June 23, 1995, make the following correction:

§ 200.43 [Corrected]

On page 32795, in the second column, in amendatory instruction 21, ''Section 200.43'' should read ''Section 200.43(a)(1)(iii)''.

BILLING CODE 1505–01–D

federal register

Tuesday
December 5, 1995

Part II

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 1280

Sheep and Wool Promotion, Research, Education, and Information Order; Proposed Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1280

[No. LS–94–015]

Sheep and Wool Promotion, Research, Education, and Information Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Sheep Promotion, Research, and Information Act of 1994 (Act), authorized the establishment of a national, industry-funded and -operated sheep and wool promotion, research, education, and information program. On January 4, 1995, the Agricultural Marketing Service (AMS) published in the Federal Register an invitation to submit proposals for a sheep and wool promotion, research, education, and information order (Order). AMS received an entire industry proposal as well as four other partial proposals, all of which were published for public comment in the June 2, 1995, issue of the Federal Register. A public meeting was held on June 26, 1995, at the Department of Agriculture (Department) to discuss the proposed Order and to solicit comments on the proposal. After evaluating the written comments submitted, the transcript from the public meeting, and other available material, an Order is issued pursuant to the provisions of the Act and will be subject to a referendum.

Before the Order is made effective, a referendum must be conducted among sheep producers, sheep feeders, and importers of sheep and sheep products, except importers of raw wool. A final referendum rule will be published separately in the Federal Register. If sheep producers, feeders, and importers voting in the referendum approve the proposed Order, all producers, feeders, and importers would be required to pay assessments, which would be used in a national program of sheep and wool promotion, research, education, consumer, industry, and producer information.

The certification and nomination procedures for the establishment of the National Sheep Promotion, Research, and Information Board (Board) as well as other implementing regulations will be published separately in the Federal Register.

ADDRESSES: Ralph L. Tapp, Chief; Marketing Programs Branch, Room 2606–S; Livestock and Seed Division, AMS–USDA; P.O. Box 96456; Washington, D.C. 20090–6456.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief, Marketing Programs Branch, 202/720–1115.

SUPPLEMENTARY INFORMATION: Prior documents: Notice-Invitation to submit proposals published January 4, 1995 (60 FR 381); Proposed Rule-Sheep and Wool Promotion, Research, Education, and Information Order published June 2, 1995 (60 FR 28747); Proposed Rule: Procedures for Conduct of Referendum published August 8, 1995 (60 FR 40313); Notice-Certification of Organization for Eligibility to Make Nominations to the Proposed Board published August 8, 1995 (60 FR 40343); Proposed Rule-Rules and Regulations published October 3, 1995 (60 FR 51737).

Regulatory Impact Analysis

Executive Orders 12866 and 12778 and the Regulatory Flexibility Act

This proposed rule has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB).

This proposed rule was reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have a retroactive effect. This 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 any person subject to the 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 the Order or an exemption from certain provisions or obligations of the Order. The petitioner would have the opportunity for a hearing on the petition. Thereafter the Secretary would issue a decision on the petition. The Act provides that the district court of the United States in the district in which the petitioner resides or carries on business has jurisdiction to review the Secretary's decision, if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of the decision. The petitioner must exhaust his or her administrative remedies before filing such a complaint in the district court.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA)(5 U.S.C. 601 *et seq.*), the Administrator of AMS has considered the economic impact of this proposed action on small entities.

The purpose of RFA is to fit regulatory actions to the scale of the businesses that are subject to such actions so that small businesses would not be unduly or disproportionately burdened.

According to the January 27, 1995, issue of ''Sheep and Goats,'' published by the Department's National Agricultural Statistics Service, there are approximately 87,350 sheep operations in the United States, nearly all of which would be classified as small businesses under the criteria established by the Small Business Administration (13 CFR 121.601). Additionally, there are approximately 9,000 importers of sheep and sheep products, nearly all of which would be classified as small businesses.

This proposed Order would require each person who makes payment to a sheep producer, feeder, or handler of sheep or sheep products to be a collecting person, and to collect an assessment from that sheep producer, feeder, or handler of sheep or sheep products. Any person who buys domestic live sheep or greasy wool for processing must also collect the assessment and remit it to the Board. Each person who processes or causes to be processed sheep or sheep products of that person's own production and who markets the processed products would pay an assessment and remit the assessment to the Board. Any person who exports live sheep or greasy wool would be required to remit an assessment to the Board. Finally, each person who imports into the United States sheep, sheep products, wool, or wool products, other than raw wool, would pay an assessment. The U.S. Customs Service (Customs) would collect the assessments on imported sheep and sheep products (except raw wool) and forward them to AMS for disbursement to the Board.

The rate of assessment on domestic sheep producers, feeders, and exporters of live sheep and greasy wool would be 1-cent-per-pound on live sheep sold and 2-cents-per-pound on greasy wool sold. Importers would be assessed 1-cent-per-pound on live sheep and the equivalent of 1-cent-per-pound of live sheep for sheep products and 2-cents-per-pound of degreased wool or the equivalent of degreased wool for wool and wool products. Imported raw wool would be exempt from assessments. Each person who processes or causes to be processed sheep or sheep products of that person's own production and markets the processed products would be assessed the equivalent of 1-cent-per-pound of live sheep sold and 2-cents-per-pound of greasy wool sold. All assessment rates

may be adjusted in accordance with the applicable provisions of the Act.

Paperwork Reduction

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the information collection requirements contained herein were submitted to OMB for approval and assigned OMB No. 0581–0093. This action sets forth the provisions for establishing a nationwide, industry-funded sheep and wool promotion, research, education, and information program. The information collection requirements as required by this action and necessary for the implementation of this Order include:

(1) A report by each collecting person required to remit assessments to the Board for live sheep or greasy wool purchased from the producer, feeder, or handler of sheep or sheep products; by each person marketing sheep or sheep products of that person's own production; and by each exporter of sheep or greasy wool. The estimated number of respondents for this report is 700. Each respondent would submit one report per month, unless otherwise prescribed by the Board, and the estimated average reporting burden is 0.5 hours per response;

(2) A requirement to maintain sufficient records to verify reports submitted under the Order. The estimated number of recordkeepers needed to comply with this requirement is 700, each of whom would have an estimated annual reporting burden of 0.5 hours;

(3) An application for certification of organization, to be completed by eligible organizations that request certification in order to be eligible to nominate producers, feeders, and importers to the Board. The estimated number of respondents is 70 (with each submitting one response), and the estimated average reporting burden is 0.5 hour per response;

(4) A nomination form by which certified organizations will nominate producers, feeders, and importers for membership on the Board. The estimated number of respondents is 60 for the first year of the Order, and 20 each year thereafter. Each respondent would submit one response per year, and the estimated average reporting burden is 0.5 hour per response; and

(5) An advisory committee membership background information form, to be completed by candidates nominated by certified organizations for appointment to the Board. The estimated number of respondents is 240 during the first year of the Order, and 80 each year thereafter. Each respondent would submit one response per year, and the estimated average reporting burden is 0.5 hour per response.

Background

The Act (7 U.S.C. 7101–7111), approved October 22, 1994, authorizes the Secretary to establish a national sheep and wool promotion, research, education, and information program. The program would be funded by a mandatory assessment on domestic sheep producers, sheep feeders, and exporters of live sheep and greasy wool of 1-cent-per-pound on live sheep sold and 2-cents- per-pound on greasy wool sold. Importers would be assessed 1-cent-per-pound on live sheep imported and the equivalent of 1-cent-per-pound of live sheep for sheep products imported and 2-cents-per-pound of degreased wool or the equivalent of degreased wool for wool and wool products imported. Imported raw wool would be exempt from assessments. Each person who processes or causes to be processed sheep or sheep products of that person's own production, and who markets the processed products, would be assessed the equivalent of 1-cent-per-pound of live sheep sold and 2-cents-per-pound of greasy wool sold. All assessment rates may be adjusted in accordance with applicable provisions of the Act.

The Act provides for the submission of proposals for a Sheep and Wool Promotion, Research, Education, and Information Order (Order). The Secretary may propose the issuance of an Order, or an association of sheep producers may submit and request the issuance of an Order. The Act provides that when the Secretary decides to propose an Order or receives a request and proposal for an Order, the Secretary shall publish the proposed Order and give due notice and opportunity for public comment. As established by the Act, the Order provides for the establishment of a Board comprised of 85 sheep producers, 10 sheep feeders, and 25 importers of sheep and sheep products. The Act further provides that any State with one member may have an alternate member.

The Department issued an invitation to submit proposals for an initial Order in the January 4, 1995, (60 FR 381) issue of the Federal Register. In response to that invitation, the American Sheep Industry Association (ASI), the sheep industry's producer member organization, submitted a proposed Order. In addition, the New Zealand Meat Producers Board, the Australian Meat and Live-stock Corporation, the Wools of New Zealand, the National Lamb Feeders Association, and the Lamb Committee of the National Livestock and Meat Board each submitted a partial proposal.

The Department also received letters from other interested parties. The Department did not consider these letters to be proposals because they primarily addressed information related to provisions of the Act itself. Copies of these letters and the comments received in response to the proposed Order, are available for public inspection.

The Department published ASI's proposal as Proposal I, the New Zealand Meat Producers Board's proposal as Proposal II, the Australian Meat and Live-stock Corporation's proposal as Proposal III, the Wools of New Zealand's proposal as Proposal IV, and the National Lamb Feeders Association's proposal as Proposal V. The Department modified these proposals slightly in order to (1) make them consistent with the Act and other similar national research and promotion programs supervised by the Department, (2) simplify the language and format of some provisions, and (3) add certain sections necessary for the proper administration of the Order by the Department. The Department rejected the proposal submitted by the Lamb Committee of the National Livestock and Meat Board and discussed that proposal in the proposed rule. Each proposal was published in the June 2, 1995, issue of the Federal Register (60 FR 28747). Interested persons were invited to submit comments on the proposals until July 17, 1995.

The Department received 137 written comments concerning the proposed Order from individual sheep producers, sheep feeders, importers of sheep and sheep products, State sheep producer organizations, general farm organizations, universities, and other interested parties. Ninety-three comments were filed on time and forty-four comments were filed after the comment period closed. The late comments generally expressed the same views as the timely comments that are discussed herein, and the commenters generally supported the primary proposed Order with certain qualifications.

The substantive changes suggested by commenters are discussed below, together with a description of changes made by the Department upon review of the proposed Order and the comments. The Department has also made other minor changes of a nonsubstantial nature for clarity and accuracy.

Of the ninety-three timely comments, sixty-two comments supported the proposed Order as published or expressed support with some

modifications or clarifications. Six comments opposed the entire Order or portions thereof. The remaining comments neither supported nor opposed the proposal in its entirety, but rather addressed specific sections in the proposed Order or made general comments relating to the Act or the Order. Forty-two comments did not express opposition to Proposal II which would provide for 6 of the 25 importer Board members to represent importers of sheep meat and that 1 member of the Executive Committee be an importer of sheep meat and that organizations that represent importers of sheep or sheep products may make nominations for representation of the importer unit. Two comments opposed Proposal II. Fifty-nine comments opposed Proposal III which would prohibit the use of assessments for specific country of origin promotion programs and two comments supported Proposal III. Forty-eight comments opposed Proposal IV which would provide that funds generated under the Act be used to promote (1) a wide range of wool products in the United States, including interior textile product; e.g., carpet rugs, and upholstery; and (2) wool generically rather than to promote wool specifically grown in the United States and four comments supported Proposal IV. Finally, fifty-two comments supported Proposal V, which would provide that domestic assessments could be used to promote ''Fresh American Lamb.'' The discussions are organized by headings of the proposed Order's provisions.

Definitions

Two commenters recommended that we review all of the terminology in § 1280.101 through § 1280.136 in the proposed Order and clarify any terms that are ambiguous, in order to ensure that the definitions in the proposed Order generally conform with or mirror those in the Act. We agree, and reviewed the definitions and determined that the definitions in the proposed Order either mirror the definitions in the Act or conform to the Act's intent.

Section 1280.108 Degreased Wool

One commenter stated that the definition of ''degreased wool'' has created some confusion because the term for ''degreased wool'' used both in the United States and abroad, is ''scoured wool.'' The commenter recommended that the term ''degreased wool'' be changed to ''scoured wool.'' We have not adopted this recommendation because the Act defines the term ''degreased wool'' and we believe that the proposed Order's definition should mirror the Act's definition. Accordingly, this suggestion is not adopted.

