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Presidential Documents

Title 3—

The President

Proclamation 6975 of March 3, 1997

Women's History Month, 1997

By the President of the United States of America

A Proclamation

Throughout the history of our Nation, women have played a pivotal role in bringing about positive change to every aspect of American life, and their achievements continue to touch the lives of every single citizen. Women's History Month honors the women who made these accomplishments possible, securing their rightful place in history among those who have made our country great. This month, we celebrate these women's lives—and renew our commitment to breaking down the gender barriers that still exist.

Through their courage, foresight, and community spirit over the years, American women have created a world of opportunity for today's heroines and role models—women such as Secretary of State Madeleine Albright, the highest ranking woman to serve in any presidential administration; Dr. Shannon W. Lucid, who has performed five historic and complex Space Shuttle missions during 18 years with NASA and recently broke the American and women's world record for continuous time in space; Oseola McCarty, who in 1995 donated the life savings she had earned as a maid to fund scholarships at the University of Mississippi; and Julie Su, the young attorney who first came to prominence through her efforts to expose illegal exploitation of Thai immigrants in a California sweatshop and who continues to help immigrants to secure proper medical care, employment, and the dignity they deserve. The pioneers in women's history would be proud of today's women pioneers.

As we approach the 21st century, we have reached another significant milestone in our Nation's history: Women have approached an almost equal share in the labor force. Thus, it is more important than ever that we enable women and men to meet their responsibilities at work and at home.

Women continue to break the glass ceiling, changing their status from employee to employer. Today, women-owned businesses are creating one out of every four jobs in the United States. From the classroom to the board room, women now occupy every part of the work force, building the kinds of lives for themselves and their families that are the heart of the American Dream.

Women's History Month provides Americans with an opportunity to celebrate the contributions of all the women who have enriched our Nation, to honor their legacy, and to reflect upon what we can all do to end discrimination against women. I encourage all Americans to learn from, and share information about, women's history in their workplaces, classrooms, and family rooms. As every family has its own heroes, so does our country. Only by studying the history of America's women can we fully understand the history of America.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States of America, do hereby proclaim March 1997, as Women's History Month. I ask educators, Government officials, and all citizens to observe this month with appropriate programs, ceremonies, and activities, remembering not only this month but also every month the many different contributions that women make every day.

IN WITNESS WHEREOF, I have hereunto set my hand this third day of March, in the year of our Lord nineteen hundred and ninety-seven, and of the Independence of the United States of America the two hundred and twenty-first.

William J. Clinton

[FR Doc. 97–5565
Filed 3–4–97; 8:45 am]
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Presidential Documents

Proclamation 6976 of March 3, 1997

Save Your Vision Week, 1997

By the President of the United States of America

A Proclamation

Our eyes are our windows to the world. They give us the freedom to gaze at a sunset, read a book, or drive a car. Our sight allows us to jog along a garden pathway or enjoy a panoramic view.

All of us need to care for our vision, but older Americans in particular should be aware of their susceptibility to eye disease. As the ''baby boom'' generation ages, it is critical that these Americans receive regular eye examinations from eye-care professionals.

A thorough exam can lead to early detection and control or cure of eye diseases such as glaucoma, cataract, and diabetic retinopathy. A professional eye exam can also diagnose age-related macular degeneration (AMD), a leading cause of severe visual impairment and blindness in the United States. This common disease affects the retina, the part of the eye that helps to produce sharp, central vision required for activities such as reading and driving. AMD causes a loss of this clear, central vision; in some cases, vision loss is rapid and dramatic. The risk of AMD dramatically increases after age 60. It is estimated that this disease already causes visual impairment in approximately 1.7 million of the 34 million Americans now older than 65. As these numbers continue to grow, researchers are working to find the cause of, and develop treatment for, this debilitating disease.

People with AMD and its accompanying visual impairment often cannot perform daily activities such as reading the newspaper, preparing meals, or recognizing faces of friends. The inability to see well affects routine activities and social interactions and can lead to a loss of independence.

However, low-vision services and devices can greatly improve the quality of life for visually impaired patients and help them maintain their independence. Devices such as hand-held magnifiers, computer monitors with large type, and large-print newspapers and books can help the visually impaired dramatically improve their quality of life.

To remind Americans of the importance of protecting their eyesight, the Congress, by joint resolution approved December 30, 1963 (77 Stat. 629; 36 U.S.C. 169a), has authorized and requested the President to proclaim the first week in March of each year as ''Save Your Vision Week.''

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim March 2 through March 8, 1997, as Save Your Vision Week. Our eyes play a vital role in our independence and daily living and need to be examined regularly. Let us recognize the work done by vision researchers across our Nation on AMD and other eye diseases and the efforts they are making to enhance and retain our precious sight. Education on good vision starts with us, and we should take progressive steps to protect our eyes.

IN WITNESS WHEREOF, I have hereunto set my hand this third day of March, in the year of our Lord nineteen hundred and ninety-seven, and of the Independence of the United States of America the two hundred and twenty-first.

William J. Clinton

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FEDERAL RESERVE SYSTEM

12 CFR Part 208

[Regulation H; Docket No. R–0909]

Membership of State Banking Institutions in the Federal Reserve System; Recordkeeping and Confirmation of Certain Securities Transactions Effected by State Member Banks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System is adopting final amendments to Regulation H pertaining to the recordkeeping and confirmation of certain securities transactions. The amendments accommodate developments in recordkeeping, confirmation and settlement requirements for broker-dealers by adding certain yield-related confirmation disclosure requirements for transactions involving debt and asset-backed securities effected by State member banks for customers, and providing for three-day settlement of those transactions. The amendments also clarify that State member banks that effect *de minimis* government securities brokerage transactions and are exempt from registration under Department of the Treasury regulations, also are exempt from Regulation H. Finally, the amendments address the minimum recordkeeping requirements for State member banks exempt from the regulation, require State member banks to establish trading policies and procedures that separate the sales function from the back office function, liberalize the written notification requirements for periodic plans, and include several new definitions and language edits.

DATES: Effective April 1, 1997.

FOR FURTHER INFORMATION CONTACT: Angela Desmond, Senior Counsel, or Susan Meyers, Senior Securities Regulation Analyst, (202) 452–2781. For users of Telecommunications Device for the Deaf (TDD), please contact Dorothea Thompson, (202/452–3544), Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: The amendments to § 208.24 are part of an interagency effort to update the respective regulations of the Board, the OCC and the FDIC (agencies) that were adopted in 1979 [1] as part of a coordinated effort to provide guidance to banks effecting securities transactions for customers in trust departments and in other areas of the bank. The regulations are based on SEC recordkeeping and confirmation rules. [2]

Recognizing that a number of market and regulatory changes have occurred since the regulation was adopted, the Board, in consultation with the other agencies, published draft amendments for comment on December 26, 1995. [3] The draft amendments were designed to update the recordkeeping and confirmation requirements of Regulation H to conform with SEC rules, with pertinent Department of the Treasury regulations adopted under the Government Securities Act of 1986, 15 U.S.C. 78o–5, and with principles of safe and sound banking practices. The draft amendments also were consistent with the amendments published by the other agencies. [4]

After reviewing the comments, the Board has determined to adopt final amendments to Regulation H as described in the section-by-section summary below. The amendments are limited to § 208.24 (formerly § 208.8(k)) of Regulation H and are part of an ongoing comprehensive review of the regulation. Adoption of the amendments will provide continued consistency among the regulations of the agencies and parity with securities industry practices in these important areas.

As is the practice with respect to other notification practices of banks, the confirmation and notification requirements of § 208.24 can be satisfied by facsimile and, when the parties agree and the necessary safeguards are in place, via electronic means. Such safeguards should ensure correct delivery, the maintenance of confidentiality and security of the transmission, appropriate notice that the transmission is being sent, and evidence of delivery. In addition, a customer consenting to electronic delivery should still be able to request and obtain a written version of the information.

Summary of Comments and Section-by-Section Summary of Final Amendments

The Board received twelve comment letters; seven were from Federal Reserve Banks, one from a trade association, three from banks, and one from a law firm. Eleven commenters expressed general support for the proposed amendments, and one bank expressed general concern with the complexity and burden of complying with the regulation. Six commenters stated that the proposed amendments would not have a significant cost or burden impact on banks.

Several commenters offered constructive suggestions that were incorporated into the final amendments. In addition, certain organizational changes have been made to assure as much consistency as possible between the respective regulations of the agencies. A section-by-section summary of the final amendments noting changes from the amendments proposed for comment follows.

Section 208.24(a) Exceptions and Safe and Sound Operations

The exceptions previously found in current § 208.8(k)(6) and the new section related to safe and sound operations for banks exempt from § 208.24 have been combined into one subsection and moved to the front of the regulation, to § 208.24(a). This makes it easier for State member banks to determine whether they qualify for an exemption from the regulation, and if so, what recordkeeping procedures are expected.

[1] 44 FR 43258 (July 24, 1979). The OCC and the FDIC adopted similar rules on the same date, 12 CFR Part 12, 44 FR 43252 (July 24, 1979) and 12 CFR Part 344, 44 FR 43261 (July 24, 1979), respectively.

[2] SEC rule 10b-10, 17 CFR 240.10b-10; rule 17a-3, 17 CFR 240.17a-3; and rule 17a-4, 17 CFR 240.17a-4, all adopted under the Securities Exchange Act.

[3] 60 FR 66759.

[4] The OCC published amendments for comment on December 22, 1995, 60 FR 66517, and adopted final amendments on December 2, 1996, 61 FR 63958. The FDIC published an advanced notice of rulemaking on its regulation on May 24, 1996, 61 FR 26135 and published amendments for comment on December 24, 1996, 61 FR 67729.

The Board is adopting the proposed language in § 208.24(a)(1)(B), which clarifies that State member banks that effect up to 500 government securities brokerage transactions and are exempt from registration under Department of the Treasury regulation 401.3(a)(2)(i), 17 CFR 401.3(a)(2), also are exempt from § 208.24. This exemption is not available if a bank has filed notice or is required to file notice indicating that it acts as a government securities broker or dealer.

The Board also is adopting, with the support of the commenters, a provision on safe and sound operations for banks exempt from § 208.24. The provision codifies the longstanding interpretation of Board staff that principles of safety and soundness require such a bank to maintain effective systems of records and controls regarding customer securities transactions that reflect accurate information and are sufficient to provide an adequate basis for an audit of the information.

Section 208.24(b) Definitions

The amendments add definitions of: asset-backed security, completion of the transaction, crossing of buy and sell orders, debt security, government security, and municipal security. In general, the new definitions are based on definitions contained in the Securities Exchange Act, or in the SEC's confirmation rule 10b–10, 17 CFR 240.10b–10, and are necessary for applying the confirmation disclosure and the three-day settlement requirements. The definition of ''security'' has been amended to conform generally to the definition in section 3(a)(10) of the Securities Exchange Act, 15 U.S.C. 78c(a)(10), although the Board has retained the current exclusions from the definition in the final rule.

The definition of ''periodic plan'' has been modified to include cash management sweep services or other prearranged automated transfers of funds from a deposit account to purchase a security in response to commenters seeking clarification how the transaction notification requirements for periodic plans apply to automatic sweep or transfer arrangements. Finally, the term ''dealer bank'' in the definition of ''customer'' has been replaced by the term ''municipal securities broker or dealer'' to clarify that a bank acting as a municipal securities broker is not a customer for purposes of § 208.24.

Section 208.24(c) Recordkeeping

The Board is adopting language in § 208.24(c) that clarifies that § 208.24 applies to government securities transactions effected for customers by State member banks and to municipal securities transactions effected by State member banks that are not registered as municipal securities dealers. All recordkeeping requirements are now located in § 208.24(c), and explanatory language that was at the end of the old recordkeeping section has been moved to the beginning of the rule to simplify the section.

Section 208.24(d) Content and Time of Notification

Section 208.24(d) has been renamed to clarify its subject matter. Substantively, the amendments delete the old five business day requirement for confirmation delivery and provide that confirmations be given or sent to customers ''at or by completion of the transaction,'' defined as the payment and delivery of the securities in § 208.24(b).

The proposed amendments would have deleted the extension of time for State member banks that choose to send confirmations from the executing broker to a customer rather than creating their own confirmations. In response to a commenter who stated that it may be difficult to meet the three-day delivery requirement in this situation, § 208.24(d) now provides that if a State member bank uses a broker-dealer's confirmation, it must give or send the confirmation to its customer within one business day of the bank's receipt of the confirmation.

As proposed, the final amendments require confirmations to: (i) Contain a legend when the security is callable prior to maturity indicating that an early redemption could affect the yield stated on the confirmation and offering additional information on request (§ 208.24(d)(2)(viii)); (ii) disclose the yield and/or resulting dollar price of transactions involving debt securities and asset-backed securities (§ 208.24(d)(2) (ix) and (x)); and, (iii) indicate when a debt security, other than a government security, is unrated by a nationally recognized statistical rating organization (§ 208.24(d)(2)(xii)). These disclosures conform bank confirmations with those of broker-dealers under SEC rule 10b–10 and with longstanding practice in the municipal securities industry.

The Board had requested comment whether it would be preferable to incorporate SEC rules 10b–10, 17a–3 and 17a–4 by reference for State member banks to refer to, rather than specify items of confirmation disclosure in the regulation. All of the comments received on this issue preferred the current approach, i.e., to specify the disclosures required to be contained on confirmations in the regulation.

Section 208.24(d)(2)(vi) requires banks to disclose on confirmations the amount of any remuneration received by the bank on the transaction. In response to commenters who pointed out that SEC rule 10b–10(a)(2)(i)(D) provides more flexibility to brokers in this area, the final amendments provide that a State member bank may elect to disclose whether it has or will receive remuneration from a party other than the customer and offer to furnish the information within a reasonable time on request.

Section 208.24(e) Notification by Agreement; Alternative Forms and Times

Section 208.24(e) has been renamed to indicate that it deals with alternative arrangements for the delivery of notifications of securities transactions to customers. Substantive changes have been made to § 208.24(e)(5), pertaining to notifications of transactions in periodic plans, to conform more completely with securities industry requirements. Formerly, the regulation required that a notification be provided to a customer ''as soon as possible after each transaction.'' The Board is amending this requirement to require notification ''not less than every three months'' for all periodic plans other than cash management sweep accounts. As requested by two commenters, the final amendments provide that a notification of a transaction involving a cash management sweep service should be given or sent to a customer ''for each month in which a securities transaction takes place but not less than every three months if there are no securities transactions.''[5] These amendments will provide more flexibility to State member banks in scheduling notifications in periodic plans and conform with SEC rule 10b–10(b)(2).

Section 208.24(f) Settlement of Securities Transactions

The amendments to § 208.24(f) update the regulation to require State member banks to settle transactions effected for customers within the ''standard settlement cycle for broker-dealers in the United States'' unless the parties agree to a different settlement date at the time of the transaction. The standard settlement cycle currently is three business days (T+3) after the trade date.

[5] Notwithstanding the provisions of this paragraph, banks that retain custody of government securities that are the subject of a hold-in-custody purchase agreement are subject to the requirements of 17 CFR 403.5(d).

The requirement applies to transactions in securities that would fall under SEC rule 15c6–1, 17 CFR 240.15c6–1, for broker-dealers, and brings banks into line with the rest of the securities industry in this area.

The commenters were nearly split with respect to the rule's use of the term ''standard settlement cycle for broker-dealers in the United States'' rather than specifying T+3 for sending customer confirmations. Four commenters favor the approach taken in the rule, while three commenters would specify T+3. The Board has determined to adopt the proposed language as it will avoid having to amend the regulation to reflect expected future modifications to the standard settlement cycle. Moreover, the same term is used in the Board's Regulation T and has not engendered any confusion.

Section 208.24(g) Securities Trading Policies and Procedures

The amendments add § 208.24(g)(1)(iii) that requires State member banks to establish supervisory procedures and reporting lines for back office personnel that are separate from those established to oversee personnel accepting orders and effecting transactions. All comments received on this provision favored its adoption.

With respect to filing notices of personal securities transactions by bank officers and directors under § 208.24(g)(4), the Board notes that affected individuals that file similar reports under SEC rule 17j–1, 15 CFR 270.17j–1, for investment advisers, do not need to file a separate notice to satisfy Regulation H requirements.

Regulatory Flexibility Act

The Board certifies that the final rule will have no significant economic impact on a substantial number of small entities. While the final rule adds certain confirmation disclosure requirements, it also streamlines and reduces other confirmation, recordkeeping and regulatory burdens for State member banks engaged in certain securities transactions for customers.

Paperwork Reduction Act

In accordance with section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 35; 5 CFR 1320 Appendix A.1), the Board reviewed the rule under the authority delegated to the Board by the Office of Management and Budget. The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB control number. The OMB control number is 7100–0196.

The collection of information requirements in this regulation are found in 12 CFR 208.24. This information is required to evidence compliance with the requirements of section 208.24 of Regulation H. The respondents are for-profit financial institutions. Records must be retained for three years.

No comments specifically addressing the burden estimate were received.

The proposed amendments would provide for only a minor addition in disclosure practices of state member banks, would not increase the banks' reporting requirements to the Federal Reserve, and would have a negligible effect on respondent burden. The estimated burden is 3 minutes per response. There are 1,214 respondents and the number of their recordkeeping and notification occurrences varies with the amount and type of securities transactions. The total annual recordkeeping and disclosure burden for these respondents is estimated to be 165,520 hours. Based on an hourly cost of $20, the annual cost to the public is estimated to be $3,310,400.

Because the records would be maintained at state member banks and the notices are not provided to the Federal Reserve, no issue of confidentiality under the Freedom of Information Act arises.

The Federal Reserve has a continuing interest in the public's opinions of our collections of information. At any time, comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, may be sent to: Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, DC 20551; and to the Office of Management and Budget, Paperwork Reduction Project (7100–0196), Washington, DC 20503.

List of Subjects in 12 CFR Part 208

Accounting, Agriculture, Banks, banking, State member banks, Confidential business information, Crime, Currency, Federal Reserve System, Flood insurance, Mortgages, Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, the Board amends 12 CFR Part 208 as set forth below:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

1. The authority citation for Part 208 continues to read as follows:

Authority: 12 U.S.C. 36, 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1820(d)(8), 1823(j), 1828(o), 1831o, 1831p–1, 3105, 3310, 3331–3351, and 3906–3909; 15 U.S.C. 78b, 78l(b), 78l(g), 78l(i), 78o–4(c)(5), 78q, 78q–1 and 78w; 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104a, 4104b, 4106 and 4128.

§ 208.8 [Amended]

2. In § 208.8 paragraph (k) is removed and reserved.

3. A new § 208.24 is added to subpart A to read as follows:

§ 208.24 Recordkeeping and confirmation of certain securities transactions effected by State member banks.

(a) Exceptions and safe and sound operations.

(1) A State member bank may be excepted from one or more of the requirements of this section if it meets one of the following conditions of paragraphs (a)(1)(i) through (a)(1)(iv) of this section:

(i) *De minimis transactions.* The requirements of paragraphs (c)(2) through (c)(4) and paragraphs (e)(1) through (e)(3) of this section shall not apply to banks having an average of less than 200 securities transactions per year for customers over the prior three calendar year period, exclusive of transactions in government securities;

(ii) *Government securities.* The recordkeeping requirements of paragraph (c) of this section shall not apply to banks effecting fewer than 500 government securities brokerage transactions per year; provided that this exception shall not apply to government securities transactions by a State member bank that has filed a written notice, or is required to file notice, with the Federal Reserve Board that it acts as a government securities broker or a government securities dealer;

(iii) *Municipal securities.* The municipal securities activities of a State member bank that are subject to regulations promulgated by the Municipal Securities Rulemaking Board shall not be subject to the requirements of this section; and

(iv) *Foreign branches.* The requirements of this section shall not apply to the activities of foreign branches of a State member bank.

(2) Every State member bank qualifying for an exemption under paragraph (a)(1) of this section that conducts securities transactions for

customers shall, to ensure safe and sound operations, maintain effective systems of records and controls regarding its customer securities transactions that clearly and accurately reflect appropriate information and provide an adequate basis for an audit of the information.

(b) *Definitions.* For purposes of this section:

(1) *Asset-backed security* shall mean a security that is serviced primarily by the cash flows of a discrete pool of receivables or other financial assets, either fixed or revolving, that by their terms convert into cash within a finite time period plus any rights or other assets designed to assure the servicing or timely distribution of proceeds to the security holders.

(2) *Collective investment fund* shall mean funds held by a State member bank as fiduciary and, consistent with local law, invested collectively as follows:

(i) In a common trust fund maintained by such bank exclusively for the collective investment and reinvestment of monies contributed thereto by the bank in its capacity as trustee, executor, administrator, guardian, or custodian under the Uniform Gifts to Minors Act; or

(ii) In a fund consisting solely of assets of retirement, pension, profit sharing, stock bonus or similar trusts which are exempt from Federal income taxation under the Internal Revenue Code (26 U.S.C.).

(3) *Completion of the transaction* effected by or through a state member bank shall mean:

(i) For purchase transactions, the time when the customer pays the bank any part of the purchase price (or the time when the bank makes the book-entry for any part of the purchase price if applicable); however, if the customer pays for the security prior to the time payment is requested or becomes due, then the transaction shall be completed when the bank transfers the security into the account of the customer; and

(ii) For sale transactions, the time when the bank transfers the security out of the account of the customer or, if the security is not in the bank's custody, then the time when the security is delivered to the bank; however, if the customer delivers the security to the bank prior to the time delivery is requested or becomes due then the transaction shall be completed when the banks makes payment into the account of the customer.

(4) *Crossing of buy and sell orders* shall mean a security transaction in which the same bank acts as agent for both the buyer and the seller.

(5) *Customer* shall mean any person or account, including any agency, trust, estate, guardianship, or other fiduciary account, for which a State member bank effects or participates in effecting the purchase or sale of securities, but shall not include a broker, dealer, bank acting as a broker or dealer, municipal securities broker or dealer, or issuer of the securities which are the subject of the transactions.

(6) *Debt security* as used in paragraph (c) of this section shall mean any security, such as a bond, debenture, note or any other similar instrument which evidences a liability of the issuer (including any security of this type that is convertible into stock or similar security) and fractional or participation interests in one or more of any of the foregoing; provided, however, that securities issued by an investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a–1 et seq., shall not be included in this definition.

(7) *Government security* shall mean:

(i) A security that is a direct obligation of, or obligation guaranteed as to principal and interest by, the United States;

(ii) A security that is issued or guaranteed by a corporation in which the United States has a direct or indirect interest and which is designated by the Secretary of the Treasury for exemption as necessary or appropriate in the public interest or for the protection of investors;

(iii) A security issued or guaranteed as to principal and interest by any corporation whose securities are designated, by statute specifically naming the corporation, to constitute exempt securities within the meaning of the laws administered by the Securities and Exchange Commission; or

(iv) Any put, call, straddle, option, or privilege on a security as described in paragraphs (b)(7) (i), (ii), or (iii) of this section other than a put, call, straddle, option, or privilege that is traded on one or more national securities exchanges, or for which quotations are disseminated though an automated quotation system operated by a registered securities association.

(8) *Investment discretion* with respect to an account shall mean if the State member bank, directly or indirectly, is authorized to determine what securities or other property shall be purchased or sold by or for the account, or makes decisions as to what securities or other property shall be purchased or sold by or for the account even though some other person may have responsibility for such investment decisions.

(9) *Municipal security* shall mean a security which is a direct obligation of, or obligation guaranteed as to principal or interest by, a State or any political subdivision thereof, or any agency or instrumentality of a State or any political subdivision thereof, or any municipal corporate instrumentality of one or more States, or any security which is an industrial development bond (as defined in 26 U.S.C. 103(c)(2) the interest on which is excludable from gross income under 26 U.S.C. 103(a)(1), by reason of the application of paragraph (4) or (6) of 26 U.S.C. 103(c) (determined as if paragraphs (4)(A), (5) and (7) were not included in 26 U.S.C. 103(c)), paragraph (1) of 26 U.S.C. 103(c) does not apply to such security.

(10) *Periodic plan* shall mean:

(i) A written authorization for a State member bank to act as agent to purchase or sell for a customer a specific security or securities, in a specific amount (calculated in security units or dollars) or to the extent of dividends and funds available, at specific time intervals, and setting forth the commission or charges to be paid by the customer or the manner of calculating them (including dividend reinvestment plans, automatic investment plans, and employee stock purchase plans); or

(ii) Any prearranged, automatic transfer or sweep of funds from a deposit account to purchase a security, or any prearranged, automatic redemption or sale of a security with the funds being transferred into a deposit account (including cash management sweep services).

(11) *Security* shall mean:

(i) Any note, stock, treasury stock, bond, debenture, certificate of interest or participation in any profit-sharing agreement or in any oil, gas, or other mineral royalty or lease, any collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, for a security, any put, call, straddle, option, or privilege on any security, or group or index of securities (including any interest therein or based on the value thereof), any instrument commonly known as a ''security''; or any certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase, any of the foregoing.

(ii) But does not include a deposit or share account in a federally or state insured depository institution, a loan participation, a letter of credit or other form of bank indebtedness incurred in the ordinary course of business, currency, any note, draft, bill of exchange, or bankers acceptance which

has a maturity at the time of issuance of not exceeding nine months, exclusive of days of grace, or any renewal thereof the maturity of which is likewise limited, units of a collective investment fund, interests in a variable amount (master) note of a borrower of prime credit, or U.S. Savings Bonds.

(c) *Recordkeeping.* Except as provided in paragraph (a) of this section, every State member bank effecting securities transactions for customers, including transactions in government securities, and municipal securities transactions by banks not subject to registration as municipal securities dealers, shall maintain the following records with respect to such transactions for at least three years. Nothing contained in this section shall require a bank to maintain the records required by this paragraph in any given manner, provided that the information required to be shown is clearly and accurately reflected and provides an adequate basis for the audit of such information. Records may be maintained in hard copy, automated, or electronic form provided the records are easily retrievable, readily available for inspection, and capable of being reproduced in a hard copy. A bank may contract with third party service providers, including broker/dealers, to maintain records required under this part.

(1) Chronological records of original entry containing an itemized daily record of all purchases and sales of securities. The records of original entry shall show the account or customer for which each such transaction was effected, the description of the securities, the unit and aggregate purchase or sale price (if any), the trade date and the name or other designation of the broker/dealer or other person from whom purchased or to whom sold;

(2) Account records for each customer which shall reflect all purchases and sales of securities, all receipts and deliveries of securities, and all receipts and disbursements of cash with respect to transactions in securities for such account and all other debits and credits pertaining to transactions in securities;

(3) A separate memorandum (order ticket) of each order to purchase or sell securities (whether executed or cancelled), which shall include:

(i) The account(s) for which the transaction was effected;

(ii) Whether the transaction was a market order, limit order, or subject to special instructions;

(iii) The time the order was received by the trader or other bank employee responsible for effecting the transaction;

(iv) The time the order was placed with the broker/dealer, or if there was no broker/dealer, the time the order was executed or canceled;

(v) The price at which the order was executed; and

(vi) The broker/dealer utilized;

(4) A record of all broker/dealers selected by the bank to effect securities transactions and the amount of commissions paid or allocated to each such broker during the calendar year; and

(5) A copy of the written notification required by paragraphs (c) and (d) of this section.

(d) *Content and time of notification.* Every State member bank effecting a securities transaction for a customer shall give or send to such customer either of the following types of notifications at or before completion of the transaction or; if the bank uses a broker/dealer's confirmation, within one business day from the bank's receipt of the broker/dealer's confirmation:

(1) A copy of the confirmation of a broker/dealer relating to the securities transaction; and if the bank is to receive remuneration from the customer or any other source in connection with the transaction, and the remuneration is not determined pursuant to a prior written agreement between the bank and the customer, a statement of the source and the amount of any remuneration to be received; or

(2) A written notification disclosing:

(i) The name of the bank;

(ii) The name of the customer;

(iii) Whether the bank is acting as agent for such customer, as agent for both such customer and some other person, as principal for its own account, or in any other capacity;

(iv) The date of execution and a statement that the time of execution will be furnished within a reasonable time upon written request of such customer specifying the identity, price and number of shares or units (or principal amount in the case of debt securities) of such security purchased or sold by such customer;

(v) The amount of any remuneration received or to be received, directly or indirectly, by any broker/dealer from such customer in connection with the transaction;

(vi) The amount of any remuneration received or to be received by the bank from the customer and the source and amount of any other remuneration to be received by the bank in connection with the transaction, unless remuneration is determined pursuant to a written agreement between the bank and the customer, provided, however, in the case of Government securities and municipal securities, this paragraph (d)(2)(vi) shall apply only with respect to remuneration received by the bank in an agency transaction. If the bank elects not to disclose the source and amount of remuneration it has or will receive from a party other than the customer pursuant to this paragraph (d)(2)(vi), the written notification must disclose whether the bank has received or will receive remuneration from a party other than the customer, and that the bank will furnish within a reasonable time the source and amount of this remuneration upon written request of the customer. This election is not available, however, if, with respect to a purchase, the bank was participating in a distribution of that security; or with respect to a sale, the bank was participating in a tender offer for that security;

(vii) The name of the broker/dealer utilized; or, where there is no broker/dealer, the name of the person from whom the security was purchased or to whom it was sold, or the fact that such information will be furnished within a reasonable time upon written request;

(viii) In the case of a transaction in a debt security subject to redemption before maturity, a statement to the effect that the debt security may be redeemed in whole or in part before maturity, that the redemption could affect the yield represented and that additional information is available on request;

(ix) In the case of a transaction in a debt security effected exclusively on the basis of a dollar price:

(A) The dollar price at which the transaction was effected;

(B) The yield to maturity calculated from the dollar price; provided, however, that this paragraph (c)(2)(ix)(B) shall not apply to a transaction in a debt security that either has a maturity date that may be extended by the issuer with a variable interest payable thereon, or is an asset-backed security that represents an interest in or is secured by a pool of receivables or other financial assets that are subject to continuous prepayment;

(x) In the case of a transaction in a debt security effected on the basis of yield:

(A) The yield at which the transaction was effected, including the percentage amount and its characterization (e.g., current yield, yield to maturity, or yield to call) and if effected at yield to call, the type of call, the call date, and the call price; and

(B) The dollar price calculated from the yield at which the transaction was effected; and

(C) If effected on a basis other than yield to maturity and the yield to maturity is lower than the represented yield, the yield to maturity as well as

the represented yield; provided, however, that this paragraph (c)(2)(x)(C) shall not apply to a transaction in a debt security that either has a maturity date that may be extended by the issuer with a variable interest rate payable thereon, or is an asset-backed security that represents an interest in or is secured by a pool of receivables or other financial assets that are subject to continuous prepayment;

(xi) In the case of a transaction in a debt security that is an asset-backed security which represents an interest in or is secured by a pool of receivables or other financial assets that are subject continuously to prepayment, a statement indicating that the actual yield of such asset-backed security may vary according to the rate at which the underlying receivables or other financial assets are prepaid and a statement of the fact that information concerning the factors that affect yield (including at a minimum, the estimated yield, weighted average life, and the prepayment assumptions underlying yield) will be furnished upon written request of such customer; and

(xii) In the case of a transaction in a debt security, other than a government security, that the security is unrated by a nationally recognized statistical rating organization, if that is the case.

(e) *Notification by agreement; alternative forms and times of notification.* A State member bank may elect to use the following alternative procedures if a transaction is effected for:

(1) Accounts (except periodic plans) where the bank does not exercise investment discretion and the bank and the customer agree in writing to a different arrangement as to the time and content of the notification; provided, however, that such agreement makes clear the customer's right to receive the written notification pursuant to paragraph (c) of this section at no additional cost to the customer;

(2) Accounts (except collective investment funds) where the bank exercises investment discretion in other than an agency capacity, in which instance the bank shall, upon request of the person having the power to terminate the account or, if there is no such person, upon the request of any person holding a vested beneficial interest in such account, give or send to such person the written notification within a reasonable time. The bank may charge such person a reasonable fee for providing this information;

(3) Accounts, where the bank exercises investment discretion in an agency capacity, in which instance:

(i) The bank shall give or send to each customer not less frequently than once every three months an itemized statement which shall specify the funds and securities in the custody or possession of the bank at the end of such period and all debits, credits and transactions in the customer's accounts during such period; and

(ii) If requested by the customer, the bank shall give or send to each customer within a reasonable time the written notification described in paragraph (c) of this section. The bank may charge a reasonable fee for providing the information described in paragraph (c) of this section;

(4) A collective investment fund, in which instance the bank shall at least annually furnish a copy of a financial report of the fund, or provide notice that a copy of such report is available and will be furnished upon request, to each person to whom a regular periodic accounting would ordinarily be rendered with respect to each participating account. This report shall be based upon an audit made by independent public accountants or internal auditors responsible only to the board of directors of the bank;

(5) A periodic plan, in which instance the bank:

(i) Shall (except for a cash management sweep service) give or send to the customer a written statement not less than every three months if there are no securities transactions in the account, showing the customer's funds and securities in the custody or possession of the bank; all service charges and commissions paid by the customer in connection with the transaction; and all other debits and credits of the customer's account involved in the transaction; or

(ii) Shall for a cash management sweep service or similar periodic plan as defined in § 208.24(b)(10)(ii) give or send its customer a written statement in the same form as prescribed in paragraph (e)(i) above for each month in which a purchase or sale of a security takes place in a deposit account and not less than once every three months if there are no securities transactions in the account subject to any other applicable laws or regulations;

(6) Upon the written request of the customer the bank shall furnish the information described in paragraph (c) of this section, except that any such information relating to remuneration paid in connection with the transaction need not be provided to the customer when paid by a source other than the customer. The bank may charge a reasonable fee for providing the information described in paragraph (d) of this section.

(f) Settlement of securities transactions. All contracts for the purchase or sale of a security shall provide for completion of the transaction within the number of business days in the standard settlement cycle for the security followed by registered broker dealers in the United States unless otherwise agreed to by the parties at the time of the transaction.

(g) Securities trading policies and procedures. Every State member bank effecting securities transactions for customers shall establish written policies and procedures providing:

(1) Assignment of responsibility for supervision of all officers or employees who:

(i) Transmit orders to or place orders with broker/dealers;

(ii) Execute transactions in securities for customers; or

(iii) Process orders for notification and/or settlement purposes, or perform other back office functions with respect to securities transactions effected for customers; provided that procedures established under this paragraph (g)(1)(iii) should provide for supervision and reporting lines that are separate from supervision of personnel under paragraphs (g)(1)(i) and (g)(1)(ii) of this section;

(2) For the fair and equitable allocation of securities and prices to accounts when orders for the same security are received at approximately the same time and are placed for execution either individually or in combination;

(3) Where applicable and where permissible under local law, for the crossing of buy and sell orders on a fair and equitable basis to the parties to the transaction; and

(4) That bank officers and employees who make investment recommendations or decisions for the accounts of customers, who participate in the determination of such recommendations or decisions, or who, in connection with their duties, obtain information concerning which securities are being purchased or sold or recommended for such action, must report to the bank, within ten days after the end of the calendar quarter, all transactions in securities made by them or on their behalf, either at the bank or elsewhere in which they have a beneficial interest. The report shall identify the securities purchased or sold and indicate the dates of the transactions and whether the transactions were purchases or sales. Excluded from this requirement are transactions for the benefit of the officer or employee over which the officer or

employee has no direct or indirect influence or control, transactions in mutual fund shares, and all transactions involving in the aggregate $10,000 or less during the calendar quarter. For purposes of this paragraph (g)(4), the term securities does not include government securities.

By order of the Board of Governors of the Federal Reserve System, February 27, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 97–5423 Filed 3–4–97; 8:45 am]

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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 344

RIN 3064–AB74

Recordkeeping and Confirmation Requirements for Securities Transactions

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) is amending its regulations governing the procedures for recordkeeping and confirmation requirements with respect to effecting securities transactions for customers of an insured state nonmember bank or a foreign bank having an insured branch (Bank). The final rule updates, clarifies and streamlines the FDIC regulations and reduces unnecessary regulatory costs and other burdens. The final rule also reorganizes and clarifies the regulation in areas where it previously was confusing. In addition, the FDIC has incorporated significant interpretive positions and updated various provisions to address market developments and regulatory changes by other regulators that affect requirements for recordkeeping and confirmation of securities transactions by Banks.

DATES: *Effective date.* The final rule is effective April 1, 1997. *Early compliance.* These revisions may be followed immediately by the affected party.

FOR FURTHER INFORMATION CONTACT: Miguel D. Browne, Manager—Risk Policy Development, (202) 898–6789; Keith A. Ligon, Chief, Policy Unit, (202) 898–3618; and John F. Harvey, Review Examiner (Trust), Securities, Capital Markets and Trust Branch, Division of Supervision (202) 898–6762; and Patrick J. McCarty, Counsel, Regulations and Legislation Section, Legal Division, (202) 898–8708.

SUPPLEMENTARY INFORMATION:

Background

In 1979, the FDIC adopted part 344 to require Banks under its jurisdiction to establish uniform procedures and recordkeeping and confirmation requirements with respect to effecting securities transactions for customers. The requirements reflected, in part, the recommendations of the Securities and Exchange Commission's (SEC) Final Report of the Securities and Exchange Commission on Bank Securities Activities (June 30, 1977). Part 344's recordkeeping and confirmation requirements were patterned after the SEC's rules applicable to broker/dealers and were intended to serve similar purposes for Banks involved in effecting customers' securities transactions. See 44 FR 43261 (July 24, 1979). The Board of Governors of the Federal Reserve System (FRB) and the Office of the Comptroller of the Currency (OCC) also adopted regulations substantially identical to part 344 in 1979.[1]

The FDIC and the other federal banking agencies are required by section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI) to review and streamline their regulations to improve efficiency, reduce unnecessary costs and eliminate unwarranted constraints on credit availability. 12 U.S.C. 4803(a). Section 303(a) also requires the federal banking agencies to work jointly to make uniform all regulations and guidelines implementing common statutory or supervisory policies.

On December 22, 1995, the OCC published a notice of proposed rulemaking (60 FR 66517) to revise 12 CFR part 12, the OCC's Recordkeeping and Confirmation Requirements for Securities Transactions regulation. The purpose of the proposal was to modernize part 12, address various market developments and regulatory changes, and reduce regulatory burden, where possible. The OCC published its final rule on December 2, 1996. See 61 FR 63958. The FRB published a substantially similar yet somewhat differently worded proposed rule on December 26, 1995. See 60 FR 66759.

The FDIC published an advance notice of proposed rulemaking on May 24, 1996, soliciting comment on issues similar to those raised in the OCC's and FRB's proposed rules, as well as issues which the OCC and FRB proposals did not address. See 61 FR 26135. On December 24, 1996, the FDIC published a notice of proposed rulemaking (61 FR 67729) to amend part 344 to address various market developments and regulatory changes, and reduce regulatory burden, where possible. Consistent with Section 303 of CDRI, the FDIC reviewed the OCC rule and the FRB proposal in connection with the preparation of its notice of proposed rulemaking. The FDIC has endeavored to create a rule that is uniform with the other agencies. As part of that effort, the staff of the FDIC has been in contact with the staffs of the FRB and the OCC in connection with the drafting of the final rule. The FDIC's final rule is closer in structure, definitions, language and form to the FRB's proposal than the OCC's final rule, however, all of the agencies' rules are substantively very similar.

Comments Received and Changes Made

The FDIC received six comments on the proposal. One comment came from a bank, one from a bank holding company and four comments came from trade associations representing banks, investment companies and accountants. In general, the commenters strongly supported the proposal as promoting uniformity among the Federal bank regulatory agencies, reducing regulatory burdens as well as addressing recent developments in the securities market. Most commenters specifically supported the provision of the proposal that excluded from the scope of part 344 customer transactions conducted directly with a broker/dealer where the customer has a written account agreement with the broker-dealer and the broker-dealer is fully disclosed to the customer. This change would exclude from part 344's coverage commonly utilized contractual relationships between banks and broker/dealers whereby the broker/dealers conducts securities transactions on bank premises, known as networking arrangements.

In addition, certain of the commenters requested specific changes to the proposal. The FDIC has considered each of the comments carefully and has made a number of changes in response to the comments received. Overall, the final rule adopts most of the changes to part 344 as proposed by the FDIC although certain changes have been made in an attempt to increase uniformity with regard to recordkeeping and confirmation requirements among the federal banking regulatory agencies. The section-by-section discussion of this preamble describes the final regulation

[1] 1 See 12 CFR 208.8(k), 44 FR 43258 (July 24, 1979) (FRB regulation); 12 CFR part 12, 44 FR 43254 (July 24, 1979)(OCC regulation).

and identifies and discusses the comments received and changes made to certain sections of the proposal.

Section-by-Section Discussion

Purpose and Scope. (Section 344.1)

The purpose of part 344 is twofold: to ensure that purchasers of securities from Banks are provided with certain necessary information about the transaction; and to ensure that Banks engaging in such transactions maintain adequate records and controls with respect to such transactions. In general, part 344 applies to securities transactions effected by Banks on behalf of customers unless the transaction is specifically exempted in § 344.2, such as, to a limited extent, transactions in government securities and transactions in municipal securities conducted by Banks that are not registered as municipal securities dealers with the SEC.

Exceptions. (Section 344.2)

The final rule provides five exceptions from the requirements of certain provisions of part 344. The specific exceptions, which are unchanged from the proposal, are: (1) Banks conducting a small number of securities transactions; (2) certain government securities transactions; (3) certain municipal securities transactions; (4) securities transactions conducted by a foreign branch of a bank; and (5) certain securities transactions with a broker/dealer. The first four exceptions already exist in part 344. The proposal added the exemption covering certain securities transactions with a broker/dealer. In order for the exception to apply, the broker/dealer must be fully disclosed to the customer and the customer must have a direct contractual agreement with the broker/dealer, that is, a signed account agreement. This exception makes clear that under the circumstances described dual employee arrangements are not subject to part 344. This exemption is similar to that found in the OCC's rule. See 12 CFR § 12.1(c)(2)(v). The rule also clarifies that even though certain transactions are excepted from compliance with all, or certain sections, of part 344, the FDIC expects a Bank conducting securities transactions for its customers to maintain effective systems of records and controls to ensure safe and sound operations.

In connection with the broker/dealer networking exception, the FDIC requested comment on whether part 344 should apply to banks which impose surcharges or additional fees on customers in addition to the transaction volume compensation they normally receive under a networking agreements. The only comment received on this issue indicated support for requiring banks to disclose to customers that such surcharges or additional fees were being imposed. It is the FDIC's understanding that these type of surcharges and additional fees are not common, however, the FDIC expects banks to disclose the imposition of these surcharges or fees to customers and will monitor this area to determine if further supervisory action is necessary.

The FDIC received comment on the small number of securities transactions exceptions. This exception applies to banks effecting an average of fewer than 200 securities transactions per year for customers over the prior three calendar year period and excepts the bank from certain record maintenance requirements as well as the need to establish most required written policies and procedures. One commenter proposed that this limited transactions exemption be expanded to allow a Bank to effect 500 rather than 200 transactions in securities that are neither municipal securities or government securities. In light of the FDIC's desire for uniformity of its recordkeeping and disclosure requirements with those of the other Federal banking regulators and the lack of a compelling basis by the commenter to make the suggested change, the FDIC has determined to maintain the exemption for limited transactions at an average of 200 of such transactions per year.

Definitions. (Section 344.3)

Section 344.3 sets forth the definitions of 13 terms used in the rule. The FDIC's advance notice of proposed rule making described six new definitions—''asset-backed security'', ''completion of the transaction'', ''crossing of buy and sell orders'', ''debt security'', ''government security'' and ''municipal security.'' The proposal added two additional new definitions: ''bank'' and ''cash management sweep account''. The proposed definitions are the similar to those proposed by the FRB. The OCC's final rule also uses the same terms, but the structure and language used are somewhat different. The final rule adopts the definitions as set forth in the proposal with the following minor modifications in response to comments received

As proposed, the term ''cash management sweep account'' would cover any prearranged, automatic transfer of funds above a certain dollar level from a deposit account to purchase a security or securities or any prearranged, automatic redemption or sale of a security or securities when a deposit account drops below a certain dollar level with the proceeds being transferred into a deposit account. The term would only cover transactions involving the purchase or sale of securities. The FDIC received two comments on its proposed definition of a ''cash management sweep account'' found at § 344.3(c). One commenter expressed appreciation for the clarity provided by having a separately defined term; the other raised concern that while the FDIC proposes to treat cash management sweep accounts in a manner identical to the OCC, an additional definition may cause uncertainty. The OCC defined a cash management sweep account within its definition of ''periodic plan''. For the reasons stated in the proposed rulemaking[2], the FDIC believes that there are benefits to separately defining the term ''cash management sweep account''. Furthermore, we do not foresee confusion resulting from the distinction used in the OCC's regulation. With respect to cash management sweep accounts, both the OCC's and the FDIC's rules will require monthly statements to be furnished to a customer for each month in which a security is purchased or sold, but not less than quarterly.

The FDIC has amended the definition of the term ''security'' at § 344.3(m) so that it conforms to the definition used by the other federal banking regulatory agencies. The new definition more closely tracks the definition of ''security'' in the Securities Exchange Act of 1934. See 17 U.S.C. 78a et seq. No substantive change in the definition or meaning of the term ''security'' is intended from the definition of the term as published in the FDIC's proposal and the term as used in the existing regulation. The FDIC is conforming where possible the terms of part 344 with the rules of the other federal banking regulatory agencies so that any regulatory burden resulting from the use of different terminology can be minimized.

[2] Sweep accounts are different in kind from typical periodic plans such as dividend reinvestment plans (DRIPs) and automatic investment plans. Sweep accounts do not normally invest in securities at the regular intervals (i.e. monthly or quarterly) as do DRIPs and automatic investment plans. Second, sweep accounts are a significant product/service in their own right which account for several billions of dollars worth of transactions on a daily basis and probably exceed the dollar volume in traditional periodic plans. Due to these differences, the FDIC believes it is not appropriate to include sweep accounts in the definition of periodic plans.

Recordkeeping. (Section 344.4)

Section 344.4 sets forth the requirements for maintenance of records of securities transactions by Banks or a third party service provider for the Bank. The rule specifically permits the use of electronic or automated records as long as the records are easily retrievable and readily available for inspection and the Bank has the capability to reproduce the records in hard copy form. The FDIC received no comments on this section, and therefore it is being adopted as proposed.

Content and Timing of Customer Notification. (Section 344.5)

Section 344.5 of the regulation identifies the information that a Bank must provide to a customer at or before the completion of a securities transaction. When a broker/dealer is utilized in a transaction, Banks have the option of either having a broker/dealer that executes a transaction for the Bank send a confirmation directly to the Bank's customer or choosing to forward a copy of the broker/dealer confirmation to the Bank customer when it is received. Banks opting to have confirmations sent directly to their customers by the broker/dealer are ultimately responsible for the timely delivery of confirmations as well as accurate disclosure of all information required therein. The FDIC received several comments concerning this section of the proposal. One commenter supported the provision allowing notices to be furnished to customers via facsimile or other electronic means. The FDIC notes its intent that references—in § 344.5 as well as § 344.6—to the ''give'' or ''send'' notices includes notice provided via facsimile or other electronic transmission.

Several commenters had concerns with the partial exemption to the customer notification requirement of the source and amount of remuneration received by a Bank from a third party. The source and amount of remuneration that the Bank receives, other than from its customer, must be disclosed to the extent required under paragraph (b)(6) of § 344.5. Paragraph 344.5(b)(6) describes three circumstances in which a Bank need only disclose to a customer that the Bank has received remuneration from a third party and that the Bank will provide such information upon the written request of the customer. If a transaction falls within one of the three enumerated exceptions in § 344.5(b)(6)(i), a simple disclosure that the Bank received remuneration from a third party and that the source and amount of such remuneration received by the Bank from a third party is available upon written request of the customer will satisfy the disclosure requirements of § 344.5(a)(2). One commenter indicated that the rule could be read so that § 344.5(a)(2) would vitiate the exemption under § 344.5(b)(6)(ii). The FDIC does not agree. As discussed, § 344.5 (a)(2) is clear that notice need be provided only to the extent that such notice would be required under § 344.5(b)(6), including any notice based on the request of a customer as permitted in paragraph (b)(6)(ii).

Another commenter suggested that the § 344.5(b)(6)(ii) partial exemption to the customer notification requirement regarding remuneration to the Bank by a source other than the customer be extended to permit a Bank not to disclose this information to the customer at all. The commenter expressed the belief that the specific source of such remuneration would not be of interest to the majority of customers. After consideration, the FDIC has determined not to change the rule from its proposed form. The final rule will reduce regulatory burden because a Bank is required to provide amount and source of remuneration information only upon specific written request by the customer. It is also noted that the final rule is consistent with similar rules of the other federal banking regulatory agencies. Moreover, because the Bank will only need to provide such information to customers who affirmatively request it, the burden on the Bank should be minimal, particularly if—as the commenter suggests—third party remuneration to the Bank is not of interest to a majority of customers.

In addition, we note that the ''source and amount of remuneration'' issue which led to the FDIC issuing a partial waiver of part 344 in 1995 [3] has been resolved in the final rule. Previously, a literal reading of part 344 could have required a Bank to disclose the remuneration it obtained from a broker/dealer that dealt directly with the customer even if the Bank's remuneration was solely based on the broker/dealer's volume of transactions with Bank customers. Due to the impossibility of providing such disclosure to customers at the time of the transaction, the FDIC had granted a partial waiver of the requirements of part 344. Id. The FDIC now exempts for the scope of part 344 those securities transactions where the customer has a direct contractual agreement with a fully disclosed broker/dealer. See 12 CFR § 344.2(a)(5). This exemption will remove from part 344's scope most, if not all, networking arrangements between registered broker/dealers and financial institutions. Banks will not be obligated to disclose the source and amount of remuneration since the customer is actually a customer of the broker/dealer, not the Bank, and will receive a confirmation from the broker/dealer as required by SEC regulations.

Notification by Agreement; Alternative Forms and Times of Notification. (Section 344.6)

In addition to the standard notification requirements in § 344.5, the final regulation, in § 344.6, generally authorizes a Bank, in cases in which it does not exercise investment discretion, to enter into a written agreement with its customer for an alternative arrangement as to the time and content of written notification. Section 344.6 also sets forth alternative forms and times of notification for certain specific types of accounts. These are: (1) accounts in which the bank exercises investment discretion in other than an agency capacity; (2) accounts in which the bank exercises investment discretion in an agency capacity; (3) cash management sweep accounts; (4) transactions for a collective investment fund account; and (5) transactions for a periodic plan account. The FDIC has added language to the final regulation amending the requirements for certain cash management sweep accounts set forth in § 344.6(d) in order to ensure that banks are aware that if they retain custody of securities that are the subject of a hold-in-custody repurchase agreement, they are subject to certain Treasury Department regulations governing confirmation requirements with respect to government securities transactions.

The FDIC received one comment regarding the financial disclosure required for collective investment fund accounts in § 344.6(e) suggesting that such disclosure be required to be made only by independent auditors in accordance with generally accepted auditing standards. The final rule allows either independent public accountants or internal auditors responsible only to the board of directors of the bank to prepare the financial information. The FDIC notes that § 344.6(e) is identical to language used in the OCC's rule and the FRB's proposal. Moreover, the potential benefits resulting from the mandated use of external auditors does not outweigh the costs associated with

[3] See ''Waiver of Burdensome Disclosures for Certain Securities Transactions for Bank Customers'', FDIC Financial Institutions Letter 29–95 (April 7, 1995).

imposing such a regulatory burden upon the industry. Banks should be allowed the flexibility to effect the required disclosure through the use of external auditors as suggested by the commenter, or internal auditors that are responsible to only the board of directors. The final regulation adopts the language of the proposal.

Settlement of Securities Transactions. (Section 344.7)

The proposal provided for a settlement period of T+3 and requires Banks to send broker/dealer confirmations within one business day of receipt. These requirements are being adopted in the final rule without change. The requirements are identical to those of the SEC and the other federal banking regulatory agencies and were generally supported by the commenters. One commenter suggested cross-referencing the rules of the Securities and Exchange Commission governing the settlement period for securities transactions into part 344 so that regulatory amendments by the SEC would automatically amend the FDIC's regulations. The FDIC has determined not to incorporate citations to the SEC's settlement regulations. Rather, the FDIC will review any regulatory amendments by the SEC on a case-by-case basis to determine whether such changes would be appropriate for Banks. The FDIC received no other comments on this section, and therefore it is being adopted as proposed.

Securities Trading Policies and Procedures. (Section 344.8)

Section 344.8 of the final regulation requires Banks to establish written policies and procedures assigning supervisory responsibility for personnel engaged in different aspects of the trading process. Specifically, this section addresses orders and execution of trades, the equitable allocation of securities and prices for accounts and the crossing of buy and sell orders. In addition, § 344.8(a)(2) requires the separation of order and execution functions from the traditional back office clearing functions in order to ensure that Banks maintain adequate internal controls for securities trading. The FDIC received no comments on this section, and therefore it is being adopted as proposed.

Personal Securities Trading Reported by Bank Officers and Employees. (Section 344.9)

The proposal relocated to § 344.9 without substantive change the personal trading reporting requirements for certain officers and employees. The notice of proposed rulemaking also included a new requirement that certain directors report their transactions in securities. As proposed, § 344.9(a) would have required Bank directors, under certain limited and specified circumstances, to report a limited number of transactions in securities. The OCC's rule and the FRB's proposal do not specifically address the issue of director reporting requirements in this area.

As proposed, the reporting requirements of § 344.9 would have applied equally to directors, officers, or employees who have access to information in such a fashion so as to enable the person to gain an improper advantage or abuse the information obtained. The reporting requirement would not extend to individuals who routinely obtain such information but are never in a position to abuse it.

The two comments received on the provision indicated uncertainty as to the scope and application of this provision of the proposed rule. One commenter indicated the rule could be interpreted more broadly than anticipated, and another comment indicated a reading more narrow than intended. Given the different interpretations of the proposed changes, it is clear that additional clarification is required if the FDIC were to retain the requirement. Upon review, the FDIC believes that additional revision to the proposed regulatory language would be necessary to accomplish the FDIC's intent. The FDIC recognizes that implementing the proposed amendatory language could result in reports being submitted by individual directors who are not intended to be subject to the reporting requirements. Other directors may innocently fail to report who are intended to be subject to the rule. Accordingly, in order to not unnecessarily increase the burden of regulatory reporting requirements, and in a continuing effort to maintain uniformity in the reporting requirements imposed by the federal banking regulators, the final rule does not contain specific reporting requirements for directors. The FDIC will, in consultation with the other federal banking regulators, study the issue of employee, officer, and director disclosures further and address the issue in a future rulemaking as appropriate. Any changes to the reporting requirements to be imposed upon bank directors, if proposed in the future, will be implemented following appropriate notice and comment.

Waivers. (Section 344.10)

This section maintains the current provision that enables the FDIC to waive any provision of part 344 for good cause. No comments were received on this provision and it is being adopted as proposed.

Effective Date

This regulation will become effective on April 1, 1997 in accordance with the requirements of the Paper Work Reduction and Regulatory Improvement Act (PWRRIA). Section 302(b) requires that the effectiveness of new rules be delayed until the beginning of the following calendar quarter in order to give depository institutions adequate time to adjust to new requirements, such as in this instance, the T+3 settlement requirement. Nevertheless, as permitted by Section 302 of the PWRRIA, 12 U.S.C. 4802, banks may comply with the final rule before the effective date. In particular, the FDIC would not object to a Bank immediately taking advantage of § 344.2(a)(5) of the final rule that exempts transactions in which a bank receives remuneration from a registered broker dealer so long as the broker/dealer is fully disclosed to the bank customer and the bank customer has a direct contractual agreement with the broker/dealer may be utilized.

Regulatory Flexibility Act

Under section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 605(b)), the final regulatory flexibility analysis otherwise required under section 604 of the RFA (5 U.S.C. 604) is not required if the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and the agency publishes such certification in the Federal Register along with its general notice of proposed rulemaking or at the time of publication of the final rule.

The Board of Directors has concluded after reviewing the final regulation that it will not have a significant economic impact on a substantial number of small institutions. The Board of Directors therefore hereby certifies pursuant to section 605 of the RFA that the regulation will not have a significant economic impact on a substantial number of small entities within the meaning of the RFA. The FDIC anticipates that the final rule will result in a net benefit to all banks regardless of size due to the clarification provided by the rule. Small banks, in particular should be benefited by these changes. Most banks with total assets of under

$100 million are not engaged in securities activities in a manner covered by this regulation. Rather, a small bank typically will use either a registered broker/dealer who has rented space on the bank's premises in what is commonly referred to as a ''networking arrangement'' or an ''introducing broker'' who will refer a customer to a dealer that can effect the desired transaction, both of which situations are outside the scope of part 344 as adopted.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Public Law 104–121) provides generally for agencies to report rules to Congress and for Congress to review rules. The reporting requirement is triggered when agencies issue a final rule as defined by the Administrative Procedure Act (APA) at 5 U.S.C. 551. Because the FDIC is issuing a final rule as defined by the APA, the FDIC will file the reports required by SBREFA.

The Office of Management and Budget (OMB) has determined that this final revision to part 344 does not constitute a ''major rule'' as defined by SBREFA.

Paperwork Reduction Act

The collection of information contained in this final rule has been reviewed and approved by the OMB under control number 3064–0028 pursuant to section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Comments on the collections of information should be directed to the OMB, Paperwork Reduction Project (3064–0028) Washington, D.C. 20503 Attention: Desk officer for the Federal Deposit Insurance Corporation, with copies of such comments to be sent to Steven F. Hanft, Office of the Executive Secretary, room F–400, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, D.C. 20429.

The collection of information requirements in this final rule are found in 12 CFR 344.2(b), 344.4(a), 344.5 (a) and (b), 344.8, and 344.9. The collections consist of recordkeeping requirements, §§ 344.2(b) and 344.4(a); the provision of written confirmations, §§ 344.5 (a) and (b) and 344.6; the establishment of written policies and procedures for placing orders and executing trades as well as back office functions, § 344.8; the reporting of personal securities trading by certain bank officers and employees, § 344.9. The likely respondents/recordkeepers are state nonmember insured banks.

Estimated average annual burden hours per respondent/recordkeeper: 19.43 hours.

Estimated number of respondents and/or recordkeepers: 5,663 state nonmember insured banks.

Estimated total annual reporting and recordkeeping burden: 109,818 hours.

Start-up costs to respondents: None.

Records under this part are to be maintained for at least three years.

List of Subjects in 12 CFR Part 344

Banks, banking, Reporting and recordkeeping requirements, Securities.

For the reasons set forth above, the FDIC hereby revises 12 CFR part 344 to read as follows.

PART 344—RECORDKEEPING AND CONFIRMATION REQUIREMENTS FOR SECURITIES TRANSACTIONS

Sec.

344.1 Purpose and scope.
344.2 Exceptions.
344.3 Definitions.
344.4 Recordkeeping.
344.5 Content and time of notification.
344.6 Notification by agreement; alternative forms and times of notification.
344.7 Settlement of securities transactions.
344.8 Securities trading policies and procedures.
344.9 Personal securities trading reporting by bank officers and employees.
344.10 Waivers.

Authority: 12 U.S.C. 1817, 1818 and 1819.

§ 344.1 Purpose and scope.

(a) *Purpose.* The purpose of this part is to ensure that purchasers of securities in transactions effected by a state nonmember insured bank (except a District bank) or a foreign bank having an insured branch are provided adequate information regarding transactions. This part is also designed to ensure that banks subject to this part maintain adequate records and controls with respect to the securities transactions they effect.

(b) *Scope; general.* Any security transaction effected for a customer by a bank is subject to this part unless excepted by § 344.2. A bank effecting transactions in government securities is subject to the notification, recordkeeping, and policies and procedures requirements of this part. This part also applies to municipal securities transactions by a bank that is not registered as a ''municipal securities dealer'' with the Securities and Exchange Commission. See 15 U.S.C. 78c(a)(30) and 78o–4.

§ 344.2 Exceptions.

(a) A bank effecting securities transactions for customers is not subject to all or part of this part 344 to the extent that they qualify for one or more of the following exceptions:

(1) *Small number of transactions.* The requirements of §§ 344.4(a) (2) through (4) and 344.8(a) (1) through (3) do not apply to a bank effecting an average of fewer than 200 securities transactions per year for customers over the prior three calendar year period. The calculation of this average does not include transactions in government securities.

(2) *Government securities.* The recordkeeping requirements of § 344.4 do not apply to banks effecting fewer than 500 government securities brokerage transactions per year. This exemption does not apply to government securities dealer transactions by banks.

(3) *Municipal securities.* This part does not apply to transactions in municipal securities effected by a bank registered with the Securities and Exchange Commission as a ''municipal securities dealer'' as defined in title 15 U.S.C. 78c(a)(30). See 15 U.S.C. 78o–4.

(4) *Foreign branches.* Activities of foreign branches of a bank shall not be subject to the requirements of this part.

(5) *Transactions effected by registered broker/dealers.* (i) This part does not apply to securities transactions effected for a bank customer by a registered broker/dealer if:

(A) The broker/dealer is fully disclosed to the bank customer; and

(B) The bank customer has a direct contractual agreement with the broker/dealer.

(ii) This exemption extends to bank arrangements with broker/dealers which involve bank employees when acting as employees of, and subject to the supervision of, the registered broker/dealer when soliciting, recommending, or effecting securities transactions.

(b) *Safe and sound operations.* Notwithstanding this section, every bank effecting securities transactions for customers shall maintain, directly or indirectly, effective systems of records and controls regarding their customer securities transactions to ensure safe and sound operations. The records and systems maintained must clearly and accurately reflect the information required under this part and provide an adequate basis for an audit.

§ 344.3 Definitions.

(a) *Asset-backed security* means a security that is serviced primarily by the cash flows of a discrete pool of receivables or other financial assets, either fixed or revolving, that by their terms convert into cash within a finite time period plus any rights or other assets designed to assure the servicing

or timely distribution of proceeds to the security holders.

(b) *Bank* means a state nonmember insured bank (except a District bank) or a foreign bank having an insured branch.

(c) *Cash management sweep account* means a prearranged, automatic transfer of funds above a certain dollar level from a deposit account to purchase a security or securities, or any prearranged, automatic redemption or sale of a security or securities when a deposit account drops below a certain level with the proceeds being transferred into a deposit account.

(d) *Collective investment fund* means funds held by a bank as fiduciary and, consistent with local law, invested collectively:

(1) In a common trust fund maintained by such bank exclusively for the collective investment and reinvestment of monies contributed thereto by the bank in its capacity as trustee, executor, administrator, guardian, or custodian under the Uniform Gifts to Minors Act; or

(2) In a fund consisting solely of assets of retirement, pension, profit sharing, stock bonus or similar trusts which are exempt from Federal income taxation under the Internal Revenue Code (26 U.S.C.).

(e) *Completion of the transaction* means:

(1) For purchase transactions, the time when the customer pays the bank any part of the purchase price (or the time when the bank makes the book-entry for any part of the purchase price, if applicable), however, if the customer pays for the security prior to the time payment is requested or becomes due, then the transaction shall be completed when the bank transfers the security into the account of the customer; and

(2) For sale transactions, the time when the bank transfers the security out of the account of the customer or, if the security is not in the bank's custody, then the time when the security is delivered to the bank, however, if the customer delivers the security to the bank prior to the time delivery is requested or becomes due then the transaction shall be completed when the bank makes payment into the account of the customer.

(f) *Crossing of buy and sell orders* means a security transaction in which the same bank acts as agent for both the buyer and the seller.

(g) *Customer* means any person or account, including any agency, trust, estate, guardianship, or other fiduciary account for which a bank effects or participates in effecting the purchase or sale of securities, but does not include a broker, dealer, bank acting as a broker or a dealer, issuer of the securities that are the subject of the transaction or a person or account having a direct, contractual agreement with a fully disclosed broker/dealer.

(h) *Debt security* means any security, such as a bond, debenture, note, or any other similar instrument that evidences a liability of the issuer (including any security of this type that is convertible into stock or a similar security) and fractional or participation interests in one or more of any of the foregoing; provided, however, that securities issued by an investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a–1 et seq., shall not be included in this definition.

(i) *Government security* means:

(1) A security that is a direct obligation of, or obligation guaranteed as to principal and interest by, the United States;

(2) A security that is issued or guaranteed by a corporation in which the United States has a direct or indirect interest and which is designated by the Secretary of the Treasury for exemption as necessary or appropriate in the public interest or for the protection of investors;

(3) A security issued or guaranteed as to principal and interest by any corporation whose securities are designated, by statute specifically naming the corporation, to constitute exempt securities within the meaning of the laws administered by the Securities and Exchange Commission; or

(4) Any put, call, straddle, option, or privilege on a security described in paragraph (i) (1), (2), or (3) of this section other than a put, call, straddle, option, or privilege that is traded on one or more national securities exchanges, or for which quotations are disseminated through an automated quotation system operated by a registered securities association.

(j) *Investment discretion* means that, with respect to an account, a bank directly or indirectly:

(1) Is authorized to determine what securities or other property shall be purchased or sold by or for the account; or

(2) Makes decisions as to what securities or other property shall be purchased or sold by or for the account even though some other person may have responsibility for these investment decisions.

(k) *Municipal security* means a security which is a direct obligation of, or an obligation guaranteed as to principal or interest by, a State or any political subdivision, or any agency or instrumentality of a State or any political subdivision, or any municipal corporate instrumentality of one or more States or any security which is an industrial development bond (as defined in 26 U.S.C. 103(c)(2)) the interest on which is excludable from gross income under 26 U.S.C. 103(a)(1) if, by reason of the application of paragraph (4) or (6) of 26 U.S.C. 103(c) (determined as if paragraphs (4)(A), (5) and (7) were not included in 26 U.S.C. 103(c), paragraph (1) of 26 U.S.C. 103(c) does not apply to such security.

(l) *Periodic plan* means any written authorization for a bank to act as agent to purchase or sell for a customer a specific security or securities, in a specific amount (calculated in security units or dollars) or to the extent of dividends and funds available, at specific time intervals, and setting forth the commission or charges to be paid by the customer or the manner of calculating them. Periodic plans include dividend reinvestment plans, automatic investment plans, and employee stock purchase plans.

(m) *Security* means any note, stock, treasury stock, bond, debenture, certificate of interest or participation in any profit-sharing agreement or in any oil, gas, or other mineral royalty or lease, any collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, and any put, call, straddle, option, or privilege on any security or group or index of securities (including any interest therein or based on the value thereof), or, in general, any instrument commonly known as a ''security''; or any certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase, any of the foregoing. The term security does not include:

(1) A deposit or share account in a federally or state insured depository institution;

(2) A loan participation;

(3) A letter of credit or other form of bank indebtedness incurred in the ordinary course of business;

(4) Currency;

(5) Any note, draft, bill of exchange, or bankers acceptance which has a maturity at the time of issuance of not exceeding nine months, exclusive of days of grace, or any renewal thereof the maturity of which is likewise limited;

(6) Units of a collective investment fund;

(7) Interests in a variable amount (master) note of a borrower of prime credit; or

(8) U.S. Savings Bonds.

§ 344.4 Recordkeeping.

(a) *General rule.* A bank effecting securities transactions for customers shall maintain the following records for at least three years:

(1) *Chronological records.* An itemized daily record of each purchase and sale of securities maintained in chronological order, and including:

(i) Account or customer name for which each transaction was effected;

(ii) Description of the securities;

(iii) Unit and aggregate purchase or sale price;

(iv) Trade date; and

(v) Name or other designation of the broker/dealer or other person from whom the securities were purchased or to whom the securities were sold;

(2) *Account records.* Account records for each customer, reflecting:

(i) Purchases and sales of securities;

(ii) Receipts and deliveries of securities;

(iii) Receipts and disbursements of cash; and

(iv) Other debits and credits pertaining to transactions in securities;

(3) *A separate memorandum (order ticket)* of each order to purchase or sell securities (whether executed or canceled), which shall include:

(i) The accounts for which the transaction was effected;

(ii) Whether the transaction was a market order, limit order, or subject to special instructions;

(iii) The time the order was received by the trader or other bank employee responsible for effecting the transaction;

(iv) The time the order was placed with the broker/dealer, or if there was no broker/dealer, time the order was executed or canceled;

(v) The price at which the order was executed; and

(vi) The broker/dealer utilized;

(4) *Record of broker/dealers.* A record of all broker/dealers selected by the bank to effect securities transactions and the amount of commissions paid or allocated to each broker during the calendar year; and

(5) *Notifications.* A copy of the written notification required by §§ 344.5 and 344.6.

(b) *Manner of maintenance.* Records may be maintained in whatever manner, form or format a bank deems appropriate, provided however, the records required by this section must clearly and accurately reflect the information required and provide an adequate basis for the audit of the information. Records may be maintained in hard copy, automated or electronic form provided the records are easily retrievable, readily available for inspection, and capable of being reproduced in a hard copy. A bank may contract with third party service providers, including broker/dealers, to maintain records required under this part.

§ 344.5 Content and time of notification.

Every bank effecting a securities transaction for a customer shall give or send, by mail, facsimile or other means of electronic transmission, to the customer at or before completion of the transaction one of the types of written notification identified below:

(a) Broker/dealer's confirmations. (1) A copy of the confirmation of a broker/dealer relating to the securities transaction. A bank may either have the broker/dealer send the confirmation directly to the bank's customer or send a copy of the broker/dealer's confirmation to the customer upon receipt of the confirmation by the bank. If a bank chooses to send a copy of the broker/dealer's confirmation, it must be sent within one business day from the bank's receipt of the broker/dealer's confirmation; and

(2) If the bank is to receive remuneration from the customer or any other source in connection with the transaction, a statement of the source and amount of any remuneration to be received if such would be required under paragraph (b)(6) of this section; or

(b) *Written notification.* A written notification disclosing:

(1) Name of the bank;

(2) Name of the customer;

(3) Whether the bank is acting as agent for such customer, as agent for both such customer and some other person, as principal for its own account, or in any other capacity;

(4) The date and time of execution, or the fact that the time of execution will be furnished within a reasonable time upon written request of the customer, and the identity, price, and number of shares or units (or principal amount in the case of debt securities) of the security purchased or sold by the customer;

(5) The amount of any remuneration received or to be received, directly or indirectly, by any broker/dealer from such customer in connection with the transaction;

(6)(i) The amount of any remuneration received or to be received by the bank from the customer, and the source and amount of any other remuneration received or to be received by the bank in connection with the transaction, unless:

(A) Remuneration is determined pursuant to a prior written agreement between the bank and the customer; or

(B) In the case of government securities and municipal securities, the bank received the remuneration in other than an agency transaction; or

(C) In the case of open end investment company securities, the bank has provided the customer with a current prospectus which discloses all current fees, loads and expenses at or before completion of the transaction;

(ii) If the bank elects not to disclose the source and amount of remuneration it has or will receive from a party other than the customer pursuant to paragraph (b)(6)(i) (A), (B), or (C) of this section, the written notification must disclose whether the bank has received or will receive remuneration from a party other than the customer, and that the bank will furnish within a reasonable time the source and amount of this remuneration upon written request of the customer. This election is not available, however, if, with respect to a purchase, the bank was participating in a distribution of that security; or, with respect to a sale, the bank was participating in a tender offer for that security;

(7) Name of the broker/dealer utilized; or where there is no broker/dealer, the name of the person from whom the security was purchased or to whom the security was sold, or a statement that the bank will furnish this information within a reasonable time upon written request;

(8) In the case of a transaction in a debt security subject to redemption before maturity, a statement to the effect that the debt security may be redeemed in whole or in part before maturity, that the redemption could affect the yield represented and that additional information is available upon request;

(9) In the case of a transaction in a debt security effected exclusively on the basis of a dollar price:

(i) The dollar price at which the transaction was effected; and

(ii) The yield to maturity calculated from the dollar price, provided however, that this shall not apply to a transaction in a debt security that either has a maturity date that may be extended by the issuer thereof, with a variable interest payable thereon, or is an asset-backed security that represents an interest in or is secured by a pool of receivables or other financial assets that are subject continuously to prepayment;

(10) In the case of a transaction in a debt security effected on the basis of yield:

(i) The yield at which the transaction was effected, including the percentage amount and its characterization (e.g., current yield, yield to maturity, or yield to call) and if effected at yield to call,

the type of call, the call date and call price;

(ii) The dollar price calculated from the yield at which the transaction was effected; and

(iii) If effected on a basis other than yield to maturity and the yield to maturity is lower than the represented yield, the yield to maturity as well as the represented yield; provided however, that this paragraph (b)(10) shall not apply to a transaction in a debt security that either has a maturity date that may be extended by the issuer with a variable interest rate payable thereon, or is an asset-backed security that represents an interest in or is secured by a pool of receivables or other financial assets that are subject continuously to prepayment;

(11) In the case of a transaction in a debt security that is an asset-backed security, which represents an interest in or is secured by a pool of receivables or other financial assets that are subject continuously to prepayment, a statement indicating that the actual yield of the asset-backed security may vary according to the rate at which the underlying receivables or other financial assets are prepaid and a statement of the fact that information concerning the factors that affect yield (including at a minimum estimated yield, weighted average life, and the prepayment assumptions underlying yield) will be furnished upon written request of the customer; and

(12) In the case of a transaction in a debt security, other than a government security, that the security is unrated by a nationally recognized statistical rating organization, if that is the case.

§ 344.6 Notification by agreement; alternative forms and times of notification.

A bank may elect to use the following alternative notification procedures if the transaction is effected for:

(a) *Notification by agreement.* Accounts (except periodic plans) where the bank does not exercise investment discretion and the bank and the customer agree in writing to a different arrangement as to the time and content of the written notification; provided however, that such agreement makes clear the customer's right to receive the written notification pursuant to § 344.5 (a) or (b) at no additional cost to the customer.

(b) *Trust accounts.* Accounts (except collective investment funds) where the bank exercises investment discretion in other than in an agency capacity, in which instance the bank shall, upon request of the person having the power to terminate the account or, if there is no such person, upon the request of any person holding a vested beneficial interest in such account, give or send to such person the written notification within a reasonable time. The bank may charge such person a reasonable fee for providing this information.

(c) *Agency accounts.* Accounts where the bank exercises investment discretion in an agency capacity, in which instance:

(1) The bank shall give or send to each customer not less frequently than once every three months an itemized statement which shall specify the funds and securities in the custody or possession of the bank at the end of such period and all debits, credits and transactions in the customer's accounts during such period; and

(2) If requested by the customer, the bank shall give or send to each customer within a reasonable time the written notification described in § 344.5. The bank may charge a reasonable fee for providing the information described in § 344.5.

(d) *Cash management sweep accounts.* A bank effecting a securities transaction for a cash management sweep account shall give or send its customer a written statement, in the same form as required under paragraph (f) of this section, for each month in which a purchase or sale of a security takes place in the account and not less than once every three months if there are no securities transactions in the account. Notwithstanding the provisions of this paragraph (d), banks that retain custody of government securities that are the subject of a hold-in-custody repurchase agreement are subject to the requirements of 17 CFR 403.5(d).

(e) *Collective investment fund accounts.* The bank shall at least annually give or send to the customer a copy of a financial report of the fund, or provide notice that a copy of such report is available and will be furnished upon request to each person to whom a regular periodic accounting would ordinarily be rendered with respect to each participating account. This report shall be based upon an audit made by independent public accountants or internal auditors responsible only to the board of directors of the bank.

(f) *Periodic plan accounts.* The bank shall give or send to the customer not less than once every three months a written statement showing:

(1) The funds and securities in the custody or possession of the bank;

(2) All service charges and commissions paid by the customer in connection with the transaction; and

(3) All other debits and credits of the customer's account involved in the transaction; provided that upon written request of the customer, the bank shall give or send the information described in § 344.5, except that any such information relating to remuneration paid in connection with the transaction need not be provided to the customer when the remuneration is paid by a source other than the customer. The bank may charge a reasonable fee for providing information described in § 344.5.

§ 344.7 Settlement of securities transactions.

(a) A bank shall not effect or enter into a contract for the purchase or sale of a security (other than an exempted security as defined in 15 U.S.C. 78c(a)(12), government security, municipal security, commercial paper, bankers' acceptances, or commercial bills) that provides for payment of funds and delivery of securities later than the third business day after the date of the contract unless otherwise expressly agreed to by the parties at the time of the transaction.

(b) Paragraphs (a) and (c) of this section shall not apply to contracts:

(1) For the purchase or sale of limited partnership interests that are not listed on an exchange or for which quotations are not disseminated through an automated quotation system of a registered securities association; or

(2) For the purchase or sale of securities that the Securities and Exchange Commission (SEC) may from time to time, taking into account then existing market practices, exempt by order from the requirements of paragraph (a) of SEC Rule 15c6–1, 17 CFR 240.15c6–1(a), either unconditionally or on specified terms and conditions, if the SEC determines that an exemption is consistent with the public interest and the protection of investors.

(c) Paragraph (a) of this section shall not apply to contracts for the sale for cash of securities that are priced after 4:30 p.m. Eastern time on the date the securities are priced and that are sold by an issuer to an underwriter pursuant to a firm commitment underwritten offering registered under the Securities Act of 1933, 15 U.S.C. 77a et seq., or sold to an initial purchaser by a bank participating in the offering. A bank shall not effect or enter into a contract for the purchase or sale of the securities that provides for payment of funds and delivery of securities later than the fourth business day after the date of the contract unless otherwise expressly agreed to by the parties at the time of the transaction.

(d) For purposes of paragraphs (a) and (c) of this section, the parties to a contract shall be deemed to have expressly agreed to an alternate date for payment of funds and delivery of securities at the time of the transaction for a contract for the sale for cash of securities pursuant to a firm commitment offering if the managing underwriter and the issuer have agreed to the date for all securities sold pursuant to the offering and the parties to the contract have not expressly agreed to another date for payment of funds and delivery of securities at the time of the transaction.

§ 344.8 Securities trading policies and procedures.

(a) *Policies and procedures.* Every bank effecting securities transactions for customers shall establish written policies and procedures providing:

(1) Assignment of responsibility for supervision of all officers or employees who:

(i) Transmit orders to or place orders with broker/dealers; or

(ii) Execute transactions in securities for customers;

(2) Assignment of responsibility for supervision and reporting, separate from those in paragraph (a)(1) of this section, with respect to all officers or employees who process orders for notification or settlement purposes, or perform other back office functions with respect to securities transactions effected for customers;

(3) For the fair and equitable allocation of securities and prices to accounts when orders for the same security are received at approximately the same time and are placed for execution either individually or in combination; and

(4) Where applicable, and where permissible under local law, for the crossing of buy and sell orders on a fair and equitable basis to the parties to the transaction.