Section 1280.113 Feeder

Five commenters opposed the definition of ''feeder'' in the proposed Order. One commenter suggested that a ''feeder'' should be defined as ''a person that is the second owner of the lamb'' because the definition in the Act and in the proposed Order was ambiguous and could allow a person who was primarily a producer to occupy a feeder seat on the Board but prohibit a person who is primarily a feeder to occupy a producer seat on the Board. The same commenter also stated that according to the definition in the proposed Order many producers could be feeders, but few feeders could be producers. Another commenter suggested that ''feeder'' should be defined as ''a producer who purchases more than 500 head of lambs a year, to be finished for the commercial market.'' The commenter believes that the intent of the Act was not to include 4–H club members who show market sheep or other individuals who sell only a few market lambs in the definition of ''feeder''. Another commenter suggested that ''feeder'' should be defined as ''any person other than a producer who purchases lambs to be finished for the commercial market.'' Another commenter suggested that a ''feeder'' should be defined as one whose main source of income (over 50 percent) comes from lambs purchased for the purpose of feeding to market weight. Another commenter opposed the definition of ''feeder'' but did not provide an alternate definition. The Act itself defines ''feeder'' as any person who feeds lambs until the lambs reach slaughter weight. The Department finds that the definition in the proposed Order should mirror that found in the Act. Accordingly, we have not adopted any of these suggestions.

Section 1280.122 Producer

Five commenters opposed the definition of ''producer'' in the proposed Order. One commenter suggested that ''producer'' be defined as any person involved in certain industry segments * * * to include but not be limited to * * * a ''commercial'' ewe flock, purebred operation, speciality lamb and/or wool market segment, 4–H member or youth, because that definition is more representative of the producer segment of the sheep industry. Another commenter suggested that ''producer'' be defined as any producer who markets less than 500 purchased lambs per year. Another commenter suggested that ''producer'' be defined as one who breeds sheep for the production of lamb and wool. Three other commenters opposed the definition of ''producer'' but did not provide an alternative definition. The Act defines ''producer'' as any person, other than a feeder, who owns or acquires ownership of sheep. The Department finds that the definition in the proposed Order should mirror that found in the Act. Accordingly, we have not adopted these suggestions.

One commenter suggested that the definitions of ''feeder,'' ''importer'' and ''producer'' include a minimum age restriction and thus require an individual to be at least 18 years of age to ensure that those eligible to vote in the referendum are actually engaged in the commercial feeding, importation or production of sheep and sheep products. The Act does not specify any age limit or restriction as an eligibility requirement, and there are no age limits or restrictions on persons who are required to pay assessments. The Department believes that Congress intended that each person who is subject to the assessment should be entitled to vote. Accordingly, we have not adopted this suggestion.

Section 1280.126 Qualified State Sheep Board

One commenter opposed the definition of ''Qualified State Sheep Board (QSSB)'' because § 1280.126 of the proposed Order was inconsistent with § 2(5), ''Findings and Declaration Policy,'' of the Act, which states that existing State organizations which conduct sheep and sheep product promotion, research, industry, and consumer education programs that are invaluable to the efforts of promoting the consumption of sheep and sheep products. The commenter further believes that the definition of ''QSSB'' would allow any private trade association to be recognized as a ''QSSB,'' because they are entities organized and operating within the State. Additionally, the commenter states that § 1280.126 in the proposed Order defines QSSB as a sheep and wool promotion entity but also appears to include entities that conduct promotion, research or consumer information programs with respect to sheep or wool or both. Finally, the same commenter suggested that § 1280.126 in the proposed Order be amended to include the following subsection ''(d)'': ''(d) * * * has agreed to maintain books and records as specified in regulations approved by the Secretary, to be subject to audit by or at the direction of the Secretary, to abide by all terms of the Act and the Order and to immediately

suspend any and all activities funded by assessments collected pursuant to the Act and Order upon receipt of such a request from the Secretary.'' The Department believes that the Board would have the authority to certify a ''QSSB'' in each State. Furthermore, the Department believes that the Board should have the latitude to establish requirements, subject to Departmental approval, to ensure that funds expended by ''QSSB's'' are spent in accordance with the Act and the Order. The Act defines a ''QSSB'', as a sheep and wool promotion entity that is authorized by State statute or organized and operating within a State, receives voluntary contributions or dues and conducts promotion, research, or consumer information programs with respect to sheep or wool, or both, and is recognized by the Board as the sheep and wool promotion entity within the State; except that not more than one QSSB shall exist in any State at any one time. Therefore, we believe that the definition in the proposed Order should mirror that found in the Act. Accordingly, we have not adopted these suggestions.

Section 1280.127 Raw Wool

Six commenters suggested that the definition of ''raw wool'' should be expanded to include wooltop, noils of wool and wool waste so that the definition is both clear and consistent with the North American Free Trade Agreement ''Yarn Forward'' rule of origin for wool and other textile imports. The Department has reviewed the definition of ''raw wool,'' and believes that Congress intended to assess processed sheep and sheep products but not raw wool. The Act defines ''raw wool'' as greasy wool, pulled wool, degreased wool, or carbonized wool. Furthermore, the Department finds that wooltop, noils of wool, and wool waste result from the processing of raw wool as defined in the Act and we believe that Congress intended that all processed products would be subject to the assessment. Therefore, to expand the definition would not be consistent with the intent of the Act. We have determined that the definition in the proposed Order mirrors that found in the Act. Accordingly, we have not adopted this suggestion.

National Sheep Promotion, Research, and Information Board

Section 1280.201 Establishment and Membership of the Board

Eighteen commenters opposed one or more aspects of the ''Establishment and Membership of the Board'' portion of the proposed Order. In general, the commenters felt that (1) the Board was too large and cumbersome for the sheep industry, (2) the Board should realign its membership on a 3-year basis based on actual collections from each industry segment, (3) the Board should include a packer/breaker/retailer member because including representatives of all or some of these entities would enhance communication and lead to greater promotional efficiency and cooperation, (4) the Board is not fairly representative of producer, feeder and importer groups based on total assessment contributions, and (5) a certain number of seats on the Board should be held by each member category—sheep producers, sheep feeders and importers of sheep and sheep products—based on total assessments collected from these groups.

The Act provides for the establishment and membership of the Board, including the number of members from each industry segment to be represented on the Board. The Act does not authorize the Board's membership to (1) be adjusted on a 3-year basis, (2) include a packer/breaker/retailer seat or (3) be based on total contributions from each industry segment. Accordingly, we have not adopted any of these suggestions.

One commenter suggested amending § 1280.201 to include the following subsection: ''(e) in accordance with regulations approved by the Secretary, at least every 3 years and not more than every 2 years, the Board shall review the relative investments made by producers, feeders, and importers through payment of assessments and, if warranted, shall reapportion representation on the Board in order to best reflect the current state of the sheep and sheep products industry and ensure equitable representation in relation to respective groups total assessments.'' The Act authorizes the establishment of a 120-member Board comprised of 85 producers, 10 feeders and 25 importers. The Act does not authorize reapportionment of the Board for any reason. Accordingly, we have not adopted this suggestion. The same commenter also suggested amending § 1280.201 to include a subsection ''(f)'' to read: ''(f) a quorum of the Board shall consist of the producer representatives, importer representatives and feeder representatives or their respective alternates and a majority vote of representatives at a meeting in which a quorum is present shall constitute an act on the Board.'' The Department has determined that the Board should have the latitude to determine what constitutes a quorum of the Board in developing its operating principles and procedures. Accordingly, this suggestion is not adopted.

One commenter suggested that the Board be selected in a manner similar to that used by the Consolidated Farm Service Agency for county and State committee elections. The Act requires that the Secretary appoint the Board from nominations submitted by certified organizations. Accordingly, we have not adopted this suggestion.

Forty-two commenters indicated that they did not oppose proposal II, which proposed that 6 of the 25 importer members would represent importers of sheep meat, that 1 member of the Executive Committee be an importer of sheep meat, and that organizations representing importers of sheep or sheep products may make nominations for representation for the importer unit. Two commenters opposed Proposal II because allocating six seats for meat importers would give meat importers a greater number of seats than they would have if representation were based on contributions to the annual revenue. Additionally, commenters suggested that § 1280.201(c) of the proposed Order be amended to read as follows: ''The importer positions shall be allocated proportionally to importers of wool products, sheep meat, sheep, and sheep products according to the relative contributions to checkoff revenues.'' The Act does not provide for a specified number of seats on the Board or the Executive Committee for each importer segment; i.e., sheep meat and wool. However, the Department has determined that the Secretary should have the latitude to appoint representatives to the Board in a manner that best reflects the interests of the various importer segments. Accordingly, we have not adopted these suggestions.

One commenter perceived that the proposed Order lacks any minimum qualifications for entities seeking recognition as Qualified State Sheep Boards and suggested that the Department compare § 1280.207 and § 1280.126. Additionally, the commenter indicated that the proposed Order appears to establish such standards for those organizations certified to nominate candidates for the Board, but not for those who handle the assessments collected under the program. The Department has reviewed these sections and determined that both are consistent with the intent of the Act. Thus, we have made no changes to this section in this proposed rule.

Section 1280.202 Nominations

Two commenters suggested that the industry representatives nominated to

the Board should be elected by the members of each industry segment because the Secretary is unfamiliar with the abilities of individuals in the various industries. The Department believes that the certification and nomination process would give the Secretary the opportunity to appoint members who best represent each industry segment because certified organizations comprised of members of those segments will submit nominations to the Board. Additionally, the Act requires the Secretary to appoint the Board. Accordingly, we have not adopted this suggestion.

One commenter stated that the Department had modified the language of its initial proposal concerning nomination of importers in a way that made it appear that importer representatives need not be actual importers. The commenter suggests that the term ''importer representatives'' be used rather than ''importer'' because the term ''importer representatives'' would be less restrictive and does not imply that the Board members must actually import wool products. The Department did not include this portion of the proposal as submitted. However, the Department has again reviewed the original language in the initial proposal and believes that its slight modification did not materially change the proposal's meaning. The Act requires the Secretary to appoint importers to seats established under the Act from nominations submitted by qualified organizations that represent importers. Furthermore, the Act defines ''importer'' as any person who imports sheep or sheep products into the United States and a ''person'' as any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity. Consequently, the Department believes that the Act intended that persons who import sheep and sheep products should be eligible for appointment to the Board. Accordingly, we have not adopted this suggestion.

One commenter opposed the inclusion of 25 importers on the Board because U.S. producers do not have the opportunity to influence policy in foreign countries. The Act provides that 25 importers of sheep and sheep products are to be represented on the Board. Accordingly, we have not adopted this suggestion.

Two commenters suggested that § 1280.202 of the proposed Order limits nominations to members of certified organizations because the definition of ''feeder'' and ''producer'' appears to allow a producer to qualify as a feeder but specifically prohibits feeders from qualifying as producers. In addition, the commenters believe that the definition of ''feeder'' and ''producer'' may also invite First Amendment challenges by individuals claiming to occupy, or to have an opportunity to occupy a feeder seat, but who are required to join a producer trade association and pay dues to such association to be eligible to be nominated to the Board. The Department carefully reviewed the Act, the proposed Order, and the nomination procedures to ensure that the nomination process would be conducted as provided for in the Act. The Act provides for certified producer organizations to submit only nominations from their membership for the unit in which the certified organization is located. There is no similar restriction on certified feeder and importer organizations. The Department finds no need to change the Order as a result of these comments.

One commenter suggested that the Secretary should not be authorized to appoint the Board. The Act specifically authorizes the Secretary to appoint the Board from nominations submitted by certified organizations. Accordingly, we have rejected this suggestion.

Section 1280.205 Method of Obtaining Nominations

One commenter suggested that § 1280.205(a) (1) and (2) in the proposed Order should provide that individuals as well as certified organizations be certified as eligible to submit nominations. The Act provides for all nominations to be made from certified producer, feeder and importer organizations. If no organization is certified for an industry segment or for a State in the case of producers, the proposed Order permits the Secretary to obtain nominees by other means. Accordingly, we have not adopted this suggestion. The commenter further suggested that § 1280.205(2)(C) in the proposed Order be amended to read as follows: ''The organization has a primary and overriding interest in representing the feeder or importer segment of the sheep industry as opposed to some other aspect of the industry.'' The Act establishes the criteria for certification, and it is not necessary to modify the Order in order to carry out the Act's provisions. The Department finds that the proposed changes to § 1280.205 enumerated above are unnecessary. Accordingly, we have not adopted them.

One commenter noted that § 1280.205(b)(2) in the proposed Order contained a misprint and suggested that the language ''shall be made by the Secretary'' be inserted between the words ''Board'' and ''from.'' There was, in fact, a misprint and we have amended the language in § 1280.205(b)(2) of the Order to mirror the language in the Act.

One commenter was concerned that producer nominees would have to be members of a certified organization in order to be nominated to the Board. The Act requires producer organizations to submit only nominations from the membership of the organization for the unit in which the organization is located. Accordingly, we have not changed this subsection in this proposed rule.

Section 1280.207 Certification

One commenter suggested that the National Lamb Feeders Association be the exclusive nominator of lamb feeder representatives, and be eligible to submit the names of the 15 sheep feeders for appointment to the 10 sheep feeder positions on the Board. The Department considered a similar comment proposed during the development of the proposed Order and did not accept it for inclusion in the proposed Order. This suggestion, if accepted, would prevent other existing organizations or new organizations from being eligible to nominate feeders to the Board, thereby restricting the opportunity for all qualified organizations to participate in the nomination process in contravention of the Act. Accordingly, we have rejected this suggestion.

Section 1280.208 Term of Office

One commenter noted that the word ''proportionally'' was substituted for the word ''proportionately'' in the proposed Order. To make the Order's language consistent with the language in the Act, we have replaced the word ''proportionally'' with ''proportionately'' in § 1280.208 in this proposed Order.

Section 1280.211 Powers and Duties of the Board

Two commenters suggested that § 1280.211(h) in the proposed Order should be amended to read as follows: ''to contract with entities, if necessary, to implement plans or projects in accordance with the Act and whenever possible, the Board shall use existing national organizations representative of feeders, importers, or producers to implement plans and projects in order to increase efficiency and minimize costs.'' The Act does not require the Board to utilize existing national organizations to implement plans and projects. The Department believes that the Board could use such organizations

if it determined that they could effectively carry out certain projects, however, we believe that this language would unduly restrict the Board's authority to enter into contracts. The Department finds that § 1280.211(h) mirrors the Act which states: ''* * * to contract with entities, if necessary, to carry out plans and projects in accordance with the Act.'' Accordingly, we have not adopted this language.

One commenter suggested that the Board should contract directly with existing national lamb organizations like the other existing livestock checkoff programs that contract with national organizations because this would ensure continued funding for such existing national organizations. The Act provides the Board with the power to contract with such entities, if necessary, to implement plans or projects in accordance with the Act. However, this suggestion if adopted as a requirement would limit the Board's ability to conduct its program in the most efficient and effective manner. Accordingly, we have not adopted this suggestion.

Section 1280.215 Use of Assessments

Fifty-nine commenters suggested that funds collected under the program should be used to fund promotion programs of ''Fresh American Lamb'' and other U.S. sheep products because the majority of funds collected would be generated from U.S. producers and feeders. Additionally, some commenters suggested using domestic assessments to fund promotion projects for ''Fresh American Lamb'' and other U.S. sheep products would provide the Board with the flexibility to establish the most effective program to enhance the markets for lamb and other sheep products. Furthermore, many commenters believe that this program is a domestic program funded primarily by U.S. growers, and because other livestock research and promotion programs do not prohibit country of origin promotion, funds generated under this program should not prohibit country of origin promotion. However other commenters contend that funds generated under the program should not be used for specific country of origin promotion, but to promote lamb and wool generically because generic promotion would provide for more equitable use of funds and be less subject to legal challenge. In addition, the same commenters pointed out that the promotion of lamb and wool generically would ensure that importers are not disadvantaged in light of their limited representation on the Board and the Executive Committee.

The Department believes that the Board should have the latitude to fund promotion plans and projects which specifically make reference to sheep and wool produced in the U.S. with the limitation that funding for such domestic country of origin plans and projects cannot exceed the combined domestic assessments collected on sheep and sheep products and further that the percentage of domestic assessments spent on the promotion of domestic sheep and sheep products shall not exceed the percentage of import assessments spent on the generic promotion of sheep and sheep products. Accordingly, § 1280.215 is revised in this proposed Order to allow Board funding of promotion plans and projects which involve identification of domestic sheep and sheep products as being U.S. produced but limit the amount of assessments the Board can spend on such plans and projects.

One commenter suggested that at least one-half of the assessments collected should be spent on promotion activities because the industry is changing and in a crisis. The Department believes that establishing a specific amount of assessments to fund a specific program area in the Order would limit the Board's flexibility to administer the program effectively. Accordingly, we have not adopted this suggestion. This same commenter also suggested that the National Lamb Feeders Association (NLFA) receive funding from the new Board. We previously determined that the Act does not authorize such funding and do not adopt this suggestion in this proposed Order.

Two commenters suggested that funds generated under the Act and the Order should promote a wide range of wool products in the United States, including interior textile products; e.g., carpets, rugs, and upholstery. The Department believes that the Board should be given the latitude to use funds for programs in a manner that would benefit the industry most effectively. The Department anticipates that the Board would fund projects according to the needs of the industry. Accordingly, we have not adopted this suggestion.

Two commenters suggested that assessments collected on wool should be spent on wool projects and assessments collected on lamb should be spent on lamb projects. The Department believes that the Board should have the latitude to spend funds on projects that would best address the economic needs of the entire industry. Accordingly, we have not adopted this suggestion.

One commenter suggested that no more than 4 percent of the annual assessments collected should be used for overhead and administrative expenses, in order to limit the amount of assessments used for such expenses. The Act does not limit administrative and overhead expenses. The Department expects that the Board would maintain its administrative and overhead expenses at a reasonable level. Accordingly, we have not adopted this suggestion.

Some commenters suggested that any funds used for export promotion or in furtherance of other export activity should be separately accounted for, a percentage of total Board funds used in this manner should be refunded to importers who pay the assessments, and that expenditures for production-related research or information programs specifically targeted for promotion or product quality and safety-related expenditures should be treated similarly because such expenditures would not benefit importers. The Department has concluded that the Board should have the latitude to determine how funds are to be spent, subject to the approval of the Secretary. Further, the Act does not provide for reimbursements. Accordingly, we have not adopted these suggestions.

Executive Committee

Section 1280.217 Membership

One commenter suggested that each of the seven regions established under § 1280.211(n) in the proposed Order should be represented by one member of the Executive Committee for a total of seven members representing producers. The commenter further suggested that (1) each member be elected by a majority vote of the directors from their respective region; (2) three members represent feeders and be elected by a majority vote of the 10 feeder directors; and (3) three members represent importers and be elected by a majority vote of the 25 importer directors. The Department believes that the Board should have the latitude to determine how the Executive Committee is structured, within the requirements of the Act, and that the Board should establish voting requirements in its policies and procedures, subject to the Secretary's approval. In addition, the Act provides for one ''feeder,'' member on the Executive Committee, not three. Accordingly, we have not adopted this suggestion.

One commenter suggested that § 1280.217 in the proposed Order implicates both equal protection and compelled association clauses of the Constitution because feeder and importer members would be elected by

producer members. The commenter asked that § 1280.217 be amended to allow the various industry segments to name their own representatives to the Executive Committee. The Department believes that the Board should establish procedures for the nomination and election of Executive Committee members in its policies and procedures, subject to the requirements of the Act, and approval of the Secretary. Thus, we have rejected the request to amend § 1280.217 of the proposed Order, and have published the language as initially proposed without change.

Several commenters recommended that of the three importer members who serve on the Executive Committee, one member should represent importers of sheep meat to ensure that the sheep meat industry has a voice on the Executive Committee. The Act does not specify the consist of the 3 importer members who serve on the Executive Committee. The Act merely provides that the Executive Committee would be elected by the membership of the Board. The Department believes that the Board should have the latitude to allocate the three importer member seats on the Executive Committee among importers of sheep, sheep meat, and wool and wool products. Accordingly, we have not adopted this suggestion.

Section 1280.221 Quorum

We received two comments concerning the establishment of a quorum of the Executive Committee. One commenter suggested that a quorum should be 11 members to ensure the presence of at least one nonproducer member. In addition, another commenter suggested that a quorum should consist of eight members, including the feeder representative and at least one importer representative. The language in the proposed Order mirrors the Act's requirement, which says that a quorum of the Executive Committee shall consist of eight members. The Act does not require a feeder or importer representative to be included. Importer and feeder representation within the 8-member quorum could be considered by the Board in developing its policies and procedures. Accordingly this suggestion is not adopted.

Section 1280.222 Vacancies

One commenter suggested that any vacancy on the Executive Committee be filled by the process established pursuant to § 1280.217 in the proposed Order, except that the Executive Committee members would be elected by each industry segment. The Act requires that the Executive Committee be elected by the Board which includes produces, feeders, and importers. The Department believes that the Board should have the latitude to establish the procedures for filling a vacancy on the Executive Committee consistent with the requirements of the Act and subject to the approval of the Secretary. Accordingly, we have not adopted this suggestion.

Assessments

Section 1280.224 Sheep Purchases

Four commenters were concerned about the high assessment rate compared to other commodity checkoff programs, and two of these commenters were concerned that the rate of assessment could increase over time. The Act establishes the initial assessment rate and specifies the manner in which the initial assessment rate may be adjusted. Such adjustments must be recommended by the Board and approved by the Secretary. Accordingly, this section is not amended in the Order.

One commenter suggested that the domestic and import rate of assessment should increase or decrease proportionately when the Board recommends a change in the assessment rate. The Act authorizes increases or decreases in the assessment rate for both domestic and imported sheep and sheep products. The Department believes that Congress intended that any adjustments in the initial assessment rate should be the same for all persons subject to assessment under the Act. Consequently, the Secretary will carefully review any Board recommended assessment adjustments to ensure that such adjustments are applied equally to all persons who are required to pay an assessment. Accordingly, § 1280.224(d), § 1280.225(d) and § 1280.228 (c) and (d) have been revised to reflect the intent of this suggestion.

One commenter felt that the method of collecting money at the various stages in the production chain would not be workable. The Act establishes the method of collecting assessments and identifies those persons responsible for collecting and remitting the assessment. Thus, we have not adopted this suggestion.

Section 1280.228 Imports

One commenter expressed opposition to Customs or any other government agency collecting funds from importers to promote the use of wool and sheep on the grounds that it is improper for the U.S. government to promote U.S. domestic consumption of imported or domestic products. Customs merely serves as a collecting agent as authorized by the Act. Using Customs as a collecting agent in other similar checkoff programs has proven to be an exceptionally economical way of collecting importer assessments and ensuring compliance.

Several commenters suggested that the Department work with Customs or develop a joint committee to develop and publish the Harmonized Tariff Schedule (HTS) classification numbers, assessment amount, and the conversion factors for the various HTS numbers subject to assessment. Furthermore, these commenters asked for clarification on how the clean wool equivalent would be calculated or determined on the various types of imported wool and wool products. The Department published a proposed rule in the Federal Register (60 FR 51737) that (1) identifies the HTS classification numbers for imported sheep and sheep products subject to assessment; (2) describes how the assessment would be calculated if the proposed Order were approved in referendum; and (3) identifies the conversion factors that would be used to convert sheep meat to a live weight equivalent and wool products to a degreased wool equivalent.

Some commenters expressed concern about multiple assessments being collected on wool or wool products imported into the U.S. after having been previously exported on one or more occasions to other countries for further processing (ie., weaving, cutting and/or assembly) and suggested that a drawback or refund of the assessment should be authorized if multiple assessments are collected. The Department believes that this comment would be more appropriately addressed in the implementing rules and regulations published in the Federal Register (60 FR 51737).

One commenter suggested that rates set forth in § 1280.228 (c) and (d) in the proposed Order should be reduced yearly by a percentage calculated by dividing the amounts provided to States pursuant to paragraphs (a) and (b) of § 1280.229 in the proposed Order by the total assessments collected by the Board on domestic marketings in the year funding is given to the States. Section 1280.229 of this subpart applies to QSSBs and as required by the Act sets forth the amount of annual assessments collected by the Board that must be returned to each QSSB. Section 1280.229 also specifies the minimum amount QSSBs would receive and requires that procedures be established to account for the funds. Accordingly,

we have not adopted this suggestion. The same commenter suggested that ''as adjusted pursuant to § 1280.229,'' be added at the end of the first sentence under § 1280.228 (c) and (d) in the proposed Order. The provisions of § 1280.229, as previously discussed relate to the distribution of collected assessments to QSSBs and are not applicable to the assessment rate provisions for imported sheep and sheep products set forth in § 1280.228. Thus, we have not adopted this suggestion.

One commenter suggested that the phrase ''and importer representatives'' be inserted after ''domestic sheep industry'' under § 1280.228(c). The language in the proposed Order mirrors that found in the Act. Accordingly, we have not adopted this suggestion.

One commenter suggested that the Order require a specific finding that a proposed increase in the assessment rate does not violate the U.S. GATT obligations, preferably in consultation with the U.S. Trade Representative (USTR). The Secretary is already directed to consult with USTR pursuant to 7 U.S.C. 2278. Accordingly, this suggestion is not adopted.

Several commenters suggested that raw wool should not be exempt from the assessment collection provisions of the Act because the exemption of raw wool would create ''free rides'' because certain importers of raw wool would benefit from the program without actually paying an assessment on raw wool. The Act exempts imported raw wool from assessments. Accordingly, we have not adopted this suggestion.

Two commenters requested an explanation of how the equivalent in wool and wool products is to be calculated—specifically for wooltop, noils of wool, and wool wastes and generally for wool products that have been further processed. The Department has published in the Federal Register (60 FR 51737) proposed rules and regulations concerning the method of calculation to be used in determining the assessment amount for live sheep, sheep meat, and wool and wool products.