§ 344.9 Personal securities trading reporting by bank officers and employees.

(a) *Officers and employees subject to reporting.* Bank officers and employees who:

(1) Make investment recommendations or decisions for the accounts of customers;

(2) Participate in the determination of such recommendations or decisions; or

(3) In connection with their duties, obtain information concerning which securities are being purchased or sold or recommend such action, must report to the bank, within ten business days after the end of the calendar quarter, all transactions in securities made by them or on their behalf, either at the bank or elsewhere in which they have a beneficial interest. The report shall identify the securities purchased or sold and indicate the dates of the transactions and whether the transactions were purchases or sales.

(b) *Exempt transactions.* Excluded from this reporting requirement are:

(1) Transactions for the benefit of the officer or employee over which the officer or employee has no direct or indirect influence or control;

(2) Transactions in registered investment company shares;

(3) Transactions in government securities; and

(4) All transactions involving in the aggregate $10,000 or less during the calendar quarter.

(c) *Alternative report.* Where a bank acts as an investment adviser to an investment company registered under the Investment Company Act of 1940, the bank's officers and employees may fulfill their reporting requirement under paragraph (a) of this section by filing with the bank the ''access persons'' personal securities trading report required by (SEC) Rule 17j–1, 17 CFR 270.17j–1.

§ 344.10 Waivers.

The Board of Directors of the FDIC, in its discretion, may waive for good cause all or any part of this part 344.

By Order of the Board of Directors.

Dated at Washington, D.C., this 25th day of February, 1997.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 97–5425 Filed 3–4–97; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 21

[Docket No. AIR–100–9601]

Replacement and Modification Parts: ''Standard'' Parts; Interpretation

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of interpretation.

SUMMARY: The FAA is notifying the public that the interpretation of an acceptable U.S. government or Industry accepted specification may include specifications that may be limited to detailed performance criteria, complete testing procedures, and uniform marking criteria. Manufacturers of parts that conform to such specifications are excepted as ''standard parts'' from the requirement to obtain FAA Parts Manufacturer Approval. The FAA is aware that specifications meeting the above criteria exist for discrete electric or electrical component parts.

EFFECTIVE DATE: January 31, 1997.

FOR FURTHER INFORMATION CONTACT: Bruce Kaplan, Aerospace Engineer, Aircraft Engineering Division, AIR–100, FAA, 800 Independence Avenue, SW., Washington, DC 20591, (202) 267–9588.

SUPPLEMENTARY INFORMATION: Section 21.303(a) of Title 14 of the Code of Federal Regulations (CFR), Replacement and Modification Parts, prohibits a person from producing a part for sale for installation on a type certificated product unless that person produces the part pursuant to an FAA Parts Manufacturer Approval (PMA). Section 21.303(b) provides four exceptions to the requirement in § 21.303(a). One of these exceptions is for ''Standard parts (such as bolts and nuts) conforming to established industry or U.S. specifications.'' (14 CFR § 21.303(b)(4).)

''Standard part'' is not otherwise defined in Title 14. Section 21.303(b)(4) has come to be understood by the aviation and manufacturing public as meaning a part, the specification for which has been published by a standard setting organization or by the U.S. government, and the FAA has traditionally regulated parts production with that understanding. Examples of such ''traditional'' standard part specifications include National Aerospace Standards (NAS), Air Force-Navy Aeronautical Standard (AN), Society of Automotive Engineers (SAE), SAE Aerospace Standard (AS), and Military Standard (MS). The FAA will continue to consider parts conforming to these specifications as standard parts.

Prior to this notice, for a specification to be acceptable, it had to include information on the design, materials, manufacture, and uniform identification requirements. The specification had to include all the information necessary to produce the part and ensure its conformity to the specification. Furthermore, the specification must be publicly available, so that any party is capable of manufacturing the part. The above examples of accepted specifications fulfill those criteria.

In the past the FAA has applied § 21.303(b)(4) to parts that have specifications where a determination of physical conformity to a design could be made. This application largely excluded classes of parts where the parts are conformed not on the basis of their physical configuration but by meeting

the specified performance criteria. These types of parts are best exemplified by discrete electrical and electronic parts.

Much of the componentry used in electronic devices are manufactured under standard industry practices, often to published specifications developed by standards organizations such as the Society of Automotive Engineers (SAE), the American Electronics Association, Semitec, Joint Electron Device Engineering Council, Joint Electron Tube Engineering Council, and the American National Standards Institute (ANSI). Such standards development by these bodies is overseen by the Institute of Electrical and Electronics Engineers (IEEE), the IEEE Standards Committee, as well as the electrical and electronics industry, at large, who depends upon characteristic design standards for consistency in operation and performance.

The FAA has determined that certain kinds of electrical and electronic parts fit within the limits of the § 21.303(b)(4) exception; these include resistors, capacitors, diodes, transistors, and non-programmable integrated circuits (e.g. amplifiers, bridges, switches, gates, etc.). Conversely, large scale, application-specific, or programmable integrated circuits; hybrids, gate arrays, memories, CPU's, or other programmable logic devices would not be considered standard parts, such components are not 'discretes' since they require programming that controls their timing, functionality, performance, and overall operating parameters.

It is important to remember that 14 CFR Part 21 § 21.303 deals with the production of parts for sale for installations on type certificated products. Installation of replacement or modification parts including owner/operator-produced and standard parts, must be accomplished in compliance with part 43 of Title 14 of the CFR (Part 43). Generally, a standard part may be replaced with an identical standard part, in accordance with the manufacturers maintenance instructions, without a further demonstration of compliance with the airworthiness regulations. Substitution of a standard part with another would require a demonstration of acceptability in accordance with part 43.

Discussion of Comments

The FAA published (61 FR 47671, September 10, 1996) a proposed expanded interpretation for ''standard part'' and requested comments from the public on the ability of producers to conform discrete electrical and electronic parts, and other kinds of parts, to specified performance criteria. The FAA also requested comment on the ability of producers to distinctly identify such parts.

A total of 19 comments were received in response to the notice. These commenters represent air carriers, aircraft manufacturers; associations representing aircraft manufacturers, aircraft maintenance personnel, and fixed base operators/air charter/air taxi operators/scheduled operators; component manufacturers; and the Joint Aviation Authorities. All but one commenter voiced general support for the proposal. Five commenters concur with no additional comment. Six commenters concur and express the desire to include specifications for other types of parts (beyond discrete electrical and electronic parts) under this expanded intrepretation.

The substantive issues raised by the commenters are discussed in the following discussion of comments.

Comment: Two commenters expressed concern about standard parts in general. They commented that some manufacturers claim to build their parts to these standards but do not have any proof that the parts meet the requirements and that just because a part is marked with the standard part type number or marking does not demonstrate that the part in fact conforms to the established industry or U.S. Government specifications. One commenter suggested the FAA survey suppliers to determine if they are reliable candidates to meet the requirements of various standards.

FAA Response: A standard part is one that conforms to the established specification. Beyond just physical configuration and performance testing almost all specifications have quality control and testing requirements. The FAA in conducting an investigation of standard part manufacturers would be looking for complete compliance with the specification, and would look for the existence and proper execution of records necessary to prove conformity. Non-conformities would be cause for enforcement action by the FAA and could be cause for a criminal investigation by the appropriate law enforcement agencies.

The marking of a part is the manufacturer's certification that the part conforms to the specification. The ability of the manufacturer to make that certification at the time of manufacture is based on the specification requirements which include production system requirements, test and acceptance procedures, and any additional internal quality control requirements. The marking of parts also serves as a means by which an installer may identify a part and establish its eligibility for installation on an aircraft. The end users confidence in that manufacturer's certification is based on their experience with that manufacturer and is supplemented by their receiving inspection, and the final determination of airworthiness as required by FAR 43.13.

Standard part manufactures are subject to continuing in-depth audits by their customers whether they be commercial airplane manufacturers, the automotive industry, or the U.S. Government. The FAA feels that these continuing process checks provide an appropriate degree of confidence.

Comment: Three commenters expressed concern that a part meeting a standard specification may be used by a design approval holder in an application that is safety-critical or outside the specified operating tolerances requiring greater scrutiny of that part. For this reason one commenter stipulated that parts must be designated as standard by the design approval holder.

FAA Response: The qualification and quality control requirements for any part installed on a product is established by the design approval holder for that product. If a design approval holder utilizes a standard part design in a safety critical application (and/or an application requiring the part to perform outside its specified operating tolerances) but imposes qualification or quality control requirements beyond those of the standard specification for the part, then that altered part would no longer be a ''standard part''.

Certain design approval holders are required to provide instructions for continued airworthiness including data necessary for maintenance. It is these maintenance instructions that are to be followed by maintenance personnel. It would be incorrect for a design approval holder to identify a part as a ''standard part'' in their maintenance instructions when their qualification or quality control procedures exceed those of the standard part specification.

Comment: Several Commenters voiced the need for including I.S.O. and European government and industry standards.

FAA Response: The FAA can recognize any industry established specification regardless of country of origin. However, under present language of Part 21 21.303(b)(4) acceptable government specifications are limited to those published by the U.S. Government. The Aviation Rulemaking Advisory Committee (ARAC), Aircraft

Certification Procedures Issues Group (Part 21), Parts & Production Working Group is currently developing a draft notice of proposed rulemaking (NPRM), for submittal to the FAA, addressing the approval of replacement and modification parts. This issue is under consideration; changes could be incorporated into the forthcoming NPRM.

Comment: Several commenters expressed the desire to allow various other categories of parts such as lamps electrical connectors, and bearings.

FAA Response: The FAA's Notice solicited information as to the merits of including categories of parts other than discrete electrical or electronic components under the interpretation. The commenters did not state how the conformity of the parts could be established solely on the basis of meeting a performance specification. Thus, the FAA still regards the standard parts exclusion as applicable to a narrow segment of the entire population of part designs.

Comment: One commenter expressed the desire to allow programmable devices to be considered standard parts when there are approved pin-for-pin alternatives. Such components only become notionally non-standard after programming for a specific application.

FAA Response: Programmable devices were specifically excluded in the proposed expanded interpretation because their performance characteristics may vary with the instruction programmed within or provided to such devices, or due to different applied voltages and signals affecting logical switching conditions. Even though such devices may be pin-to-pin compatible, the performance characteristics cannot be assured, thus making such devices ineligible for consideration of the ''performance'' based interpretation of the definition.

The interpretation for standard parts is effective on January 31, 1997. The FAA is compiling a list of standard setting bodies and U.S. government entities that establish specifications for standard parts. That list will be published on the Aircraft Certification Home Page on the World Wide Web by June 30, 1997.

Issued in Washington, DC on January 31, 1997.

Elizabeth Yoest,

Deputy Director, Aircraft Certification Service.

[FR Doc. 97–5437 Filed 3–4–97; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 96–NM–146–AD; Amendment 39–9953; AD 97–05–09]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 737 series airplanes, that requires replacement of the flow restrictors of the aileron and elevator power control units (PCU's) with new flow restrictors. This amendment is prompted by a review of the design of the flight control systems on Model 737 series airplanes. The actions specified by this AD are intended to prevent reduced roll and/or pitch rate control of the airplane and consequent increased pilot workload as a result of fragments from a deteriorated flow restrictor filter screen becoming lodged in the PCU.

DATES: Effective April 9, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 9, 1997.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 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: Don Kurle, Senior Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2798; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 737 series airplanes was published in the Federal Register on August 28, 1996 (61 FR 44232). That action proposed to require replacement of the flow restrictors of the aileron and elevator power control units (PCU's) with new flow restrictors.

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

Support for the Proposal

One commenter supports the proposed rule.

Request To Revise Statement of Findings of Critical Design Review Team

One commenter requests the second paragraph of the Discussion section that appeared in the preamble to the proposed rule be revised to accurately reflect the findings of the Critical Design Review (CDR) team. The commenter asks that the FAA delete the one sentence in that paragraph, which read: ''The recommendations of the team include various changes to the design of the flight control systems of these airplanes, as well as correction of certain design deficiencies.'' The commenter suggests that the following sentences should be added: ''The team did not find any design issues that could lead to a definite cause of the accidents that gave rise to this effort. The recommendations of the team include various changes to the design of the flight control systems of these airplanes, as well as incorporation of certain design improvements in order to enhance its already acceptable level of safety.''

The FAA does not find that a revision to this final rule in the manner suggested by the commenter is necessary, since the Discussion section of a proposed rule does not reappear in a final rule. The FAA acknowledges that the CDR team did not find any design issue that could lead to a definite cause of the accidents that gave rise to this effort. However, as a result of having conducted the CDR of the flight control systems on Boeing Model 737 series airplanes, the team indicated that there are a number of recommendations that should be addressed by the FAA for each of the various models of the Model 737. In reviewing these recommendations, the FAA has concluded that they address unsafe conditions that must be corrected through the issuance of AD's. Therefore, the FAA does not concur that these design changes merely ''enhance [the Model 737's] already acceptable level of safety.''

Request To Extend Compliance Time for Replacing Flow Restrictors

Several commenters request that the proposed compliance time for

replacement of the flow restrictors be extended.

The Air Transport Association (ATA) of America, on behalf of several of its members, requests that the proposed compliance time for accomplishment of paragraph (a) of the proposal be extended from within 18 months to within five years after the effective date of the AD to align with regularly scheduled maintenance (''D'' checks).

One commenter requests that the compliance time for paragraph (a) of the proposal be extended to 24 months to avoid grounding aircraft by scheduling maintenance outside of regularly scheduled visits. One ATA member requests a 4-year compliance time based on considerations including scheduling, airplane downtime, unit turn-around time, and availability of spare parts.

One commenter states that the retrofit requires a 30-day turn-around time. Another commenter indicates that although the replacement takes 3 work hours, it takes 42 total work hours to return the airplane to service since the affected units are CAT II sensitive line replaceable units. The commenters also point out that there has never been an in-service failure of the filter screen. The failure referenced in the proposal occurred during a shop functional test at 5,400 pounds per square inch (psi) and, in service, the unit would not be subjected to operational pressures greater than 3,000 psi. The commenters add that there is some uncertainty at this time as to whether the shop test should be accomplished at such a high pressure; such a test may cause more safety concerns than it addresses.

One ATA member states that there is no service history or other evidence to indicate that the filter screens may fail when subjected to 3,000 psi, nor is there any history of discrepant PCU operation attributed to failure of the filter screens. The commenter indicates that the affected PCU's have accumulated an average of 17,400 flight hours each (for a total of approximately 17 million flight hours) without an in-service failure due to disintegration of the flow restrictor filter screens. The commenter believes that an acceptable level of safety can be achieved by mandating the replacement of suspect flow restrictors at the next PCU overhaul, not to exceed 5 years after the effective date of the AD.

Boeing agrees that, in order to preclude any failures from occurring during a functional test following maintenance action, the suspect PCU filter screens should be replaced. However, Boeing indicates that any maintenance action involving removing, disassembling, modifying, and reinstalling the PCU provides opportunity for a maintenance error. In addition, Boeing states that any suspect filter screens already installed in airplanes are very unlikely to fail. Boeing adds that there is added risk if a filter screen failed during functional testing, but was not discovered. In view of these considerations, Boeing recommends a compliance time of five years or 15,000 hours.

One commenter, an operator of affected airplanes of foreign registry, requests that the proposed compliance time be extended to 60 months to allow sufficient time to accomplish the replacement without grounding airplanes.

The FAA concurs with the commenters' request to extend the compliance time. The FAA has determined that, in light of the information presented by the commenters, the compliance time can be extended to five years or 15,000 flight hours (whichever occurs first) to allow the replacement to be performed at a base during regularly scheduled maintenance where special equipment and trained maintenance personnel will be available, if necessary. The FAA does not consider that this extension will adversely affect safety. Paragraph (a) of the final rule has been revised to specify the extended compliance time.

Request To Extend Compliance Time for Disallowing Installation of Flow Restrictors

The ATA also requests that the proposed compliance time for disallowing installation of flow restrictors, as specified in paragraph (b) of the proposal, be extended from ''as of the effective date of this AD'' to within two years after the effective date of the AD. The commenter does not provide specific justification for this request.

The FAA does not concur. Since the service information referenced in this final rule was issued in June 1992, the FAA finds that ample opportunity has been provided for removal of the affected flow restrictors from operators' inventories and replacement with acceptable parts.

Requests To Withdraw the Proposal

Several commenters request that the proposed rule be withdrawn.

One commenter believes the proposal is not justified since it cannot be supported by data. The commenter indicates the proposal does not contribute to improving the safety aspects of Model 737 aircraft. The commenter states that the Critical Design Review (CDR) team's report does not indicate that there is any evidence to tie the referenced service documents to any in-service problems or accidents. The commenter adds that the FAA has not indicated that it has reviewed any routine component tear-down reports that would support the proposed actions. The commenter concludes that the FAA does not understand the enormity of the proposed action.

A second commenter concludes that the proposal does not address an unsafe condition, even in a worst case situation; that an unsafe condition is extremely unlikely to occur in service; and that an unsafe condition would most likely be detected during a preflight check.

Another commenter, Boeing, states that the proposal does not correct an unsafe condition; rather, it eliminates the potential for a failure condition that could degrade controllability (but not prevent continued safe flight and landing). Boeing indicates that there have been no reported in-service failures of the suspect filter screens. Based on ''the limited safety concern,'' Boeing states that it is appropriate for removal and rework of the suspect units as part of routine maintenance. Boeing suggests that, if the FAA does not withdraw the proposal, the PCU overhaul manual could be revised to provide a procedure for inspection and replacement of suspect flow restrictors.

One commenter states that both Boeing and FAA analyses indicate a worst case scenario (with an accompanying independent hydraulic failure) to be reversion to manual control—a situation checked many times each year during maintenance test flights by carriers. The commenter also states that the instance in which the filter collapsed occurred at proof test pressures that would never be encountered in service (according to Boeing and the component manufacturer).

The FAA does not concur with these requests to withdraw the proposed rule. The FAA has not received any data to demonstrate the reliability or strength of the faulty filters. However, the FAA is aware that these filters were not strong enough to pass proof testing at the PCU manufacturer's facility. Neither the filter or PCU manufacturer attempted to quantify the actual strength of the filter screen. In addition, while it is true that there have been no reported in-service failures, a screen failure would not necessarily be reported since the FAA does not require reports of screen failures.

As discussed in the preamble to the proposal, the FAA has determined that sufficient data exist to demonstrate that contamination of the PCU at the main control valve due to deterioration of a

filter screen from a flow restrictor can result in fragments of the screen migrating to the main control valve, the damping orifice, or the bypass valve. Fragments from a deteriorated flow restrictor filter screen could become lodged in the PCU. As suggested by one of the commenters, even if manual reversion is checked during maintenance test flights several times each year, this condition is considered unsafe since it would result in reduced roll and/or pitch rate control of the airplane and consequent increased pilot workload. The FAA has determined that replacement of the flow restrictors of the aileron and elevator PCU's with new flow restrictors, as required by this AD action, will adequately address that unsafe condition.

The FAA has no objection to Boeing revising the PCU overhaul manual to provide a procedure for inspection and replacement of suspect flow restrictors; such revision will not affect the requirements of this AD.

Request To Allow Records Search

One commenter requests that a note be added to the proposal to specify that compliance with the AD can be demonstrated by accomplishing a records search to determine whether any of the suspect units are installed on the airplane.

The FAA finds that no change to the final rule is necessary. The applicability of this final rule specifies that the AD applies only to certain Model 737 series airplanes that are equipped with an aileron or elevator PCU having a particular part number. This AD does not preclude an operator from performing a records search to determine if an airplane in its fleet is subject to the requirements of this AD.

Request To Revise Cost Impact Information

One commenter states that imposition of the proposal would overburden competent repair facilities and expose the airlines and the flying public to unnecessary risk as a result. In support of its position, the commenter states that the cost impact information in the proposal indicates the screens referenced in the service letter cited in the AD are line replaceable when they are not. The commenter also asserts that the costs specified in the proposal are unrealistically low; however, the commenter does not provide any suggested cost estimates or data to substantiate this remark.

The FAA infers from these remarks that the commenter requests that the cost impact information be revised. In this case, the FAA does not concur.

First, the FAA points out that comments are more likely to be persuasive to the extent that they provide specific and detailed information regarding actual costs. However, when commenters submit simple generalizations about the costs, there is little that the FAA can consider.

Second, the cost impact information, below, describes only the ''direct'' costs of the specific actions required by this AD. The number of work hours necessary to accomplish the required actions and the cost for required parts were provided to the FAA by the manufacturer based on the best data available to date. This number represents the time necessary to perform only the actions actually required by this AD.

The FAA recognizes that, in accomplishing the requirements of any AD, operators may incur ''incidental'' costs in addition to the ''direct'' costs. The FAA realizes that such is the case for this AD, since the filter screen is not a line replaceable unit. The cost analysis in AD rulemaking actions, however, typically does not include incidental costs, such as the time required to gain access and close up; planning time; or time necessitated by other administrative actions. Because incidental costs may vary significantly from operator to operator, they are almost impossible to calculate.

Third, the FAA finds that the revised compliance time specified in paragraph (a) of this AD should allow ample time for the required actions to be accomplished coincidentally with scheduled major airplane inspection and maintenance activities, thereby minimizing any burden on repair facilities and any additional costs.

Conclusion

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

Cost Impact

There are approximately 244 Model 737 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 146 airplanes of U.S. registry will be affected by this AD, that it will take approximately 12 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $2,960 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $537,280, or $3,680 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

97–05–09 Boeing: Amendment 39–9953. Docket 96–NM–146–AD.

Applicability: Model 737 series airplanes equipped with an aileron or elevator power control unit (PCU) having part number (P/N) 65–45180–29, serial numbers 182 through 1297 inclusive; certificated in any category.

Note 1: Originally, aileron or elevator PCU's having P/N's and serial numbers identified in the applicability of this AD may have been installed on Model 737 series airplanes having line numbers 1793 through 2036 inclusive. In addition, some of these PCU's may have been used as spares; therefore, specific airplane line numbers equipped with such PCU's cannot be provided in this AD.

Note 2: PCU's having P/N 65–45180–29 consist of a PCU assembly having P/N 65–44761–21 plus associated hydraulic fittings. Both PCU P/N's 65–45180–29 and 65–44761–21 are serialized. PCU's subject to the requirements of this AD may be more easily identified using serial numbers for P/N 65–44761–21. The following serial numbers correspond to P/N 65–44761–21:

8550A,
8552A,
8556A,
8557A,
8561A,
8563A through 8718A inclusive,
8720A through 8726A inclusive,
8728A through 8745A inclusive,
8749A,
8750A through 8758A inclusive,
8760A through 8873A inclusive,
8876A through 9004A inclusive,
9007A through 9012A inclusive,
9014A through 9040A inclusive,
9042A through 9066A inclusive,
9068A through 9340A inclusive,
9342A through 9388A inclusive,
9390A through 9529A inclusive,
9531A through 9676A inclusive, and
9678A through 9688A inclusive.

Note 3: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced roll and/or pitch rate control of the aileron and consequent increased pilot workload, accomplish the following:

(a) Within 5 years or 15,000 flight hours after the effective date of this AD, whichever occurs first: Replace the four flow restrictors, part number (P/N) JETA1875500D, on the aileron and elevator power control units (PCU's), P/N 65–45180–29, serial numbers 182 through 1297 inclusive, with flow restrictors having P/N JETX0527100B, in accordance with Boeing Service Letter 737-SL–27–71–A, dated June 19, 1992, including Attachment 1.

(b) As of the effective date of this AD, no person shall install a flow restrictor having P/N JETA1875500D on an aileron or elevator PCU having P/N 65–45180–29, serial numbers 182 through 1297 inclusive, of any airplane.

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

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

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

(e) The replacement shall be done in accordance with Boeing Service Letter 737–SL–27–71–A, dated June 19, 1992, including Attachment 1. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on April 9, 1997.

Issued in Renton, Washington, on February 25, 1997.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–5158 Filed 3–4–97; 8:45 am]

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14 CFR Part 71

[Airspace Docket No. 93–AEA–02]

Amendment to Class E Airspace; Dunkirk, NY

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This amendment modifies the Class E airspace at Dunkirk, NY, to accommodate a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 19 and a VHF Omni-Directional Radio Range/Distance Measuring Equipment (VOR/DME) SIAP to at Angola Airport. The intended effect of this action is to provide adequate controlled airspace for instrument flight rules (IFR) operations at the airport.

EFFECTIVE DATE: 0901 UTC, May 22, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Operations Branch, AEA–530, Air Traffic Division, Eastern Region, Federal Aviation Administration, Federal Building # 111, John F. Kennedy International Airport, Jamaica, New York 11430, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On January 6, 1995, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by modifying Class E airspace at Dunkirk, NY, (60 FR 2047). This action would provide adequate Class E airspace for IFR operations at Angola Airport.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Class E airspace areas designations are published in paragraph 6005 of FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) modifies Class E airspace area at Dunkirk, NY, to accommodate a GPS RWY 19 SIAP, a VOR/DME or GPS A SIAP and for IFR operations at Angola Airport.

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 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; EO 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 Federal Aviation Administration Order 7400.9D, Airspace Designation and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

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

* * * * *

AEA NY AEA E5 Dunkirk, NY [Revised]

Chautauqua County/Dunkirk Airport, NY
(Lat. 42°29′36″ N., long. 79°16′19″ W.)
Angola Airport, NY
(Lat. 42°39′37″ N., long. 78°59′28″ W.)
Dunkirk VORTAC, NY
(Lat. 42°29′26″ N., long. 79°16′27″ W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Chautauqua County/Dunkirk Airport and within 11.8-mile radius of the airport extending clockwise from a 022° to a 264° bearing from the airport and within a 6.3 mile radius of the Angola Airport and within 5.3 miles northwest of 051° radial from the Dunkirk VORTAC and within 5.3 miles northwest of the 231° radial from the VORTAC extending from the 6.3-mile radius to 9.9 miles southwest of the VORTAC.

* * * * *

Issued in Jamaica, New York on February 21, 1997.

James K. Buckles,

Acting Manager, Air Traffic Division, Eastern Region.

[FR Doc. 97–5436 Filed 3–4–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Laidlomycin Propionate Potassium

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Hoffmann-LaRoche, Inc. The supplemental NADA provides for use of dry laidlomycin propionate potassium Type A articles for making liquid Type B medicated feeds used to make dry Type C medicated feeds. The Type C feeds are for cattle fed in confinement for slaughter for increased rate of weight gain and improved feed efficiency.

EFFECTIVE DATE: March 5, 1977.

FOR FURTHER INFORMATION CONTACT: Russell G. Arnold, Center for Veterinary Medicine (HFV–142), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1674.

SUPPLEMENTARY INFORMATION: Hoffmann-LaRoche, Inc., Nutley, NJ 07110, filed supplemental NADA 141–025, which provides for use of Cattylyst® 50 (50 grams (g) per pound laidlomycin propionate potassium) dry Type A articles to make liquid, 100 to 2,000 g per ton (g/t) laidlomycin propionate potassium Type B feeds, used to make dry, 5 to 10 g/t laidlomycin propionate potassium Type C feeds. The Type C feeds are for cattle fed in confinement for slaughter for increased rate of weight gain and improved feed efficiency. The supplemental NADA is approved as of March 5, 1997, and § 558.305 (21 CFR 558.305) is amended to reflect the approval.

In addition, certain mixing directions for liquid feeds are required for use of laidlomycin propionate potassium liquid Type B feeds to make Type C feeds. Those directions had not been previously codified in the regulation. At this time, existing § 558.305(b) is redesignated as § 558.305(d) and new paragraph (b) is added to include those directions. New § 558.305(c) is established and reserved for future use.

The supplement is for a new formulation of an approved product used to make another approved product. Approval does not affect the basis of approval or the conditions of use of the currently approved application. No additional safety or effectiveness data are required. Therefore, a freedom of information summary is not required. A summary of safety and effectiveness data and information submitted to support approval of the original application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), this approval does not qualify for marketing exclusivity because the supplement does not contain substantial evidence of effectiveness of the drugs involved, any studies of animal safety or, in the case of food-producing animals, human food safety studies (other than bioequivalence or residue studies) required for approval and conducted or sponsored by the applicant.

The agency has determined under 21 CFR 25.24(d)(1)(iii) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

2. Section 558.305 is amended by redesignating paragraph (b) as paragraph (d), by adding new paragraphs (b) and (c), and by revising the title of redesignated paragraph (d)(3) to read as follows:

§ 558.305 Laidlomycin propionate potassium.

* * * * *

(b) *Special considerations.* (1) Laidlomycin liquid Type B feeds may be manufactured from dry laidlomycin Type A articles. The liquid Type B feeds must have a pH of 6.0 to 8.0, dry matter of 62 to 75 percent, and bear appropriate mixing directions as follows:

(i) For liquid Type B feeds stored in recirculating tank systems: Recirculate immediately prior to use for no less than 10 minutes, moving not less than 1 percent of the tank contents per minute from the bottom of the tank to the top. Recirculate daily as described even when not used.

(ii) For liquid Type B feeds stored in mechanical, air, or other agitation type tank systems: Agitate immediately prior to use for not less than 10 minutes, creating a turbulence at the bottom of the tank that is visible at the top. Agitate daily as described even when not used.

(2) The expiration date for the liquid Type B feed is 21 days after date of manufacture. The expiration date for the dry Type C feed made from the liquid Type B feed is 7 days after date of manufacture.

(c) [Reserved]

(d) * * *

(3) *Additional limitations.* * * *

Dated: February 6, 1997.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 97–5312 Filed 3–4–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 203

[Docket No. FR–4032–I–02]

RIN 2502–AG72

Single Family Mortgage Insurance—Loss Mitigation Procedures Suspension of Certain Provisions of Interim Rule

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Suspension of certain provisions of interim rule.

SUMMARY: This document suspends, until the date of publication of a final rule, the last sentence in introductory paragraph (a) of 24 CFR 203.355 and the second sentence in paragraph (f) of 24 CFR 203.402, which otherwise would have become applicable on March 1, 1997. This suspension is being issued to permit HUD to consider fully the public comments on these provisions before making them applicable. The suspended provisions relate to loss mitigation procedures for single family mortgage insurance.

DATES: Effective February 28, 1997, the last sentence of the introductory test of 24 CFR 203.355(a) and the second sentence of 24 CFR 203.402(f) are suspended.

FOR FURTHER INFORMATION CONTACT: Joseph McCloskey, Director, Single Family Servicing Division, Room 9178, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, (202) 708–1672, or, TTY for hearing and speech impaired, (202) 708–4594. (These are not toll-free numbers).

SUPPLEMENTARY INFORMATION: In an interim rule published on July 3, 1996 (61 FR 35014) to implement loss mitigation procedures under section 407 of The Balanced Budget Downpayment Act, I (Pub. L. 104–99, approved January 26, 1996) (Downpayment Act), delayed implementation dates were included for provisions in two sections so that HUD would be able to consider and address any public comments on these provisions before the prescribed implementation date. The reduction from nine to six months for taking action upon default of a mortgage in § 203.355(a), and the amendment to § 203.402(f) to permit varying the percentage of foreclosure costs or the costs of acquiring a property that are reimbursed, were made to apply only after March 1, 1997.

HUD has determined that it is appropriate to delay the implementation of these provisions until the publication of a final rule. Section 203.355(a) provides, in part, that ''where the date of default is on or after March 1, 1997, the mortgagee shall take one of the following actions within six months of the date of default or within such additional time approved by HUD[.]'' Section 203.402(f) provides, in part, that: ''For mortgages insured on or after March 1, 1997, the Secretary will reimburse a percentage of foreclosure costs or costs of acquiring the property, which percentage shall be determined in accordance with such conditions as the Secretary shall prescribe.''

Accordingly, HUD is providing notice that is suspending the provision contained in the last sentence of the introductory text of paragraph (a) of § 203.355 that reduces the foreclosure initiation time frame from nine months to six months for mortgages where the default date is on or after March 1, 1997. This will leave in place the nine-month time frame in effect prior to the July 3, 1996 interim rule until HUD issues a final rule.

In addition, HUD is providing notice that it is suspending the provision contained in the second sentence of § 203.402(f) that permits HUD to vary the percentage of foreclose costs or costs of acquiring the property otherwise reimbursed for mortgages insured on or after March 1, 1997. Under this suspension, HUD will continue to reimburse foreclosure costs or costs of acquiring the property otherwise (including costs of acquiring the property by the mortgagee and of conveying and evidencing title to the property to HUD, but not including any costs borne by the mortgagee to correct title defects) actually paid by the mortgagee and approved by HUD, in an amount not in excess of two-thirds of such costs or $75, whichever is the greater. This will leave in place the reimbursement rate in effect prior to the July 3, 1996 interim rule until HUD issues a final rule.

Dated: February 28, 1997.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 97–5457 Filed 2–28–97; 3:55 pm]

BILLING CODE 4210–27–M

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 102

Issuance and Service of Subpoenas

AGENCY: National Labor Relations Board.

ACTION: Final rule.

SUMMARY: The Board is amending its rules to provide that the Executive Secretary may sign and issue subpoenas on behalf of the Board or any Member thereof and that the date of service of the subpoena for purposes of computing the 5-day period for filing a petition to revoke shall be construed as the date the subpoena is received.

EFFECTIVE DATE: March 5, 1997.

FOR FURTHER INFORMATION CONTACT: John J. Toner, Executive Secretary, National Labor Relations Board, 1099 14th Street, NW, Room 11600, Washington, DC 20570. Telephone: (202) 273–1940.

SUPPLEMENTARY INFORMATION: For approximately the last three years, the NLRB has been conducting an intensive internal review of its procedures at all levels of the Agency. The purpose of this internal review has been to find ways to maintain and improve the Agency's case-processing efficiency in light of the Agency's diminishing resources. Many initiatives have already been implemented by the Board as part of this ongoing review, such as the initiative authorizing the use of settlement judges and providing judges with the discretion to dispense with briefs and to issue bench decisions,

which was published as a final rule on February 23, 1996, following a one-year experimental period (61 FR 6940). See also the Board's recent, December 11, 1996, notice implementing certain proposed changes in the Board's advisory opinion rules and procedures (61 FR 65180).

Another, more technical, change that the Board has considered at the suggestion of Agency personnel involves the current process for issuing subpoenas. Under the current procedure, the Board supplies preprinted blank subpoenas bearing a seal and the facsimile signature of one of the current Board Members to the regional offices which, as required by Section 11 of the Act, automatically issue the subpoenas to the person requesting the subpoena. Although this procedure is perfectly proper (see *Lewis* v. *NLRB*, 357 U.S. 10, 14–15 (1958)), experience has shown that it may not be the most efficient procedure available to the Agency. The problem is that, because the Board Members serve out limited, 5-year terms, the preprinted subpoena forms containing a particular Board Member's facsimile signature will only be useable for the length of that Member's time in office, and will have to be destroyed and replaced after the Board Member's term expires or the Member otherwise vacates the position.

The Agency has attempted to minimize the number of unused subpoena forms which must be destroyed after a Board Member leaves by ordering a limited number of preprinted forms containing the facsimile signature of a particular Board Member, and by using those forms exclusively, before printing or using the forms containing the facsimile signature of the next most senior Board Member (i.e., the Board Member whose term is next scheduled to expire). However, notwithstanding these efforts, literally thousands of subpoena forms containing a former Board Member's facsimile signature often remain unused following the Member's departure. For example, at the conclusion of Member Cohen's term in August 1996, there were over 6,000 unused preprinted subpoena forms containing his facsimile signature stored at the Washington Headquarters alone, not counting those stored at the Agency's 50 regional and subregional offices.

In an effort to eliminate or at least reduce such an obvious waste of its increasingly scarce resources,[1] the Board has decided to amend Sections 102.31(a) and 102.66(c) of the rules to provide that the Board's Executive Secretary may sign and issue the subpoenas on behalf of the Board or any Member thereof.[2] As a career official, the Executive Secretary can reasonably be expected to serve for a longer period of time than any one Board Member.[3] Thus, it is expected that, by providing for issuance of subpoenas by the Executive Secretary, the frequency in number of times that the preprinted subpoena forms will need to be updated with a new facsimile signature will be significantly reduced.[4]

Finally, the Board has also decided to clarify §§ 102.31(b) and 102.66(c) of the rules by adding a provision in each section stating that the ''date of service'' of a subpoena for purposes of computing the 5-day period for filing a petition to revoke shall be construed as the date the subpoena was received. Although this has long been the Board's policy, it has never been clearly articulated by the Board in a published decision.[5] Further, it is an issue that has arisen with some frequency in recent years. Accordingly, the Board has decided to revise the foregoing sections to clearly set forth the Board's policy in this regard.

Regulatory Requirements

This rule relates solely to agency organization, procedure and practice, and will not have a significant economic impact on a substantial number of small businesses or impose any information collection requirements.

Accordingly, the Agency finds that prior notice and comment is not required for these rules and that good cause exists for waiving the general requirement of delaying the effective date under the Administrative Procedure Act (5U.S.C. 553), and that the rules are not subject to the Regulatory Flexibility Act (5 U.S.C. 601), Small Business Regulatory Enforcement Act (5 U.S.C. 801), Paperwork Reduction Act (44 U.S.C. 3501), or Executive Order 12866.

List of Subjects in 29 CFR Part 102

Administrative practice and procedure, Labor management relations.

29 CFR part 102 is amended as follows:

PART 102—RULES AND REGULATIONS

1. The authority citation for 29 CFR part 102 continues to read as follows:

Authority: Section 6, National Labor Relations Act, as amended 929 U.S.C. 151, 156). Section 102.117(c) also issued under Section 552(a)(4)(A) of the Freedom of Information Act, as amended (5 U.S.C. 552(a)(4)(A). Sections 102.143 through 102.155 also issued under Section 504(c)(1) of the Equal Access to Justice Act, as amended (5 U.S.C. 504(c)(1).

2. Section 102.31 is amended as follows:

(a) Paragraph (a) is revised;

(b) Paragraph (b) is amended by removing the first sentence of that paragraph and adding two sentences in its place as set forth below.

§ 102.31 Issuance of subpenas; petitions to revoke subpenas; rulings on claim of privilege against self-incrimination; supena enforcement proceedings; right to inspect and copy data.

(a) The Board, or any Member thereof, shall, on the written application of any party, forthwith issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence, including books, records, correspondence, or documents, in their possession or under their control. The Executive Secretary shall have the authority to sign and issue any such subpoenas on behalf of the Board or any Member thereof. Applications for

[1] The per-unit cost of the subpoenas to the Agency is about 4 or 5 cents, depending on the particular subpoena form used, or about $1800 to $2500 per 50,000. Although this is obviously a relatively small cost in the Agency's overall budget, the Board recognizes its responsibility in these times of budgetary cutbacks to implement reasonable cost-saving measures wherever it may responsibly do so, regardless of their potential size or impact.

[2] Such a delegation is clearly lawful since, as indicated above, the issuance of subpoenas is mandatory under the NLRA, does not involve the exercise of any discretion, and is therefore a purely ministerial act. See *Lewis* v. *NLRB*, 357 U.S.C. 10, 14–15 (1958).

[3] For example, former Executive Secretary John C. Truesdale served in that position for a total of approximately 18 of the last 25 years (June 6, 1972–Oct. 25, 1997; Jan. 26, 1981–Jan. 23, 1994; and March 4, 1994–Dec. 22, 1994). Moreover, during four separate periods in the other 7 years, he served as a Board Member (Oct. 25, 1977–Aug. 27, 1980; Oct. 23, 1980–Jan. 25, 1981; Jan. 24, 1994–March 3, 1994; and Dec. 23, 1994–Jan. 3, 1996). Thus, if the instant new rule had been in effect during the past 25 years, his signature would have been valid not only during the 18 years that he served as the Executive Secretary, but also during those periods in the other 7 years when he was serving as a Board Member. Thus, no change in the subpoena form would have been necessary for virtually the entire 25-year period.

[4] The agency, of course, will also continue to study other possible ways to reduce the costs associated with issuing subpoenas, such as eliminating the carbon copy and computerizing the printing process so that the subpoenas may be printed on an as-needed basis.

[5] But see the administrative law judge's decision in *Champ Corp.*, 291 NLRB 803, 817 (1988), citing *NLRB* v. *C.E. Strickland*, 220 F. Supp. 661 (D.C. Tenn. 1962), affd. 321 F.2d 811 (6th Cir. 1963). Compare Section 102.112 of the Board's rules, which generally provides that the date of service under the Board's rules shall be the day when the matter served is deposited in the mail or with a private delivery service, is personally delivered, or, if by fascimile transmission, when the transmission is received.

subpoenas, if filed prior to the hearing, shall be filed with the Regional Director. Applications for subpoenas filed during the hearing shall be filed with the administrative law judge. Either the Regional Director or the administrative law judge, as the case may be, shall grant the application on behalf of the Board or any Member thereof. Applications for subpoenas may be made ex parte. The subpoena shall show on its face the name and address of the party at whose request the subpoena was issued.

(b) Any person served with a subpoena, whether ad testificandum or duces tecum, if he or she does not intend to comply with the subpoena, shall, within 5 days after the date of service of the subpoena, petition in writing to revoke the subpoena. The date of service for purposes of computing the time for filing a petition to revoke shall be the date the subpoena is received. * * *

* * * * *

3. Paragraph (c) of § 102.66 is amended by removing the first four sentences of that paragraph and adding the following seven sentences in their place as set forth below:

§ 102.66 Introduction of evidence; rights of parties at hearing; subpoenas.

* * * * *

(c) The Board, or any Member thereof, shall, on the written application of any party, forthwith issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence, including books, records, correspondence, or documents, in their possession or under their control. The Executive Secretary shall have the authority to sign and issue any such subpoenas on behalf of the Board or any Member thereof. Any party may file applications for subpoenas in writing with the Regional Director if made prior to hearing, or with the hearing officer if made at the hearing. Applications for subpoenas may be made ex parte. The Regional Director or the hearing officer, as the case may be, shall forthwith grant the subpoenas requested. Any person served with a subpoena, whether ad testificandum or duces tecum, if he or she does not intend to comply with the subopoena, shall, within 5 days after the date of service of the subpoena, petition in writing to revoke the subpoena. The date of service for purposes of computing the time for filing a petition to revoke shall be the date the subpoena is received. * * *

* * * * *

Dated, Washington, D.C., February 27, 1997.

By direction of the Board.

John J. Toner,

Executive Secretary.

[FR Doc. 97–5284 Filed 3–4–97; 8:45 am]

BILLING CODE 7545–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 901, 902, 904, 906, 913, 914, 915, 916, 917, 918, 920, 925, 926, 931, 934, 935, 936, 938, 943, 944, 946, 948 and 950

RIN 1029–AB86 and 1029–AB87

State Program Amendments

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is amending its regulations by revising the information currently reported in the Code of Federal Regulations (CFR) regarding the OSM Director's approval of amendments to State regulatory programs and abandoned mine land reclamation plans (hereafter State program amendments). This information is being condensed to a three-column tabular presentation providing the dates when State program amendments were originally submitted to OSM, the dates the OSM Director's decision approving all or portions of these amendments were published in the Federal Register, and the State citations affected by the amendments. This rulemaking will reduce the number of unnecessary pages in the CFR and make it a more useful document. As always, people interested in getting copies of the full text of the amended State regulatory program or abandoned mine land reclamation plan can contact the State regulatory authority office or the OSM field office with oversight authority for that State.

EFFECTIVE DATE: April 4, 1997.

FOR FURTHER INFORMATION CONTACT: John A. Trelease, Division of Regulatory Support, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW, Room 210 SIB, Washington, DC 20240; Telephone (202) 208–2783.

SUPPLEMENTARY INFORMATION:

I. Background
II. Discussion of Final Rule and Responses to Comments
III. Procedural Matters

I. Background

The OSM Director's approval or approval in part of State program amendments is published in the Federal Register and codified in the CFR. The regulatory text documenting such decisions usually contained topical headings describing the amendments in a variety of forms, the associated program citations, the dates the amendments were submitted to OSM, and the dates the amendments became effective. The proposed rules published on May 8 and May 28, 1996, (61 FR 20768 and 61 FR 26477, respectively), would have limited the regulatory text to a two-column tabular presentation of the dates that the State program amendments were submitted to OSM and the dates the amendments were published in the Federal Register after approval, or partial approval, by the OSM Director for 30 CFR parts 901, 902, 904, 906, 913, 914, 915, 916, 917, 918, 920, 925, 926, 931, 934, 935, 936, 938, 943, 944, 946, 948 and 950.

This final rulemaking adds a third column to each table providing the State program citations affected by each program amendment. Where no citation is available or appropriate, a brief description is provided.

II. Discussion of Final Rule and Responses to Comments

Three commenters responded to the proposed rules, a citizens group and two trade associations. While neither association opposed the proposed goal of making the CFR a more readable document, they however argued that the rule should not be construed as being responsive to the regulatory reform required by the President's Regulatory Reform Initiative. While the formatting and informational changes promulgated by this rule may not meet all of the objectives of the Initiative, OSM believes that these changes are well within the discretion exercised by the Secretary for the last 20 years as to the nature of information published in the Federal Register and codified in the CFR documenting approval or approval in part of State program amendments.

One of the associations referenced its comments submitted in opposition to another earlier OSM rulemaking which had proposed deleting the whole text of State-Federal Cooperative Agreements from the CFR. (April 4, 1996, 61 FR 15005). OSM considers such comments to be inapplicable to the instant rule which provides as high or higher a level of meaningful State program amendment information as that provided under the prior rules.

Both associations and the citizens group contended that the proposed two-column format would not be useful to people researching the status of amendments, and would reduce the information currently available to the public. One of the associations suggested as a solution that a third column be added which would list the State citations affected by each amendment. In this way, the commenter believed that OSM would achieve the reform efforts of the proposed tabular format while maintaining its usefulness to people researching the status of State program amendments.

OSM accepts this last suggestion. In the final rule a third column has been added to each table labeled ''Citation/Description.'' This column provides State citations or a brief description of the topic being affected by the State program amendment.

With the addition of the third column, the only category of information included in the prior State program amendment rules which is not being carried forward into the current rulemaking is the topical headings attributed to amended State program provisions. It is noteworthy that many of the early State program amendment rules did not include this type of topical information.

While some parties may have found the topical headings of the prior rules a convenient place to have begun research of a particular State program amendment provision, the topical headings most often supplied little useful guidance as to the actual nature or purpose of the amended provision. This was because the majority of amendments affect only a small portion of their topical headings. For example, the Illinois State program amendment submitted to OSM on July 26, 1990, and which became effective on May 6, 1991, listed four paragraphs of § 1778.13 as being amended: § 1778.13 (b), (c)(5), (i), and (j), but attributed to each paragraph the broader section heading of ''Permit Applications; Identification of Interests.'' If a person was interested in the current requirements for the submission of information under § 1778.13, that person would have no indication from the prior rules'' topical headings that such requirements were amended at § 1778.13(j). Under the final rule, as under the prior rules, people interested in researching a particular State program provision must continue to refer to an updated copy of that program to determine the precise language of the provision.

OSM anticipates that the public will find that elimination of the prior rules' topical headings allows for a more concise, readable format without a material lessening of the information needed for researching a particular program provision.

During the process of preparing the Citation/Description column, OSM found numerous instances where the State program citations listed in the CFR were either incomplete or incorrect. Pursuant to the discretion the Secretary has historically exercised as to the nature of State program amendment information published in the Federal Register and codified in the CFR, OSM has taken the opportunity in the final rule to correct all errors found and to include the complete State citations approved by the Director where possible.

III. Procedural Matters

Federal Paperwork Reduction Act

This rule does not contain collections of information which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Regulatory Flexibility Act

The Department of the Interior certifies that this revision would 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.*).

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 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)).

Executive Order 12866

This rule is not significant under Executive Order 12866 and does not require review by the Office of Management and Budget.

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets 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 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.

List of Subjects in 30 CFR Parts 901, 902, 904, 906, 913, 914, 915, 916, 917, 918, 920, 925, 926, 931, 934, 935, 936, 938, 943, 944, 946, 948 and 950

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 20, 1997.

Kathrine L. Henry,

Acting Director.

For the reasons set out in the preamble, 30 CFR parts 901, 902, 904, 906, 913, 914, 915, 916, 917, 918, 920, 925, 926, 931, 934, 935, 936, 938, 943, 944, 946, 948 and 950 are amended as follows.

PART 901—ALABAMA

1. The authority citation for part 901 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 901.15 is revised to read as follows:

§ 901.15 Approval of Alabama regulatory program amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the Federal Register and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the Federal Register.

Original amendment submission date	Date of final Publication	Citation/description
November 24, 1982	July 27, 1983	Recodification of ASMC Rules

Original amendment submission date	Date of final Publication	Citation/description
August 29, 1983	March 2, 1984	Ala. Code 9–16–75, 79(1)(a), 87(d), 89(h)(2), 90(b)(10)(b.1), 92(a)(4), 93(f), 94(a), (e), 95 (f), 99(2), 105; ASMC Rules 880–X–: 2A–.06(xx), (yy), (fff), (www)(5), (kkkkkk)(1); 5A–.02(1)(i), .17(1)(n), .18, .36; 8C–.09; 8D–.05(1)(b), (4); 8E–.06(2), (5)(a); 8F–.07, .08(1)(d), (p), (2), .09(2)(e); 8G–.05(1)(b), (4); 8H–.06(2), (5)(a); 8I–.07(1)(d), (2), (p), .08(2)(e), .09; 8J–.09(4)(i), .11; 8K–.05(4)(a), .12(1)(a), (b); 8N–.07, (c), .08, .09, .13(d); 10A–.03; 10B–.06(a); 10C–.03, .30 through .35, .34–4(e)(2), .64(3); 10D–.03, .28–32, .31–4(e)(2), .62(3); 10G–.01, .07(a); 10J; 11C–.02(1)(b), (2)(b)
November 28, 1983	July 5, 1984	ASMC Rules 880–X–8C–.06; 10C–.13, .17, .20, .27, .36; 10D–.13, .17, .20, .25, .33; Ala. revised systems Ch. V, § 731.14(f), (g)(9).
January 9, 1984	September 27, 1984	ASMC Rules 880–X–10C–.30(c); 10D–.28(3); 12A–.01 through .08; and other items.
May 22, 1985	July 19, 1985	ASMC Rules 880–X–2E
April 2, 1985	December 3, 1985	Staffing levels.
May 7, 1986	August 14, 1986	Ala. Senate Bill 445.
May 20, 1986	September 8, 1986	ASMC Rules 880–X–2A–.06, 8J–.11.
November 22, 1989	February 5, 1991	ASMC Rules 880–X–2A–.06; 2B–.01; 7B–.07; 7D–.10; 8A–.07; 8B–.06; 8C–.08; 8D–.08, .14; 8E–.05, .06, .10, .11; 8F–.08, .14, .18; 8G–.08, .14; 8H–.05, .06, .10, .11; 8I–.07, .14, .18; 8J–.04, .08; 8K–.05 through .09, .11 through .16; 8M–.07 through .12; 10B–.04, .05, .06; 10C–.08, .12, .14, .24, .26, .28, .37 through .49, .52 through .56, .58 through .61, .63; 10D–.08, .12, .14, .23, .24, .26, .34 through .45, .48, .49, .52, .53, .54, .55, .57, .59, .60, .61; 10F–.03; 10G; 10I–.04, .06; 11A–.04; 11B–.02; 11C–.02; 11D–.10; 11E.
July 16, 1990	February 28, 1991	ASMC Rules 880–X–2A–.07(1)(c); 2E–.01 through .11.
July 16, 1990	July 3, 1991	ASMC Rules 880–X–2A–.06, .07; 8B–.03; 8C–.01 through .07, .09, .10; 8F–.11, .17, .19; 8I–.12, .17, .19; 8J–.08; 9A–.04; 9B–.04; 9C–.03, (7), .04; 9D–.02; 9E–.05; 10B–.01, 02, .06, .07; 10C–.17, .20, .62, .67 through .71; 10D–.17, .20, .56, .65 through .69; 10G–.05.
November 22, 1989, July 16, 1990, August 1, 1991.	May 11, 1992	ASMC Rules 880–X–2A–.06, .07(3); 6A–.06; 8D–.05, .06; 8G–.05, .06; 8I–.10; 8K–.10, .11, .17, .18; 10C–.40, .45, .62; 10D–.56, .58; 11C–.02.
June 23, 1993	October 21, 1993	ASMC Rules 880–X–8D–.05(8), .09(2); 8F–.08(2)(j); 8G–.05(8), .09(2); 8I–.07(2)(j), .16(1); 8K–.10(1)(a); 10C–.41(1); 10J–.03(f); 12A–.07.

3. Section 901.25 is revised to read as follows:

§ 901.25 Approval of Alabama abandoned mine land reclamation plan amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the Federal Register and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the Federal Register.

Original amendment submission date	Date of final publication	Citation/description
June 15, 1987	July 7, 1988	Alabama policies and procedures for land acquisition, management and disposal of property, and reclamation on private lands.
April 25, 1990	August 31, 1990	Emergency program.
June 26, 1992	January 12, 1993	Ranking and selection of AML projects.
October 1, 1993	June 30, 1994	Eligibility and definition of AML.
December 5, 1994	August 15, 1995	Ranking and selection of AML projects; administrative and management structure.

PART 902—ALASKA

4. The authority citation for part 902 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

5. Section 902.15 is revised to read as follows:

§ 902.15 Approval of Alaska regulatory program amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the Federal Register and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the Federal Register.

Original amendment submission date	Date of final publication	Citation/description
November 12, 1983	December 23, 1983	Redesignation of title 11, Ch 90 of the AAC.
May 28, 1985, November 16, 1986, February 24, 1987.	February 22, 1988	11 AAC 90.065(b), .077(d), .331(a)(3), .461(f), .601 (d) through (g), .625, .627(a), (b), .751(a), .907(d), (g); Articles 15 through 17.

Original amendment submission date	Date of final publication	Citation/description
February 2, 1990	August 19, 1992	11 AAC 90.021(c), .023(a)(1), (2), (3), (b)(1), (2), .025(a)(1), (2), (b), (c), .041(a), (b), .043(b), (c), .045(b)(4), .057, .071(2)(D), .077(b)(5), (11), (d), .081(a)(1), (2), (3), (b), (c), .085(a)(1), (2), (3)(A) through (E), (4), (b)(3), (4), (c)(3), (4), (5)(A) through (D), .089(a), (c), .099(a), .101(c)(1), (2)(A) through (F), (3)(A), (B), (C), (4), (5)(A), (B), (6), .119(d), (e), .121(c), .125(a)(7) through (13), .127(4), (5)(A), (B), (C), (6), .129 (a)(6), (7), (8), .141(a)(1), .163(a)(2) (A) through (G), (b)(2), (3), (c)(1), (2), (3)(A), (B), .173(a)(1), (2), (3), .175(4)(D), .181(a)(5)(A), (B), (6), .185(a)(3), (4), (5), .207(c)(5)(C), .213(g), (h), .323(a) through (d), .325(b), (c), (d)(1), (2), (3), (g)(3), .327(b)(2), .331(b)(1), (2), (3), (c), (d)(2), (3), (4), (e), (f), (g), .333, .336(a), (b)(1), (2), (c)(1) through (9), (d)(1), (2), (3), (e), (f), .337(a), (b), (c)(1) through (7), (d), (e), (g), .338(1) through (7), .343, .345(a), (b)(1) through (5), (c), (d), (e)(1) through (6), (f) through (i), .349(2)(A), .353(a)(1), (2), (3), .371(d)(1) through (4), .373(b), (c), (d), .375(b), (e) through (h), .379(b), (c), (e) through (j), .381(a), (b), .391(b), (e), (g), (i), (k), (l), (m)(1) through (6), (n), (o), (p)(3) through (7), (q), (r), .395(a)(1) through (5), (b), .397(a), (b), (c)(1) through (5), (d) through (g), .399, .401(a), (b)(1), (2), (3), (c), (d), (e), .403, .405, .407(a) through (d), (f) through (i), .409, .435, .441(a), (b), (c), .443(a), (b), (c)(1)(A) through (F), (e)(2), (3), (4), (f) through (k), .451(b)(1), (5), .455(1) through (4), .457(b), (c)(5), .635(a), (b)(1), (2), (c), (d)(1), (2), (3), (e)(1), (2), (3), (f), (g), (h), .703(e), .705(a) through (e), .901(c), .907(b), (i), .911(18) through (21), (51), (110), (118), (122).
January 26, 1995	September 17, 1996	11 AAC 05.010(a)(11)(D), 90.002, .003, .011, .025(a), (b), (c), .045(a), .049(2), (D) through (H), .083(b)(10), (11), (12), (3), (b), (c), .097, .099, .149(d), (1), .163(a), (b), (1), (c), (3)(B), (4), (5), .207(f)(1), (2), (4) through (7), .337(f), .345(e), .375, .391(b), (h), .401(e), .407(e), .409, .423(b), (h), .443(d)(1), (k), .491(a), (1), (6), (7), (8), (c)(4) through (8), (e), (f), .901(e), .907(c) through (h), (j).

6. Section 902.25 is revised to read as follows:

§ 902.25 Approval of Alaska abandoned mine land reclamation plan amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the Federal Register and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the Federal Register.

Original Amendment submission date	Date of final publication	Citation/description
May 28, 1992	November 16, 1992	Emergency response reclamation program.

PART 904—ARKANSAS

7. The authority citation for part 904 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

8. Section 904.15 is revised to read as follows:

§ 904.15 Approval of Arkansas regulatory program amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the Federal Register and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the Federal Register.

Original amendment submission date	Date of final publication	Citation/description
December 7, 1983	March 16, 1984	ASCMRC 771.25 (a)(2); 776(c)(1), (2), (4), (5)(i), (ii); 842(c).
May 21, 1985	August 15, 1985	ASCMRC 843.12; 845.18 through .20.
December 17, 1984	December 2, 1985	ASCMRC 816.61–S, –U, .62, .64, –U, .65, .67, .68; 850.1, .5, .12 through .15.
March 10, 1986	March 28, 1988	ASCMRC 701.5; 761.12(b)(2), (e)(1), (2), (3); .15; 762.5; 764.13, .15(a)(1); 771.23(c)(4); 776.12, (a)(3)(vi), .14(a); 778.14(c); 779.14(a), (b)(1), .17; 780.18(b)(4), .21; 784.20(a)(1), (2), (b)(1), (e); 785.13(e), (5), (i), (j), (k), .17(b)(1)(ii); 786.1(d), .11(a), .15(a)(4), .16(a), .17(a)(1), .19(d)(8), .29(c); 788.18(d); 795.13, .14(d)(4), .19(a)(5); 800.11(h), .13(g); 805.13(b), .14(a); 806.11(b), (d)(2)(v); 807.11(d)(2)(v); 808.14(c); 815.15(a); 816.41(d), .42(a)(7), .43, .44(b)(3), .46, .49, .52(a)(4), .53, .55(d), .57(a)(2), .71 through .74, .79, .81, .83, .84, .87, .89, .97(b), (d)(10), .102(a)(2), (b), (f), .107, .111, .116, .126–U(a), (e), (f), .133(b)(1), .150, .151; 819.11(c)(1), (2); 823.12(a)(1), .15; 826.12(c); 827.11; 842.16(a); 843.11(a)(2), (3); 845.12(b), .13(b)(2), .15(b)(1)(i), (ii), (2); 1000(6), (10), (13), (16), (19), (51).
November 4, 1987	June 1, 1988	ASCMRC 776.12(a)(3), (b); 780.31; 786.19(p).
December 22, 1988	November 14, 1989	ASCMRC 705.11(a), .13(a), .15; 780.16(b)(3)(i), (ii), (c); 784.21; 816.97(b); 817.97; 846.1, .5, .12, .14, .18; 1000(50).
December 18, 1989	November 23, 1990	ASCMRC 778.13(a), (5), (6), (7), (b), (1) through (5), (c), (g), (h), .14(c), (d); 786.5(c), .17(c), (d), .19(i), .27(d), .30(a), (b), (c), .31(a), (b), (c); 843.11(g).
September 20, 1990	June 14, 1991	ASCMRC 700.10(d), part 702.

Original amendment submission date	Date of final publication	Citation/description
September 27, 1990	July 18, 1991	ASCMRC 700.10(a); 701.5; 776.11(b); 780.21(f), .37(f), (g), (h), .38; 784.27; 800.11(b)(2); 815.15(c)(2), (3), (4), .17(a), (b); 816.49(b)(7), (c)(2), .84(b)(2), (f), .116(b)(3), (c)(4), .117, .150 (b), (d), (f), .152(a), (c); 1000(d)(2), (8), (30) through (36), (44), (47).
October 11, 1991	April 23, 1992	ASCMRC 816.116(c)(2).
April 11, 1991, September 25, 1991.	August 19, 1992	ASCMRC 701.5, .11(c)(1); 707.12; 761.5 defining VER and public roads; 764.15(a)(7); 770.5, .6(a), (b), (c); 771.23(e)(1), (2); 772; 779.11, .12(a), (b), .15(a), .16(a), (b)(2), .17, .18(a), .20(a), .21(a), .22(a), (c), .24(g), (k), .25, .25(d) through (h), (j), .27(a), (b)(5), (d)(1), (2); 780.11, .14(b), (2), .18(b)(3), .23(b), .25(a), (b), .37(e); 783.14(a) through (d); 785.16(a), .17(a), (b); 786.5(b), .14(b)(3), .19(c); 788.13(b); 805.13(d); 806.12(e)(6)(iii), (g)(7)(iii); 808.12(c), .14(a), (b); 810.11; 815, .2(b), (c), .11(c), .15(a) through (d), (f) through (k); 816.13, .41(a), .43(e), .51–S(b), .52(a)(1), (2), .54, .65(f), .95(a), (b), .101(b)(1), .102(a), (g), .103, .104(a), (b), (3), .106, .107, .115, .133(c); 823.1, .14(c); 826.12(b); 827.12(m); 828.11(e), .12(a); 1000(d)(1), (3), (4), (5), (7), (9), (11), (12), (14), (15), (17), (18), (20) through (29), (37) through (43), (45), (46), (48), (49).
March 31, 1993	November 17, 1994	ACA 15–58–104(11), 503(a)(2)(A), (B), (C).
August 26, 1994	June 30, 1995	ASCMRA 4(18), (19), 5(b)(1), 13(k).

9. Section 904.25 is revised to read as follows:

§ 904.25 Approval of Arkansas abandoned mine land reclamation plan amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the Federal Register and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the Federal Register.

Original amendment submission date	Date of final publication	Citation/description
March 31, 1993	July 19, 1993	ACA 15–58–401(b), (c).
October 6, 1993	January 5, 1994	ACA 15–58–401(b)(2).

PART 906—COLORADO

10. The authority citation for part 906 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

11. Section 906.15 is revised to read as follows:

§ 906.15 Approval of Colorado regulatory program amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the Federal Register and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the Federal Register.

Original amendment submission date	Date of final publication	Citation/description
January 11, 1982, February 25, 1982.	December 16, 1982	2 CCR 407–2, 1.03.3(2), 1.03.4(2)(a); 2.02.2(3); 2.03.4(3); 2.05.3(6), .4(2)(c), .6, .6(3)(a), (c), .6(4), .6(6)(f); 2.06.12, .5(1), .6(2)(j), .8(3)(b), .8(5); 2.08.4(1)(f), .4(5)(b), (c); 3.02.1(5)(b); 3.05.1(1)(a), .1(7); 4.05.2(2), .3(5), (6), .4, .6(3)(c), .6(9); 4.06.5; 4.15.7(2)(d), .8(7), (8); 4.16.2(1); 4.21.2(1), (2); 5.03.6.
January 11, 1982, February 25, 1982, May 26, 1983, August 2, 1983.	May 1, 1984	CRS 34–33–108, 2 CCR 407–2, 1.13, 2.07.6(3), 4.05.2(7).
August 28, 1985	November 15, 1985	CCR 407–2, 5.03.2(1), 5.04.5(2)
August 28, 1984, March 12, 1985.	February 5, 1986	2 CCR 407–2, 1.04(95), (111); 1.14; 1.15; 2.02.1, .2(2), .(g), .3(1)(c), (e); 2.03.5(3), .9(1); 2.04.4, .8(1), .9(1), .10(4), .12(1), (2), (4), 2.05.3(4)(a), .5(1)(a); 2.07.5(1)(b); 2.10.1(1), (2), (3), .2(4), .3(1); 4.03; 4.06.1(2), .2(1), (2)(a), (4)(a), .4(1); 4.07.1(2), .3(1), (2); 4.08.3(2)(b), .4(1)(b), .4(10), .6(2); 4.15.1(2)(a), (d), .1(4), .2, .4, .5, .6(3), .8(2), (3), (4), (7), (8), .9; 4.16.2, .3; 4.18(3), (4); 4.21.1, .4(1); 4.30.1(2); 5.02.2, 5.03.2(2), 5.04.6(4).
January 23, 1986	May 30, 1986	2 CCR 407–2, 5.03.3(2)(b).
January 27, 1986, May 13, 1986.	July 1, 1986	2 CCR 407–2, 1.04; 6.01–4; blaster training program; blaster certification examination.
August 18, 1986	February 5, 1987	2 CCR 407–2, 2.02.2(2)(g); 2.04.12(1); 2.10.1(1); 4.06.1(2), .2(2)(a), .2(4)(a); 4.21.4(1); The Handbook Memorandum, ''Alternative to Topsoil Stockpiles,'' which interprets 4.06.1(2).
November 25, 1986	May 7, 1987	2 CCR 407–2, 4.15.7(2)(d).
May 26, 1987	March 31, 1989	2 CCR 407–2, 1.04(25), (57), (59), (71), (116), (120), (153); 1.05.1; 2.03.7(3); 2.04.9(1), .12; 2.05.4(2), .6(6)(f); 2.06.2(4), (5), (8), (9), (10), .6(1), (2); 2.07.6(2)(d), (e); 3.02.1(4), (5), (6), .2(4), .4(1), (2); 3.03.1(2), .2(5), (6); 3.04.2(5), (6); 4.06.2(2), (4), (5), (6); 4.15.1(1), .2, .7(2), (3), .8(2), (3), (4), (7), (9); 4.18; 4.20.1(3), .4(1), (3); 4.25.5(2), (3); 5.02.4(1); 5.03.3(5); 5.04.3(2), (3); 7.03(3)(f); 7.04(5); 7.06.2(1), (2), .3(1), (2), .5(2).

Original amendment submission date	Date of final publication	Citation/description
October 14, 1988	June 6, 1989	2 CCR 407–2, 2.05.6(4)(b), 2.07.6(2)(e), 2.10.3(1)(g).
August 23, 1988	December 11, 1989	2 CCR 407–2, 1.04; 2.02.3, .5; 2.03, .3, .5; 2.04.4, .6, .7, .13; 2.05.3, .4, .6; 2.06.3, .7, .8; 2.07.3, .4, .5; 2.08.4, .5, .6; 2.09.2, .3, .5, .6, .8; 2.10.3; 3.02.4; 3.03.2; 4.05.1 through .6, .8, .9, .13, .16; 4.07.2; 4.08.1, .2, .4, .5, .6; 4.09, .1 through .4; 4.10, .1 through .4; 4.11, .1 through .5; 4.14.1, .2, .6; 4.17; 4.21.4; 4.24.2 through .5; 5.04.3; 7.08.
July 18, 1989	January 14, 1991	2 CCR 407–2, 1.01(9); 1.04(64), (70a), (83a), (115), (153); 1.10.2(2), .4(1); 2.02.3(1)(c), .7(2)(a); 2.03.4, .5(3), (4); 2.04.7(1)(a); 2.05.3(4)(a), (b), .6(2)(c); 2.06.8(3)(c); 2.07.6(1)(b),(d), (2)(h), (10)(c), .7(4), (5); 4.05.3(1), (7), (8), (9), .4(1), (2)(b), .6(3)(c), (d), (e), (4), (5), (6), (11), (11i), (11j), (11k), (12), (13), (13b), .8(1), (2), .9(1)(a), (e), (f), (3), (3a), (3b), (4), (5), (12), (13), (13c); 4.08.1(3), .4(6)(c), .5(4)(c), (11); 4.09.1(10), .2(2)(a), (3); 4.11.5(3)(b), (d); 4.21.4(7), (7)(c); 4.23.2(7); 4.25.1(2); 5.02.2(4)(b); 5.03.2(1)(d), .5(1)(d), (4)(e); 5.04.7(2), (3), (4).
April 11, 1991	July 22, 1991	2 CCR 407–2, 3.03.3; 4.05.3(1)(c), (d), (e), .8(1); 4.14.1(1)(e); 5.02.2(8), (9); 5.04.(7)(1).
March 19, 1993	January 19, 1994	2 CCR 407–2, 1.04(103a); 4.14.1(2)(a), (f), (g), (h), .2(1), (1a), (1b); 4.27.4, (1).
June 30, 1993	June 1, 1994	2 CCR 407–2, 1.04(111) through (111c); 2.05.3(3)(a), (c), (9)(a), (10)(a) through (e), .4(2); 4.03.1(1)(a), (b), (d), (e), (2)(b), (3)(c), (e), (6)(c), (7)(a), (b), .2(1)(a), (b), (e), (f), (2)(b), (3)(c), (e), (6)(a), (c), (7)(a), (b), .3(1)(a), (b), (2)(b), (3)(c), (6)(c), (7)(i); 4.08.4(10) through (b), .6(1); 4.09.3(2)(c); 4.11.4(3); 4.14.2(2), (c); 4.21.4(3)(b), (c), (d); 4.26.2(2), (b), (c); Policy statements in the 11/03/93 revised amendment, ''Statement of Basis, Specific Statutory Authority and Purpose''.
April 18, 1994	December 6, 1994	2 CCR 407–2, 1.04(25), (116); 3.02.1(4), (7), .2(4)(b), (d), .4(1)(b), (c), (2)(b) through (e); 3.03.1(2), (3)(b), (d), (e), .2(1)(b), (2), (4)(c), (5)(a), (b); 3.06; 4.15.10(2), (3); 4.25.5(3)(a).
March 18, 1994	May 15, 1995	Memorandum of Understanding (MOU).
July 12, 1995	December 14, 1995	2 CCR 1.04(21), (80), (92), (111), (132), .05.1(1)(b); 2.03.3(4), .7(1), .05.3(3)(c)(iv), (8)(c), .6(2)(iii)(A), .06.6(2), .8(5), (c)(i)(A), (B), .07.2; 3.02.2(5), .3(c), .4(1)(b)(2), (c)(ix), (1)(d), (i); 3.03.1(2)(b); 4.08.6(1), .15.10(3), .20.3(2).
November 20, 1995	February 21, 1996	2CCR 5.03.6, (4)(e).

12. Section 906.25 is revised to read as follows:

§ 906.25 Approval of Colorado abandoned mine land reclamation plan amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the Federal Register and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the Federal Register.

Original amendment submission date	Date of final publication	Citation/description
April 29, 1985	January 9, 1986	Reclamation of noncoal sites.

PART 913—ILLINOIS

13. The authority citation for part 913 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

14. Section 913.15 is revised to read as follows:

§ 913.15 Approval of Illinois regulatory program amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the Federal Register and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the Federal Register.

Original amendment submission date	Date of final publication	Citation/description
March 3, 1980	November 23, 1982	62 IAC 1823.14(a).
November 30, 1982	May 25, 1983	62 IAC 1807.11(d), 1816.64(a).
July 27, 1983	October 13, 1983	62 IAC 1786.19(h).
August 11, 1983	November 10, 1983	62 IAC 1817.65, 1843.12.
March 16, 1984	September 28, 1984	62 IAC 1785.17(a).
September 27, 1984	January 11, 1985	62 IAC 1816.190, 1817.190.
December 23, 1983	October 30, 1985	62 IAC 1850.
May 30, 1985, June 2, 1986.	December 10, 1986	62 IAC 1816.111 through 117, 1817.111 through 117, 1823, 1825.
March 28, 1986, May 22, 1987.	October 25, 1988, January 4, 1989.	62 IAC 1700, 1701, 1705, 1760, 1761, 1762, 1764, 1770 through 1780, 1782 through 1788, 1795, 1800, 1801, 1805 through 1808, 1815 through 1819, 1824 through 1828, 1840, 1843, 1845.

Original amendment submission date	Date of final publication	Citation/description
July 17, 1989	August 29, 1990	62 IAC 1700.11; 1701; 1761.11; 1761.12; 1772.12; 1773.5, .11, .15, .17, .19, .20, .21; 1774.15, .17; 1778.13, .14; 1779.12; 1780.16, .21, .31; 1783.12; 1784.14, .17, .21; 1800.21, .40, .60; 1816.49, .61, .64, .67, .68, .83, .97, .99, .102; 1817.49, .61, .64, .66, .67, .68, .83, .97, .122; 1843.11; 1846.
July 26, 1990	May 6, 1991	62 IAC 1700.11(d), (e); 1761.11(a), .12; 1772.12(b)(8)(D); 1773.15(b)(1), .20(b)(2)(B), (c)(2), .21(b); 1778.13(b), (c)(5), (i), (j), .14(c), (e); 1779.12, (b); 1780.16(a)(1)(B)(i), .21(f)(3)(C), (D)(v), .31(a)(1), (b); 1783.12(b); 1784.14(e)(3)(C)(v), .17(a)(1), (b), .21(a)(1)(B)(i), (2)(C); 1800.21(d), .40(a)(2), (b)(2), (e); 1816.49(a)(1), (10), .67, .97(b); 1817.49(a)(1), (10), .66(d), .67, .97(b); 1843.11; 1846.5, .14(a)(3).
March 5, 1991	August 2, 1991	1773.19(b)(1), (2), (3); 20 ILCR 720 § 2.11(d).
February 1, 1991	December 13, 1991	62 IAC 1700.11(a), (a)(2), (c); 1701, appendix A; 1702; 1761.11(a), (d)(2), .12(c), (1), (2); 1772.11(b)(5), 14(a), (b); 1773.5, .11(a), (b)(1)(C), .15(b)(1), (B), .17(h); 1774.13(b)(1); 1778.14(c); 1780.16(b)(3)(B), .21(f), .37(a)(5), (7), (b), .39; 1784.14(e), .21(a)(2)(C), .24(a)(5), (7), (b), .30; 1816.49(a)(1), (3)(A), (B), (5)(A), (10)(B), .68(a)(18), (19), .84(b)(2), (f), .111(a)(4), (b)(1), (5), .116(a)(2)(C), (D), (E), (3), (C), (D), (E), (4)(A)(iii), (D), (b)(2), .117(a), (1), (3), (5), (b), (c), (d)(1) through (6), .150 (a) through (f), .151, appendix A; 1817.49(a)(1), (3)(A), (B), (5)(A), (10)(B), .68(a)(18), (19), .84(b)(2), (f), .116(a)(2)(C), (D), (E), (3), (C), (D), (E), (b)(2), .117(a), (1), (3), (5), (b), (c), (d)(1) through (6), .150 (a) through (f), .151; 1823.14(g), .15(b)(3).
June 22, 1992	September 3, 1993	62 IAC 1701, Appendix A; 1702.11(a)(2), (f)(1), (2), .17(c)(1), (2), (3); 1705.21; 1761.11(g), .12(b)(2), (c), (4), (d)(1), (g); 1764.19(d); 1772.12(e)(2); 1773.13(a)(1)(E), .15(b)(1)(B), (3), (c)(12), (d), .20(b)(2)(B), .21(c); 1774.11(c), .13(b)(2)(E), (d)(2), (4), (5), .15(f); 1775; 1777.17(a) through (d); 1778.15(a), (e); 1779.19(b); 1780.21(b)(1)(B), .38; 1783.19(b); 1784.14(b)(1)(B), .27; 1785.13(a), (g); 1800.11(a), .40(a)(3), (e), (f) through (h), .50(c)(2) through (5); 1816.49(a)(9)(B), (c)(2), .84(b)(2), .116(a)(3)(A) through (E), (b)(2), .117(a)(1), (2), (5), (d)(6), .151(b); 1817.49(a)(9)(B), (c)(2), .84(b)(2), .116(a)(3)(A) through (E), (b)(2), .117(a)(1), (2), (5), (d)(6), .151(b), .182(d); 1827.12(b); 1843.12(i), .13(c), (e) through (k), .14(a)(2), .15(a), .16, .17, .20, .21; 1845.12(c), (d), .13(b)(4)(A) through (D), .17(b), (b)(2)(B), (c), .18(a)(2), (c), .19, .20(a); 1846.17(b)(1), .18(b); 1847.1 through .9; 1848.1, .2, .3, 5 through .9, .11, .12, .13, .15 through .22.
August 17, 1993	February 2, 1994	225 ILCS 720 §§ 2.11 (a), (b), (c), (g); 6.01(b).
September 9, 1994	November 21, 1994	225 ILCS 720, §§ 2.02(b); 3.15(e); 9.07(a).
March 3, 1995	July 11, 1995	Executive Order Number 2, §§ I(C), II(C), III, IV(F).
February 3, 1995	May 29, 1996	62 IAC 1700.11, .16; 1701.Appendix A; 1761.11; 1772.11, .12; 1773.15, .20, .22 through .25; 1774.13; 1778.15; 1779.25; 1780.23; 1783.22; 1784.15; 1785.17, .23; 1795.1, .4, .6, .9, .12; 1800.5, .20, .21; 1816/1817.13, .22, .41, .46, .79, .97, .116, .117, .151, 190; 1816. Appendix A; 1817.121; 1825.14; 1840.11, .17; 1843.13, .23; 1845.12; 1847.3, .4 through .7; 1848.5; 1850.14 through .17.
March 4, 1996	July 18, 1996	Self-bonding; 62 IAC 1800.4(c) through (f); 1800.5(c); 1800.11(a), (e); 1800.23.

15. Section 913.25 is revised to read as follows:

§ 913.25 Approval of Illinois abandoned mine land reclamation plan amendments.

(a) You may receive copies of the Illinois Abandoned Mine Land Reclamation Plan and amendments from the:

(1) Illinois Department of Natural Resources, Office of Mines and Minerals, Division of Abandoned Mine Lands Reclamation, 524 South Second Street, Springfield, Illinois 62701–1787; or

(2) Office of Surface Mining Reclamation and Enforcement, Indianapolis Field Office, Minton-Capehart Federal Building, room 301, 575 North Pennsylvania Street, Indianapolis, Indiana 46204.