One commenter noted that § 1280.228(d) in the proposed Order substituted the word ''clean'' for ''degreased.'' The Department did substitute the word and believes that the language in the proposed Order should mirror the language in the Act. Thus, the word ''clean'' is replaced with ''degreased'' in § 1280.228(d) in this proposed Order.

One commenter suggested that ''equal protection'' problems could arise because of the exemption of raw wool, inadequate representation of lamb feeders, and inclusion of importers. The Act specifically exempts raw wool and sets forth the composition of the Board.

Several commenters suggested that processors of wool and wool products be allowed to retain 5 to 10 percent of the total amount of assessments collected to cover additional administrative costs associated with collecting and remitting assessments. The Act does not permit collecting persons to retain a portion of the assessments collected to offset administrative costs. Accordingly, we have not adopted this suggestion.

Section 1280.229 Qualified State Sheep Boards

One commenter suggested that the Qualified State Sheep Boards (QSSBs), the Board and those who contract with the QSSBs and the Board should separately account for checkoff funds. The commenter also suggested that each QSSB should (1) be required to give a written plan showing how it plans to protect against improper uses of assessments; (2) certify each year that it has not used assessments for forbidden purposes; and (3) permit the Secretary and the Board the opportunity to audit QSSBs and groups that contract with the Board and QSSBs. Section 1280.229(c) in the proposed Order provides that the Board would establish procedures with the approval of the Secretary to account for funds expended by the QSSBs. Additionally, § 1280.213, Books and Records of the Board, provides that (1) the Secretary may inspect and audit books and records of the Board; (2) the Board must prepare and submit from time-to-time such reports as prescribed by the Secretary; and (3) the Board's books are to be audited by an independent auditor at the end of each fiscal year, and auditor's report submitted to the Secretary. Additionally, the Department believes the Act intends that the Board, the QSSBs and any organizations receiving funds to conduct program activities would be accountable for all funds received, and would be required to expend those funds in accordance with the Act and the Order. Therefore, although the Department agrees that accountability for funds is important, we have not made changes in this proposed Order as a result of these suggestions because the proposed Order already provides for such accountability. The Department believes that the Board would develop operating procedures and guidelines to ensure that any funds collected under the authority of this subpart would be accounted for as authorized under the Act. Accordingly, we have not adopted this suggestion.

Two commenters suggested that importers receive a credit similar to the 20 percent share of funding returned to State QSSBs, contending that State funding defeats the basic purpose of the law which is to promote sheep products nationwide. The Act does not authorize the Board to distribute to importers a portion of the annual assessments similar to that distributed to QSSBs. Thus, we have not adopted this suggestion.

Section 1280.230 Collection

One commenter suggested that § 1280.230(b), Late Payment Charges, in the proposed Order should include a provision stating that any collector shall have the right to submit a written petition to the Board to have these charges waived or adjusted under this subpart. The commenter indicated the provisions should also state: ''The Board shall consider such petitions and is empowered to waive or reduce penalties upon a two-thirds majority vote.'' Although, the Department believes that the Board should have the flexibility to establish collection procedures consistent with the Act's intent and Order provisions, we have not adopted this suggestion concerning late payments.

Another commenter suggested that the 2-percent per month late payment charge is usurious and should be pegged to the 30-year Treasury bill. The 2-percent late payment charge is designed to encourage people to remit assessments on a timely basis. The Department does not believe that reducing the late payment charge would further the purposes of the Act. Accordingly, we have not adopted this suggestion.

Fifty-three commenters supported § 1280.230(d) in the proposed Order which provides that the Secretary is authorized to receive assessments if the Board is not in place by the date the first assessments are to be collected. We have adopted this section as proposed.

Section 1280.231 Prohibitions on Use of Funds

Fifty-six commenters opposed and two supported the language of § 1280.231(d) in the proposed Order, which provides that no plans or projects shall be undertaken to promote or advertise any sheep or sheep products by brand or trade name without the approval of the Board and the concurrence of the Secretary. The commenters opposed the language because Board approval and Secretary concurrence is already authorized under

the Act and in the proposal submitted by the proponents of Proposal I. Therefore, the commenters feel that there is no need to address these plans separately from the Board's other activities and that doing so will result in additional bureaucracy and administration costs. The Act and proposed Order already authorize the Board and the Secretary to approve plans and projects for funding with assessments collected under the authority of this subpart. However, based on the Department's experience with other similar commodity promotion and research programs under the Department's oversight, branded promotion projects involve joint funding with participating private firms and a cooperative agreement. Consequently, the Department believes that such arrangements are more complex than the usual plans and projects and thus require additional review and evaluation to insure that branded promotions are in compliance with the Act and the proposed Order and Departmental policy. Based on the Department's past experience, jointly funded branded advertising projects have been reviewed and approved without added expense or undue delays. Accordingly, § 1280.231(d) of the proposed Order is published in this rule with no modifications.

One commenter suggested that § 1280.231, Prohibition on Use of Funds, be deleted because it would restrict the sheep industry's ability to defend against detrimental legislation. The Act prohibits funds generated under this program from being used in any manner for the purpose of influencing legislation or government action or policy. Accordingly, we have not adopted this suggestion.

One commenter suggested that § 1280.231(b)(2) should be strengthened because no assessments should be used to influence government decision-making under the guise of providing information requested by a friendly government official who is actually helping the industry to support or oppose legislation in which it has interest. The Department believes that the language provided in the Act and in the proposed Order addresses this concern. Accordingly, we have not adopted this suggestion.

Additional Comments

One commenter suggested that the Department conduct an economic impact study because of (1) the recordkeeping burden on the industry; (2) the loss of the Wool Act; and (3) the addition of the new program. The Administrator, AMS, previously determined pursuant to the requirements set forth in the Regulatory Flexibility Act that the economic impact on small entities would not be significant. The Department does not anticipate a significant increase in costs and paperwork burden to those persons subject to the provisions of the Act and Order because most of the records required to be maintained are normally maintained by all businesses in the sheep industry and the calculation of assessments is a one step procedure that uses readily available records. Accordingly, we have not adopted this suggestion.

One commenter asked how the vote on the referendum would be conducted and how seats on the Executive Committee and the Board would be assigned because the Board is heavily weighted toward sheep growers. The Department published proposed referendum rules for public comment on August 8, 1995, in the Federal Register (60 FR 40313). These proposed rules include the registration and voting procedures. Also, the Act establishes the number of seats for the Executive Committee and the Board. We have made no changes in this proposed Order based on these questions.

Several commenters suggested that additional hearings be conducted throughout the country to allow time for the necessary revisions and allow for additional public comment. The Department conducted a public meeting on June 26, 1995, and provided a 45-day comment period so that any person interested in the sheep and wool checkoff program would have the opportunity to present testimony or submit comments by the July 17, 1995, deadline. The Department does not feel it is necessary to hold additional public meetings. Also, there are timeframes set forth in the Act. Further, all costs incurred by the Department in conducting the additional meetings are reimbursable by the sheep industry. Accordingly, we have not adopted this suggestion.

A few commenters suggested that the implementation of the program be delayed to allow sheep on feed inventories to be more manageable and allow producers to be assessed their fair share. The sheep industry has requested that assessments begin as soon as possible so that promotional and other activities can begin. Because of the time frames set forth in the Act, the Department believes that Congress intended for the Department to proceed in an expeditious manner. The Department has determined that no useful purpose would be served in delaying implementation of this program.

One commenter suggested that the Department ensure that importers are eligible to participate in the referendum. The Act provides that sheep producers, sheep feeders, and importers of sheep and sheep products who, during a representative period established by the Department, were engaged in sheep production, sheep feeding or importation of sheep and sheep products—excluding importers of raw wool—are eligible to vote in the referendum. The Department believes that Congress intended that each person who is subject to the assessment is entitled to vote. Consequently, the Department has proposed and published referendum rules in the Federal Register (60 FR 40313).

List of Subjects in 7 CFR Part 1280

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreements, Sheep and sheep products, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that chapter XI of title 7 of the Code of Federal Regulations be amended as follows:

1. Part 1280 is proposed to be added as follows:

PART 1280—SHEEP PROMOTION, RESEARCH, AND INFORMATION

Subpart A—Sheep and Wool Promotion, Research, Education, and Information Order

Definitions

Sec.
1280.101 Act.
1280.102 Board.
1280.103 Carbonized wool.
1280.104 Certified organization.
1280.105 Collecting person.
1280.106 Consumer information.
1280.107 Customs Service.
1280.108 Degreased wool.
1280.109 Department.
1280.110 Education.
1280.111 Executive Committee.
1280.112 Exporter.
1280.113 Feeder.
1280.114 Greasy wool.
1280.115 Handler.
1280.116 Importer.
1280.117 Industry information.
1280.118 National feeder organization.
1280.119 Part and subpart.
1280.120 Person.
1280.121 Processor.
1280.122 Producer.
1280.123 Producer information.
1280.124 Promotion.
1280.125 Pulled wool.
1280.126 Qualified State Sheep Board.
1280.127 Raw wool.
1280.128 Research.
1280.129 Secretary.
1280.130 Sheep.

1280.131 Sheep products.
1280.132 State.
1280.133 Unit.
1280.134 United States.
1280.135 Wool.
1280.136 Wool products.

National Sheep Promotion, Research, and Information Board

1280.201 Establishment and membership of the Board.
1280.202 Nominations.
1280.203 Nominee's agreement to serve.
1280.204 Appointment.
1280.205 Method of obtaining nominations.
1280.206 Vacancies.
1280.207 Certification of organizations.
1280.208 Term of office.
1280.209 Compensation.
1280.210 Removal.
1280.211 Powers and duties of the Board.
1280.212 Budgets.
1280.213 Books and records of the Board.
1280.214 Investment of funds.
1280.215 Use of assessments.

Executive Committee

1280.216 Establishment.
1280.217 Membership.
1280.218 Powers and duties.
1280.219 Term of office.
1280.220 Chairperson.
1280.221 Quorum.
1280.222 Vacancies.

Expenses

1280.223 Expenses.

Assessments

1280.224 Sheep purchases.
1280.225 Wool purchases.
1280.226 Direct processing.
1280.227 Exports.
1280.228 Imports.
1280.229 Qualified State Sheep Board.
1280.230 Collection.
1280.231 Prohibition on use of funds.

Reports, Books, and Records

1280.232 Reports.
1280.233 Books and records.
1280.234 Use of information.
1280.235 Confidentiality.

Miscellaneous

1280.240 Right of the Secretary.
1280.241 Proceedings after termination.
1280.242 Effect of termination or amendment.
1280.243 Personal liability.
1280.244 Patents, copyrights, inventions, and publications.
1280.245 Amendments.
1280.246 Separability.

Subpart B—[Reserved]

Subpart C—[Reserved]

Subpart D—[Reserved]

Subpart E—[Reserved]

Authority: 7 U.S.C. 7101–7111.

Subpart A—Sheep and Wool Promotion, Research, Education, and Information Order

Definitions

§ 1280.101 Act.

The term *Act* means the Sheep Promotion, Research, and Information Act of 1994, 7 U.S.C. 7101–7111; Public Law No. 103–107; 108 Stat. 4210, enacted October 22, 1994, and any amendments thereto.

§ 1280.102 Board.

The term *Board* means the National Sheep Promotion, Research, and Information Board established pursuant to § 1280.201.

§ 1280.103 Carbonized wool.

The term *carbonized wool* means wool that has been immersed in a bath, usually of mineral acids or acid salts, that destroys vegetable matter in the wool, but does not affect the wool fibers.

§ 1280.104 Certified organization.

The term *certified organization* means any organization that has been certified by the Secretary pursuant to this part as being eligible to submit nominations for membership on the Board.

§ 1280.105 Collecting person.

The term *collecting person* means any person who is responsible for collecting an assessment pursuant to the Act, this subpart and regulations prescribed by the Board and approved by the Secretary, including processors and any other persons who are required to remit assessments to the Board pursuant to this part, except that a collecting person who is a market agency; i.e., commission merchant, auction market, or livestock market in the business of receiving such sheep or sheep products for sale on commission for or on behalf of a producer or feeder shall pass the collected assessments on to the subsequent purchaser pursuant to the Act, this subpart and the regulations prescribed by the Board and approved by the Secretary.

§ 1280.106 Consumer information.

The term *consumer information* means nutritional data and other information that would assist consumers and other persons in making evaluations and decisions regarding the purchase, preparation, or use of sheep products.

§ 1280.107 Customs Service.

The term *Customs Service* means the U.S. Customs Service of the Department of the Treasury.

§ 1280.108 Degreased wool.

The term *degreased wool* means wool from which the bulk of impurities has been removed by processing.

§ 1280.109 Department.

The term *Department* means the U.S. Department of Agriculture.

§ 1280.110 Education.

The term *education* means activities providing information relating to the sheep industry or sheep products to producers, feeders, importers, consumers, and other persons.

§ 1280.111 Executive Committee.

The term *Executive Committee* means the Executive Committee of the Board established under § 1280.216.

§ 1280.112 Exporter.

The term *exporter* means any person who exports domestic live sheep or greasy wool from the United States.

§ 1280.113 Feeder.

The term *feeder* means any person who feeds lambs until the lambs reach slaughter weight.

§ 1280.114 Greasy wool.

The term *greasy wool* means wool that has not been washed or otherwise cleaned.

§ 1280.115 Handler.

The term *handler* means any person who purchases and markets greasy wool.

§ 1280.116 Importer.

The term *importer* means any person who imports sheep or sheep products into the United States.

§ 1280.117 Industry information.

The term *industry information* means information and programs that would lead to increased efficiency in processing and the development of new markets, marketing strategies, increased marketing efficiency, and activities to enhance the image of sheep or sheep products on a national or international basis.

§ 1280.118 National feeder organization.

The term *national feeder organization* means any organization of feeders that has been certified by the Secretary pursuant to the Act and this part as being eligible to submit nominations for membership on the Board.

§ 1280.119 Part and subpart.

Part means the Sheep and Wool Promotion, Research, Education, and Information Order and all rules and regulations issued pursuant to the Act

and the Order, and the Order itself shall be a *subpart* of such part.

§ 1280.120 Person.

The term *person* means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity.

§ 1280.121 Processor.

The term *processor* means any person who slaughters sheep or processes greasy wool into degreased wool.

§ 1280.122 Producer.

The term *producer* means any person, other than a feeder, who owns or acquires ownership of sheep.

§ 1280.123 Producer information.

The term *producer information* means activities designed to provide producers, feeders, and importers with information relating to production or marketing efficiencies or developments, program activities, or other information that would facilitate an increase in the consumption of sheep or sheep products.

§ 1280.124 Promotion.

The term *promotion* means any action (including paid advertising) to advance the image and desirability of sheep or sheep products, to improve the competitive position, and stimulate sales, of sheep products in the domestic and international marketplace.

§ 1280.125 Pulled wool.

The term *pulled wool* means wool that is pulled from the skin of slaughtered sheep.

§ 1280.126 Qualified State Sheep Board.

The term *Qualified State Sheep Board* means a sheep and wool promotion entity that:

(a) Is authorized by State statute or organized and operating within a State;

(b) Receives voluntary contributions or dues and conducts promotion, research, or consumer information programs with respect to sheep or wool, or both; and

(c) Is recognized by the Board as the sheep and wool promotion entity within the State; except that not more than one QSSB shall exist in any State at any one time.

§ 1280.127 Raw wool.

The term *raw wool* means greasy wool, pulled wool, degreased wool, or carbonized wool.

§ 1280.128 Research.

The term *research* means development projects and studies relating to the production (including the feeding of sheep), processing, distribution, or use of sheep or sheep products, to encourage, expand, improve, or make more efficient the marketing of sheep or sheep products.

§ 1280.129 Secretary.

The term *Secretary* means the Secretary of Agriculture of the United States or any other officer or employee of the Department to whom authority has been delegated, or to whom authority may be delegated, to act in the Secretary's stead.

§ 1280.130 Sheep.

The term *sheep* means ovine animals of any age, including lambs.

§ 1280.131 Sheep products.

The term *sheep products* means products produced in whole or in part from sheep, including wool and products containing wool fiber.

§ 1280.132 State.

The term *State* means each of the 50 States.

§ 1280.133 Unit.

The term *unit* means each State, group of States, or class designation that is represented on the Board.

§ 1280.134 United States.

The term *United States* means the 50 States and the District of Columbia.

§ 1280.135 Wool.

The term *wool* means the fiber from the fleece of a sheep.

§ 1280.136 Wool products.

The term *wool products* means products produced, in whole or in part, from wool and products containing wool fiber.

National Sheep Promotion, Research, and Information Board

§ 1280.201 Establishment and membership of the Board.

There is hereby established a National Sheep Promotion, Research, and Information Board (Board) of 120 members. Members of the Board shall be appointed by the Secretary from nominations submitted in accordance with this subpart. The seats shall be apportioned as follows:

(a) *Producers.* For purposes of nominating producers to the Board, each State shall be represented by the following number of members:

Unit	Board members
Alabama	1
Alaska	1
Arizona	1
Arkansas	1
California	5
Colorado	4
Connecticut	1
Delaware	1
Florida	1
Georgia	1
Hawaii	1
Idaho	2
Illinois	1
Indiana	1
Iowa	2
Kansas	1
Kentucky	1
Louisiana	1
Maine	1
Maryland	1
Massachusetts	1
Michigan	1
Minnesota	2
Mississippi	1
Missouri	1
Montana	5
Nebraska	1
Nevada	1
New Hampshire	1
New Jersey	1
New Mexico	2
New York	1
North Carolina	1
North Dakota	2
Ohio	1
Oklahoma	1
Oregon	2
Pennsylvania	1
Rhode Island	1
South Carolina	1
South Dakota	4
Tennessee	1
Texas	10
Utah	3
Vermont	1
Virginia	1
Washington	1
West Virginia	1
Wisconsin	1
Wyoming	5

(b) *Feeders.* The feeder sheep industry shall be represented by 10 members.

(c) *Importers.* Importers shall be represented by 25 members.

(d) *Alternates.* A unit represented by only one producer member may have an alternate member appointed to ensure representation at meetings of the Board.

§ 1280.202 Nominations.

(a) *Producers.* The Secretary shall appoint producers and alternates to represent units as specified under § 1280.201(a) from nominations submitted by organizations certified under § 1280.207. A certified organization may submit only nominations for producer representatives and alternates if appropriate from the membership of the organization for the unit in which the organization operates. To be represented on the Board, each certified organization

shall submit to the Secretary at least 1.5 nominations for each seat on the Board for which the unit is entitled to representation. If a unit is entitled to only one seat on the Board, the unit shall submit at least two nominations for the appointment.

(b) *Feeders.* The Secretary shall appoint representatives of the feeder sheep industry to seats established under § 1280.201(b) from nominations submitted by qualified national organizations that represent the feeder sheep industry. To be represented on the Board, the industry shall provide at least 1.5 nominations for each appointment to the Board to which the feeder sheep industry is entitled.

(c) *Importers.* The Secretary shall appoint importers to seats established under § 1280.201(c) from nominations submitted by qualified organizations that represent importers. The Secretary shall receive at least 1.5 nominations for each appointment to the Board to which importers are entitled.

(d) As soon as practicable, the Secretary shall obtain nominations from certified organizations. If no organization is certified in a unit the Secretary may use other means to obtain nominations. A certified organization shall only submit nominations for positions on the Board representing units in which such certified organization can establish that it is certified as eligible to submit nominations for representation of that unit of individual producers, feeders, or importers residing in that unit.

(e) After the establishment of the initial Board, the Department shall announce when a vacancy does or will exist. Nominations shall be initiated not less than 6 months before the expiration of the terms of the members whose terms are expiring, in the manner described in § 1280.205(b). In the case of vacancies due to reasons other than the expiration of term of office, successor Board members shall be appointed pursuant to § 1280.206.

(f) Where there is more than one eligible organization representing producers, feeders, or importers in a State or unit, they may caucus and jointly nominate a minimum of 1.5 qualified persons for each position representing that State or unit on the Board for which a member is to be appointed. If joint agreement is not reached with respect to any such nominations, or if no caucus is held, each certified organization may submit nominations for each appointment to be made to represent that State or unit.

(g) Nominations should be submitted in order of preference and, for the initial Board, in order of preference for staggered terms. If the Secretary rejects any nominations submitted and there are insufficient nominations submitted from which appointments can be made, the Secretary may request additional nominations under paragraph (a), (b), or (c) of this section.

§ 1280.203 Nominee's agreement to serve.

Any producer, feeder, or importer nominated to serve on the Board, or as an alternate, shall file with the Secretary at the time of the nomination a written agreement to:

(a) Serve on the Board if appointed;

(b) Disclose any relationship with any organization that operates a qualified State or regional program or has a contractual relationship with the Board; and

(c) Withdraw from participation in deliberations, decisionmaking, or voting on matters that concern the relationship disclosed under paragraph (b) of this section.

§ 1280.204 Appointment.

From the nominations made pursuant to § 1280.202, the Secretary shall appoint the members of the Board on the basis of representation provided in § 1280.201.

§ 1280.205 Method of obtaining nominations.

(a) *Initially established Board.* (1) *Producer and alternate nominations.* The Secretary shall solicit, from organizations certified under § 1280.207, nominations for each producer's or alternate member's seat on the initially-established Board to which a unit is entitled. If no such organization exist, the Secretary shall solicit nominations for appointments in such manner as the Secretary determines appropriate.

(2) *Feeder and importer nominations.* The Secretary shall solicit, from certified organizations that represent feeders and importers, nominations for each seat to which feeders or importers are entitled. If no such organization exists, the Secretary shall solicit nominations for appointments in such manner as the Secretary determines appropriate. In determining whether an organization is eligible to submit nominations under this subparagraph, the Secretary shall determine whether:

(i) The organization's active membership includes a significant number of feeders or importers in relation to the total membership of the organization;

(ii) There is evidence of stability and permanency of the organization; and

(iii) The organization has a primary and overriding interest in representing the feeder or importer segment of the sheep industry.

(b) *Subsequent appointment*—(1) *Producer nominations.* The solicitation of nominations for subsequent appointment to the Board from eligible organizations certified under § 1280.207 shall be initiated by the Secretary, with the Board securing the nominations for the Secretary.

(2) *Feeder and importer nominations.* The solicitation of feeder and importer nominations for subsequent appointment to the Board shall be made by the Secretary from organizations certified in accordance with paragraph (a)(2) of this section.

§ 1280.206 Vacancies.

To fill any vacancy occasioned by the death, removal, resignation, or disqualification of any member of the Board, the Secretary shall appoint a successor from the most recent list of nominations for the position or from nominations submitted by the Board.

§ 1280.207 Certification of organizations.

(a) *In general.* The eligibility of any State organization to represent producers and to participate in the making of nominations under this subpart shall be certified by the Secretary. The Secretary shall certify any State organization that the Secretary determines meets the eligibility criteria established under paragraph (b) of this section. An eligibility determination by the Secretary shall be final.

(b) *Basis for certification.* Certification shall be based upon, in addition to other available information, a factual report submitted by the organization that shall contain information considered relevant and specified by the Secretary, including:

(1) The geographic territory covered by the active membership of the organization;

(2) The nature and size of the active membership of the organization, including the proportion of the total number of active producers represented by the organization;

(3) Evidence of stability and permanency of the organization;

(4) Sources from which the operating funds of the organization are derived;

(5) The functions of the organization; and

(6) The ability and willingness of the organization to further the aims and objectives of the Act.

(c) *Primary considerations.* A primary consideration in determining the eligibility of an organization under this paragraph shall be whether:

(1) The membership of the organization consists primarily of

producers who own a substantial quantity of sheep; and

(2) An interest of the organization is in the production of sheep.

§ 1280.208 Term of office.

Each appointment to the Board shall be for a term of 3 years, except that appointments to the initially established Board shall be proportionately for 1-year, 2-year, and 3-year terms. No person may serve more than two consecutive 3-year terms, except that elected officers shall not be subject to the term limitation while they hold office.

§ 1280.209 Compensation.

Board members shall serve without compensation, but shall be reimbursed for their reasonable expenses incurred in performing their duties as Board members.

§ 1280.210 Removal.

If the Secretary determines that any person appointed under this part fails to perform his or her duties properly or engages in acts of dishonesty or willful misconduct, the Secretary shall remove the person from office. The Secretary may remove a person appointed or certified under this part, or any employee of the Board, if the Secretary determines that the person's continued service would be detrimental to the purposes of the Act.

§ 1280.211 Powers and duties of the Board.

The Board shall have the following powers and duties:

(a) To elect officers of the Board, including a chairperson, vice chairperson, and secretary/treasurer;

(b) To administer this subpart in accordance with its terms and provisions;

(c) To recommend regulations to effectuate the terms and provisions of this subpart;

(d) To hold at least one annual meeting and any additional meetings it deems appropriate;

(e) To elect members of the Board to serve on the Executive Committee;

(f) To approve or reject budgets submitted by the Executive Committee;

(g) To submit budgets to the Secretary for approval;

(h) To contract with entities, if necessary, to implement plans or projects in accordance with the Act;

(i) To conduct programs of promotion, research, consumer information, education, industry information, and producer information;

(j) To receive, investigate, and report to the Secretary complaints of violations of this subpart;

(k) To recommend to the Secretary amendments to this subpart;

(l) To provide the Secretary with prior notice of meetings of the Board to permit the Secretary or a designated representative to attend such meetings;

(m) To provide not less than annually a report to producers, feeders, and importers, accounting for the funds expended by the Board, and describing programs implemented under the Act; and to make such report available to the public upon request;

(n) To establish seven regions that, to the extent practicable, contain geographically contiguous States and approximately equal numbers of sheep producers and sheep production;

(o) To employ or retain necessary staff; and

(p) To invest funds in accordance with § 1280.214.