(b) The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the Federal Register and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the Federal Register.

Original amendment submission date	Date of final publication	Citation/description
January 19, 1984	June 11, 1984	Emergency reclamation program.
September 6, 1989	February 14, 1990	Non-coal reclamation.
June 29, 1990	November 2, 1990	Procedures for public participation, ranking and selection of reclamation projects, liens, bids and contracts.
August 13, 1992	January 14, 1993	Ch. 96½, par. 8001.03; 8002.13.
July 2, 1993	September 21, 1993	20 ILCS 1920 §§ 2.11, .13; 62 IAC 2501.37.
April 10, 1995	July 11, 1995	Executive Order No. 2 (1995), Part I(C); Part II(D); Part III(A), (C); Part IV(F).

PART 914—INDIANA

16. The authority citation for part 914 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

17. Section 914.15 is revised to read as follows:

§ 914.15 Approval of Indiana regulatory program amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the Federal Register and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the Federal Register.

Original amendment submission date	Date of final publication	Citation/description
September 1, 1982	December 17, 1982	Revision to permit application forms to require applicant to certify that all reclamation fees had been paid.
December 9, 1982	March 4, 1983	310 IAC 12–2–7, –9; 12–3–1, –12(c)(2), –21(b)(4), –25, –37(a), –47(b), –48, –59(b)(4), –74(a), –81, –97, –102(c); 12–4–5, –10(e)(1), –16; 12–5–3, –18, –24(f), –51, –84, –90(f), –115, –123(b), –149, –152; 12–6–6(d), (f), –6.5, –16(b)(3)(ii); 12–7–4(f).
April 19 and 28, 1983	August 19, 1983	IC 13–4.1–2–3, 13–4.1–4–5(c), 13–4.1–7–5, 13–4.1–11–11(i), 13–4.1–14–2(a); 310 IAC 12–1–3; 12–3–12, –39, –63, –76, –112, –118; 12–4–3, –4, –7, –17; 12–5–19, –36, –41, –71.5, –85, –101, –105, –139.5; 12–6–1, –4, –5, –6.5, –9, –15, –16.
March 5, 1984	July 10, 1984	IC 13–4.1–2–4, 13–4.1–3–3, 13–4.1–4–3, 13–4.1–5–7.
March 19, 1984	October 19, 1984	310 IAC 12–2–8; 12–3–43, –118; 12–5–6, –34, –35, –36, –38, –40; 12–5–73, –100, –100.5, –101, –103.
February 7, 1985	May 13, 1985	IC 13–4–6–1.5, –1.6; 13–4.1–1–7; 13–4.1–3–1, –3.5; 13–4.1–5–8; 13–4.1–6–9; 13–4.1–8–1; 13–4.1–10–1; 13–4.1–12–1, –2.
December 7, 1984	May 15, 1985	310 IAC 12–2–11; 12–3–46, –80, –96, –97, –98; 12–5–3, –6, –11, –12, –12.1, –13, –14, –15, –18, –19, –20, –21, –23, –24, –44, –54, –54.1, –55, –55.1, –56, –56.1, –57, –57.1, –69, –73, –77, –78, –78.1, –79, –80, –81, –84, –85, –86, –87, –89, –90, –108, –118, –119, –119.1, –120, –121, –121.1, –137, –147, –150, –150.1, –151, –152, –153, –154; 12–6–2, –9.1.
May 29, 1984	May 16, 1985	310 IAC 0.5; Policy statement dated October 16, 1984.
February 18, 1985	June 5, 1985	310 IAC 12–3–26, –64, –106, –107, –108.
December 10 and 16, 1985.	March 14, 1986	310 IAC 0.5–1–1 through –5, –8 through –13, –15 through –19; 12–5–148; advisory letter from Indiana State Office of the Attorney General dated April 23, 1985.
September 4, 1985	March 17, 1986	310 IAC 12–1–3; 12–5–33, –99; 12–8–1 through 12–8–9; blaster training program.
January 31, 1986	May 13, 1986	310 IAC 12–3–121; 12–5–34, –36, –100, –101; 12–6–11, –12, –12.5.
May 29, 1986	August 14, 1986	310 IAC 12–3–8.
September 24, 1986	January 21, 1987	310 IAC 12–5–56.1, –121.1.
June 11, 1986, November 7, 1986.	April 1, 1987	IC 4–21.5; 4–22–1; 13–4–6–9; 13–4.1–1–3, –5; 13–4.1–3–3, –4, –6; 13–4.1–4–1, –3, –7; 13–4.1–7–1, –5, –6; 13–4.1–8–1; 13–4.1–11–5, –6, –8, –12; 13–4.1–14–1; 310 IAC 12–8–4, –8.
June 11, 1986, May 4, 1987.	February 16, 1988	IC 13–4.1–1–8, 13–4.1–3.2, 13–4.1–6–8, 13–4.1–12–6.
April 10, 1987	March 22, 1988	310 IAC 12–5–12.1(a)(3)(i), –78.1(a)(3)(i).
August 13, 1987	November 10, 1988	IC 13–4.1–6–4; 13–4.1–11–3, –4.
August 13, 1987, June 12, 1989.	October 11, 1989	310 IAC 12–1–3; 12–2–7; 12–3–104, –104.1; 12–5–155, –156.
September 28, 1988	November 1, 1989	310 IAC 12–5–18, –19, –84, –85.
March 18, 1988	December 15, 1989	IC 13–4.1–11–10, 35–44–1–3.
November 8, 1989	April 5, 1990	IC 13–4.1–10–3.
March 18, 1988	April 23, 1990	IC 13–4.1–6–5, 13–4.1.6.3–1 through –13.
December 5, 1989, May 16, 1990.	August 10, 1990	310 IAC 12–3–111; 12–5–148; 12–6–8, –9, –16; 12–8–9.
December 4, 1989, August 9, 1990.	September 24, 1990	IC 13–4.1–2–2, 13–4.1–11–5.
August 15, 1989, December 5, 1989.	January 18, 1991	310 IAC 0.6–1, 12–6–6.5.
October 24, 1990	March 15, 1991	Intervention in hearings by those who may be adversely affected by the outcome of the proceedings.
December 11, 1990	March 21, 1991	310 IAC 12–0.5, 12–0.5–25(c), 12–1–3.
September 29, 1988, February 15, 1991.	August 2, 1991	310 IAC 12–5–29, –94; IC 4–26–3–27.8; 13–4.1–2, –4, –5; 14–3; Non-code provision at § 46 of Senate Enrolled Act 362 concerning the Bureau of Mine Reclamation.
June 4, 1991	November 27, 1991, December 13, 1991.	IC 13–4.1–3–2; 13–4.1–6–9; 13–4.1–6.3–11(2), –13; 13–4.1–10–1; 13–4.1–11–6.
July 11, 1991	December 13, 1991	310 IAC 0.7–3–5.
March 18, 1988	April 20, 1992	IC 13–4.1–6–8, 13–4.1–6.5.
May 22 and 23, 1991	May 29, 1992	310 IAC 12–5–64, –64.1 through .3, –65, –128, –128.1 through .3, –129.
June 4, 1991	June 23, 1992	IC 13–4.1.
May 23, 1991	September 14, 1992	310 IAC 12–5–145 through –148, –148.5.
May 7, 1992	December 17, 1992	310 IAC 12–3–8, –9; 12–8–4, –8; 12–9–1 through –4.
March 18, 1988, February 15, 1991, July 10, 1991.	December 30, 1992	IC 13–4.1–1–3; 13–4.1–2–4; 13–4.1–3–3, –3.1; 13–4.1–4–2, –3.1, –5; 13–4.1–14–1; SEA 121, § 8; 310 IAC 12–0–5–48; 12–0.5–59; 12–2–1, –2; 12–3–13, –29, –38, –52, –67, –75, –84, –112, –121.
July 16, 1992	January 14, 1993	IC 13–4.1–1–1, 13–4.1–3–2(c), –3(c), –3.5(a)(1), (5).
December 2, 1992	May 17, 1993	310 IAC 12–3–87.1; 12–5–130.1, –131.1.
November 13, 1992	June 24, 1993	310 IAC 12–0.5; 12–3–19, .1, –20, –111, –112, –119.5, .6; 12–6–5.
January 4, 1993	August 2, 1993	310 IAC 12–5–64.1 through .3, –128.1, .3; –145; –148.5.

Original amendment submission date	Date of final publication	Citation/description
March 26, 1992	August 16, 1993	310 IAC 12–0.5–6, –32.5, –90.5, –91.5; 12–2–6, –7; 12–3–6, –30.5, –33, –46.5, –47, –57, –68.5, –71, –78, –80.5, –81, –94, .1, –98, –106, –110, –116, –127, –128, –131; 12–4–3, –16; 12–5–16, –24, –27, –30, –32, –39, –42, –43, .1, –48, –51, .1, –57.5, –82, –92, –95, –97, –99, –100, –104, –106, –107, .1, –115, –119.1, –121.5, –131, –144.
August 8, 1992	September 3, 1993	310 IAC 12–0.5–5.5, –32.6, .7, .8, –72.5, –78.5; 12–1–5 through –12.
April 19, 1993	September 21, 1993	IC 13–4.1–1–5, 13–4.1–6.5–8(d).
February 24, 1993	November 18, 1993	310 IAC 0.6–1–5, –13; 0.7–3–5; 12–6–6.5.
July 2, 1993	June 16, 1994	310 IAC 12–0.5–6, –23, –53, –55, –64, –72, –104, –111, –116, –139.
April 2, 1993	July 15, 1994	310 IAC 0.6–1–2, .5, –9, –17.
October 1, 1993	July 27, 1994	310 IAC 13–4.1–4–3(a)(10).
June 15, 1994	October 20, 1994	310 IAC 0.6–1–5, –13; 0.7–3–5.
August 11, 1994	December 13, 1994	310 IAC 12–4–16(c)(3).
September 26, 1994	February 2, 1995	Amendment #94–4 to the Indiana program to correct typographical, clerical, spelling errors.
December 7, 1994	March 10, 1995	310 IAC 12–8–4.1, –8.1.
March 21, 1994	April 4, 1995	IC 13–4.1–6–9; 13–4.1–9–2.5; 13–4.1–2–4; 13–4.1–4–3, –5; 13–4.1–6–7; 13–4.1–11–6, –8, –12; 13–4.1–12–1; 13–4.1–13–1; 13–4.1–15–9.
January 31, 1995	April 7, 1995	310 IAC 12–5–54.1.
March 18, 1994, August 25, 1994.	April 20, 1995	310 IAC 12–3–87, .1(c)(2), (7); 12–5–130, .1(c)(2), (g), (h), –131; Amendment #94–2 to the Indiana program.
May 3, 1995	September 14, 1995, October 25, 1995.	310 IAC 12–3–130; –131-Intro paragraph, (1), (2), (B), (C), –132.5, –133 through –135; 12–5–64.1(c), –128.1(c); correction of typographical, clerical, spelling errors.
May 11, 1995	October 16, 1995	310 IAC 12–0.5–2, –15, –57, –95, –99.
December 30, 1993	November 9, 1995	310 IAC 12–0.5–109.5, –110.5, –122.5; 12–1–5; 12–3–31, –48, –69, –78, –82, –97, –106; 12–4–5, –7; 12–5–3, –4; 12–6–20 through –24; 12–7–4, –5, –6; Amendment #93–7, Part I.
September 11, 1995	April 8 and 10, 1996	IC 13–4.1; 14–2–285.5; 14–8, –2–144.5; 14–34, –2–4, –4–8.5, –10.5, –10–2(b)(23), –13–1, –2, –19–2.
March 18, 1984	May 28, 1996	310 IAC 12–3–87.1(c)(2); 12–5–130.1(c)(2), –132.
September 26, 1994	October 29, 1996	310 IAC 12–0.5–78.7, –91.5, –109; 12–3–30, –32, –33, –34, –41, –47, –49, –55, –55.1, –68, –70, –71, –81, –83, –90.5, –91; 12–5–17, –20, –21(a)(3), –24(a)(9)(B), –27, –31, –39, –41, –42, –44, –48, –50, –69, –70, –83, –86,—87(a)(3), –90(a)(9)(B), –92, –96, –104, –105, –106, 108, –112, –114, –127, –137, –137.5(2), –144; 12–6–19.

18. Section 914.25 is revised to read as follows:

§ 914.25 Approval of Indiana abandoned mine land reclamation plan amendments.

(a) The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the Federal Register and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the Federal Register.

Original amendment submission date	Date of final publication	Citation/description
January 22, 1988	November 29, 1988	Project selection reclamation coordination, land acquisition, rights of entry, lien consideration, public participation, procurement, accounting systems, endangered and threatened species listing, revised administrative and management structure of the plan.
December 6, 1991	May 11 and October 6, 1992.	Revisions to the Indiana State Reclamation Plan corresponding to 30 CFR 884.13(c)(1), (2), (3), (5), (7), (d)(1), (e)(1), (2), (f)(1).
November 17, 1992	October 26, 1994	Emergency response reclamation program.

PART 915—IOWA

19. The authority citation for part 915 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

20. Section 915.15 is revised to read as follows:

§ 915.15 Approval of Iowa regulatory program amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the Federal Register and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the Federal Register.

Original amendment submission date	Date of final publication	Citation/description
October 1, 1981	May 26, 1982	IAC 780–4.6(8), 4.35(13).
June 3, 1982	September 8, 1982	IC 83–14.2, .7(a).
September 28, 1982	January 4, 1983	IAC 4.311(2); 4.322(13); 4.522(11); 4.523(15), (38), (60); 4.55(1), (5).
May 9, 1984	December 7, 1984	IAC 4.523(63), 4.322(14).
January 31, 1985	May 24, 1985	IAC 780–4.6(83), .42(1)(83).
July 25 and 26, 1985	May 9, 1986	IAC 780–4.6(1), (4), .35(1), (6), .37(2), .321(8), .361(9); and 780-Chapter 26.

Original amendment submission date	Date of final publication	Citation/description
June 16, 1986	October 7, 1986	Iowa Senate File 2175: State Government Reorganization Bill.
August 12, 1986	December 11, 1986	IAC 4.522(15)c, g.
April 28, 1987	October 7, 1987	I.C. 83.7
June 9, 1988.	December 9, 1988	I.C. 83.26.
December 26, 1990	November 6, 1991	IAC 27–40.1 through .7, .11, .12, .13, .21, .22, .23, .30 through .39, .41, .51, .61 through .68, .71 through .74, .81, .82, .91 through .99.
November 23, 1992	February 8, 1994	IAC 27–40.1, .3 through .7, .11, .12, .13, .21, .22, .23, .30 through .39, .41, .51, .61 through .68, .71, .73, .74, .75, .81, .82, .92.
April 13, 1994	April 6, 1995	IAC 27–40.3(207), .4(9), .31(14), .32(207), .51(7), .63(20), .74(3), .75(2).

PART 916—KANSAS

21. The authority citation for part 916 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

22. Section 916.15 is revised to read as follows:

§ 916.15 Approval of Kansas regulatory program amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the Federal Register and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the Federal Register.

Original amendment submission date	Date of final publication	Citation/description
May 20, 1981	April 14, 1982	MLCRA 49–411, 412, 413, 414, 416, 421, 49–422, 422a, 430.
November 16, 1982	March 1, 1983	MLCRA 49–403, 49–405c, 49–406, 49–420; § 10 of House Bill 2182; K.A.R. 47–2–21, 47–8–10, 47–8–11.
March 16, 1984	June 8, 1984	MLCRA 49–406; K.A.R. 47–1–10.
December 21, 1984	April 11, 1985	K.A.R. 47–15–13.
April 4, 1985	November 15, 1985	K.S.A 1984 Supp. 49–406(g); K.A.R. 47–1–11; 47–2–75; 47–3–42, (a)(23), (45); 47–5; 47–8–9(a), (j); 47–9–1, 2, 3; 47–13–4, 5, 6; 47–15; Memoranda of understanding with Fish and Game Commission, Division of Water Resources, Department of Health and Environment, State Geological Survey, State Historical Society, State Water Office, State Conservation Commission and State Fire Marshal.
April 23, 1986	May 26, 1987	K.A.R. 47–1–4; 47–2–7, 17, 44, 53, a, 75; 47–3–2, 3, a, 4, 21, 40, 42; 47–4–14, 15; 47–6–3, 4, 5, 6; 47–7–2; 47–8–2, 9, a, 10; 47–9–1, 3, 4; 47–10–1; 47–11–8; 47–12–4; 47–15–1a.
August 5, 1987	December 31, 1987	K.S.A. 49–431; K.A.R. 47–9–1.
April 29, 1988	October 5, 1988	K.S.A. 49–402, 404, 405, a through d; 407 through 410, 413, 415, 416, a, 417, 420, 421a, 426 through 429, 432, 433; K.S.A. 1987 Supplement 49–403, 406, 422a.
January 26, 1988	October 7, 1988	K.A.R. 47–2–75; 47–3–42(a); 47–7–2; 47–9–1 (c), (d); 47–10–1; 47–12–4.
June 8, 1990	February 19, 1991	The revegetation guidance document entitled ''Revegetation Standards for Success and Statistically Valid Sampling Techniques for Measuring Revegetation Success''.
June 29, 1989	September 13, 1991	K.A.R. 47–1–1, 3, 4, 8, 9, 10, 11; 47–2–14, 21, 53, 67, 75; 47–3–1, 2, 3a, 42; 47–4–14a, 15, 16, 17; 47–5–5a, 16; 47–6–1 through 4, 6 through 10; 47–7–2; 47–8–9, 11; 47–9–1, 2, 4; 47–10–1; 47–11–8; 47–12–4; 47–13–4 through 7; 47–15–1a, 3, 4, 7, 8, 15, 17.
June 29, 1989	April 13, 1992, September 9, 1994.	''Guidelines for repair of rills and gullies in Kansas''.
June 3, 1991	August 19, 1992	Statistical sample adequacy.
July 10, 1992	June 14 and August 30, 1993.	K.A.R. 47–1–9; 47–2–14, 53a, 58, 67, 75; 47–3–2, 3a, 42; 47–4–14a, 15; 47–5–5a, 16; 47–6–1 through 4, 6, through 10; 47–7–2; 47–8–9, 11; 47–9–1, 4; 47–10–1; 47–11–8; 47–12–4; 47–13–4, 5; 47–14–4, 7; 47–15–1a, 4, 7, 8.
September 14, 1993	June 3, 1994	K.A.R. 47–2–75(e)(6); 47–4–14a(b), (c)(7), (11), (d), (2)(F), (6)(E)(iii), (iv); 47–5–5a(a)(10), (b), (14), (15), (16), (19), (20), (c)(7)(C); 47–6–7(h)(2); 47–9–1(c)(17), (43), (46), (d)(17), (39), (44); 47–15–1a, (b)(6), (9), (21).
August 9, 1995	November 27, 1995	Alternative sampling method for determining woody stem density.

23. Section 916.25 is revised to read as follows:

§ 916.25 Approval of Kansas abandoned mine land reclamation plan amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the Federal Register and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the Federal Register.

Original amendment submission date	Date of final publication	Citation/description
April 29, 1988	October 5, 1988	Reorganization of the Regulatory Authority. House Bill 3009 eliminated the Kansas Mined Land Conservation and Reclamation Board and transferred its functions and staff to the Kansas Department of Health and Environment.

Original amendment submission date	Date of final publication	Citation/description
September 30, 1988	January 10, 1989	Approval of emergency reclamation program.
June 29 and July 26, 1989.	November 30, 1989	KAR 47–16–1, –16–2, –16–4 through –8; policy and procedures for project ranking and selection; organization structure; public participation.
October 25, 1991	April 13, 1992	KAR 47–16–5(b), –6.

PART 917—KENTUCKY

24. The authority citation for part 917 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

25. Section 917.15 is revised to read as follows:

§ 917.15 Approval of Kentucky regulatory program amendments.

(a) The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the Federal Register and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the Federal Register.

Original amendment submission date	Date of final publication	Citation/description
May 28, 1982	January 4, 1983	405 KAR 1:005 § 6; 3:005 § 6; 7:020 § 1(11), (70), (117); 7:030 § 1; 7:040 § 5(1), 10(2), (7); 7:090 § 4(1), (6); § 6; 7:095, 8:010 § 6(1), (2), 13(1), 20(5), 21(2)(a)(4), (b)(1), 22(1), (2)(a), (a)(2), (2)(c)(1), (4), (5), (6); 8:020 § 2(2)(h); 8:030 § 23(4); 12:010 § 3(5)(a), (b); 16:140 § 2(1)(d); 18:140 § 2(1)(d); 24:020 § 3(5), (7), 4(6); 24:030 § 4(4), 8(7), 9.
May 28, 1982	May 13, 1983	KRS 151.250(3); 350.010, .035, .062(9), .093 § 2, .425, .990; 405 KAR 16:020 § 4.
January 11, 1983	May 20, 1983	405 KAR 7:020 § 1(13), (27), (34), (57); 12:010 § 6; 16:060 §§ 1(3), 9(2), 11(1), :090 §§ 2, 5(5), :110 § 2(2), :130 § 2(2), :220 § 4; 18:060 §§ 7(3), 9(1), (3), :090 §§ 2, 5(5), :110 2(2), :130 § 2(2), :230 § 4; 24:030 § 3.
February 1, 1983	October 12, 1983	Technical Reclamation Memorandum #9.
October 31, 1983	November 25, 1983	405 KAR 7:020E, :030E.
January 10, 1984	April 13, 1984	''Kentucky's Plan for Transition to Primacy''.
May 1, 1984	August 22, 1984	KRS 350.010, .032, .093(2), .250(1), (3), (4); 355.060(5)(g).
October 31, 1983	September 25, 1984	405 KAR 1:030, :040, :050; 7:020, :030, :090; 8:030, :040; 16:060, :090, :140; 18:090, :140.
October 31, 1983	October 3, 1984	405 KAR 8:050 § 2; 16:190; 18:190.
October 12, 1984	March 4, 1985	405 KAR 7:020 § 1(87), (118), :030 § 3(1)(e).
August 3, 1984	May 30, 1985	KRS Chapter 350, .032, .060, .135, .990; 405 KAR 16:020.
August 29, 1985	November 20, 1985	Paragraph D of ''Field Enforcement Procedures'' in § II of the State program plan; 405 KAR 7:090 §§ 11(2)(a), 12(3); 24:030 defining ''substantial legal and financial commitments''.
December 4, 1984	December 10, 1985	405 KAR 7:070; 16:120; 18:120.
June 6, 1984, December 17, 1985.	January 24, 1986	405 KAR 1:015; 3:015; 7:015.
August 13, 1985	March 3, 1986	405 KAR 7:020, :080; 8:030, :040; 12:010, :020; 16:050, :110, :130, :170; 18:050, :110, :130, :170; 20:030.
September 16, 1985, December 10, 1985.	March 17, 1986	405 KAR 7:015; 10:030.
December 10, 1985	April 4, 1986	405 KAR 7:090, § 11(2)(a).
December 3, 1985	April 9, 1986	405 KAR 7:020E; 8:050E; 20:070E.
August 3, 1984	May 27, 1986	KRS 350.066 through .070; 405 KAR 10:035.
April 29, 1986	July 15, 1986	KRS Chapter 350 contained in Senate Bills 130, 374; KRS 350.470 through .550 contained in House Bill 285; KRS 350.060(22) contained in House Bill 757; KRS 350.990 contained in House Bill 839.
August 30, 1985, September 16, 1985, February 7, 1986.	August 27, 1986	405 KAR 7:020, :060; 8:030, :040, :050; 16:010, :060, :080, :190; 18:060, :080, :190; 20:040, :070; documents incorporated by reference: ''Soil Conservation Service, Kentucky Standards and Specifications for Land Restoration, Currently Mined Prime Farmland;'' ''Kentucky Prime Farmland Revegetation and Crop Production After Mining;'' ''Estimated Crop Yields on Prime Farmland Soils in Western Kentucky Coalfields;'' ''Estimated Crop Yields on Prime Farmland Soils in Eastern Kentucky Coalfields''.
September 5, 1986	March 9, 1987	405 KAR 10:200.
February 27, 1987	December 31, 1987	405 KAR 16:060 § 11; 18:060 § 11, :190 § 2.
June 17, 1987	March 10, 1988	405 KAR 7:070.
April 29, 1988	October 6, 1988	405 KAR 7:090.
May 28, 1987	October 7, 1988	KRS 350.032 contained in House Bill 869.
July 5, 1989	December 15, 1989	405 KAR 8:010, :020, :030, :040; 24:040.
April 29, 1986	April 9, 1990	KRS 350.032.
April 21, 1988	August 10, 1990	KRS 350.020, .060, .064, .093, .130, .131, .151.
August 15, 1989	November 1, 1990	405 KAR 8:010 § 20(3), (5).
July 15, 1988	December 31, 1990	405 KAR 7:015, :020, :030, :090; 8:010, :020, :050; 10:010, :020, :030, :040, :050; 16:010, :070, :080, :100, :110, :120, :150, :190; 18:010, :070, :080, :100, :110, :120, :150, :190; 20:010, :060; 24:020, :030, :040.
May 8, 1990	February 6, 1991	KRS chapter 350 contained in Senate Bill 255; 350.010, .053, .054, .057, .060, .070, .085, .090, .093, .110, .113, .130, .139, .151, .990; 224.083.

Original amendment submission date	Date of final publication	Citation/description
January 9, 1991	April 16, 1991	405 KAR 10:040 § 2(4)(b)1.
January 24, 1991	September 23, 1991	405 KAR 7:020 § 1; 8:010 §§ 13(4), (5), 18(5), 25(1) through (4), :030 §§ 1(4), 2, 3, :040 §§ 1(3), 2, 3; 12:020 § 3(6).
June 28, 1991	April 15, 1992	405 KAR 7:080.
September 18, 1989	August 18, 1992	405 KAR 10:200; KRS 350.710–710.
June 28, 1991	October 1, 1992	405 7:001, § 1, :015 § 4(6), (7), :020, :021, § 1, :030 § 3(1) through (4), :035, §§ 1 through 9; 8:001 § 1, :020 §§ 1, 1(1), (2)(c), 2, (1), (2)(g), 4, 4(c)(5); 10:001 § 1, :200 §§ 1, 2, 4(4), 5(3), 6(1), (2), 7(1), (d), (e), (f), (j), (2), (d), (e), (i); 12:001 § 1; 16:001 § 1, :190 § 7(2), :210 §§ 1(1), 2, 3, 4; 18:001 § 1, :190 § 5(2), :220 §§ 1(1), 2, 3, 4; 20:001 § 1, :010 §§ 2, 3, 4; 24:001 § 1.
March 13, 1992	December 9, 1992	405 KAR 8:030(20), (36), :040(20), (36); 16:180(1), (2), (3); 18:180(1), (2), (3).
July 30, 1992	December 17, 1992	KRS Chapter 350 §§ 350.550, .553, .560, .597.
June 28, 1991	January 12, 1993	405 KAR 8:010 §§ 5(1)(c), (d), 12(1)(a), 14(8), 20(2)(a)10, (3)(a), (d)23, (f), 20(5) through (7).
July 30, 1992	March 26, 1993	KRS Chapter 350 contained in House Bill 844 and Senate Bill 381; 350.010, .0281, .130(1), .260, .450(4)(c), .705(1) (b), (c); numerous other sections on ''applicant,'' ''permit applicant,'' ''permittee,'' ''person,'' ''operator''.
June 28, 1991	June 8, 1993	405 KAR 16:200, 18:200, TRM No. 19 (Field Sampling Techniques for Determining Ground Cover, Productivity, and Stocking Success of Reclaimed Surface Mined Lands), the use of average county yield data found in Kentucky Agricultural Statistics, a report published annually by the Kentucky Agricultural Statistics Service.
July 28, 1992	August 6, 1993	KRS 350 contained in Senate Bill 318; 405 KAR 7:001, 7:090, :091, :092; 8:001; 12:020.
July 21, 1992	October 1, 1993	405 KAR 1:007, 3:007, 7:030 § 4.
May 21, 1993	February 24, 1994	405 KAR 10:050 Statutory and regulatory citations, sections Necessity and Function, 1(1), 2(4), (5); 12:001 section Necessity and Function, (29), (30); 12:010 Statutory and regulatory citations, sections Necessity and Function, 3(2), (5)(a), (b), 4(1), (3).
June 28, 1991	May 26, 1994	405 KAR 8:030 §§ 1(4)(a), (b), 2(3), (4), (5)(a), (11), (12), 3(5), 4(2), 5(4), 10, 37–MRP, 38–MRP; 8:040 §§ 1(3)(a), (b), 2(3), (4), (11), (12), 3(5), 4(2), 5(4), 10, 37–MRP, 38–MRP.
April 26, 1994	September 1, 1994	405 KAR 7:080 sections Necessity and Function, 1, 3, 4, 5, 6(4), (5), (8)(b), 7(1)(b), (3), 8, 10(2) (a), (b), 11(1), (d), (e).
April 18, 1994	September 16, 1994	KRS 350.010, 350(1) through (32).
October 3, 1994	February 15, 1995	405 KAR 7:080 §§ 5(2), (a), (b), 6, 8(2)(a)(11), (b)(11), 11(1), (e).
April 29, 1994	June 27, 1995	KRS 42.470(1)(c); 132; 136; 138; 139; 177.977; 211.390(1), .392(1), (2), (5), (6), (8); 350.010 (1), (2), (9), (16), (22), (23), .0285, .0301(1), (4), .0305, .032(2), (4), .070(1), .085(1), (7), .095(1), (2), .421, (1), (2), .560(1); 351.070(13), (14); 352.420(3).
August 2, 1994	December 7, 1995	405 KAR 16:010 §§ 1, 6, 7, 8; 18:010 §§ 4, 5, 6.

(b) The Director is deferring his decision on the enforcement provisions of section 720 of the Act from its effective date (October 24, 1992), to the effective date of KRS 350.421(1) and (2) (July 15, 1994).

26. Section 917.21 is revised to read as follows:

§ 917.21 Approval of Kentucky abandoned mine land reclamation plan amendments.

(a) The Kentucky Amendment, submitted to OSM on December 8, 1982, is approved. You may receive a copy from:

(1) Commonwealth of Kentucky, Natural Resources and Environmental Protection Cabinet, Division of Abandoned Lands, 618 Teton Trail, Frankfort, Kentucky 40601; or

(2) Office of Surface Mining Reclamation and Enforcement, Lexington Field Office, 2675 Regency Road, Lexington, Kentucky 40503–2922.

(b) The Kentucky Abandoned Mine Reclamation Amendment, submitted to OSM on March 25, 1985, is approved. Copies may be obtained at the addresses listed in paragraph (a) of this section.

(c) The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the Federal Register and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the Federal Register.

Original amendment submission date	Date of final publication	Citation/description
June 24, 1992	December 17, 1992	Chapter 3—Goals and Obligations, Chapter 15—Maps of Eligible Lands and Waters.
May 5, 1994	July 29, 1994	Chapter 5—Coordination with Ramp, Indian, and Other Reclamation Programs.

PART 918—LOUISIANA

27. The authority citation for part 918 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

28. Section 918.15 is revised to read as follows:

§ 918.15 Approval of Louisiana regulatory program amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the Federal Register and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the Federal Register.

Original amendment submission date	Date of final publication	Citation/description
January 19, 1990	May 8, 1991	Chapters 1, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 35, 37, 39, 41, 43, 45, 47, 51, 53, 55, 59, 63, 65, 69.
August 14, 1990	May 21, 1991	Policy statements—PS–1, PS–2, PS–3 regarding requirements at LSMR 5353.C, 3127, 5321; 107.C, Chapter 4.
November 12, 1991	October 28, 1992	LSMR 107.G.1, 2; 53123.A, .1, .2, .3, .4, .B.1.b, .d, .2.a, .b, .3.b, .B.2.a, .4, .7, .9; Policy Statement PS–4 interpreting LSMR 2523; LSMR 53125.
May 3, 1994	September 20, 1994	LSMR 53123.B.4.a.
November 2, 1994	January 24, 1995	LSMR 5423.B.4.a; Policy Statement PS–5.

29. Section 918.25 is added to read as follows:

§ 918.25 Approval of Louisiana abandoned mine land reclamation plan amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the Federal Register and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the Federal Register.

Original amendment submission date	Date of final publication	Citation/description
February 3, 1986	November 10, 1986	Approval of AMLR program.
June 12, 1989	April 9, 1990	Certification for Noncoal reclamation.

PART 920—MARYLAND

30. The authority citation for part 920 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

31. Section 920.15 is revised to read as follows:

§ 920.15 Approval of Maryland regulatory program amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the Federal Register and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the Federal Register.

Original amendment submission date	Date of final publication	Citation/description
October 28, 1982	February 8, 1984	COMAR 08.13.09.01B(24), .02K(2)(d), .05A(5), (12), (13), .07B(3), H(1), (3), .25A(4).
May 28, 1984, October 5, 1984.	January 22, 1985	Blaster certification program; COMAR 08.13.09.02, .25; and other items.
January 30, 1985	September 10, 1985	COMAR 08.13.09.02, .25.
January 13, 1984, June 8, 1984, August 7, 1984, October 10 1984, November 9, 1984.	November 18, 1985	COMAR 08.13.09, 08.13.09.07, .15B(2)(c), C(3), F(3), H(2), (5), I(1)(b), (c), (2)(a), J(4), (5), (6)(a), .40B, F(4) through (7); M.C.A. §§ 7–504(a), (c), 7–505.1(e), 7–506(c)(3), (h), 7–507(c)(2), 7–511(a), (b), 7–514.6.
January 14, 1986, May 15, 1986.	December 12, 1986	COMAR 08.13.09.07A, B, C, G(2), (5)(a), (k); M.C.A. §§ 7–504(D), 7–505(g), 7–506(c), 7–507(c)(1), 7–514(C).
March 18, 1986, April 23, 1986.	January 30, 1987	COMAR 08.13.09.01B(14), .03, G, H, .28, E.
July 8, 1987, June 10, 1988.	June 5, 1990	M.C.A. §§ 7–505(a), (b)(2)(iii), (c)(1), (2), (d)(1), I, II, III, (2); 7–506; § 2; 7–511(A), (B); 7–513; 7–514(a); 7–517(D).
March 30, 1989	January 11, 1991	COMAR 08.13.09.01, .02, .13, .17, .28, .31 through .34, .42, .43.
June 15, 1989	March 21, 1991	M.C.A. §§ 7–5A–05(c), (d); 7–5A–05.1; 7–5A–13(c), (d); 7–5A–13.2; 7–203(H); 7–205(B), (C); 7–501(n); 7–505(c), (d), (k); 7–507(a), (b), (c)(3); 7–509(A); 7–510(b); 7–514(d).
September 28, 1990, November 21, 1990.	April 26, 1991	COMAR 08.13.09.06, B, .43K(7), N(7).
March 27, 1989	May 22, 1991	COMAR 08.13.09.01, .02, .04, .05, .08, .10, .11, .26, .40.
March 23, 1990	June 21, 1991	COMAR 08.13.09.02, .05, .10, .11.
October 31, 1989	August 9, 1991	COMAR 08.13.09.01B, .02K, O, .23D, E, I, J, .24A, C, D, F, H, I, .35A, C through G, .41, B through G.
December 6, 1990	December 2, 1991	COMAR 08.13.09.01B(59), .02H, i, i(1), (3), (4), (5), (11), .04L(2) through (6), M(1), (3), .05D(9), E, F, .40G(10).
June 10, 1988, June 14, 1989, June 15, 1989.	December 5, 1991	COMAR 08.13.09.15A through F, H, I, (2)(b), (4), (a), (b), J, L, M; M.C.A. §§ 7–507.1, 7–514, .1, .2, 7–519, 7–5A–05.2, 7–5A–09(c), 7–5A–10(d).
May 7, 1991, May 16, 1991.	January 10, 1992	COMAR 08.13.09.43A, B(1), (e), (3) through (6), K(7), (8), N(7).
January 23, 1992	September 24, 1992	COMAR 08.13.09.03D(7), .11G(7), .33C(1).
June 11, 1992	November 16, 1992	M.C.A. §§ 7–101(k), 7–501(o), 7–5A–01(h).

Original amendment submission date	Date of final publication	Citation/description
July 14, 1992	December 17, 1992	M.C.A. §§ 7–205(b)(2), (c); 7–206; 7–505(a), (c), (d), (5), (f), (j).
June 23, 1992	December 30, 1992	M.C.A. § 7–508(b)(2).
October 21, 1992	May 17, 1993	COMAR 08.13.09.24B.
February 23, 1993	June 17, 1993	COMAR 08.13.02.01(B), (E), (M), .02A, C(2), .03E, J, M, .04B, C, .06, .07A, B, .08, .09, .10, A, B.
February 7, 1992	June 22, 1993	COMAR 08.13.09.23E, .24H, I, .41C.
February 5, 1993	July 6, 1993	COMAR 08.13.09. 04B(3)(c), (4), C(2)(e), G(4), (5), (6), H(1), (2)(b), I, (1), J(1), (a), (2) through (5), (7), L, .27A, B, (8), (13), (14), (15), D; 08.20.04. 02C, D, .03B(5), .07D, E, F, .08A, B(2), .09, .10A, .11, A, (1), B, D through G, .13; 08.20.23.01A, B, (8), (13), (14) (15), D.
February 25, 1994	June 30, 1994	COMAR 08.13.02.01 through .05, .07, .11 through .15; 08.20.02.18; 08.20.13.01, .03(C), (D), .04(D), .10(D), .11, .12; 08.20.14.13(A), (C), (E).
May 16, 1994, May 31, 1994.	November 14, 1994	M.C.A. §§ 7–501(o), (v); 7–504 (b) through (d); 7–517.1; COMAR 08.13.09.24H(1)(q), (3)(c).
June 16, 1995	November 9, 1995	M.C.A. §§ 7–505, Code 7–515; COMAR 08.20.16.02A, .03A, .08A, B.
October 26, 1995	March 25, 1996	M.C.A. §§ 7–501(m), (w); 7–505(1)(2); 7–511(b)(2)(I), (II), (III); COMAR 08.20.14.14.

32. Section 920.25 is revised to read as follows:

§ 920.25 Approval of Maryland abandoned mine land reclamation plan amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the Federal Register and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the Federal Register.

Original amendment submission date	Date of final publication	Citation/description
September 4, 1992	March 22, 1993	Chapters 1, 5, 11 of Plan—Expenditure of Funds.
August 19, 1993	December 9, 1994	Chapter 1 of Plan—Project Ranking & Selection.

PART 925—MISSOURI

33. The authority citation for part 925 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

34. Section 925.15 is revised to read as follows:

§ 925.15 Approval of Missouri regulatory program amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the Federal Register and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the Federal Register.

Original amendment submission date	Date of final publication	Citation/description
December 3, 1980, March 12, 1981.	July 23, 1982	10 CSR 40–2.080; 40–3.050; 40–3.100(4)(B); 40–6.010(6), .070, .090(3), (4)(C); 40–7.030(1)(E), .040(2)(C); 40–8.030(5) through (13)(A).
September 7, 1982, October 13, 1982.	January 17, 1983	10 CSR 40–8.030(6)(B)1, (C), (7)(A), (D), (8)(A)1, (E), (9)(A)2, (B), (10)(A), (13)(B), .050(8), .060.
April 13, 1983	May 8, 1984	RSMo 444: .805, .830, .950, .955, .960, .965, .970; 10 CSR 40–3.120, .270; 40–4.030; 40–7.010, .011, .020, .021, .030, .031, .040, .041, .050; 40–8.030.
March 13, 1986	January 7, 1987	10 CSR 40–2.090(6); 40–7.031(3)(B); 40–8.030(1), (6), (7), (17), .040(3), (7), (8).
February 4, 1987	February 26, 1988	10 CSR 40–2.090(5); 40–3.040(2), (6), (17), .110(1), .120(7), .200(2), (16), .270(7); 40–7.011(2), (3), .021(2), .031, .041(1), (2), (3); 40–8.030(6), (18); RSMo 444: .950, .960, .965.
June 22, 1987	June 16, 1988	10 CSR 40–3.010(6), .050, .110(6), .120(8)(A), (D), .170, .210; 40–6.010(3)(C), (5)(C), .030(2)(C), .050(4), .070(2)(C), (6), (7), (8), .090(4), (6), (9), (10), (11), .100(2)(C); 40–8.040(3).
December 14 and 18, 1987.	October 31, 1988	10 CSR 40–2.090(6)(B); 40–3.050(1)(E), .210(1)(E); 40–4.010, .030(4)(C), (5), (6), (7)(A), (B)(1) through (8); 40–6.010(6)(A), .020, .040(16), .060(1)(E), (G), (J), (K), (4)(B), (C), (D), .110(16); 40–7.021(4)(B); 40–8.010(1)(A)5, 15, 16, 17, 19, 20, 25, 47, 48, 92, .030(3)(B), .050, .070(2); RSMo 444.730, .800, .805, .950.
August 3, 1988	December 11, 1989	10 CSR 40–3.050(1)(C), (D), (2)(F), (3)(B), (5)(B), (D), .210(1)(C), (D), (2)(F), (5)(B), (D), .160; 40–4.030(4), (7)(B)6; 40–6.070(8)(J), (K), (L), (N), (O).
July 8, 1988	January 8, 1990	10 CSR 40–3.200(2)(B); RSMo 444.535.7(2), .815.6(2).
March 18, 1988	June 5, 1990	10 CSR 40–3.100(2), .120(1), (6)(A), (6)(B)3, (7)(C)2, .250(1)(B), .270(1), (6)(A), (B)3, (7)(C)2; 40–6.040(3)(B), (11)(B), (C), (D), .050(7)(B), (C), (14)(B), .070(8)(E), .110(3)(B), (11)(B), (C), (D), .120(8)(B), (12)(B), (C), .040(8)(B), (C).
June 5, 1989	July 6, 1990	10 CSR 40–6.040(5)(A), (B)1, .050(5)(C), (9)(A) through (E); .060(4)(A), .070(12)(D), .110(11)(B), .120(2)(B)3, (5)(A), (C), (D), (E), (11)(A), (14)(C); 40–8.040(8)(K).

Original amendment submission date	Date of final publication	Citation/description
July 21, 1989	October 30, 1990	10 CSR 40–4.080(1), (2); 40–6.040(11)(E)2, 3, .050(5)(C), .060(2)(B), (C), .070(7)(A)3, 8(M), .120(11); 40–8.010(1)(A)5, 18, .045; 40–060(8)(B).
January 12, 1989	January 3, 1991	10 CSR 40–3.040(1)(B), (3)(G), (4)(B)3, (6)(B), (H), (7)(A), (B), (10)(A), (E), (G), (J), (13)(A)1, (B)1.C, .060(1)(B), (F), (H), (K), .080(1)(C), (2)(A), (4)(A), (D)3, (10)(B), (11)(D), .100(2), .110(6), .120(6)(A), (B)2.A through F, (8)(D), .200(1)(B), (3)(H), (4)(B)3, (6)(B), (H), (7)(A), (B), (10)(A), (E), (G), (J), (12)(A)1, (B)1.C, .220(1)(B), (F), (H), (K), .230(1)(C), (2)(A), (4)(A), (D)3, (10)(B), (11)(D), .270(6)(A), (B)2.A through F, .280(1)(C); 40–5.010(2)(C), (E), (3)(B)2, .020(4)(B)1, 2, 4, 5, 6, (C)1, 3, 4, 5; 40–6.060(4)(A)3; 40–8.010(1)(A)59, 79.
July 8, 1988, January 12, 1988.	May 8, 1991	RSMo 444.805(8), (16), .950.1, .2, .3, .4, .960.1, .965.2, .4; 10 CSR 40–7.011(1) (E), (F), (G), (2)(C), (4)(E), (F), (5)(A)4, (B)2, 4, (D), .021(2)(B)4, (D)(3), (3), .031, .041(1)(B), 1, (D), (4)(A)2.
November 8, 1991	September 24, 1992	RSMo 444.870.1 through .5, .873.1, .3, .4.
October 10, 1990	September 29, 1992	10 CSR 40–3.010(5), .030(1)(C), .040(2)(A)1, (4)(B)(3), (6)(B), (C), (D), (H), (Q), (T), (10)(G), (I), .050(6)(C), .060(1)(A), (H), .080(3)(A), (8)(B), (D), .090, .110(3)(A), .120(1)(D), (E), (5), (6)(B)1, 2, A, D, G, I, (7)(C)2, (C)3.A, C, (8)(A)4 through 8, 10, .130(2)(A), (3)(C), (I), .140(1)(A), (D)(1), (3)(D)9, (6)(D), (8)(A), (D)(1), (10)(D)9, (13)(C), (D), (15)(A), (20)(C), (D), .170(5), .190(1)(C), .200(2)(A)1, (4)(B)3, (6)(B), (C), (D), (H), (Q), (T), (10)(G), (I), .210(6)(C), .220(1)(A), (H), .230(3)(A), (8)(D), .240, .250(1)(B), .260(3)(A)1, .270(1)(D), (E), (5), (6)(B)1, 2, A, B, D, G, I, (7)(C)2, 3.A, C, (8)(A)4 through 8, 10, .290(1)(A), (D)1, (3)(D)9, (6)(D), (8)(A), (D)1, (10)(D)9, (13)(C), (D), (15)(A), (20)(C), (D), .300(2)(A), (3)(C), (I); 40–4.030(4)(A), (7)(B)6; 40–5.010(1)(A), (J), (2)(C), (3)(F)1; 40–6.010(2)(E), .020(2)(B)3, (3)(B)3, (5), .030(1)(A), (C), (D), (H), (2)(D), .040(5)(A), (11)(A), (E), (F), .050(7)(A), (B)1, (B)2, (C)1, (C)3, (9)(C)5, (11)(C), (17)(A)1 through 9, (B), (18), .060(4)(A), (E)5, .070(1)(B), (7)(C), (C)2, (F), (G), (8)(I), (L), (10)(B)1.A, (E)2, (11)(A), (B), (13)(E), .100(1)(A), (C), (D), (H), (2)(D), .110(5)(A), (B), (11)(A), (E), (F), .120(5)(C)4, (7)(C), (12)(A), (B)1, (C)1, (C)3, (16), (17)(A)1 through 9, (B); 40–7.011(3)(C), (4)(E), (5)(D)2.C.(II), (III), (D)2.(I), 5. A, B, C, 8, .021(2)(A), (B)1, 5, 6, .031(3)(B); 40–8.010(1)(A)4, 53, 51.B, C, D, I, J, 54, .030(6)(G), (7)(A), .040(5)(B)3, (8)(A), (K), .070(2)(C).
October 19, 1992	December 6, 1993	10 CSR 40–3.010, .040, .080, .100, .110, .120, .130, .140, .200, .230, .250, .260, .270; 40–4.010; 40–5.010; 40–6.030, .040, .050, .070, .100, .120; 40–7.011, .021, .031, .041; 40–8.010, .030, .040.
September 24, 1993	April 22, 1994	RSMo 444.870.3, .5 through .8.
February 10, 1995	July 13, 1995	10 CSR 40–3.030(4)(B)2, .040(10)(B)5, .060(1)(L)1, (0), .080(8)(B), .100(5)2, (6), (7), .110(3)1, (3)3, (6)(B), .140(1)(A); 40–6.010(2)(H), .020(2)(A), (3)(A), .030(1)(C), (5)(B), .050(7)(C), (D), .060(4)(D)(4), .070(8)(M), (9)(A)1, 2.A, .B, .120(7)(C), (12)(D); 40–8.010(1)(A)72, 84, .030(7)(A), .040(9), .050(2)(B).
March 7 and 28, 1995, December 14, 1995.	May 28, 1996	RSMo 444.805, 830.1, .3, 950.1, .3, .4, 960.1, .5, 965.1, .3, .4, .5; 10 CSR 40–3.120, .270(6)(B); 7.011(1) through (5), .021(2), (5), .041(1), (4).
March 20, 1996	July 24, 1996	RSMo 444.800, .810, .950.

35. Section 925.25 is revised to read as follows:

§ 925.25 Approval of Missouri abandoned mine land reclamation plan amendments.

(a) You may receive copies of the Missouri abandoned mine land reclamation plan and amendments from the:

(1) Missouri Department of Natural Resources, Land Reclamation Program, 205 Jefferson Street, P.O. Box 176, Jefferson City, MO 65102; or

(2) Office of Surface Mining Reclamation and Enforcement, Mid-Continent Regional Coordinating Center, Alton Federal Building, 501 Belle Street, Alton, IL 62002.

(b) The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the Federal Register and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the Federal Register.

Original amendment submission date	Date of final publication	Citation/description
June 22, 1987	June 16, 1988	10 CSR 40–9.060(2), (3), (4).
August 22, 1988	March 15, 1989	Organization; project selection; rights of entry; coordination of reclamation activities; land acquisition, management and disposal; database.
November 29, 1994	August 24, 1995	RSMo 444.810.2 through .8; 444.915.3; 10 CSR 40–9.020(1)(D), (E), (3)(A); AML Plan § 884.13(C)(2), (D)(3), (4).

PART 926—MONTANA

36. The authority citation for part 926 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

37. Section 926.15 is revised to read as follows:

§ 926.15 Approval of Montana regulatory program amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the Federal Register and the State citations or

a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the Federal Register.

Original amendment submission date	Date of final publication	Citation/description
September 13, 1983	January 3, 1984	MCA 82–4–237, –251(4), –254.
April 2, 1984	January 3, 1985	ARM 26.4.1206 through .1209, .1211, .1212.
January 3, 1984	November 18, 1985	ARM 26.4.310, .621 through .626, .1260 through .1263.
July 3, 1985	February 14, 1986	MCA 82–4–231, 232, 254.
April 23, 1987	December 31, 1987	MCA 82–4–203, 222, 223.
December 21, 1988	May 11, 1990	ARM 26.4 subchapters 3, definitions and strip mine permit application requirements; 4, mine permit and test pit prospecting permit procedures; 5, backfilling and grading requirements; 6, transportation facilities, explosives and hydrology; 7, topsoiling, revegetation, and protection of wildlife and air resources; 8, alluvial valley floors, prime farmlands, alternate reclamation, and auger mining; 9, underground coal and uranium mining; 10, prospecting; 11, bonding, insurance reporting, and special areas; 12, special departmental procedures; 13, miscellaneous provisions.
June 19, 1990	March 20, 1991, August 19, 1992.	ARM 26.4.724 through 726, .728, .730 through .733, .1301A, .724; ARM 26.4.920, .924 through .927, .930, .932; ARM 26.4 subchapters 3, 5, 8, 11, 12.
October 19, 1992	February 25, 1994	MCA 82–4–203(26).
June 16, 1993, July 28, 1993.	February 1, 1995	MCA 82–4–203, subsections (14), (16), (21), (23), (29), (34), (35), (36), definitions; 82–4–224, surface owner consent; 82–4–226, subsections (1), (2), (3), (5), (6), (8), prospecting permits and notices of intent; 82–4–227, subsections (1), (2), (3), (7) through (13), permit approval/denial criteria

38. Section 926.25 is revised to read as follows:

§ 926.25 Approval of Montana abandoned mine land reclamation plan amendments.

(a) Montana certification of completing all known coal-related impacts is accepted, effective July 9, 1990.

(b) The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the Federal Register and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the Federal Register.

Original amendment submission date	Date of final publication	Citation/description
April 20, 1983	August 18, 1983	Liens on noncoal projects; noncoal additions to Montana Abandoned Mine Land Inventory; emergency response reclamation program; organizational restructure.
March 22, 1995	July 19, 1995	Reclamation of interim program and bankrupt surety coal sites; future set-aside program; water supply facilities and water replacement; other policies and procedures.

PART 931—NEW MEXICO

39. The authority citation for part 931 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

40. Section 931.15 is revised to read as follows:

§ 931.15 Approval of New Mexico regulatory program amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the Federal Register and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the Federal Register.

Original amendment submission date	Date of final publication	Citation/description
February 28, 1982	May 27, 1982	Procedures for Posting and Publishing Notices of Show Cause Orders.
July 9, 1982	October 26, 1982	CSMC 80–1–19–15(d), 80–1–20–71(i), 20–102(a); 80–1–29–12(b), definition of ''Unconsolidated Stream-laid Deposits Holding Streams''.
February 8, 1984	August 1, 1984	CSMC 80–1–14–23(a), (b).
June 6, 1984	January 4, 1985	CSMC 80–1–1–5 definition of roads; 80–1–20–150, 151.
June 20, 1984, July 18, 1984.	January 31, 1985	CSMC 80–1–1–11; 80–1–11–30; 80–1–20–103.
August 12, 1987	February 11, 1988	CSMC 80–1–30–12(c) through (l).
September 1, 1988	January 30, 1989	CSMC 80–2–22–29(p).
June 17, 1987	March 9, 1989	CSMC 80–1–5–25, –26; 80–1–8–11; 80–1–9–18; 80–1–11–27, 80–1–20–89, –102, –103, –106, –181; 80–1–29–11; 80–1–33 Training, Examination, and Certification of Blasters.
April 18, 1988, October 20, 1988.	March 17, 1989	CSMC 80–1–20–71(b), –81, –83(b), –85, –92(b).
February 21, 1989, August 17, 1989.	December 26, 1989	CSMC 80–1–20–41(d)(1), –42(a)(1).

Original amendment submission date	Date of final publication	Citation/description
March 29, 1989, April 26, 1989.	April 26, 1990	CSMC 80–1–20–83(b), –89(d)(2), –103(a)(1); 80–1–29–11(a); 80–1–33–11, –14, –15(e)(1).
May 25, 1989	November 23, 1990	CSMC 80–1–1–5, definitions of ''affected area,'' ''self-bond''; 80–1–8–20; 80–1–9–16; 80–1–14–23(d)(2),–40(a)(2); 80–1–20–97(b), (c); 80–1–31–21 through –24; July 12, 1990 Policy Statement.
July 22, 1989	February 26, 1991	CSMC 80–1–1–5, definition of ''other treatment facilities;'' 80–1–20–41(f), –46, (a), –49.
April 24, 1990	June 21, 1991	CSMC 80–1–20–42(a)(8), –133(c).
March 15, 1990	December 31, 1991	CSMC 80–1–1–5, definitions of ''cumulative impact area,'' ''previously mined area,'' ''excess spoil,'' ''impoundment,'' ''coal processing waste,'' ''coal processing waste bank;'' 80–1–2–11(f), –12(b)(2); 80–1–4–15(b); 80–1–6–10, –11(b)(5), –12(b)(7), –13(d); 80–1–8–14(b)(1)(vi), –15(c), –16(b)(3), –24, –27(a); 80–1–9–13(f), –14(c), –21(b) through (d); 80–1–10–13, (a), (c), (e), –17(a)(1)(i), (6); 80–1–11–11(a)(3), –15(a), (b), –19(c), –27(e); 80–1–13–11(a), –12(c), (d), –18(c)(3), (d), (e); 80–1–20–11(f), –41(a), –43(a), –44(a), (c), –52(a), (b), –57(a)(1), (2), –61 through –68, –71(f), (j), (k), –82(a), –91(c), –97(d)(10), –102(a), (f), (g), –111(c), –112(c), (d); 80–1–24–11(c), –12(a)(1), –15(c)(2) through (6); 80–1–26–12(c); 80–1–29–16(a); 80–1–30–13(d); 80–1–31–17(b)(1), 18(b)(1); Policy Statement for Records and Retention.
July 9, 1991	April 13, 1992	CSMC 80–1–20–42(a)(4)(ii), (a)(8).
November 22, 1991	June 23, 1992	CSMC 80–1–20–72(d), –83(b).
January 16, 1991	December 17, 1993	CSMC 80–1–1–5, definition of ''owned or controlled and owns and controls;'' 80–1–4–15(b)(2); 80–1–7–13(a) through (j); –14(a) through (d); 80–1–9–21(c), –25(b), (c), (e), –37(a) through (e), –39(b), –40; 80–1–11–17(c), (2), (3), (d), (e), –19(i), –20(a), (b)(1), (i), (iii), (2), (i), (ii), (3), (c), (1) through (4), –24(a), (b), (c), –29(d); 80–1–19–15(c)(2), (3), (4), –17(a), (b); 80–1–20–91(c), –93(a), (c), (d), (e), –116(a), (b)(1), (3), (6), (7), (d) through (d)(3), –117(a) through (d), (1), (2), (3)(i), –121(a), –124, –150(a)(2)(i), (iii), (b)(9), (c), (e)(1), (g)(5), (6), (7), –151(a), (b)(2), (c)(1), (6); 80–1–30–11(b), (l); NMSA 69–25A–31.
October 26, 1994	February 15, 1995	CSMC 80–1–34–1 through 10.
January 22, 1996	May 29, 1996	CSMC 80–1–1–5 definitions of ''Applicant/violator system'' or ''AVS,'' ''Federal violation notice,'' ''Ownership or control link,'' ''State violation notice,'' and ''Violation notice;'' ''Drinking, domestic, or residential water supply,'' ''Material damage,'' ''Noncommercial building,'' ''Occupied residential dwelling and associated structures,'' ''Replacement of water supply;'' ''OSM,'' ''Qualified Laboratory,'' ''Road,'' ''SMCRA;'' 80–1–4–15(b)(1); 80–1–7–14(c) (1) through (5); 80–1–9–25(a)(2), (3), (c), –39(a) (1) through (6), (b), (c)(1) through (9); 80–1–11–17(c), (d), –19(i), –20(b)(1), (ii), (3), (c)(1), (2), (d), (e), –24(a), –29(d), –31(a) through (d), –32(a) through (c), –33 (a) through (d), –34(a) through (d); 80–1–19–15(c)(2), (3), (iii), (4); 80–1–20–41(e)(3)(i), –49(d), (e)(1) through (11), (f)(2), (g)(4), (5), –82(a)(4), –89(d)(2), –93(a)(1), –97(b), (c), –116(b)(1), (5), (6), –117, (c)(1), (3), (4), (d)(2), (3)(i), –124(a) through (d), –125(a) through (e), –127, –150(c)

41. Section 931.25 is revised to read as follows:

§ 931.25 Approval of New Mexico abandoned mine land reclamation plan amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the Federal Register and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the Federal Register.

Original amendment submission date	Date of final publication	Citation/description
July 24, 1995	July 24, 1996	Plan §§ 874.16, 875.16, .20, 886.23(c); NMSA 69–25B–3.A, C, D, –4, –6.B, –7, –8.

PART 934—NORTH DAKOTA

42. The authority citation for part 934 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

43. Section 934.15 is revised to read as follows:

§ 934.15 Approval of North Dakota regulatory program amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the Federal Register and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the Federal Register.

Original amendment submission date	Date of final publication	Citation/description
July 30, 1982	February 9, 1983, November 9, 1983.	NDCC Chapter 38–14.1; subsection 5 of § 38–14.1–02, definitions of ''extended mining plan,'' ''performance bond;'' 38–14.1–03; subsection 3 of § 38–14.1–07, 13; subdivision ''u'' of subsection 1 of § 38–14.1–14; subdivision ''n'' of subsection 2 of § 38–14.1–14; § 38–14.15; subsection 3 of § 38–14.1–20; subsections 17, 18 of § 38–14.1–24; subsection 4 of § 38–14.1–30; § 38–14.1–38; Chapter 38–12.1; subdivision b of § 1 of § 38–12.1–04; Chapter 38–18; subsection 3 of § 38–18–05, definition of ''mineral developer;'' subsection 6 of § 38–18–05, definition of ''mineral owner;'' subsection 10 of § 38–18–05, definition of ''surface owner;'' subsection 3 of § 38–18–06; § 38–18–07; NDAC 69–05.2, Chapter 69–05.2–01, 05 through 19, 21, 22, 23, 26; NDCC § 38.12.1–03.
February 2, 1984	July 19, 1984	NDAC §§ 38–14–1.02(33)(a), 04.1, .2, .3, 13(1)(b), 24(1)(1); §§ 69–05.2–05–03, 69–05.2–09–18, 69–05.2–13–12.1 through .6, 69–05.2–16–04.
February 27, 1984	January 3, 1985	NDAC §§ 69–05.2–01–02, definition of ''blaster'' and renumbering of §; 69–05.2–17–01; 69–05.2–31.
June 18, 1985	February 18, 1986	NDCC 38–14.1–04.2, .3, –7, –10, –14, –21, –30,–33; NDAC 69–05.2–04–01, –06–02, –08–03, –09–02,–08, –09, –10–03, –16–09.
May 30, 1986	October 21, 1986	NDAC 69–05.2–01–02 (11), (12), definitions ''coal preparation,'' ''coal preparation plant,'' ''coal processing plant,'' 08–05(2)(c)(5), –09–19, –13–13, –15–01, –02, –03(2), –04, –16–04(1)(b), –09(22), –15–01, –21–03.
September 8, 1986	December 9, 1986	NDAC 69–05.2–12–20.
April 3, 1987	November 16, 1987	NDCC 38–14.1–16(2), (7), –17(7).
February 10, 1987	February 2, 1988	NDAC 69–05.2–12, –13–04, –23.
June 1, 1988	March 10, 1989	Amendment X, ''Standards for Evaluation of Revegetation Success and Recommended Procedures for Pre-and Post- mining Vegetation Assessments''.
April 11, 1989	August 4, 1989	NDCC 38–14.1–37, –39.
November 1, 1988	January 19, 1990	NDAC 69–05.2, 2–01 through –31.
November 20, 1990	January 9, 1992	NDCC 28–32–02(3), (4); NDAC 69–05.2–01–02, –03(4), (5), (7), –04–01(5)(b), –05–06(1), (1d), –06–01,–02(3) through (6), –08–05(2), (2C), (2e), –09(3b), –15,–09–01(4), –06(1), (2), –09(1)(c)(7–8), (1)(e), (2)(c through e), (h), –17(1), (2), –19(1), –10–03, –05(3a, e), –11–03, –12–01(4), (10), –12(3), –18, –20, –13–08(2) through (6), –12(4), –13, –15–04(4)(a)(2)(c), –16–03, –07(2a), –09(9), (17), (18), (20), –12(1), –14(3), –20, –17–01(2), –05(1), –18–01, –12(f), –20–03(1b, d), (3),–22–07(4)(e) through (i), –23–01, –24–01–09, –25–03(2), (4), –26–05, (3), –28–03, (7), 16 through 18.
June 12, 1991, November 19, 1991.	August 20, 1992	NDCC 38–12.1–03–2.b, –05–2.d; 38–14.1–02–33.a, –24.13.a, –30.3.c through g(1), (2); NDAC 43–02–01–18.1, –20; 69–05.2–01–01–3, –05–08, –08–01, –02; 69–05.2–08, –10.1a, –12; –09–04, –09, –10, –11, –14, –17, –10–02, –11–01.5, 02, –12–01, –05 through –08, –12–11, –12, –14, –16, –13–06, –08, –14–01, –15–02, –16–04, –06, –12, –22–07, –25–03, –04; 69–05.2–32, –32–01.1.b.
April 21, 1993	March 15, 1994, July 22, 1994.	NDAC 69–05.2–06–02(3), –09–01(4), –10–03(1), (1)(a), (4), –13–02(4)(e), –08(3) through (6), –15–04(3), –16–09 (13), (14), (16), –20–03(3), (4); NDCC 38–14.1–21(5), –24(13)(e), –37(2), (a) through (f), (3) through (6); 38–12.1–04(1)(a); 43–02–01–05, –20.3(c)(2); 43–02–01–05.
October 22, 1993	July 22, 1994	NDAC 69–05.2–17–02, –29–01(2), –02(1)(a), (b), –03(2), (5), –04, –05, –06(1)(a), –07(1), –08(1)(a) through (e), (2).
November 10, 1994	April 13, 1995	NDAC 69–05.2–04–07(3)(a), –05–09, –06–01(2), –02(6), –10–03(5), –11–01(1)(d), –03(5)(c), –06(1)(c), –12–09(2), –15–02(2a), –16–09(7), (20), –21–01(2), –28–03(6)
February 17, 1994	July 14, 1995	Policy document entitled ''Standards for Evaluation of Revegetation Success and Recommended Procedures for Pre- and Postmining Vegetation Assessments''.

44. Section 934.25 is revised to read as follows:

§ 934.25 Approval of North Dakota abandoned mine land reclamation plan amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the Federal Register and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the Federal Register.

Original amendment submission date	Date of final publication	Citation/description
March 4, 1983	June 24, 1983	Definition of reclamation terms; right of entry; land acquisition, management, and disposition; other policies and procedures.
September 15, 1987	June 16, 1988	Revision of administrative and management structure of the approved North Dakota Plan.
October 31, 1991	July 27, 1992	NDCC 38–14.2–04, –06.
May 25, 1993	September 27, 1993	Emergency response reclamation program; set-aside trust funds, eligible lands.
September 20, 1995	October 8, 1996	NDCC 38–14.2–03(14); Public Service Commission Procurement and Contract Procedures; PSC policies Nos. 2–01–81(5), 2–02–81(5); PSC organizational structure.

PART 935—OHIO

45. The authority citation for part 935 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

46. Section 935.15 is revised to read as follows:

§ 935.15 Approval of Ohio regulatory program amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the Federal Register and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the Federal Register.

Original amendment submission date	Date of final publication	Citation/description
September 16, 1982	January 17, 1983	OAC:13–1–01.
October 13, 1982	January 31, 1983, July 22, 1983.	OAC 1501:13–1–02(E), –07; 13–4–03 through –05.
January 6, 1983	May 24, 1983	ORC as amended by SB 240 and 323.
June 10, 1983, August 11, 1983, August 22, 1983.	October 6, 1983	OAC 1501:13–1–02; 13–4–04, –05, –13, –14; 13–9–04; 13–12–03, –04.
July 18, 1983	October 13, 1983	ORC 1513:01(G)(2), (U); –13(A)(1), (C)(1), (3).
January 30, 1984	April 23, 1984	OAC 1501:13–4–13(K)(1).
February 8, 1984	May 1, 1984	OAC 1501:13–9–15(E)(5); ORC1513–101(J), (k), (L).
December 28, 1983	June 5, 1984	OAC 1501:13–14–01.
March 5, 1984	August 8, 1984	OAC 1501:13–14–05.
June 15, 1984	September 25, 1984	OAC 1501:13–4–04(I), (L), –13(I), (J), (L); 13–9–04(B)(5), (G)(15); and Division Advisory Memo No. 31.
July 23, 1984	November 1, 1984	ORC contained in Substitute House Bill No. 164.
March 9, 1984	November 7, 1984	OAC 1501:13–4–13(E)(2).
September 17, 1984	December 31, 1984	OAC 1501:13–2–15.
July 10 and 23, 1984	March 18, 1985	OAC 1501:13–9–06.
July 11, 1984, July 23, 1984.	May 23, 1985	OAC 1501:13–14–01; ORC 1513–3–01 through –22.
July 3, 1985	September 18, 1985	OAC 1513–3–01 through –22.
November 15, 1985	April 9, 1986, June 9, 1986.	ORC 1513.02, .07, .08, .10, .16, .18, .20, .25, .27 through .33, .37, .181; 5749.02, .021.
January 15, 1986	May 6, 1986	OAC 1513–3–01 through 04, 16, 17.
October 26, 1985	July 17, 1986	OAC 1501:13–3–05; 13–4–04, –13; 13–9–04.
November 6, 1984	July 28, 1986	OAC 1501:13–14–03.
March 3, 1986	September 18, 1986	OAC 1501:13–4–05, 14; 13–9–07.
July 10, 1986	October 29, 1986	OAC 1501:13–9–06.
October 8, 1986	March 5, 1987	OAC 1501:13–9–07.
December 1, 1986, January 13, 1987.	June 19, 1987	OAC1501:13–7–03(B)(5)(g), (7)(h).
May 16, 1986	July 17, 1987	OAC 1501:13–1–01, –02, –07, –10, –13; 13–3–02 through –07; 13–4–01 through –04, –06, –08, –12, –13, –14; 13–5–01; 13–6–03; 13–7–01 through –08; 13–8–0; 13–9–01, –04, –06, –08, –09, –10 (formerly 13–14–05), –11, –13, –14, –15; 13–10–01; 13–13–02 through –06, –08; 13–14–01 through –05; 1513–3–03, –08; ORC 1513.16(H)(2), (3), .18(F).
January 28, 1987	August 10, 1987	OAC 1513–3–02, –03, –04, –08, –19, –21.
June 26, 1987	December 9, 1987	OAC 1501:13–1–02.
January 16, 1987	March 10, 1988	OAC 1501:13–7–03(B)(5)(g).
October 16, 1987	May 27, 1988	OAC 1501:13–1–02(M), (PP), (YY); 13–3–03 (C), (G), –04(E); 13–4–01(B), –04(A), (K)(7), –05(K), –13(A), (K)(7), –14(J); 13–5–01(E)(16).
March 24, 1988	July 14, 1988	OAC 1513:1513–3–21(E) (3), (4), (5).
May 24, 1988, August 23, 1988.	December 22, 1988	OAC 1501:13–1–02; 13–4–03, –04, –05; 13–4–13, –14; 13–7–03, –04, –05, –07(B); 13–9–04, –07, –09, –14, –15; 13–10–01; 13–14–02, –05.
March 8, 1988, July 1, 1988.	January 30, 1989	OAC 1501:13–4–02(B)(1)(b), (B)(1)(c), (C)(1), (C)(1)(a).
April 17, 1987	February 21, 1989	OAC 1501:13–9–15(A)(1)(a), (F)(8), (e)(i), (f)(i), (F)(9) through (12).
November 3, 1987	December 15, 1989	OAC 1501:13–9–15(F)(4)(c).
January 26, 1989	January 31, 1990	OAC 1501:13–9–15(A)(1)(a), (F), (G), (H), (I)(2)(c), (4)(c), (8), (b), (f)(i), (I)(9).
October 2, 1989	April 20, 1990	ORC 1513.02(J), .08(A), .18(B), (C), (F), (H), .24, .37(J).
August 11, 1989	June 5, 1990	ORC 1513.05, .13(E), (F); OAC 1513–3–21.
December 5, 1989	July 20, 1990	OAC 1501:13–7–01(A)(4), (5), (6)(a)(i), (ii), –05(A)(1), (2)(b), (iv), (c)(ii), (B)(2)(c), (4) through (4)(e).
October 20, 1988	July 25, 1990	OAC 1501:13–3–07(B)(8); 13–4–01(B); 13–7–01(A)(6)(c)(ii), –05(A)(3), (5)(b)(i), (B)(2)(e); 13–9–07(K)(1)(b).
May 11, 1990	August 21, 1990	OAC 1501:13–7–06(F).
March 1, 1989	September 18, 1990	OAC 13–1–02, 03; 13–4–14; 13–5–01; 13–7–04, –05; 13–9–11; 13–14–06.
January 20, 1989	September 24, 1990	ORC 1513.07, .16; OAC 1501:13–4–15(A) through (I).
May 11, 1990	February 21, 1991	OAC 1501:13–9–15(I)(2)(c)(ii).
December 7, 1990	February 26, 1991	OAC 1501:13–10–01(G)(1).
June 15, 1990	April 19, 1991	OAC 1501:13–4–03(A), (B), (C); 13–5–01(A)(4)(a), (D), and letter of interpretation dated April 1, 1991 (Administrative Record Number OH–1498), (E)(8), (F), (G)(5), (H)(5), –02; 13–14–02(A)(8), (C)(7), (D)(1)(c), (I); ORC 1513.07(E)(6).
January 31, 1991	May 21, 1991, June 6, 1991.	OAC 1501:03–9–13.
March 1, 1991	May 30, 1991	OAC 1501:13–9–11(D)(3).

Original amendment submission date	Date of final publication	Citation/description
January 31, 1989	October 21, 1991	ORC 1513.07(B)(4); OAC 1501:13–6–03(C)(1)(b), (I)(1)(d), (I)(1)(e).
August 23, 1991	December 9, 1991	OAC 1501:13–14–02(A)(2).
November 16, 1987, October 12, 1990.	April 13, 1992	ORC 1513.01(G)(1)(a); 1513.07(E)(5), (6); OAC 1501:13–1–02(S)(1)(a); 13–4–16; 13–5–03; 13–14–01; OAC 1513.16(F)(3)(b).
January 16, 1990	July 27, 1992	OAC 1501:13–1–02(E)(1)(d), (YYYY); 13–4–05(H)(2)(c), (M)(1)(d), (e), (2), –14(H)(2)(c), (L)(1)(d), (e), (2); 13–9–04(G)(3)(b)(i), (ii), (iii), (H)(1)(c), (h)(i), (ii), (iii), (2)(h), (3)(b); 13–9–09(C)(2)(b), (5), 15(F) through (I)(2)(c)(i), (ii), (3)(c); 13–10–01(B)(1), (D)(1), (F) (5), (6), (G)(1), (G)(3), (G)(4); 13–11–02(A); ORC 1513.01(G)(2).
July 22, 1991, September 10, 1991.	August 18, 1992	OAC 1501:13–9–04(H)(1)(i), (2)(d), (e), (g), (h), –07(H).
May 12, 1992	September 11, 1992	OAC 1501:13–1–01(D)(1), (2).
December 11, 1991	October 28, 1992	OAC 1501:13–7–06(A), (1), (4), (B), (1), (2)(b), (C), (1), (2), (a), (b), (c), (C)(3), (4), (E)(1), (E)(4).
June 30, 1992	January 12, 1993	OAC 1501:13–13–06(A).
May 12, 1992, June 22, 1992.	January 14, 1993	OAC 1501:13–5–01(A)(4)(a), 13–9–15(J)(1).
December 9, 1992	April 23, 1993	OAC 1501:13–1–01(B).
February 7, 1992, March 2, 1992.	June 11, 1993	ORC 1513.02(F)(3).
April 5, 1993	June 22, 1993	OAC 1501:13–1–02 (HHHH), 13–4–15(B)(5), (I)(2)(a), (3)(d).
February 11, 1993	August 16, 1993	OAC 1501:13–9–15.
January 15, 1993	September 3, 1993	OAC 1501:13–4–02(C)(2) through (K).
May 1, 1992, June 11, 1993.	May 2, 1994	OAC 1501:13–4–06(E)(2)(g), 13–9–15, 17(B); Ohio Department of Natural Resources Guidelines for Evaluating Revegetation Success; Division of Reclamation Policy/Procedure Directive, Regulatory 94–2.
May 17, 1994	July 27, 1994	OAC 1501:13–9–17.
March 15, 1993	September 1, 1994	Program Amendment Number 63.
February 23, 1994	October 12, 1994	OAC 1501:13–1–05, –10(B)(2).
March 4, 1993	November 15, 1994	OAC 1501:13–4–05(E)(1)(g), (H)(1)(b)(iv), (c)(iv), –14(E)(1)(f), (H)(1)(b)(iv), (c)(iv); 13–9–04(B)(1)(a), (b), (G)(2)(e); Ohio's Policy/Procedure Directive, Inspection and Enforcement 93–4.
July 19, 1994	May 11, 1995	Combined Program Amendments 25R and 56R: Ohio Guidelines for Evaluating Revegetation Success.
May 17, 1994	May 12, 1995	Program Amendment 68R: Contemporaneous Reclamation.
September 22, 1994	July 17, 1995	OAC 1501:13–1–03(D)(2), (I)(1), (J)(1), (L)(1), (2), (3) (Financial interest statements); 13–7–05(A)(2)(b)(ii), (c)(ii), (B)(2)(c).
March 28, 1995	July 25, 1995	OAC 1501:13–14–01.
February 2, 1995	November 9, 1995	Program Amendment 63R: Ohio regulatory and Abandoned Mine Land reclamation programs.
July 3, 1995	February 28, 1996	OAC 1501:13–4–15(d)(2); Policy Directives 92–3, 93–4.
May 23, 1996	September 4, 1996	OAC 1501:13–4–12(G)(3)(d), (4)(f), (i); 13–09–08(A)(1), (B); 13–13–01.
May 17, 1996	October 29, 1996	OAC 1501:13–14–01(A)(2)(b), (c).
August 26, 1996	February 28, 1997	OAC 1501:13–1–02(OOO), (JJJJJJJ); 13–4–08(A)(15), –10(A)(6), –12(L), –15(B); 13–5–01(D)(7), (D), (E)(19), (A), (B), (C); 13–9–15(F)(2), (A), (3), (a), (4)(d), (G)(3)(a), (H)(2), (I)(6), (J)(1)(b), (L), (2), (M)(4), (O), (1) through (6).

47. Section 935.25 is revised to read as follows:

§ 935.25 Approval of Ohio abandoned mine land reclamation plan amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the Federal Register and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the Federal Register.

Original amendment submission date	Date of final publication	Citation/description
January 6, 1983	May 24, 1983	ORC 1513.37(D)(2), (4), (5), (J).
August 20, 1986	August 17, 1987	Ohio AMLR Plan 3.7.4, 3.9.1; RAMP Committee role; AMLR program staff organization.
October 2, 1989	April 20, 1990	ORC 1513.02(J), .08(A), .18(B), (C), (F), (H), .24, .37(J).
February 19, 1992	September 24, 1992	AML emergency program; ORC 1513.37(C)(1), (L)(1), (2); OAC 1501:13–6–03(C)(1)(b), (I)(1)(d), (e).

PART 936—OKLAHOMA

48. The authority citation for part 936 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

49. Section 936.15 is revised to read as follows:

§ 936.15 Approval of Oklahoma regulatory program amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the Federal Register and the State citations or

a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the Federal Register.

Original amendment submission date	Date of final publication	Citation/description
January 22, 1982	April 2, 1982	Permanent program regulations to replace those approved by the Secretary on January 19, 1981, and subsequently rescinded by the Oklahoma Legislature on February 12, 1981.
February 22, 1983	May 4, 1983	§§ 816.42(b) and 817.42(b).
May 13, 1983	August 28, 1984	45 O.S. 1981, §§ 745.2, 746.16, 774(c), 786(E), 788.17 through 788.19, 816.64; Parts 842, 843, 845; §§ 4.1000 through 4.1400; Sections governing the transfer, sale or assignment of rights under permits, inspection and enforcement provisions.
July 8, 1983	March 18, 1985	DOM/RR 776.12 through .15, .17, .18; 815.5, .11; 816.1,.2.
July 16, 1985	December 10, 1985	45 O.S. 1981.
August 15, 1985	January 14, 1986	Administration and funding of the Small Operator Assistance Program.
September 11, 1985	January 16, 1986	DOM/RR 700.5: definition of ''surface coal mining operations'', 701.5: definitions of ''coal preparation'' and ''coal preparation plant''.
August 8, 1985	April 28, 1986	DOM/RR Part 850 establishing blaster training, examination and certification program.
May 18, 1988	March 27, 1990, May 15, 1990.	DOM/RR 700.1 through .5, .11 through .15; 701.1 through .5, .11; 705.1 through .6, .11, .13, .15, .17, .18, .19, .21, .22; 707.1, .4, .5, .10, .11, .12; 761.1, .3, .5, .11, .12; 762.1, .4, .5, .11 through .14; 764.1, .11, .13, .15, .17, .19, .21, .23, .25; 772.1, .2, .3, .11 through .16; 773.1, .5, .11, .12, .13, .15, .17, .19, .20, .21; 774.1, .11, .13, .15, .17; 775.1, .11, .13; 777.1, .11, .13, .14, .15, .17; 778.1, .13 through .18, .20, .21; 779.1, .2, .4, .11, .12, .18, .19, .21, .22, .24, .25; 780.1, .2, .4, .11 through .16, .18, .21, .22, .23, .25, .27, .29, .31, .33, .35, .37, .38; 783.1, .2, .4, .11, .12, .18, .19, .21, 22, .24, .25; 784.1, .2, .4, .11 through .26, .29, .30, .200; 785.1, .2, .13, .14, .15, .17, .18, .20, .21, .22; 795.3, .5 through .9, .12; 800.1, .4, .5, .11 through .17, .20, .21, .23, .30, .40, .50, .60; 810.1, .2, .4, .11; 815.1, .13, .15; 816.1, .2, .11, .13, .14, .15, .22, .41, .42, .43, .45, .46, .47, .49, .56, .57, .59, .61, .62, .64, .66, .67, .68, .71 through .74, .79, .81, .83, .84, .87, .89, .95, .97, .99, .100, .102, .104 through .107, .111, .113, .114, .116, .121, .122, .131, .132, .133, .150, .151, .180, .181, .200; 817.1, .2, .11, .13, .14, .15, .22, .41, .42, .43, .45, .46, .47, .49, .56, .57, .59, .61, .62, .64, .66, .67, .68, .71 through .74, .81, .83, .84, .87, .89, .95, .97, .99, .100, .102, .106, .107, .111, .113, .114, .116, .121, .122, .131, .132, .133, .150, .151, .180, .181, .200; 819.1, .11, .13, .15, .17, .19, .21; 823.1, .2, .11 through .15; 824.1, .2, .11; 827.1, .11, .12; 828.1, .2, .11, .21; 842.1, .11 through .16; 843.1, .5, .11 through .18, .20, .22; 845.1, .2, .11 through .21; 846.1, .5, .12, .14, .17, .18; 850.1, .5, .12 through .15.
March 30, 1990	December 18, 1990, February 15, 1991.	DOR/RR 700.5, 700.11(b)(4), and part 702, concerning an exemption for operations when the extraction of coal is incidental to the extraction of other minerals.
June 21, 1990	January 9, 1991	DOM/RR 772.12(b)(12); 773.5(a)(2): the definition of ''owned or controlled and owns or controls''.
February 6, 1992	December 7, 1993	Bond Release Guidelines, including revegetation success standards, statistically valid sampling techniques, guidelines for phase I, II, and III bond release.
February 17, 1994	January 10, 1995	Bond Release Guidelines, including revegetation success standards, statistically valid sampling techniques, guidelines for phase I, II, and III bond release; Subsections I.E.3.b; I.F.3.d, .5.b; II.B.2.d; III.B.2.d; IV.A.1.a, b; V.B.2.c through f; VI.B.2.e; VII.A, B; Appendices A, F, J, O, R, V.
September 14, 1994	March 10 and 29, 1995	OAC 460:20–35–1, –3(a)(2), (A), (B), (D), (b), –6(a), (b)(1) through (6), (d), –7(a), (2), (3); 460:20–43–12(b)(3), –45–12(b)(3); OAC, certification of construction of siltation structures by qualified, registered professional engineers and land surveyors; OAC 460:20–43–12(f)(8), –47, –48, –53(1); 460:20–45–28, –53(1); 460:20–49–5(a)(1), –6, –7(5).
July 5, 1995	November 9, 1995	OAC 460:20–61–10(b)(1).
April 26, 1996	July 24, 1996	OAC 460:20–6–1 through –5.

50. Section 936.25 is revised to read as follows:

§ 936.25 Approval of Oklahoma abandoned mine land reclamation plan amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the Federal Register and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the Federal Register.

Original amendment submission date	Date of final publication	Citation/description
August 24, 1989, November 13, 1995.	May 28, 1996	OAC 155:15, 884.13.(c)(1), (2), (3), (5), (7), (d)(1).

PART 938—PENNSYLVANIA

51. The authority citation for part 938 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

52. Section 938.15 is revised to read as follows:

§ 938.15 Approval of Pennsylvania Regulatory program amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the Federal Register and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the Federal Register.

Original amendment submission date	Date of final publication	Citation/description
April 26, 1983, May 12, 1983.	October 5, 1983	Bureau of Water Quality Management Underground Mine/Coal preparation Plant Permit Application Instructions; Bituminous Underground Mining Operation Permit/Manual; Coal Refuse Disposal Permit Application; Anthracite Coal Refuse Disposal Permit Application; Anthracite Bank Removal and Reclamation Permit Application; Anthracite Surface Mine Permit Application; Anthracite Underground Mining Operation Permit Application/Manual; Memorandum of Understanding between the Pennsylvania Department of Environmental Resources and the Pennsylvania Museum and Historical Commission.
August 1, 1983	January 4, 1984	25 PA Code 89.143(2)(iii)(A) through (D), (4), .144(b)(3), .145(a)(4), (b), (d), .146(e), .147(a).
January 17, 1984	March 20, 1984	Pennsylvania policy statement: Citizen Complaint Procedures, Department of Environmental Resources Inspection and Enforcement Policy for Mining Operations, Civil Penalty Program.
October 31, 1983	May 15, 1984, July 3, 1984.	25 PA Code 86.5, .38(b), .112(b), .134(c), .211; 87.1, .112(c)(1), (2), (d), (e), .144, .138, .175; 89.86(a)(1), .161, .162, .163; 90.1, .112(c), (d), (e); addendum to the DER Inspection and Enforcement Policy for Mining Operations.
March 30, 1984	November 27, 1984	25 PA Code chapter 88, subchapters A through D, F.
March 2, 1984	April 4, 1985	Blaster training, examination and certification program, as contained in 25 PA Code chapter 210, subchapter A.
April 19, 1985	August 15, 1985	Blaster certification program.
April 18, 1985	November 4, 1985	25 PA Code chapter 89, subchapter F on subsidence control regulations.
September 5, 1985	February 19, 1986	Act 158 of 1984; 25 PA Code chapter 87, subchapter F; chapter 88, subchapter G; letters from the Pennsylvania Deputy General Counsel and the First Deputy Attorney General to Rebecca W. Hanmer, Director, Office of Water Enforcement Permits, U.S. EPA, dated July 8, 1985, and August 19, 1985, respectively.
November 2, 1984	May 19, 1986	25 PA Code 86.37(a)(13), .171(e)(12), .172(d)(2)(iii); 88.1—definitions for ''cropland,'' ''historically used for cropland,'' ''prime farmland,'' and ''soil survey'', .24(b)(4), .30(a), (1), .31(a)(7), .32, .61, .129, .134(a), (e), .135(c)(1), (f)(2), (h), .136(a), (c), .137(18), (19), .217, .330, .381(b)(2), (c)(6), (8), (9), .491(i)(1), (13), (22), (23), (j), (k), .492(m), .493(8).
September 30, 1985	September 8, 1986	Civil Penalty Program: §§ I, II.2, II.4, II.8; Inspection and Enforcement Policy: §§ II.B.2.a.(4), (5), E, J.
April 18, 1985	June 18, 1987	25 PA Code 89.143(b).
January 22, 1987	July 14, 1987	§ 4.2(F)(II): right-of-entry requirements.
April 14, 1987	October 27, 1988	§§ II.J of the Inspection and Enforcement Policy, II.2 of the Civil Penalty Program, both concern alternative enforcement actions for failure to abate violations.
December 5, 1988	July 14, 1989	25 PA Code 86.1, .12; 88.1, .381; 89.5.
August 17, 1988	August 18, 1989	Civil Penalty Program, § II (Assessment), paragraph 4; Program Guidance Manual, § 1:3:6 (Civil Penalty Assessments) Part 1—Coal, paragraph 4.
August 21, 1986	November 3, 1989	PA Policy Statement entitled Reclamation in Lieu of Cash Payment for Civil Penalties found in Department of Environmental Resources Program Guidance Manual at § 1:3:9.
December 22, 1989	May 31, 1991	25 PA Code 86.17(e), .83(a)(2), .112(b)(1), .158(b)(1), (2), (3), .174(d)(1), .175(1), (2), (3), .182(d); 87.73, .112(b)(1), (f), .125(a), .127(e)(2), (h), .131(n), .135(a), .138; 88.24(b)(4), .492(c)(4); 89.34(a)(1), (2)(ii), .59(a)(1), (2), (3), .71(d), .82, .101(a), (d), .172(b); 90.112(b)(1), (d), (f), .150.
September 24, 1986	October 24, 1991	25 PA Code 86.182, .186 through .190; PA SMCRA §§ 3.1, 4(a), (b), 18(c)(i), 18.8.
May 27, 1992	October 28, 1992	25 PA Code 86.83, .94.
June 2, 1992	November 16, 1992	25 PA Code 86.1; 88.1, .381; 89.5.
December 18, 1991	December 30, 1992, January 14, 1993, April 8, 1993.	25 PA Code 86.1, .36(c), .37(a), (c), .41 .43, .44, .52(c)(4), .53, .55(d), .62, .63, .101, .102, .129, .132, .133, .134(3)(ii)(C), (12), .136, .151(a), (d), (h), .163, .165, .193(3), (f), .194, .195, .202, .212; 87.1, .11, .14, .21, .42(2), .54(a)(9), (22), .77, .112(c), .151(d), .155, .160, .166; 88.1, .22(2), .31(a)(9), (22), .56, .115, .116, .381(c)(9), .491(a)(1)(ii), (i)(7), .492(f); 89.5, .26, .38(a), (b), (c), .86, .90, .111(c); 90.1, .11(a)(3), .21(a)(9), (24), .40, .112(c), .134, .140, .155(d), .159.
February 18, 1993	July 6, 1993	25 PA Code 86.17.
March 9, 1993	December 6, 1993	PA SMCRA § 4(d) concerning financial instruments for performance bonds.
May 11, 1993	July 20, 1994	25 PA Code 86.142, .159, .166.
October 24, 1994	April 3, 1995	25 PA Code 86.81 through .89, .91 through .95.

53. Section 938.25 is revised to read as follows:

§ 938.25 Approval of Pennsylvania abandoned mine land reclamation plan amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the Federal Register and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the Federal Register.

Original amendment submission date	Date of final publication	Citation/description
April 17, 1992	October 30, 1992	Part D of Plan—Initiative, Part E of Plan—Modifications.

PART 943—TEXAS

54. The authority citation for part 943 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

55. Section 943.15 is revised to read as follows:

§ 943.15 Approval of Texas regulatory program amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the Federal Register and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the Federal Register.

Original amendment submission date	Date of final publication	Citation/description
March 27, 1980	June 18, 1980, November 26, 1980.	TCMR 051.07.04.023, .070.
September 18, 1981	June 3, 1982	TCMR 05.07.01.313(a).
August 31, 1984	July 9, 1985	TCMR 051.07.04.008, .138, .184, .201, .340, .510, .620 through .625.
August 24, 1988	December 11, 1989	TCMR 806.309(j)(1)(A) through (H), (2)(A) through (D), (4)(A), (B), (C), (5)(A), (B), (6)(A) through (E), (7), (8).
June 24, 1991	February 19, 1992	TCMR 806.309(j)(1)(H), (I), 806.309(j)(2), (3), (7), (8), (9).
December 23, 1991	April 17, 1992	TCMR 816.394.
September 12, 1989	May 21, 1992	TCMR 701.008(53), 778.116(a) through (l), (n); 786.215(e)(2), .221(d), .225(h).
September 22, 1989	August 19, 1992	TCMR 700.002(b)(2), .003(22), .008(18), (56), (81), (85); 762.074(1), (2); 770.100(c), .101, .102(c); 771.107(d), .108; 776.111(a)(3)(A), (7), (b), (1); 779.125(b), .126(a), .133; 780.144(a), .145(b)(4), .151; 783.171(b), .172, .179; 784.187(b)(4), .191, .194(a), (e), (f), .195(a); 785.200(a), (b), (c), (f) through (i); 786.216(p); 788.230(a)(4), (5), (6); 788.232(c)(1), (d), (e); 795.237(b)(5), (c), (d), .238(d)(4), .243(a); 800.301(b); 808.317; 815.327(a), (f); 816.339(a), .344(a), .353(d), .359 through .362, .363(j), (i), (o), (p), .368(c), .369(a), .371(c)(3), .375(d), .377(b), .380(b), (c), .384(b)(2), .390(a); 817.509(a), .514(a), .531(j), (i), (o), (p), .547(b), (c), .551(b)(2), .562(c), .565(e); 819.600(c)(1); 840.672(b); 843.680(a), .682(f); 845.695(b)(2); 850.700, .701, .702(a) through (d), .703 through .710; recodification of the TCMR 700.001 through 845.698.
February 8, 1993	March 21, 1994	TCMR 778.116(l), (m); 786.215(e)(1), (2), (g); 788.225(e), (1)(A), (2), (3), (f), (1), (2), (g); 843.680(c).
May 24, 1994	March 27, 1995	TCMR 778.116(m); 786.215(e)(1), (f), .216(i) through (o), .225(f)(3), (4), (g), (1), (i) through (iv), (2), (h).
August 11, 1995	December 13, 1995	TCMR 806.309(j)(2)(C)(iv)(I)(A) through (C), (II)(A) through (C).
December 20, 1995	April 8, 1996	TCMR 701.008(71); 780.154(a) through (c); 784.198(a) through (c); 816.400 through 403; 815.327(c); 817.569 through 572; 827.651(b).
August 30, 1995, September 18, 1995.	June 18, 1996	TSMCRA Article 5920–11, 6(b), 21(a), (c); TCMR 701.008(104); 778.116(m), .225(g)(1).
August 24,1995	January 30, 1997	Recodification of TSMCRA Article 5920–11, 1 through 38; 4 Ch. 134.001 through .188.

56. Section 943.25 is revised to read as follows:

§ 943.25 Approval of Texas abandoned mine land reclamation plan amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the Federal Register and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the Federal Register.

Original amendment submission date	Date of final publication	Citation/description
May 11 and 26, 1989	August 19, 1992	Certification of the completion of reclamation on all lands adversely impacted by past coal mining
August 24, 1997	January 30, 1997	Recodification of TSMCRA Article 5920–11, § 3(7); 4 Ch. 134.142.

PART 944—UTAH

57. The authority citation for part 944 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

58. Section 944.15 is revised to read as follows:

§ 944.15 Approval of Utah regulatory program amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the Federal Register and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the Federal Register.

Original amendment submission date	Date of final publication	Citation/description
June 29, 1981	June 22, 1982	UCA 40–10–10, –11, –16, –17, –18, –21, –22, –24; UMC 784.20(b)(3)(v); 817.124(b).
May 21, 1981	September 27, 1982	SMC/UMC 845; Vegetation Information Guidelines.
August 26, 1982	December 13, 1982	SMC 816.53(c); UMC 817.42(a)(3)(i), (ii), .53(c), .101(b)(8), (c).
December 3, 1982	March 7, 1983	SMC/UMC 785.19(c)(3)(ii); SMC 816.72(b), (c); UMC 817.72(b), (c).
February 6, 1984	August 29, 1984	SMC/UMC 816/817.42; 840.11; 843.12.
August 13, 1984	December 3, 1985	SMC/UMC 700.1, .5—definition for ''affected area;'' 800, .5, .11 through .17, .20 through .23, .30, .40, .50, .60; 805 through 808; 843.11, .15, .16; 845.12, .13, .17 through .20.
September 25, 1985	December 18, 1985	SMC/UMC 843.13.
October 9, 1985	January 16, 1986	SMC/UMC 700.5—definition for ''incidental boundary change;'' 771.21(b)(3); 778.12.
January 21, 1985	June 10, 1986	Definitions for ''adjacent area,'' ''disturbed area,'' ''permit area,'' ''mine plan area;'' SMC 843.11, .15, .16, .20; 845.12, .13, .17, .18, .19.
March 3, 1986	July 28, 1986	SMC/UMC 816/817.61; 850; Memorandum of Agreement between the Board and Division of Oil, Gas, and Mining and the Utah Industrial Commission; UCA 40–2–14 through –16; Utah Industrial Commission's General Safety Orders, Coal Mining, §§ 51 through 53.
September 3, 1986	January 28, 1987	SMC/UMC 700.5—definitions for ''coal processing,'' ''coal processing plant''.
February 17, 1987	March 28, 1988	SMC/UMC 845.15(b)(1)(ii), (2).
September 24, 1987	August 18, 1988	SMC/UMC 785.19(e)(2).
August 11, 1989	April 12, 1990	Utah Admin. R. 614–100 through –105, –200 through –203, –300; –301, –100 through –800; –302, –100 through –300; –303, –100 through –300; –400, –100 through –300; –401, –100 through –900; –402, –100 through –500.
November 13, 1989	August 13, 1990	UCA 40–10–10, –14, –20, –21, –25, –30, –31.
October 10, 1990	January 29, 1991	UCA 40–10–6.5(1), (2), (3); 6.6(1), (2).
July 3, 1990	August 23, 1991	Utah Admin. R. 614–100–200, definitions of ''fragile lands,'' ''owned or controlled,'' ''owns or controls,'' ''unwarranted failure to comply,'' ''valid existing rights;'' –415; 614–103–220 through –222; 614–105–443; 614–201–400 through –432, .100, .300, –433, –434; 614–300–112.500, –132.100, .120, .200, .300, –148, .100, .200, –160, –161, –162.100 through .300, –163, .100 through .400, –164, .100 through .300, –170; 614–301–112.200 through .420, .900, –113.300 through .310, .400, –352, –356.110 and Vegetation Information.
March 1, 1991	November 22, 1991	Utah Admin. R. 614–100–200, definition for ''public road''.
December 30, 1991	May 11, 1992	Utah Admin. R. 645–100–200 definitions for ''cumulative impact area,'' ''cumulative measurement period,'' ''cumulative production,'' ''cumulative revenue,'' ''mining area,'' ''other minerals;'' –414; 645–106–100, –200 through –262, –300 through –326, –400 through –430, –500 through –522, –600 through –616, –700 through –724, –800 through –843, –900 through –926; 645–300–211.
July 26, 1991	August 19, 1992	UCA 40–10–5(1), (b), (2), –6.6(1), (2), (3).
November 20, 1991	September 11, 1992	Utah Admin. R. 645–100–200, –400 through –452; 645–103–220; 645–301–111.400, –356.231, –425, –512.140, –528.320, –553.800, –731.750, –742.224; 645–300–110, Guideline for Examining and Evaluating Violations, Penalties, and Fees; Vegetation Information Guidelines.
November 5, 1992	March 30, 1993	Utah Admin. R. 614–100–452.
April 30, 1992	September 17, 1993	Utah Admin. R. 645–100–200, definition for ''highwall;'' 645–301–553, .100, .130, .510, .520, .521, .523, .620, .630 through .633, .652 through .655.
September 17, 1992	April 7, 1994	Utah Admin. R. 645–100–200, definitions for ''affected area,'' ''public road,'' ''road''.
March 7, 1994	May 24, 1994	Utah Admin. R. 645–303–224.400 through .600.
August 2, 1993	July 11, 1994	Utah Admin. R. 641–112; R645–100–500; 645–103–441; 645–203–200; 645–301–524.661, –731.760; 645–302–314.110, –323.310.
January 27, 1994	September 27, 1994	Utah Admin. R. 645–200–121, –122, –123, –220, –230; 645–201–100 through –130, –200 through –220, –223, –310, –323.100, –342.200; 645–202–100, –232, –235.
March 7, 1994	September 27, 1994	UCA 40–10–14(3), 20(1), (2), (3), (5), (6), (8).
September 9, 1994	March 27, 1995	Utah Admin. R. 645–203–200.
February 10, 1995	May 2, 1995	Utah Admin. R. 645–401–120, –410, –430, –721, –723.100, –742, –810, –830, –910; 645–402–120, –420, –422.
November 12, 1993	May 30, 1995	Utah Admin. R. 645–100–200, definition for ''continuously mined areas;'' 645–301–553, .100 through .130, .150, .200 through .230, .252, .300, .500 through .540, .600 through .612, .650, .650.100 through .500.
April 14, 1994	July 19, 1995	UCA 40–10–2(1) through (6), –3(1) through (22), –4, –6.5(1), (2), (3), .7, –7(1), –8(1), (3), –10(2), –11(1), (2)(a) through (d), (e)(ii), (f)(i), (iii), (3), (4), (a), (b), (5)(a) through (c), –12(3), –13(2)(b), –14(2), (3), (6), –15(1), –16(1), (3), (6)(a) through (d), –17(2)(g), (j)(i)(B), (ii)(A), (B), (2)(m), (o), (o)(i), (iv), (v), (p)(i)(F), (ii), (iii), (t)(i), (ii), (2)(v), (viii), (3)(b), (ii), (c), (4)(a), (d), (5), –18(1), (2)(i)(i)(B), (j), (4)(a) through (c), (5), –19(1), (2)(a), –20(2)(e)(ii), –21(1)(a)(i), (ii), (2)(a)(ii), (5), –22(1)(c), (d), (2)(a)(i), (b), (3)(a), (b), (d), (e), (f), –24(1)(c)(i)(A), (B), (C), (D), (ii), (e)(i), (ii), (iii), (2)(a), (b), –30; Utah Admin. R. 641–100–100.
February 6, 1995	September 14, 1995	Utah Admin. R. 645–301–357.300 through .365, Vegetation Information Guidelines.

Original amendment submission date	Date of final publication	Citation/description
November 30, 1995, December 4, 1995, March 11, 1996.	September 4, 1996	Utah Admin. R. 645–100–500; 645–301–553.110, .120.

59. Section 944.25 is revised to read as follows:

§ 944.25 Approval of Utah abandoned mine land reclamation plan amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the Federal Register and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the Federal Register.

Original amendment submission date	Date of final publication	Citation/description
July 26, 1991	August 19, 1992	UCA 40–10–25(1), (2)(c), (e), (f), (3)(a), (b), (c), .1(1)(a), (b), (2)(a), (b), (c), (3)(a) through (d), .2(1), (2), –27(10)(b), –28.1(1) through (7).
March 7, 1994	September 27, 1994 ...	UCA 40–10–28(1), (a)(i), (b), (2)(b), .1(6).
April 14, 1994	July 19, 1995	UCA 40–10–25(2)(d), (e), (3), (a), (b), (4), (5), (6), –27(5)(a), (12)(b), –28(1)(a)(ii), (2)(a).

PART 946—VIRGINIA

60. The authority citation for part 946 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

61. Section 946.15 is revised to read as follows:

§ 946.15 Approval of Virginia regulatory program amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the Federal Register and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the Federal Register.

Original amendment submission date	Date of final publication	Citation/description
January 28, 1982	July 21, 1982	Virginia's revised policy statement granting authority to field inspectors to issue cessation orders for imminent danger or harm.
July 9, 1982	August 19, 1982	VA Code § 33.1–246.1; V816.150, V817.150.
July 8, 1982	September 21, 1982 ...	VA Code §§ 45.1–270.1 through .7; V808.15, V809, reference changes to remainder of Subchapter VJ.
August 13, 1982	December 13, 1982	VA Code § 45.1–235(C); conditions (a) through (j), (l) through (p), (s).
September 30, 1982 ...	January 18, 1983	§ V809.
December 20, 1982	February 28, 1983	§ V809.11.
March 22, 1983	April 21, 1983, June 6 and 20, 1983.	VA Code §§ 45.1–234, 240 , 249, 251.
July 9, 1982	April 22, 1983	Chapter 23 of Title 45.
May 20, 1983	December 27, 1983	VA Code §§ 45.1–270.2 through .4; Part V809.
July 27, 1983	March 16, 1984	Coal haul road policy.
February 10, 1984	May 8, 1984	§ V786.19(o).
April 11, 1984	August 2, 1984	Subchapter VM Part V850—Blaster certification program; §§ V816/817.61(c); Chapter 230 of the 1984 Acts of Assembly; and all other items.
June 13, 1984	August 31, 1984	Chapter 590 of the 1984 Acts of Assembly to revise various Sections of Title 45.
February 20, 1985	May 8, 1985	VA Code §§ 45.1–244, 369.1.
May 1985	August 15, 1985	VA Code §§ 45.1–364, 364.1.
September 4, 1985	November 18, 1985	V700.5—definitions of ''coal preparation or coal processing,'' ''coal preparation plant''.
November 8, 1985	November 25, 1986	VR 480–03–19: 700 through 850; techniques for measuring revegetation success; applications for a permit revision.
March 20, 1987	July 17, 1987	VR 480–03–19: 784.20(f)(2); 817.121(c)(2).
January 16, 1987	August 17, 1987	VR 480–03–19.801.13(a)(2), .17(a).
June 15, 1987, July 2, 1987.	December 31, 1987	VA Code §§ 45.1–270.3:1, .4, .5:1, .6B; VR 480–03–19.801.12(a).
September 1, 1987	March 7, 1988	VR 480–13–19.789.1(e); measurement techniques for determining ground cover on small areas; sampling techniques for measuring productivity of grazing land, pasture land, and crop land; VR 480–03–19: .843.15, .845.17(b), .18(b)(1).
September 10, 1987 ...	June 16, 1988	VR 480–03–19: 700.5 defining ''abatement plan,'' ''actual improvement,'' ''baseline pollution load,'' ''best professional judgment,'' ''best technology,'' ''pollution abatement area;'' 785.19; 825.
June 30, 1989	December 1, 1989	VR 480–03–19: 700.11; 764.15, 773.15; 779.19, .20; 780.14, .16; 783.19, .20; 784.20, .21; 785.14; 801.17; 816.97; 817.97; 840.11; 846, .2, .12; 846.14, .17, .18.
July 5, 1989	February 2, 1990	VA Code §§ 45.1–270.2, .3.

Original amendment submission date	Date of final publication	Citation/description
April 6, 1988	February 5, 1990	VR 480–03–19: 700.5; 772.12(b)(8)(iv); 773.12, .15(c)(11), (12); 779.12(b), .24(j); .780.31; 783.12(b), .24(j); 784.17; 785.13(b)(2), .14(c)(1), .16(a)(1); 800.52; 816/817.116(b)(3)(v)(C); 842.15(d); 843.12(j), .13(f); revegetation success standard.
August 31, 1990	December 7, 1990	VA Code § 45.1–270.4:1.
September 12, 1990	December 26, 1990	VR 480–03–19: 784.20; 817.121
June 29, 1990	January 4, 1991	VR 480–03–19: 700.5; 773.15, .17, .20, .21; 778.13, .14; 843.11, .13.
April 5, 1991, May 1, 1991.	August 5, 1991	VR 480–03–19: 801.11(a), .12(a), (b), (g), .14(a) through (d), .15(a); VA Code §§ 45.1–261.1, 270.3, .3:1, .4, .4:1
October 1, 1990	July 7, 1992	VR 480–03–19: 700.5 definitions—''Road,'' ''Support Facilities,'' .11(a), (4), (d); 701.11(a) through (c); 702.5 defining Exemption for Coal Extraction Incidental to the Extraction of Other Minerals, .11 through .18; 772.11(a), (b)(3), .12(a), (b)(3), (d), .14(a), (b); 773.11(a); 780.25(c), .37(a) through (e), .38; 784.16(c), .24(a) through (e), .30; 785.17(e)(5), .21(a); 800.60(b); 815.2, .15(b); 816.46(c)(2), .49(a)(1), (3)(i), (5), (8), (9), (b)(7), (c)(2), .84(b)(2), (f), .116(b)(3)(i), (ii), (iv)(C), (c)(2), .150(a) through .150(e), (f)(1), .151(a)(1), (2), (c), (d)(1), (2), (4), (5), (6); 817.46(c)(2), .49(a)(1), (3)(i), (5), (8), (9), (b)(7), (c)(2), .84(b)(2), (f), .116(b)(3)(i), (ii), (iv)(C), (v)(C), (c)(2), .150(a) through (e), (f)(1), .151(a), (c), (d)(1), (2), (4), (5), (6); 823.11(b), .12(c)(2), .14(d); 827.1; 843.11(a)(2).
May 6, 1993	September 24, 1993	VA Code §§ 45.1–243, –258.
October 22, 1993	September 27, 1994	VR 480–03–19.816/817: .49(a)(3)(ii), .116(b)(3)(v)(A), (c)(3), .151(b), .152.
October 31, 1994	August 8, 1995	VR 480–03–19.816/817.102(e)(1), (2).
October 13, 1995	May 29, 1996	VR 480–03–19.816.102(e), .817.102(e).
April 17, 1996	August 19, 1996	VA Code § 45.1–243B; VR 480–03–19.784.14(g); 817.41(i)(3), (i)(3)(i), (ii).
May 28, 1996	September 4, 1996	VA 480–03–19.700.5 concerning definitions of ''Lands eligible for remining,'' ''Unanticipated event or condition;'' 773.15(b)(4), (c)(14); 785.25; 816/817.116(c)(2)(i), (ii).

62. Section 946.25 is revised to read as follows:

§ 946.25 Approval of Virginia abandoned mine land reclamation plan amendments.

(a) The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the Federal Register and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the Federal Register.

Original amendment submission date	Date of final publication	Citation/description
November 8, 1985	November 25, 1986	VR 480–03–19.874 through 882.
February 3, 1987	November 13, 1987	VR 480–03–19.884.13(c) (2), (5), (6), (7), (d)(1), (2); Establish emergency program.

(b) You may receive a copy from:

(1) Virginia Division of Mined Land Reclamation, P.O. Drawer 900, Big Stone Gap, Virginia 24219, or

(2) Office of Surface Mining Reclamation and Enforcement, Big Stone Gap Field Office, Powell Valley Square Shopping Center, 1941 Neeley Road, Suite 201, Compartment 116, Big Stone Gap, Virginia 24219.

PART 948—WEST VIRGINIA

63. The authority citation for part 948 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

64. Section 948.15 is revised to read as follows:

§ 948.15 Approval of West Virginia regulatory program amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the Federal Register and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the Federal Register.

Original amendment submission date	Date of final publication	Citation/description
October 29, 1981	May 11, 1982	§ 10.
June 17, 1982	September 10, 1982	§ E.03 of the State's coal refuse disposal regulations.
September 14, 1982, October 29, 1982.	March 1, 1983	§§ 4D.04h; 6A.02a.6; 6B.02, .07c.2, f; 7A.02a.6; 12B.07; 15A.01; Part H concerning alternative bonding system.
February 16, 1983, April 29, 1983, June 15, 1983, September 13, 1983.	November 16, 1983	Technical Handbook of Standards and Specifications for Mining Operations; applicability; bond release procedures for interim program permits; incidental mining.
January 12, 1984	September 20, 1984	Chapter 22–4 Series—blaster certification program.
November 20, 1984	April 23, 1985	Chapter 22–4 Series, § 6.01(B), 9—blaster certification program.

Original amendment submission date	Date of final publication	Citation/description
March 30, 1984, October 30, 1984, May 20, 1985, June 14, 1985.	July 11, 1985	Reclamation and coal refuse disposal; Transfer of program authority; permit addendum and Chapter 20, Revegetation, of the Technical Handbook for Surface Mining; permit or significant revision to a permit; the coal exploration approval document; civil penalty procedures; assessable and non-assessable violations.
November 11, 1985	March 20, 1986	Financial analysis and supporting documentation demonstrating sufficient money in the special reclamation fund; withdrawals from the fund; noncoal administrative expenses.
June 30, 1986, April 26, 1986.	May 23, 1990	Code of Violations; Replacement of all regulations in chapter 20, Article 6, Series VII and VII–A (1985) with new set of Legislative Rules at title 38, Series 2.
June 29, 1990	October 4, 1991	CSR 38–2 §§ 2, 3, 5, 6, 9, 11 through 14, 17, 20, 22.
July 12, 1991	November 19, 1991	CSR 38–2–20.5, .6, .7
July 30, 1993	August 16, 1995	CSR 38–2–14.14(b)(4), (g)(1)(B), (g)(8), (11), (12).
June 28, 1993	October 4, 1995, February 21, 1996.	WV Code 22–1–4 through –8; 22–2; 22–3–3, –5, –7, –8, –9, a, –11(a), (g), –12, –13, –15, –17, –18, –19, –22, –26,—28, –40; 22B–1–4 through –12; 22B–3–4; 22B–4; CSR 38–2–1.2, –2, –3.1(o), .4, .6, .7, .8, .12, .14, .15, .16, .25, .26, .27(a), .28, .29, .30, .31(a), .32, .33, .34, –4, .1(a), .2 through .12, –5.2, .4, .5, –6, .3(b), .6, .8, –8.1, –9, –11.1 through .7, –12.2, .3, .4(a), (2)(B), (c) through (e), .5,—13, –14.5, .8, .11, .12, .14, .15, .17, .18, .19, –15.2,—16.2, –17, –18.3, –20.1, .2, .4 through .7, –22; 38–2C–4,—5, –8.2, –10.1, –11.1; 38–2D–4.4(b), –6.3(a), –8.7(a).
April 2, 1996	July 24, 1996	CSR 38–2–4.12, –5.4(c), –12.2(e), –14.3(c), .14(e)(4), .15(m).

65. Section 948.25 is revised to read as follows:

§ 948.25 Approval of West Virginia abandoned mine land reclamation plan amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the Federal Register and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the Federal Register.

Original amendment submission date	Date of final publication	Citation/description
May 20, 1985	July 11, 1985	Transfer of program authority to the Department of Energy (HB 1850).
December 30, 1987	August 26, 1988	Agency structure, public participation procedures, assumption of emergency reclamation program.
September 17, 1991, October 25, 1991.	March 26, 1993	Amendments contained in House Bill 2492; Expanded eligibility criteria; Acid mine drainage treatment and abatement program.

PART 950—WYOMING

66. The authority citation for part 950 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

67. Section 950.15 is revised to read as follows:

§ 950.15 Approval of Wyoming regulatory program amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the Federal Register and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the Federal Register.

Original amendment submission date	Date of final publication	Citation/description
March 26, 1981, April 8, 1981.	February 18, 1982	LQD Rules, Ch I, § 2(14) defining ''complete application;'' Ch II, §§ 1.c., 2.a.(1)(f)(ii), 3.a(6)(b)(iii), (d)(ii); Ch IV, §§ 2.c.(2)(a), 2.d.(6), 3.p.(1)(a); sworn applicant statement regarding reclamation fees payment.
May 26, 1982	September 27, 1982	LQD Rules, Ch I, § 2(99).
March 3, 8 and 21, 1983.	November 9, 1983	W.S. 35–11–103(e) (xxii), (xxiii) defining ''complete application,'' ''deficiency'' in permit applications, ''interim mine stabilization;'' W.S. 35–11–401(n), 406(h); LQD Rules, Ch I, § 2; Ch XIII, § 2; Ch XVI, §§ 1 through 6.
June 25, 1984	February 28, 1985	LQD Rules, Ch IV, §§ 1, 2; Ch XII, §§ 1 through 7; Ch XVII, §§ 1 through 3.
September 21, 1984	December 3, 1985	LQD Rules, Ch I, § 2; Ch XIII.
October 12, 1984	December 13, 1985	LQD Rules, Ch VI, § 6.
June 19, 1985	January 2, 1986	LQD Rules, Ch X, and accompanying Appendix A.
June 10, 1985	March 31, 1986	LQD Rules, Ch II, § 3; Ch III, § 2; Ch V, §§ 1, 6, 7; Ch VI, §§ 2 through 5; Ch VII, §§ 1 through 4; Ch XI, §§ 1 through 4, 6; Ch XVI, §§ 1 through 5; Ch XVIII, §§ 1 through 5.
May 1, 1986	November 24, 1986	LQD Rules, Chs I, II, III, IV, IX, XII, XIV, XXIII; Appendix A, ''Vegetation Sampling Methods and Reclamation Success Standards for Surface Coal Mining Operations''.
December 13, 1985	May 6, 1987	LQD Rules, Ch XII, ''Self-Bonding Program''.
March 31, 1989	July 25, 1990	LQD Rules, Ch I, § 2; Ch II, §§ 2, 3; Ch IV, §§ 2, 3; Ch V, §§ 2, 6, 7; Ch VI, §§ 3, 4; Ch VII, §§ 1, 4; Ch IX, §§ 1, 2, 3; Ch XI, §§ 1, 3; Ch XII, §§ 1 through 4, 6; Ch XIII, § 1; Ch XIV, §§ 1, 2; Ch XVI, §§ 1, 3, 4; Ch XVII, §§ 1, 2; Ch XVIII, §§ 1, 3.

Original amendment submission date	Date of final publication	Citation/description
May 1, 1986	January 29, 1991	LQD Rules, Ch IV, §§ 3(h)(iii)(A), (B); Ch VI, § 3(c)(ii)(C)(I)
March 21, 1991	July 8, 1992	W.S. Article 1, subsection 35–11–103(e) (xxvi), (xxvii); Article 4, subsection 35–11–402(b).
June 24, 1991	October 29, 1992	W.S. 35–11–103(d)(ii)(D); LQD Rules, Ch I, §§ 2(br), (ba), 3(b)(i); Ch II, §§ 3(a)(vi)(E), (M), (b)(xvi)(D), (xx), (v)(C); Ch IV, §§ 3(d)(vii), (e)(i)(H); Ch XI, § 2(b)(iv); Ch XII, § 1(a); Ch XIII, § 1(a)(v)(A); Ch XXI, § 3(b)(vii), (x).
March 19, 1993	August 23, 1993	W.S. 35–11–406(h), (j).
July 8, 1992	October 7, 1993	LQD Rules, Ch II, § 3(b)(iv)(B); Ch IV, § 3(o)(iv); Appendix B, ''Wildlife Monitoring Requirements for Surface Coal Mining Operations''.
July 24, 1992	November 2, 1993	LQD Rules, Ch I, § 2(e); Ch II, § 3(a)(i)(D); Ch XIV, §§ 2(b)(i), 6(a).
August 18, 1982, March 9, 1993.	January 24, 1994	W.S. 35–11–437(f); LQD Rules, Ch I, § 2(cv) defining ''toxic materials;'' Ch II, § 7; Ch V pertaining to the award of costs and expenses in administrative proceedings; Ch VI pertaining to informal review by the Director.
December 15, 1992, August 6, 1993.	March 30, 1994	LQD Rules, Chs I through XX, Appendices A, B.
May 1, 1986	June 30, 1994	LQD Rules, Ch IV, § 2(b)(i).
April 13, 1994	October 21, 1994	W.S. 35–11–437(f), (g).
November 8, 1994	March 17, 1995	Appendix B, §§ C, E.
June 2, 1995	September 14, 1995	W.S. 35–11–406(j).
April 21, 1995	February 21, 1996	W.S. 35–11–1206(a), (b), –1209(a), (b).
November 29, 1995	August 6, 1996	W.S. 35–11–103(e)(xxviii), (xxix), (xxx); 35–11–402(b), (c); Ch I, § 2(ac), (ax), (bc)(iii), (viii), (xi), (v), (w); Ch. II, § 2(a)(vi)(G)(II), (b)(iv)(C); Ch IV, § 2(d)(x)(E)(I), (II), (III), appendix A; Ch X, § 4(e); Ch XI, § 5(a); Ch. XIII, § 1(a).
April 18, 1996	August 27, 1996	W.S. 35–11–426(a), (b); 35–11–431(a)(vi).

68. Section 950.35 is revised to read as follows:

§ 950.35 Approval of Wyoming abandoned mine land reclamation plan amendments.

(a) Wyoming certification of completing all known coal-related impacts is accepted, effective May 25, 1984.

(b) The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all, or portions of these amendments, were published in the Federal Register and the State citations or a brief description of each amendment. The amendments in this table are listed in order of the date of final publication in the Federal Register.

Original amendment submission date	Date of final publication	Citation/description
December 16, 1991	April 13, 1992	W.S. 35–11–1201 through 1304; Chs I through VIII of State's AML rules.
April 21, 1995	February 21, 1996	W.S. 35–11–1206(a), (b); –1209(a), (b).

[FR DOC. 97–5243 Filed 3–4–97; 8:45 am]
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DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 536

Narcotics Trafficking Sanctions Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Foreign Assets Control of the U.S. Department of the Treasury is issuing the Narcotics Trafficking Sanctions Regulations to implement the President's declaration of a national emergency and imposition of sanctions against significant foreign narcotics traffickers centered in Colombia.

EFFECTIVE DATE: February 28, 1997.

FOR FURTHER INFORMATION CONTACT: Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220; tel.: 202/622–2520.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

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Background

On October 21, 1995, the President issued Executive Order 12978, declaring a national emergency with respect to ''the actions of significant foreign narcotics traffickers centered in Colombia, and the unparalleled violence, corruption, and harm that they cause in the United States and abroad,''

and invoking the authority, *inter alia*, of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706). The order blocks all property and interests in property of four persons listed in an Annex to the order, as well as the property and interests in property of other persons who are designated by the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State. The order also authorizes the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State, to take such actions, including the promulgation of rules and regulations, as may be necessary to carry out the purposes of the order. In implementation of the order, the Treasury Department is issuing the Narcotics Trafficking Sanctions Regulations (the ''Regulations'').

The Regulations block all property and interests in property of (1) foreign persons designated in Executive Order 12978; (2) foreign persons designated by the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State, because they are found:

(a) to play a significant role in international narcotics trafficking centered in Colombia; or

(b) materially to assist in, or provide financial or technological support for or goods or services in support of, the narcotics trafficking activities of persons designated in or pursuant to the order.

The Regulations also block all property and interests in property of persons determined by the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State, to be owned or controlled by, or to act for or on behalf of, any other designated person. Persons coming within any of these categories are called specially designated narcotics traffickers (''SDNTs''). Executive Order 12978 blocks all property or interests in property of SDNTs that are in the United States, that hereinafter come within the United States, or that are or hereafter come within the possession or control of U.S. persons, including their overseas branches. Section 2 of Executive Order 12978 also prohibits any transaction or dealing by U.S. persons or in the United States in property or interests in property of SDNTs, including any transaction that evades or avoids, or that has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in the order.

Transactions otherwise prohibited under this part but found to be consistent with U.S. policy may be authorized by a general license contained in subpart E or by a specific license issued pursuant to the procedures described in § 536.801 of subpart H. Civil and criminal penalties for violations of the Regulations are described in subpart G.

Since the Regulations involve a foreign affairs function, the provisions of Executive Order 12866 and the Administrative Procedure Act (5 U.S.C. 553), requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply. Wherever possible, however, it is the practice of the Office of Foreign Assets Control to receive written submissions or hold informal consultations with interested parties concerning any rule or other public document.

Paperwork Reduction Act

The Regulations are being issued without prior notice and public comment procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the collections of information contained in the Regulations have been submitted to and approved by the Office of Management and Budget (''OMB'') pending public comment, and have been assigned control number 1505–0163. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The collections of information in the Regulations are contained in §§ 536.503, 536.504, subpart F, and § 536.801. This information is required by the Office of Foreign Assets Control for licensing, compliance, civil penalty, and enforcement purposes. This information will be used to determine the eligibility of applicants for the benefits provided through specific licenses, to determine whether persons subject to the Regulations are in compliance with applicable requirements, and to determine whether and to what extent civil penalty or other enforcement action is appropriate. The likely respondents and record keepers are individuals and business organizations.

The estimated total annual reporting and/or recordkeeping burden: 500 hours.

The estimated annual burden per respondent/record keeper varies from 30 minutes to 2 hours, depending on individual circumstances, with an estimated average of 1 hour.

Estimated number of respondents and/or record keepers: 500.

Estimated annual frequency of responses: 1–12.

Comments are invited on: (a) whether these collections of information are necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collections of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start–up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments concerning the above information, the accuracy of estimated average annual burden, and suggestions for reducing this burden should be directed to OMB, Paperwork Reduction Project, control number 1505–0163, Washington, DC 20503, with a copy to the Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Ave., NW—Annex, Washington, DC 20220. Any such comments should be submitted not later than May 5, 1997. Comments on aspects of the Regulations other than those involving collections of information should not be sent to OMB.

List of Subjects in 31 CFR Part 536

Administrative practice and procedure, Banks, banking, Blocking of assets, Drug traffic control, Narcotics trafficking, Penalties, Reporting and recordkeeping requirements, Specially designated narcotics traffickers, Transfer of assets.

For the reasons set forth in the preamble, 31 CFR part 536 is added to read as follows:

PART 536—NARCOTICS TRAFFICKING SANCTIONS REGULATIONS

Subpart A—Relation of This Part to Other Laws and Regulations

Sec.
536.101 Relation of this part to other laws and regulations.

Subpart B—Prohibitions

536.201 Prohibited transactions involving blocked property.
536.202 Effect of transfers violating the provisions of this part.
536.203 Holding of certain types of blocked property in interest–bearing accounts.
536.204 Evasions; attempts; conspiracies.
536.205 Exempt transactions.

Subpart C—General Definitions

536.301 Blocked account; blocked property.
536.302 Effective date.
536.303 Entity.
536.304 Foreign person.
536.305 General license.
536.306 Information and informational materials.
536.307 Interest.
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536.309 Person.
536.310 Property; property interest.
536.311 Narcotics trafficking.
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536.313 Specific license.
536.314 Transfer.
536.315 United States.
536.316 United States person; U.S. person.
536.317 U.S. financial institution.

Subpart D—Interpretations

536.401 Reference to amended sections.
536.402 Effect of amendment.
536.403 Termination and acquisition of an interest in blocked property.
536.404 Setoffs prohibited.
536.405 Transactions incidental to a licensed transaction.
536.406 Provision of services.
536.407 Offshore transactions.
536.408 Alleged change in ownership or control of an entity designated as a specially designated narcotics trafficker.
536.409 Credit extended and cards issued by U.S. financial institutions.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

536.501 Effect of license or authorization.
536.502 Exclusion from licenses and authorizations.
536.503 Payments and transfers to blocked accounts in U.S. financial institutions.
536.504 Investment and reinvestment of certain funds.
536.505 Entries in certain accounts for normal service charges authorized.
536.506 Provision of certain legal services authorized.
536.507 Authorization of emergency medical services.

Subpart F—Reports

536.601 Required records.
536.602 Reports to be furnished on demand.
536.603 Registration of persons holding blocked property subject to § 536.201.

Subpart G—Penalties

536.701 Penalties.
536.702 Prepenalty notice.
536.703 Response to prepenalty notice.
536.704 Penalty notice.
536.705 Administrative collection; referral to United States Department of Justice.

Subpart H—Procedures

536.801 Licensing.
536.802 Decisions.
536.803 Amendment, modification, or revocation.
536.804 Rulemaking.
536.805 Delegation by the Secretary of the Treasury.
536.806 Rules governing availability of information.

Subpart I—Paperwork Reduction Act

536.901 Paperwork Reduction Act notice.

Authority: 3 U.S.C. 301; 50 U.S.C. 1601–1641, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); E.O. 12978, 60 FR 54579 (October 24, 1995), 3 CFR, 1995 Comp., p. 415.

Subpart A—Relation of This Part to Other Laws and Regulations

§ 536.101 Relation of this part to other laws and regulations.

(a) This part is separate from, and independent of, the other parts of this chapter. Differing foreign policy and national security contexts may result in differing interpretations of similar language among the parts of this chapter. No license or authorization contained in or issued pursuant to those other parts authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to any other provision of law or regulation authorizes any transaction prohibited by this part.

(b) No license or authorization contained in or issued pursuant to this part relieves the involved parties from complying with any other applicable laws or regulations.

Subpart B—Prohibitions

§ 536.201 Prohibited transactions involving blocked property.

Except as authorized by regulations, orders, directives, rulings, instructions, licenses, or otherwise, and notwithstanding any contract entered into or any license or permit granted prior to the effective date, no property or interests in property of a specially designated narcotics trafficker that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of U.S. persons, including their overseas branches, may be transferred, paid, exported, withdrawn or otherwise dealt in.

§ 536.202 Effect of transfers violating the provisions of this part.

(a) Any transfer after the effective date, which is in violation of any provision of this part or of any regulation, order, directive, ruling, instruction, license, or other authorization hereunder and involves any property held in the name of a specially designated narcotics trafficker or in which a specially designated narcotics trafficker has or has had an interest since such date, is null and void and shall not be the basis for the assertion or recognition of any interest in or right, remedy, power or privilege with respect to such property.

(b) No transfer before the effective date shall be the basis for the assertion or recognition of any right, remedy, power, or privilege with respect to, or interest in, any property held in the name of a specially designated narcotics trafficker or in which a specially designated narcotics trafficker has an interest, or has had an interest since such date, unless the person with whom such property is held or maintained, prior to such date, had written notice of the transfer or by any written evidence had recognized such transfer.

(c) Unless otherwise provided, an appropriate license or other authorization issued by or pursuant to the direction or authorization of the Director of the Office of Foreign Assets Control before, during, or after a transfer shall validate such transfer or render it enforceable to the same extent that it would be valid or enforceable but for the provisions of the International Emergency Economic Powers Act, this part, and any regulation, order, directive, ruling, instruction, or license issued hereunder.

(d) Transfers of property which otherwise would be null and void or unenforceable by virtue of the provisions of this section shall not be deemed to be null and void or unenforceable as to any person with whom such property was held or maintained (and as to such person only) in cases in which such person is able to establish to the satisfaction of the Director of the Office of Foreign Assets Control each of the following:

(1) Such transfer did not represent a willful violation of the provisions of this part by the person with whom such property was held or maintained;

(2) The person with whom such property was held or maintained did not have reasonable cause to know or suspect, in view of all the facts and circumstances known or available to such person, that such transfer required a license or authorization by or pursuant to this part and was not so licensed or authorized, or if a license or authorization did purport to cover the transfer, that such license or authorization had been obtained by misrepresentation of a third party or the withholding of material facts or was otherwise fraudulently obtained; and

(3) The person with whom such property was held or maintained filed with the Office of Foreign Assets Control a report setting forth in full the circumstances relating to such transfer promptly upon discovery that:

(i) Such transfer was in violation of the provisions of this part or any

regulation, ruling, instruction, license, or other direction or authorization hereunder; or

(ii) Such transfer was not licensed or authorized by the Director of the Office of Foreign Assets Control; or

(iii) If a license did purport to cover the transfer, such license had been obtained by misrepresentation of a third party or the withholding of material facts or was otherwise fraudulently obtained.

Note to paragraph (d)(3): The filing of a report in accordance with the provisions of this paragraph (d)(3) shall not be deemed evidence that the terms of paragraphs (d)(l) and (2) of this section have been satisfied.

(e) Unless licensed or authorized pursuant to this part, any attachment, judgment, decree, lien, execution, garnishment, or other judicial process is null and void with respect to any property which, on or since the effective date, was held in the name of a specially designated narcotics trafficker or in which there existed an interest of a specially designated narcotics trafficker.

536.203 Holding of certain types of blocked property in interest–bearing accounts.

(a)(1) Any person, including a U.S. financial institution, currently holding property subject to § 536.201 which, as of the effective date or the date of receipt if subsequent to the effective date, is not being held in an interest–bearing account, or otherwise invested in a manner authorized by the Office of Foreign Assets Control (*e.g.*, § 536.504), shall transfer such property to, or hold such property or cause such property to be held in, an interest–bearing account or interest–bearing status in a U.S. financial institution as of the effective date or the date of receipt if subsequent to the effective date of this section, unless otherwise authorized or directed by the Office of Foreign Assets Control.

(2) The requirement set forth in paragraph (a)(1) of this section shall apply to currency, bank deposits, accounts, obligations, and any other financial or economic resources or assets, and any proceeds resulting from the sale of tangible or intangible property. If interest is credited to an account separate from that in which the interest–bearing asset is held, the name of the account party on both accounts must be the same and must clearly indicate the specially designated narcotics trafficker having an interest in the accounts. If the account is held in the name of a specially designated narcotics trafficker, the name of the account to which interest is credited must be the same.

(b) For purposes of this section, the term *interest–bearing account* means a blocked account in a U.S. financial institution earning interest at rates that are commercially reasonable for the amount of funds in the account. Except as otherwise authorized, the funds may not be invested or held in instruments the maturity of which exceeds 90 days.

(c) This section does not apply to blocked tangible property, such as chattels, nor does it create an affirmative obligation on the part of the holder of such blocked tangible property to sell or liquidate the property and put the proceeds in a blocked account. However, the Office of Foreign Assets Control may issue licenses permitting or directing sales of tangible property in appropriate cases.

536.204 Evasions; attempts; conspiracies.

Any transaction for the purpose of, or which has the effect of, evading or avoiding, or which facilitates the evasion or avoidance of, any of the prohibitions set forth in this part, is hereby prohibited. Any attempt to violate the prohibitions set forth in this part is hereby prohibited. Any conspiracy formed for the purpose of engaging in a transaction prohibited by this part is hereby prohibited.

536.205 Exempt transactions.

(a) *Personal communications.* The prohibitions contained in this part do not apply to any postal, telegraphic, telephonic, or other personal communication, which does not involve the transfer of anything of value.

(b) *Information and informational materials.* (1) The importation from any country and the exportation to any country of information or informational materials as defined in § 536.306, whether commercial or otherwise, regardless of format or medium of transmission, are exempt from the prohibitions and regulations of this part.

(2) This section does not authorize transactions related to information and informational materials not fully created and in existence at the date of the transactions, or to the substantive or artistic alteration or enhancement of informational materials, or to the provision of marketing and business consulting services by a U.S. person. Such prohibited transactions include, without limitation, payment of advances for informational materials not yet created and completed, provision of services to market, produce or co–produce, create or assist in the creation of information and informational materials, and payment of royalties to a specially designated narcotics trafficker with respect to income received for enhancements or alterations made by U.S. persons to information or informational materials imported from a specially designated narcotics trafficker.

(3) This section does not authorize transactions incident to the exportation of technology that is not informational material as defined in § 536.306(b)(1) or incident to the exportation of goods for use in the transmission of any information.

(c) *Travel.* The prohibitions contained in this part do not apply to transactions ordinarily incident to travel to or from any country, including importation of accompanied baggage for personal use, maintenance within any country including payment of living expenses and acquisition of goods or services for personal use, and arrangement or facilitation of such travel including non–scheduled air, sea, or land voyages. Any transactions entered into by a specially designated narcotics trafficker while traveling in the United States that are outside the scope of those set forth in this paragraph are in violation of § 536.201.

Subpart C—General Definitions

§ 536.301 Blocked account; blocked property.

The terms *blocked account* and *blocked property* shall mean any account or property subject to the prohibition in § 536.201 held in the name of a specially designated narcotics trafficker or in which a specially designated narcotics trafficker has an interest, and with respect to which payments, transfers, exportations, withdrawals, or other dealings may not be made or effected except pursuant to an authorization or license from the Office of Foreign Assets Control authorizing such action.

§ 536.302 Effective date.

The term *effective date* refers to the effective date of the applicable prohibitions and directives contained in this part which is 12:01 a.m. EDT, October 22, 1995, or, in the case of specially designated narcotics traffickers designated after that date, the earlier of the date on which a person receives actual or constructive notice of such designation.

§ 536.303 Entity.

The term *entity* means a partnership, association, corporation, or other organization, group or subgroup.

§ 536.304 Foreign person.

The term *foreign person* means any citizen or national of a foreign state (including any such individual who is also a citizen or national of the United

States), or any entity not organized solely under the laws of the United States or existing solely in the United States, but does not include a foreign state.

§ 536.305 General license.

The term *general license* means any license or authorization the terms of which are set forth in this part.

§ 536.306 Information and informational materials.

(a) For purposes of this part, the term *information and informational materials* means:

(1) Publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, compact disks, CD ROMs, artworks, and news wire feeds, and other information and informational articles.

(2) To be considered informational materials, artworks must be classified under chapter subheading 9701, 9702, or 9703 of the Harmonized Tariff Schedule of the United States.

(b) The terms *information* and *informational materials* with respect to U.S. exports do not include items:

(1) That were, as of April 30, 1994, or that thereafter become, controlled for export pursuant to section 5 of the Export Administration Act of 1979, 50 U.S.C. App. 2401–2420 (the ''EAA''), or section 6 of the EAA to the extent that such controls promote nonproliferation or antiterrorism policies of the United States, including *software* as defined in 15 CFR part 772 that is not *publicly available* (see 15 CFR parts 734 and 772); or

(2) With respect to which acts are prohibited by 18 U.S.C. chapter 37.

§ 536.307 Interest.

Except as otherwise provided in this part, the term *interest* when used with respect to property (*e.g.*, ''an interest in property'') means an interest of any nature whatsoever, direct or indirect.

§ 536.308 License.

Except as otherwise specified, the term *license* means any license or authorization contained in or issued pursuant to this part.

§ 536.309 Person.

The term *person* means an individual or entity.

§ 536.310 Property; property interest.

The terms *property* and *property interest* include, but are not limited to, money, checks, drafts, bullion, bank deposits, savings accounts, debts, indebtedness, obligations, notes, guarantees, debentures, stocks, bonds, coupons, any other financial instruments, bankers acceptances, mortgages, pledges, liens or other rights in the nature of security, warehouse receipts, bills of lading, trust receipts, bills of sale, any other evidences of title, ownership or indebtedness, letters of credit and any documents relating to any rights or obligations thereunder, powers of attorney, goods, wares, merchandise, chattels, stocks on hand, ships, goods on ships, real estate mortgages, deeds of trust, vendors sales agreements, land contracts, leaseholds, ground rents, real estate and any other interest therein, options, negotiable instruments, trade acceptances, royalties, book accounts, accounts payable, judgments, patents, trademarks or copyrights, insurance policies, safe deposit boxes and their contents, annuities, pooling agreements, services of any nature whatsoever, contracts of any nature whatsoever, and any other property, real, personal, or mixed, tangible or intangible, or interest or interests therein, present, future or contingent.

§ 536.311 Narcotics trafficking.

The term *narcotics trafficking* means any activity undertaken illicitly to cultivate, produce, manufacture, distribute, sell, finance or transport, or otherwise assist, abet, conspire, or collude with others in illicit activities relating to narcotic drugs, including, but not limited to, cocaine.

§ 536.312 Specially designated narcotics trafficker.

The term *specially designated narcotics trafficker* means:

(a) Persons listed in the annex to Executive Order 12978 (3 CFR, 1995 Comp., p.415);

(b) Foreign persons designated by the Secretary of Treasury, in consultation with the Attorney General and the Secretary of State, because they are found:

(1) To play a significant role in international narcotics trafficking centered in Colombia; or

(2) Materially to assist in, or provide financial or technological support for or goods or services in support of, the narcotics trafficking activities of specially designated narcotics traffickers; and

(c) Persons determined by the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State, to be owned or controlled by, or to act for or on behalf of, any other specially designated narcotics trafficker.

§ 536.313 Specific license.

The term *specific license* means any license or authorization not set forth in this part but issued pursuant to this part.

§ 536.314 Transfer.

The term *transfer* means any actual or purported act or transaction, whether or not evidenced by writing, and whether or not done or performed within the United States, the purpose, intent, or effect of which is to create, surrender, release, convey, transfer, or alter, directly or indirectly, any right, remedy, power, privilege, or interest with respect to any property and, without limitation upon the foregoing, shall include the making, execution, or delivery of any assignment, power, conveyance, check, declaration, deed, deed of trust, power of attorney, power of appointment, bill of sale, mortgage, receipt, agreement, contract, certificate, gift, sale, affidavit, or statement; the making of any payment; the setting off of any obligation or credit; the appointment of any agent, trustee, or fiduciary; the creation or transfer of any lien; the issuance, docketing, filing, or levy of or under any judgment, decree, attachment, injunction, execution, or other judicial or administrative process or order, or the service of any garnishment; the acquisition of any interest of any nature whatsoever by reason of a judgment or decree of any foreign country; the fulfillment of any condition; the exercise of any power of appointment, power of attorney, or other power; or the acquisition, disposition, transportation, importation, exportation, or withdrawal of any security.

§ 536.315 United States.

The term *United States* means the United States, its territories and possessions, and all areas under the jurisdiction or authority thereof.

§ 536.316 United States person; U.S. person.

The term *United States person* or *U.S. person* means any United States citizen or national; permanent resident alien; entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches); or any person in the United States.

§ 536.317 U.S. financial institution.

The term *U.S. financial institution* means any U.S. person (including foreign branches) that is engaged in the business of accepting deposits, making, granting, transferring, holding, or brokering loans or credits, or purchasing or selling foreign exchange, securities, commodity futures or options, or procuring purchasers and sellers thereof, as principal or agent; including,

but not limited to, depository institutions, banks, savings banks, trust companies, securities brokers and dealers, commodity futures and options brokers and dealers, forward contract and foreign exchange merchants, securities and commodities exchanges, clearing corporations, investment companies, employee benefit plans, and U.S. holding companies, U.S. affiliates, or U.S. subsidiaries of any of the foregoing. This term includes those branches, offices and agencies of foreign financial institutions which are located in the United States, but not such institutions' foreign branches, offices, or agencies.

Subpart D—Interpretations

§ 536.401 Reference to amended sections.

Except as otherwise specified, reference to any section of this part or to any regulation, ruling, order, instruction, direction, or license issued pursuant to this part shall be deemed to refer to the same as currently amended.

§ 536.402 Effect of amendment.

Any amendment, modification, or revocation of any section of this part or of any order, regulation, ruling, instruction, or license issued by or under the direction of the Director of the Office of Foreign Assets Control shall not, unless otherwise specifically provided, be deemed to affect any act done or omitted to be done, or any civil or criminal suit or proceeding commenced or pending prior to such amendment, modification, or revocation. All penalties, forfeitures, and liabilities under any such order, regulation, ruling, instruction, or license shall continue and may be enforced as if such amendment, modification, or revocation had not been made.

§ 536.403 Termination and acquisition of an interest in blocked property.

(a) Whenever a transaction licensed or authorized by or pursuant to this part results in the transfer of property (including any property interest) away from a specially designated narcotics trafficker, such property shall no longer be deemed to be property in which a specially designated narcotics trafficker has or has had an interest, or which is held in the name of a specially designated narcotics trafficker, unless there exists in the property another interest of a specially designated narcotics trafficker, the transfer of which has not been effected pursuant to license or other authorization.

(b) Unless otherwise specifically provided in a license or authorization issued pursuant to this part, if property (including any property interest) is transferred or attempted to be transferred to a specially designated narcotics trafficker, such property shall be deemed to be property in which there exists an interest of the specially designated narcotics trafficker.

§ 536.404 Setoffs prohibited.

A setoff against blocked property (including a blocked account), whether by a U.S. bank or other U.S. person, is a prohibited transfer under § 536.201 if effected after the effective date.

§ 536.405 Transactions incidental to a licensed transaction.

Any transaction ordinarily incident to a licensed transaction and necessary to give effect thereto is also authorized, except a transaction by an unlicensed, specially designated narcotics trafficker or involving a debit to a blocked account or a transfer of blocked property not explicitly authorized within the terms of the license.

§ 536.406 Provision of services.

(a) Except as provided in § 536.205, the prohibitions contained in § 536.201 apply to services performed by U.S. persons, wherever located:

(1) On behalf of, or for the benefit of, a specially designated narcotics trafficker; or

(2) With respect to property interests of a specially designated narcotics trafficker.

(b) *Example:* U.S. persons may not, except as authorized by the Office of Foreign Assets Control by or pursuant to this part, provide legal, accounting, financial, brokering, freight forwarding, transportation, public relations, educational, or other services to a specially designated narcotics trafficker. See § 536.506, with respect to certain authorized legal services.

§ 536.407 Offshore transactions.

The prohibitions contained in § 536.201 apply to transactions by U.S. persons in locations outside the United States with respect to property which the U.S. person knows, or has reason to know, is held in the name of a specially designated narcotics trafficker, or in which the U.S. person knows, or has reason to know, a specially designated narcotics trafficker has or has had an interest since the effective date.

§ 536.408 Alleged change in ownership or control of an entity designated as a specially designated narcotics trafficker.

(a) A change or alleged change in ownership or control of an entity designated as a specially designated narcotics trafficker shall not be the basis for removal of that entity from the list of specially designated narcotics traffickers unless, upon investigation by the Office of Foreign Assets Control and submission of evidence by the entity, it is demonstrated to the satisfaction of the Director of the Office of Foreign Assets Control that the transfer to a bona fide purchaser at arm's length is legitimate and that the entity no longer meets the criteria for designation under § 536.312. Evidence submitted must conclusively demonstrate that all ties with other specially designated narcotics traffickers have been completely severed, and may include, but is not limited to, articles of incorporation; identification of new directors, officers, shareholders, and sources of capital; and contracts evidencing the sale of the entity to its new owners.

(b) Any continuing substantial financial obligations on the part of the new owners to any specially designated narcotics traffickers, including long–term payment plans, leases, or rents, will be considered as evidence of continuing control of the entity by the specially designated narcotics trafficker. Purchase of a designated entity without ongoing substantial financial obligations to a specially designated narcotics trafficker may nonetheless be a basis for subsequent designation of the purchaser, if the transaction is determined materially to assist in or provide financial support for the narcotics trafficking activities of specially designated narcotics traffickers for purposes of § 536.312(b)(2). For example, any acquisition transaction resulting in a direct cash transfer to or other enrichment of a specially designated narcotics trafficker could lead to designation of the purchaser. Mere change in name of an entity will not be considered as constituting a change of the entity's status.

§ 536.409 Credit extended and cards issued by U.S. financial institutions.

The prohibition in § 536.201 on dealing in property in which a specially designated narcotics trafficker has an interest prohibits U.S. financial institutions from performing under any existing credit agreements, including, but not limited to, charge cards, debit cards, or other credit facilities issued by a U.S. financial institution to a person designated under this part.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

§ 536.501 Effect of license or authorization.

(a) No license or other authorization contained in this part, or otherwise issued by or under the direction of the Director of the Office of Foreign Assets

Control, shall be deemed to authorize or validate any transaction effected prior to the issuance of the license, unless specifically provided in such license or authorization.

(b) No regulation, ruling, instruction, or license authorizes any transaction prohibited under this part unless the regulation, ruling, instruction, or license is issued by the Office of Foreign Assets Control and specifically refers to this part. No regulation, ruling, instruction, or license referring to this part shall be deemed to authorize any transaction prohibited by any provision of this chapter unless the regulation, ruling, instruction or license specifically refers to such provision.

(c) Any regulation, ruling, instruction, or license authorizing any transaction otherwise prohibited under this part has the effect of removing a prohibition or prohibitions contained in this part from the transaction, but only to the extent specifically stated by its terms. Unless the regulation, ruling, instruction, or license otherwise specifies, such an authorization does not create any right, duty, obligation, claim, or interest in, or with respect to, any property which would not otherwise exist under ordinary principles of law.

§ 536.502 Exclusion from licenses and authorizations.

The Director of the Office of Foreign Assets Control reserves the right to exclude any person, property, or transaction from the operation of any license, or from the privileges therein conferred, or to restrict the applicability thereof with respect to particular persons, property, transactions, or classes thereof. Such action shall be binding upon all persons receiving actual or constructive notice of such exclusion or restriction.

§ 536.503 Payments and transfers to blocked accounts in U.S. financial institutions.

(a) Any payment of funds or transfer of credit or other financial or economic resources or assets into a blocked account in a U.S. financial institution is authorized, provided that a transfer from a blocked account pursuant to this authorization may only be made to another blocked account held in the same name on the books of the same U.S. financial institution. This authorization is subject to the condition that written notification from the U.S. financial institution receiving an authorized payment or transfer is furnished to the Compliance Programs Division, Office of Foreign Assets Control, U.S. Treasury Department, 1500 Pennsylvania Avenue, NW—Annex, Washington, DC 20220, within 10 days from the value date of the payment or transfer. This notification shall confirm that the payment or transfer has been deposited into a blocked account pursuant to this section and § 536.203 and shall provide the account number, the name and address of the person in whose name the account is held and, if the account party is not a specially designated narcotics trafficker, the name of the specially designated narcotics trafficker having an interest in the account, the name and address of the transferee U.S. financial institution, the name and address of the transferor financial institution, the amount of the payment or transfer, the name and telephone number of a contact person at the transferee financial institution from whom compliance information may be obtained, and the name and telephone number of the person, registered with the Office of Foreign Assets Control pursuant to § 536.603, responsible for the administration of blocked assets at the transferee financial institution from whom records on blocked assets may be obtained.

(b) This section does not authorize any transfer from a blocked account within the United States to an account held outside the United States.

§ 536.504 Investment and reinvestment of certain funds.

(a) U.S. financial institutions are hereby authorized and directed to invest and reinvest assets held in blocked accounts in the name of a specially designated narcotics trafficker, subject to the following conditions:

(1) The assets representing such investments and reinvestments are credited to a blocked account or sub–account which is in the name of the specially designated narcotics trafficker and which is located in the United States or within the possession or control of a U.S. person; and

(2) The proceeds of such investments and reinvestments are not credited to a blocked account or sub–account under any name or designation which differs from the name or designation of the specific blocked account or sub–account in which such funds or securities were held; and

(3) No immediate financial or economic benefit or access accrues (*e.g.*, through pledging or other use) to the specially designated narcotics trafficker.

(b)(1) U.S. persons seeking to avail themselves of this authorization must register with the Office of Foreign Assets Control, Blocked Assets Division, before undertaking transactions authorized under this section.

(2) Transactions conducted pursuant to this section must be reported to the Office of Foreign Assets Control, Blocked Assets Division, in a report filed no later than 10 business days following the last business day of the month in which the transactions occurred.

§ 536.505 Entries in certain accounts for normal service charges authorized.

(a) U.S. financial institutions are hereby authorized to debit any blocked account with such U.S. financial institution in payment or reimbursement for normal service charges owed to such U.S. financial institution by the owner of such blocked account.

(b) As used in this section, the term *normal service charge* shall include charges in payment or reimbursement for interest due; cable, telegraph, or telephone charges; postage costs; custody fees; small adjustment charges to correct bookkeeping errors; and, but not by way of limitation, minimum balance charges, notary and protest fees, and charges for reference books, photostats, credit reports, transcripts of statements, registered mail, insurance, stationery and supplies, check books, and other similar items.

§ 536.506 Provision of certain legal services authorized.

(a) The provision to or on behalf of a specially designated narcotics trafficker of the legal services set forth in paragraph (b) of this section is authorized, provided that all receipt of payment therefor must be specifically licensed.

(b) Specific licenses may be issued, on a case–by–case basis, authorizing receipt of payment of professional fees and reimbursement of incurred expenses for the following legal services by U.S. persons to a specially designated narcotics trafficker:

(1) Provision of legal advice and counseling on the requirements of and compliance with the laws of any jurisdiction within the United States, provided that such advice and counseling is not provided to facilitate transactions that would violate any of the prohibitions contained in this part;

(2) Representation of a specially designated narcotics trafficker when named as a defendant in or otherwise made a party to domestic United States legal, arbitration, or administrative proceedings;

(3) Initiation of domestic United States legal, arbitration, or administrative proceedings in defense of property interests subject to U.S.

jurisdiction of a specially designated narcotics trafficker;

(4) Representation before any federal or state agency with respect to the imposition, administration, or enforcement of United States sanctions against significant narcotics traffickers centered in Colombia or specially designated narcotics traffickers; and

(5) Provision of legal services in any other context in which prevailing United States law requires access to legal counsel at public expense.

(c) The provision of any other legal services to a specially designated narcotics trafficker, not otherwise authorized in or exempted by this part, requires the issuance of a specific license.

(d) Entry into a settlement agreement affecting property or interests in property of a specially designated narcotics trafficker or the enforcement of any lien, judgment, arbitral award, decree, or other order through execution, garnishment or other judicial process purporting to transfer or otherwise alter or affect a property interest of a specially designated narcotics trafficker is prohibited unless specifically licensed in accordance with § 536.202(e).

§ 536.507 Authorization of emergency medical services.

The provision of nonscheduled emergency medical services to a specially designated narcotics trafficker located in the United States is authorized, provided that any payment for such services requires prior authorization by specific license.

Subpart F—Reports

§ 536.601 Required records.

(a) Except as otherwise provided, every person engaging in any transaction subject to the provisions of this part shall keep a full and accurate record of each transaction engaged in, regardless of whether such transaction is effected pursuant to license or otherwise, and such record shall be available for examination for at least 5 years after the date of such transaction. Except as otherwise provided, every person holding property subject to § 536.201 shall keep a full and accurate record of such property, and such record shall be available for examination for the period of time that such property is blocked and for at least 5 years after the date such property is unblocked.

(b) Any person, other than an individual, required to maintain records pursuant to this section, must designate an individual to be responsible for providing information concerning such records to the Office of Foreign Assets Control when so requested.

§ 536.602 Reports to be furnished on demand.

Every person is required to furnish under oath, in the form of reports or otherwise, from time to time and at any time as may be required, complete information relative to any transaction, regardless of whether such transaction is effected pursuant to license or otherwise, subject to the provisions of this part. Such reports may be required to include the production of any books of account, contracts, letters or other papers, connected with any such transaction or property, in the custody or control of the person required to make such reports. Reports with respect to transactions may be required either before or after such transactions are completed. The Director of Foreign Assets Control may, through any person or agency, conduct investigations, hold hearings, administer oaths, examine witnesses, receive evidence, take depositions, and require by subpoena the attendance and testimony of witnesses and the production of all books, papers, and documents relating to any matter under investigation, regardless of whether any report has been required or filed in connection therewith.

§ 536.603 Registration of persons holding blocked property subject to § 536.201.

(a) Any individual holding property subject to § 536.201 must register with the Office of Foreign Assets Control, Blocked Assets Division, by the later of March 17, 1997, or within 10 days after the date such property is received or becomes subject to § 536.201.

(b) Any person, other than an individual, holding property subject to § 536.201 must register the name, title, address, and telephone number of the individual designated under § 536.601(b) to be responsible for the administration of blocked assets, from whom the Office of Foreign Assets Control can obtain information and records. The registration shall be sent to the Blocked Assets Division, Office of Foreign Assets Control, U.S. Treasury Department, 1500 Pennsylvania Avenue, NW—Annex, Washington, DC 20220, by the later of March 17, 1997, or, unless notification is given pursuant to § 536.503, 10 days after the date such property is received or becomes subject to § 536.201.

Subpart G—Penalties

§ 536.701 Penalties.

(a) Attention is directed to section 206 of the International Emergency Economic Powers Act (50 U.S.C. 1705 — the ''Act''), which is applicable to violations of the provisions of any license, ruling, regulation, order, direction or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under the Act. Section 206 of the Act, as adjusted pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410, as amended, 28 U.S.C. 2461 note), provides that:

(1) A civil penalty of not to exceed $11,000 per violation may be imposed on any person who violates any license, order, or regulation issued under the Act;

(2) Whoever willfully violates any license, order, or regulation issued under the Act shall, upon conviction, be fined not more than $50,000, or, if a natural person, may be imprisoned for not more than ten years, or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment or both.

(b) The criminal penalties provided in the Act are subject to increase pursuant to 18 U.S.C. 3571.

(c) Attention is also directed to 18 U.S.C. 1001, which provides that whoever, in any matter within the jurisdiction of any department or agency of the United States, knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined under title 18, United States Code, or imprisoned not more than five years, or both.

(d) Violations of this part may also be subject to relevant provisions of other applicable laws.

§ 536.702 Prepenalty notice.

(a) *When required*. If the Director of the Office of Foreign Assets Control has reasonable cause to believe that there has occurred a violation of any provision of this part or a violation of the provisions of any license, ruling, regulation, order, direction or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under the

International Emergency Economic Powers Act, and the Director determines that further proceedings are warranted, he shall issue to the person concerned a notice of his intent to impose a monetary penalty. The prepenalty notice may be issued whether or not another agency has taken any action with respect to this matter.

(b) *Contents*—(1) *Facts of violation*. The prepenalty notice shall describe the violation, specify the laws and regulations allegedly violated, and state the amount of the proposed monetary penalty.

(2) *Right to respond*. The prepenalty notice also shall inform the respondent of respondent's right to respond to the notice within 30 days of its mailing as to why a monetary penalty should not be imposed, or, if imposed, why it should be in a lesser amount than proposed.

§ 536.703 Response to prepenalty notice.

(a) *Time within which to respond*. The respondent shall have 30 days from the date of mailing of the prepenalty notice to respond in writing to the Director of the Office of Foreign Assets Control.

(b) *Form and contents of written response*. The written response need not be in any particular form, but shall contain information sufficient to indicate that it is in response to the prepenalty notice. It should respond to the allegations in the prepenalty notice and set forth the reasons why the person believes the penalty should not be imposed or, if imposed, why it should be in a lesser amount than proposed.

(c) *Informal settlement*. In addition or as an alternative to a written response to a prepenalty notice pursuant to this section, the respondent or respondent's representative may contact the Office of Foreign Assets Control as advised in the prepenalty notice to propose the settlement of allegations contained in the prepenalty notice and related matters. In the event of settlement at the prepenalty stage, the prepenalty notice will be withdrawn, the respondent is not required to take a written position on allegations contained in the prepenalty notice, and the Office of Foreign Assets Control will make no final determination as to whether a violation occurred. The amount accepted in settlement of allegations in a prepenalty notice may vary from the civil penalty that might finally be imposed in the event of a formal determination of violation. In the event no settlement is reached, the 30–day period specified in paragraph (a) of this section for written response to the prepenalty notice remains in effect unless additional time is granted by the Office of Foreign Assets Control.

§ 536.704 Penalty notice.

(a) *No violation*. If, after considering any written response to the prepenalty notice and any relevant facts, the Director of the Office of Foreign Assets Control determines that there was no violation by the respondent named in the prepenalty notice, the Director promptly shall notify the respondent in writing of that determination and that no monetary penalty will be imposed.

(b) *Violation*. If, after considering any written response to the prepenalty notice and any relevant facts, the Director of the Office of Foreign Assets Control determines that there was a violation by the respondent named in the prepenalty notice, the Director promptly shall issue a written notice of the imposition of the monetary penalty or other available disposition on the respondent.