§ 1280.212 Budgets.

(a) *In general.* The Board shall review the budget submitted by the Executive Committee, on a fiscal year basis, of anticipated expenses and disbursements by the Board, including probable costs of administration and promotion, research, consumer information, education, industry information, and producer information projects. The Board shall submit the budget to the Secretary for the Secretary's approval.

(b) *Limitation.* No expenditure of funds may be made by the Board unless such expenditure is authorized under a budget or budget amendment approved by the Secretary.

§ 1280.213 Books and records of the Board.

The Board shall:

(a) Maintain such books and records, which shall be made available to the Secretary for inspection and audit, as the Secretary may prescribe;

(b) Prepare and submit to the Secretary, from time-to-time, such reports as the Secretary may prescribe; and

(c) Account for the receipt and disbursement of all funds entrusted to it. The Board shall cause its books and records to be audited by an independent auditor at the end of each fiscal year, and a report of such audit to be submitted to the Secretary.

§ 1280.214 Investment of funds.

The Board may invest, pending disbursement, funds it receives under this subpart, only in obligations of the United States or any agency thereof, in general obligations of any State or any political subdivision thereof, in any interest-bearing account or certificate of deposit of a bank that is a member of the Federal Reserve System, or in obligations fully guaranteed as to principal and interest by the United States. Any income from any such investment may be used for any purpose for which the invested funds may be used.

§ 1280.215 Use of assessments.

(a) Assessments received by the Board shall be used by the Board:

(1) To fund promotion, research, education, and information plans and projects authorized under this subpart, including promotion plans and projects which make specific reference to domestic sheep and sheep products originating or being produced and/or marketed in the U.S., except that the combined expenditures for such promotion plans and projects involving domestic country of origin shall be limited to no more than the combined domestic assessments collected on sheep and sheep products and the percentage of domestic assessments spent on the promotion of domestic sheep and sheep products shall not exceed the percentage of import assessments spent on the generic promotion of sheep and sheep products; and

(2) For the payment of expenses incurred in administering this subpart, including a reasonable reserve.

(b) The Board shall reimburse the Secretary, from assessments collected, for costs incurred in implementing and administering the Order as provided for under the Act.

Executive Committee

§ 1280.216 Establishment.

The Board shall establish an Executive Committee of the Board to assist the Board in the administration of the terms and provisions of this subpart, under the direction of the Board, and consistent with the policies determined by the Board.

§ 1280.217 Membership.

The Executive Committee shall be comprised of 14 members as follows:

(a) Eleven members of the Executive Committee shall be elected by the Board annually. Of these members:

(1) One member shall represent each of the seven regions established under § 1280.211(n) for a total of seven members representing producers;

(2) One member shall represent feeders; and

(3) Three members shall represent importers.

(b) The remaining three members of the Executive Committee shall be the elected officers of the Board.

§ 1280.218 Powers and duties.

(a) *Plans and projects.* The Executive Committee shall develop plans or projects of promotion and advertising, research, consumer information, education, industry information, and producer information, which plans or projects shall be paid for with assessments collected by the Board. The plans or projects shall not become effective until approved by the Secretary.

(b) *Budgets.* The Executive Committee shall be responsible for developing and submitting to the Board, for Board approval, budgets on a fiscal year basis of the Board's anticipated expenses and disbursements, including the estimated costs of advertising and promotion, research, consumer information, education, industry information, and producer information projects. The Board shall approve or disapprove such budgets and, if approved, shall submit them to the Secretary for the Secretary's approval.

§ 1280.219 Term of office.

Terms of appointment to the Executive Committee shall be for 1 year.

§ 1280.220 Chairperson.

The Chairperson of the Board shall serve as chairperson of the Executive Committee.

§ 1280.221 Quorum.

A quorum of the Executive Committee shall consist of eight members.

§ 1280.222 Vacancies.

To fill any vacancy caused by the death, removal, resignation, or disqualification of any member of the Executive Committee, the Board shall elect a successor for the position pursuant to § 1280.217.

Expenses

§ 1280.223 Expenses.

(a) The Board shall be responsible for all expenses of the Board and the Executive Committee.

(b) Contracts and Agreements. Any contract or agreement entered into by the Board shall provide that:

(1) The contracting party shall develop and submit to the Board a plan or project of promotion, research, education, consumer information, industry information, and producer information, together with a budget or budgets that shall show estimated costs to be incurred for such plan or project; and

(2) No plan, project, contract, or agreement shall become effective until it has been approved by the Secretary.

(c) The contracting party shall:

(1) keep accurate records of all of its transactions;

(2) account for funds received and expended, including staff time, salaries, and expenses expended on behalf of Board activities;

(3) make periodic reports to the Board of activities conducted; and

(4) make such other reports as the Board or the Secretary may require.

Assessments

§ 1280.224 Sheep purchases.

(a) *In general.* Each person making payment to a producer or feeder for sheep purchased from the producer or feeder shall be a collecting person and shall collect an assessment from the producer or feeder on each sheep sold by the producer or feeder. Each such producer or feeder shall pay such assessment to the collecting person at the rate set forth in paragraph (d) of this section.

(b) *Remittances.* Each processor making payment to a producer, feeder, or collecting person for sheep purchased from the producer, feeder, or collecting person shall be a collecting person and shall collect an assessment from the producer, feeder, or other collecting person on each sheep sold by the producer, feeder, or collecting person, and each such producer, feeder, or collecting person shall pay such assessment to the processor at the rate set forth in paragraph (d) in this section, and such processor shall remit the assessment to the Board.

(c) *Processing.* Any person who purchases sheep for processing shall collect the assessment from the seller and remit the assessment to the Board.

(d) *Rate.* Except as otherwise provided, the rate of assessment shall be 1-cent-per-pound of live sheep sold. The rate of assessment may be raised or lowered no more than 0.15 of a cent in any 1 year as recommended by the Executive Committee and approved by the Board and the Secretary. However, if the Board makes a recommendation to the Secretary to raise or lower the assessment rates, the domestic rate and the import rate must be raised or lowered simultaneously by an equivalent amount. The rate of assessment shall not exceed 2½-cents-per-pound.

§ 1280.225 Wool purchases.

(a) *In general.* Each person making payment to a producer, feeder, or handler of wool for wool purchased from the producer, feeder, or handler shall be a collecting person and shall collect an assessment from the producer, feeder, or handler on each pound of greasy wool sold. The producer, feeder, or handler shall pay such assessment to the collecting person at the rate set forth in paragraph (d) of this section.

(b) *Remittances.* Each processor making payment to a producer, feeder, handler, or collecting person for wool purchased from the producer, feeder, handler, or collecting person shall be a collecting person and shall collect an assessment from the producer, feeder, handler, or other collecting person on all wool sold by the producer, feeder, handler, or collecting person, and each such producer, feeder, handler, or collecting person shall pay such assessment to the processor at the rate set forth in paragraph (d) of this section and such processor shall remit the assessment to the Board.

(c) *Processing.* Any person purchasing greasy wool for processing shall collect the assessment and remit the assessment to the Board.

(d) *Rate.* Except as otherwise provided, the rate of assessment shall be 2-cents-per-pound. The rate of assessment may be raised or lowered no more than 0.2 of a cent per pound in any 1 year as recommended by the Executive Committee and approved by the Board and the Secretary. However, if the Board makes a recommendation to the Secretary to raise or lower the assessment rates, the domestic rate and the import rate must be raised or lowered simultaneously by an equivalent amount. The rate of assessment shall not exceed 4-cents-per-pound of greasy wool.

§ 1280.226 Direct processing.

Each person who processes or causes to be processed sheep or sheep products of that person's own production, and markets such sheep or sheep products, shall pay an assessment on such sheep or sheep products at the time of sale at a rate equivalent to the rate established in § 1280.224(d) or § 1280.225(d), as appropriate, and shall remit such assessment to the Board.

§ 1280.227 Exports.

Each person who exports live sheep or greasy wool shall remit the assessment on such sheep or greasy wool at the time of export, at a rate equivalent to the rate established in § 1280.224(d) or § 1280.225(d), as appropriate, and shall remit such assessment to the Board.

§ 1280.228 Imports.

(a) In general. Each person who imports sheep or sheep products or who imports wool or products containing wool (with the exception of raw wool)

into the United States shall pay an assessment to the Board.

(b) Collection. The Customs Service is authorized to collect and remit such assessment to the Secretary for disbursement to the Board.

(c) Rate for sheep and sheep products. The assessment rate for sheep shall be 1-cent-per-pound of live sheep. The assessment rate for sheep products shall be the equivalent of 1-cent-per-pound of live sheep, as determined by the Secretary in consultation with the domestic sheep industry. Such rates may be raised or lowered no more than 0.15-cent-per-pound in any 1 year as recommended by the Executive Committee and approved by the Board and the Secretary, but shall not exceed 2½-cents-per-pound. However, if the Board makes a recommendation to the Secretary to raise or lower the assessment rates, the domestic rate and the import rate must be raised or lowered simultaneously by an equivalent amount.

(d) Rate for wool and wool products. The assessment rate for wool and products containing wool shall be 2-cents-per-pound of degreased wool or the equivalent of degreased wool. The rate of assessment may be raised or lowered no more than 0.2-cents-per-pound in any 1 year, as recommended by the Executive Committee and approved by the Board and the Secretary, but shall not exceed 4-cents-per-pound of degreased wool or the equivalent. However, if the Board makes a recommendation to the Secretary to raise or lower the assessment rates, the domestic rate and the import rate must be raised or lowered simultaneously by an equivalent amount.

(e) The Secretary shall issue regulations regarding the assessment rates for imported sheep and sheep products. The Secretary may exclude from assessment certain imported products that contain *de minimis* levels of sheep or sheep products and waive the assessment on such products.

§ 1280.229 Qualified State Sheep Board.

(a) Except as provided in paragraph (b) of this section, 20 percent of the total assessments collected by the Board on the marketings of domestic sheep and domestic sheep products in any 1 year from a State shall be returned to the QSSB of the State.

(b) No QSSB shall receive less than $2,500 under paragraph (a) of this section in any 1 year. (c) The Board shall establish procedures with the approval of the Secretary to account for funds expended pursuant to paragraphs (a) and (b) of this section.

§ 1280.230 Collection.

(a) Each person responsible for the collection and remittance to the Board of assessments under this subpart shall do so on a monthly basis, unless the Board, with the approval of the Secretary, has specifically authorized otherwise.

(b) Late payment charges. Any unpaid assessments due the Board or from a person responsible for remitting assessments to the Board, shall be increased by 2 percent each month beginning with the day after the date such assessments were due under this subpart. Any assessments or late payment charges that remain unpaid shall be increased at the same rate on the corresponding day of each month thereafter until paid.

(c) Any unpaid assessments due to the Board pursuant to § 1280.224, § 1280.225, § 1280.226, and § 1280.227 shall be increased 2 percent each month beginning with the day following the date such assessments were due. Any remaining amount due, which shall include any unpaid charges previously made pursuant to this paragraph, shall be increased at the same rate on the corresponding day of each month thereafter until paid. For the purposes of this paragraph, any assessment determined at a date later than the date prescribed by this subpart because of a person's failure to submit a timely report to the Board shall be considered to have been payable by the date it would have been due if the report had been timely filed. The date of payment is the applicable postmark date or the date of receipt by the Board, whichever is earlier.

(d) If the Board is not in place by the date the first assessments are to be collected, the Secretary shall have the authority to receive assessments and invest them on behalf of the Board, and shall pay such assessments and any interest earned to the Board when it is formed. The Secretary shall have the authority to promulgate rules and regulations concerning assessments and the collection of assessments if the Board is not in place or is otherwise unable to develop such rules and regulations.

§ 1280.231 Prohibition on use of funds.

(a) Except as otherwise provided in paragraph (b) of this section, no funds collected by the Board under this subpart shall be used in any manner for the purpose of influencing any action or policy of the United States Government, any foreign or State Government, or any political subdivision thereof.

(b) The prohibition in paragraph (a) of this section shall not apply:

(1) To the development and recommendation of amendments to this subpart; or

(2) To the communication to appropriate government officials, in response to a request made by the officials, of information relating to the conduct, implementation, or results of promotion, research, consumer information, education, industry information, or producer information activities under this subpart.

(c) A plan or project conducted pursuant to this part shall not make false or misleading claims on behalf of sheep or sheep products or against a competing product.