§ 536.705 Administrative collection; referral to United States Department of Justice.

In the event that the respondent does not pay the penalty imposed pursuant to this part or make payment arrangements acceptable to the Director of the Office of Foreign Assets Control within 30 days of the mailing of the written notice of the imposition of the penalty, the matter may be referred for administrative collection measures or to the United States Department of Justice for appropriate action to recover the penalty in a civil suit in a Federal district court.

Subpart H—Procedures

§ 536.801 Licensing.

(a) *General licenses*. General licenses have been issued authorizing under appropriate terms and conditions certain types of transactions which are subject to the prohibitions contained in this part. All such licenses in effect on the date of publication are set forth in subpart E of this part. It is the policy of the Office of Foreign Assets Control not to grant applications for specific licenses authorizing transactions to which the provisions of an outstanding general license are applicable. Persons availing themselves of certain general licenses may be required to file reports and statements in accordance with the instructions specified in those licenses. Failure to file such reports or statements will nullify the authority of the general license.

(b) *Specific licenses*—(1) *General course of procedure*. Transactions subject to the prohibitions contained in this part which are not authorized by general license may be effected only under specific licenses.

(2) *Applications for specific licenses*. Applications for specific licenses to engage in any transactions prohibited by or pursuant to this part may be filed by letter with the Office of Foreign Assets Control. Any person having an interest in a transaction or proposed transaction may file an application for a license authorizing such transaction, but the applicant for a specific license is required to make full disclosure of all parties in interest to the transaction so that a decision on the application may be made with full knowledge of all relevant facts and so that the identity and location of the persons who know about the transaction may be easily ascertained in the event of inquiry.

(3) *Information to be supplied*. The applicant must supply all information specified by relevant instructions and/or forms, and must fully disclose the names of all the parties who are concerned with or interested in the proposed transaction. If the application is filed by an agent, the agent must disclose the name of his principal(s). Such documents as may be relevant shall be attached to each application as a part of such application except that documents previously filed with the Office of Foreign Assets Control may, where appropriate, be incorporated by reference. Applicants may be required to furnish such further information as is deemed necessary to a proper determination by the Office of Foreign Assets Control. Any applicant or other party in interest desiring to present additional information or discuss or argue the application may do so at any time before or after decision. Arrangements for oral presentation should be made with the Office of Foreign Assets Control.

(4) *Effect of denial*. The denial of a license does not preclude the reopening of an application or the filing of a further application. The applicant or any other party in interest may at any time request explanation of the reasons for a denial by correspondence or personal interview.

(5) *Reports under specific licenses*. As a condition for the issuance of any license, the licensee may be required to file reports with respect to the transaction covered by the license, in such form and at such times and places as may be prescribed in the license or otherwise.

(6) *Issuance of license*. Licenses will be issued by the Office of Foreign Assets Control acting on behalf of the Secretary of the Treasury or licenses may be issued by the Secretary of the Treasury acting directly or through any

specifically designated person, agency, or instrumentality.

(7) *Address.* License applications, reports, and inquiries should be addressed to the appropriate section or individual within the Office of Foreign Assets Control, or to its Director, at the following address: Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW—Annex, Washington, DC 20220.

§ 536.802 Decisions.

The Office of Foreign Assets Control will advise each applicant of the decision respecting filed applications. The decision of the Office of Foreign Assets Control acting on behalf of the Secretary of the Treasury with respect to an application shall constitute final agency action.

§ 536.803 Amendment, modification, or revocation.

The provisions of this part and any rulings, licenses, whether general or specific, authorizations, instructions, orders, or forms issued hereunder may be amended, modified, or revoked at any time.

§ 536.804 Rulemaking.

(a) All rules and other public documents are issued by the Secretary of the Treasury upon recommendation of the Director of the Office of Foreign Assets Control. In general, rulemaking by the Office of Foreign Assets Control involves foreign affairs functions of the United States, and for that reason is exempt from the requirements under the Administrative Procedure Act (5 U.S.C. 553) for notice of proposed rulemaking, opportunity for public comment, and delay in effective date. Wherever possible, however, it is the practice of the Office of Foreign Assets Control to receive written submissions or hold informal consultations with interested parties before the issuance of any rule or other public document.

(b) Any interested person may petition the Director of the Office of Foreign Assets Control in writing for the issuance, amendment, or repeal of any rule.

§ 536.805 Delegation by the Secretary of the Treasury.

Any action which the Secretary of the Treasury is authorized to take pursuant to Executive Order 12978 or any further executive orders relating to the national emergency declared in Executive Order 12978 may be taken by the Director of the Office of Foreign Assets Control, or by any other person to whom the Secretary of the Treasury has delegated authority so to act.

§ 536.806 Rules governing availability of information.

(a) The records of the Office of Foreign Assets Control required by the Freedom of Information Act (5 U.S.C. 552) to be made available to the public shall be made available in accordance with the definitions, procedures, requirements for payment of fees, and other provisions of the regulations on the Disclosure of Records of the Departmental Offices and of other bureaus and offices of the Department of the Treasury issued under 5 U.S.C. 552 and published at 31 CFR part 1.

(b) The records of the Office of Foreign Assets Control required by the Privacy Act (5 U.S.C. 552a) to be made available to an individual shall be made available in accordance with the definitions, procedures, requirements for payment of fees, and other provisions of the regulations on the Disclosure of Records of the Departmental Offices and of other bureaus and offices of the Department of the Treasury issued under 5 U.S.C. 552a and published at 31 CFR part 1.

(c) Any form issued for use in connection with the Narcotics Trafficking Sanctions Regulations may be obtained in person or by writing to the Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW—Annex, Washington, D.C. 20220, or by calling 202/622–2520.

Subpart I—Paperwork Reduction Act

§ 536.901 Paperwork Reduction Act notice.

The information collection requirements in §§ 536.503, 536.504, subpart F, and § 536.801 have been approved by the Office of Management and Budget under the Paperwork Reduction Act and assigned control number 1505–0163.

Dated: February 7, 1997.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: February 18, 1997.

James E. Johnson,

Assistant Secretary (Enforcement).

[FR Doc. 97–5299 Filed 2–28–97; 12:34 pm]

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DEPARTMENT OF DEFENSE

Corps of Engineers; Department of the Army

33 CFR Part 334

Danger Zones and Restricted Areas, National Guard Training Center, Sea Girt, NJ

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: The Corps is revoking the regulations which establish a danger zone in the waters of the Atlantic Ocean at the New Jersey National guard Training Vente, Sea Girt, New Jersey. According to the State of New Jersey, the danger zone is no longer needed due to the improvements made at the small arms firing range located at Sea Girt. The danger zone was established to protect the public from the hazards associated with the possibility of an errant round or ricochet from the range impacting into the waters offshore. The revocation of the danger zone is essential to allow a beach nourishment project to proceed and formalize full public use of the water areas offshore of the National Guard Training Center. The revocation of the danger zone regulations will not affect any other Federal, State, or local regulations in that area.

EFFECTIVE DATE: March 20, 1997.

ADDRESSES: HQUSACE, CECW–OR, Washington, D.C. 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph Eppard, Regulatory Branch, CECW–OR at (202) 761–1783, or Mr. Richard Tomer of the New York District at (212) 264–9053.

SUPPLEMENTARY INFORMATION: Pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the Corps is amending the regulations in 33 CFR Part 334.90. The National Guard Training Center is located adjacent to the federally authorized share protection project identified as ''Ashbury Park to Manasquan South Reach''. One entire borrow area and a portion of another borrow are that are designated to be used as a source of sand for part of the beach restoration and storm damage protection that will be provided to this area located within the limits of the danger zone. The danger zone regulations in 33 CFR 334.90 prohibits entry by vessels into the danger zone during operation of the range. The State

of New Jersey Department of Military and Veterans Affairs and the State of New Jersey Department of Environmental Protection have requested that the danger zone at the National Guard Training Center at Sea Girt, New Jersey, established by the Corps on January 10, 1969, be disestablished. According to the State, the danger zone is no longer needed to protect the public using the waters offshore of the National Guard Training Center, because of improvements previously made at the small arms firing range. Accordingly, we are hereby removing the regulations which establish the danger zone. We have determined that notice of proposed rulemaking and public procedures thereto are unnecessary since the revocation of the danger zones removes a restriction on public use of the offshore.

Procedural Requirements

A. Review Under Executive Order 12866

This rule is issued with respect to a military function of the Defense Department and the provisions of Executive Order 12866 do not apply.

B. Review Under the Regulatory Flexibility Act

These rules have been reviewed under the Regulatory Flexibility Act (Pub. L. 96–354), which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (i.e., small businesses and small Governments). The Corps expects that the economic impact of the removal of the danger zone at the National Guard Training Center at Sea Girt, New Jersey would have no impact on the public, no anticipated navigational hazard or interference with existing waterway traffic and accordingly, certifies that this rule will have no significant economic impact on small entities.

C. Review Under the National Environmental Policy Act

We have concluded that this amendment to the danger zone regulations which removes a restriction on the public's use of a water area will not have a significant impact to the human environment, and preparation of an environmental impact statement is not required.

D. Unfunded Mandates Act

This rule does not impose an enforceable duty among the private sector and, therefore, is not a Federal private sector mandate and is not subject to the requirements of Section 202 of 205 of the Unfunded Mandates Act. We have also found under Section 203 of the Act, that small Governments will not be significantly and uniquely affected by this rulemaking.

E. Submission to Congress and the GAO

Pursuant to Section 801(a)(1)(A) of the Administrative Procedure Act as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, the Army has submitted a report containing this rule to the U.S. Senate, House of Representatives, and the Comptroller General of the General Accounting Office. This rule is not a major rule within the meaning of Section 804(2) of the Administrative Procedure Act, as amended.

List of Subjects in 33 CFR Part 334

Navigation (water), Transportation, Danger zones.

For the reasons set out in the preamble, we are amending 33 CFR Part 334, as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for Part 334 continues to read as follows:

Authority: 40 Stat. 266; (33 U.S.C. 1) and 40 Stat. 892; (33 U.S.C. 3).

§ 334.90 [Removed]

2. Section 334.90 is removed.

Dated: February 23, 1997.

Russell L. Fuhrman,

Major General, United States Army, Director of Civil Works.

[FR Doc. 97–5049 Filed 3–4–97; 8:45 am]

BILLING CODE 3710–92–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 1

RIN 2900–AI33

Rulemaking Procedures; Public Participation

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the ''General Provisions'' regulations of the Department of Veterans Affairs (VA) by eliminating a policy statement concerning prior notice-and-comment for rulemaking. We believe that there is no need to retain this policy statement. Furthermore, this action is warranted to prevent confusion concerning VA policy.

EFFECTIVE DATE: April 4, 1997.

FOR FURTHER INFORMATION CONTACT: Thomas O. Gessel, Director, Office of Regulations Management (02D), Office of General Counsel, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8605.

SUPPLEMENTARY INFORMATION: In a document published in the Federal Register on March 20, 1996 (61 FR 11309), we amended the ''General Provisions'' regulations in 38 CFR Part 1 by removing § 1.12 captioned ''Public participation in regulatory development.'' Subsequently, judicial review was sought on the basis that the removal did not comply with notice-and-comment provisions. Accordingly, to avoid unnecessary litigation, we reestablished § 1.12 in a document published in the Federal Register on July 1, 1996 (61 FR 33850). In addition, in a companion document also published in the Federal Register on July 1, 1996 (61 FR 33878), we proposed to remove § 1.12 and requested comments on the proposal. Accordingly, this document relates to the proposal to remove § 1.12.

The comment period ended August 30, 1996. We received four comments. Three were submitted by veterans'' service organizations and one was submitted by a law school professor. The commenters argued in favor of retaining § 1.12.

The provisions of the Administrative Procedure Act (APA) at 5 U.S.C. 553 set forth notice-and-comment requirements for rulemaking and include exemptions from the notice-and-comment requirements for rulemaking concerning public property, loans, grants, benefits, or contracts.

The regulatory history of § 1.12 indicates that this section was established for the purpose of adopting a recommendation of the 1969 Administrative Conference of the United States, i.e., that agencies adopt a policy stating that they would not exempt rulemaking from notice-and-comment provisions solely because the rulemaking concerned public property, loans, grants, benefits, or contracts (see 37 FR 3552, February 17, 1972; 37 FR 7157, April 11, 1972).

Subsequent to the initial promulgation of § 1.12, statutory provisions were established that specifically apply the notice-and-comment provisions of 5 U.S.C. 553 to VA rulemaking concerning loans, grants, or benefits (see 38 U.S.C. 501(d)). Also, subsequent to the initial promulgation of § 1.12, statutory provisions were established that specifically apply notice-and-comment

provisions to certain rulemaking concerning contracts (see 41 U.S.C. 418b). These statutory provisions do not impose notice-and-comment provisions for rulemaking concerning public property.

One commenter indicated that we should retain the notice-and-comment provisions for rulemaking concerning public property and contracts. We are committed to compliance with all legal requirements concerning rulemaking, including APA requirements. However, we believe that self-imposition of any other procedures for rulemaking should be done on a case-by-case basis and we do not believe that it is necessary or prudent to self-impose additional requirements by regulation.

The commenters also argued in favor of retaining § 1.12 based on issues relating to certain ''non-legislative rules'' (rules of agency management; interpretative rules; general statements of policy; rules of organization, procedure, or practice). In this regard, the provisions of 5 U.S.C. 553 contain exemptions from the notice-and-comment requirements for ''non-legislative rules.'' The commenters argued that § 1.12 added notice-and-comment requirements for rulemaking regarding such ''non-legislative rules'' and further included specific reasons to support the desirability of having additional notice-and-comment for such types of rulemaking.

Rulemaking documents establishing ''non-legislative rules'' are issued by the Secretary and concurred in by the General Counsel. The provisions of § 1.12 included internal instructions which stated: ''Exceptions to the policy of permitting public participation in the regulatory development may be authorized by the Secretary or one of the Secretary's deputies if adequately justified and concurred in by the General Counsel.'' The next sentence, in part, states: ''Such exceptions, unless public comment is required by statute, may be recommended when: (a) The proposed regulations consist of interpretative rules, general statements of policy, or rules of Department of Veterans Affairs organization procedure or practice * * *.'' The mere finding that a rulemaking proceeding concerned a ''non-legislative'' rule met the ''adequately justified'' standard for foregoing the notice-and-comment procedures. The elimination of § 1.12 would bring VA practice into conformity with the requirements generally imposed on the rest of government, i.e., notice-and-comment issues would be governed by the provisions of 5 U.S.C. 553. Eliminating the regulatory provisions imposing internal procedural steps increases government efficiency and would not result in the diminution of the substantive rights of any party.

Furthermore, the removal of § 1.12 is warranted because it has generated much confusion, particularly with respect to ''non-legislative rules.'

Accordingly, based on the rationale set forth in the proposed rule and this document, we are removing § 1.12.

This rulemaking action concerns VA policy and internal VA procedures. Although we provided notice-and-comment concerning this rulemaking proceeding it was not required under the provisions of the APA and, consequently, no regulatory flexibility analysis is required under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Nevertheless, the Secretary of Veterans Affairs certifies that this rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act. This rule will not have a direct effect on small entities.

There is no Catalog of Federal Domestic Assistance program number.

List of Subjects in 38 CFR Part 1

Administrative practice and procedure, Claims, Freedom of information, Government contracts, Government employees, Government property, Reporting and recordkeeping requirements.

Approved: February 24, 1997.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 1 is amended as set forth below:

PART 1—GENERAL PROVISIONS

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

Authority: 38 U.S.C. 501(a), unless otherwise noted.

§ 1.12 [Removed]

2. Section 1.12 and the undesignated center heading preceding § 1.12 are removed.

[FR Doc. 97–5341 Filed 3–4–97; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO–015–1015a; FRL–5682–5]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving the Asarco Glover, Missouri, lead emission control plan submitted by the state of Missouri on August 14, 1996. The plan was submitted by the state to satisfy certain requirements under the Clean Air Act (CAA) to reduce lead emissions sufficient to bring the Glover area into attainment with the National Ambient Air Quality Standard (NAAQS) for lead.

DATES: This action is effective May 5, 1997 unless by April 4, 1997 adverse or critical comments are received. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the: Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; and the EPA Air & Radiation Docket and Information Center, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Josh Tapp at (913) 551–7606.

SUPPLEMENTARY INFORMATION:

I. Background

Currently, the only significant source of lead contributing to violations of the lead NAAQS in the Glover area is a primary lead smelter owned and operated by the American Smelting and Refining Company (Asarco). The smelter processes lead concentrate recovered from lead mines into pure lead or lead compounds to meet its customer's specifications. The facility's refining capacity is approximately 140,000 tons of refined lead per year.

The original Glover lead State Implementation Plan (SIP) was approved by the EPA in 1981.

Subsequent to SIP approval, the EPA conducted modeling which predicted continued violations of the standard. Asarco and Missouri prepared several SIP revisions; however, these revisions were not approved because modeling still showed violations in some areas defined as ''ambient air.'

In 1987, the state began to record violations of the lead standard three miles from the facility. These data prompted Region VII to request more monitors in closer proximity to the source. On November 5, 1990, the EPA requested that the state of Missouri revise the SIP for this facility based on modeling conducted for 1983 through 1987, and based on monitored violations during 1988, 1989, and 1990.

On November 6, 1991, the EPA designated the Liberty and Arcadia Townships which surround the Glover facility as nonattainment for lead. This designation became effective on January 6, 1992.

The attainment plan was required to be submitted 18 months after the designation or by July 6, 1993. The state failed to make the required submission and on August 2, 1993, the EPA notified the Governor by letter of this fact. This notice initiated sanctions clocks in accordance with section 179 of the CAA and the Federal Implementation Plan (FIP) clock in accordance with section 110 of the CAA.

Under section 179 of the CAA, the EPA must impose sanctions on a nonattainment area for which the state has failed to submit a plan which has been determined complete by the EPA. The first of two sanctions must be implemented within 18 months after the date of the finding (or in this case, not later than January 2, 1995), and the second sanction must be implemented within 6 months after the implementation of the first sanction (or in this case, not later than August 2, 1995).

On August 4, 1994 (59 FR 39832), the EPA published a rulemaking which identifies the order of sanctions as follows: the first sanction to be imposed is the 2:1 offset sanction which requires 2:1 offsets for emission increases of the nonattainment pollutant from certain new or modified major sources within the nonattainment area; the second sanction to be imposed is the highway funding sanction. Under this sanction, Federal highway funds are withheld from the nonattainment area, unless the funds are for exempt projects.

Furthermore, section 110(c) of the Act obligates the EPA to promulgate a FIP within two years of a finding that the state has failed to submit the required plan. The EPA must approve a plan submitted by the state in order to stop the FIP clock.

In a January 27, 1995, letter, the EPA notified the Governor of the imposition of the mandatory offset sanction on February 2, 1995, barring a complete submission. And in an August 1, 1995, letter, the EPA notified the Governor of the imposition of the mandatory highway funding sanction on August 2, 1995, barring a complete submission.

Both sanctions were imposed until September 18, 1996, when the EPA was able to find that the state's August 14, 1996, submittal was complete, thus lifting the sanctions.

II. Criteria for Approval

The state's August 14, 1996, submission was reviewed using the criteria established by the CAA. The requirements for all SIPs are contained in section 110(a)(2) of the CAA. Subpart 1 of Part D of Title I of the CAA, and in particular section 172(c), specifies the provisions necessitated by designation of an area as nonattainment for any of the NAAQS. Further guidance and criteria are set forth in Subpart 5 of Part D, the ''General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990'' (57 FR 13498), and in the ''Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990'' (58 FR 67748).

III. Review of State Submittal

A. Control Strategy

The control strategy must contain provisions to ensure that Reasonably Available Control Technology (RACT), including Reasonably Available Control Measures (RACM), for area sources are implemented (see section 172(c)(1) of the CAA). See 57 FR 13549 and 58 FR 67748 for the EPA's interpretation of RACM and RACT requirements.

The state's selection of control strategies for the SIP was based on an evaluation of controls provided to the state by Asarco and its contractors. In this study, Asarco evaluated 19 fugitive emission control strategies and 29 process and stack-related control strategies. Asarco selected what it considered to be the most implementable and cost-effective options from this list which would bring the area into attainment with the lead NAAQS. The state concurred with Asarco's assessment that these controls constituted RACT. Detailed information regarding Asarco's control option selection process can be found in the EPA's technical support document (TSD).

The attainment modeling assisted Asarco and the state in focusing the control strategy by indicating which sources or groups of sources were the greatest contributors to the ambient concentrations.

Sinter plan fugitive emissions were identified as the single largest contributor to the violations with an estimated contribution of 91 percent. The sinter plant scrubber stack, the sinter plan ventilation baghouse stack, and the in-plant roads were also identified as significant contributors.

The sinter plant is the first process point for the lead concentrate at the lead smelter. Fugitive emissions from the sinter plant building are created by sources inside the building as well as by losses from point source ventilation systems. Emissions caused by material conveyance, crushing, and screening exit the building through open sides and roof monitors. This plan requires increased efficiency of materials handling by the reduction of transfer steps, and the enclosure and ventilation of the sinter plant.

The sinter plant scrubber cleans ventilation gases from the crushing and mixing of virgin feedstock for the sinter machine. The emissions from the scrubber currently exit the roof of the sinter building through the wet scrubber stack. The plan requires that these gases, once processed by the scrubber, be routed to the sinter machine updraft fans to be used as process air for the sinter feedstock bed. The gases will ultimately be captured by the sinter machine ventilation hoods and routed to the process gas baghouse.

The sinter plant wheelabrator ventilation baghouse cleans the point source ventilation gases from the crushing and sorting of sinter produced from the sinter machine. These gases exit the roof of the sinter building through the baghouse stack. This plan will require that baghouse gases be rerouted to the intake of the sinter machine updraft fans to be used as process gases and ultimately collected by the sinter machine hoods and routed to the process gas baghouse.

Finally, the plan requires compliance with state and Federally approved work practices to minimize fugitive emissions from in-plant roadways, stockpiles, baghouse unloading, and other sources. These work practices require additional trafficway paving, sweeping, dust supression, and materials handling practices to reduce fugitive emissions.

Once approved, these work practices may be modified only through Federal approval of a SIP revision.

B. Attainment Demonstration

Section 192(a) of the CAA requires that SIPs must provide for attainment of the lead NAAQS as expeditiously as practicable, but not later than five years from the date of an area's nonattainment designation. The lead nonattainment designation for the Liberty and Arcadia Townships became effective on January

6, 1992; therefore, the latest attainment date permissible by statute is January 6, 1997.

The Industrial Source Complex Short-Term Model was used to demonstrate attainment and maintenance of the lead NAAQS. The procedures recommended in the EPA's *Guideline on Air Quality Models (Revised)*, EPA 450/2–78–027R, July 1986, and *Supplement A to the Guideline on Air Quality Models (Revised)*, EPA 450/2–78–027R, July 1987, were followed. This modeling predicts attainment of the Federal lead standard by January 1, 1997, with the implementation of the control strategy. See the TSD for more information.

C. Emission Inventory and Air Quality Data

Section 172(c)(3) of the CAA requires that nonattainment plan provisions include a comprehensive, accurate, current inventory of actual emissions from all sources of relevant pollutants in the nonattainment area.

Asarco, the state, and the EPA undertook a comprehensive study to develop an accurate baseline emission inventory and dispersion model. This inventory was quantified through stack testing, evaluation of equipment and procedures, the EPA emission estimation methods, and engineering judgment. The attainment emission inventory was derived from the baseline inventory with the control strategy applied. Both inventories are included in the state's submittal.

The state's submittal also provides a historical summary of the air quality data for the Glover area collected from 1984 through the most current quarter.

D. Reasonable Further Progress (RFP)

The SIP must provide for RFP [see section 172(c)(2) of the Act]. The state's Consent Decree specifies an implementation schedule which requires a logical stepwise implementation of emissions control projects. This schedule results in a continual decrease of lead emissions through the implementation of the last projects, scheduled to be completed by December 31, 1996. The EPA believes that the RFP demonstration meets the requirements of section 172(c)(2) and the relevant guidelines in the ''Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990'' (58 FR 67748).

E. New Source Review (NSR)

Section 172(c)(5) requires that nonattainment areas be subject to the NSR permitting requirements of section 173. Missouri NSR regulations were originally approved pursuant to Part D of the Act on May 9, 1980 (45 FR 30626). The 1990 Amendments to the Act added other requirements pursuant to the review and approval of new and modified sources. Missouri incorporated these requirements into its regulations, and the EPA approved this SIP revision on February 29, 1996 (61 FR 7714). Therefore, the state's rules presently meet the requirements of sections 172(c)(5) and 173. The EPA proposed changes to the Part D NSR regulations on July 23, 1996 (61 FR 38250). Missouri may be required to revise its NSR regulations to conform to the final EPA requirements, when finalized.

F. Contingency Measures

As provided in section 172(c)(9) of the CAA, all nonattainment area SIPs must include contingency measures. Contingency measures should consist of specific emission control measures that are not part of the area's control strategy. These measures must take effect without further action by the state or the EPA, upon a determination that the area has failed to meet RFP or attain the lead NAAQS by the applicable attainment date.

There are seven contingency measures established in item 2.C. of the state's Consent Decree. These measures are: (1) construct and utilize a truck wash, (2) expand the in-plant road sprinkler system, (3) withdraw unloading building air for sinter plant make-up air, (4) comply with more stringent stack emission limitations, (5) cool lead bullion pots before dumping into receiving kettles, (6) modify refinery skims handling in blast furnace area, and (7) increase efficiency of sinter plant ventilation baghouse. In accordance with the Consent Decree, contingency measure number 1 would be implemented by Asarco within 30 days from receipt of notice by Missouri that the area failed to attain the standard. In the case that an additional violation is recorded, measures 2, 3, and 4 would be implemented in the following quarter and, in the case that a further violation is recorded, measures 5, 6, and 7 would be implemented. No triggers were set for contingency measure implementation in the case that the area failed to maintain RFP, based on circumstances unique to this lead SIP. The plan was adopted by the state well into Asarco's implementation of the control strategy, and the impending attainment date would not allow much evaluation of Asarco's maintenance of RFP by the state prior to the statutory deadline for attainment of the standard.

G. Enforceability

All measures and other elements in the SIP must be enforceable by the state and the EPA (see sections 172(c)(6), 110(a)(2)(A), and 57 FR 13556). The state submittal includes rule 10 CSR 10–6.120 and Consent Decree Case No. CV596–98CC, which contain all of the control and contingency measures, with enforceable dates for implementation. This Consent Decree also contains language regarding stipulated penalties. While the EPA is approving this language, Federal enforcement actions and related activities would be initiated by the EPA pursuant to its authority under the CAA.

As mentioned above, a Work Practice Manual was also included in the state's submission as an integral part of the enforceable plan to achieve attainment of the standard. These work practices are designed to limit the fugitive emissions at the facility, and are enforced through recordkeeping requirements. Noncompliance with the established work practices is a violation of the state's rule and the terms of the Consent Decree. The EPA approves the Work Practice Manual with the understanding that any change to the Work Practice Manual requires a revision to the Missouri SIP.

IV. Implications of This Action

This SIP revision will significantly revise the current SIP. The modeling performed in support of the SIP revision indicates that the emissions control strategy will result in attainment of the NAAQS for lead by January 1, 1997.

V. Final Action

Pursuant to sections 110 and 172 of the CAA, this is a direct final action which approves the lead plan submitted by the state of Missouri on August 14, 1996, in response to the designation of the Liberty and Arcadia Townships as nonattainment for lead. This SIP revision meets the requirements of section 110 and Part D of Title I of the CAA and 40 CFR Part 51.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action is effective May 5, 1997 unless, by April 4, 1997, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a

subsequent notice that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action is effective May 5, 1997.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors, and in relation to relevant statutory and regulatory requirements.

VI. Administrative Requirements

A. Executive Order (E.O.) 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995, memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5. U.S.C. § 600 et seq., the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, the EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, Part D of the CAA do not create any new requirements but simply approve requirements that the state is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids the EPA to base its actions concerning SIPs on such grounds (*Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2)).

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, the EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, the EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves preexisting requirements under state or local law, and imposes no new Federal requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in today's Federal Register. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 5, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Lead, Particulate matter, Reporting and recordkeeping requirements.

Dated: January 16, 1997.

Dennis Grams,

Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401—7671q.

Subpart AA—Missouri

2. Section 52.1320 is amended by adding paragraph (c)(95) to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

(95) Plan revisions were submitted by the Missouri Department of Natural Resources on August 14, 1996, which reduce lead emissions from the Asarco primary lead smelter located within the lead nonattainment area defined by the boundaries of the Liberty and Arcadia Townships located in Iron County, Missouri.

(i) Incorporation by reference.

(A) Rule 10 CSR 10–6.120, Restriction of Emissions of Lead From Primary Lead Smelter—Refinery Installations, except subsection 2(B) and 2(C), and section 4, effective June 30, 1996.

(B) Consent Decree Case Number CV596–98CC, STATE OF MISSOURI ex. rel. Jeremiah W. (Jay) Nixon and the Missouri Department of Natural Resources v. ASARCO, INC., Missouri Lead Division, effective July 30, 1996, with Exhibits A, C, D, E, F, and G.

(ii) Additional material.

(A) Narrative SIP material submitted on August 14, 1996. This submittal includes the emissions inventory and the attainment demonstration.

[FR Doc. 97–5132 Filed 3–4–97; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 180

[OPP–300455; FRL–5591–5]

RIN No. 2070–AB78

Thiazopyr; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes tolerances for residues of the herbicide thiazopyr (3-pyridinecarboxylic acid, 2-(difluoromethyl)-5-(4,5-dihydro-2-thiazolyl)-4-(2-methylpropyl)-6-(trifluoromethyl)-, methyl ester) and its metabolites determined as 2-(difluoromethyl)-6-(trifluoromethyl)-3,4,5-pyridinetricarboxylic acid, all expressed as the parent equivalents in or on the raw agricultural commodities orange and grapefruit. Rohm and Haas Company submitted a petition to EPA under the Federal Food, Drug and Cosmetic Act as amended by the Food Quality Protection Act of l996 requesting the tolerances.

EFFECTIVE DATE: This regulation becomes effective March 5, 1997.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300455], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the docket control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically to the OPP by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [OPP–300455].

No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Joanne I. Miller, Product Manager (PM) 23, Registration Division (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number and e-mail address: Rm. 237, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703) 305–6224; e-mail: miller.joanne@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the Federal Register of October 21, 1993 (58 FR 54354), EPA issued a notice pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), announcing the filing of a pesticide tolerance petition by Monsanto Co., Suite 1100, 700 14th St., NW., Washington, DC 20005. The petition requested that 40 CFR part 180 be amended by adding a regulation for tolerances for combined residues of the herbicide thiazopyr (3-pyridinecarboxylic acid, 2-(difluoromethyl)-5-(4,5-dihydro-2-thiazolyl)-4-(2-methylpropyl)-6-(trifluoromethyl)-, methyl ester) and its metabolites determined as 3-pyridinecarboxylic acid, 5-(aminocarbonyl)-2-(difuoromethyl)-4-(2-methylpropyl)-6-trifluoromethyl-, methyl ester and 3-pyridinecarboxylic acid, 2-(difluoromethyl)-4-(2-methylpropyl)-5-((2-sulfoethyl)amino) carbonyl-6-(trifluoromethyl) and expressed as parent equivalents, in or on the raw agricultural commodities: Citrus, whole fruit at 0.05 ppm; cotton seed at 0.05 ppm and cotton forage at 0.2 ppm. The proposed analytical method for determining residues was gas chromatography with mass spectrometry.

In the Federal Register of August 24, l994 (59 FR 43580) EPA issued a notice of an amendment to the petition. The tolerances requested were changed to residues of thiazopyr (3-pyridinecarboxylic acid, 2-[difluoromethyl]-5-(4,5-dihydro-2-thiazolyl)-4-(2-methylpropyl)-6-(trifluoromethyl)-, methyl ester) and its metabolites determined as 3-pyridinecarboxylic acid, 5-(aminocarbonyl)-2-(difluoromethyl)-4-(2-methylpropyl)-6-trifluoromethyl)-, methyl ester and 3-pyridinecarboxylic acid, 2-(difluoromethyl)-4-(2-methylpropyl)-5-(((2-sulfoethyl) amino) carbonyl)-6-(trifluoromethyl) acid and expressed as parent equivalents, in or on citrus whole fruit at 0.05 ppm, cotton seed at 0.05 ppm and cotton forage at 0.2 ppm. Monsanto Co. requested the petition be amended to read: tolerances of 0.05 ppm for orange, whole fruit and 0.05 for grapefruit, whole fruit. The proposed analytical method for determining residues was mass spectral multiple-ion detection.

In the Federal Register of November 22, l996 (61 FR 59440)(FRL–5573–8) EPA issued a third notice of filing to amend the petition to bring the petition in conformity with the Food Quality Protection Act (FQPA) of l996. The notice contained a summary of the petition prepared by the petitioner and this summary contained conclusions and arguments to support its conclusion that the petition complied with FQPA. In this instance the petitioner proposed to amend 40 CFR part 180 by establishing a regulation for tolerances for residues of thiazopyr in or on orange and grapefruit at 0.05 ppm on the whole fruit, the same as proposed in the previous EPA notices of filing.

There were no comments or requests for referral to an advisory committee received in response to the notices of filing.

The data submitted in the petition and other relevant material have been evaluated. The toxicology data listed below were considered in support of these tolerances.

I. Toxicological Profile

1. A battery of acute toxicity studies placing technical thiazopyr in Toxicity Categories III and IV.

2. A 3–month feeding study in rats at dietary intakes of 0, 0.07, 0.67, 6.60, 68, or 201 milligrams per kilogram per day (mg/kg/day) (males) and 0.08, 0.79, 8.0, 79 or 227 mg/kg/day (females) with a no observed effect level (NOEL) of 6.6 mg/kg/day, based on increased liver, thyroid and kidney weights, changes in clinical chemistry and hematological parameters and on gross and microscopic changes observed in the liver and thyroid at dose levels of 68 mg/kg/day and higher. At the 201 mg/kg/day dose diffuse thyroid follicular cell hypertrophy/hyperplasia was observed.

3. A 3–month feeding study in dogs at 0, 3, 6, 35 and 175 mg/kg/day (males) and 0, 2, 3, 35 and 160 mg/kg/day (females) with a NOEL of 2 mg/kg/day, based on decreased body weight gain and increased SGPT levels at 3 and 6 mg/kg/day for males and females, respectively and above; decreased total protein and albumin concentration and

albumin/globulin ratio, increased AP, hepatocytic hypertrophy, oval cell proliferation and increased hepatocytic fatty content at 35 mg/kg/day and above; and decreased calcium concentration which is thought to be related to the hypoalbuminemia, decreased cholesterol and triglyceride concentrations, slightly increased GGT and SGPT, follicular hyperplasia of thyroid, increased colloid content in follicles and increased relative thyroid weight at 175 mg/kg/day.

4. A 3–week dermal study in rabbits at 0, 100, 500 and 1,000 mg/kg/day with a NOEL of 100 mg/kg/day. The effects were increased mean absolute and relative kidney weights and minimal multifocal or periportal hepatocyte vacuolation.

5. A 1–year feeding study in dogs at 0, 0.8, 7.8, 86 mg/kg/day (males) and 0, 0.8, 8.8, and 78 mg/kg/day (females). The NOEL was 0.8 mg/kg/day and the LOEL is 7.8 mg/kg/day based upon hepatocellular hypertrophy/hyperplasia, which was observed at 7.8 to 8.8 mg/kg/day for males and females, respectively, and above. In addition, an increase of approximately 10% in prothrombin time was observed at 8.6 and 7.8 mg/kg/day for males and females, respectively with both sexes, as well as increased SGOT, SGPT, GGT and ALK and decreases in cholesterol, albumin, total protein and calcium levels. An increase in absolute and relative liver weights were also observed at 2,000 ppm. Enlargement and/or discoloration in some of the high dose animals provided additional evidence of hepatotoxicity.

6. A developmental toxicity study in rats at 0, 10, 100 and 250 mg/kg/day. The maternal NOEL is 100 mg/kg/day and the maternal lowest observed effect level (LOEL) is 250 mg/kg/day based on increased liver weights, salivation, decreased body weight gains and food consumption. The developmental NOEL was 100 mg/kg/day and the developmental LOEL was 250 mg/kg/day based on increased incidences of unossified sternebra(e) and 7th cervical rib variations.

7. A developmental toxicity study in rabbits at 0, 10, 75 and 175 mg/kg/day. The maternal NOEL was 75 mg/kg/day based on reduced body weight gain and food consumption. The developmental NOEL was 175 mg/kg/day the highest dose tested. No effects were observed.

8. A two-generation reproductive study in rats at 0, 0.72, 7.33 and 72.9 mg/kg/day (males) and 0, 0.86, 8.49, 81.3 mg/kg/day (females). The parental/systemic NOEL was 0.72 mg/kg/day. The toxic effects were increased absolute and relative liver weight, hepatic discoloration, histologic evidence of hepatic hypertrophy and vacuolization in females in both generations. The reproductive NOEL was 72.9 mg/kg/day, the highest dose tested. There were no reproductive effects.

9. A mouse carcinogenicity study at doses of 0, 0.17, 1.6, 16.9 66.3 and 128.4 mg/kg/day (males) and 0,0.24, 2.6, 26.8, 108.1 and 215.9 mg/kg/day (female). The systemic NOEL was 1.6 mg/kg/day. The effects were hepatocellular hypertrophy and amyloid deposition. At 66.3 mg/kg/day the same lesions plus increased liver weights, random and periportal hepatocellular vacuolation were observed. At 128.4 mg/kg/day the same lesions plus distended abdomen, slight increase in ALP, SGOT and SGPT, abnormal coloration and enlargement of liver, decrease in absolute and relative spleen weights, increase in absolute and relative kidney weights, increase in eosinophilia in hepatocytes, kidney nephropathy and lymphocytic hyperplasia of the nesenteric lymph nodes were observed. There were no increases in neoplastic lesions in any of the treated groups.

10. A 2–year rat carcinogenicity study at doses of 0, 0.04, 0.4, 4.4, 44.2 or 136.4 mg/kg/day (males) and 0, 0.06, 0.6, 5.6, 56.3 or 177.1 mg/kg/day (female) with a systemic NOEL of 4.4 mg/kg/day. The effects were protruding eyes, evidence of mild anemia, increased GGT and cholesterol, increased absolute and relative liver, kidney and thyroid weights and significant increase in microscopic lesions in the liver (hypertrophy and vacuolar changes), kidney (nephropathy) and thyroid (hypertrophy and hyperplasia); decreased mean body weight and body weight gain and food consumption. A statistically significant increase in thyroid follicular cell adenomas/cystadenomas were observed in males at 44.2 and 136.4 mg/kg/day. A nonsignificant increase in renal tubular adenomas in high-dose females was considered to be equivocal.

The EPA's Health Effects Division Carcinogenicity Peer Review Committee classified thiazopyr as a Group C, possible human carcinogen and recommended that for the purpose of risk characterization a Margin of Exposure (MOE) approach should be used in evaluation of the consequences of human exposure.

11. An acceptable study for inducing reverse mutation in Ames Salmonella strains of bacteria exposed with or without activation at doses up to 10,000 micrograms per plate. The study showed negative results.

12. An acceptable study for inducing micronuclei in bone marrow cells of mice treated up to a lethal dose of 800 mg/kg. The study showed negative results.

13. A mutagenic study with Chinese hamster ovary cells exposed *in vitro* with or without activation to doses up to 1,000 micrograms, the highest dose tested. The study showed negative results for inducing forward mutation at the hypoxanthine guanine phosphoribosyl transferase locus (HGPRT). On the basis of the studies on mutagenicity and genotoxicity, it is concluded that thiazopyr is not a mutagenic or genotoxic chemical.

14. An acute neurotoxicity in rats at doses of 0, 500, 1,000 and 2,000 mg/kg with a NOEL of 500 mg/kg. The effects were transient differences in functional observational battery and motor activity compared to control groups. The results of the study were considered to be inconclusive for neurotoxicity. At the highest dose (2,000 mg/kg) it was not possible to distinguish between neurotoxicity and general systemic toxicity.

15. Two metabolism studies were conducted in rats with radio-labeled thiazopyr. One with the ^{14}C at the 4 position of the pyridine ring and one with the ^{14}C at the 4′ and 5′ positions of the thiazole ring. The absorption of an orally administered dose was about 90%. The overall radiolabel recovery for all study groups was 88.9, plus or minus 0.65%. No significant sex-related differences were observed in the total percent recovery. However, the distribution of recovery was sex-related. There was little radiolabel detected in tissues at study termination. Preferential sites for localization of the radiolabel included liver, adipose tissue, muscle and bone. The metabolic pathway is essentially an oxidative pathway. Vulnerable sites of the molecule are the thiazoline ring, the isobutyric side chain and the pyridine rings. Thiazopyr appears to be rapidly and extensively eliminated with low amounts of residues remaining in the tissues and carcasses. The percentage of radiolabel remaining in the carcasses following feeding thiazoline-labeled thiazopyr was between 6.9 and 10.8%.

16. Special mechanistic studies for mode of toxic action on thyroid function. The results of three studies on the effects of thiazopyr on thyroid function and mechanisms involved in the disposition of T4 in rats were reviewed. These studies are described below:

a. Thiazopyr was administered through the diet, in rats, at 0 and 150 mg/kg/day to determine the subchronic effect on hormone level and other biochemical endpoints. Animals were

assayed at 7, 14, 28, 56 or 90 days. Significant decreases in body weight gain were observed at 90 days. Early in the study the treated rats showed increases in TSH (ranging from 133 to 200% of controls) and decreases in T4 (ranging from 43% to 76% of controls). In addition there were increases in liver and thyroid weights and increases in thyroid follicular cell hypertrophy/hyperplasia. Reverse T3 was increased at 28 days, and T3 was either not affected or increased. There were indications of increases in hepatic UDPGT activity and significant increases in T4 UDPGT activity. Hepatic 5′-monodeiodinase activity was either not affected or decreased. The effects observed in this study were supportive of the theory that thiazopyr may induce thyroid tumors through a disruption in the thyroid-pituitary hormonal feedback mechanisms.

b. A second study on the effects of thiazopyr on the biochemical mechanisms of thyroid toxicity in rats at doses of 0, 0.5, 1.5, 5, 15, 50 or 150 mg/kg/day was conducted. Dose response effects on various biochemical parameters were observed. Two groups of the rats in the study were observed for reversibility of effects observed up to 56 and 112 days. Doses at 15, 50 and 150 mg/kg/day significantly increased the liver weights. Thyroid weights were increased at doses of 50 and 150 mg/kg/day. There was no significant effect on body weight or body weight gains during the study. The T4 UDPGT levels were increased by 117 and 376% above controls at the 50 and 150 mg/kg/day dosages, respectively. Effects of 150 mg/kg/day were increases in T3, TSH and rT3 serum concentrations, and increased incidence of follicular cell hypertrophy/hyperplasia at the 150 mg/kg/day dose. A NOEL of 1.5 mg/kg/day was determined based on liver weight increases. Thyroid weight was the only parameter that did not return to those similar to the controls. At the 56 and 112 day recovery periods the thyroid weights were 120 and 123% of control values, respectively.

c. A third thyroid function study on the biochemical mechanisms involved with disposition of T4 in rats fed dosages of 0 and 150 mg/kg/day for 56 days was conducted. Rats feed thiazopyr had increase T4 UDPGT activity and total deiodinase activity in their livers. There was also a two-fold increase in mixed function oxidase enzyme activity. Results of the three studies suggest that increased glucuronidation, deiodination of T4 and T3, and increased rate of clearance of T4 from the blood and excretion of the hormone and its metabolites in the bile could significantly reduce the level of circulating T4 in the male rat.

Results of these studies support the hypothesis that thiazopyr may induce thyroid tumors through a disruption of the thyroid-pituitary hormonal feedback mechanism circulating T4 in the male rat.

II. Aggregate Exposures

1. *Food and feed uses.* The primary source for human exposure to thiazopyr will be from ingestion of both raw and processed agricultural commodities as proposed in the November 22, 1996 notice of filing cited above. Based on tolerances of 0.05 ppm in or on orange and grapefruit, the Theoretical Maximum Residue Contributions (TMRC) for the U.S. adult population and for U.S. children (1 to 6 years of age) were determined. In deriving the dietary exposure to thiazopyr and its metabolites, EPA assumed that 100% of the orange and grapefruit crops were cultured with the aid of this herbicide. A chronic exposure was used to estimate the TMRC. The TMRC for the U.S. population was estimated to be 0.000118 mg/kg/day. The TMRC for children, 1 to 6 years of age was 0.000324 mg/kg/day. The TMRC for children, 7 to 12 years of age was 0.000173 mg/kg/day.

2. *Potable water.* There is presently no EPA Lifetime Health Advisory level for thiazopyr and its degradates as drinking water contaminates. Thiazopyr has not been found in ground water. A monoacid degradate was found in wells at concentrations of up to 7.6 parts per billion (ppb). The wells were being monitored as part of a prospective ground water study in the state of Florida. Using a standard potable water ingestion of 2 liters per day by adults and 1 liter per day by children, the exposure from potable water to adults was determined to be 0.000217 mg/kg/day. Exposure to children was determined to be 0.00076 mg/kg/day.

3. *Non-dietary uses.* There are no non-dietary uses registered under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended.

4. Cumulative exposure to substances with common mechanism of toxicity.Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ‘‘available information’’ concerning the cumulative effects of a particular pesticide’s residues and ‘‘other substances that have a common mechanism of toxicity.’’ While the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the capability to resolve the scientific issues concerning common mechanism of toxicity in a meaningful way. EPA is commencing a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will enable the Agency to apply common mechanism issues to its pesticide risk assessments. At present, however, the Agency does not know how to apply the information in its files concerning common mechanism issues to risk assessments, and therefore believes that in most cases there is no ‘‘available information’’ concerning common mechanism that can be scientifically applied to tolerance decisions. Where it is clear that a particular pesticide may share a significant common mechanism with other chemicals, or where it is clear that a pesticide does not share a common mechanism with other chemicals, a tolerance decision may be affected by common mechanism issues. The Agency expects that most tolerance decisions will fall into the area in between, where EPA can not reasonably determine whether a pesticide does or does not share a common mechanism of toxicity with other chemicals (and, if so, how that common mechanism should be factored into a risk assessment). In such circumstances, the Agency will reach a tolerance decision based on the best, currently available and usable information, without regard to common mechanism issues. However, the Agency will also revisit such decisions when the Agency learns how to apply common mechanism information to pesticide risk assessments.

In the case of thiazopyr, EPA has determined that it does not now have the capability to apply the information in its files to a resolution of common mechanism issues in a manner that would be useful in a risk assessment. This tolerance determination therefore does not take into account common mechanism issues. The Agency will reexamine the tolerances for thiazopyr, if reexamination is appropriate, after the Agency has determined how to apply common mechanism issues to its pesticide risk assessments.

III. Determination of Safety for U.S. Population and Non-nursing Infants

1. *The U.S. population.* Based on a NOEL of 0.8000 milligrams per kilogram of body weight per day (mg/kg bwt/day) from a 2–year dog feeding study that showed a liver effect of hepatocellular hypertrophy and hyperplasia, and using a safety or uncertainty factor of 100 to

account for the interspecies extrapolation and intraspecies variability, the Agency has determined a Reference Dose (RfD) of 0.008 mg/kg bwt/day for this assessment of risk. Based on the available toxicity data and the available exposure data identified above, the proposed tolerances will utilize 1.5% of the RfD for the U.S. population. Including an estimated exposure of 7.6 ppb in potable water, the dietary exposure for the U.S. adult population, assuming the ingestion of 2 liters of water per day, increases to 0.000335 mg/kg/day and utilizes 4.6% of the RfD.

2. *Non-nursing infants.* Using the RfD of 0.008 mg/kg/bwt/day as described above and the TMRC of 0.000251 mg/kg/day determined of non-nursing infants, the proposed tolerances utilize 13.97% (3.1% dietary and 10.87% potable water) of the RfD.

3. *Nonfood uses.* There are no nonfood uses of thiazopyr registered under FIFRA, as amended.

IV. Determination of Safety for Infants and Children

Risk to infants and children was determined by use of two developmental toxicity studies. One study in rats had a NOEL for developmental toxicity of 100 mg/kg/day, based on an increase in the incidence of unossified sternebrae and 7th cervical rib variations. The maternal NOEL was also 100 mg/kg/day based on toxic effects of increased liver weights, salivation, decreased body weight gains and food consumption. Fetal toxicity was only observed at maternally toxic doses. No malformations were observed at any dose. A second study in rabbits had a maternal NOEL of 75 mg/kg/day based on effects in reducing body weight gain and food consumption. There were no development effects at l75 mg/kg/day, the highest dose tested.

In a reproduction study in rats, the parental NOEL was 0.72 to 8.1 mg/kg/day. The reproductive toxicity NOEL was 72.9 to 81.3 mg/kg/day. There were no treatment-related effects on any reproductive parameter in the adults or their offspring. Overall, thiazopyr was not associated with significant developmental or reproductive effects below maternally toxic doses.

FFDCA section 408 provides that EPA shall apply an additional safety factor for infants and children in the case of threshold effects to account for pre-and post-natal toxicity and the completeness of the database unless EPA determines that such additional factor is not necessary to protect the safety of infants and children. EPA believes that reliable data support using a different safety factor (usually 100x) and not the additional safety factor when EPA has a complete data base and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the traditional safety factors.

The toxicological database for evaluating pre- and post-natal toxicity for thiazopyr is mostly complete. Available data indicate that no developmental toxicity was observed in the rabbit study at the highest dose tested (175 mg/kg/day). Maternal toxicity was observed in the rabbit in the 175 mg/kg/day dose group which consisted of reductions in body weight gain and food consumption. In the rat developmental study, a reduction in maternal body weight gain and body weight was observed at the highest dose tested (250 mg/kg/day). Developmental toxicity was observed in the high dose (250 mg/kg/day) as increased incidences of unossified sternebra and 7th cervial rib variations.

The NOEL for systemic (parental) toxicity is 0.72 mg/kg/day. The NOEL for reproductive toxicity is 72.9 mg/kg/day (highest dose tested). There were no reproductive effects noted in the study. These data taken together suggest minimal concern for developmental or reproductive toxicity and do not indicate any increased pre- or post-natal sensitivity in the offspring; no additional uncertainty factor for increased sensitivity in infants and children is appropriate.

The percent of the RfD that will be utilized by the aggregate exposure to thiazopyr will range from 7.148% for non-nursing infants, up to 13.55% for children (1 to 6 years of age). Therefore, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure.

V. Other Considerations

A. Endocrine Effects

An evaluation of the potential effects on the endocrine systems of mammals was partially determined by chronic toxicology studies described above. There were observed pathology of the endocrine organs in those studies. Three supplemental rat studies were conducted to determine the mode of toxic action of thiazopyr on thyroid function. The mode of toxic action as indicated by effects of thiazopyr on serum hormone levels, hepatic enzyme activity, and thyroid-pituitary hormonal feedback mechanisms.

B. Metabolism in Plants and Animals

The metabolism of thiazopyr in plants and animals is adequately understood for the purposes of these tolerances. There were no crop residues found after the preemergence use in the culture of orange and grapefruit. The metabolites that were identified in a radiolabeled thiazopyr study and converted to two common entities: amide ester and sulfonic diacid. However, the Agency has accepted enforcement analytical methodology that uses only one common entity to determine greater than 70% of the expected thiazopyr residues.

C. Analytical Method

There is a practical analytical method for detecting and measuring levels of thiazopyr and its metabolites in or on food with a limit of detection that allows monitoring of food with residues at or above the levels set in these tolerances. The proposed analytical method for determining residues is gas-liquid chromatography with mass selective detection. Thiazopyr and its metabolites are converted to a common moiety which is quantified. The quantitation limit of this method is 0.015 ppm for whole orange fruit. EPA has provided information on this method to FDA. Because of the long lead time from establishing these tolerances to publication, the enforcement methodology is being made available in the interim to anyone interested in pesticide enforcement when requested by mail from: Calvin Furlow, Public Response Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone umber: Rm. 1130A, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)–305–5937.

D. International Tolerances

There are no Codex Alimentarius Commission (Codex) Maximum Residue Levels (MRLs) for thiazopyr.

E. Summary of Findings

The analysis for thiazopyr using tolerance level residues shows that the proposed uses in the culture of orange and grapefruit will not cause exposure to exceed the levels at which the Agency believes there is an appreciable risk. All population subgroups examined by EPA are exposed to thiazopyr residues at levels below 100 percent of the RfD for chronic effects.

Based on the information cited above, the Agency has determined that the establishment of these tolerances by adding a new section to 40 CFR part 180

will be safe; therefore, the tolerances are established as set forth below.

VI. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to ''object'' to a tolerance regulation issued by EPA under new section 408(e) and (1)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which governs the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by May 5, 1997, file written objections to any aspect of this regulation (including the automatic revocation provision) and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as Confidential Business Information (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VII. Public Docket

A record has been established for this rulemaking under docket number [OPP–300455]. A public version of this record, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operation Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. EPA has also established a special record for post-FQPA tolerances which contains documents of general applicability. This record can be found in the same location.

The official record for this rulemaking, as well as the public version, as described above, is kept in paper form. Accordingly, in the event there are objections and hearing requests, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record. The official rulemaking record is the paper record maintained at the Virginia address in ''ADDRESSES'' at the beginning of this document.

VIII. Regulatory Assessment Requirements

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), this action is not a ''significant regulatory action'' and since this action does not impose any information collection requirements subject to approval under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., it is not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty, or contain any ''unfunded mandates'' as described in Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation as specified by Executive Order 12875 (58 FR 58093, October 28, l993), or special considerations as required by Executive Order 12898 (59 FR 7629, February 16, l994).

Because tolerances established on the basis of a petition under section 408(d) of FFDCA do not require issuance of a proposed rule, the regulatory flexibility analysis requirements of the Regulatory Flexibility Act (RFA), 5 U.S.C. 604(a), do not apply. Prior to the recent amendment of the FFDCA, EPA had treated such rulemakings as subject to the RFA; however, the amendments to the FFDCA clarify that no proposal is required for such rulemakings and hence that the RFA is inapplicable.

Under 5 U.S.C. 801(a)(1)(A) of the Administrative Procedure Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Title II of Pub. L. 104–121, 110 Stat. 847), EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2) of the APA as amended.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 19, 1997.

Stephanie R. Irene,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. By adding § 180.496 to read as folllows:

§ 180.496 Thiazopyr; tolerances for residues.

Tolerances are established for combined residues of the herbicide thiazopyr (3-pyridinecaroxylic acid, 2-(difluoromethyl)-5-(4,5-dihydro-2-thiazolyl)-4-(2-methylpropyl)-6-(trifluoromethyl)-, methyl ester) and its metabolites determined as 2-(difluoromethyl)-6-(trifluoromethyl)-3,4,5-pyridinetricarboxylic acid, all expressed as the parent equivalents in or on the following raw agricultural commodities:

Commodities	Parts per million
Grapefruit	0.05
Orange	0.05

[FR Doc. 97–5201 Filed 3–4–97; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 180

[OPP–300457; FRL–5592–2]

RIN 2070–AB78

Clofencet; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes tolerances for the residues of the plant growth regulator (hybridizing agent) clofencet, [2-(4-chlorophenyl)-3-ethyl-2,5-dihydro-5-oxo-4-pyridazinecarboxylic acid, potassium salt] expressed as the free acid, active ingredient code 128726, CAS No. 82697–71–0 in or on the raw agricultural commodities wheat as a primary application; in or on the cereal grains group (except rice, wild rice, sweet corn and wheat) and soybeans as rotational crops; and in animal products. Monsanto Co. submitted a petition to EPA under the Federal Food, Drug and Cosmetic Act as amended by the Food Quality Protection Act of 1996 requesting the tolerances.

EFFECTIVE DATE: This rule becomes effective March 5, 1997.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [OPP–300457], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [OPP–300457]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

FOR FURTHER INFORMATION CONTACT: By mail: Philip V. Errico, Product Manager (PM) 25, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number and e-mail address: Rm. 241, CM #2, 1921 Jefferson Davis Highway., Arlington, VA 22202, (703) 305–6027; e-mail: errico.philip@epamail. epa.gov.

SUPPLEMENTARY INFORMATION: In the Federal Register of August 7, 1996 (61 FR 41153), (PF–667; FRL–5388–7), EPA issued a notice announcing that Monsanto Company, 700 14th St., NW., Suite 1100, Washington, DC 20005, had submitted pesticide petition 4F4346 to EPA which requested that the Administrator, pursuant to section 408 of the Federal Food, Drug and Cosmetic Act (FFDCA), amend 40 CFR part 180 to establish tolerances for residues of clofencet, [2-(4-chlorophenyl)-3-ethyl-2,5-dihydro-5-oxo-4-pyridazinecarboxylic acid, potassium salt] expressed as the free acid, in or on the raw agricultural commodities: wheat grain at 250 parts per million (ppm), wheat hay at 40 ppm, wheat straw at 50 ppm and wheat forage at 10 ppm; in the animal product commodities of cattle, goats, hogs, horses and sheep: fat at 0.04 ppm, kidney at 10 ppm, meat at 0.15 ppm, meat by-products (except kidney) at 0.5 ppm and milk at 0.02 ppm; in animal product commodities of poultry: eggs at 1 ppm, fat at 0.04 ppm, meat at 0.15 ppm and meat by-products at 0.20 ppm; and rotational crop tolerances in the raw agricultural commodities: soybeans at 30 ppm, soybean hay at 10 ppm and soybean forage at 10 ppm; cereal grains group (except rice, wild rice, sweet corn and wheat): grain at 20 ppm, straw at 4 ppm, forage at 4 ppm, stover (fodder) at 1 ppm and hay at 15 ppm.

In the Federal Register of December 12, 1996 (61 FR 65392), (PF–678; FRL–5576–2), EPA issued a second notice to bring the Notice into conformity with the Food Quality Protection Act (FQPA) of 1996. The notice contained a summary of the petition prepared by the petitioner, Monsanto Co., including information and arguments to support its conclusion that the petition complied with FQPA. It was stated in the notice that the conclusions and arguments were not of the EPA.

There were no comments received in response to the notices of filing.

The data submitted in the petition and other relevant material have been evaluated. The toxicological data listed below were considered in support of these tolerances.

I. Toxicology Profile

1. A battery of acute toxicity studies placing technical clofencet in toxicity category II for eye irritation, category III for oral LD_{50}, category IV for inhalation LC_{50} and dermal irritation and category V for dermal LC_{50}.

2. A 90–day rat neurotoxicity study at doses of 0, 200, 2,000 or 20,000 ppm (males = 0, 12.3, 124.5 or 1,232 milligrams per kilogram per day (mg/kg/day); females = 0, 15.2, 149.8 or 1,537.2 mg/kg/day) with a No Observed Effect Level (NOEL) of 2,000 ppm in females based on decreased body weight gain in females and 20,000 ppm in males. At the 20,000 ppm (Highest Dose Tested (HDT)), no neurotoxicity was observed in either male or female rats.

3. A 21–day rat dermal toxicity study at doses of 0, 100, 300 or 1,000 mg/kg/day which showed no significant toxic effects at any dose tested with a systemic and dermal NOEL of 1,000 mg/kg/day.

4. A 90–day dog feeding study at doses of 0, 10, 50, 200 or 500 mg/kg/day with a NOEL of 50 mg/kg/day based on histological findings in the thymus and testes.

5. A 90–day rat feeding study at doses of 0, 200, 1,000, 5,000 or 20,000 ppm (males = 0, 12, 60, 311 or 1,207 mg/kg/day; females = 0, 15, 75, 373 or 1,477 mg/kg/day) with a NOEL of 5,000 ppm in the diet based on decreased cumulative weight gain and slightly increased kidney weights in females.

6. A rat developmental toxicity study at doses of 0, 100, 300 or 1,000 mg/kg/day with a maternal and developmental NOEL of 1,000 mg/kg/day HDT. There was no developmental toxicity considered to be the result of clofencet administration.

7. A rabbit developmental toxicity study at doses of 0, 50, 150 or 500 mg/kg/day) with a maternal and developmental NOEL of 150 mg/kg/day based on mortality, increased abortions and decreased body weight gain, decreased food consumption, lower fetal body weights, increased incidence of fetal hydrocephalus and an increase in

the number of fetuses/litters with unossified bones.

8. A rat two-generation reproduction study at dietary concentrations of 0, 500, 5,000 or 20,000 ppm (males = 0, 38, 393 or 1,602 mg/kg/day; females = 0, 52, 529 or 2,044 mg/kg/day) with a maternal NOEL of 5,000 ppm based on suggestive increase in mortality, decrease in body weight/weight gains and lung pathology. The reproductive NOEL is 500 ppm based on an increase in pup mortality in F1a and F1b during lactation days 1 to 4 and decreased body weights during lactation.

9. A 1–year dog chronic toxicity study at doses of 0, 5, 30 or 200 mg/kg/day. The NOEL was 5 mg/kg/day based on liver and epididymal/testicular effects.

10. An 18–month mouse carcinogenicity study at doses of 0, 70, 300, 3,000 or 7,000 ppm (males = 0, 11.45, 50.31, 501.20 or 1,228.22 mg/kg/day; females = 0, 16.92, 70.67, 710.79 or 1,608.46 mg/kg/day) with a systemic NOEL of 3,000 ppm based on decreased survival as well as bone marrow myeloid hyperplasia, lung congestion and skin fibrosis in males and an increased incidence of histiocytic sarcomas in females at 7,000 ppm (HDT).

11. A 2–year rat chronic/carcinogenicity study at dietary doses of 0, 100, 1,000, 10,000 or 20,000 ppm (males = 0, 4.7, 47, 470 or 989 milligrams per kilogram of body weight per day (mg/kg bwt/day)); females = 0, 5.9, 58, 607 or 1,288 mg/kg bwt/day) with a systemic NOEL of 1,000 ppm based on hematuria, white/gray lung foci and kidney lesions. Clofencet at 20,000 ppm (HDT) may cause an increase in the number of animals with hepatocellular carcinomas and adenomas/carcinomas in males and an increase in thyroid C-cell adenomas in males and females.

12. A metabolism study in rats indicated that clofencet was rapidly absorbed and excreted by 7 days post-dosing, with the majority of the administered ^{14}C-label (>78%) eliminated in the urine within 24 hours. Analysis of the excreta indicated that ^{14}C MON 21200 was eliminated mostly unmetabolized in the urine (87.9 to 92.1% of the administered dose) and in the feces (4.5 to 9.1% of the administered dose). Less than 1% was of the administered ^{14}C-label was eliminated as expired CO_2. Less than 1% was retained in the tissue at 7 days post-dosing, indicating low bioaccumulation. There were no apparent sex- or dose-related differences in the absorption, distribution, metabolism or elimination.

13. Acceptable studies on gene mutation and other genotoxic effects: Ames *Salmonella* Assay; CHO/HGPRT Point Mutation Assay; *In Vitro* Cytogenetics Assay in Human Lymphocytes; Mouse Micronucleus Assay; and *In Vivo/In Vitro* Hepatocyte DNA Repair Assay yielded negative results.

II. Dose Response Assessment

Reference dose (RfD). The RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. The RfD is determined by using the toxicological end-point or the NOEL for the most sensitive mammalian toxicological study. To assure the adequacy of the RfD, the Agency uses an uncertainty factor in deriving it. The factor is usually 100 to acount for both interspecies extrapolation and intraspecies variability represented by the toxicological data. The EPA has determined a RfD of 0.05 mg/kg/day with an uncertainty factor of 100 for this risk assessment, based on a NOEL of 5.0 mg/kg/day from a 1–year feeding study in dogs which demonstrated the effect of epididymitis, tubular degeneration and absence of spermatozoa as endpoint effects.

Carcinogenicity classification. Using the Guidelines for Carcinogenic Risk Assessment published September 24, 1986 (51 FR 33992), the EPA has classified clofencet as Group ''C'' for carcinogenicity (possible human carcinogen) based on the increase in histiocytic sarcomas (malignant) by both pair-wise and trend analyses in female mice. The thyroid C-cell tumors in male rats (mainly benign) were considered to have occurred only at an excessive dose. There were no apparent genotoxicity concerns and little additional support for carcinogenicity based on structure-activity relationship (SAR) with a related wheat hybridizing agent, fenridazon; therefore, the EPA's Carcinogenicity Peer Review Committee recommended that for the purpose of risk characterization, the RfD approach be used for quantitation of human risk.

III. Residential Exposure Assessment

The toxicological endpoint of concern for residential exposure is systemic toxicity resulting from chronic exposure. There are no proposed residential uses for clofencet and it is not likely to be applied in or near residential areas; therefore, there are no residential risk concerns.

IV. Dietary Exposure Assessment

Use of a pesticide results or may reasonably be expected to result, directly or indirectly, in pesticide residues in food. Primary residues or indirect/inadvertent residues in agricultural commodities are determined by chemical analysis. To account for the diversity of growing conditions, cultural practices, soil types, climatic conditions, crop varieties and methods of application of the pesticide, data from studies that represent the commodities are collected and evaluated to determine an appropriate level of residue that would not be exceeded if the pesticide is used as represented in the studies.

1. *Plant/animal metabolism and magnitude of the residue.* The nature of the residue (metabolism) of clofencet in plants and animals is adequately understood for the purposes of these tolerances. There are no Codex maximum residue levels established for residues of clofencet on wheat or the rotational crops. The residue of concern to be regulated is the parent, clofencet.

2. *Residue analytical methods.* The analytical method proposed for detecting and measuring levels of clofencet in or on the commodities with a limit of detection that allows monitoring of food with residues at or above the levels set in the tolerance for primary and rotational crops includes derivatization of clofencet to its methyl ester followed by analysis via gas chromatography with electron capture detection, however, for rotational crops, it is necessary to first hydrolyze clofencet-sugar conjugates to clofencet before proceeding with derivatization. The method for animal tissues includes derivatization of clofencet to its methyl ester followed by analysis via HPLC with UV detection. For milk and eggs, analysis is achieved by extraction, concentration and direct analysis via HPLC with UV detection. EPA will provide information on this method to the Food and Drug Administration (FDA). Because of the long lead time from establishing these tolerances to publication, the enforcement methodology is being made available in the interim to anyone interested in pesticide enforcement when requested by mail from: Calvin Furlow, Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1130A, CM #2, 1921 Jefferson-Davis Highway, Arlington, VA 22202, (703) 305–5937.

The presence of the pesticide or degradates of the pesticide in potable water may also be a source of dietary exposure that must be considered in establishing a tolerance level for an agricultural commodity.

V. Aggregate Exposures Assessment

In examining aggregate exposure, FQPA directs EPA to consider available information concerning exposures from the pesticide residue in food, including water, and all other non-occupational exposures. The aggregate sources of exposure the Agency looks at include food, drinking water or groundwater, and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

1. *Acute dietary.* There is no concern for acute effects due to dietary exposure to clofencet.

2. *Chronic dietary.* Tolerances in this petition are based on residues from field trial data. Using the Dietary Risk Evaluation System (DRES), a routine chronic exposure analysis was based on 0.1% crop treated and on tolerance values for wheat and rotational crops listed in this petition. Although percent crop treated were used, the estimate is conservative, since it is assumed that 100% of the fields treated with clofencet in the United States are rotated to cereal grains group crops (except rice, wild rice, sweet corn and wheat) and soybeans at the same time. At this time, there is no concern for chronic effects due to exposure of clofencet in the diet.

3. *Drinking water.* Because the Agency lacks specific water- related exposure data for most pesticides, EPA has commenced and nearly completed a process to identify a reasonable yet conservative bounding figure for the potential contribution of water related exposure to the aggregate risk posed by a pesticide. In developing the bounding figure, EPA estimated residue levels in water for a number of specific pesticides using various data sources. The Agency then applied the estimated residue levels, in conjunction with appropriate toxicological endpoints (RfD's or acute dietary NOEL's) and assumptions about body weight and consumption, to calculate, for each pesticide, the increment of aggregate risk contributed by consumption of water containing that pesticide. This analysis is included in the docket for this rulemaking. While EPA has not yet pinpointed the appropriate bounding figure for consumption of water containing pesticides, the ranges the Agency is continuing to examine are all well below the level that would cause clofencet to exceed the RfD by granting the tolerances being considered in this document. The Agency has therefore concluded that the potential exposures associated with clofencet in water, even at the higher levels the Agency is considering as a conservative upper bound, will not prevent the Agency from determining that there is a reasonable certainty of no harm.

4. *Non-occupational non-dietary.* Since the proposed use does not involve residential use and since clofencet is not likely to be used in or near residential areas, non-occupational non-dietary exposure is not expected.

5. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' The Agency believes that ''available information'' in this context might include not only toxicity, chemistry, and exposure data, but also policies and methodologies for conducting cumulative risk assessments. While the Agency has some information in its files that may be helpful in determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodology to resolve the scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will enable it to develop and apply policies for evaluating the cumulative effects of chemicals having a common mechanism of toxicity. At present, however, the Agency does not know how to apply the information in its files concerning common mechanism issues to most risk assessments.

In making individual tolerance decisions, the Agency will determine whether: (1) It has sufficient information to determine that a pesticide does not appear to share a common mechanism of toxicity with other substances; or (2) it is unable to conclude that a pesticide does not share a common mechanism of toxicity with other substances.

For pesticides falling into the first category, the Agency will explain its determination and factor the determination into the tolerance decision. For pesticides falling into the second category, the Agency will conclude that it does not have sufficient available information concerning common mechanism of toxicity to scientifically apply that information to the tolerance decision, the tolerance decision will be reached based upon the best available and useful information for the individual chemical, and a risk assessment will be performed for the tolerance action assuming that no common mechanism of toxicity exists. However, tolerance decisions falling into the second category will be reexamined by the Agency after EPA establishes methodologies and procedures for integrating information concerning common mechanism into its risk assessments. In such circumstances, related registration actions may be conditioned upon the provision of such data as may be necessary to evaluate common mechanism of toxicity issues in a risk assessment.

In the case of clofencet, EPA has not yet determined whether or how to include this chemical in a cumulative risk assessment. This tolerance determination therefore does not take into account common mechanism issues. After EPA develops a methodology for applying common mechanism of toxicity issues to risk assessments, the Agency will develop a process (either as part of the periodic review of pesticides or otherwise) to reexamine those tolerance decisions made earlier. The registrant must submit, upon EPA's request and according to a schedule determined by the Agency, such information as the Agency directs to be submitted in order to evaluate issues related to whether clofencet share(s) a common mechanism of toxicity with any other substance and, if so, whether any tolerances for clofencet needs to be modified or revoked.

VI. Determination of Safety for the U.S. Population and Non-nursing Infants

Using the Dietary Risk Evaluation System (DRES), a routine chronic dietary exposure analysis was based on use of 0.1% of the wheat crop treated, and 0.1% of the cereal grains group crops (except rice, wild rice, sweet corn and wheat) and soybeans as rotated crops in fields previously containing wheat treated with clofencet, and tolerance levels established in this document. Percent crop treated of 0.1% is based on the petitioner's expectations that up to 33,000 acres of wheat grown for seed will be treated in the year 2000. This 33,000 acres is 0.05% of the approximate 70,000,000 acres of wheat which is grown for grain in the United States. Pursuant to section 408(b)(2)(F) of FFDCA as amended, the Agency may, when assessing chronic dietary risk, consider available data and information on the percent of food actually treated

with the pesticide chemical, and finds that the data are reliable and provides a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide chemical residue, finds that the exposure estimate does not understate exposure for any significant subpopulation group, finds that, if data are available on pesticide use and consumption of food in a particular area, the population in such area is not dietarily exposed to residues above those estimated by the Agency, and provides for the periodic reevaluation of the estimate of anticipated dietary exposure.

The Agency believes the above conditions have been met for the conditions stated above. Based on the available information and the use of this conservative risk assessment, EPA finds the exposure estimate does not understate exposure for any significant subpopulation group. Also, EPA has no data that show clofencet use on wheat grown for seed, and consumption of food in a particular area differ significantly from that used in the conservative risk assessment stated herein. Registration of end-use product(s) containing clofencet conditioned on production of no more clofencet than necessary to treat no more than 35,000 acres per year. The additional 2,000 acres was requested by the registrant, and does not significantly effect the results of this risk determination. Before the petitioner can increase production of product for treatment of greater than 35,000 acres per year, permission from the Agency must be obtained. The petitioner must also provide annual reports on production of end-use products containing clofencet, number of acres treated, and a best estimate of which crops and how many acres were planted as rotational crops on fields previously planted to wheat treated with clofencet. The registrant must also provide field residue data on wheat grain, forage, hay and straw from commercially treated crop beginning 18 months after wheat grain is first harvested. Field residue trials on the rotated crops listed in this document may also be required. The Agency will provide for periodic reevaluation of the dietary exposure, if warranted, with percent crop treated, acres of wheat treated, end-use product production information provided by the petitioner and other available sources, and submitted field residue data. The reason for using 0.1% instead of 0.05% crop treated is to allow expansion of use if other conditions of registration are satisfied. Before expansion beyond 0.1% is allowed, reevaluation of the dietary exposure may be performed using all available information as necessary.

Based on the conservative dietary assessment presented above, the proposed use of clofencet uses 0.73% of the RfD for the U.S. population and for the most highly exposed subgroups, 0.6% for non-nursing infants (<1 year old), 1.6% for children (1 to 6 years old) and 1.2% for children (7 to 12 years old). The risk estimate from combined food and water sources is expected to be below 25% of the RfD even with the addition of a reasonable bounding figure for the contribution from drinking water. EPA concluded there is a reasonable certainty that no harm will occur from aggregate exposure to clofencet for this directed use on wheat and the subsequent rotational crops [cereal grains group (except rice, wild rice, sweet corn and wheat) and soybeans].

VII. Determination of Safety for Infants and Children

Risk to infants and children was determined by the use of the two developmental toxicity studies in rats and rabbits and the two-generation reproduction study in rats noted above. The developmental toxicity studies evaluates the potential for adverse effects on the developing organism resulting from exposure during prenatal development to the female parent. The reproduction study provides information relating to effects from exposure to the chemical on the reproductive capability of both (mating) parents and on systemic toxicity.

FFDCA section 408 provides that the EPA shall apply an additional safety factor of 10 in the case of threshold effects for infants and children to account for pre- and post-natal toxicity and the completeness of the database unless EPA determines, based on reliable data, that a different safety factor would be appropriate. EPA believes that reliable data support using a different safety factor (usually 100X (100 times)) and not the additional safety factor when EPA has a complete data base and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the traditional safety factors. The Agency believes that an additional safety factor for infants and children is not warranted here. First, a complete set of developmental and reproductive studies have been submitted and EPA has found them to be acceptable. Second, since the NOELs from the developmental and reproductive studies are 7.6X to 200X (7.6 times to 200 times) higher than the NOEL used for the RfD, the Agency does not believe the effects seen in these studies are of such concern to require an additional safety factor. Accordingly, the Agency believes the RfD has an adequate margin of protection for infants and children. The percent of the RfD that would be utilized by the aggregate exposure to clofencet will range from 0.6% for non-nursing infants to 1.6% for children 1 to 6 years old. EPA concluded that there is reasonable certainty that no harm will occur to infants and children from aggregate exposure to clofencet.

VIII. Other Considerations

Endocrine effects. No specific tests have been conducted with clofencet to determine whether the chemical may have an effect in humans that is similar to an effect produced by a naturally occuring estrogen or other endocrine effects. However, there were no significant findings in other relative toxicity studies, i.e., teratology and multi-generation reproductive studies, which would suggest that clofencet produces these kinds of effects.

IX. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to ''object'' to a tolerance regulation issued by EPA under the new section 408(e) and (1)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which governs the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by May 5, 1997 file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given below (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on

which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

X. Public Docket

A record has been established for this rulemaking and all written comments for this rule under docket number [OPP–300457]. A public version of this record, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. EPA has also established a special record for post-FQPA tolerances which contains documents of general applicability. This record can be found in the same location.

Electronic comments may be sent directly to EPA at:

opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above, is kept in paper form. Accordingly, in the event there are objections and hearing requests, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place paper copies in the official rulemaking record.

XI. Regulatory Assessment Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and, since this action does not impose any information collection requirements subject to approval under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., it is not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty, or contain any ''unfunded mandates'' as described in Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

Because tolerances established on the basis of a petition under section 408(d) of FFDCA do not require issuance of a proposed rule, the regulatory flexibility analysis requirements of the Regulatory Flexibility Act (RFA), 5 U.S.C. 604(a), do not apply. Prior to the recent amendment of the FFDCA, EPA had treated such rulemakings as subject to the RFA; however, the amendments to the FFDCA clarify that no proposal is required for such rulemakings and hence that the RFA is inapplicable.

Under 5 U.S.C. 801(a)(1)(A) of the Administrative Procedure Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Title II of Pub. L. 104–121, 110 Stat. 847), EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2) of the APA as amended.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 24, 1997.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority : 21 U.s.c. 346a and 371.

2. By adding § 180.497, to read as follows:

§ 180.497 Clofencet; tolerances for residues.

(a) *Tolerances--general.* Tolerances are established for the plant growth regulator (hybridizing agent) clofencet, [2-(4-chlorophenyl)-3-ethyl-2,5 dihydro-5-oxo-4-pyridazinecarboxylic acid, potassium salt] expressed as the free acid in or on the following raw agricultural commodities:

Commodities	Parts per million
Cattle, fat	0.04
Cattle, kidney	10.0
Cattle, mbyp (except kidney)	0.5
Cattle, meat	0.15
Eggs	1.0
Goats, fat	0.04
Goats, kidney	10.0
Goats, mbyp (except kidney)	0.5
Goats, meat	0.15
Hogs, fat	0.04
Hogs, kidney	10.0
Hogs, mbyp (except kidney)	0.5
Hogs, meat	0.15
Horses, fat	0.04
Horses, kidney	10.0
Horses, mbyp (except kidney)	0.5
Horses, meat	0.15
Milk	0.02
Poultry, fat	0.04
Poultry, mbyp	0.20
Poultry, meat	0.15
Sheep, fat	0.04
Sheep, kidney	10.0
Sheep, mbyp (except kidney)	0.5
Sheep, meat	0.15
Wheat, forage	10.0
Wheat, grain	250.0
Wheat, hay	40.0
Wheat, straw	50.0

(b) *Tolerances for Indirect or inadvertent residues.* Tolerances are established for indirect or inadvertent residues of the plant growth regulator (hybridizing agent) clofencet, [2-(4-chlorophenyl)-3-ethyl-2,5-dihydro-5-oxo-4-pyridazinecarboxylic acid, potassium salt] expressed as the free acid in or on the following raw agricultural commodities when present therein as a result of the application of clofencet to the growing crops in paragraph (a) of this section:

Commodities	Parts per million
Cereal grains group (except rice, wild rice, sweet corn and wheat), forage	4.0

Commodities	Parts per million
Cereal grains group (except rice, wild rice, sweet corn and wheat, grain	20.0
Cereal grains group (except rice, wild rice, sweet corn and wheat), hay	15.0
Cereal grains group (except rice, wild rice, sweet corn and wheat), stover (fodder)	1.0
Cereal grains group (except rice, wild rice, sweet corn and wheat), straw	4.0
Soybeans	30.0
Soybean, forage	10.0
Soybean, hay	10.0

[FR Doc. 97–5415 Filed 3–4–97; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 180

[OPP–300456; FRL–5591–7]

RIN 2070–AC78

Tebufenozide; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for combined residues of the insecticide tebufenozide in or on the raw agricultural commodities peppers, non-brassica leafy vegetables (Crop Group 4 - celery, lettuce, spinach, swiss chard), turnips grown for foliage tops only, and brassica (cole) leafy vegetables (Crop Group 5 - broccoli, cabbage, cauliflower, collards, kale, kohlrabi, and mustard greens) in connection with EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of tebufenozide on peppers, leafy vegetables (except brassica), turnips grown for foliage tops only and brassica leafy vegetables in Texas; and lettuce, broccoli, cauliflower, cabbage and spinach in Arizona. This regulation establishes maximum permissible levels for residues of tebufenozide in these foods. These tolerances will expire on February 28, 1998.

DATES: This regulation becomes effective March 5, 1997. This regulation expires on February 28, 1998. Objections and requests for hearings must be received by EPA on May 5, 1997.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300456], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300456], should be submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Highway., Arlington, VA. A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov.

Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [OPP–300456]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Pat Cimino, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Sixth Floor, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA 22202. (703) 308–8328, e-mail: cimino.pat@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA, pursuant to section 408(e) and (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), is establishing a tolerance for residues of the insecticide tebufenozide (benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl)hydrazide) in or on peppers at 0.5 part per million (ppm), leafy vegetables (except brassica) at 5.0 ppm, turnip tops at 5.0 ppm, and brassica (cole) leafy vegetables at 5.0 ppm. These tolerances will expire on February 28, 1998.

I. Background and Statutory Authority

The Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) was signed into law August 3, 1996. FQPA amends both the FFDCA, 21 U.S.C. 301 et seq., and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq. The FQPA amendments went into effect immediately. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new section 408 with a new safety standard and new procedures. These activities were discussed in detail in the final rule establishing the time-limited tolerance for an emergency exemption for use of propiconazole on sorghum (61 CFR 58135, November 13, 1996)(FRL–5572–9).

New section 408(b)(2)(A)(i) allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....''

Section 18 of FIFRA authorizes EPA to exempt any Federal or State Agency from any provision of FIFRA, if EPA determines that ''emergency conditions exist which require such exemption.'' This provision was not amended by FQPA. EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

Section 408(l)(6) requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Section 408(l)(6) also requires EPA to promulgate regulations by August 3, 1997, governing the establishment of tolerances and exemptions under section 408(l)(6) and requires that the

regulations be consistent with section 408(b)(2) and (c)(2) and FIFRA section 18.

Section 408(l)(6) allows EPA to establish tolerances or exemptions from the requirement for a tolerance, in connection with EPA's granting of FIFRA section 18 emergency exemptions, without providing notice or a period for public comment. Thus, consistent with the need to act expeditiously on requests for emergency exemptions under FIFRA, EPA can establish such tolerances or exemptions under the authority of section 408(e) and (l)(6) without notice and comment rulemaking.

In establishing section 18-related tolerances and exemptions during this interim period before EPA issues the section 408(l)(6) procedural regulation and before EPA makes its broad policy decisions concerning the interpretation and implementation of the new section 408, EPA does not intend to set precedents for the application of section 408 and the new safety standard to other tolerances and exemptions. Rather, these early section 18 tolerance and exemption decisions will be made on a case-by-case basis and will not bind EPA as it proceeds with further rulemaking and policy development. EPA intends to act on section 18-related tolerances and exemptions that clearly qualify under the new law.

II. Emergency Exemptions for Tebufenozide on Peppers, Leafy Vegetables (except Brassica), Turnip Tops, and Cole Leafy Vegetables (Brassica) and FFDCA Tolerances

On December 18, and 20, 1996, the Texas Department of Agriculture availed of itself the authority to declare the existence of a crisis situation within the State, thereby authorizing use under FIFRA section 18 of tebufenozide on leafy vegetables (non-brassica), turnip tops and brassica leafy vegetables to control the beet armyworm (BAW), respectively. The states of Texas and Arizona have also requested specific exemptions for use of this chemical to control beet armyworm on brassica and non-brassica leafy vegetable, turnip tops and peppers. Emergency conditions are determined to exist due to: (1) The BAW populations demonstrating resistance to registered insecticides causing control failures when these products are applied to BAW; (2) a mild winter and unusually dry, hot weather have increased the survival rate of the pest. Natural controls, such as disease, needed cooler, wetter conditions to have their greatest impact on this pest; and (3) the unusually large numbers of BAW. According to the Applicant, estimated yield losses due to BAW in peppers and non-brassica leafy vegetables could result in a 50% yield loss and a 30% yield for brassica (cole) leafy vegetables without the use of an effective pesticide.

As part of its assessment of these applications for emergency exemption, EPA assessed the potential risks presented by residues of tebufenozide on brassica (cole), non-brassica leafy vegetables, turnip tops and peppers. In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and EPA decided to grant the section 18 exemptions only after concluding that the necessary tolerance under FFDCA section 408(l)(6) would clearly be consistent with the new safety standard and with FIFRA section 18. This tolerance for tebufenozide will permit the marketing of brassica (cole) and non-brassica leafy vegetables, turnip tops and peppers treated in accordance with the provisions of the section 18 emergency exemptions. Consistent with the need to move quickly on the emergency exemptions and to ensure that the resulting food is safe and lawful, EPA is issuing these tolerances without notice and opportunity for public comment under section 408(e) as provided in section 408(l)(6). Although these tolerances will expire on February 28, 1998, under FFDCA section 408(l)(5), residues of tebufenozide not in excess of the amount specified in the tolerance remaining in or on brassica (cole) , and non-brassica leafy vegetables, turnip tops and peppers after that date will not be unlawful, provided the pesticide is applied during the term of, and in accordance with all the conditions of, the emergency exemptions. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

EPA has not made any decisions about whether tebufenozide meets the requirements for registration under FIFRA section 3 for use on brassica (cole) and non-brassica leafy vegetables, turnip tops and peppers or whether a permanent tolerance for tebufenozide on these crops would be appropriate. This action by EPA does not serve as a basis for registration of tebufenozide by a State for special local needs under FIFRA section 24(c). Nor does this action serve as the basis for any State other than Texas or Arkansas to use this product on this crop under section 18 of FIFRA without following all provisions of section 18 as identified in 40 CFR 180.166. For additional information regarding the emergency exemptions for tebufenozide, contact the Agency's Registration Division at the address provided above.

III. Risk Assessment and Statutory Findings

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. For many of these studies, a dose response relationship can be determined, which provides a dose that causes adverse effects (threshold effects) and doses causing no observed effects (the ''no-observed effect level'' or ''NOEL'').

Once a study has been evaluated and the observed effects have been determined to be threshold effects, EPA generally divides the NOEL from the study with the lowest NOEL by an uncertainty factor (usually 100 or more) to determine the Reference Dose (RfD). The RfD is a level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. An uncertainty factor (sometimes called a ''safety factor'') of 100 is commonly used since it is assumed that people may be up to 10 times more sensitive to pesticides than the test animals, and that one person or subgroup of the population (such as infants and children) could be up to 10 times more sensitive to a pesticide than another. In addition, EPA assesses the potential risks to infants and children based on the weight of the evidence of the toxicology studies and determines whether an additional uncertainty factor is warranted. Thus, an aggregate daily exposure to a pesticide residue at or below the RfD (expressed as 100 percent or less of the RfD) is generally considered by EPA to pose no appreciable risk.

Lifetime feeding studies in two species of laboratory animals are conducted to screen pesticides for cancer effects. When evidence of increased cancer is noted in these studies, the Agency conducts a weight of the evidence review of all relevant toxicological data including short term and mutagenicity studies and structure activity relationship. Once a pesticide has been classified as a potential human carcinogen, different types of risk assessments (e.g., linear low dose extrapolations or margin of exposure calculation based on the appropriate

NOEL) will be carried out based on the nature of the carcinogenic response and the Agency's knowledge of its mode of action.

In examining aggregate exposure, FFDCA section 408 requires that EPA take into account available and reliable information concerning exposure from the pesticide residue in the food in question, residues in other foods for which there are tolerances, and other non-occupational exposures, such as where residues leach into groundwater or surface water that is consumed as drinking water. Dietary exposure to residues of a pesticide in a food commodity are estimated by multiplying the average daily consumption of the food forms of that commodity by the tolerance level or the anticipated pesticide residue level. The Theoretical Maximum Residue Contribution (TMRC) is an estimate of the level of residues consumed daily if each food item contained pesticide residues equal to the tolerance. The TMRC is a ''worst case'' estimate since it is based on the assumptions that food contains pesticide residues at the tolerance level and that 100 percent of the crop is treated by pesticides that have established tolerances. If the TMRC exceeds the RfD or poses a lifetime cancer risk that is greater than approximately one in a million, EPA attempts to derive a more accurate exposure estimate for the pesticide by evaluating additional types of information (anticipated residue data and/or percent of crop treated data) which show, generally, that pesticide residues in most foods when they are eaten are well below established tolerances.

IV. Aggregate Risk Assessments, Cumulative Risk Discussion, and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. Tebufenozide is not registered by EPA for indoor or outdoor residential use. Existing food and feed use tolerances for tebufenozide are listed in 40 CFR 180.482. At this time EPA is not in possession of a registration application for tebufenozide on brassica (cole) and non-brassica leafy vegetables, turnip tops, and peppers. However, based on the information submitted to the Agency thus far, EPA has sufficient data to assess the hazards of tebufenozide and to make a determination on aggregate exposure, consistent with section 408(b)(2), for the time-limited tolerances for residues of tebufenozide on brassica (cole) leafy vegetables at 5.0 ppm, non-brassica leafy vegetables at 5.0 ppm, turnip tops at 5.0 ppm and peppers at 0.5 ppm. EPA's assessment of the dietary exposures and risks associated with establishing these tolerances follows.

A. Toxicological Profile

1. *Chronic toxicity*. Based on the available chronic toxicity data, the EPA's Office of Pesticide Programs (OPP) has established the RfD for tebufenozide at 0.018 milligrams/kilogram/day (mg/kg/day). The RfD is based on a 1–year feeding study in dogs with a NOEL of 1.8 mg/kg/day and an uncertainty factor of 100. Decreased red blood cells, hematocrit, and hemoglobin and increased heinz bodies, reticulocytes, and platelets were observed at the Lowest-Observed Effect Level (LOEL) of 8.7 mg/kg/day.

2. *Acute toxicity*. No appropriate acute dietary endpoint was identified by OPP. This risk assessment is not required.

3. *Carcinogenicity*. Using its Guidelines for Carcinogen Risk Assessment published September 24, 1986 (51 FR 33992), OPP has classified tebufenozide as a Group ''E'' chemical (no evidence of carcinogenicity for humans) based on the results of carcinogenicity studies in two species. There was no evidence of carcinogenicity in a 2–year rat study and an 18–month mouse study.

B. Aggregate Exposure

Tolerances for residues of tebufenozide are currently expressed as benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl)hydrazide. Permanent tolerances currently exist for residues on apples and walnuts (see 40 CFR 180.482).

For purposes of assessing the chronic dietary exposure from tebufenozide, EPA assumed tolerance level residues and 100 percent of crop treated refinements to estimate the TMRC from all established existing food uses for tebufenozide as well as the proposed use on leafy vegetables, turnip tops and peppers. Neither peppers nor any of the commodities comprising Crop Group 4 (Non-brassica leafy vegetables) and 5 (Brassica Cole Leafy vegetables) are considered livestock feed items; thus, there is no reasonable expectation that measurable residues of tebufenozide will occur in meat, milk, poultry, or eggs under the terms of these emergency exemptions. Although, turnip tops potentially are a ruminant feed item, conversation with the Texas Department of Agriculture indicates that the turnip tops treated under this section 18 are destined for fresh market use only. Nonetheless, even if those turnip tops were fed to ruminants, potential residue levels in animal commodities would most likely be undetectable. For purposes of this section 18 registration only, OPP concludes that tolerances for animal commodities are not needed.

Other potential sources of exposure of the general population to residues of pesticides are residues in drinking water and exposure from non-occupational sources. Based on the available studies used in EPA's assessment of environmental risk, tebufenozide is moderately persistent to persistent and mobile, and could potentially leach to groundwater and runoff to surface water under certain environmental conditions. There are no established Maximum Concentration Levels for residues of tebufenozide in drinking water. No drinking water health advisory levels have been established for tebufenozide. There is no entry for tebufenozide in the ''Pesticides in Groundwater Database'' (EPA 734–12–92–001, September 1992).

The Agency does not have available data to perform a quantitative drinking water risk assessment for tebufenozide at this time. However, in order to mitigate the potential for tebufenozide to leach into groundwater or runoff to surface water, precautionary language has been incorporated into the product label.

Because the Agency lacks sufficient water-related exposure data to complete a comprehensive drinking water risk assessment for many pesticides, EPA has commenced and nearly completed a process to identify a reasonable yet conservative bounding figure for the potential contribution of water-related exposure to the aggregate risk posed by a pesticide. In developing the bounding figure, EPA estimated residue levels, in water for a number of specific pesticides using various data sources. The Agency then applied the estimated residue levels, in conjunction with appropriate toxicological endpoints (RFD's or acute dietary NOEL's) and assumptions about body weight and consumption, to calculate, for each pesticide, the increment of aggregate risk contributed by consumption of contaminated water. While EPA has not yet pinpointed the appropriate bounding figure for consumption of contaminated water, the ranges the Agency is continuing to examine are all below the level that would cause tebufenozide to exceed the RFD if the tolerance being considered in this document were granted. The Agency has therefore concluded that the potential exposures associated with tebufenozide in water, even at the higher levels the Agency is considering

as a conservation upper bound, would not prevent the Agency from determining that there is a reasonable certainty of no harm if the tolerance is granted.

Tebufenozide is not registered for either indoor or outdoor residential use. Non-occupational exposure to the general population is therefore not expected and not considered in aggregate exposure estimates.

C. Cumulative Exposure to Substances with Common Mechanisms of Toxicity

Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' The Agency believes that ''available information'' in this context might include not only toxicity, chemistry, and exposure data, but also policies and methodologies for conducting cumulative risk assessments. While the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodology to fully resolve the scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will enable the Agency to apply common mechanism issues to its pesticide risk assessments. At present, however, the Agency does not know how to apply the information in its files concerning common mechanism issues to most risk assessments.

In making individual tolerance decisions, the Agency will determine whether:

1. It has sufficient information to determine that a pesticide does not appear to share a common mechanism of toxicity with other substances.

2. It is unable to conclude that a pesticide does not share a common mechanism of toxicity with other substances.

For pesticides falling into the first category, the Agency will explain its determination and factor the determination into the tolerance decision. For pesticides falling into the second category, the Agency will conclude that it does not have sufficient available information concerning common mechanism of toxicity to scientifically apply that information to the tolerance decision, the tolerance decision will be reached based upon the best available and useful information for the individual chemical, and a risk assessment will be performed for the individual chemical assuming that no common mechanism of toxicity exists. However, tolerance decisions falling into the second category will be reexamined by the Agency after EPA establishes methodologies and procedures for integrating information concerning common mechanism into its risk assessments. In such circumstances, related registration actions may be conditioned upon the provision of such data as may be necessary to evaluate common mechanism of toxicity issues in a risk assessment.

Tebufenozide falls into the second category and at this time, the Agency has not made a determination that tebufenozide and other substances that may have a common mode of toxicity would have cumulative effects. EPA has not yet determined whether to include this chemical in a cumulative risk assessment. This tolerance determination does not take into account common mechanism issues. The Agency will reexamine tolerances for tebufenozide, after the Agency has developed a methodology for applying common mechanism of toxicity issues to risk assessments.

Given the time limited nature of this request, the need to make emergency exemption decisions quickly, and the significant scientific uncertainty at this time about how to define common mode of toxicity, the Agency will make its safety determination for these tolerances based on those factors which it can reasonably integrate into a risk assessment. For purposes of these tolerances only, the Agency is considering only the potential risks of tebufenozide in its aggregate exposure.

D. Safety Determinations for U.S. Population

EPA has concluded that chronic dietary exposure to tebufenozide will utilize 27% of the RfD for the U.S. population. EPA generally has no concern for exposures below 100 percent of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to tebufenozide in drinking water, EPA does not expect the aggregate exposure to exceed 100% of the RfD. EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to tebufenozide residues.

E. Determination of Safety for Infants and Children

In assessing the potential for additional sensitivity of infants and children to residues of tebufenozide, EPA considered data from developmental toxicity studies in the rat and rabbit and a reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development to one or both parents. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

Developmental (pre-natal) toxicity was not observed in developmental studies using rats and rabbits. The NOEL for developmental effects in both rats and rabbits was >1,000 mg/kg/day the highest dose tested (HDT), which demonstrates that no toxicity was present for tebufenozide.

In the two-generation reproductive toxicity study in the rat, the reproductive/developmental toxicity NOEL of 12.1 mg/kg/day was 14–fold higher than the parental (systemic) toxicity NOEL (0.85 mg/kg/day), which indicates that post-natal toxicity in the production studies occurs only in the presence of significant parental toxicity.

These developmental and reproduction studies indicate that tebufenozide does not have additional sensitivity for infants and children in comparison to other exposed groups. The TMRC value for the most highly exposed infant and children subgroup (non-nursing infants <1 year old) occupies 61% of the RfD. However, this calculation assumes 100% crop treated and uses tolerance level residues for all commodities. Refinement of the dietary risk assessment by using percent crop treated and anticipated residue data would greatly reduce dietary exposure. Therefore, this risk assessment is an over-estimate of dietary risk. Consideration of anticipated residues and percent crop treated would likely result in an anticipated residue contribution (ARC) which would occupy a percent of the RfD that is likely to be significantly lower than the currently calculated TMRC value. Therefore, taking into account the completeness and reliability of the toxicity data and the conservative exposure assessment, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to tebufenozide residues.

FFDCA section 408 provides that EPA shall apply an additional safety factor for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the data base unless EPA concludes that a different margin of safety is appropriate. EPA has concluded that the database on this pesticide is sufficiently complete regarding potential effects on infants and children and that the studies demonstrate no additional sensitivity in infants and children. Therefore, EPA concludes that an additional uncertainty factor is not warranted and that the RfD at 0.018 mg/kg/day based on a 100–fold safety is adequate for protecting infants and children.

V. Other Considerations

The metabolism of tebufenozide in plants is adequately understood for the purposes of this tolerance. There are no Mexican, Canadian or Codex International maximum residue levels established for residues of tebufenozide. There is a practical analytical method (liquid chromatography with ultraviolet detection) for detecting and measuring levels of tebufenozide in or on food with a limit of detection that allows monitoring of food with residues at or above the level set by the tebufenozide tolerance. EPA has provided information on this method to FDA. The method is available to anyone who is interested in pesticide residue enforcement from: By mail, Calvin Furlow, Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Crystal Mall #2, Rm 1128, 1921 Jefferson Davis Highway, Arlington, VA 22202, 703–305–5805.

VI. Conclusion

Therefore, tolerances in connection with the FIFRA section 18 emergency exemptions are established for residues of tebufenozide at 0.5 ppm in peppers, 5.0 ppm in/on leafy vegetables (brassica and non-brassica-cole), and 5.0 ppm in/on turnip tops grown for foliage tops only. These tolerances will expire on February 28, 1998.

VII. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to ''object'' to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by May 5, 1997, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as Confidential Business Information (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VIII. Public Docket

A record has been established for this rulemaking under docket number [OPP–300456]. A public version of this record, which does not include any information claimed as CBI, is available for inspection from 8:30 am to 4 pm, Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at:

opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above, is kept in paper form. Accordingly, in the event there are objections and hearing requests, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record. The official rulemaking record is the paper record maintained at the Virginia address in '' ADDRESSES'' at the beginning of this document.

IX. Regulatory Assessment Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and, since this action does not impose any information collection requirements as defined by the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., it is not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

Because FFDCA section 408(l)(6) permits establishment of this regulation without a notice of proposed rulemaking, the regulatory flexibility analysis requirements of the Regulatory Flexibility Act, 5 U.S.C. 604(a), do not apply.

Under 5 U.S.C. 801(a)(1)(A) of the Administrative Procedure Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Title II of Pub. L. 104–121, 110 Stat. 847), EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the

Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2) of the APA as amended.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and record keeping requirements.

Dated: February 25, 1997.

Peter Caulkins,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR Chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.482, the section heading and the table in paragraph (b) are revised to read as follows:

§ 180.482 Tebufenozide; tolerances for residues.

* * * * *

(b) * * *

Commodity	Parts per million	Expiration/Revocation Date
Leafy Vegetable (Cole -brassica)	5.0	February 28, 1998
Leafy Vegetables (non-brassica)	5.0	February 28, 1998
Peppers	0.5	February 28, 1998
Turnip Tops	5.0	February 28, 1998

[FR Doc. 97–5414 Filed 3–4–97; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 68

Connection of Telephone Equipment to the Telephone Network; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correcting amendments.

SUMMARY: This document contains corrections to the final regulations which related to the connection of terminal equipment to the telephone network. (61 FR 42386 August 15, 1996)

EFFECTIVE DATE: March 5, 1997.

FOR FURTHER INFORMATION CONTACT: William von Alven, (202) 418–2342.

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections relate to the means of connection of equipment making use of the Public Switched Digital Service (PSDS) and the Integrated Services Digital Network (ISDN).

Need for Correction

As published, the final regulations contain errors which may prove to be misleading and are in need of correction.

List of Subjects in 47 CFR Part 68

Communications equipment, Telephone.

Accordingly, 47 CFR Part 68 is amended by making the following correction:

PART 68—CONNECTION OF TERMINAL EQUIPMENT TO THE TELEPHONE NETWORK

1. The authority citation for Part 68 continues to read as follows:

Authority: Secs. 1, 4, 5, 201–5, 208, 215, 218, 226, 227, 303, 313, 403, 404, 410, 602 of the Communications Act of 1934 as amended, 47 U.S.C. 151. 154. 155. 201–5, 208, 215, 218, 226, 227, 303, 314, 403, 410, 602, 610.

§ 68.308 [Corrected]

2. Section 68.308 is amended by revising the heading to the introductory text of paragraph (h)(3) and adding new paragraph (h)(4) to read as follows:

§ 68.308 Signal power limitations.

* * * * *

(h) * * *

(3) *PSDS Types II and III Maximum Output Pulse Templates.*

* * * * *

(4) *Limitations on Terminal Equipment Connected to ISDN BRA.* If registered terminal equipment connecting to ISDN BRA services contains a digital-to-analog converter, or generates signals directly in digital form, which are intended for eventual conversion into voiceband analog signals, the encoded analog content of the digital signal must be limited. The maximum equivalent power of the encoded analog signals, other than live voice as derived from a zero-level-decoder test configuration, shall not exceed –12 dBm when averaged over a three second interval. The maximum equivalent power of encoded analog signals, as derived by a zero-level decoder test configuration, for network control signaling, shall not exceed –3 dBm when averaged over any three-second interval.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–5352 Filed 3–4–97; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 96–9; RM–8736]

Radio Broadcasting Services; Ukiah, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule; Petition for reconsideration.

SUMMARY: This document dismisses a petition for partial reconsideration filed on behalf of LifeTalk Broadcasting Association (''LifeTalk'') of the Report and Order in this proceeding, which allotted Channel 246A to Ukiah, California, as that community's fourth local commercial FM transmission service, rather than reserving Channel 246A for noncommercial educational use, as requested by LifeTalk. See 61 FR 58340, November 14, 1996. LifeTalk subsequently requested the withdrawal of its petition for partial reconsideration. With this action, the proceeding is terminated.

EFFECTIVE DATE: April 14, 1997.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Memorandum Opinion and Order, MM Docket No. 96–9, adopted February 21, 1997, and released February 28, 1997.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC'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.

Federal Communications Commission.

Douglas W. Webbink,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–5354 Filed 3–4–97; 8:45 am]

BILLING CODE 6712–01–P

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47 CFR Part 73

[MM Docket No. 96–176; RM–8851]

Radio Broadcasting Services; Greensboro, AL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 256A to Greensboro, Alabama, as that community's first local aural transmission service, in response to a petition for rule making filed by Autaugaville Radio, Inc. See 61 FR 47471, September 8, 1996. Coordinates used for Channel 256A at Greensboro, Alabama, are 32–47–22 and 87–34–39. With this action, the proceeding is terminated.

DATES: Effective April 14, 1997. The window period for filing applications for Channel 256A at Greensboro, Alabama, will open on April 14, 1997, and close on May 15, 1997.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180. Questions related to the window application filing process for Channel 256A at Greensboro, Alabama, should be addressed to the Audio Services Division, Mass Media Bureau, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 96–176, adopted February 21, 1997, and released February 28, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC'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 Alabama, is amended by adding Greensboro, Channel 256A.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 97–5357 Filed 3–4–97; 8:45 am]

BILLING CODE 6712–01–P

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47 CFR Part 73

[MM Docket No. 96–205; RM–8862]

Radio Broadcasting Services; Hobe Sound and Jupiter, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action in this document substitutes Channel 288C2 for Channel 288C3 at Jupiter, Florida, reallots the channel to Hobe Sound, Florida, and modifies the construction permit for Station WTPX(FM) to specify operation on Channel 288C2 at Hobe Sound. *See* 61 FR 54404, October 18, 1996. The coordinates for Channel 288C2 at Hobe Sound are 27–16–03 and 80–12–10. With this action, this proceeding is terminated.

EFFECTIVE DATE: April 14, 1997.

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. 96–205, adopted February 21, 1997, and released February 28, 1997. 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 Florida, is amended by removing Channel 288C3 at Jupiter and adding Hobe Sound, Channel 288C2.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 97–5359 Filed 3–4–97; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

48 CFR Parts 234, 242, and 252

[DFARS Case 96–D024]

Defense Federal Acquisition Regulation Supplement; Earned Value Management Systems

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: The Director of Defense Procurement has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to adopt industry-standard ''Guidelines for Earned Value Management Systems'' in lieu of the cost/schedule control systems criteria that are unique to DoD contracts.

DATES: Effective date: March 5, 1997.

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before May 5, 1997 to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Mr. Michael Pelkey, PDUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax number (703) 602–0350.

Please cite DFARS Case 96–D024 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Michael Pelkey, (703) 602–0131.

SUPPLEMENTARY INFORMATION:

A. Background

On August 19, 1996, the National Security Industrial Association, Aerospace Industries Association, American Shipbuilding Association, Shipbuilders Council of America, and Electronic Industries Association proposed that DoD recognize industry-standard ''Guidelines for Earned Value Management Systems (EVMS)'' as an alternative to DoD-unique cost/schedule control systems. On December 14, 1996, the Under Secretary of Defense for Acquisition and Technology directed that these guidelines be adopted for use as the criteria by which the acceptability of DoD contractors' management control systems will be evaluated. Since DoD's cost/schedule control systems criteria are considered to be equivalent to EVMS, contractors' previously approved cost/schedule control systems are considered to be acceptable under the EVMS criteria.

B. Regulatory Flexibility Act

The interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule only applies to contractors for certain major defense programs, and eliminates the requirement that such contractors use a unique management control system for DoD contracts. An initial regulatory flexibility analysis has, therefore, not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subparts also will be considered in accordance with Section 610 of the Act. Such comments should be submitted separately and should cite DFARS Case 96–D024 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any new information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense to issue this rule as in interim rule. Urgent and compelling reasons exist to promulgate this rule without prior opportunity for public comment. This interim rule implements the December 14, 1996, direction from the Under Secretary of Defense for Acquisition and Technology that DoD recognizes industry-standard ''Guidelines for Earned Value Management Systems'' as an alternative to DoD-unique cost/schedule control systems. Immediate implementation is necessary to preclude incurring unnecessary costs to create or maintain DoD-unique cost/schedule control systems at DoD contractors' facilities where acceptable earned value management systems exist. However, comments received in response to the publication of this interim rule will be considered in formulating the final rule.

List of Subjects in 48 CFR Parts 234, 242, and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 234, 242, and 252 are amended as follows:

1. The authority citation for 48 CFR Parts 234, 242, and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 234—MAJOR SYSTEM ACQUISITION

2. Section 234.005–70 is revised to read as follows:

234.005–70 Earned value management systems.

When an offeror provides an earned value management system (EVMS) plan as part of its proposal in accordance with the provision at 252.234–7000, the contracting officer shall forward a copy of the plan to the cognizant administrative contracting officer (ACO). The procuring contracting officer shall obtain the assistance of the ACO in determining the adequacy of the proposed EVMS plan.

3. Section 234.005–71 is added to read as follows:

234.005–71 Solicitation provision and contract clause.

When the Government requires contractor compliance with DoD earned value management system criteria—

(a) Use the provision at 252.234–7000, Notice of Earned Value Management System, in solicitations; and

(b) Use the clause at 252.234–7001, Earned Value Management Systems, in solicitations and contracts.

PART 242—CONTRACT ADMINISTRATION

4. Section 242.302 is amended by revising paragraph (a)(41) to read as follows:

242.302 Contract administration functions.

(a) * * *

(41) The Defense Contract Management Command (DCMC) has responsibility for reviewing earned value management system (EVMS) plans and verifying initial and continuing contractor compliance with DoD EVMS criteria.

* * * * *

5. Section 242.1107–70 is revised to read as follows:

242,1107–70 Solicitation provision and contract clause.

(a) Use the clause at 252.242–7005, Cost/Schedule Status Report, in solicitations and contracts for other than major systems that require cost-schedule status reporting (i.e., the Contract Data Requirements List includes DI–MGMT–81467).

(b) Use the provision at 252.242–7006, Cost/Schedule Status Report Plans, in solicitations for other than major systems that require cost/schedule status reporting.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

6. Section 252.234–7000 is revised to read as follows:

252.234–7000 Notice of earned value management system.

As prescribed in 234.005–71, use the following provision:

Notice of Earned Value Management System (Mar 1997)

(a) The offeror shall provide documentation that the cognizant Administrative Contracting Officer (ACO) has recognized that the proposed earned value management system (EVMS) complies with the EVMS criteria of DoD 5000.2, Mandatory Procedures for Major Defense Acquisition Programs and Major Automated Information Systems, or that the proposed cost/schedule control system has been accepted by the Government.

(b) If the offeror proposes to use a system that does not meet the requirements of paragraph (a) of this provision, the offeror shall submit a comprehensive plan for compliance with the EVMS criteria.

(1) The plan shall—

(A) Describe the EVMS the offeror intends to use in performance of the contract;

(B) Distinguish between the offeror's existing management system and modifications proposed to meet the criteria;

(C) Describe the management system and its application in terms of the 32 EVMS criteria;

(D) Describe the proposed procedure for administration of the criteria as applied to subcontractors; and

(E) Provide documentation describing the process and results of any third-party or self-evaluation of the system's compliance with EVMS criteria.

(2) The offeror shall provide information and assistance as required by the Contracting Officer to support review of the plan.

(3) The Government will review the offeror's plan for EVMS before contract award.

(c) Offerors shall identify the major subcontractors, or major subcontracted effort if major subcontractors have not been selected, planned for application of the criteria. The prime contractor and the Government shall agree to subcontractors selected for application of the EVMS criteria.

(End of provision)

7. Section 252.234–7001 is revised to read as follows:

252.234–7001 Earned value management system.

As prescribed in 234.005–71, use the following clause:

Earned Value Management System (Mar 1997)

(a) In the performance of this contract, the Contractor shall use an earned value management system (EVMS) meeting the criteria provided in DoD 5000.2–R, Mandatory Procedures for Major Defense Acquisition Programs and Major Automated Information Systems.

(b) If the Contractor has an EVMS that has been recognized by the cognizant Administrative Contracting Officer (ACO) as complying with the EVMS criteria (or an existing cost/schedule control system (C/SCS) that has been accepted by the Government), the Contractor shall apply the system to this contract within 60 calendar days after contract award or as otherwise agreed to by the parties.

(c) If the Contractor does not have an EVMS that has been recognized by the cognizant ACO as complying with EVMS criteria (or does not have an existing C/SCS that has been accepted by the Government), the Contractor shall be prepared to demonstrate to the ACO that the EVMS complies with the EVMS criteria referenced in paragraph (a) of this clause.

(d) The Government may require an integrated baseline review within 180 calendar days after (1) contract award, (2) the exercise of significant contract options, or (3) the incorporation of major modifications. The purpose of the integrated baseline review is for the Government and the Contractor to jointly assess areas, such as the Contractor's planning, to ensure complete coverage of the statement of work, logical scheduling of the work activities, adequate resourcing, and identification of inherent risks.

(e) Unless a waiver is granted by the ACO, Contractor proposed EVMS changes require approval of the ACO prior to implementation. The ACO shall advise the Contractor of the acceptability of such changes within 30 calendar days after receipt of the notice of proposed changes from the Contractor. If the advance approval requirements are waived by the ACO, the Contractor shall disclose EVMS changes to the ACO at least 14 calendar days prior to the effective date of implementation.

(f) The Contractor agrees to provide access to all pertinent records and data requested by the ACO or duly authorized representatives. Access is to permit Government surveillance to ensure that the EVMS complies, and continues to comply, with the criteria referenced in paragraph (a) of this clause.

(g) The Contractor shall require those subcontractors specified in the contract for application of the EVMS criteria to comply with the requirements of this clause.

(End of clause)

8. Section 252.242–7005 is revised to read as follows:

252.242–7005 Cost/Schedule Status Report.

As prescribed in 242.1107–70(a), use the following clause:

Cost/Schedule Status Report (Mar 1997)

(a) The Contractor shall use management procedures in the performance of this contract that provide for—

(1) Planning and control of costs;

(2) Measurement of performance (value for completed tasks); and

(3) Generation of timely and reliable information for the cost/schedule status report (C/SSR).

(b) As a minimum, these procedures must provide for—

(1) Establishing the time-phased budgeted cost of work scheduled (including work authorization, budgeting, and scheduling), the budgeted cost for work performed, the actual cost of work performed, the budget at completion, the estimate at completion, and provisions for subcontractor performance measurement and reporting;

(2) Applying all direct and indirect costs and provisions for use and control of management reserve and undistributed budget;

(3) Incorporating changes to the contract budget base for both Government directed changes and internal replanning;

(4) Establishing constraints to preclude subjective adjustment of data to ensure performance measurement remains realistic. Unless the Contracting Officer provides prior written approval, in no case shall the total allocated budget exceed the contract budget base. For cost-reimbursement contracts, the contract budget base shall exclude changes for cost growth increases, other than for authorized changes to the contract scope; and

(5) Establishing the capability to accurately identify and explain significant cost and schedule variances, both on a cumulative basis and projected at completion basis.

(c) The Contractor may use a cost/schedule control system that has been recognized by the cognizant Administrative Contracting Officer (ACO) as complying with the earned value management system criteria provided in DoD 5000.2–R, Mandatory Procedures for Major Defense Acquisition Programs and Major Automated Information Systems.

(d) The Government may require an integrated baseline review within 180 calendar days after (1) contract award, (2) the exercise of significant contract options, or (3) the incorporation of major modifications. The purpose of the integrated baseline review is for the Government and the Contractor to jointly assess areas, such as the Contractor's planning, to ensure complete coverage of the statement of work, logical scheduling of the work activities, adequate resourcing, and identification of inherent risks. The Contractor shall provide necessary documents and data which describe the methods of planning, control and data generation in actual operation and satisfy the requirements of paragraph (a) of this clause.

(e) The Contractor shall provide access to all pertinent records, company procedures, and data requested by the ACO, or authorized representative, to—

(1) Show proper implementation of the procedures generating the cost and schedule information being used to satisfy the C/SSR contractual data requirements to the Government; and

(2) Ensure continuing application of the accepted company procedures in satisfying the C/SSR data item.

(f) The Contractor shall submit any substantive changes to the procedures and their impact to the ACO for review.

(g) The Contractor shall require a subcontractor to furnish C/SSR in each case where the subcontract is other than firm-fixed-price, is 12 months or more in duration, and has critical or significant tasks related to the prime contract. Critical or significant tasks shall be defined by mutual agreement between the Government and Contractor. Each subcontractor's reported cost and schedule information shall be incorporated into the Contractor's C/SSR.

(End of clause)

9. Section 252.242–7006 is added to read as follows:

252.242–7006 Cost/Schedule Status Report Plans.

As prescribed in 242.1107–70(b), use the following provision:

Cost/Schedule Status Report Plans (Mar 1997)

(a) The offeror shall submit a written summary of the management procedures it will establish, maintain, and use in the performance of any resultant contract to comply with the requirements of the clause at 252.242–7005, Cost/Schedule Status Report.

(b) If the offeror proposes to use a cost/schedule control system that has been recognized by the cognizant Administrative Contracting Officer as complying with the earned value management system criteria of DoD 5000.2–R, Mandatory Procedures for Major Defense Acquisition Programs and Major Automated Information Systems, the offeror may submit a copy of the documentation of such recognition instead of the written summary required by paragraph (a) of this provision.

(End of provision)

[FR Doc. 97–5362 Filed 3–4–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 649

[Docket No. 970219034–7034–01; I.D. 021097D]

RIN 0648–XX81

American Lobster Fishery; Technical Amendment

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

ACTION: Final rule; technical amendment.

SUMMARY: NMFS issues this final rule to add a provision allowing vessels issued Maine state lobster permits to fish in designated waters of the Federal exclusive economic zone (EEZ). This technical amendment conforms the American lobster regulations to existing statutory language, as amended by the Sustainable Fisheries Act.

EFFECTIVE DATE: February 28, 1997.

FOR FURTHER INFORMATION CONTACT: Mary Tokarcik, Fisheries Management Specialist, 508–281–9326.

SUPPLEMENTARY INFORMATION: On October 11, 1996, the Sustainable Fisheries Act (SFA) was signed into law. The SFA amended, among other statutes, the Atlantic Coastal Fisheries Cooperative Management Act (16 U.S.C. 5101 *et seq.*) to allow fishing for lobster by vessels issued Maine State American lobster permits in designated areas of the EEZ. These areas are often referred to as Maine pocket waters. The SFA provides that any person holding a valid permit issued by the State of Maine may engage in lobster fishing in these pocket waters, if such fishing is in accordance with all other applicable Federal and State regulations. These pocket waters are small areas of the EEZ that lie between two areas of State waters, created by islands near the coast of Maine. This technical amendment changes § 649.8, modifying the prohibitions to allow for this provision. It also adds § 649.24 to designate areas of the EEZ in which State-permitted vessels may harvest American lobster.

Classification

This rule only conforms to an existing set of regulations to a recently enacted statutory provision for which the agency has no discretion. As such, under authority at 5 U.S.C. 553(b)(B), there is good cause to waive the requirement to provide prior notice and an opportunity for public comment as such procedures are unnecessary. Similarly, as the statute is already effective, there is good cause under authority at 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective date.

This rule is exempt from review under E.O. 12866.

List of Subjects in 50 CFR Part 649

Fisheries.

Dated: February 27, 1997.

Charles Karnella,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR Part 649 is 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 § 649.8, paragraphs (a) introductory text, (b), (c) introductory text, (c)(1)(iv), (c)(2), and (c)(4) are revised and (c)(1)(v) is added to read as follows.

§ 649.8 Prohibitions.

(a) In addition to the general prohibitions specified in § 600.725 of this chapter, it is unlawful for any person owning or operating a vessel issued a Federal American lobster permit under § 649.4 or a vessel or person holding a valid State of Maine American lobster permit or license and fishing under the provisions of and under the areas designated in § 649.24 to do any of the following:

* * * * *

(b) In addition to the prohibitions specified in paragraph (a) of this section, it is unlawful for any person owning or operating a vessel that has not been issued a limited access American lobster permit as described under § 649.4(b) or a vessel or person holding a valid State of Maine American lobster permit or license and fishing under the provisions of and in the area designated under § 649.24, to possess on board a vessel or land American lobsters unless the vessel is a party, charter, or dive boat and there are six or fewer American lobsters per person on such boats, and the lobster are not sold, traded or bartered, or unless the vessel is a recreational vessel, or a vessel fishing for American lobsters exclusively in State waters.

(c) In addition to the general prohibitions specified in § 600.725 of this chapter and the prohibitions specified in paragraphs (a) and (b) of this section, it is unlawful for any person to do any of the following:

(1) * * *

(iv) The American lobsters were harvested by a recreational fishing vessel; or

(v) The American lobsters were harvested by a vessel or person holding a valid State of Maine American lobster permit or license that is fishing under the provisions of and in the areas designated in § 649.24.

(2) Sell, barter or trade, or otherwise transfer, or attempt to sell, barter, or trade, or otherwise transfer for a commercial purpose, any American lobsters from a vessel, unless the vessel had been issued a valid Federal American lobster permit under § 649.4, the American lobsters were harvested by a vessel without a Federal lobster permit that fishes for lobsters exclusively in State waters or unless the vessel or person holds a valid State of Maine American lobster permit or license and is fishing under the provisions of and in the areas designated in § 649.24.

* * * * *

(4) Purchase, possess, or attempt to purchase or receive for commercial purposes, as, or in the capacity of, a dealer, American lobsters caught by a vessel other than one issued a Federal American lobster permit under § 649.4 or one holding or owned or operated by one holding a valid State of Maine American lobster permit or license and fishing under the provisions of and in the areas designated in § 649.24, unless the American lobsters were harvested by a vessel without a Federal American lobster permit and that fishes for American lobster exclusively in state waters.

* * * * *

3. Section 649.24 is added to subpart B to read as follows:

§ 649.24 Exempted waters for Maine State American lobster permits.

A person or vessel holding a valid permit or license issued by the State of Maine that lawfully permits that person to engage in commercial fishing for American lobster may, with the approval of the State of Maine, engage in commercial fishing for American lobsters in the following areas designated as EEZ, if such fishing is conducted in such waters in accordance with all other applicable Federal and State regulations:

(a) West of Monhegan Island in the area located north of the line 43.5°42'08'' N. lat., 69.5°34'18'' W. long., and 43.5°42'15'' N. lat., 69.5°19'18'' W. long.

(b) East of Monhegan Island in the area located west of the line 43.5°44'00'' N. lat., 69.5°15'05'' W. long., and 43.5°48'10'' N. lat., 69.5°08'01'' W. long.

(c) South of Vinalhaven in the area located west of the line 43.5°52'21'' N. lat., 68.5°39'54'' W. long., and 43.5°48'10'' N. lat., 67.5°40'33'' W. long.

(d) South of Boris Bubert Island in the area located north of the line 44.5°19'15'' N. lat, 67.5°49'30'' W. long. and 44.5°23'45'' N. lat., 67.5°40'33'' W. long.

[FR Doc. 97–5440 Filed 2–28–97; 4:43 pm]

BILLING CODE 3510–22–F

50 CFR Part 679

[Docket No. 961126334–7025–02; I.D. 022897A]

Fisheries of the Exclusive Economic Zone Off Alaska, Pollock in the Eastern Regulatory Area of the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is closing directed fishing for pollock by vessels catching pollock for processing by the inshore component in the Eastern Regulatory Area in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the allocation of the total allowable catch (TAC) for pollock by vessels catching pollock for processing by the inshore component in the Eastern Regulatory Area.

EFFECTIVE DATE: 1200 hrs, Alaska local time (A.l.t.), March 2, 1997, until 2400 hrs, A.l.t., December 31, 1997.

FOR FURTHER INFORMATION CONTACT: Thomas Pearson, 907–486–6919.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

The final specification of the allocation of pollock to vessels catching pollock for processing by the inshore component in the Eastern Regulatory Area of the GOA was established by the Final 1997 Harvest Specifications of Groundfish for the GOA (62 FR 8179, February 24, 1997) as 5,580 metric tons (mt), determined in accordance with § 679.20 (a)(6)(ii).

In accordance with § 679.20 (d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the allocation of the TAC of pollock to vessels catching pollock for processing by the inshore component in the Eastern Regulatory Area will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 5,480, and is setting aside the remaining 100 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20 (d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for pollock by vessels catching pollock for processing by the inshore component in the Eastern Regulatory Area.

Maximum retainable bycatch amounts for applicable gear types may be found in the regulations at § 679.20(e) and (f).

Classification

This action is required by 50 CFR 679.20 and is exempt from review under E.O. 12866.

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

Dated: February 28, 1997.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–5439 Filed 2–28–97; 4:43 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 62, No. 43
Wednesday, March 5, 1997

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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 551

RIN 3206–AA40

Pay Administration Under the Fair Labor Standards Act

AGENCY: Office of Merit Systems Oversight, OPM.

ACTION: Proposed rule; withdrawal.

SUMMARY: The Office of Personnel Management (OPM) is withdrawing the proposed rule published on January 10, 1995, at 60 FR 2549–2551. The proposed rule would have added Subpart F—Complaints and Compliance to OPM's regulations administering pay of Federal employees under the Fair Labor Standards Act (FLSA or Act); however, events have overtaken the proposed rule.

FOR FURTHER INFORMATION CONTACT: Jeffrey D. Miller, Director, Classification Appeals and FLSA Programs, by telephone on 202–606–2530; by fax on 202–606–2663; or by e-mail at JDMiller@opm.gov.

SUPPLEMENTARY INFORMATION: On January 10, 1995, OPM published a proposed rule at 60 FR 2549–2551 to amend regulations on the Fair Labor Standards Act (FLSA). The proposed rule was to supersede instructions contained in Federal Personnel Manual Letter 551–9, *Civil Service Commission System for Administering the Fair Labor Standards Act (FLSA) Compliance and Complaint System* (March 30, 1976).

Pursuant to the Legislative Branch Appropriations Act of 1996, most of the claims settlement functions performed by the General Accounting Office (GAO) were transferred to the Director of the Office of Management and Budget (OMB). See Section 211, Public Law 104–53, 109 Stat. 535. The OMB Director delegated these functions to various components within the Executive branch in a determination order dated June 28, 1996. This order delegated to the Office of Personnel Management (OPM) the authority to settle claims against the Untied States involving Federal employees' compensation and leave (31 U.S.C. 3702), deceased employees' compensation 95 U.S.C. 5583), and proceeds of canceled checks for veterans' benefits payable to deceased beneficiaries (38 U.S.C. 5122). OPM is withdrawing the proposed rule to amend 5 CFR Part 551 while it considers a claims procedure in keeping with its new authority.

Until superseded by OPM regulations, it is OPM's policy, with one exception, to apply to the administration of any authority transferred from the General Accounting Office (GAO) any applicable GAO regulations in effect at the time of the transfer. The exception to this policy involves claims arising under the Fair Labor Standards Act (FLSA), 29 U.S.C. 201, *et seq.* FLSA claims will continue to be settled in the same manner as complaints under this Act are resolved pursuant to OPM's authority to administer the FLSA for the Federal Government pursuant to 29 U.S.C. 204(f).

Office of Personnel Management.

James B. King,

Director.

[FR Doc. 97–5366 Filed 3–4–97; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AEA–16]

Proposed Amendment to Class E Airspace; Olean, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class E airspace area at Olean, NY. The development of two new Standard Instrument Approach Procedures (SIAP) at Cattaraugus County-Olean Airport based on the Global Positioning System has made this proposal necessary. Additional controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate these SIAPs and for instrument flight rules (IFR) operations at the airport.

DATES: Comments must be received on or before April 5, 1997.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Operations Branch, AEA–530, Docket No. 97–AEA–16, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430.

The official docket may be examined in the Office of the Assistant Chief Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the Operations Branch, AEA–530, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Jr., Airspace Specialist, Operations Branch, AEA–530, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 97–AEA–16.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposal rule. The proposal contained in this notice may be changed in light of comments

received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Assistant Chief Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the Class E airspace area at Olean, NY. A GPS RWY 22 SIAP and a GPS RWY 4 SIAP has been developed for the Cattaraugus County-Olean Airport. Additional controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate this SIAP and for IFR operations at the airport. Class E airspace designations for airspace area extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed 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 11034; 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 would only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have 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).

The Proposed Amendment

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

PART 71—[AMENDED]

1. The authority citation for 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.

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, is proposed to be amended as follows:

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

* * * * *

AEA NY E5 Olean, NY [Revised]

Cattaraugus County-Olean Airport, NY
(lat. 42°14′24″ N., long. 78°22′18″ W.)
OLEAN NDB
(lat. 42°17′01″ N., long. 78°20′06″ W.)

That airspace extending upward from 700 feet above the surface within a 10.3-mile radius of Cattaraugus County-Olean Airport and within 3.1 miles each side of the OLEAN NDB 032° bearing extending from the 10.3-mile radius to 10 miles northeast of the NDB.

* * * * *

Issued in Jamaica, New York, on February 21, 1997.

James K. Buckles,

Acting Manager, Air Traffic Division, Eastern Region.

[FR Doc. 97–5435 Filed 3–4–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF DEFENSE

Corps of Engineers; Department of the Army

33 CFR Part 207

Navigation Regulations

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Corps is proposing to amend the navigation regulations for the Red River Waterway, Louisiana and the Yazoo Diversion Canal at Vicksburg, Mississippi. It is proposed to amend the Red River Waterway navigation regulation which prescribe maximum length, width, and draft of vessel tows that are allowed to enter the lock chamber for each lockage. It is proposed to mend the Yazoo Diversion Canal navigation regulation that establishes procedures for mooring of vessels along the banks. If the proposal is approved for the Red River Waterway, the maximum length of allowable vessel tow that may enter the lock chamber for each lockage will be increased from 685 feet to 705 feet. The maximum allowable width and draft of tow remains the same at 80 feet and 9 feet, respectively. Increasing the usable tow length to 705 feet will increase the efficiency of lock operations by reducing the number of tow breakups during a locking operation. If the proposal is approved for the Yazoo Diversion Canal, the navigation regulation would clarify vessel mooring locations along the canal banks for various river stages and that fairways will be established by the Vicksburg District Engineer. Establishment of fairways and specifying locations along the banks that vessels may moor for various river stages, will control indiscriminate vessel moorings and improve navigation safety .

DATES: Comments must be submitted on or before April 15, 1997.

ADDRESSES: HQUSACE, ATTN: CECW–OD, Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Hilton, Dredging and Navigation Branch (CECW–OD) at (202) 761-8830 or Mr. Jim Jeffords, Vicksburg District, Operations Division at (601) 631–5274.

SUPPLEMENTARY INFORMATION: Pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1), the Corps proposes to amend the regulations in 33 CFR Part 207. The Commanding Officer, Lower Mississippi Valley Division, Vicksburg, Mississippi has requested an amendment to the regulations in 33 CFR 207.249(b)(5)(iv) and 33 CFR 207.260 (c) and (g). The 685 feet maximum tow length currently allowed in the Red River Waterway lock chamber is based on the design vessel tow length. Increasing the tow length that may safety enter the lock chamber for each lockage to 705 feet, will not affect the safety of either the lock structure or the tow in the chamber during a filling or emptying operation, if the tow is properly secured and positioned. In addition to the publication of this proposed rule, the Corps Vicksburg District Engineer is concurrently soliciting public comment on these proposed changes to the Navigation

Regulations by distribution of a public notice to all known interested parties.

Procedureal Requirements

a. Executive Order 12866

This proposed rule is not a significant regulatory action under E.O. 12866. The Corps expects the economic impact of this rule, if approved, to be so minimal that further regulatory evaluation is unnecessary. We have concluded this because we expect that the proposed change will benefit the commercial towing industry.

b. Review Under the Regulatory Flexibility Act

These proposed rules have been reviewed under the Regulatory Flexibility Act (Pub. L. 96–354), which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (i.e., small businesses and small Governments). The Corps expects that the economic impact of the change to the tow length on the Red River Waterway and mooring locations on the Yazoo Diversion Canal, would have a positive affect on the towing industry and the general public, with no anticipated navigational safety or interference with existing waterway traffic and accordingly, certifies that this proposal, if adopted, will have no significant economic impact on small entities.

c. Review Under the National Environmental Policy Act

An environmental assessment has been prepared for this action. We have concluded, based on the Red River Waterway increase in tow length and Yazoo Diversion Canal mooring locations, there will not be a significant impact to the human environment, and preparation of an environmental impact statement is not required. The environmental assessment may be reviewed at the Corps Vicksburg District Office, in room 129, Regulatory Branch, located at 4155 E. Clay Street, Vicksburg, Mississippi.

d. Collection of information

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

e. Federalism

The Corps has analyze this proposed rule under principles and criteria in E.O. 12612 and has determined that this proposed rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

f. Unfunded Mandates Act

This proposed rule does not impose an enforceable duty among the private sector and therefore, is not a Federal private sector mandate and is not subject to the requirements of Section 202 or 205 of the Unfunded Mandates Act. We have also found, under Section 203 of the Act, that small Governments will not be significantly and uniquely affected by this rulemaking.

List of Subjects in 33 CFR Part 207

Navigation (water), Transportation, and Lockage.

For the reasons set out in the preamble, we propose to amend 33 CFR Part 207, as follows:

PART 207—NAVIGATION REGULATIONS

The authority citation for Part 207 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1).

2. Section 207.249 is amended by revising paragraphs (b)(5)(iv) to read as follows:

§ 207.249 Ouachita and Black Rivers, Ark, and La. Mile 0.0 to Mile 338.0 (Camden, Ark.) above the mouth of the Black River; the Red River, La., Mile 6.7 (Junction of Red, Atchafalaya and Old Rivers) to Mile 228.0 (Shreveport, La.); use, administration, and navigation.

(b) * * *

(5) * * *

(iv) The maximum dimensions on the Red River Waterway of a vessel tow attempting to pass through the lock during normal pool stages in a single passage are 80 feet wide, 705 feet long, and 9 feet draft. Tows requiring breaking into two or more sections to pass through the lock may transit the lock at such time as the lockmaster/lock operator determines that they will neither unduly delay the transit of craft of lesser dimensions, nor endanger the lock structure and appurtenances because of wind, current, and other adverse conditions. These craft are also subject to such special handling requirements as the lockmaster/lock operator finds necessary at the time of transit.

* * * * *

3. Section 207.260 is amended by revising paragraphs (c) and (g) to read as follows:

§ 207.260 Yazoo Diversion Canal, Vicksburg, Miss., from its mouth to the entrance of the upper Vicksburg Harbor Extension.

* * * * *

(c) *Mooring.* No vessel or raft shall be moored along the west bank of the canal between points Latitude 32°21′22″, Longitude 90°53′02″ and Latitude 32°20′48″, Longitude 90°53′22″, which is approximately 2000 feet above and 2000 feet below the public boat launch (foot of Clay Street) at Vicksburg City Front. No vessel or raft shall be moored along the west bank of the canal at any stage from the mouth of the Yazoo Diversion Canal where it enter into the Mississippi River to Latitude 32°20′21″, Longitude 90°53′44″ which is approximately 1200 feet from the mouth. At stages below 20 on the Vicksburg gage, no vessel or raft shall be moored along the east bank of the canal from the mouth of the Yazoo Diversion Canal where it enters into the Mississippi River to Latitude 32°20′12″, Longitude 90°53′41″, which is approximately 750 feet from the mouth. When tied up, boats, barges, or rafts shall be moored by bow and stern lines parallel to the bank and as close in as practicable. Lines shall be secured at sufficiently close intervals to insure the vessel or raft will not be drawn away from the bank by winds, current, or other passing vessels. No vessel or raft shall be moored along the banks of the canal for a period longer than five (5) days without written permission from the District Engineer, Corps of Engineers, Vicksburg District Office, 4155 E. Clay St, Vicksburg, Mississippi 39180–3435.

* * * * *

(g) *Fairway.* A clear channel not less than 175 feet wide as established by the District Engineer shall be left open at all times to permit free and unobstructed navigation by all types of vessels.

Dated: February 19, 1997.

John P. D'Aniello,

Deputy Director of Civil Works.

[FR Doc. 97–5048 Filed 3–4–97; 8:45 am]

BILLING CODE 3710–92–M

PANAMA CANAL COMMISSION

35 CFR Part 103

RIN 3207–AA40

Preference in the Transit Schedule/ Order of Transiting Vessels; Passenger Steamers Given Preference in Transiting

AGENCY: Panama Canal Commission.

ACTION: Notice of proposed rule with request for comments.

SUMMARY: This document proposes a test of a revised vessel transit reservation system. The proposed rule incorporates certain new features, including increasing the number of

available reserved transit slots, creation of a third booking period, establishment of new booking fees for transit reservations whenever the total number of vessels awaiting transit is excessively high, and clarification and refinement of procedures concerning cancellations refunds, and penalties.

The proposed rule being announced also makes certain passenger vessels seeking preference over other vessels in transiting the Panama Canal, that heretofore were exempt, subject to the revised vessel transit reservation system to be tested.

DATES: Written comments must be received on or before April 4, 1997.

ADDRESSES: Written comments may be mailed to John A. Mills, Secretary, Panama Canal Commission, 1825 I Street, NW, Suite 1050, Washington, DC 20006–5402, Telephone (202) 634–6441, Fax (202) 634–6439, Internet E-Mail: PanCanalWO@AOL.COM.

FOR FURTHER INFORMATION CONTACT: John A. Mills, Secretary, Panama Canal Commission, 1825 I Street, NW, Suite 1050, Washington, DC 20006–5402, Telephone (202) 634–6441, Fax (202) 634–6439, Internet E-Mail: PanCanalWO@AOL.COM.

SUPPLEMENTARY INFORMATION: On April 1, 1983, the Panama Canal Commission (PCC) implemented the vessel transit reservation system described in 35 CFR 103.8.

Section 1801 of the Panama Canal Act of 1977, as amended (22 U.S.C. 3811), authorizes PCC to prescribe and, from time to time, amend regulations governing the passage and control of vessels through the Panama Canal or any part thereof, including the locks and approaches thereto.

For the reasons discussed below, PCC proposes to adopt an interim rule to test certain improvements and modifications to the current vessel transit reservation system, formerly known as the Panama Canal Transit Booking System.

Technological advances now permit the shipping industry to schedule vessels for arrival and transit of the Panama Canal earlier than the current 21-day limitation stipulated in 35 CFR 103.8. Additionally, a significant number of Canal customers (especially those who utilize the reservation system) operate on regular fixed schedules that are planned and published as much as a year in advance.

The sixteen (16) reserved transit slots currently available are based on what the sustainable Canal capacity was in 1983 when the current vessel transit reservation system was put into effect. Today, due to major Canal improvements and more efficient use of PCC's operational resources, the sustainable Canal capacity has been significantly increased, thereby allowing reserved transit slots to be increased to 21.

Under the current vessel transit reservation system, when reduced Canal capacity attributable to maintenance and other factors coincides with unusually high vessel arrivals, transit bookings frequently are suspended. Canal customers complain that it is during just such periods that the vessel transit reservation system is the most beneficial to shipping and, for that reason, Canal authorities should continue taking reservations.

In response to these customers complaints, when due to various operational factors sustained Canal capacity is expected to be reduced, Canal authorities will continue to book transits, although the number of available reserved transit slots may be reduced. To better reflect the market value of the transit reservation service being provided to Canal customers whenever the total number of vessels awaiting transit is excessively high, customers wishing to reserve transit slots during these periods will be required to pay a premium booking fee.

Since 1925, certain passenger vessels have been given preference over other vessels in transiting the Panama Canal; the original justification being that such vessels carried the bulk of overseas travelers and mail and, unlike most other vessels, operated on fixed published schedules. When the current vessel transit reservation system went into effect in 1983, passenger vessels were exempted from the provisions thereof and continued to receive preference in transiting. Today, the focus of the passenger vessel industry is luxury leisure cruising. Also, many other types of vessels now operate on fixed published schedules.

In fairness to all Canal customers seeking timely transits, commercial passenger vessels, as a condition to continuing to receive preference in transiting the Canal, should be required to reserve transit slots and pay prescribed booking fees.

Technological improvements in PCC's communications capabilities will permit Canal customers to request transit reservations 24 hours a day.

Cancellations of transit bookings on short notice by Canal customers is disruptive to vessel transit operations. Shortened deadlines coupled with financial incentives will encourage customers to give Canal authorities greater advance notice of cancellations.

Summarizing, PCC hereby proposes to implement an interim rule, which would test certain modifications and refinements of the existing rule, in the following particulars:

1. Make commercial passenger vessels subject to the vessel transit reservation system as a condition of continued preferential treatment in transiting;

2. Increase the number of reserved transit slots from 16 to 21;

3. Permit reservation requests to be made via fax, 24 hours a day, with processing handled on a first come-first served basis;

4. Permit transit reservations to be made up to 365 days in advance;

5. Increase booking fee whenever the total backlog of vessels awaiting transit is projected to be, within 48-hours, 90 or more vessels, to $0.69 per PC/UMS Net Ton;

6. Use shortened deadlines and financial incentives to reduce cancellations of transit bookings on short notice; and

7. Clarify policies and procedures concerning refunds and penalties.

The test of the interim rule will be 120 days in duration, or longer, to afford PCC a fair opportunity to determine whether the refinements to the current rule discussed herein, are feasible and beneficial to PCC and its customers.

PCC strongly encourages all interested persons to submit written data, views or arguments before PCC publishes the interim rule in the Federal Register. All timely written submissions will be considered by PCC. Wherever suggested revisions to the proposed rule are indicated, revisions based thereon will be made. The test of the interim rule will commence upon its publication in the Federal Register, but no earlier than the expiration of the comment period announced in this notice.

PCC is exempt from Executive Order 12866. The provisions of that directive, therefore, do not apply to this proposed rule. Even if the Order was applicable, this proposed rule would not have any significant economic impact on any substantial number of small entities under the Regulatory Flexibility Act of 1980.

Additionally, PCC has determined that implementation of this proposed rule will not have an adverse effect on competition, employment, investment, productivity, innovation, or the ability of the U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary of PCC certifies that these proposed regulatory changes meet the applicable standards contained in sections 3(a) and 3(b)(2) of Executive Order No. 12988 of February 7, 1996.

List of Subjects in 35 CFR Parts 103 and 104

General provisions governing vessels, Panama Canal, Vessels.

For the reasons set forth in the preamble, PCC proposes to amend 35 CFR Chapter 1 by removing §§ 103.8 and 103.9, and adding a new part 104 to read as follows:

PART 104—VESSEL TRANSIT RESERVATION SYSTEM

Sec.
104.1 Applicability and scope.
104.2 Definitions.
104.3 Booking periods; allocation of booking slots.
104.4 Booked transits.
104.5 Passenger vessel preference.
104.6 Booking Fees.
104.7 Penalties.
104.8 Re-scheduling; refunds.
104.9 Cancellations.
104.10 Regular transits.
104.11 Temporary suspension of system.
104.12 Further implementation.

Authority: 22 U.S.C. 3811.

§ 104.1 Applicability and scope.

Subject to the limitations imposed by Article III of the 1901 Treaty to Facilitate the Construction of a Ship Canal, entered into by the United States and Great Britain, and by Articles II and VI of the 1977 Treaty concerning the Permanent Neutrality and Operation of the Panama Canal, between the United States and the Republic of Panama, Canal authorities have implemented a vessel transit reservation system that allows vessels desiring transit of the Panama Canal to reserve transit slots by complying with the provisions of this part.

§ 104.2 Definitions.

(a) *Booked for transit* means that a vessel, in advance of arriving at the Canal, has been assigned a specific date by Canal authorities on which it will be moved through the Canal and that the vessel has otherwise complied with the provisions of this part.

(b) *Regular transit* means movement through the Canal of a vessel that has not been booked for transit.

(c) *Required arrival time* means the date and the hour of the day established by Canal authorities as the deadline by which a vessel booked for transit must arrive at a terminus of the Canal in order to transit on its reserved transit date.

§ 104.3 Booking periods; allocation of booking slots.

(a) Vessel agents only may request reserved transit slots for vessels during the following booking periods:

(1) First period—365 to 22 days prior to the requested transit date.

(2) Second period—21 days to 4 days prior to the requested transit date.

(3) Third period—3 to 2 days prior to the requested transit date.

(b) A total of 21 reserved transit slots will be made available for all three booking periods, allocation of which among the booking periods is to be determined by Canal authorities. Canal authorities, from time to time, may adjust the total number of available reserved transit slots to ensure continued safe and efficient operation of the Canal.

§ 104.4 Booked Transits.

(a) The specific order vessels transit the Canal, whether booked or regular transits, shall be determined by Canal authorities. Except as provided in this part, a vessel booked for transit may not transit prior to its reserved transit date, unless Canal authorities determine that assigning the vessel an earlier transit slot would not impair safe and efficient operation of the Canal.

(b) Notwithstanding any subsequent assignment of an earlier transit slot, a vessel booked for transit will be charged the prescribed booking fee.

(c) Substitution of reserved transit slots between or among vessels booked for transit will be permitted only on conditions specified by Canal authorities.

§ 104.5 Passenger vessel preference.

To the extent consistent with efficient operation of the Canal, and subject to being booked for transit, commercial passenger vessels running on fixed published schedules will be given preference over other vessels in transiting, as determined by Canal authorities.

§ 104.6 Booking fees.

(a) The booking fee for reserving a transit slot for a vessel measured in accordance with § 135.13(a) of this chapter, shall be $0.26 per PC/UMS Net Ton.

(b) The booking fee for reserving a transit slot for a vessel subject to transitional relief measures and measured in accordance with § 135.13(b) of this chapter, shall be $0.23 per Panama Canal Gross Ton, as specified on the last tonnage certificate issued to the vessel by Canal authorities between March 23, 1976 and September 30, 1994, inclusive.

(c) Notwithstanding any contrary provision, whenever the total number of vessels awaiting transit at both terminuses of the Canal is projected by Canal authorities to be, within 48-hours, 90 or more vessels, any vessel booked for transit that transits the Canal while this condition is in effect shall automatically be assessed a booking fee of $0.69 per PC/UMS Net Ton.

(d) Notwithstanding any contrary provision, the minimum booking fee for any vessel booked for transit shall be $1500.

§ 104.7 Penalties.

(a) The reserved transit slot of a vessel booked for transit will be cancelled by Canal authorities and a penalty fee assessed in a sum that is the greater of the prescribed booking fee or $1,500, in the following situations:

(1) When a vessel that is subject to transit restrictions (e.g., clear cut, clear-cut daylight) has been booked for transit and does not arrive at a terminus of the Canal by 0200 hours of the day of the scheduled transit;

(2) When a vessel that is not subject to transit restrictions has been booked for transit and does not arrive at a terminus of the Canal by 1400 hours of the day of the scheduled transit; or

(3) When a vessel booked for transit arrives on time but cannot or, at the vessel operator's election, does not transit as scheduled, despite the readiness of Canal authorities to proceed.

(b) Canal authorities may waive assessment of a penalty fee if the vessel agent presents acceptable proof that late arrival of the vessel was due to a medical or humanitarian emergency arising during the voyage, or a naturally occurring, extraordinary phenomenon or event of major proportions that could not have been reasonably predicted in advance.

(c) Failure of the vessel agent to provide complete and accurate information required by Canal authorities when requesting transit bookings may result in rejection of the booking request or cancellation of the vessel's reserved transit slot.

(d) When a vessel's reserved transit slot is cancelled, and unless otherwise directed by the vessel agent, upon arrival, Canal authorities will re-schedule the vessel for regular transit.

§ 104.8 Re-scheduling; refunds.

(a) Except as otherwise provided, a vessel agent, without penalty, may request cancellation of a vessel's reserved transit slot and rescheduling of the vessel for regular transit or, alternatively, may request assignment of an alternate reserved transit slot, in the following situations:

(1) If for whatever reason Canal authorities cancel or significantly delay the transit of a vessel booked for transit that is otherwise ready to proceed as scheduled;

(2) If for whatever reason Canal authorities delay the transit of a vessel booked for transit to such a degree that the delay is likely to cause the vessel to be unable to meet its required arrival time for a later, second reserved transit, booked before the delay of the first reserved transit occurred; or

(3) If a vessel is booked for transit on the assumption that the vessel will pay the booking fee prescribed by § 104.6(a) or (b) but, subsequently, a change in traffic conditions occurs triggering the higher booking fee prescribed by § 104.6(c).

(b) A vessel booked for transit will be deemed to have transited the Canal on its reserved transit date if the vessel arrives at the first set of locks at either terminus of the Canal prior to 2400 hours that day and its in-transit time (ITT) is 18 hours or less. ITT begins when the vessel enters the first set of locks at either Canal terminus and ends when the vessel departs the last set of locks at the opposite terminus. No booking fee will be charged if ITT, through no fault of the vessel, exceeds 18 hours.

§ 104.9 Cancellations.

(a) A vessel agent may cancel the transit reservation of a vessel by giving notice prescribed by Canal authorities. In such event, and except as otherwise provided, a cancellation fee will be charged. The amount of the fee will depend on the amount of notice (days or hours) received by Canal authorities in advance of the vessel's required arrival time, according to the following schedule:

Advance notice periods	Cancellation fee (the greater of)
31 days or more	None.
30 to 11 days	20% of booking fee or $500.
10 to 7 days	40% of booking fee or $750.
6 to 2 days	60% of booking fee or $1,000.
1 day to 8 hours	80% of booking fee or $1,200.

(b) Receipt of notice of cancellation of a transit reservation by Canal authorities after the vessel's required arrival time will result in levy of a cancellation fee equal to the entire prescribed booking fee.

§ 104.10 Regular Transits.

Vessels not booked for transit will be scheduled for movement through the Canal on the date and in the order determined by Canal authorities. In establishing the daily schedule of vessels to be moved through the Canal, the order in which vessels arrive is only one of several considerations. In general, regular transits will equal or exceed in number, one-half the total number of daily vessel transits.

§ 104.11 Temporary Suspension of System.

(a) Canal authorities may temporarily suspend, in whole or in part, for whatever period of time deemed necessary, the vessel transit reservation system established by this part, whenever Canal authorities determine that such action is necessary to ensure continued safe and efficient operation of the Canal.

(b) No penalty or fee shall be levied against any vessel booked for transit whose reserved transit slot is cancelled by reason of a temporary suspension of the system pursuant to this section.

104.12 Further Implementation.

In order to ensure safe and efficient operation of the system, Canal authorities may establish additional policies and procedures, define additional terms and issue clarifications and interpretations not inconsistent with the provisions of this part, which periodically will be published and distributed to Canal customers through notices to shipping or other appropriate means.

Dated: February 28, 1997.

John A. Mills,

Secretary, Panama Canal Commission.

[FR Doc. 97–5396 Filed 3–4–97; 8:45 am]

BILLING CODE 3640–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO–015–1015(b); FRL–5682–6]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the Asarco Glover, Missouri, lead emission control plan submitted by the state of Missouri on August 14, 1996. The plan was submitted by the state to satisfy certain requirements under the Clean Air Act to reduce lead emissions sufficient to bring the Liberty and Arcadia Townships into attainment with the National Ambient Air Quality Standard for lead.

In the final rules section of the Federal Register, the EPA is approving the plan as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Comments must be received on or before April 4, 1997.

ADDRESSES: Comments may be mailed to Josh Tapp, Environmental Protection Agency, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Josh Tapp at (913) 551–7606.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the rules section of the Federal Register.

Authority: 42 U.S.C. 7401—7671q.

Dated: January 15, 1997.

Dennis Grams,

Regional Administrator.

[FR Doc. 97–5138 Filed 3–4–97; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[MO–018–1018; FRL–5698–7]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed notice of failure to attain the National Ambient Air Quality Standard (NAAQS) for lead in the vicinity of the Doe Run Company's primary lead smelter in Herculaneum, Missouri.

SUMMARY: Pursuant to the Clean Air Act (CAA or the Act), the EPA has notified the state of Missouri that the Doe Run-Herculaneum nonattainment area failed to attain the NAAQS for lead (Pb) by June 30, 1995, as required under the provisions of the Act and the Missouri State Implementation Plan (SIP). This notification is based on the EPA's review of monitored air quality data for compliance with the NAAQS for lead. This notice is issued pursuant to the EPA's obligations under sections 179(c)(1) and (2) of the CAA, which require the EPA to make a determination of an area's attainment status following an applicable attainment date, and publish a notice in the Federal Register indicating that such a determination has been made. If EPA finalizes this notice, then pursuant to section 179(d)(1) of the CAA, Missouri would be required to submit a SIP revision, meeting the applicable provisions of the Act. This SIP revision would be required within one year of publication of the finding in the Federal Register.

DATES: Comments must be received on or before April 4, 1997.

ADDRESSES: Comments may be mailed to Royan W. Teter, Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Royan W. Teter at (913) 551–7609.

SUPPLEMENTARY INFORMATION:

I. Background

On June 3, 1986, the EPA issued a call for a revision to the Missouri SIP in response to violations of the NAAQS for lead near the Doe Run primary lead smelter in Herculaneum, Missouri (Doe Run-Herculaneum). The state submitted a SIP revision on September 6, 1990, with additional materials submitted on May 8, 1991. The 1990 SIP established February 1, 1993, as the attainment date for the Herculaneum area.

The CAA was amended on November 15, 1990. Sections 107(d) (1) and (5) of the Act, as amended, provide for areas to be designated as nonattainment with respect to the NAAQS. Upon promulgation of the nonattainment designation, a state must prepare a revision to the SIP in accordance with the requirements of section 172 of the CAA, showing how the area will be brought into attainment. The EPA promulgated a nonattainment designation for the area in the vicinity of Doe Run-Herculaneum under the authority granted by the CAA. The designation was published on November 6, 1991 (56 FR 56694), and became effective on January 6, 1992.

As a result of the EPA's promulgation of the nonattainment designation, the Part D requirements of the CAA became applicable to the Missouri SIP revision for Doe Run-Herculaneum. The EPA granted limited approval for Missouri's 1990 SIP revision on March 6, 1992 (57 FR 8076). The EPA did not give full approval because the state was required to submit a supplemental SIP revision meeting the applicable Part D requirements.

The state of Missouri initially submitted a SIP revision addressing the applicable Part D requirements of the CAA on July 2, 1993. The submission also provided for additional control measures in response to unanticipated emissions after the control measures were implemented under the 1990 SIP revision. These emissions resulted in violations of the lead NAAQS after the 1990 SIP revision attainment date of February 1, 1993. Upon review, the EPA determined that additional revisions were necessary. Missouri submitted these revisions in March and November 1994.

The final result was a SIP that established June 30, 1995, as the attainment date for the area and satisfied the Part D requirements of the CAA. The revised plan also contained a control strategy to address the violations of the NAAQS which occurred upon implementation of the control measures in the 1990 SIP revision. Dispersion modeling indicated that the subsequent control measures would result in attainment of the NAAQS for lead.

II. Proposed Action

A. Determination of Attainment Status

By today's action, the EPA provides notice that the Herculaneum, Missouri, nonattainment area failed to attain the NAAQS for lead by June 30, 1995, as required by the approved SIP. This determination is based upon air quality data showing violations of the lead NAAQS during 1995 and 1996.

Since June 30, 1995 (second quarter 1995), a total of eight violations of the lead standard (1.5 μg/m^3 quarterly arithmetic mean) have been measured at multiple monitoring sites in Herculaneum, Missouri. The data are as follows:

LEAD AMBIENT AIR QUALITY DATA—VICINITY OF THE DOE RUN PRIMARY SMELTER, CALENDAR QUARTERLY VALUES (MICROGRAMS OF LEAD PER CUBIC METER OF AIR (μG/M^3)), HI-VOL MONITOR LOCATIONS

Date	S Dunklin 29–099–0014	H Dunklin 29–099–0005	H Golf course 29–099–0008	H North 29–099–0009	H Ursaline 29–099–0010	H Rutz 29–099–0011	H Div. manager 29–099–0013	H Broad Street 29–099–0015
1995:								
3rd	1.4	1.2	0.3	0.3	0.2	1.0	1.2	*4.1*
4th	*1.9*	*1.7*	0.4	0.8	0.1	*1.6*	1.3	*6.3*
1996:								
1st	*2.3*	*1.9*	0.3	0.4	0.1	1.4	.8	*2.3*
2nd	*1.6*	1.2	0.5	0.1	0.2	*2.4*	0.8	*5.7*
3rd	0.8	0.6	0.1	0.2	0.3	0.7	0.5	*4.0*

Notes:[1] (S) = State monitor, (H) = Herculaneum monitor.[2] *Italics* Quarterly Air Quality Values exceed the National Ambient Air Quality Standard (NAAQS) for lead; the NAAQS for lead is 1.5 μg/m^3 and is the arithmetic mean of a series of daily (24-hour) values from hi-vol monitors measuring particulate matter, within a three-month (calendar quarter) period.

Attainment of the lead standard is based upon regulations found in 40 CFR 50.12. The lead national primary and secondary air quality standards are 1.5 micrograms per cubic meter, maximum arithmetic mean averaged over a calendar quarter. The data indicate that four monitors in the Herculaneum area continue to measure violations of the NAAQS for lead in spite of the state's efforts.

Under section 179(c)(1) of the CAA, the EPA has the responsibility for determining whether a nonattainment area has attained the lead NAAQS. The EPA must make an attainment determination as expeditiously as practicable, but no later than six months after the attainment date for the area. The Act also requires the EPA to publish a notice of its findings in the Federal Register.

In the case where the area fails to attain the NAAQS by the applicable attainment date, the EPA policy (Shaver 1995) specifies that the EPA will notify the affected state(s) by letter and Federal Register notice of the EPA's findings. The EPA notified Missouri of its finding on August 27, 1996.