(d) No such plans or projects shall be undertaken to promote or advertise any sheep or sheep products by brand or trade name without the approval of the Board and the concurrence of the Secretary.

Reports, Books, and Records

§ 1280.232 Reports.

(a) Each collecting person, including processors and other persons required to remit assessments to the Board pursuant to § 1280.224(b) for live sheep, each person who markets sheep products of that person's own production and each exporter of sheep shall report to the Board information pursuant to regulations prescribed by the Board and approved by the Secretary. Such information may include:

(1) The number of sheep purchased, initially transferred or which, in any other manner, are subject to the collection of assessment, and the dates of such transaction;

(2) The number of sheep imported or exported, or the equivalent thereof of sheep products imported;

(3) The amount of assessment remitted;

(4) An explanation for the remittance of any assessment that is less than the pounds of sheep multiplied by the assessment rate; and

(5) The date any assessment was paid.

(b) Each collecting person, including processors and other persons required to remit assessments to the Board pursuant to § 1280.225(b) for wool purchased from the producer or handler of wool or wool products, each person purchasing greasy wool for processing, each importer of wool or wool products (except raw wool), each exporter of greasy wool, and each person who markets wool of that person's own production shall report to the Board information pursuant to regulations prescribed by the Board and approved by the Secretary. Such information may include:

(1) The amount of wool purchased, initially transferred or in any other manner subject to the collection of assessment, and the dates of such transaction;

(2) The amount of wool imported (except raw wool) or the equivalent thereof of wool products imported or the amount of greasy wool exported;

(3) The amount of assessment remitted;

(4) An explanation for the remittance of an assessment that is less than the pounds of wool multiplied by the assessment rate; and

(5) The date any assessment was paid.

§ 1280.233 Books and records.

(a) Each collecting person, including processors and other persons required to remit assessments to the Board, each importer of sheep or sheep products (except raw wool), and exporter of sheep or greasy wool, and each person who markets sheep products of that person's own production, shall maintain and make available for inspection such books and records as may be required by regulations prescribed by the Board and approved by the Secretary, including records necessary to verify any required reports. Such records shall be maintained for the period of time prescribed by the regulations issued hereunder.

(b) Document evidencing payment of assessments. Each collecting person responsible for collecting an assessment paid pursuant to this subpart, other than a person who slaughters sheep or markets sheep products of his or her own production for sale, is required to give the person or collecting person from whom the collecting person collected an assessment written evidence of payment of the assessments paid pursuant to this subpart. Such written evidence serving as a receipt shall include:

(1) Name and address of the collecting person;

(2) Name of the producer who paid the assessment;

(3) Number of head of sheep or pounds of wool sold;

(4) Total assessments paid by the producer;

(5) Date; and

(6) Such other information as the Board, with the approval of the Secretary, may require.

§ 1280.234 Use of information.

Information from records or reports required pursuant to this subpart shall be made available to the Secretary as is appropriate to the administration or enforcement of the Act, this subpart or any regulation issued under the Act. In addition, the Secretary shall authorize the use under this part of information that is accumulated under laws or regulations other than the Act or regulations issued under the Act regarding persons paying producers, feeders, importers, handlers, or processors.

§ 1280.235 Confidentiality.

(a) All information from records or reports required pursuant to this subpart shall be kept confidential by all officers and employees of the Department and of the Board. Such information may be disclosed only if the Secretary considers the information relevant, the information is disclosed only in a suit or administrative hearing brought at the direction or on the request of the Secretary, or to which the Secretary or any officer of the United States is a party, and the information relates to the Act.

(b) Administration. No information obtained under the authority of this subpart may be made available to any agency or officer of the Federal Government for any purpose other than the implementation of the Act and any investigatory or enforcement action necessary for the implementation of the Act.

(c) General statements. Nothing in paragraph (a) of this section may be deemed to prohibit:

(1) The issuance of general statements, based on the reports of the number of persons subject to this subpart or statistical data collected therefrom, which statements do not identify the information furnished by any person; or

(2) The publication, by direction of the Secretary, of the name of any person violating this subpart and a statement of the particular provisions of this subpart violated by such person.

(d) Penalty. Any person who willfully violates the provisions of this subpart, on conviction, shall be subject to a fine of not more than $1,000, or to imprisonment for not more than 1 year, or both, and if the person is an officer or employee of the Board or the Department, that person shall be removed from office.

Miscellaneous

§ 1280.240 Right of the Secretary.

All fiscal matters, programs or projects, bylaws, rules or regulations, reports, or other substantive actions proposed, and prepared by the Board shall be submitted to the Secretary for approval.

§ 1280.241 Proceedings after termination.

(a) Upon the termination of this subpart, the Board shall recommend not more than five of its members to the Secretary to serve as trustees for the purpose of liquidating the affairs of the Board. Such persons, upon designation by the Secretary, shall become trustees of all the funds and property owned, in the possession of or under the control of the Board, including any claims of the Board against third parties that exist at the time of such termination.

(b) The trustees shall:

(1) Act as trustees until discharged by the Secretary;

(2) Carry out the obligations of the Board under any contracts or agreements entered into by the Board pursuant to § 1280.223(b);

(3) From time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Board and of the trustees, to such persons as the Secretary may direct; and

(4) Upon the request of the Secretary, execute such assignment of other instruments necessary or appropriate to transfer to such persons full title and right to all of the funds, property, and claims of the Board or the trustees pursuant to this subpart.

(c) Any person to whom funds, property or claims have been transferred or delivered pursuant to this subpart shall be subject to the same obligation imposed upon the Board and upon the trustees.

(d) Any residual funds not required to pay the necessary costs of liquidation shall be turned over to the Secretary to be used, to the extent practicable, for continuing one or more of the promotion, research, consumer information, education, industry information, and producer information plans or projects authorized pursuant to this subpart.

§ 1280.242 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant thereto, or the issuance of any amendment to either thereof, shall not:

(a) Affect or waive any right, duty, obligation, or liability that has arisen or may hereafter arise in connection with any provision of this subpart or any regulation issued thereunder; or

(b) Release or extinguish any violation of this subpart or any regulation issued thereunder; or

(c) Affect or impair any rights or remedies of the United States, the Secretary or any person with respect to any such violation.

§ 1280.243 Personal liability.

No member, employee, or agent of the Board, including employees, agents, or Board members of the QSSB, acting pursuant to the authority provided in this subpart, shall be held personally responsible, either individually or jointly, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts of either commission or omission, of such member, employee, or agent except for acts of dishonesty or willful misconduct.

§ 1280.244 Patents, copyrights, inventions, and publications.

Any patents, copyrights, inventions, or publications developed through the use of funds remitted to the Board under the provisions of this subpart shall be the property of the United States Government as represented by the Board, and shall, along with any rents, royalties, residual payments, or other income from the rental, sales, leasing, franchising, or other uses of such patents, copyrights, inventions, or publications, inure to the benefit of the Board. Upon termination of this subpart, § 1280.240 shall apply to determine disposition of all such property.

§ 1280.245 Amendments.

Amendments to the subpart may be proposed, from time to time, by the Board or by any interested person affected by the provisions of the Act, including the Secretary.

§ 1280.246 Separability.

If any provision of this subpart is declared invalid or its applicability to any person or circumstances is held invalid, the validity of the remainder of this subpart of the applicability thereof to other persons or circumstances shall not be affected thereby.

Subpart B—[Reserved]

Subpart C—[Reserved]

Subpart D—[Reserved]

Subpart E—[Reserved]

Dated: November 29, 1995.

Lon Hatamiya,

Administrator.

[FR Doc. 95–29528 Filed 12–1–95; 3:00 pm]

BILLING CODE 3410–02–P

federal register

Tuesday
December 5, 1995

Part III

Department of Energy

10 CFR Parts 475, 476, and 478

Removal of Obsolete Regulations; Final Rule and Proposed Rule

DEPARTMENT OF ENERGY

10 CFR Parts 475, 476, and 478

Removal of Obsolete Regulations

AGENCY: Department of Energy.

ACTION: Direct final rule.

SUMMARY: The Department of Energy is amending the Code of Federal Regulations (CFR) to remove obsolete regulations relating to defunct programs of financial assistance for electric and hybrid vehicle research and methane transportation research. This action is being taken in furtherance of the President's Regulatory Reinvention Initiative to eliminate obsolete regulations and streamline existing rules.

EFFECTIVE DATE: This action is effective on January 16, 1996, unless significant adverse or critical comments are received by January 4, 1996. The Department will publish a timely notice in the Federal Register if comments are received that require the effective date to be suspended or delayed for any of the CFR parts included in this direct final rule.

FOR FURTHER INFORMATION CONTACT: Mr. Romulo L. Diaz, Jr., Director, Rulemaking Support, Office of the General Counsel, (GC–75), U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, DC 20585, (202) 586–2902.

SUPPLEMENTARY INFORMATION: In furtherance of the President's Regulatory Reinvention Initiative, the Department of Energy is engaged in a continuing and comprehensive review of its regulatory program. As part of that review, the Department is removing from Title 10 of the CFR regulations for which statutory authority has expired or has been superseded by subsequent legislation, as well as regulations governing nonfunctioning and unfunded programs. Elimination of these regulations will not interfere with the Department's ongoing activities in the area of alternative fueled vehicles. On September 22, 1995, the Department published a final rule that eliminated numerous obsolete regulations from Title 10 of the CFR. 60 FR 49195. As a result of this and prior actions, the Department has reduced its pages in the CFR by 514 pages, or 71 percent of its goal of 726 pages.

Today's action will remove the following obsolete regulations:

10 CFR Part 475—Electric and Hybrid Vehicle Research, Development and Demonstration Program

The Electric and Hybrid Vehicle Research, Development and Demonstration Act of 1976, 15 U.S.C. 2501 et seq., authorized the Department to support research, development and demonstration of electric and hybrid vehicle technologies. Part 475 contains performance standards for electric vehicles which DOE developed for purposes of the demonstration program. The demonstration period extended, by law, through fiscal year 1986. 15 U.S.C. 2506(c)(3). Because the demonstration program has ended, these regulations are obsolete.

10 CFR Part 476—Electric and Hybrid Vehicle Research, Development and Demonstration Program Small Business Planning Grants

Section 9 of the Electric and Hybrid Vehicle Research, Development and Demonstration Act of 1976, 15 U.S.C. 2508(c)(2), authorized the Department to make grants to qualified small businesses that needed assistance in developing and submitting proposals for contracts. Part 476 contains regulations implementing the Act's provision for these small business planning grants. Congress has not appropriated funds for this program for the past 15 years. DOE does not expect the program to be revived.

10 CFR Part 478—Methane Transportation Research and Development; Review and Certification of Contracts, Grants, Cooperative Agreements and Projects

Part 478 provides procedures for grants, contracts, or cooperative agreements to support research and development for methane-fueled vehicles. The regulations implement section 4(d) of the Methane Transportation Research, Development, and Demonstration Act. 15 U.S.C. 3801 et seq. The Department has not requested, and Congress has not provided, funds for this program for many years. The Department has no plans to seek revival of this program, and it considers these regulations to be obsolete.

Rulemaking Analyses

Regulatory Planning and Review

The elimination of obsolete regulations does not constitute a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866 (58 FR 51735); therefore, this rulemaking has not been reviewed by the Office of Information and Regulatory Affairs of the Office of Management and Budget.

Federalism

The Department has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 12612, and has determined that there are no federalism implications that would warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

Given that the programs for which these regulations were promulgated are now inactive, the Department certifies that this rulemaking will not have a ''significant economic impact on a substantial number of small entities.''

National Environmental Policy Act

This rule amends Title 10 of the Code of Federal Regulations by removing regulations governing programs that are funded. This rulemaking will not change the environmental effect of the programs governed by the regulations being eliminated because the programs have been inactive for many years and have no current environmental effect. The Department has therefore determined that this rule is covered under the Categorical Exclusion found at paragraph A.5 of Appendix A to Subpart D, 10 CFR Part 1021, which applies to a rulemaking amending an existing regulation that does not change the environmental effect of the regulation being amended.

Paperwork Reduction Act

This rulemaking contains no reporting requirement that is subject to OMB approval under 5 CFR Part 1320, pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Direct Final Rulemaking

The Code of Federal Regulation parts being removed by this rule are regulations that involve programs for which there has not been an appropriation since the mid-1980's. It is unlikely that the President will request, or that Congress will again provide, an appropriation for these programs. In the absence of funding, retention of these regulations does not serve any useful purpose. Their removal will have no direct effect on any person and, therefore, this action is expected to be uncontroversial. Accordingly, the Department has determined, pursuant to 5 U.S.C. 553, that there is good cause to conclude that prior notice and opportunity for public comment is unnecessary and contrary to the public interest.

Nevertheless, in a separate document in this Federal Register publication, the Department is publishing a notice of proposed rulemaking to remove these regulations. If the Department receives significant adverse or critical comments, it will withdraw this action before the effective date by publishing a subsequent notice of withdrawal in the Federal Register. If significant adverse comments clearly apply only to removal of certain of the affected CFR parts, the Department will withdraw this action only for the parts that are the subject of adverse or critical comments. This action would become effective for the part or parts that were not the subject of such comments.

Any public comments received on the separate notice of proposed rulemaking, which incorporates the substance of this action, will be addressed in a subsequent final rule. The Department will not institute a second comment period on this action. If no significant adverse or critical comments are received, this action will be effective January 16, 1996.

List of Subjects

10 CFR Part 475

Electric Power, Energy conservation, Motor vehicles, Research.

10 CFR Part 476

Electric power, Energy conservation, Grant programs-business, energy, Motor vehicles, Research, Small businesses.

10 CFR Part 478

Energy conservation, Government contracts, Methane, Motor vehicles, Natural gas, Research.

Issued in Washington, DC on November 29, 1995.

Robert R. Nordhaus,

General Counsel.

PARTS 475, 476, 478—[REMOVED]

For the reasons set forth in the preamble, under the authority of 42 U.S.C 7101, Title 10 of the Code of Federal Regulations is amended by removing parts 475, 476, and 478.

[FR Doc. 95–29575 Filed 12–4–95; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

10 CFR Parts 475, 476, and 478

Removal of Obsolete Regulations

AGENCY: Department of Energy.

ACTION: Proposed rule.

SUMMARY: The Department of Energy is proposing to amend the Code of Federal Regulations (CFR) to remove obsolete regulations relating to defunct programs of financial assistance for electric and hybrid vehicle research and methane transportation research. This action is being taken in response to the President's Regulatory Reinvention Initiative to eliminate obsolete regulations and streamline existing rules.

DATES: Comments on this proposed rule must be received in writing by January 4, 1996.

ADDRESSES: Written comments should be submitted to Mr. Romulo L. Diaz, Jr., Director, Rulemaking Support, Office of the General Counsel, (GC–75), U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, DC 20585, (202) 586–2902.

FOR FURTHER INFORMATION CONTACT: Mr. Romulo L. Diaz, Jr., Director, Rulemaking Support, Office of the General Counsel, (GC–75), U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, DC 20585, (202) 586–2902.

SUPPLEMENTARY INFORMATION: In connection with the President's Regulatory Reinvention Initiative, the Department of Energy is engaged in a continuing and comprehensive review of its regulatory program. As part of that review, the Department is removing from Title 10 of the CFR regulations for which statutory authority has expired or has been superseded by subsequent legislation, and other regulations governing nonfunctioning and unfunded programs. As a result of this proposed action and prior actions, the Department will have reduced its pages in the CFR by 514 pages.

The Department is proposing to remove from the CFR the following regulations, which it has determined to be obsolete:

10 CFR Part 475—Electric and Hybrid Vehicle Research, Development and Demonstration Program

The Electric and Hybrid Vehicle Research, Development and Demonstration Act of 1976, 15 U.S.C. 2501 et seq., authorized the Department to support research, development and demonstration of electric and hybrid vehicle technologies. Part 475 contains performance standards for electric vehicles which DOE developed for purposes of the demonstration program. The demonstration period extended, by law, through fiscal year 1986. 15 U.S.C. 2506(c)(3). Because the demonstration program has ended, these regulations are obsolete.

10 CFR Part 476—Electric and Hybrid Vehicle Research, Development and Demonstration Program Small Business Planning Grants

Section 9 of the Electric and Hybrid Vehicle Research, Development and Demonstration Act of 1976, 15 U.S.C. 2508(c)(2), authorized the Department to make grants to qualified small businesses that needed assistance in developing and submitting proposals for contracts. Part 476 contains regulations implementing the Act's provision for these small business planning grants. Congress has not appropriated funds for this program for the past 15 years. DOE does not expect the program to be revived.

10 CFR Part 478—Methane Transportation Research and Development; Review and Certification of Contracts, Grants, Cooperative Agreements and Projects

Part 478 provides procedures for grants, contracts, or cooperative agreements to support research and development for methane-fueled vehicles. The regulations implement section 4(d) of the Methane Transportation Research, Development, and Demonstration Act. 15 U.S.C. 3801 et seq. The Department has not requested, and Congress has not provided, funds for this program for many years. The Department has no plans to seek revival of this program, and it considers these regulations to be obsolete.

The Department of Energy is publishing, elsewhere in this issue, a direct final rule, to remove these CFR parts. As explained in the preamble for the direct final rule, the Department considers this removal action to be uncontroversial and unlikely to generate significant adverse or critical comments. If no significant adverse comments are received by the Department, the direct final rule will become effective on January 16, 1996, and there will be no further action on this proposal. If such comments are received, the direct final rule will be withdrawn for those parts that are the subject of significant adverse comments. The public comments then will be addressed in a subsequent final rule based on this proposed rule. The Department will not institute a second comment period on this action.

Issued in Washington, DC on November 29, 1995.

Robert R. Nordhaus,

General Counsel.

PARTS 475, 476, 478—[REMOVED]

For the reasons set forth in the preamble, under the authority of 42 U.S.C 7101, Title 10 of the Code of Federal Regulations is proposed to be amended by removing parts 475, 476, and 478.

[FR Doc. 95–29576 Filed 12–4–95; 8:45 am]

BILLING CODE 6450–01–P

Reader Aids

Federal Register

Vol. 60, No. 233

Tuesday, December 5, 1995

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations

General Information, indexes and other finding aids	**202–523–5227**
Public inspection announcement line	**523–5215**

Laws

Public Laws Update Services (numbers, dates, etc.)	**523–6641**
For additional information	**523–5227**

Presidential Documents

Executive orders and proclamations	**523–5227**
The United States Government Manual	**523–5227**

Other Services

Electronic and on-line services (voice)	**523–4534**
Privacy Act Compilation	**523–3187**
TDD for the hearing impaired	**523–5229**

ELECTRONIC BULLETIN BOARD

Free Electronic Bulletin Board service for Public Law numbers, Federal Register finding aids, and list of documents on public inspection. **202–275–0920**

FAX-ON-DEMAND

You may access our Fax-On-Demand service. You only need a fax machine and there is no charge for the service except for long distance telephone charges the user may incur. The list of documents on public inspection and the daily Federal Register's table of contents are available using this service. The document numbers are 7050-Public Inspection list and 7051-Table of Contents list. The public inspection list will be updated immediately for documents filed on an emergency basis.

NOTE: YOU WILL ONLY GET A LISTING OF DOCUMENTS ON FILE AND NOT THE ACTUAL DOCUMENT. Documents on public inspection may be viewed and copied in our office located at 800 North Capitol Street, N.W., Suite 700. The Fax-On-Demand telephone number is: **301–713–6905**

FEDERAL REGISTER PAGES AND DATES, DECEMBER

61645–62016.....1
62017–62188.....4
62189–62318.....5

CFR PARTS AFFECTED DURING DECEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
6853.....62185
6854.....62187

7 CFR

29.....62172
31.....62172
32.....62172
51.....62172
52.....62172
53.....62172
54.....62172
56.....62172
58.....62172
70.....62172
160.....62172
401.....62189
1002.....62017, 62018
1260.....62019

Proposed Rules:
226.....62227
985.....62229
1280.....62298

8 CFR

214.....62021

10 CFR

475.....62316
476.....62316
478.....62316

Proposed Rules:
475.....62318
476.....62318
478.....62318

12 CFR

Proposed Rules:
250.....62050

13 CFR

140.....62190

14 CFR

39 .....61645, 61647, 61649, 62192
71 .....61652, 61653, 62194

Proposed Rules:
39.....62051
71 .....61666, 61667, 61668, 61669, 62053

15 CFR

Proposed Rules:
960.....62054

16 CFR

455.....62195
1145.....62023

17 CFR

200.....62295

21 CFR

176.....62207
177.....61654
182.....62208
186.....62208

Proposed Rules:
801.....61670
803.....61670
804.....61670
897.....61670

24 CFR

81.....61846

26 CFR

1 .....62024, 62026, 62209
53.....62209
301.....62209

Proposed rules:
1.....62229

29 CFR

2606.....61740
2616.....61740
2617.....61740
2629.....61740

Proposed Rules:
102.....61679

30 CFR

Proposed Rules:
913.....62229

34 CFR

668 .....61760, 61776, 61796, 61830
674.....61796
675.....61796
676.....61796
682.....61750, 61796
685 .....61790, 61796, 61820
690.....61796

36 CFR

Poposed Rules:
1.....62233
13.....62233

37 CFR

253.....61654
255.....61655
259.....61657

Proposed Rules:
202.....62057

39 CFR

20.....61660

40 CFR

70.....62032

Proposed Rules:
61.....61681

81.....62236

42 CFR

Proposed rules:
413.....62237

43 CFR

10.....62134

44 CFR

65.....62213

47 CFR

0.....61662
73 .....62218, 62219, 62220
90.....61662
Proposed Rules:
73.....62060, 62061

49 CFR

219.....61664
553.....62221
Proposed Rules:
571.....62061

50 CFR

25.....62035
32.....62035
649.....62224
650.....62224
651.....62224
652.....62226
Proposed Rules:
642.....62241

REMINDERS

The rules and proposed rules in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

Rules Going Into Effect Today

AGRICULTURE DEPARTMENT

Federal Crop Insurance Corporation

Crop insurance regulations:

Florida citrus endorsement; published 12-5-95

FEDERAL COMMUNICATIONS COMMISSION

Radio stations; table of assignments:

Arkansas et al.; published 12-5-95

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Food additives:

Paper and paperboard components--

Silver chloride-coated titanium dioxide; published 12-5-95

GRAS or prior-sanctioned ingredients:

Japan wax; published 12-5-95

TREASURY DEPARTMENT

Internal Revenue Service

Excise taxes:

Charitable organizations; political expenditures; published 12-5-95

Comments Due Next Week

AGRICULTURE DEPARTMENT

Consolidated Farm Service Agency

North American Free Trade Agreement (NAFTA):

End-use certificate program; comments due by 12-14-95; published 11-14-95

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Pacific Coast groundfish; comments due by 12-13-95; published 11-28-95

EDUCATION DEPARTMENT

Bilingual education:

Graduate fellowship program; comments due by 12-11-95; published 11-9-95

ENVIRONMENTAL PROTECTION AGENCY

Clean Air Act:

State operating permits programs--

Puerto Rico; comments due by 12-14-95; published 11-14-95

Hazardous waste:

Identification and listing--

Dye and pigment production; comments due by 12-15-95; published 11-30-95

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities; exemptions:

1,2-ethanediamine, polymer with oxirane and methyloxirane; comments due by 12-15-95; published 11-15-95

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]methyl]-1H-1,2,4-triazole (propiconazole); comments due by 12-15-95; published 11-15-95

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:

Public mobile services--

Enhanced 911 services compatibility with wireless services; comments due by 12-15-95; published 11-28-95

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Food additives:

Adhesive coatings and components--

Silver chloride-coated titanium dioxide; comments due by 12-15-95; published 11-15-95

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:

Bruneau hot springsnail

Comment period extension; comments due by 12-15-95; published 11-13-95

JUSTICE DEPARTMENT

Executive Office for Immigration Review:

Representation and appearance, nominal fees requirement; and free legal services lists; comments due by 12-14-95; published 11-14-95

LABOR DEPARTMENT

Mine Safety and Health Administration

Metal and nonmetal mine safety and health:

First aid safety standards; comments due by 12-11-95; published 10-27-95

PENSION BENEFIT GUARANTY CORPORATION

Privacy Act; implementation; comments due by 12-15-95; published 11-15-95

PERSONNEL MANAGEMENT OFFICE

Prevailing rate systems; comments due by 12-14-95; published 11-14-95

SECURITIES AND EXCHANGE COMMISSION

Securities:

Ownership reports and trading by officers, directors, and principal security holders (insider trading)

Correction; comments due by 12-15-95; published 10-26-95

STATE DEPARTMENT

Visas; immigrant documentation:

Diversity immigrant visa program; requirements to prevent fraudulent practices; comments due by 12-13-95; published 11-13-95

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Class C airspace; comments due by 12-15-95; published 11-1-95

Class E airspace; comments due by 12-11-95; published 11-1-95

TREASURY DEPARTMENT

Fiscal Service

Financial management services:

Federal process agents of surety companies; comments due by 12-11-95; published 11-9-95

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as ''slip laws'') from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–2470).

H.R. 2126/P.L. 104–61

Department of Defense Appropriations Act, 1996 (Dec. 1, 1995; 109 Stat. 636)

Note: Upon expiration of the 10-day period prescribed by the Constitution of the United States, H.R. 2126 became law on Dec. 1, 1995, without the President's signature.

Last List November 30, 1995