B. Implementation of Contingency Measures

Upon receipt of notification, affected states are required to implement specific contingency measures previously identified in the approved SIP. These measures were identified and submitted under section 172(c)(9) of the CAA. These measures are to be undertaken without further action on the part of the state or the EPA. In general, the EPA expects all actions needed to effect full implementation of the contingency measures to occur with 60 days of notification. On December 10, 1996, the EPA received written notification from the Missouri Department of Natural Resources that all contingency measures in the approved SIP have been implemented.

C. Call for Revision of Missouri's SIP

In accordance with section 179(d) of the CAA, upon publication of the EPA's notice indicating an area has failed to attain, states must within one year submit a SIP revision meeting all of the requirements of sections 110 and 172 of the Act and any additional measures as may be reasonably prescribed, including all measures that can be feasibly implemented in light of technological achievability, costs, and other factors. With this document, the EPA gives notice that it has notified the Governor of Missouri that the Herculaneum, Missouri, area has failed to attain the NAAQS for lead. This notice requests public comment on this determination.

Retention of the area's nonattainment status under section 107(d) of the Act does not impose any new requirements on small entities. Retention of the nonattainment designation is an action that affects the status of a geographical area and does not impose any regulatory requirements on sources. To the extent that the area must adopt new regulations, based on its nonattainment status, the EPA will review the effect of those actions on small entities at the time the state submits those regulations. The Administrator certifies that retention of the area's nonattainment status will not affect a substantial number of small entities.

III. Administrative Requirements

A. Executive Order (EO) 12866

Under E.O. 12866, 58 FR 51735 (October 4, 1993), the EPA is required to determine whether regulatory actions are significant and therefore should be subject to the Office of Management and Budget review, economic analysis, and the requirements of the Executive Order. The Executive Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may meet at least one of the four criteria identified in section 3(f), including, under paragraph (1), that the rule may ''have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.''

The Agency has determined that today's finding of failure to attain results in none of the effects identified in section 3(f). Under section 179(c) of the CAA, findings of failure to attain for nonattainment areas are based upon air quality considerations, in light of certain air quality conditions. They do not, in and of themselves, impose any new requirements on any sectors of the economy.

B. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, the EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

As discussed in section III of this notice, findings of failure to attain for nonattainment areas under section 179(c) of the CAA do not in and of themselves create any new requirements. Therefore, I certify that today's proposed action does not have a significant impact on small entities.

C. Unfunded Mandates

Under sections 202, 203 and 205 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act), signed into law on March 22, 1995, the EPA must assess whether various actions undertaken in association with proposed or final regulations include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to state, local, or tribal governments in the aggregate.

The EPA believes, as discussed above, that the proposed finding of failure to attain for the Herculaneum, Missouri, lead nonattainment area is a factual determination based upon air quality considerations and does not impose any Federal intergovernmental mandate, as defined in section 101 of the Unfunded Mandates Act.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, National parks, Wilderness areas, Lead.

Authority: 42 U.S.C. 7401–7671q.

Dated: February 18, 1997.

Dennis Grams,

Regional Administrator.

[FR Doc. 97–5416 Filed 3–4–97; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Parts 52 and 70

[MO 014–1014; FRL–5698–8]

Approval and Promulgation of Implementation Plan and State Operating Permit Program; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve revisions to Missouri's State Implementation Plan (SIP) concerning Missouri's rule 10 CSR 10–6.110, Submission of Emission Data, Emission Fees, and Process Information. This rule also clarifies the requirements for the payment of emission fees to support Missouri's Title V program and was submitted as part of the state's plan to comply with Title V of the Clean Air Act (CAA).

DATES: Comments must be received on or before April 4, 1997.

ADDRESSES: Comments may be mailed to Stan Walker, Environmental Protection Agency, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Stan Walker at (913) 551–7494.

SUPPLEMENTARY INFORMATION:

I. Background

On February 1, 1996, the state of Missouri submitted revisions to Missouri rule 10 CSR 10–6.110 as part of the SIP and to comply with the operating permit requirement outlined in Title V of the CAA as amended (1990). A public hearing was held on July 27, 1996.

A. Missouri's SIP Submission

Revisions to the rule provide procedures for collecting, recording, and submitting emission data and process information on state-supplied Emission Inventory Questionnaires (EIQ) and Emission Statement forms, or in a format satisfactory to the Director. This is necessary so the state can calculate emissions for state air resource planning. As specified in sections 182(a)(3)(B) and 182(b) of the CAA, emission statements are required of certain facilities in nonattainment areas. Emission statements are required if the actual emissions of either nitrogen oxide, volatile organic compounds, or carbon monoxide are equal to or greater than ten tons annually. Facilities must report emissions of each pollutant if they meet the ten-ton threshold for any of the three.

An amendment to the rule also establishes emission factor approvability and procedures for adjusting emission fees. Also, the amendment revises the use of the terms ''contaminant'' and ''pollution'' to reflect definitions in 10 CSR 10–6.020.

B. Proposed Approval of Revision to Missouri's Part 70 Operating Permit Program

One amendment to Missouri rule 10 C.S.R. 10–6.110, changes section (1), ''Applicability,'' to include a provision that all installations required to obtain permits under 10 C.S.R. 10–6.060 or 10 C.S.R. 10–6.065 to file an EIQ as outlined in the reporting frequency table in subsection (2)(E). Installations, however, can prove to the staff director that their potential emissions are below de minimis levels and that they should be exempt. The purpose of this change is to remove exemptions that were not intended by the Missouri legislature. Consequently, all air contaminant sources required to obtain a permit must pay emission fees. This rule requires subject facilities to submit emission information and emission fees, and makes emission data available to the public. Reference to rules 10 CSR 10–6.060 and 10 CSR 10–6.065, as well as changes to Section (5) of the rule, relate to Missouri's Title V program covered under 40 CFR Part 70.

The revision to Section (5) of Missouri rule 10 CSR 10–6.110 clarifies language related to payment of fees by charcoal kilns. This particular change relates to Missouri's Operating Permits Program, as specified in the Missouri statutes, which was previously approved by the EPA on April 4, 1996 (61 FR 16063).

II. Proposed Action

The EPA is proposing to approve revisions to Missouri's SIP and Missouri's Title V Operating Permit Program concerning Missouri rule 10 CSR 10–6.110, ''Submission of Emission Data, Emission Fees, and Process Information.''

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors, and in relation to relevant statutory and regulatory requirements.

III. Administrative Requirements

A. Docket

Copies of the state submittal and other information relied upon for the proposed approval are contained in a docket maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, the EPA in the development of this proposed approval. The docket is available for public inspection at the location listed under the **ADDRESSES** section of this document.

B. Executive Order (E.O.) 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995, memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from E.O. 12866 review.

C. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5. U.S.C. § 600 et seq., the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, the EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, Part D of the CAA do not create any new requirements but simply approve requirements that the state is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids the EPA to base its actions concerning SIPs on such grounds (*Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2)).

D. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, the EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, the EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirement.

Authority: 42 U.S.C. 7401–7671q.

Dated: February 5, 1997.

William Rice,

Acting Regional Administrator.

[FR Doc. 97–5422 Filed 3–4–97; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 268

[FRL–5699–3]

RIN 2050 AE05

Land Disposal Restrictions—Phase IV: Treatment Standards for Characteristic Metal Wastes; Notice of Data Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of data availability.

SUMMARY: EPA has received additional information on an issue it first raised in the Land Disposal Restrictions (LDR) Phase III proposed rule (60 FR 11702, March 2, 1995), that of whether the addition of iron filings (and iron dust) to lead-contaminated spent foundry sand is a means of diluting the waste impermissibly rather than treating it to conform with the requirements of the LDR rules. The new information being noticed today addresses whether this practice stabilizes (or otherwise treats) lead, the chief hazardous constituent found in the spent sand, so that the lead will not migrate through the environment when the spent sand is land disposed. Stabilization as a technology-based LDR standard (STABL) is described in 40 CFR 268.42 as using the following reagents (or waste reagents) or combinations of reagents: (1) Portland cement; or (2) lime/pozzolans (e.g., fly ash and cement kiln dust)—this does not preclude the addition of reagents (e.g., iron salts, silicates, and clays) designed to enhance the set/cure time and/or compressive strength, or to overall reduce the leachability of the metal or inorganic. New studies have been performed to evaluate this hazardous waste management practice, and the studies have undergone external Peer Review. EPA is noticing these studies, and the results of the Peer Review, in this Notice, and soliciting public comment. EPA may use the results of the studies to promulgate a revised final approach on this waste management practice in an upcoming LDR rulemaking (Phase IV).

The public has 30 days from publication of this notice to comment on the results of the studies and the Peer Review. This notice does not reopen for comment any other Phase III or Phase IV issue; only comments about the waste management practice of adding iron filings or dust to lead-contaminated spent foundry sand will be considered by the Agency.

DATES: Comments are due by April 4, 1997.

ADDRESSES: To submit comments, the public must send an original and two copies to Docket Number F–97–PH3A–FFFFF, located at the RCRA Docket. The mailing address is: RCRA Information Center, U.S. Environmental Protection Agency (5305W), 401 M Street, SW, Washington, DC 20460. RCRA Information Center is located at 1235 Jefferson Davis Highway, First Floor, Arlington, Virginia. The RCRA Information Center is open for public inspection and copying of supporting information for RCRA rules from 9:00 a.m. to 4:00 p.m. Monday through Friday, except for Federal holidays. The public must make an appointment to review docket materials by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory document at no cost. Additional copies cost $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information or to order paper copies of this Federal Register document, call the RCRA Hotline. Callers within the Washington Metropolitan Area must dial 703–412–9810 or TDD 703–412–3323 (hearing impaired). Long-distance callers may call 1–800–424–9346 or TDD 1–800–553–7672. The RCRA Hotline is open Monday-Friday, 9:00 a.m. to 6:00 p.m., Eastern Standard Time. For other information on this notice, contact Mary Cunningham at (703) 308–8453, John Austin at (703) 308–0436 or Rhonda Craig at (703) 308–8771, Office of Solid Waste, Mail Code 5302W, 401 M Street, SW, Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

Paperless Office Effort

EPA is asking prospective commenters to voluntarily submit one additional copy of their comments on labeled personal computer diskettes in ASCII (TEXT) format or a word processing format that can be converted to ASCII (TEXT). It is essential to specify on the disk label the word processing software and version/edition as well as the commenter's name. This will allow EPA to convert the comments into one of the word processing formats utilized by the Agency. Please use mailing envelopes designed to physically protect the submitted diskettes. EPA emphasizes that submission of comments on diskettes is not mandatory, nor will it result in any advantage or disadvantage to any commenter. This expedited procedure is in conjunction with the Agency ''Paperless Office'' campaign. For further information on the submission of diskettes, contact Rhonda Craig of the Waste Treatment Branch at (703) 308–8771.

This Federal Register notice is available on the Internet System through EPA Public Access Server, www.epa.gov. For the text of the notice, choose: Rules, Regulations, and Legislation; FR-Waste; Year/Month/Day.

Notice of Data Availability

I. Overview

On March 2, 1995, EPA published the LDR Phase III proposal in the Federal Register (60 FR 11702). Among other things, EPA proposed that adding iron filings to lead-contaminated spent foundry sand constituted impermissible dilution of hazardous lead waste rather than treatment to meet the LDR treatment standards (60 FR 11731). As explained in the proposed rule, the addition of iron filings seems to temporarily retard the leachability of lead in the spent foundry sand thus allowing the waste to pass the TCLP test, but not to be permanently treated. Comments were mixed on this issue, and EPA decided not to finalize a determination that the practice is a form of impermissible dilution in the Phase III final rule without studying the issue further. See 61 FR 15569, April 8, 1996.

Since then, two studies have become available on this issue. One study was developed by Dr. John Drexler of the University of Colorado, and the other by Dr. Douglas Kendall of the National Enforcement Investigations Center (NEIC). The results of these studies indicate that the addition of iron filings or iron dust to spent foundry sand does

not constitute adequate treatment of the waste because high concentrations of lead remain available to the environment, and indeed have been shown to leach in actual field monitoring of units receiving the spent foundry wastes. The studies also may support a more basic principle: a method of treatment that does not in fact result in substantial reductions of a waste's toxicity or mobility could be viewed as not adequately minimizing threats posed by land disposal of the waste, and therefore, may fail to satisfy the requirements for permissible treatment under section 3004(m) of RCRA. Cf. 62 FR 1994–1995 (Jan. 14, 1997) (EPA discusses similar principle in connection of treatment of hazardous waste K088).

EPA requested that these studies be reviewed by experts from the academic community who are independent of EPA. The studies are discussed in greater detail below.

II. Discussion of the Studies

Spent foundry sand, as generated, may fail the Toxicity Characteristic Leaching Procedure (TCLP) for lead, and would then be considered a characteristic hazardous waste. At a brass foundry in Nacogdoches, Texas, EPA found that hazardous foundry sand is treated by the addition of iron dust and iron filings. After this treatment, the spent foundry sand passed the TCLP (and thus was no longer considered a hazardous waste) and was disposed in the municipal landfill. EPA Region VI commissioned studies to assess the effectiveness of this waste management practice. The studies discuss the chemistry behind iron treatment and conclude that the addition of iron to waste foundry sand does not permanently prevent the release of lead into the environment.

The studies were based on samples collected from two cells at the Nacogdoches Municipal landfill and NIBCO, Inc. in Nacogdoches, Texas by a team from A. T. Kearney (EPA Contractor) and EPA. The landfill cells contained waste sands and other wastes from the NIBCO facility and were sampled so as to preserve depth information. Samples taken at the NIBCO brass foundry included waste foundry sands, green sand, hydofilter sludge, baghouse dust, resin sand, and silica sand. Dr. John W. Drexler of the University of Colorado performed a geostatistical evaluation of the Nacogdoches Landfill data and photomicrographic analysis of the samples. Dr. Douglas Kendall with EPA's National Enforcement Investigations Center (NEIC) evaluated total and leachate analyses performed by the NEIC laboratory. These studies and supporting documentation are being placed in the docket for the Phase IV rule, and are being made available for review by today's notice.[1]

In his study, Dr. Drexler concluded the following: (1) That the spent foundry wastes placed in the Nacodoches Municipal Landfill remained hazardous in fact; (2) the addition of iron filings to spent foundry sand does not cause chemical reduction (i.e., the hazardous lead remains oxidized); (3) the addition of iron filings to the spent foundry sand promoted a physicochemical dilution of the sample during the TCLP by producing significant increases in surface area sorption sites; (4) the addition of iron filings to the waste sand artificially altered the environmental character of the TCLP test by increasing pH, and lowering Eh (redox potential) and DO (dissolved oxygen); and (5) in-vitro testing shows that these ''treated'' spent foundry sands maintain a high bioavailability of lead.

In his study, Dr. Kendall concluded that when metallic iron is mixed with lead-contaminated foundry sand there is no reaction, the lead is not entrapped or immobilized. During the TCLP the mixture comes in contact with an aqueous solution and the lead begins to leach into the solution. If metallic iron is present, the lead concentration in solution will be decreased by an oxidation/reduction reaction to levels below the lead characteristic level. If fresh metallic iron is regularly introduced into the mixture, then soluble lead can be kept at low levels. If, however, the mixture is placed in a landfill and left alone, the iron will oxidize, thereby losing its ability to reduce lead ions. The report concludes that adding iron is not a way to permanently treat lead-contaminated waste.

The A.T. Kearney *Peer Review Report* includes comments from three reviewers: Dr. Abinash Agrawal of Wright State University; Dr. Carl Palmer of the Oregon Institute of Science and Technology; and Dr. Geoffrey Thyne of California State University at Bakersfield. The peer reviewers were instructed to review each report to determine if the reports addressed the following questions:

1. Does the report support the conclusion that treatment has not occurred by adding iron filings to the foundry sand containing lead?

2. Do the scientific data present in the report support the conclusions reached?

3. Is the report based on sound scientific research and fact?

The peer reviewers agree that adding iron filings to spent foundry sand is not treatment of hazardous waste constituents. The Peer Review report further states that the scientific data presented in the studies support the conclusions reached by the studies. Furthermore, the Peer Review report finds that the studies are based on sound scientific research and fact.

The Agency is in the process of reviewing all the data that were obtained during the NIBCO investigation. The Agency is also continuing to review the comments submitted to the LDR Phase III proposed rulemaking which addressed this issue (59 FR 11731, March 2, 1995). These studies and data are being analyzed in order to determine the treatment validity of adding iron filings to characteristic metal wastes as a method of treatment.

The documents being placed in the docket for this NODA include:

- *Phase I, Characterization of Iron Filings Treatment Method of Foundry Sands,* Dr. John W. Drexler, Associate Professor, University of Colorado Laboratory for Environmental and Geological Studies.
- *Impermanence of Iron Treatment of Lead-Contaminated Foundry Sand,* Douglas Kendall, Ph.D., Senior Chemist, National Enforcement Investigations Center (NEIC).
- *Peer Review Report,* September 3, 1996, submitted by A.T. Kearney, Inc., Dallas, Texas to Rena McClurg, Regional Project Officer, USEPA, Dallas, Texas.
- Fax message to Bret Kendrick from Dr. Abinash Agrawal *RE: Peer Review for EPA Region 6.*
- *Reply to Reviewers' Comments; Impermanence of Iron Treatment of Lead-Contaminated Foundry Sand,* Douglas Kendall, Ph.D., Senior Chemist, National Enforcement Investigations Center (NEIC).
- *Responses to Peer Review Comments, Characterization of Iron Filings Treatment Method of Foundry Sands, Dr. John W. Drexler.*

List of Subjects in 40 CFR Part 268

Environmental protection, Hazardous waste, Reporting and recordkeeping requirements.

[1] EPA is mentioning its enforcement activities here solely to indicate the provenance of the studies being made available for public comment. EPA is not seeking to influence the results of any enforcement actions by doing so. In addition, none of the Agency staff involved in any pending enforcement action involving any member of the foundry industry has any substantive involvement in the Agency's rulemaking considering the question of whether addition of iron to foundry wastes is a permissible form of treatment.

Dated: February 20, 1997.

Matthew Hale,

Acting Director, Office of Solid Waste.

[FR Doc. 97–5419 Filed 3–4–97; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 372

[OPPTS–400101; FRL–5584–9]

RIN 2070-AC00

Polymeric Diphenylmethane Diisocyanate; Toxic Chemical Release Reporting; Community Right-to-Know

AGENCY: Environmental Protection Agency (EPA).

ACTION: Denial of petition.

SUMMARY: EPA is denying a petition to remove polymeric diphenylmethane diisocyanate (PMDI) from the diisocyanates category subject to the reporting requirements under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) and section 6607 of the Pollution Prevention Act of 1990 (PPA). EPA has reviewed the available toxicological data on this chemical and has determined that PMDI does not meet the section 313(d)(3) deletion criterion. Therefore, EPA is denying the petitioner's request to remove PMDI from the EPCRA section 313 diisocyanates category.

FOR FURTHER INFORMATION CONTACT: Daniel R. Bushman, Acting Petitions Coordinator, 202–260–3882, or e-mail: bushman.daniel@epamail.epa.gov, for specific information regarding this document or for more information on EPCRA section 313, the Emergency Planning and Community Right-to-Know Hotline, Environmental Protection Agency, Mail Code 5101, 401 M St., SW., Washington, DC 20460, Toll free: 1–800–535–0202, in Virginia and Alaska: 703–412–9877 or Toll free TDD: 1-800-553-7672.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Statutory Authority

This action is taken under sections 313(d) and (e)(1) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. 11023. EPCRA is also referred to as Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA) (Pub. L. 99-499).

B. Background

Section 313 of EPCRA requires certain facilities manufacturing, processing, or otherwise using listed toxic chemicals to report their environmental releases of such chemicals annually. Beginning with the 1991 reporting year, such facilities also must report pollution prevention and recycling data for such chemicals, pursuant to section 6607 of the Pollution Prevention Act of 1990 (PPA), 42 U.S.C. 13106. Section 313 established an initial list of toxic chemicals that was comprised of more than 300 chemicals and 20 chemical categories. Polymeric diphenylmethane diisocyanate (PMDI) is a diisocyanate chemical reportable under the diisocyanates category which was added to the EPCRA section 313 list of toxic chemicals on November 30, 1994 (59 FR 61432) (FRL–4922–2). Section 313(d) authorizes EPA to add or delete chemicals from the list, and sets forth criteria for these actions. EPA has added and deleted chemicals from the original statutory list. Under section 313(e)(1), any person may petition EPA to add chemicals to or delete chemicals from the list. Pursuant to EPCRA section 313(e)(1), EPA must respond to petitions within 180 days, either by initiating a rulemaking or by publishing an explanation of why the petition is denied.

EPCRA section 313(d)(2) states that a chemical may be listed if any of the listing criteria are met. Therefore, in order to add a chemical, EPA must demonstrate that at least one criterion is met, but does not need to examine whether all other criteria are also met. Conversely, in order to remove a chemical from the list, EPA must demonstrate that none of the criteria are met.

EPA issued a statement of petition policy and guidance in the Federal Register of February 4, 1987 (52 FR 3479), to provide guidance regarding the recommended content and format for submitting petitions. On May 23, 1991 (56 FR 23703), EPA issued guidance regarding the recommended content of petitions to delete individual members of the section 313 metal compound categories. EPA has also published a statement clarifying its interpretation of the section 313(d)(2) and (3) criteria for adding and deleting chemical substances from the section 313 list (59 FR 61432).

II. Description of Petition

On August 15, 1995, EPA received a petition from the Polyurethane Division of the Society of the Plastics Industry (SPI) to delete PMDI (Chemical Abstracts Service Registry Number (CASRN) 9016–87–9) from the list of chemicals reportable under EPCRA section 313 and PPA section 6607. Specifically, the petitioner requested that PMDI be removed from the EPCRA section 313 diisocyanates category. The petitioner contends that PMDI should be delisted because: (1) PMDI does not independently meet the EPCRA section 313 toxicity criteria since it is a mixture that contains approximately 50 percent 4,4'-methylenediphenylene isocyanate (MDI), and it is the MDI that dominates the toxicity of the mixture; (2) PMDI is not a diisocyanate and does not meet the molecular weight criterion of the diisocyanates category that the petitioner claims was set by EPA; (3) MDI, which is the constituent of toxic concern, is listed in the diisocyanates category and its releases would continue to be reported by users of PMDI; and (4) the higher molecular weight oligomers that make up the other 50 percent of PMDI have low volatility relative to other members of the diisocyanates category which prevents significant environmental exposures.

Because the petitioner does not dispute the listing of MDI and acknowledges that the MDI component of PMDI is a source of the toxicity of PMDI, this petition is limited to the issue of whether the higher molecular weight oligomers in PMDI can reasonably be anticipated to add to the toxicity of PMDI such that PMDI should be included as a separate chemical in the diisocyanates category.

III. EPA's Technical Review of PMDI

A. Introduction

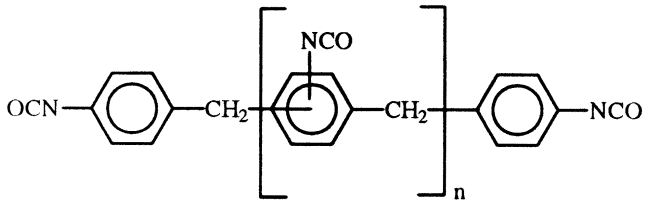
On November 30, 1994 (59 FR 61432), EPA added the diisocyanates category to the EPCRA section 313 list of toxic chemicals based on concerns for chronic pulmonary toxicity. There are no other criteria for defining this EPCRA section 313 category. The diisocyanates category consists of a list of 20 individual diisocyanates, including PMDI. The reference that the petitioner makes to a ''molecular weight criteria set by EPA for the diisocyanates category'' refers to the definition EPA set for the diisocyanates category under review by EPA's Office of Pollution Prevention and Toxics (OPPT) in the existing chemicals program (Ref. 1). The OPPT existing chemicals review was undertaken to determine whether to regulate diisocyanates under the Toxic Substances Control Act (TSCA). The TSCA diisocyanates category was defined as ''monomeric diisocyanates of molecular weight less than or equal to 300, plus polymeric diphenylmethane diisocyanate (which is only 40 to 60 percent polymerized).'' While EPA included all members of the TSCA category in the EPCRA section 313 diisocyanates category, it did not

include any molecular weight criterion or any other criteria other than the list of chemicals included in the EPCRA category. Therefore, molecular weight alone does not exclude a diisocyanate from being included in the EPCRA section 313 diisocyanates category.

The technical review of the petition to delete polymeric diphenylmethane diisocyanate included a review of the chemistry of PMDI (Refs. 2 and 3) and available toxicological data (Refs. 3-16). The focus of EPA's review, however, was on whether the higher molecular weight oligomers in PMDI can reasonably be anticipated to cause chronic pulmonary toxicity.

B. Chemistry

PMDI is manufactured by a process that results in a mixture that contains approximately 50 percent MDI and 50 percent higher molecular weight oligomers (Refs. 2 and 3). PMDI typically contains the following products in the percent ranges indicated in the figure below:



n	MW	Weight %
0 (MDI)	250	40-60
1	381	25-35
2	512	10-20
3	643	<5
4	774	trace

The higher molecular weight oligomers are those where n = 1 or greater in the above figure. As indicated above, less than 5 percent of the compounds in the mixture have a molecular weight greater than 512. The higher molecular weight oligomers contain the diisocyanate moiety; however, they are not formally identified as diisocyanates since they have more than two isocyanate groups. Since the reactive sites in diisocyanates are the isocyanate groups, these extra isocyanate groups are additional reactive sites (both chemically and biologically) within the molecule (Ref. 4). These higher molecular weight oligomers are structurally very similar to MDI, varying only by the sequential addition of an aromatic ring and an isocyanate group.

Since the higher molecular weight oligomers are never isolated as pure compounds, their physical/chemical properties have not been measured and must be estimated. Using data on MDI as a reference point, the estimated melting point range for the higher molecular weight oligomers in PMDI would be 30-50 °C, the estimated boiling point would be > 400 °C and the estimated vapor pressure would be < 1 x 10^{-5} millimeters mercury (mm Hg) (Ref. 2).

C. Toxicity Evaluation

In a 2–year chronic inhalation study (Refs. 12 and 13), Wistar rats (60/sex/exposure level) were exposed whole-body to 0, 0.2, 1.0, and 6.0 milligrams per cubic meter (mg/m^3) of PMDI aerosol for 6 hours/day (hrs/day), 5 days/week (days/wk), for 24 months. The PMDI material tested was a dark brown liquid with an average molecular weight of about 400 that contained 47 percent MDI and 53 percent higher molecular weight oligomers. Ninety five percent of the particles in the aerosols generated were smaller than 5 micrometers.

There were no treatment-related deaths, changes in body weights, clinical signs or effects on serum chemistry, hematology or urinalysis parameters. There was a significant increase in lung weights in both males and females exposed to 6.0 mg/m^3 after 1 and 2 years. In the 2–year study, males exposed to the highest dose had increased incidence of spotted and discolored lungs. At the interim sacrifices at 1 year, males and females in the highest dose group had treatment related histological changes in the nasal cavity, lungs and mediastinal lymph nodes. The incidence and severity of degeneration and basal cell hyperplasia of the olfactory epithelium and Bowman's gland hyperplasia were increased in males of the 1.0 and 6.0 mg/m^3 groups and in females of the high dose group following the 2 year exposure period. The lungs from the rats of the 1.0 and 6.0 mg/m^3 group had similar changes to, but more severe than, those found after 1 year of exposure. There were significant increases in alveolar duct epithelialization, accumulation of macrophages containing PMDI associated yellow pigment and focal fibrosis in males and females of the mid and high dose groups. Pulmonary adenomas were found in 6 males and 2 females and 1 male had pulmonary adenocarcinoma in the 6.0 mg/m^3 group. The data obtained in this chronic inhalation study identifies a no-observed-adverse-effect-level (NOAEL) of 0.2 mg/m^3 (duration-adjusted concentration = 0.036 mg/m^3) and a lowest-observed-adverse-effect-level (LOAEL) of 1.0 mg/m^3 (duration-adjusted concentration = 0.18 mg/m^3) based on hyperplasia of the olfactory epithelium.

In a 90-day inhalation study (Ref. 14), Wistar rats (15/sex/dose) were exposed to 4, 8, and 12 mg/m^3 of PMDI aerosol for 6 hrs/day, 5 days/wk, for 13 weeks. The content of the PMDI was approximately 52 percent MDI and 48 percent higher molecular weight oligomers and 95 percent of the particles in the aerosols had aerodynamic diameters of < 5 micrometers. Mortality and severe respiratory distress occurred in the 12 mg/m^3 dosed group, and less severe symptoms occurred in the 8 mg/m^3 dosed group. A dose related increase in lung weight was noted in the 8 and 12 mg/m^3 dose groups for both males and females. Degenerative lesions occurred

in the olfactory epithelium of the nasal cavity of both males and females in the 12 mg/m^3 groups. There was a significant increase in macrophages in the lungs and lymph nodes of all exposed animals (4 mg/m^3 or higher) compared with control groups. This study demonstrated adverse effects in the lungs and nasal cavity at levels of 4 mg/m^3 and above.

Although there are no toxicological studies available on the higher molecular weight oligomers of PMDI in the absence of MDI, there is indirect evidence, from studies of diisocyanates other than PMDI, to support the conclusion that the higher molecular weight oligomers can cause chronic pulmonary toxicity. For some other diisocyanates, the higher molecular weight oligomers rather than the monomeric form may induce adverse pulmonary effects. In one study (Ref. 15), subjects exposed to a prepolymer of toluene diisocyanate (TDI) in wood varnish exhibited an asthmatic reaction, but exposure to monomeric TDI did not elicit the same response. Another prospective study (Ref. 16), was conducted among 10 workers with occupational asthma caused by spray paints which contained both monomeric hexamethylene diisocyanate (HDI) and polymeric HDI. In the study, four workers developed asthmatic reactions only after exposure to polymeric HDI and not after exposure to monomeric HDI.

In the chronic inhalation studies discussed above, the test animals where exposed to aerosols of PMDI which should have contained a representative sample of all of the components of PMDI. From these chronic inhalation studies, it is not possible to separate out the adverse health effects caused by MDI from those caused by the higher molecular weight oligomers and EPA is aware of no studies on the higher molecular weight oligomers themselves. However, given the structural similarities between MDI and the higher molecular weight oligomers, it is reasonable to anticipate that their toxicological properties will be similar to those of MDI and upon exposure will result in the adverse health effects observed in the PMDI studies. In addition, the indirect evidence discussed above also supports this conclusion.

D. Technical Summary

The technical review of the petition to delete polymeric diphenylmethane diisocyanate from the diisocyanates category focused on the chronic toxicity of the higher molecular weight oligomers contained in PMDI. Animal studies conducted on aerosolized PMDI have demonstrated that PMDI can cause chronic pulmonary toxicity. Because of the structural similarities between MDI and the higher molecular weight oligomers of PMDI, there is no basis to conclude that the toxicity observed in these studies is due only to the MDI present in PMDI. Based on a review of the available data on PMDI and other diisocyanates, EPA has determined that there is sufficient evidence to reasonably anticipate that the higher molecular weight oligomers of PMDI can cause chronic pulmonary toxicity.

IV. Rationale for Denial

EPA is denying the petition submitted by the Polyurethane Division of the Society of the Plastics Industry to delete PMDI from the diisocyanates category on the EPCRA section 313 list of toxic chemicals. This denial is based on EPA's conclusion that, based on available data on PMDI and other diisocyanates, the higher molecular weight oligomers of PMDI can reasonably be anticipated to cause chronic pulmonary toxicity. EPA considers the LOAEL of 1.0 mg/m^3 and the NOAEL of 0.2 mg/m^3 for PMDI to be relatively low doses and thus EPA does not consider PMDI to have low chronic toxicity. Therefore, in accordance with EPA's stated policy on the use of exposure assessments (59 FR 61432, November 30, 1994), EPA does not believe that an exposure assessment is necessary to conclude that PMDI meets the toxicity criterion of EPCRA section 313(d)(2)(B).

V. References

1. USEPA, OPPTS, 1995. Memorandum from Sandra Strassman-Sundy, Existing Chemical Assessment Division, re: Additions to Section 313. (May 6, 1992).

2. USEPA, OPPTS, 1995. Chemistry Report for Delisting of Polymeric MDI by Diana Darling, Industrial Chemistry Branch, Economics, Exposure and Technology Division, Office of Pollution Prevention and Toxics. (September 25, 1995).

3. USEPA, OPPTS, 1995. Memorandum from James W. Holder, Effects Identification and Characterization Group, National Center for Environmental Assessment, Office of Research and Development, re: Response to Delist Polymeric MDI (PMDI) from Ongoing MDI Reporting under Section 313, Toxic Chemical Release Reporting of EPCRA (Emergency Right-to-Know Act of SARA of 1986). (September 18, 1995).

4. Dynamac. 1987. Generic Health Hazard Assessment of the Chemical Class Diisocyanates, Final Report May 5, 1987, Appendix 4. EPA Contract No. 68-02-3990, Work Assignment No. 205. Submitted to USEPA, Office of Toxic Substances, Health and Environmental Review Division, Washington, DC Prepared by Dynamac Corporation, Rockville, MD.

5. USEPA, OPPTS, 1995. Memorandum from Nicole Paquette, Health Effects Branch, Health and Environmental Review Division, Office of Pollution Prevention and Toxics, re: Review of the Delisting Petition for Polymeric Diphenylmethane Diisocyanate (PMDI). (September 20, 1995).

6. USEPA, OPPTS, 1995. Memorandum from Daniel Bushman, Industrial Chemistry Branch, Economics, Exposure and Technology Division, Office of Pollution Prevention and Toxics, re: Health Effects Review for Polymeric Diphenylmethane Diisocyanate. (October 2, 1995).

7. USEPA, OPPTS, 1995. Memorandum from Nicole Paquette, Health Effects Branch, Health and Environmental Review Division, Office of Pollution Prevention and Toxics, re: Health Effects Review for Polymeric Diphenylmethane Diisocyanate (PMDI). (October 5, 1995).

8. USEPA, OPPTS, 1995. Memorandum from Elbert L. Dage, Analysis and Information Management Branch, Chemical Screening and Risk Assessment Division, Office of Pollution Prevention and Toxics. re: Risk Assessment Review for Polymeric Diphenylmethane Diisocyanate (PMDI). (November 7, 1995).

9. USEPA, OPPTS, 1996. Memorandum from Nicole Paquette, Health Effects Branch, Health and Environmental Review Division, Office of Pollution Prevention and Toxics, re: Health Effects Review for Polymeric Diphenylmethane Diisocyanate (PMDI). (January 16, 1996).

10. USEPA, OPPTS, 1996. Memorandum from Daniel Bushman, Toxics Release Inventory Branch, Environmental Assistance Division, re: EPCRA Section 313 Petition to Delist PMDI. (July 8, 1996).

11. USEPA, OPPTS, 1996. Memorandum from Nicole Paquette, Health Effects Branch, Health and Environmental Review Division, Office of Pollution Prevention and Toxics, re: EPCRA Section 313 Petition to Delist Polymeric Diphenylmethane Diisocyanate (PMDI). (July 9, 1996).

12. Reuzel, P.G.J., Arts, J.H.E., Lomax, L.G., Kuijpers, M.H.M., Kuper, C.F., Feron, V.J., Loser, E., ''Chronic Inhalation Toxicity and Carcinogenicity Study of Respirable Polymeric

Methylene Diphenyl Diisocyanate (Polymeric MDI) Aerosol in Rats,'' Journal of Fundamental and Applied Toxicology, v. 22, (1994), pp. 195-210.

13. Reuzel, P.G.J., Arts, J.H.E., Kuypers, M.H.M., Kuper, C.F., ''Chronic Toxicity/Carcinogenicity Inhalation Study of Polymeric Methylene Diphenyl Diisocyanate Aerosol in Rats (Final Report),'' Prepared by Civo Institute for the International Isocyanate Institute. Report No. V88.122. (March 1990).

14. Reuzel, P.G.J., Kuper, C.F., Feron, V.J., Appelman, L.M., Loser, E., ''Acute, Subacute, and Subchronic Inhalation Toxicity Studies of Respirable Polymeric Methylene Diphenyl Diisocyanate (Polymeric MDI) Aerosol in Rats,'' Journal of Fundamental and Applied Toxicology, v. 22, (1994), pp. 186-194.

15. Vandenplas, O., Malo, J.L., Saetta, M., Mapp, C.E., Fabbri, L.M., ''Occupational Asthma and Extrinsic Alveolitis Due to Isocyanates: Current Status and Perspective,'' British Journal of Industrial Medicine, v. 30, (1993), pp. 213-228.

16. Vandenplas, O., Cartier, A., Lesage, J., Cloutier, Y., Perrault, G., Grammar, L.C., Shaughnessy, M.A., Malo, J.L., ''Prepolymers of Hexamethylene Diisocyanate as a Cause of Occupational Asthma,'' Journal of Allergy and Clinical Immunology, v. 91, (1993), pp. 850-861.

VI. Administrative Record

The record supporting this decision is contained in docket control number OPPTS–400101. All documents, including the references listed in Unit V. of this document and an index of the docket, are available to the public in the TSCA Nonconfidential Information Center (NCIC), also known as the Public Docket Office, from noon to 4 p.m., Monday through Friday, excluding legal holidays. The TSCA NCIC is located at EPA Headquarters, Rm. NE-B607, 401 M St., SW., Washington, DC 20460.

List of Subjects in 40 CFR Part 372

Environmental protection, Community right-to-know, Reporting and recordkeeping requirements, and Toxic chemicals.

Dated: February 20, 1997.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 97–5307 Filed 3–4–97; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Parts 16, 74, 75, and 95

Indirect Cost Appeals

AGENCY: Department of Health and Human Services (HHS).

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This NPRM would remove the informal grant appeals procedure for indirect cost rates and other cost issues. The regional HHS Divisions of Cost Allocation have been reorganized into a new Program Support Center and no longer report to the Regional Directors, making the process obsolete. The Department also sees little value in this formal appeals process because it frequently lengthens the time required for appeals. Deletion of this rule will reduce internal management regulations as required by Executive Order 12861.

DATES: Comments must be submitted by May 5, 1997.

ADDRESSES: Comments must be in writing and should be mailed or faxed to Charles Gale, Director, Office of Grants Management, HHS, Room 517–D, 200 Independence Ave. SW., Washington DC 20201; FAX (202) 690–8772. Written comments may be inspected at the identified address during agency business hours from 9:30 a.m. to 5:30 p.m.

FOR FURTHER INFORMATION CONTACT: Ronald Speck, (202) 401–2751. For the hearing impaired only: TDD (202) 690–6415.

SUPPLEMENTARY INFORMATION: We propose to remove 45 CFR part 75, ''Informal grant appeals procedures,'' together with all references to it. Part 75 provides for an informal appeals process to the Regional Directors (prior to formal appeals under 45 CFR part 16) for disputes arising from determinations made by a Director, Division of Cost Allocation (DCA) in the Department's regional offices, concerning indirect cost rates and certain other cost allocation plans. The Department's Divisions of Cost Allocation have been reorganized into a new Program Support Center and no longer report to the Regional Directors. Consequently the procedures in part 75 are obsolete.

In addition, experience has shown that this informal appeals process actually resolves very few of the covered disputes, because most of these informal appeals are subsequently appealed to the Departmental Appeals Board established by 45 CFR part 16. Therefore, this informal appeals process has the effect of lengthening the total time required to finally resolve the subject appeals.

Since the department sees little value in this informal appeals process, and this process is obsolete, we propose to eliminate part 75 and thereby reduce internal management regulations as required by Executive Order 12861.

Regulatory Impact Analyses

Executive Order 12866

In accordance with the provisions of Executive Order 12866, this proposed rule was not reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this proposed rule before publication and, by approving it, certifies that it does not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

This proposed rule does not contain information collection requirements requiring clearance under the Paperwork Reduction Act.

List of Subjects in 45 CFR Parts 16, 74, 75, and 95

Accounting, Administrative practice and procedure, Grant programs—health, Grant programs—social programs, Grants administration, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Number does not apply)

Dated: February 25, 1997.

Donna E. Shalala,

Secretary.

Accordingly, for the reasons set forth above, it is proposed that title 45 of the Code of Federal Regulations be amended as follows:

PART 16—PROCEDURES OF THE DEPARTMENTAL GRANT APPEALS BOARD

1. The authority citation for part 16 would continue to read as follows:

Authority: 5 U.S.C. 301 and secs. 1, 5, 6, and 7 of Reorganization Plan No. 1 of 1953, 18 FR 2053, 67 Stat. 631 and authorities cited in the Appendix.

§ 16.3 [Amended]

2. Section 16.3 would be amended in paragraph (c) by removing the words ''and part 75 of this title for rate determinations and cost allocation plans''.

Appendix A to Part 16—[Amended]

3. Section D. of appendix A would be amended by removing the last sentence.

PART 74—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR AWARDS AND SUBAWARDS TO INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, OTHER NONPROFIT ORGANIZATIONS, AND COMMERCIAL ORGANIZATIONS; AND CERTAIN GRANTS AND AGREEMENTS WITH STATES, LOCAL GOVERNMENTS AND INDIAN TRIBAL GOVERNMENTS

4. The authority citation for part 74 would continue to read as follows:

Authority: 5 U.S.C. 301; OMB Circular A–110 (November 29, 1993, 58 FR 62992).

§ 74.62 [Amended]

5. Section 74.62 would be amended in paragraph (b) by removing the numbers ''16, 75,'' and adding, in their place, the number ''16''.

§ 74.90 [Amended]

6. Section 74.90 would be amended in paragraph (b) by removing the words ''parts 16 and 75'' and adding, in their place, the words ''part 16''.

PART 75—[REMOVED]

7. Part 75— would be removed.

PART 95—GENERAL ADMINISTRATION—GRANT PROGRAMS (PUBLIC ASSISTANCE AND MEDICAL ASSISTANCE)

8. The authority citation for part 95 would continue to read as follows:

Authority: Sec. 452(a), 83 Stat. 2351, 42 U.S.C. 652(a); sec. 1102, 49 Stat. 647, 42 U.S.C. 1302; sec. 7(b), 68 Stat. 658, 29 U.S.C. 37(b); sec. 139, 84 Stat. 1323, 42 U.S.C. 2577b; sec. 144, 81 Stat. 529, 42 U.S.C. 2678; sec. 1132, 94 Stat. 530, 42 U.S.C. 1320b–2; 306(b), 94 Stat. 530, 42 U.S.C. 1320b–2 note, unless otherwise noted.

§ 95.513 [Removed]

9. Section 95.513 would be removed.

§ 95.519 [Amended]

10. Section 95.519 would be amended by redesignating paragraph (b)(1) as paragraph (b), by removing the words ''reconsideration of the determination under 45 CFR part 75'' and adding, in their place, the words ''appeal of the determination under 45 CFR part 16'', and by removing paragraph (b)(2).

[FR Doc. 97–5276 Filed 3–4–97; 8:45 am]

BILLING CODE 4150–04–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–86, RM–9025]

Radio Broadcasting Services; Camdenton, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Camdenton Community Broadcasters proposng the allotment of Channel 265A to Camdenton, Missouri. The coordinates for Channel 265A are 38–02–00 and 92–44–20. There is a site restriction 2.9 kilometers (1.8 miles) north of the community.

DATES: Comments must be filed on or before April 21, 1997, and reply comments on or before May 6, 1997.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Richard J. Hayes, Jr., 13809 Black Meadow Road, Spotsylvania, Virginia 22553.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–86, adopted February 21, 1997, and released February 28, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 97–5353 Filed 3–4–97; 8:45 am]

BILLING CODE 6712–01–P

47 CFR Part 73

[MM Docket No. 97–84, RM–9021]

Radio Broadcasting Services; Pauls Valley, OK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Tom Stamper seeking the allotment of Channel 291A to Pauls Valley, OK, as the community's second local FM and third aural broadcast service. Channel 291A can be allotted to Pauls Valley in compliance with the Commission's minimum distance separation requirements with a site restriction of 9.8 kilometers (6.1 miles) south, at coordinates 34–39–14 NL; 97–11–54 WL, to avoid a short-spacing to Station KGOU, Channel 292A, Norman, OK.

DATES: Comments must be filed on or before April 21, 1997, and reply comments on or before May 6, 1997.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Tom Stamper, 2402 C Avenue, Lawton, OK 73505 (Petitioner).

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–84, adopted February 21, 1997, and released February 28, 1997. 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 Services, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed

Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 97–5355 Filed 3–4–97; 8:45 am]

BILLING CODE 6712–01–P

47 CFR Part 73

[MM Docket No. 97–85, RM–9026]

Radio Broadcasting Services; Belgrade, MT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Gallatin Valley Witness, Inc., proposing the allotment of Channel 256A to Belgrade, Montana, as that community's second local FM broadcast service. The coordinates for Channel 256A are 45–46–36 and 111–10–36.

DATES: Comments must be filed on or before April 21, 1997, and reply comments on or before May 6, 1997.

ADDRESSES: Federal Communications Commission, Washington, DC. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Bryan Cave LLP, 700 Thirteenth Street, NW, Suite 600, Washington, DC 20005.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–85, adopted February 21, 1997, and released February 28, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC. 20037, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of l980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible ex parte contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 97–5356 Filed 3–4–97; 8:45 am]

BILLING CODE 6712–01–P

47 CFR Part 73

[MM Docket No. 97–83; RM–8948]

Radio Broadcasting Services; Westport, WA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Chehalis Broadcasting Company proposing the allotment of Channel 267A at Westport, Washington, as the community's first local aural transmission service. Channel 267A can be allotted to Westport in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channel 267A at Westport are North Latitude 46–53–24 and West Longitude 124–06–06. Since Westport is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government has been requested.

DATES: Comments must be filed on or before April 21, 1997, and reply comments on or before May 6, 1997.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Henry E. Crawford, Esq., 1150 Connecticut Ave., NW., Suite 900, Washington, DC 20036 (Counsel for Petitioner).

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–83, adopted February 21, 1997, and released February 28, 1997. 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.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 97–5358 Filed 3–4–97; 8:45 am]

BILLING CODE 6712–01–P

47 CFR Part 76

[CS Docket No. 97–80; FCC 97–53]

Commercial Availability of Navigation Devices

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Communications Commission seeks comments on proposals to implement Section 629 of the Communications Act of 1934, as amended, 47 U.S.C. 549, concerning the commercial availability of navigation devices. This notice is prompted by Section 304 of the 1996 Telecommunications Act, which became law on February 5, 1996, adding this provision to the Communications Act. This action is intended to implement the 1996 Act.

DATES: Comments are due on or before May 16, 1997 and reply comments are due on or before June 16, 1997.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION, CONTACT: Technical Information: Michael Lance, Cable Services Bureau, (202) 418–7014. Legal Information: Barrett L. Brick, Cable Services Bureau, (202) 418–1065.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rulemaking, CS Docket No. 97–80, adopted February 11, 1997 and released on February 20, 1997. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC 20554, and may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 1919 M Street, NW., Washington, DC 20554.

Synopsis of the Notice of Proposed Rule Making

1. In this notice of proposed rulemaking, the Commission seeks comment on proposals to implement Section 629 of the Communications Act, added as part of the Telecommunications Act of 1996, Public Law 104–104, 110 Stat. 56 (1996) (1996 Act). Section 629 instructs the Commission to promote the commercial availability to consumers of navigation devices: That is, equipment used to access multichannel video programming and other services offered over multichannel video programming systems. The Commission is also instructed not to jeopardize the security of services offered over multichannel video programming systems.

2. The Commission first seeks comment regarding the scope and meaning of Section 629. The Commission tentatively concludes that the coverage of Section 629 is broad in terms of the multichannel video programming distributors (MVPDs) involved, including cable television, multichannel broadcast television, DBS, MMDS, and SMATVs. The Commission also tentatively concludes that Section 629 is broad in terms of the type of equipment covered, including not just equipment used to receive video programming, but also equipment used to access other services offered by MVPDs over their systems. The Commission seeks comments on these conclusions, and also on methods to narrow the focus of the rulemaking process and rules adopted in order best to accomplish the statutory objectives.

3. The Commission seeks comment on the meaning of commercial availability in the context of Section 629. The Commission proposes to incorporate a consumer right to attach equipment into the rules, modeled after the telephony right to attach which had its genesis in Carterphone, 13 FCC 2d 420, recon. denied, 14 FCC 2d 571 (1968), and seeks comment on this proposal. The Commission recognizes that in implementing Section 629, there is a need to assure that customer premises equipment (CPE) does not cause harm to the network to which the CPE is attached, and that the networks technical integrity is maintained. The Commission seeks comment on how best to accomplish this task. The Commission tentatively concludes that existing Part 15 certification rules should adequately address signal leakage issues surrounding existing navigation devices, and seeks comment on this conclusion. The Commission also seeks comment on whether the marketplace will sufficiently address signal quality issues involving navigation devices.

4. Section 629 requires that navigation devices be commercially available from vendors not affiliated with any MVPD. The Commission tentatively concludes that the definition of affiliate in Section 3 of the 1996 Act, which establishes a ten percent equity interest threshold, is applicable to Section 629 and seeks comment on this conclusion.

5. The Commission seeks comment not only on issues raised by current equipment distribution models, but also on whether and what degree of standardization might be necessary so that navigation devices may be geographically portable or may be interoperable to function with different types of MVPDs or both. The Commission seeks comment on the incremental cost of additional capabilities in this context. The Commission also seeks comment on the process whereby any necessary standards might be developed to promote competition. The Commission states its desire not to develop standards itself, but rather urges the adoption of voluntary standards by those affected. The Commission seeks comment on the techniques it should use should standards prove to be necessary or desirable toward assuring the commercial availability of navigation devices, including alternatives to actual standard setting.

6. The Commission recognizes that some of the technologies implicated by this proceeding may be wholly or partially proprietary in nature. The Commission seeks comment on its authority to affect proprietary rights, and on what limitations existing proprietary rights may place on the Commission's authority to mandate commercial availability of navigation devices.

7. Section 629 instructs the Commission not to jeopardize the security of services offered over multichannel video programming systems, nor to impede service providers' legal rights to prevent theft of service. In order to fashion effective rules that fulfill this requirement, the Commission seeks data and information on existing security methodologies employed by MVPD industries, and seeks comment on what it means to jeopardize security and to impede a programmer's rights to prevent theft of service. The Commission recognizes that equipment that performs security functions is often combined with equipment that performs other functions. The Commission seeks comment on the possibility of unbundling security from nonsecurity equipment. The Commission tentatively concludes, should such unbundling be necessary, that the preferred option for developing the necessary framework to accomplish this would be to adopt only a conduct or performance rule mandating the separation involved, leaving to the industry participants involved the task of developing the necessary interface standards. The Commission also seeks comment on whether the affected industries could voluntarily adopt and the Commission approve a variant of the decoder interface connector discussed in the First Report and Order in ET Docket No. 93–7, 9 FCC Rcd 1981, 59 FR 25339 (May 16, 1994) and in the Memorandum Opinion and Order in ET Docket No. 93–7, 11 FCC Rcd 4121, 61 FR 18508 (April 26, 1996). The Commission also seeks comment on the impact of the 1996 Act's amendments to Section 624A of the Communications Act on the Commission's authority under Section 629.

8. Section 629 allows MVPDs to offer navigation devices to consumers if the charges are separately stated and not subsidized by charges for the service accessed by the devices. The Commission tentatively concludes that continuing with existing forms of regulations that are broadly intended to constrain the subsidization of equipment prices from regulated service revenues is most consistent with the 1996 Act, and seeks comment on this conclusion, as well as on alternative means of addressing subsidy issues.

9. Section 629 requires the Commission to waive any implementing

regulation adopted for a limited period of time upon an appropriate showing that such a waiver is necessary to assist the development or introduction of new or improved multichannel video programming or other service offered over multichannel video programming systems, technology, or products. The Commission tentatively concludes that where such waivers are required and requested, these requests should be looked upon sympathetically and expansively. The Commission seeks comment on this analysis. The Commission also seeks comment on whether guidelines need to be set to define the limited time contemplated, and also on whether the Commission's existing waiver procedures need to be modified to comply with the statutory mandate that the Commission act on a waiver within 90 days of its filing.

10. Section 629 provides that implementing regulations which are adopted shall cease to apply upon a Commission determination that the MVPD market is fully competitive, that the market for navigation devices is fully competitive, and that elimination of the regulations will promote competition and the public interest. The Commission seeks comment on the service category and geographic market analyses required, as well as the circumstances in general under which regulatory involvement might terminate. The Commission tentatively concludes that regulations for certain types of equipment may not need to be adopted in the first place if competition is already fully robust, and seeks comment on this conclusion.

Initial Regulatory Flexibility Analysis

11. As required by Section 603 of the Regulatory Flexibility Act (''RFA''),[1] the Commission has prepared the following Initial Regulatory Flexibility Analysis (''IRFA'') of the expected significant economic impact on small entities by the policies and rules proposed in this Notice of Proposed Rulemaking. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Notice but they must have a separate and distinct heading designating them as responses to the IRFA. The Secretary shall send a copy of this *Notice* to be sent to the Chief Counsel for Advocacy of the Small Business Administration (''SBA'') in accordance with 5 U.S.C. 603(a).

12. Need for and Objectives of the Proposed Rules: The 1996 Act requires the Commission to promulgate rules designed to promote the commercial availability of navigation devices. The Commission is issuing this *Notice* to seek comment on the proposed rules intended to implement this provision of the 1996 Act, and to provide a record for a Commission decision on issues discussed in the Notice.

13. Legal Basis: Authority for this proposed rulemaking is contained in Sections 4(i), 4(j), 303(r), and 629 of the Communications Act of 1934 as amended, 47 U.S.C. 154(i), 154(j), 303(r), and §§ 304 and 549 of the Telecommunications Act of 1996, Public Law 104–104, 110 Stat. 56 (1996).

14. Description and Estimate of Small Entities to Which the Proposed Rules Will Apply: Implementation of Section 304 will have the positive result of opening up to small entities the market to supply navigation devices directly to cable and other subscribers. In addition, small businesses will have the opportunity to become the manufacturers of navigation devices. While any policies or rules developed in this proceeding could have an impact on small businesses that manufacture, distribute, or use converter boxes, interactive communications equipment, and other equipment used by consumers to access multichannel video programming and other services offered over multichannel video programming systems, this proceeding seeks comment on how this burden, if any, could be mitigated for small entities.

15. The Regulatory Flexibility Act defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small business concern'' under Section 3 of the Small Business Act.[2] A small concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

16. Small MVPDs: SBA has developed a definition of small entity for cable and other pay television services, which includes all such companies generating less than $11 million in revenue annually. This definition includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau, there were 1,323 such cable and other pay television services generating less than $11 million in revenue that were in operation for at least one year at the end of 1992.[3]

17. Cable Systems: The Commission has developed its own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a ''small cable company,'' is one serving fewer than 400,000 subscribers nationwide.[4] Based on our most recent information, we estimate that there were 1,439 cable operators that qualified as small cable system operators at the end of 1995.[5] Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators that may be affected by the decisions and rules proposed in this Notice.

18. The Communications Act also contains a definition of a small cable system operator, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1% of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.''[6] The Commission has determined that there are 61,700,000 subscribers in the United States. Therefore, we found that an operator serving fewer than 617,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate.[7] Based on available data, we find that the number of cable operators serving 617,000 subscribers or less totals 1,450.[8] Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the

[1] 5 U.S.C. 603. The RFA has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (''CWAAA''). Title II of the CWAAA is the ''Small Business Regulatory Enforcement Fairness Act of 1996'' (''SBREFA''), codified at 5 U.S.C. 601 et seq.

[2] 5 U.S.C. 601(3) (1980).

[3] U.S. Census Bureau, 1992 Economic Census, 1992 Census of Transportation, Communications and Utilities at Firm Size 1–123.

[4] 47 CFR 76.901(e). The Commission developed this definition based on its determinations that a small cable system operator is one with annual revenues of $100 million or less. Implementation of Sections of the 1992 Cable Act: Rate Regulation, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 60 FR 35854 (July 12, 1995).

[5] Paul Kagan Associates, Inc., Cable TV Investor, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

[6] 47 U.S.C. 543(m)(2).

[7] 47 CFR 76.1403(b).

[8] Paul Kagan Associates, Inc., Cable TV Investor, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

19. MMDS: The Commission refined the definition of ''small entity'' for the auction of MMDS as an entity that together with its affiliates has average gross annual revenues that are not more than $40 million for the preceding three calendar years.[9] This definition of a small entity in the context of the Commission's Report and Order concerning MMDS auctions that has been approved by the SBA.[10]

20. The Commission completed its MMDS auction in March 1996 for authorizations in 493 basic trading areas (''BTAs''). Of 67 winning bidders, 61 qualified as small entities. Five bidders indicated that they were minority-owned and four winners indicated that they were women-owned businesses. MMDS is an especially competitive service, with approximately 1573 previously authorized and proposed MMDS facilities. Information available to us indicates that no MDS facility generates revenue in excess of $11 million annually. We tentatively conclude that for purposes of this IRFA, there are approximately 1634 small MMDS providers as defined by the SBA and the Commission's auction rules.

21. ITFS: There are presently 2032 ITFS licensees. All but one hundred of these licenses are held by educational institutions. Educational institutions are included in the definition of a small business.[11] However, we do not collect annual revenue data for ITFS licensees and are not able to ascertain how many of the 100 non-educational licensees would be categorized as small under the SBA definition. Thus, we tentatively conclude that at least 1932 licensees are small businesses.

22. DBS: As of December 1996, there were eight DBS licensees. However, the Commission does not collect annual revenue data for DBS and, therefore, is unable to ascertain the number of small DBS licensees that could be impacted by these proposed rules. Although DBS service requires a great investment of capital for operation, we acknowledge that there are several new entrants in this field that may not yet have generated $11 million in annual receipts, and therefore may be categorized as a small business, if independently owned and operated.

23. HSD: The market for HSD service is difficult to quantify. Indeed, the service itself bears little resemblance to other MVPDs. HSD owners have access to more than 265 channels of programming placed on C-band satellites by programmers for receipt and distribution by MVPDs, of which 115 channels are scrambled and approximately 150 are unscrambled.[12] HSD owners can watch unscrambled channels without paying a subscription fee. To receive scrambled channels, however, an HSD owner must purchase an integrated receiver-decoder from an equipment dealer and pay a subscription fee to an HSD programming packager. Thus, HSD users include: (1) Viewers who subscribe to a packaged programming service, which affords them access to most of the same programming provided to subscribers of other MVPDs; (2) viewers who receive only non-subscription programming; and (3) viewers who receive satellite programming services illegally without subscribing. Because scrambled packages of programming are most specifically intended for retail consumers, these are the services most relevant to this discussion.[13]

24. According to the most recently available information, there are approximately 30 program packagers nationwide offering packages of scrambled programming to retail consumers.[14] These program packagers provide subscriptions to approximately 2,314,900 subscribers nationwide.[15] This is an average of about 77,163 subscribers per program packager. This is substantially smaller than the 400,000 subscribers used in the Commission's definition of a small MSO. Furthermore, because this an average, it is likely that some program packagers may be substantially smaller.

25. SMATVs: Industry sources estimate that approximately 5200 SMATV operators were providing service as of December 1995.[16] Other estimates indicate that SMATV operators serve approximately 1.05 million residential subscribers as of September 1996.[17] The ten largest SMATV operators together pass 815,740 units.[18] If we assume that these SMATV operators serve 50% of the units passed, the ten largest SMATV operators serve approximately 40% of the total number of SMATV subscribers. Because these operators are not rate regulated, they are not required to file financial data with the Commission. Furthermore, we are not aware of any privately published financial information regarding these operators. Based on the estimated number of operators and the estimated number of units served by the largest ten SMATVs, we tentatively conclude that a substantial number of SMATV operators qualify as small entities.

26. LMDS: Unlike the above pay television services, LMDS technology and spectrum allocation will allow licensees to provide wireless telephony, data, and/or video services. A LMDS provider is not limited in the number of potential applications that will be available for this service. Therefore, the definition of a small LMDS entity may be applicable to both cable and other pay television (SIC 4841) and/or radiotelephone communications companies (SIC 4812). A small radiotelephone entity is one with 1500 employees or less.[19] However, for the purposes of this Notice, we include only an estimate of LMDS video service providers.

27. LMDS is a service that is expected to be auctioned by the FCC in 1997. The vast majority of LMDS entities providing video distribution could be small businesses under the SBA's definition of cable and pay television (SIC 4841). However, in the Third NPRM, we proposed to define a small LMDS provider as an entity that, together with affiliates and attributable investors, has average gross revenues for the three preceding calendar years of less than $40 million.[20] We have not yet received approval by the SBA for this definition.

28. There is only one company, CellularVision, that is currently providing LMDS video services. Although the Commission does not collect data on annual receipts, we assume that CellularVision is a small business under both the SBA definition

[9] 47 CFR 21.961(b)(1).

[10] See Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding, MM Docket No. 94–31 and PP Docket No. 93–253, Report and Order, 10 FCC Rcd 9589, 60 FR 36524 (July 17, 1995).

[11] SBREFA also applies to nonprofit organizations and governmental organizations such as cities, counties, towns, townships, villages, school districts, or special districts, with populations of less than 50,000. 5 U.S.C. 601(5).

[12] Report in CS Docket No. 96–133 (''1996 Competition Report''), FCC 96–496 at ¶ 49, 62 FR 5627 (February 6, 1997).

[13] Id.

[14] Id.

[15] Id.

[16] 1996 Competition Report at ¶81.

[17] Id.

[18] Id.

[19] 13 CFR § 121.201.

[20] In the Matter of Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5–29.5 GHz Frequency Band, to Reallocate the 29.5–30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services and Suite 12 Group Petition for Pioneer's Preference (''Third NPRM''), CC Docket No. 92–297, 11 FCC Rcd 53, at]188, 60 FR 43740 (August 23, 1995).

and our proposed auction rules. We tentatively conclude that a majority of the potential LMDS licensees will be small entities, as that term is defined by the SBA and the Commission's proposed definition.

29. Small Manufacturers: The SBA has developed definitions of small entity for manufacturers of household audio and video equipment (SIC 3651) and for radio and television broadcasting and communications equipment (SIC 3663). In each case, the definition includes all such companies employing 750 or fewer employees.

30. Electronic Equipment Manufacturers: The Commission has not developed a definition of small entities applicable to manufacturers of electronic equipment. Therefore, we will utilize the SBA definition of manufacturers of Radio and Television Broadcasting and Communications Equipment.[21] According to the SBA's regulations, a TV equipment manufacturer must have 750 or fewer employees in order to qualify as a small business concern.[22] Census Bureau data indicates that there are 858 U.S. firms that manufacture radio and television broadcasting and communications equipment, and that 778 of these firms have fewer than 750 employees and would be classified as small entities.[23] The Census Bureau category is very broad, and specific figures are not available as to how many of these firms are exclusive manufacturers of television equipment or how many are independently owned and operated. We conclude that there are approximately 778 small manufacturers of radio and television equipment.

31. Electronic Household/Consumer Equipment: The Commission has not developed a definition of small entities applicable to manufacturers of electronic equipment used by consumers, as compared to industrial use by television licensees and related businesses. Therefore, we will utilize the SBA definition applicable to manufacturers of Household Audio and Visual Equipment. According to the SBA's regulations, a household audio and visual equipment manufacturer must have 750 or fewer employees in order to qualify as a small business concern.[24] Census Bureau data indicates that there are 410 U.S. firms that manufacture radio and television broadcasting and communications equipment, and that 386 of these firms have fewer than 500 employees and would be classified as small entities.[25] The remaining 24 firms have 500 or more employees; however, we are unable to determine how many of those have fewer than 750 employees and therefore, also qualify as small entities under the SBA definition. Furthermore, the Census Bureau category is very broad, and specific figures are not available as to how many of these firms are exclusive manufacturers of television equipment for consumers or how many are independently owned and operated. We conclude that there are approximately 386 small manufacturers of television equipment for consumer/household use.

32. Computer Manufacturers: The Commission has not developed a definition of small entities applicable to computer manufacturers. Therefore, we will utilize the SBA definition of Electronic Computers. According to SBA regulations, a computer manufacturer must have 1,000 or fewer employees in order to qualify as a small entity.[26] Census Bureau data indicates that there are 716 firms that manufacture electronic computers and of those, 659 have fewer than 500 employees and qualify as small entities.[27] The remaining 57 firms have 500 or more employees; however, we are unable to determine how many of those have fewer than 1,000 employees and therefore also qualify as small entities under the SBA definition. We conclude that there are approximately 659 small computer manufacturers.

33. Small Retailers: The Commission has not developed a definition of small entities applicable to navigation retail devices. Therefore, we will utilize the SBA definition. The 1992 Bureau of the Census data indicates: there were 9,663 U.S. firms classified as Radio, TV & electronic stores (SIC 5731), and that 9,385 of these firms had $4.999 million or less in annual receipts and 9,473 of these firms had $7.499 million or less in annual receipts.[28] Consequently, we tentatively conclude that there are approximately 9,663 small entities that produce and distribute radio, television, and electronic stores that may be affected by the decisions and rules proposed in this Notice.

34. Reporting, Recordkeeping, and Other Compliance Requirements: The proposed actions may require MVPDs to obtain security modules for sale to subscribers. They may also prohibit MVPDs from providing CPE which is not commercially available. In addition, the proposed actions may require MVPDs to make available to consumers basic technical information concerning the network to which a navigation device is to be attached (paragraph 56). This latter proposal, if adopted, would not necessitate any additional professional, engineering, or customer service skills beyond those already utilized in the ordinary course of business by MVPDs. Any costs to the MVPD would be justified by the competitive benefits; MVPDs and consumers will benefit from an increased, more innovative, and more competitive market for navigation devices. We seek comment on this.

35. Any Significant Alternatives Minimizing the Impact On Small Entities Consistent With the Stated Objectives: We believe that our proposals will have the positive result of opening up to small entities the market to supply navigation devices directly to cable and other subscribers (see discussion at paragraph 84). In addition, small businesses will have the opportunity to become the manufacturers of navigation devices (see discussion at paragraph 84). While small businesses would experience costs associated with maintaining for sale navigation devices, should we adopt rules that would require such, we believe such businesses are capable of doing so. Should commenters disagree with this conclusion, we welcome comments suggesting ways in which any perceived burden upon small entities could be mitigated.

36. Federal Rules Which Overlap, Duplicate or Conflict with Proposed Rules: None.

Ex Parte

37. This is a non-restricted notice and comment rule making proceeding. *Ex*

[21] This category excludes establishments primarily engaged in the manufacturing of household audio and visual equipment which is categorized as SIC 3651. See infra for SIC 3651 data.

[22] 13 CFR 121.201, (SIC) Code 3663.

[23] U.S. Dept. of Commerce, 1992 Census of Transportation, Communications and Utilities, Table 1D, (issued May 1995), SIC category 3663.

[24] 13 CFR 121.201, (SIC) Code 3651.

[25] U.S. Small Business Administration 1995 Economic Census Industry and Enterprise Report, Table 3, SIC Code 3651, (Bureau of the Census data adapted by the Office of Advocacy of the U.S. Small Business Administration).

[26] 13 CFR 121.201, (SIC) Code 3571.

[27] U.S. Small Business Administration 1995 Economic Census Industry and Enterprise Report, Table 3, SIC Code 3571, (Bureau of the Census data adapted by the Office of Advocacy of the U.S. Small Business Administration).

[28] U.S. Small Business Administration 1992 Economic Census Industry and Enterprise Report, Table 2D, SIC 7812, (Bureau of the Census data adapted by the Office of Advocacy of the U.S. Small Business Administration) (SBA 1992 Census Report). The Census data does not include a category for $6.5 million therefore, we have reported the closest increment below and above the $6.5 million threshold. There is a difference of 88 firms between the $4.999 and $7.499 million annual receipt categories. It is possible that these 88 firms could have annual receipts of $6.5 million or less and therefore, would be classified as small businesses.

parte presentations are permitted, provided they are disclosed as provided in the Commission's Rules. See generally 47 CFR 1.1202, 1.1203 and 1.1206(a).

Comment Dates

38. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before May 16, 1997 and reply comments on or before June 16, 1997. All relevant and timely comments will be considered before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239) of the Federal Communications Commission, 1919 M Street, NW, Washington, DC 20554.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–5350 Filed 3–4–97; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN: 1018—AC10

Endangered and Threatened Wildlife and Plants, Notice of Reopening of Comment Period on Proposed Threatened Status for the Flat-tailed Horned Lizard

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed Rule, notice of reopening of comment period.

SUMMARY: The Fish and Wildlife Service (Service), pursuant to the Endangered Species Act of 1973, as amended (Act), provides notice of reopening of the comment period on proposed endangered status for the flat-tailed horned lizard (*Phrynosoma mcalli*). The comment period has been reopened to acquire additional information from interested parties.

DATES: The public comment period closes May 9, 1997. Any comments received by the closing date will be considered in the final decision on this proposal.

ADDRESSES: Written comments and materials concerning this proposal should be sent directly to the Field Supervisor, Carlsbad Field Office, 2730 Loker Avenue West, Carlsbad California 92008. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Sandy Vissman at (619) 431–9440.

SUPPLEMENTARY INFORMATION:

Background

The flat-tailed horned lizard inhabits desert areas of southern Riverside, eastern San Diego, and Imperial Counties in California; southwestern Arizona; and adjacent regions of northwestern Sonora and northeastern Baja California Norte, Mexico. Within the United States, populations of the flat-tailed horned lizard are centered in portions of the Coachella Valley, Ocotillo Wells, Anza Borrego Desert, West Mesa, East Mesa and the Yuma Desert in California; and the area between Yuma and the Gila Mountains in Arizona. The flat-tailed horned lizard occurs on Federal, State, county, and privately owned lands.

This species may be threatened by one or more of the following: commercial and residential development, agricultural development, off-highway vehicle activity, energy developments, military activities, and pesticide use.

On November 29, 1993, the Service published a rule proposing threatened status for the flat-tailed horned lizard. The original comment period closed on January 28, 1994. The Service was unable to make a final listing determination on this species because of a limited budget, other endangered species assignments driven by court orders, and higher listing priorities. In addition, a moratorium on listing actions (Public Law 104–6) that took effect April 10, 1995, stipulated that no funds could be used to make final listing or critical habitat determinations. Now that funding has been restored, the Service is proceeding with a final determination for this species.

Due to the length of time that has elapsed since the close of the initial comment period, changing procedural and biological circumstances, and the need to review the best scientific information available during the decision-making process, the comment period is being reopened. Such changing circumstances include the recent (October 1996) draft *Flat-tailed Horned lizard Rangewide Management Strategy*, which likely affect the threats facing the species.

The Service seeks information that has become available in the last three years concerning:

(1) Biological, commercial, or other relevant data on any threat (or lack thereof) to this species; and

(2) The size, number, or distribution of populations of this species.

Written comments may be submitted until May 9, 1997 to the Carlsbad Field Office, 2730 Loker Avenue West, Carlsbad, California 92008.

Author: The primary author of this notice is Sandy Vissman.

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*)

Dated: February 26, 1997.

Thomas J. Dwyer,

Acting Regional Director, Region 1.

[FR Doc. 97–5383 Filed 3–4–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 970226037–7037–01; I.D. 022197F]

RIN 0648–AJ39

Fisheries of the Exclusive Economic Zone Off Alaska; Management Measures to Reduce Seabird Bycatch in the Hook-and-Line Groundfish Fisheries

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to require operators of hook-and-line vessels fishing for groundfish in the Bering Sea and Aleutian Islands management area (BSAI) and the Gulf of Alaska (GOA) and federally-permitted hook-and-line vessels fishing for groundfish in Alaska waters adjacent to the BSAI and to the GOA, to conduct

fishing operations in a specified manner, and to employ specified bird avoidance techniques to reduce seabird bycatch and incidental seabird mortality. This measure is necessary to mitigate hook-and-line fishery interactions with the short-tailed albatross, an endangered species protected under the Endangered Species Act (ESA), and other seabird species. This measure is intended to accomplish the objectives of the ESA and of the Fishery Management Plan for Groundfish of the Gulf of Alaska and the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (Groundfish FMPs) with respect to the management of the GOA groundfish fishery and the BSAI groundfish fishery and the marine environment.

DATES: Comments must be received by March 20, 1997.

ADDRESSES: Comments should be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori J. Gravel, or delivered to the Federal Building, 709 West 9th Street, Juneau, AK. Copies of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for the amendment may be obtained from the North Pacific Fishery Management Council, Suite 306, 605 West 4th Avenue, Anchorage, AK 99501–2252; telephone: 907–271–2809.

FOR FURTHER INFORMATION CONTACT: Kim S. Rivera, 907–586–7228.

SUPPLEMENTARY INFORMATION: The U.S. groundfish fisheries of the GOA and the BSAI in the Exclusive Economic Zone (EEZ) are managed by NMFS under the Groundfish FMPs. The FMPs were prepared by the North Pacific Fishery Management Council (Council) under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 773 *et seq.*, 1801 *et seq.*; Magnuson-Stevens Act) and are implemented by regulations for the U.S. fisheries at 50 CFR part 679. General regulations that also pertain to U.S. fisheries appear at subpart H of 50 CFR part 600.

Background

Recent takes of the endangered short-tailed albatross (*Diomedea albatrus*) (two in 1995 and one in 1996) in hook-and-line groundfish fisheries in the BSAI and the GOA highlight a seabird bycatch problem. A biological opinion issued in an ESA section 7 consultation on the GOA and BSAI groundfish fisheries includes an incidental take statement for the take of two short-tailed albatrosses annually in the fisheries. If the annual take exceeds two, NMFS immediately must reinitiate section 7 consultation and review with the U.S. Fish & Wildlife Service (USFWS) the need for possible modification of the reasonable and prudent measures established to minimize take of the short-tailed albatross.

In response to these recent takes, several industry groups representing hook-and-line vessels in the GOA and the BSAI petitioned the Council and NMFS to impose regulatory measures intended to reduce the incidental mortality of seabirds in their fisheries. The presence of ''free'' food in the form of offal and bait attract many birds to fishing operations. In the process of feeding, birds sometimes come into contact with fishing gear and are accidentally killed. For example, most birds taken during hook-and-line operations are attracted to the baited hooks when the gear is being set. These birds become hooked at the surface and are then dragged underwater where they drown. The proposed measures would reduce the incidental mortality of short-tailed albatrosses and other seabird species by (1) minimizing the seabirds' attraction to fishing vessels and (2) preventing seabirds from attempting to seize baited hooks.

At its December 1996 meeting, the Council voted unanimously to recommend that all hook-and-line vessels fishing for groundfish in the GOA and BSAI must use certain seabird bycatch avoidance devices intended to reduce the incidental mortality of the short-tailed albatross and other seabird species. At its April 1997 meeting, the Council is scheduled to take final action to expand these measures to the Pacific halibut fishery in convention waters off Alaska. Should the Council take this action, rulemaking to require seabird avoidance measures would be initiated separately for the halibut fishery.

At the February 1997 Council meeting, NMFS informed the Council of revisions in the draft proposed rulemaking made because of concerns regarding the enforceability of some of the seabird avoidance measures. The Council reiterated its December 1996 recommendations that the seabird avoidance measures be required in regulation.

Seabird Bycatch in Alaskan Groundfish Fisheries

Over 80 species of seabirds, including the short-tailed albatross, occur over waters off Alaska and could potentially be affected by interactions with the GOA and BSAI groundfish fisheries. Fulmars, gulls, and albatrosses account for the vast majority of seabird bycatch in both the GOA and the BSAI. NMFS, USFWS, and the National Biological Survey are cooperating to obtain accurate information on the mortality of seabirds related to hook-and-line, trawl, and pot vessels fishing groundfish in the EEZ of the GOA and BSAI. This cooperative project will also address questions about the effects of various levels of take on the world-wide population of short-tailed albatrosses, currently estimated at 800 birds. Whereas the USFWS provided an opinion in 1989 that short-tailed albatrosses could be adversely affected by commercial fishing operations in Alaska, this effect on the world population is unknown.

The EA/RIR/IRFA prepared for this action contains more information on Alaskan seabirds and a historical background of the seabird bycatch issue (see **ADDRESSES**).

Seabird Bycatch Avoidance Gear and Methods

The proposed measures are intended to reduce the incidental mortality of seabirds by minimizing their attraction to fishing vessels and by preventing the seabirds from attempting to seize baited hooks. The proposed measures would apply to vessels fishing for groundfish with hook-and-line gear in the GOA and the BSAI and federally-permitted vessels fishing groundfish with hook-and-line gear in waters of the State of Alaska that are adjacent to the GOA and the BSAI and that retain more round-weight equivalent of groundfish than round-weight equivalent of halibut.

1. All applicable hook-and-line fishing operations would be conducted in the following manner:

a. Use hooks that, when baited, sink as soon as they are put in the water. This could be accomplished by the use of weighted groundlines and/or thawed bait.

b. Avoid dumping of offal to the extent practicable while gear is being set or hauled. If discharge of offal is unavoidable, the discharge must take place aft of the hauling station or on the opposite side of the vessel to that where gear is set or hauled.

c. Make every reasonable effort to ensure that birds brought on board alive are released alive and that, wherever possible, hooks are removed without jeopardizing the life of the bird.

2. All applicable hook-and-line fishing operations would be required to employ one or more of the following seabird avoidance measures:

a. Deploy gear only during the hours specified at § 679.24(e)(2)(iv)(D) of this

proposed rule, using only the minimum vessel's lights necessary for safety;

b. Tow a streamer line or lines during deployment of gear to prevent birds from taking hooks;

c. Tow a buoy, board, stick or other device during deployment of gear, at a distance appropriate to prevent birds from taking hooks. Multiple devices may be employed; or

d. Deploy hooks underwater through a lining tube at a depth sufficient to prevent birds from settling on hooks during deployment of gear.

The Council and NMFS intend to implement these proposed regulations for the groundfish fisheries first and to follow at a future time with the same or similar regulations for the Pacific halibut fishery. To avoid having the proposed groundfish regulations applicable to halibut fishermen that retain bycatch amounts of groundfish, the proposed regulations would apply only to those hook-and-line fishermen that retain more round-weight equivalent of groundfish than round-weight equivalent of halibut.

The Council and NMFS intend to reduce the fisheries-related bycatch and incidental mortality of seabirds that occur over waters off Alaska. To maximize the extent to which these proposed regulations would apply, an operator of a hook-and-line vessel that has been issued a Federal permit to fish for groundfish in the BSAI and GOA would be required to comply, even while fishing for groundfish in State of Alaska waters.

Although the Council's recommendation at its December 1996 meeting included a provision whereby fishermen could substitute other experimental seabird avoidance devices with the approval of the NMFS Administrator, Alaska Region, NMFS believes that such a waiver provision is not administratively practicable. NMFS strongly encourages the industry's efforts to find other effective seabird avoidance devices. Additional effective measures can be implemented through the regulatory amendment process in the future.

The proposed measures are modeled after NMFS' regulations implementing conservation and management measures adopted by the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) (61 FR 8483; March 5, 1996) and measures currently in use by some hook-and-line fishermen in Alaskan fisheries. Some of the CCAMLR measures were initially developed for use in the Australian and New Zealand longline fisheries and have proven very effective in reducing bait loss and incidental seabird mortality. In addition to the measures benefitting seabirds, the reduction of bait loss and subsequent increased fish harvest provides financial benefits to fishermen. In the Australian southern bluefin tuna fishery, annual economic losses attributed to bait loss and reduced harvest were estimated to exceed $7 million in Australian dollars (approximately $5 million United States).

The CCAMLR regulations indicate that longline gear shall be set between the times of nautical twilight. Nautical twilight is defined practically as those times when it is too dark to see the horizon clearly and when normal outdoor activities cannot be conducted without the use of artificial light. The intent of the proposed regulation is to limit hook-and-line gear deployment to those hours (nighttime hours/hours of darkness) between nautical twilight, if that is the option being exercised by the fisherman. The proposed regulation provides a table specifying the allowed hours of hook-and-line gear deployment. The *Nautical Almanac,* a U.S. Naval Observatory publication, was used to determine these times. This option is not available during the months of June and July, due to the lack of nautical twilight at northernmost latitudes.

Besides the measures proposed here, other methods have been used to reduce seabird bycatch. Some of them are: Loud noises to deter birds from the stern of the fishing vessel during gear deployment, automatic bait-caster to deploy bait away from the turbulent water caused by ''prop wash'' and causing the bait to remain afloat, deflating swim bladders or the squid mantle of bait species (causing bait to sink faster), and reducing the time taken to haul back gear. NMFS specifically requests comments on: (a) These and other effective methods for reducing seabird bycatch that are not included in the proposed measures, (b) any safety concerns of using seabird bycatch avoidance devices during extreme weather conditions, and (c) offal discharge during setting or hauling of hook-and-line gear and how either or both of these operations impacts seabird bycatch.

Suggestions for Streamer Line Construction

The streamer line is a seabird avoidance device that currently is required in Australian and New Zealand longline fisheries and has been credited with effectively reducing seabird bycatch. Scientific studies in New Zealand indicate that the quality of a streamer line, both in construction and materials used, played a major role in the streamer line's effectiveness in preventing seabirds from seizing baited hooks. In fact, the difference in bycatch rates between sets that used no streamer line and sets that used a poorly-constructed streamer line was not significant. Sets that used a high-quality streamer line were significantly less likely to catch seabirds than sets that used a poor-quality streamer line or no streamer line at all. The purpose of the streamer line is to scare birds away from the stern of the vessel when gear is deployed and baited hooks are present near or on the water's surface. A well-constructed streamer line thrashes about unpredictably; thus, the seabirds do not become habituated to its movement. The key characteristics of an effective streamer line are:

- All materials used to construct the streamer line and to hold the streamer line in place are strong enough to withstand all weather conditions in which hook-and-line fishing activity is likely to be undertaken;
- The streamer line is attached to a pole at the stern of the vessel and positioned such that it will be directly above the baited hooks as they are deployed;
- The height of the streamer line at the point of attachment is 3 to 4 meters (m) above sea level;
- The streamer line is constructed of material that is between 2 and 5 millimeters (mm) in diameter;
- Length of streamer line is a minimum of 150 to 175 m;
- Number of streamers attached to a streamer line is 5 to 10 pairs;
- Streamers made of a heavy, flexible material that will allow the streamers to move freely and flop unpredictably (for example, streamer cord inserted inside a red polyurethane tubing);
- Streamer pairs attached to the bird streamer line using a 3-way swivel; and
- Streamers should just skim above the water's surface over the baited hooks.

These characteristics should be taken into consideration when employing a bird streamer line, as proposed in this rulemaking.

The Magnuson-Stevens Act requires that the public be provided with a comment period of 15 to 60 days to respond to proposed regulations. Beginning January 1, the hook-and-line fisheries open in the BSAI and GOA. Short-tailed albatross sightings in the BSAI and/or GOA have occurred in all months from April to November. Considering the urgency of completing rulemaking regarding these proposed measures, NMFS has provided for a 15-day public comment period. The

proposed measures were initially requested by hook-and-line industry representatives as emergency measures because of concerns about the potential economic impacts if the annual take limit for the short-tailed albatross is exceeded and fishing ceases pending reinitiation and conclusion of consultation pursuant to section 7 of the ESA.

Classification

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

NMFS prepared an IRFA as part of the RIR, which describes the impact this proposed rule would have on small entities, if adopted. Based on the analysis, it was determined that this proposed rule could have a significant economic impact on a substantial number of small entities. In 1995, 1,217 and 100 hook-and-line catcher vessels harvested groundfish from the GOA and BSAI, respectively. Catcher/processor vessels numbered 35 and 46 in those respective areas. Very significant impacts on small entities could occur if the groundfish fisheries are altered or perhaps closed due to the annual take of the endangered short-tailed albatross being exceeded. The likelihood of this happening is great under the status quo alternative because of recent takes (e.g., two in 1995). The economic impacts of such alterations or closures would depend on the development and implementation of the reasonable and prudent measures established to minimize take of the short-tailed albatross.

Several measures available under the preferred alternative would minimize the economic impacts on small entities. The economic impact on small entities would depend upon the particular measures chosen. Procedural or operational changes may be necessary in fishing operations. A vessel operator would have a choice of several other measures. The cost of buoys and bird streamer lines as seabird bycatch avoidance devices range from $50–$250 per vessel. A lining tube is a technology used in fisheries of other nations to deploy baited hooks underwater to avoid birds and is offered as a possible option. NMFS anticipates that the operators of smaller vessels (less than 60 ft (18.3 m)) would choose an avoidance measure other than a lining tube, which could cost as much as $35,000 per vessel. There are 154 and 53 hook-and-line catcher vessels and 31 and 45 catcher/processor vessels equal to or greater than 60 ft (18.3 m) in the GOA and BSAI, respectively.

If the annual take of short-tailed albatross in the hook-and-line fisheries operating under these proposed measures would exceed the take limit established under the ESA section 7 consultation, the actual economic impacts resulting from the modification of the reasonable and prudent measures established to minimize take of the short-tailed albatross would depend upon the development and implementation of revised measures. The revised measures could range from those proposed by this rule, additional or modified measures, to closures. The economic impact on fishing operations would depend upon the length of time of the closed period and the additional cost of revised measures. Significant impacts on small entities could occur if the fisheries closed due to the annual take of the endangered short-tailed albatross being exceeded. The likelihood of this happening is less under the proposed rule than under the status quo alternative. The economic impacts of this proposed rule on small entities could result in a reduction in annual gross revenues by more than 5 percent and could, therefore, potentially have a significant economic impact on a substantial number of small entities. A copy of this analysis is available from the Council (see **ADDRESSES**).

List of Subjects in 50 CFR Part 679

Fisheries, Reporting and recordkeeping requirements.

Dated: February 28, 1997.

Nancy Foster,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.* and 1801 *et seq.*

2. In § 679.24, paragraph (e) is added to read as follows:

§ 679.24 Gear limitations.

* * * * *

(e) *Seabird avoidance gear and methods for hook-and-line vessels fishing for groundfish*—(1) *Applicability.* (i) Except as provided in paragraph (e)(1)(ii) of this section, the operator of a vessel that is required to obtain a Federal fisheries permit under § 679.4(b)(1) must comply with the seabird avoidance measures in paragraph (e)(2) of this section while fishing for groundfish with hook-and-line gear in the BSAI, in the GOA, or in waters of the State of Alaska that are shoreward of the BSAI and the GOA.

(ii) The operator of a vessel is not required to comply with the seabird avoidance measures in paragraph (e)(2) of this section whenever the round-weight equivalent of halibut retained on board exceeds the round-weight equivalent of groundfish retained on board.

(2) The operator of a vessel described in paragraph (e)(1) of this section must conduct fishing operations in the following manner:

(i) Use hooks that when baited, sink as soon as they are put in the water.

(ii) Avoid dumping of offal to the extent practicable while gear is being set or hauled. If discharge of offal is unavoidable, the discharge must take place aft of the hauling station or on the opposite side of the vessel to that where gear is set or hauled.

(iii) Make every reasonable effort to ensure that birds brought on board alive are released alive and that wherever possible, hooks are removed without jeopardizing the life of the bird.

(iv) Employ one or more of the following seabird avoidance measures:

(A) Tow a streamer line or lines during deployment of gear to prevent birds from taking hooks;

(B) Tow a buoy, board, stick or other device during deployment of gear, at a distance appropriate to prevent birds from taking hooks. Multiple devices may be employed; or

(C) Deploy hooks underwater through a lining tube at a depth sufficient to prevent birds from settling on hooks during deployment of gear; or

(D) Deploy gear only during the hours specified below, using only the minimum vessel's lights necessary for safety.

HOURS THAT HOOK-AND-LINE GEAR CAN BE DEPLOYED FOR SPECIFIED LONGITUDES ACCORDING TO PARAGRAPH (E)(2)(IV) OF THIS SECTION

[Hours are Alaska local time]

Calendar Month	Longitude		
	Shoreward to 150°W	151 to 165°W	166 to 180°W
January	1800–0700	1900–0800	2000–0900
February	1900–0600	2000–0700	2100–0800
March	2000–0500	2100–0600	2200–0700
April	2100–0400	2200–0500	2300–0600
May	2200–0300	2300–0400	2400–0500
June	[1]	[1]	[1]
July	[2]	[2]	[2]
August	2200–0400	2300–0500	2400–0600
September	2000–0500	2100–0600	2200–0700
October	1900–0600	2000–0700	2100–0800
November	1800–0700	1900–0800	2000–0900
December	1700–0700	1800–0800	1900–0900

[1] This measure cannot be exercised during June.
[2] This measure cannot be exercised during July.

[FR Doc. 97–5438 Filed 3–4–97; 8:45 am]
BILLING CODE 3510–22–P

50 CFR Part 697

[I.D. 091696A]

Atlantic Coast Weakfish Fisheries; Public Hearings

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

ACTION: Notice of additional public hearing; extension of comment period.

SUMMARY: On February 21, 1997, NMFS announced three public hearings to receive comments from fishery participants and other members of the public regarding proposed regulations on the harvest and possession of weakfish in the exclusive economic zone of the Atlantic Ocean from Maine through Florida.

Due to requests from the public, NMFS now announces one additional public hearing in New Bern, NC and extends the comment deadline.

To accommodate people unable to attend a hearing or wishing to provide additional comments, NMFS also solicits written comments on the proposed rule.

DATES: Written comments on the proposed rule and supporting documents (Draft Supplemental Environmental Impact Statement and Regulatory Impact Review (DSEIS/RIR) must be received on or before April 1, 1997.

The New Bern, NC hearing will be held on Thursday, March 27, 1997, from 7–9 p.m.

ADDRESSES: Written comments should be sent to Richard H. Schaefer, Chief, Staff Office of Intergovernmental and Recreational Fisheries (Fx2), National Marine Fisheries Service, 8484 Georgia Avenue, Suite 425, Silver Spring, MD 20910. Clearly mark the outside of the envelope ''Atlantic Weakfish Comments.'' The hearing will be held at the following location:

Sheraton Grand New Bern, 1 Bicentennial Park, New Bern, NC 28563.

FOR FURTHER INFORMATION CONTACT: Thomas Meyer/Paul Perra, 301–427–2014.

SUPPLEMENTARY INFORMATION: The hearing announcement was published on February 21, 1997, (62 FR 7994).

A complete description of the measures, and the purpose and need for the proposed action, is contained in the proposed rule published February 14, 1997 (62 FR 6935), and is not repeated here. A copy of the proposed rule may be obtained by writing (see **ADDRESSES**) or calling the contact person (see **FOR FURTHER INFORMATION CONTACT**).

The purpose of this document is to alert the interested public of hearings and provide for public participation. These hearings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids for the New Bern, NC hearing should be directed to Thomas Meyer by March 17, 1997 (see **ADDRESSES**).

Authority: 16 U.S.C. 1851 note.

Dated: February 27, 1997.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–5335 Filed 3–4–97; 8:45 am]
BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 62, No. 43
Wednesday, March 5, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

February 28, 1997.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20523 and to Department Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6204 or (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

- Rural Business-Cooperative Service

Title: Intermediary Relending Program.
OMB Control Number: 0575–0130.
Summary: Information collected includes an application contract, agreements, work plans, certifications and budget information.
Need and Use of the Information: The information is necessary in order to make prudent credit and financial analysis decisions.
Description of Respondents: Not-for-profit institutions; individuals or households; business or other for-profit; State, Local or Tribal Government.
Number of Respondents: 160.
Frequency of Responses: Reporting: On occasion.
Total Burden Hours: 16,930.

- Rural Utilities Service

Title: 7 CFR 1717, Subpart Y, Settlement of Debt Owed by Electric Borrowers.
OMB Control Number: 0572–New.
Summary: Information will be collected concerning the need for debt settlement, the amount of debt that can be repaid, scheduling of repayment and the range of opportunities for enhancing the amount of debt that can be recovered.
Need and Use of the Information: The information is needed to determine whether debt settlement is required and the amount of relief that is needed.
Description of Respondents: Business or other for-profit; Not-for-profit institutions.
Number of Respondents: 2.
Frequency of Responses: Reporting: On occasion.
Total Burden Hours: 6,000.

Larry Roberson,
Deputy Departmental Clearance Officer.

[FR Doc. 97–5391 Filed 3–4–97; 8:45 am]

BILLING CODE 3410–01–M

Food Safety and Inspection Service

[Docket No. 97–005N]

User Fees To Cover On-site Inspection Costs of Meat, Poultry, and Egg Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The Department of Agriculture's Food Safety and Inspection Service (FSIS) will hold a public meeting on March 10, 1997, to discuss user fees for the inspection of meat, poultry, and egg products. The meeting will be an initial step in identifying the most equitable user fee system, and will enable the public to begin focusing on identifying criteria to be evaluated and options to be considered in establishing such a system.

DATES: The meeting will be held from 1:00 p..m. to 5:00 p.m. on March 10, 1997, in the Patio in the Jamie A. Whitten Building, Department of Agriculture, 12th and Jefferson Drive, SW., Washington, DC 20250–3700.

FOR FURTHER INFORMATION CONTACT: To register for the meeting, contact Ms. Lisa Parks at (202) 501–7138, FAX (202) 501–7642, or E-mail usdafsis/s=confer@mhs.attmail.com. For questions about the meeting or to obtain copies of a draft agenda, contact Mr. Charles Danner, FSIS, at (202) 501–7138.

SUPPLEMENTARY INFORMATION: The Administration believes that the collection of user fees is essential to the successful long-term implementation of meat, poultry and egg inspection reforms. In Fiscal Year 1998, it is estimated that the new fees would generate $390 million for the Federal Government and result in savings to taxpayers. This March 10, 1997, public meeting will be convened for the purpose of identifying the criteria FSIS will use in considering available user fee options. Attendees will be asked to address (1) What criteria should be used in developing and evaluating user fee options? and (2) What user fees options FSIS should be considering?

Done at Washington, DC, on February 27, 1997.

Thomas J. Billy,
Administrator.

[FR Doc. 97–5332 Filed 2–27–97; 5:06 pm]

BILLING CODE 3410–DM–P

Grain Inspection, Packers and Stockyards Administration

Opportunity for Designation in Kansas - Termination of Kansas' Designation, Possible Cancellation of Kansas' Designation, and Requests for Applications for Designation from Persons Interested in Providing Official Services in Kansas

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA), USDA.

ACTION: Notice.

SUMMARY: The United States Grain Standards Act, as amended (Act), provides that official agency designations will end not later than triennially and may be renewed. The designation of the Kansas State Grain Inspection Department (Kansas) will end August 31, 1997, according to the Act. GIPSA is asking persons interested in providing official services in Kansas to submit an application for designation. In addition, Kansas has advised GIPSA that it is considering asking for cancellation of its designation effective July 1, 1997. Accordingly, GIPSA is also asking that the persons submitting applications be prepared to provide service effective July 1, 1997.

DATES: Applications must be postmarked or sent by telecopier (FAX) on or before March 31, 1997.

ADDRESSES: Applications must be submitted to USDA, GIPSA, Neil E. Porter, Director, Compliance Division, AG Code 3604, 1400 Independence Avenue, S.W., Washington, D.C. 20250–3604. Internet and GroupWise users may respond to nporter@fgisdc.usda.gov. Applications may be submitted by FAX on 202–690–2755. If an application is submitted by FAX, GIPSA reserves the right to request an original application. All applications will be made available for public inspection at this address located at 1400 Independence Avenue, S.W., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Neil E. Porter, telephone 202–720–8262.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act authorizes GIPSA's Administrator to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services. GIPSA designated Kansas, main office located in Topeka, Kansas, to provide official inspection services under the Act on September 1, 1994.

Section 7(g)(1) of the Act provides that designations of official agencies shall end not later than triennially and may be renewed according to the criteria and procedures prescribed in Section 7(f) of the Act. The designation of Kansas ends on August 31, 1997, according to the Act.

Pursuant to Section 7(f)(2) of the Act, the following geographic area, the entire State of Kansas, is assigned to Kansas.

Interested persons, including Kansas, are hereby given the opportunity to apply for designation to provide official services in the geographic area specified above under the provisions of Section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder. Designation in the Kansas geographic area is for the period beginning September 1, 1997, and ending August 31, 2000. Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant(s) will be designated.

Further, Kansas has advised GIPSA that it is considering asking for cancellation of its designation effective July 1, 1997. As a result, GIPSA is also asking persons submitting applications to be prepared to provide official services effective July 1, 1997.

AUTHORITY: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: February 26, 1996.

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 97–5333 Filed 3–4–97; 8:45 am]

BILLING CODE 3410–EN–F

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the District of Columbia Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the District of Columbia Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 12:00 p.m. on Thursday, March 13, 1997, at the U.S. Commission on Civil Rights, Conference Room 540, 624 Ninth Street NW, Washington, DC 20425. The purpose of the meeting is to provide an orientation for new Committee members, and plan project activities for FY 1997.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Steven Sims, 202–862–4815, or Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, February 28, 1997.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 97–5456 Filed 2–28–97; 4:58 pm]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 10–97]

Foreign-Trade Zone 38, Spartanburg, SC; Request for Manufacturing Authority, Zeuna Stärker USA, Inc., (Automotive Exhaust Systems)

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the South Carolina State Ports Authority, grantee of FTZ 38, pursuant to § 400.28(a)(2) of the Board's regulations (15 CFR part 400), requesting authority on behalf of Zeuna Stärker USA, Inc. (ZSUSA) (a subsidiary of Zeuna Stärker GmbH & Co., KG, Germany), to manufacture automotive exhaust systems under FTZ procedures within FTZ 38, with certain restrictions applicable to foreign stainless steel materials. It was formally filed on February 18, 1997.

The ZSUSA plant is located at 2651 New Cut Road within the proposed Site 4 of FTZ 38 in the Wingo Corporate Park, Spartanburg, South Carolina (Docket 65–96, 61 FR 45400, 8–29–96). The ZSUSA plant (50 employees) is used to manufacture exhaust systems for automotive applications that are sold in the U.S. and exported. Components sourced from abroad (about 80% of total) include: Catalytic converters, muffler boxes, flanges, fasteners, helical pressure and threaded inserts, brackets, stainless steel alloy pipe, and monoliths (duty rate range: 0.1–5.3%). The

application indicates that the majority of the plant's current output is shipped to BMW Manufacturing Corporation's auto plant in Spartanburg, South Carolina. Some two percent of the ZSUSA plant's shipments are exported.

FTZ procedures would exempt ZSUSA from Customs duty payments on the foreign components used in export production. On its domestic sales, ZSUSA would be able to choose the duty rate during Customs entry procedures that applies to finished auto exhaust systems (2.7%) for the foreign inputs noted above, except that foreign status stainless steel pipe would be admitted to FTZ 38 in privileged foreign status (19 CFR 146.41), making such materials subject to the full duty normally applicable. The motor vehicle duty rate (2.5%) could apply to the foreign components in the finished exhaust systems, which are not in privileged foreign status, and that are shipped to the BMW plant (FTZ Subzone 38A) or other U.S. motor vehicle assembly plants with subzone status for manufacture into finished motor vehicles under FTZ procedures. FTZ procedures would also exempt the foreign components that become scrap during the production process (about 0.08% for stainless steel pipe; 4% for the other foreign items) from Customs duties. The request indicates that the savings from FTZ procedures would help improve the ZSUSA plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is May 5, 1997. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to May 19, 1997).

A copy of the application and the accompanying exhibits will be available for public inspection at the following location: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th Street & Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: February 24, 1997.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 97–5404 Filed 3–4–97; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[A–301–602]

Certain Fresh Cut Flowers From Colombia: Amended Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of amended final results of antidumping duty administrative review.

SUMMARY: On August 19, 1996, the Department of Commerce (the Department) published in the Federal Register the final results of three concurrent administrative reviews of the antidumping duty order on certain fresh cut flowers from Colombia. These reviews cover a total of 348 producers and/or exporters of fresh cut flowers to the United States for at least one of the following periods: March 1, 1991 through February 29, 1992; March 1, 1992 through February 28, 1993; and March 1, 1993 through February 28, 1994. We are now amending the final results to correct certain ministerial errors we made in our calculations for the 93/94 review period.

EFFECTIVE DATE: March 5, 1997.

FOR FURTHER INFORMATION CONTACT: Lyn Johnson or Richard Rimlinger, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4733.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994.

SUPPLEMENTARY INFORMATION:

Background

On August 19, 1996, the Department published in the Federal Register (61 FR 42833) the final results of three concurrent administrative reviews of the antidumping duty order on certain fresh cut flowers from Colombia. Imports covered by these reviews are shipments of certain fresh cut flowers from Colombia (standard carnations, miniature (spray) carnations, standard chrysanthemums and pompon chrysanthemums). The reviews covered a total of 348 producers and/or exporters of fresh cut flowers to the United States for at least one of the following periods: March 1, 1991 through February 29, 1992; March 1, 1992 through February 28, 1993; and March 1, 1993 through February 28, 1994.

After publication of our final results, we received timely allegations of ministerial and clerical errors from several respondents. We reviewed the allegations and agreed that we made certain ministerial errors in our calculations for the final result for the 93/94 period for three respondents: Grupo Papagayo (Papagayo Group), Floricola La Gaitana, S.A., and Agricola Celestina & La Maria Ltda., (AGA Group). Although these final results are currently the subject of litigation before the U.S. Court of International Trade, the Court granted permission to correct these errors on February 12, 1997.

As a result of correcting the ministerial errors, some weighted-average rates for the period have changed. *See* Memorandum to the file dated December 4, 1996, for Grupo Papagayo, and memoranda to the file dated September 6, 1996, for Floricola La Gaitana and the AGA Group. We have corrected these errors only for the 93/94 review period because only this review period will affect the current deposit rates.

Amended Final Results of Review

After correcting for ministerial errors, we have determined the following weighted-average margins to exist for the following producers or exporters for the period March 1, 1993 through February 28, 1994:

Producer/exporter	93/94
Papagayo Group	3.88
Agricola Papagayo Ltda.	
Inversiones Calypso S.A.	
Floricola La Gaitana, S.A	0.00
AGA Group	9.99
Agricola la Celestina	
Agricola la Maria	
Agricola Benilda Ltda.	

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages as stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of these amended final results of administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption, as provided by section 751(a)(1) of the Act, on or after the publication date of these amended final

results of review: (1) The cash deposit rate for the named companies will be the rates as listed above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be the ''all other'' rate of 3.10 percent. This is the rate established during the LTFV investigation.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

These amended final results of administrative review and notice are in accordance with section 751(f) of the Tariff Act (19 U.S.C. 1675(f)) and 19 CFR 353.28.

Dated: February 27, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–5406 Filed 3–4–97; 8:45 am]

BILLING CODE 3510–DS–P

[A–583–508]

Porcelain-on-Steel Cooking Ware From Taiwan: Final Results of Changed Circumstances Antidumping Duty Administrative Review, and Revocation in Part of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of changed circumstances antidumping duty administrative review, and revocation in part of antidumping duty order.

SUMMARY: On January 10, 1997, the Department published a notice of initiation of a changed circumstances antidumping duty administrative review and preliminary results of review with intent to revoke, in part, the antidumping duty order on porcelain-on-steel (POS) cooking ware from Taiwan. We are now revoking this order in part, with regard to teakettles, based on the fact that domestic parties have expressed no interest in the importation or sale of teakettles imported from Taiwan.

EFFECTIVE DATE: March 5, 1997.

FOR FURTHER INFORMATION CONTACT: Amy S. Wei or James Terpstra, Office of Antidumping/Countervailing Duty Enforcement, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the Federal Register on May 11, 1995 (60 FR 25130).

Background

On September 12, 1996, General Housewares Corporation (GHC) requested that the Department conduct a changed circumstances administrative review to determine whether to partially revoke the order with regard to imports of teakettles from Taiwan. In its request, GHC stated that it is the only U.S. producer of POS cooking ware and that, in the original petition, it requested that the scope of order include teakettles. GHC also stated that it no longer manufactures POS teakettles and has no further interest in the antidumping duty order with respect to teakettles.

We preliminarily determined that petitioner's affirmative statement of no interest constituted changed circumstances sufficient to warrant a partial revocation of this order. Consequently, on January 10, 1997, the Department published a notice of initiation and preliminary results of changed circumstances antidumping duty administrative review and intent to revoke this order in part (62 FR 1434). We gave interested parties an opportunity to comment on the preliminary results of this changed circumstances review. We received no comments.

Scope of Review

The products covered by this antidumping order are POS cooking ware, including teakettles, which do not have self-contained electric heating elements. All of the foregoing are constructed of steel and are enameled or glazed with vitreous glasses. Kitchenware is not subject to this order. See Antidumping Duty Order; Porcelain-on-Steel Cooking Ware from Taiwan, 51 FR 43416 (December 2, 1986).

The merchandise covered by this changed circumstances review are teakettles from Taiwan. Imports of teakettles are currently classifiable under the harmonized tariff schedule (HTS) subheading 7323.94.00.10. The HTS subheading is provided for convenience and U.S. Customs purposes. Our written description of the scope of this proceeding is dispositive. The order with regard to imports of other POS cooking ware is not affected by this request. Thus, pursuant to the Department's determination to revoke in part the antidumping order on POS cooking ware from Taiwan with respect to teakettles, the scope of the antidumping order on POS cooking ware from Taiwan now reads as follows: The products covered by this antidumping duty order are POS cooking ware which do not have self-contained electric heating elements. All of the foregoing are constructed of steel and are enameled or glazed with vitreous glasses. Kitchenware and teakettles are not subject to this order.

Final Results of Review; Partial Revocation of Antidumping Duty Order

The affirmative statement of no interest by petitioner in POS cooking ware from Taiwan constitutes changed circumstances sufficient to warrant

partial revocation of this order. Therefore, the Department is partially revoking the order on POS cooking ware from Taiwan with regard to teakettles, in accordance with sections 751 (b) and (d) and 782(h) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 353.25(d)(1).

The Department will instruct the U.S. Customs Service (Customs) to proceed with liquidation, without regard to antidumping duties, of all unliquidated entries of teakettles from Taiwan that are not subject to final results of administrative review. The Department will further instruct Customs to refund with interest any estimated duties collected with respect to unliquidated entries of teakettles from Taiwan that are not subject to final results of administrative review.

This notice also serves as a reminder to parties subject to administrative protection orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This changed circumstances administrative review, partial revocation of the antidumping duty order and notice are in accordance with sections 751 (b) and (d) and 782(h) of the Act and sections 353.22(f) and 353.25(d) of the Department's regulations.

Dated: February 27, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–5403 Filed 3–4–97; 8:45 am]

BILLING CODE 3510–DS–P

[A–428–820]

Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe From Germany; Antidumping Duty Administrative Review; Extension of Time Limit

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit.

SUMMARY: The Department of Commerce (the Department) is extending the time limit of the preliminary results of the antidumping duty administrative review of Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from Germany. This review covers the period January 27, 1995 through July 31, 1996.

EFFECTIVE DATE: March 5, 1997.

FOR FURTHER INFORMATION CONTACT: Nancy Decker or Linda Ludwig, Office of AD/CVD Enforcement, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–1324 or 482–3833, respectively.

SUPPLEMENTARY INFORMATION: The Department has received a timely cost allegation from Petitioner. We have initiated a cost of production investigation based on these allegations. Because of the cost investigation, it is not practicable to complete this review within the original time limit. The Department is extending the time limit for completion of the preliminary results until September 2, 1997, in accordance with section 751(a)(3)(A) of the Trade and Tariff Act of 1930, as amended by the Uruguay Round Agreements Act of 1994. The deadline for the final results of this review will continue to be 120 days after publication of the preliminary results.

This extension is in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (19 U.S.C. 1675 (a)(3)(A)).

Dated: February 27, 1997.

Joseph A. Spetrini,

Deputy Assistant Secretary, Enforcement Group III.

[FR Doc. 97–5407 Filed 3–4–97; 8:45 am]

BILLING CODE 3510–DS–P

[A–588–054, A–588–604]

Tapered Roller Bearings, Finished and Unfinished, and Parts Thereof From Japan and Tapered Roller Bearings, Less Than Four Inches in Outside Diameter, and Components Thereof From Japan; Antidumping Duty Administrative Reviews; Time Limits

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limits.

SUMMARY: The Department of Commerce (the Department) is extending the time limits for the preliminary results of the 1995–1996 administrative reviews of the antidumping duty order (A–588–604) and finding (A–588–054) on tapered roller bearings from Japan. These reviews cover 5 manufacturers/exporters and resellers of the subject merchandise to the United States and the period October 1, 1995, through September 30, 1996.

EFFECTIVE DATE: March 5, 1997.

FOR FURTHER INFORMATION CONTACT: Valerie Owenby at (202) 482–0145, Charles Ranado at (202) 482–3518, or Stephanie Arthur at (202) 482–6312, AD/CVD Enforcement Office Eight, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: Because it is not practicable to complete these reviews within the normal time frame, the Department is extending the time limits for completion of the preliminary results until September 1, 1997 in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act of 1994. See Memorandum from Joseph A. Spetrini to Robert S. LaRussa, on file in Room B–099 of the Main Commerce Building. The deadline for the final results of this review will continue to be 120 days after publication of the preliminary results.

These extensions are in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)(3)(A)).

Dated: February 26, 1997.

Joseph A. Spetrini,

Deputy Assistant Secretary, AD/CVD Enforcement Group III.

[FR Doc. 97–5405 Filed 3–4–97; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

[I.D. 022597E]

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene a public meeting of the Law Enforcement Advisory Panel (AP).

DATES: This meeting will be held on March 19, 1997, from 8:30 a.m. to 12:00 noon.

ADDRESSES: This meeting will be held at the Isle of Capri Crowne Plaza Resort, 151 Beach Boulevard, Biloxi, MS 39530; telephone: (601) 435–5400.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Richard Leard, Senior Fishery Biologist; telephone: (813) 228–2815.

SUPPLEMENTARY INFORMATION: The purpose of the meeting will be to review management alternatives being considered by the Council in Amendment 15 to the Fishery Management Plan (FMP) for Reef Fish in the Gulf of Mexico. Amendment 15 includes a license limitation system for red snapper with initial trip-limit allocations. In order to help alleviate the effects of derby fishing, the amendment also considers opening the commercial season for red snapper for only the first 15 days of each month until the quota is reached and the fishery is closed. In addition to proposed measures for red snapper, Amendment 15 considers alternatives regarding the harvest of reef fish in traps other than permitted reef-fish traps and the potential removal of certain species of sea basses, grunts, and porgies from the management unit.

The Law Enforcement AP will also review the current regulations on bag limits for reef fish species and any potential enforcement problems. Finally, the AP will review the schedule for implementation of Amendment 9 to the Shrimp FMP that requires virtually all shrimp trawls used in Federal waters west of Cape San Blas, FL to be equipped with certified bycatch reduction devices.

At 1:00 p.m., members of the Law Enforcement AP will attend a meeting of the Ad Hoc Interjurisdictional Legal Panel of the Gulf States Marine Fisheries Commission at the same location. This meeting will focus on:

(1) Consistency of state fishery regulations with Magnuson-Stevens Act FMP guidelines;

(2) Consistency among Gulf States in licensing and vessel registration;

(3) Development of guidelines for effective state prosecution of Federal fishery violations; and

(4) Future of state jurisdictional authority within and without states' waters. If necessary, the Law Enforcement AP will reconvene following the Ad Hoc Legal Panel meeting to consider any recommendations that arise from these discussions. All business is expected to be concluded by 5:00 p.m.

The AP comprises chief enforcement agents for the state and Federal fishery agencies in the Gulf area who advise the Council on law enforcement issues.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by March 12, 1997.

Dated: February 26, 1997.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–5336 Filed 3–4–97; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 022597C]

Pacific Fishery Management Council; Public Meetings and Hearings

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

ACTION: Notice of availability of reports; notice of public meetings and hearings.

SUMMARY: The Pacific Fishery Management Council (Council) has begun its annual preseason management process for the 1997 ocean salmon fisheries. This notice announces the availability of Council documents and the dates and locations of Council meetings and public hearings. These actions comprise the complete schedule of events followed by the Council for determining the annual proposed and final modifications to ocean salmon management measures.

DATES: Written comments on the season options must be received by April 2, 1997.

ADDRESSES: Written comments should be sent to Lawrence D. Six, Executive Director, Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201; telephone: (503) 326–6352. See **SUPPLEMENTARY INFORMATION** for dates, times, and locations of public meetings and hearings.

FOR FURTHER INFORMATION CONTACT: John Coon, Salmon Management Coordinator; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION:

February 24, 1997: Council reports which summarize the 1996 salmon season and project the expected salmon stock abundance for 1997 are available to the public from the Council office.

March 3–7, 1997: Council and advisory entities meet at the Red Lion Hotel Lloyd Center, 1000 NE Multnomah, Portland, OR, to adopt 1997 regulatory options for public review.

March 18, 1997: Report with proposed management options and public hearing schedule is mailed to the public. (The report includes options, rationale, and summary of biological and economic impacts.)

March 31 - April 1, 1997: Public hearings are held to receive comments on the proposed ocean salmon fishery regulatory options adopted by the Council. All public hearings begin at 7 p.m. on the dates and at the locations specified below.

March 31, 1997: Westport High School Commons, 2850 S. Montesano Street, Westport, WA.

March 31, 1997: Pony Village Motor Inn, Ballroom, Virginia Avenue, North Bend, OR.

April 1, 1997: Red Lion Inn, Chinook Room, 400 Industry, Astoria, OR.

April 1, 1997: Red Lion Inn, Evergreen Room, 1929 Fourth Street, Eureka, CA.

April 7–11, 1997: Council and its advisory entities meet at the Clarion Hotel, Millbrae, CA, to adopt final 1997 regulatory measures.

April 17, 1997: Newsletter describing adopted ocean salmon fishing management measures is mailed to the public.

April 11–22, 1997: Salmon Technical Team completes ''Preseason Report III Analysis of Council Adopted Regulatory Measures for 1996 Ocean Salmon Fisheries.''

May 1, 1997: Federal regulations implemented and preseason report III available for distribution to the public.

Special Accommodations

The meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Eric Greene at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: February 26, 1997.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–5334 Filed 3–4–97; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 022797B]

Marine Mammals; Permit No. 968 (P557D)

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

ACTION: Scientific research permit amendment.

SUMMARY: Notice is hereby given that a request for amendment of scientific

research permit no. 968 submitted by Scripps Institution of Oceanography, Acoustic Thermometry of Ocean Climate Project, Institute for Geophysics and Planetary Physics, 9500 Gilman Drive, La Jolla, California 92093–02252, has been granted.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289); and

Regional Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213 (310/980–4001).

SUPPLEMENTARY INFORMATION: The requested amendment has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the provisions of § 216.39 of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the provisions of § 222.25 of the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR 222.23), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

This amendment incorporates into Permit No. 968 refinements to the research protocol, as provided for by Special Condition A.5. of Permit 968.

Issuance of this amendment, as required by the ESA was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of this permit; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: February 27, 1997.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–5382 Filed 3–4–97; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

New Export Visa Stamp for Certain Textiles and Textile Products Produced or Manufactured in Japan

February 27, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs providing for the use of a new export visa stamp.

EFFECTIVE DATE: April 1, 1997.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

Beginning on April 1, 1997, the ''Japan Cotton Textile Exporters Association'' and the ''Japan Silk & Synthetic Textiles Exporters' Association'' will merge to form the ''Japan Textiles Exporters' Association.''

Effective on April 1, 1997, regardless of the date of export, textile products from Japan shall be accompanied by a visa with the new stamped marking ''Japan Textiles Exporters' Association,'' instead of the ones from the former ''Japan Cotton Textile Exporters Association'' and ''Japan Silk & Synthetic Textiles Exporters' Association.'' There will be a grace period from April 1, 1997 through April 30, 1997, during which the old or the new visas will be acceptable. The new visa stamp must accompany goods exported on and after May 1, 1997.

Export visa stamps from Japan with the following markings remain unchanged and will continue to be accepted: ''Japan Woollen & Linen Textiles Exporters Association,'' ''The Japan Textile Products Exporters' Association'' and ''Japan General Merchandise Exporters' Association.'' The exempt certification stamp will continue unchanged with the ''The Japan Textile Products Exporters' Association'' marking.

See 52 FR 4639, published on February 13, 1987.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

February 27, 1997.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on February 6, 1987, as amended, by the Chairman, Committee for the Implementation of Textile Agreements. That directive directed you to prohibit entry of certain textiles and textile products, produced or manufactured in Japan for which the Government of Japan has not issued an appropriate visa or exempt certification.

Beginning on April 1, 1997, the ''Japan Cotton Textile Exporters Association'' and the ''Japan Silk & Synthetic Textiles Exporters' Association'' will merge to form the ''Japan Textiles Exporters' Association.''

Effective on April 1, 1997, regardless of the date of export, textile products from Japan shall be accompanied by a visa with the new stamped marking ''Japan Textiles Exporters' Association,'' instead of the ones from the former ''Japan Cotton Textile Exporters Association'' and ''Japan Silk & Synthetic Textiles Exporters' Association.'' There will be a grace period for goods exported from April 1, 1997 through April 30, 1997, during which the old or the new visas will be acceptable. The new visa stamp must accompany goods exported on and after May 1, 1997.

A facsimile of the new visa stamp is enclosed with this letter. The remaining visa and certification stamps remain unchanged.

Shipments entered or withdrawn from warehouse according to this directive which are not accompanied by an appropriate export visa shall be denied entry and a new visa must be obtained.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

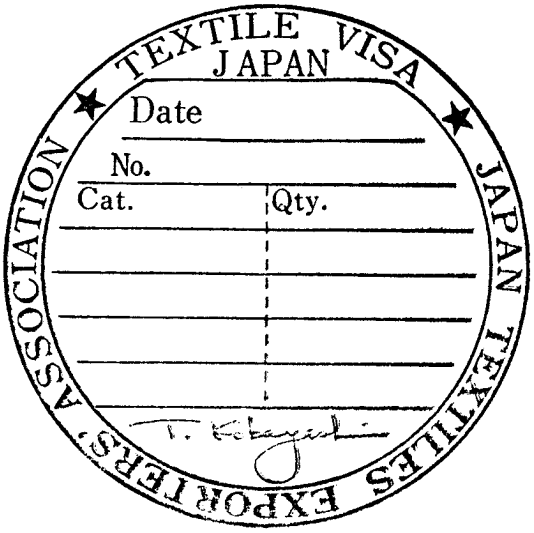
Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

BILLING CODE 3510–DR–F

Visa Stamp:

JAPAN TEXTILE EXPORTERS' ASSOCIATION



[FR Doc. 97–5402 Filed 3–4–97; 8:45 am]

BILLING CODE 3510–DR–C

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency, Scientific Advisory Board Closed Meeting

AGENCY: Defense Intelligence Agency, Department of Defense.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of Subsection (d) of Section 10 of Public Law 92–463, as amended by Section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Scientific Advisory Board has been scheduled as follows:

DATES: March 18, 1997 (800am to 1600pm).

ADDRESSES: The Defense Intelligence Agency, Bolling AFB, Washington, D.C. 20340–5100.

FOR FURTHER INFORMATION CONTACT: Maj. Michael W. Lamb, USAF, Executive Secretary, DIA Scientific Advisory Board, Washington, D.C. 20340–1328 (202) 231–4930.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(I), Title 5 of the U.S. Code and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA, on related scientific and technical matters.

Dated: February 28, 1997.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 97–5364 Filed 3–4–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[FERC–544]

Proposed Information Collection and Request for Comments

February 28, 1997.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed information collection and request for comments.

SUMMARY: In compliance with the requirements of Section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Consideration will be given to comments submitted within 60 days of the publication of this notice.

ADDRESSES: Copies of the proposed collection of information can be obtained from and written comments may be submitted to the Federal Energy Regulatory Commission, Attn: Michael P. Miller, Information Services Division, ED–12.4, 888 First Street NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Michael P. Miller may be reached by telephone at (202) 208–1415, by fax at (202) 273–0873, and by e-mail at mmiller@ferc.fed.us.

SUPPLEMENTARY INFORMATION: The information collected under the requirements of FERC–544 ''Gas Pipeline Rates: Rate Change (Formal)'' OMB No. 1902–0153) is used by the Commission to implement the statutory provisions of the Sections 4, 5, and 16 of the Natural Gas Act (NGA) (15 U.S.C. 717–717w). Under FERC–544 the Commission investigates the rates charged by natural gas pipeline companies subject to its jurisdiction. If, after its investigation, the Commission is of the opinion that the rates are ''unjust or unreasonable or unjustly discriminatory or unduly preferential,'' it is authorized to determine and prescribe just and reasonable rates.

Formal rate change filings (FERC–544) are suspended and set for hearing. When the Section 4(e) filing is suspended, the rate becomes the subject of a hearing process and may go into effect subject to refund with interest. All suspended filings that go through the hearing process are considered formal cases and an investigation is instituted to determine the reasonableness of the rate filing. If the rates and charges are deemed unjust, unreasonable or unduly discriminatory, the appropriate rate, charge or service condition is ascertained by the Commission and a final order issued.

Action: The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data.

Burden Statement: Public reporting burden for this collection is estimated as:

Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1)×(2)×(3)
25	1.0	4,582.5	114,563

The estimated total cost to respondents is $5,728,150, (114,563 hours divided by 2,087 hours per year per employee times $104,350 per year per average employee=$5,728,150). The cost per respondent is $229,125.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Commetns are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of

the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology *e.g.* permitting electronic submission of responses.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5392 Filed 3–4–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–259–000]

Algonquin Gas Transmission Company; Notice of Application

February 27, 1997.

Take notice that on February 21, 1997, Algonquin Gas Transmission Company (Algonquin), 1284 Soldiers Field Road, Boston, Massachusetts 02135, filed an application with the Commission in Docket No. CP97–259–000 pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon and remove pipe in New Jersey and pursuant to Section 7(c) of the NGA in order to temporary acquire temporary workspace adjacent to the existing right-of-way to replace the removed pipe, all as more fully set forth in the application which is open to the public for inspection.

Algonquin proposes to remove and replace approximately 2,400 feet of 26-inch diameter pipe in Raritan, Hunterdon County, New Jersey, in order to comply with a U.S. Department of Transportation (DOT) class location change. Algonquin states that it must upgrade this portion of its pipeline or lower the Maximum Allowable Operating Pressure (MAOP) below the currently effective MAOP of 750 psig by January 17, 1998. Algonquin also states that it would be unable to meet its contractual obligations at an MAOP lower than the present MAOP of 750 psig.

Algonquin proposed to acquire temporary rights to use 35 feet of work space adjacent to its existing right-of-way in order to remove the 2,400 feet of pipe it needs to replace. Algonquin states that it would place new 26-inch diameter pipe in the same trench excavated to remove the old pipe. Algonquin further states that it would be forced to operate heavy equipment over its in-service 30-inch diameter loop pipeline if Algonquin does not acquire the temporary workspace. Algonquin estimates that it would cost $1,312,833 to replace the removed pipe.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 20, 1997, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Algonquin to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5329 Filed 3–4–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–258–000]

Gas Transport, Inc.; Notice of Request Under Blanket Authorization

February 27, 1997.

Take notice that on February 21, 1997, Gas Transport, Inc. (GTI), P.O. Box 430, Lancaster, OH 43130–0430, filed in Docket No. CP97–258–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct and operate a new delivery point in West Virginia under GTI's blanket certificate issued in Docket No. CP86–291–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

GTI proposes to construct and operate a new connection for the delivery of gas to Hope Gas, Inc. (Hope). The new delivery point location is 702+00 GTI Line #1, Clay District, Wood County, West Virginia. The quantity of gas to be delivered at this delivery point is a maximum of 3,000 Mcf per year. GTI states that this new delivery point is not prohibited by its existing tariff and that it has sufficient capacity to accomplish deliveries without detriment or disadvantage to other customers. The proposed delivery point will not have an effect on GTI's peak day and annual deliveries and the total volumes delivered will not exceed total volumes authorized prior to this request. The cost of construction is estimated at $2,000 and Hope will provide a contribution-in-aid-of-construction to finance the measurement and regulation.

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. 97–5330 Filed 3–4–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–317–002]

Great Lakes Gas Transmission Limited Partnership; Notice of Compliance Filing

February 27, 1997.

Take notice that on February 25, 1997, Great Lakes Gas Transmission Limited Partnership (Great Lakes), tendered for

filing to become part of its FERC Gas Tariff, the following revised tariff sheets:

Second Revised Volume No. 1

Substitute Third Revised Sheet No. 6
Substitute Second Revised Sheet No. 9
Substitute Second Revised Sheet No. 53
Substitute First Revised Sheet No. 54
Substitute Second Revised Sheet No. 59
Substitute Original Sheet No. 59A
Substitute Second Revised Sheet No. 60

Original Volume No. 2

Substitute Sixth Revised Sheet No. 3–A

Great Lakes states that on February 3, 1997, in Docket No. RP96–317–000, the Commission issued an order accepting Great Lakes' proposal to implement a revised fuel allocation methodology to reflect a more distance sensitive methodology than the present zone-based method presently utilized. Under the revised fuel allocation methodology, Great Lakes' Transporter's Use percentages applicable to transportation services are to be determined on a 75-mile basis.

Pursuant to the Commission's February 3, 1997 order, Great Lakes filed the revised tariff sheets to implement the approved revision to the methodology for allocating system fuel and other use gas, and the corresponding determination of Transporter's Use percentages, from a zone-based methodology to a 75-mile based methodology. Great Lakes requested that the revised tariff sheets filed herein become effective on April 1, 1997.

Great Lakes states that copies of its filing were served on each of its firm customers, parties on the official service list in this proceeding, and the Public Service Commissions of the States of Minnesota, Wisconsin and Michigan.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in section 154.210 of the Commission's Regulations. Copies of this filing are on file with the Commission and are available for public inspection in the Commission's Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5326 Filed 3–4–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–143–042]

Great Lakes Gas Transmission Limited Partnership; Notice of Compliance Filing

February 27, 1997.

Take notice that on February 24, 1997, Great Lakes Gas Transmission Limited Partnership (Great Lakes), tendered for filing to become part of its FERC Gas Tariff, the following revised tariff sheets, with an effective date of March 1, 1997:

Second Revised Volume No. 1

First Revised Second Revised Sheet No. 4
First Revised First Revised Sheet No. 4A
First Revised First Revised Sheet No. 5

Original Volume No. 2

First Revised Seventeenth Revised Sheet No. 151
First Revised Fourteen Revised Sheet No. 223
First Revised Fourteen Revised Sheet No. 245
First Revised Eighth Revised Sheet No. 269
First Revised Fourteen Revised Sheet No. 294
First Revised Ninth Revised Sheet No. 603
First Revised Sixth Revised Sheet No. 604

Great Lakes states that on January 21, 1997, in Docket No. RP91–143–037, the Commission issued an order accepting Great Lakes' pro forma Case-B alternative methodology reflecting the allocation of Administrative and General, Account No. 850 and Account No. 851 expenses (A&G/S&E) on a volumetric basis, in lieu of the currently utilized volume-distance basis.

Great Lakes states the above referenced tariff sheets are being filed in compliance with the Commission's order accepting the Case-B allocation methodology for A&G/S&E.

Great Lakes states that copies of its filing were served on each of its firm customers, parties on the official service list in this proceeding, and the Public Service Commissions of the States of Minnesota, Wisconsin and Michigan.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed as provided in Section 154.210 of the Commission's Regulations. Copies of this filing are on file with the Commission and are available for public inspection in the Commission's Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5327 Filed 3–4–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–260–000]

National Fuel Gas Supply Corporation; Notice of Application

February 27, 1997.

Take notice that on February 21, 1997, National Fuel Gas Supply Corporation (National Fuel), 10 Lafayette Square, Buffalo, New York 14203 filed an application pursuant to Section 7(b) of the Natural Gas Act and Part 157 of the Commission's Regulations for permission and approval for National Fuel to abandon certain storage service provided under Rate Schedules SS–1 and SS–2, all as more fully set forth in the application on file with the Commission and open to public inspection.

Specifically, National Fuel proposes to abandon, effective April 1, 1997, the storage service it provides for Valley Gas Company, Connecticut Natural Gas Corporation, Essex County Gas Company, and Yankee Gas Services Company under National Fuel's Rate Schedules SS–1 and SS–2. National Fuel states that all four customers submitted written notices of termination to National Fuel on or before March 31, 1996, requesting termination of their services, effective April 1, 1997.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 20, 1997, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulation Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience

and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for National Fuel to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5328 Filed 3–4–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–239–001]

Northwest Pipeline Corporation; Notice of Proposed Changes in FERC Gas Tariff

February 27, 1997.

Take notice that on February 24, 1997, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheet, to become effective March 1, 1997:

Substitute Alternate First Revised Sheet No. 254

Northwest states that on January 29, 1997, Northwest submitted preferred and alternate tariff sheets to propose changes to the Facilities Reimbursement provision of Section 21 of the General Terms and Conditions of its tariff. Northwest further states that it intended for Section 21.4, Existing Facilities, to be identical on Second Revised Sheet No. 255 and on Alternate First Revised Sheet No. 254. Northwest states that due to an oversight, the phrase ''including any related income taxes'' was inadvertently omitted from Section 21.4 on Sheet No. 254. Therefore, Northwest has submitted Substitute Alternate First Revised Sheet No. 254 in lieu of the Alternate First Revised Sheet No. 254.

Northwest states that a copy of this filing has been served upon Northwest's customers, upon all intervenors in Docket No. RP97–239 and upon interested state regulatory commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5324 Filed 3–4–97; 8:45 am]

BILLING CODE 6717–01–M

Williams Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

February 27, 1997.

Take notice that on February 24, 1997, Williams Natural Gas Company (WNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to be effective May 1, 1997:

Fifth Revised Sheet No. 1
Sixth Revised Sheet No. 2
First Revised Sheet Nos. 132 and 138
Second Revised Sheet No. 144
First Revised Sheet Nos. 145 and 146
Original Sheet No. 147
Second Revised Sheet No. 210
Original Sheet No. 210A
Second Revised Sheet Nos. 248 and 458
Original Sheet Nos. 458A, 458B, 458C, and 458D

WNG states that this filing is being made to establish Rate Schedule IPS under which WNG will provide pooling service as required by the Gas Industry Standards Board (GISB). WNG's current tariff does not provide for pooling as contemplated by GISB standard 1.3.18, which provides that deliveries from receipt points should be able to be delivered directly into at least one pool and delivery points should be able to receive quantities from at least one pool.

WNG states that a copy of its filing was served on all of WNG's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5323 Filed 3–4–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP97–227–001 and TM97–2–49–002]

Williston Basin Interstate Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

February 27, 1997.

Take notice that on February 24, 1997, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1 and Original Volume No. 2, the following tariff sheets, with an effective date of January 1, 1997:

Second Revised Volume No. 1

1st Rev Sub 20th Revised Sheet No. 15
1st Rev Sub 23rd Revised Sheet No. 16
1st Rev Sub 20th Revised Sheet No. 18
1st Rev Sub 17th Revised Sheet No. 21

Original Volume No. 2

1st Rev Sub 64th Revised Sheet No. 11B

Williston Basin states that on January 14, 1997, it filed tariff sheets in Docket Nos. RP96–93–000 and TM97–2–49–000 to reflect the elimination of the Docket No. RP96–93–000 Take-or-Pay Throughput Surcharge, effective January 1, 1997.

On February 12, 1997, the OPR—Rate Review Branch I issued a Letter Order in Docket Nos. RP97–227–000 and TM97–2–49–000, which accepted the filed tariff sheets to be effective as proposed but ordered that Williston Basin correct the tariff sheet pagination on the January 1, 1997 tariff sheets. Williston Basin filed the above tariff sheets in compliance with that Order.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are

available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5325 Filed 3–4–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EG97–34–000, et al.]

Atlantis Energy Systems—Germany AG et al. Electric Rate and Corporate Regulation Filings

February 26, 1997.

Take notice that the following filings have been made with the Commission:

1. Atlantis Energy Systems—Germany AG

[Docket No. EG97–34–000]

Take notice that on February 18, 1997, Atlantis Energy Systems—Germany AG (''AES-G'') filed an application for determination of exempt wholesale generator status. AES-G is solely in the business of installing, owning and operating building-integrated photovoltaic systems (''PV Systems''), which are used to generate electric energy.

Comment date: March 18, 1997, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Texican Energy Ventures, Inc. Westcoast Power Marketing, Inc., Rig Gas Inc., Hinson Power Company, Wicor Energy Services, Inc., Federal Energy Sales, Inc. American Hunter Energy, Inc.

[Docket Nos. ER94–1362–007, ER95–378–007, ER95–480–008, ER95–1314–007, ER96–34–005, ER96–918–004, and ER97–144–001] (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for inspection and copying in the Commission's Public Reference Room:

On January 31, 1997, Texican Energy Ventures, Inc. filed certain information as required by the Commission's July 25, 1994, order in Docket No. ER94–1362–000.

On January 31, 1997, Westcoast Power Marketing, Inc. filed certain information as required by the Commission's April 20, 1995, order in Docket No. ER95–378–000.

On January 28, 1997, Rig Gas Inc. filed certain information as required by the Commission's March 16, 1995, order in Docket No. ER95–480–000.

On January 27, 1997, Hinson Power Company filed certain information as required by the Commission's August 29, 1995, order in Docket No. ER95–1314–000.

On January 28, 1997, Wicor Energy Services, Inc. filed certain information as required by the Commission's November 9, 1995, order in Docket No. ER96–34–000.

On January 31, 1997, Federal Energy Sales, Inc. filed certain information as required by the Commission's March 1, 1996, order in Docket No. ER96–918–000.

On January 27, 1997, American Hunter Energy, Inc. filed certain information as required by the Commission's November 13, 1995, order in Docket No. ER97–144–000.

3. Engelhard Power Marketing, Inc., Stand Energy Corporation Proler Power Marketing, Inc., Seagull Power Services Inc., Utility Management & Consulting, Inc., American Energy Solutions, Inc.

[Docket Nos. ER94–1690–11, ER95–362–008, ER95–1433–005, No. ER96–342–004, ER96–525–003 ER97–360–001] (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for inspection and copying in the Commission's Public Reference Room:

On February 3, 1997, Engelhard Power Marketing, Inc. filed certain information as required by the Commission's December 29, 1994, order in Docket No. ER94–1690–000.

On January 23, 1997, Stand Energy Corporation filed certain information as required by the Commission's February 24, 1995, order in Docket No. ER95–362–000.

On January 30, 1997, Proler Power Marketing, Inc. filed certain information as required by the Commission's October 16, 1995, order in Docket No. ER95–1433–000.

On January 30, 1997, Seagull Power Services Inc. filed certain information as required by the Commission's February 15,1996, order in Docket No. ER96–342–000.

On January 3, 1997, Utility Management & Consulting, Inc. filed certain information as required by the Commission's January 19, 1996, order in Docket No. ER96–525–000.

On January 29, 1997, American Energy Solutions, Inc. filed certain information as required by the Commission's December 5, 1996, order in Docket No. ER97–360–000.

4. Tennessee Power Company, K Power Company, Dupont Power Marketing, Inc., Dupont Power Marketing, Inc., Industrial Energy Applications, Inc., Entergy Power Marketing Corp., Preferred Energy Services, Inc.

[Docket Nos. ER95–581–007, ER95–792–006, ER95–1441–007, Docket ER95–1441–008, ER95–1465–005, ER95–1615–005 and ER96–2141–002 (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for inspection and copying in the Commission's Public Reference Room:

On January 22, 1997, Tennessee Power Company filed certain information as required by the Commission's April 28, 1995, order in Docket No. ER95–581–000.

On January 27, 1997, K Power Company filed certain information as required by the Commission's June 19, 1995, order in Docket No. ER95–792–000.

On February 18, 1997, Dupont Power Marketing, Inc. filed certain information as required by the Commission's August 30, 1995, order in Docket No. ER95–1441–000.

On February 18, 1997, Dupont Power Marketing, Inc. filed certain information as required by the Commission's August 30, 1995, order in Docket No. ER95–1441–000.

On February 7, 1997, Industrial Energy Applications, Inc. filed certain information as required by the Commission's September 28, 1995, order in Docket No. ER95–1465–000.

On January 27, 1997, Entergy Power Marketing Corp. filed certain information as required by the Commission's February 14, 1996, order in Docket No. ER95–1615–000.

On January 7, 1997, Preferred Energy Services, Inc. filed certain information as required by the Commission's August 13, 1996, order in Docket No. ER96–2142–000.

5. Gateway Energy Inc., Stalwart Power Company, Questar Energy Trading Company, IUC Power Services, Bonneville Fuels Management Corp., Gateway Energy Marketing, Inland Pacific Energy Services

[Docket Nos. ER95–1049–006, ER95–1334–005, ER96–404–004, ER96–594–004, ER96–659–004, ER96–795–004 and ER96–2144–001, (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for inspection and copying in the Commission's Public Reference Room:

On February 3, 1997, Gateway Energy Inc. filed certain information as required by the Commission's August 4, 1995, order in Docket No. ER95–1049–000.

On February 3, 1997, Stalwart Power Company filed certain information as required by the Commission's August 18, 1995, order in Docket No. ER95–1334–000.

On January 27, 1997, Questar Energy Trading Company filed certain information as required by the Commission's January 29, 1996, order in Docket No. ER96–404–000.

On February 3, 1997, IUC Power Services filed certain information as required by the Commission's February 9, 1996, order in Docket No. ER96–594–000.

On February 3, 1997, Bonneville Fuels Management Corp. filed certain information as required by the Commission's February 8, 1996, order in Docket No. ER96–659–000.

On February 10, 1997, Gateway Energy Marketing filed certain information as required by the Commission's March 7, 1996, order in Docket No. ER96–795–000.

On January 21, 1997, Inland Pacific Energy Services filed certain information as required by the Commission's September 16, order in Docket No. ER96–2144–000.

6. Duke Power Company

[Docket No. ER97–1651–000]

Take notice that on February 11, 1997, Duke Power Company (Duke) tendered for filing a Transmission Service Agreement between Duke, on its own behalf and acting as agent for its wholly-owned subsidiary, Nantahala Power and Light Company, and Consumers Power Company dba Consumers Energy Company (Consumers) and The Detroit Edison Company (Edison). Duke states that the TSA sets out the transmission arrangements under which Duke will provide Consumers and Edison non-firm point-to-point transmission service under Duke's Pro Forma Open Access Transmission Tariff. Duke requests that the Agreement be made effective as of January 8, 1997.

Comment date: March 12, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Duke Power Company

[Docket No. ER97–1652–000]

Take notice that on February 11, 1997, Duke Power Company (Duke) tendered for filing a Market Rate Service Agreement between Duke and Federal Energy Sales, Inc. dated as of January 22, 1997. Duke requests that the Agreement be made effective as of January 22, 1997.

Comment date: March 12, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Duke Power Company

[Docket No. ER97–1653–000]

Take notice that on February 11, 1997, Duke Power Company (Duke) tendered for filing a Market Rate Service Agreement between Duke and Vitol Gas & Electric LLC, dated as of January 24, 1997. Duke requests that the Agreement be made effective as of January 24, 1997.

Comment date: March 12, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Long Island Lighting Company

[Docket No. OA96–38–002]

Take notice that on February 13, 1997, Long Island Lighting Company tendered for filing to Section 206 of the Federal Power Act (FPA), Section 35.13 of the Federal Energy Regulatory Commission's (Commission) Regulations, 18 CFR 35.13, and in compliance with the Commission's Order dated January 29, 1997 in American Electric Service Corporation, Docket No. OA96–183–000, *et al.*, an Open Access Transmission Tariff (Tariff).

LILCO served copies of the filing upon the persons listed on a service list submitted with its filing, including each of its existing wholesale customers and the state regulatory authority for each state in which its existing wholesale customers are served.

Comment date: March 12, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Sierra Pacific Power Company

[Docket No. OA96–68–002]

Take notice that on February 3, 1997, Sierra Pacific Power Company tendered for filing a revised tariff sheet in compliance with the Commission's order in this docket dated December 18, 1996.

Comment date: March 12, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. New England Power Company, Massachusetts Electric Company, The Narragansett Electric Company, Granite State Electric Company, Nantucket Electric Company

[Docket No. OA96–74–001]

Take notice that on February 13, 1997, New England Power Company, on behalf of itself and its affiliates Massachusetts Electric Company, The Narragansett Electric Company, Granite State Electric Company and Nantucket Electric Company, tendered an open access transmission compliance filing pursuant to the Commission's Order dated January 29, 1997.

Comment date: March 12, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Consolidated Edison Company of New York, Inc.

[Docket No. OA96–138–002]

Take notice that on February 13, 1997, Consolidated Edison Company of New York, Inc. tendered for filing its revised access transmission tariff (the Tariff) in compliance with the Commission's January 29, 1997 Order.

Con Edison states that a copy of this filing has been served by mail to all of its wholesale transmission customers who have taken wholesale transmission service since March, 1995 and all parties included on the service list in the above docket. Con Edison has also served this filing by mail on the state commissions of each of the aforementioned transmission customers, the members of the New York Power Pool, and the New York State Public Service Commission.

Comment date: March 12, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Lockhart Power Company

[Docket No. OA96–163–002]

Take notice that on January 22, 1997, Lockhart Power Company (Lockhart), tendered for filing revisions to its Open Access Tariff filing, filed on July 8, 1996 pursuant to Order No. 888. The revisions to the compliance filing are being made to comply with the Commission's November 13, 1996, Order which required Lockhart to revise its compliance filing to provide a more detailed description of the method Lockhart uses to compute Available Transmission Capacity (ATC).

Lockhart Power requests an effective date of July 9, 1996.

Copies of the filing were served on all parties to this proceeding.

Comment date: March 12, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Citizens Utilities Company

[Docket No. OA96–184–001]

Take notice that on February 13, 1997, Citizens Utilities Company (Citizens) tendered for filing in Docket No. OA96–184–001 a revised Open Access Transmission Tariff applicable to its Vermont Electric Division.

Citizens states that this tariff is being filed in compliance with the Commission's January 29, 1997 order in American Electric Power Service Corp.,

et al., 78 FERC ¶ 61,070 (1997), and conforms to the non-rate terms and conditions of the Pro Forma tariff set forth in Order No. 888.

Citizens states that it served copies of this filing on all affected state commissions and customers, as well as on certain other interested parties.

Comment date: March 12, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. New York State Electric & Gas Corporation

[Docket No. OA96–195–002]

Take notice that New York State Electric & Gas Corporation (''NYSEG'') on February 13, 1997, tendered for filing pursuant to Section 206 of the Federal Power Act (''FPA''), Section 35.13 of the Federal Energy Regulatory Commission's (''Commission'') Regulations, 18 CFR 35.13, and in compliance with the Commission's Order dated January 29, 1997 in American Electric Power Service Corporation, Docket No. OA96–183–000, et al., an Open Access Transmission Tariff.

NYSEG served copies of the filing upon the persons listed on a service list submitted with its filing, including each of its existing wholesale customers and the New York State Public Service Commission.

Comment date: March 12, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. El Paso Electric Company

[Docket No. OA96–200–003]

Take notice that on February 13, 1997, El Paso Electric Company (''El Paso''), tendered for filing its Non-discriminatory Open Access Transmission Service Tariff (Open Access Tariff) pursuant to the Commission's January 29, 1997 order in the above-captioned proceeding and Sections 205 and 206 of the Federal Power Act, 16 U.S.C. 824d, 824e, Order No. 888, 61 FR 21540 (May 10, 1996), III FERC Stats. & Regs. ¶ 31,036 (1996), and Sections 35.1, 35.12, and 35.28(c) of the Commission's Regulations, 18 CFR 35.1, 35.12, 35.28(c).

El Paso states that the Open Access Tariff conforms with the pro forma tariff and Order No. 888. El Paso requests that its Open Access Tariff be accepted for filing by the Commission with an effective date of July 9, 1996.

Copies of the filing have been served on all parties in the above-captioned proceeding, as well as the Public Utility Commission of Texas, the New Mexico Public Utility Commission, and all customers that have received wholesale transmission service from El Paso since March 29, 1995 and on the state agencies that regulate public utilities in the states where the customers are located. An electronic version of the Open Access Tariff will be served upon request.

Comment date: March 12, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Orange and Rockland Utilities, Inc.

[Docket No. OA96–210–001]

Take notice that on February 13, 1997, Orange and Rockland Utilities, Inc. acting on behalf of itself and its wholly owned subsidiaries, Rockland Electric Company and Pike County Light & Power Company, filed a revised Open Access Transmission Service Tariff. Pursuant to the requirements of the Commission's Order dated December 18, 1996 in the above-referenced docket, this revised Open Access Transmission Service Tariff eliminates changes to the indemnity and force majeure provisions of the pro forma tariff.

Comment date: March 12, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. The United Illuminating Company

[Docket No. OA97–521–000]

Take notice that on January 31, 1997, The United Illuminating Company (UI) tendered for filing its Policy Implementing the FERC Standards of Conduct contained in Section 37.4 of the Commission's Regulations 18 CFR 37.4, in compliance with the Commission's Order No. 889, 61 FR 21737 (May 10, 1996), FERC Stats. & Regs. ¶ 31,038 (1996), *reh'g pending,* and the Commission's order in *The United Illuminating Co., et al.,* Notice of Extension of time, Docket Nos. OA96–157–000 et al. (December 16, 1996).

Comment date: March 11, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. Madison Gas and Electric Company

[Docket No. OA97–522–000]

Take notice that on January 31, 1997, Madison Gas and Electric Company (MGE) tendered for filing with the Federal Energy Regulatory Commission unbundled rate proposals for the following FERC Rate Schedules:

MGE/FERC Rate Schedule 7
MGE/FERC Rate Schedule 10
MGE/FERC Rate Schedule 12
MGE/FERC Rate Schedule 13
MGE/FERC Rate Schedule 14
MGE/FERC Rate Schedule 19

MGE states that a copy of the filing has been provided to the Public Service Commission of Wisconsin and the parties whose rate schedules are affected by the proposed changes. MGE is requesting an effective date of January 1, 1997.

Comment date: March 20, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. Upper Peninsula Power Company

[Docket No. OA97–523–000]

Take notice that on January 31, 1997, Upper Peninsula Power Company tendered for filing a proposed non-discriminatory open access transmission service tariff in compliance with FERC Order No. 888 and this Commission's order issued November 29, 1996 in *Black Creek Hydro, Inc.* Docket Nos. OA96–25–000, *et al.*

Comment date: March 12, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. Moon Lake Electric Association Inc.

[Docket No. OA97–525–000]

Take notice that on February 5, 1997, Moon Lake Electric Association, Inc. (''Moon Lake'') submitted for filing a Request for Waiver of the Application of the Requirements of Order Nos. 888 and 889, in accordance with Section 35.28(d) of the Rules of the Federal Energy Regulatory Commission (''Commission''), 18 CFR 35.28(d).

Moon Lake states that it owns, operates, or controls only limited and discrete transmission facilities that do not constitute an integrated grid. Moon Lake states that it thus qualifies for a waiver of application of the requirements of Orders No. 888 and 889 to it, as more fully set forth in the application which is on file with the Commission and open to public inspection.

Comment date: March 20, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. Cleveland Electric Illuminating Company

[Docket No. OA97–529–000]

Take notice that on February 11, 1997, The Cleveland Electric Illuminating Company (CEI) tendered for filing an electric power service agreement for the sale of electricity under its FERC Electric Tariff, Original Volume No. 2, to the City of Cleveland, Ohio. CEI has requested waiver of the notice provisions of the Commission's regulations in order to permit the service agreement to be made effective as of January 12, 1997.

Comment date: March 20, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–5339 Filed 3–4–97; 8:45 am]

BILLING CODE 6717–01–P

[Docket Nos. CP96–178–000, CP96–178–002, CP96–248–000, CP96–248–003, CP96–249–000, CP96–249–003 and CP97–238–000]

Maritimes & Northeast Pipeline, L.L.C., Portland Natural Gas Transmission System, and Portland Natural Gas Transmission System and Maritimes & Northeast Pipeline, L.L.C.; Notice of Technical Conference

February 27, 1997.

On March 6, 1997, the Commission staff will convene a technical conference with Maritimes & Northeast Pipeline, L.L.C. (Maritimes) and Portland Natural Gas Transmission System (PNGTS) in response to PNGTS's February 24, 1997 request. The purpose of this technical conference is to discuss the filing of the revised environmental report in Docket No. CP97–238–000 scheduled to be made by PNGTS and Maritimes on March 17, 1997 and the amendment to be filed by PNGTS in Docket Nos. CP96–249–000, *et al.* In addition, procedures will be discussed to make the subject filings suitable for analysis by the Commission staff. Further, PNGTS and Maritimes should be prepared to discuss the attached questions from staff and should answer them in writing as part of the proposed March 17, 1997 filing. The meeting will begin at 9:30 am, in a room to be designated at the Commission's headquarters, 888 First Street NE, Washington, DC.

When adequate information is filed in the joint application to permit it to be publicly noticed and when all related amendments in the PNGTS and Maritimes proceedings are filed and considered complete, the Commission staff will issue a notice to convene a technical conference to be held at a location near the proposed joint project area. The exact time and location will be provided in that notice.

Lois D. Cashell,

Secretary.

Appendix

Maritimes & Northeast Pipeline L.L.C (M&NP); Portland Natural Gas Transmission System (PNGTS); Docket No. CP96–178–000 et al.

Environmental Information Request

1. The following facilities are listed in only the application or table 1–2 of resource report 1 (not both), filed on February 10, 1997. Please clarify if they are proposed for the Joint Facilities Project:

a. The 0.6-mile-long, 20-inch-diameter Haverhill Lateral and associated meter station for the interconnection with Tennessee Gas Pipe Line Company (Tennessee) (application page 14);

b. the Granite State Meter Station on the Newington Lateral for the interconnection with Granite State (application page 13);

c. the interconnection with Public Service of New Hampshire (PSNH) from the acquired Northern Utilities Meter Station (application page 14); and

d. the S.D. Warren Meter Station on the Westbrook Lateral (resource report table 1–2, page 7).

2. If the Haverhill Lateral is part of the Joint Facilities Project, update the resource tables to include all relevant environmental information.

3. if the Northern Utilities meter station is acquired for the interconnection with PSNH, what modifications would be required and how much land would be disturbed?

4. Provide a listing by milepost (MP) of all areas along the Joint Facilities mainline and laterals that have not been surveyed.

5. M&NP and PNGTS indicate that the following information will be filed when they become available:

a. Original U.S. Geological (USGS) 7.5-minute-series topographic maps with mileposts showing the proposed route and meter stations;

b. alignment sheets (scale not smaller than 1:6,000) showing the exact location of all meter stations, pig launchers/receivers, block values and any other aboveground facilities, staging areas and extra work spaces, pipe storage yards, and temporary and permanent access roads needed during construction and operation (scheduled for March 17, 1997);

c. acreage of each wetland disturbed during construction and acreage of forested wetlands that would be permanently converted to other cover types;

d. volume, discharge rate, and source and discharge locations of hydrostatic test water;

e. residences within 50 feet of the construction work area by milepost and site-specific plans for residences closer than 25 feet to the construction work area; and

f. Soil Erosion and Sediment Control Guidelines (Guidelines) for the Joint Facilities Project. When filing these Guidelines, clearly indicate whether all of the provisions contained in our *Erosion Control, Revegetation, and Maintenance Plan and Wetland and Waterbody Construction and Mitigation Procedures* (Procedures) are incorporated. For any individual provision that M&NP and PNGTS consider unnecessary, technically infeasible, or unsuitable due to local conditions, please provide alternative measures that M&NP and PNGTS would use to ensure an equal or greater level of protection. Be specific and definitive in describing these alternative measures.

Please provide the above items or a schedule indicating when they will be filed.

6. Provide right-of-way cross section diagrams for segments of the mainline and laterals that would parallel existing rights-of-way. Clearly indicate the amount of existing right-of-way that is presently maintained clear of forest vegetation.

7. These project plan/reports previously filed by M&NP and PNGTS contain differing data and mitigation techniques. Please provide the following to resolve these inconsistencies:

a. A wetland delineation report for the Joint Facilities Project.

b. A spill prevention and containment plan detailing specific measures that would be taken to cleanup and dispose of any accidental discharge within a municipal watershed, or within 100 feet of wetlands or waterbodies. Indicate what portions of our Procedures (version 12/2/94) M&NP and PNGTS will incorporative into its plan, and for those it will not, indicate why and what alternative measures would be used.

c. A plan prepared in consultation with the Massachusetts, New Hampshire, and Maine State Historic Preservation Officers (SHPO) identifying the procedures M&NP and PNGTS will follow if human remains are discovered during cultural resources investigations or construction, or if unanticipated historic properties are discovered during construction.

d. A directional drill contingency plan that what describes what methods M&NP and PNGTS would use to contain and manage drilling muds during construction.

e. Resource Report 11, Reliability and Safety.

8. Provide copies or the current status of all required Federal, state, and local government approvals.

9. Provide a detailed description of the construction techniques to be used for the Squamscott River (MP 34.2), Piscataqua River (MP 47.9), Mousam River (MP 73.1), Saco River (MP 81.8), and Presumpscot River (MP 97.6) crossings. The descriptions should include:

a. Crossing method to be used (open cut or directional drill);

b. if open cut, the method to be used to excavate the trench underwater;

c. if open cut, the techniques to be used to minimize turbidity and sedimentation impacts associated with trenching in the river;

d. if open cut, the location of spoil storage areas and the mitigative measures that would be used to control and store the spoil;

e. if open cut, the method to be used to pull the pipeline across the river, including the amount of time required for the pull;

f. if open cut, the material and method to be used to backfill the trench underwater;

g. an explanation of the location and size requirements of the extra workspaces on each bank (such as trench size and work to be done in each workspace); and

h. an estimate of the total length of time required for each phase of construction (such as river crossings and restoration).

Please indicate if either M&NP's or PNGTS's previously filed river crossing plans for any of these waterbodies are still accurate for the Joint Facilities Project. There is no need to re-file river crossing plans that are still current.

10. In its February 24, 1997 data response, PNGTS stated that due to favorable geotechnical conditions, it intends to directionally drill the crossing of the Piscataqua River. The Joint Facilities Project environmental report shows M&NP's proposed crossing as the preferred location. If an open-cut crossing of the Piscataqua River is still proposed, please provide a summary of discussions with the U.S. Army Corps of Engineers and state (New Hampshire and Maine) agencies concerning the feasibility and impact of an open-cut. If no discussions have taken place, provide a schedule for future discussions with those agencies.

11. In its February 24, 1997 data response, PNGTS stated that due to unfavorable geotechnical conditions, directional drilling of the crossings of the Powwow River, Great Brook, their associated wetlands, and New Hampshire State Route 107A (approximate MPs 26.5 to 26.9) is inappropriate. PNGTS proposes a combined open-cut/push-pull technique. Provide responses to items b through h in question 10, as well as any additional measures PNGTS will take to mitigate impacts on these waterbodies and wetlands.

12. Provide a site-specific crossing plan for the Exeter River (MP 29.7) that addresses:

a. Protection of the downstream drinking water supply;

b. avoidance of riparian vegetation removal or active restoration of the riparian zone with woody vegetation;

c. minimization of sedimentation; and

d. avoidance of interference with migratory fisheries.

13. Discuss the feasibility of crossing Branch Brook (MP 71.2) using a dry crossing technique (*e.g.*, flume, dam and pump, horizontal bore, directional drill). Provide a site-specific crossing plan that addresses protection of the downstream drinking water supply. Indicate the downstream distance to all drinking water intakes. Provide copies of all correspondence and describe communications with appropriate agencies and/or water supply authorities regarding the crossing of Branch Brook.

14. Provide a report summarizing your January 28, 1997 meeting with the Maine Department of Environmental Protection regarding stream crossing issues, which you stated would be filed with the Commission on or about February 4, 1997.

15. Will M&NP and PNGTS prohibit refueling activities and storage of hazardous liquids within at least a 200-foot-radius of all private wells and at least a 400-foot-radius of all municipal or community water supply wells? If not, how would M&NP and PNGTS minimize the potential for contamination of private and municipal/community water supply wells?

16. M&NP and PNGTS indicate that potentially contaminated sediments may be found in the Great Bay tributaries, Pickering Brook, Piscataqua River, and Saco River tributaries and in soils within the former Pease Airforce Base. Provide copies of all relevant correspondence and provide specific construction and mitigation measures that would be used to contain and avoid spread of contaminants found in sediments or soils.

17. Table 3–3 indicates that one federally listed endangered species, the small whorled pogonia (*Isotria medeoloides*) occurs within the pipeline corridor. Provide:

a. A copy of the 1996 survey report prepared by qualified biologists using U.S. Fish and Wildlife (FWS) approved survey methods. The survey report must include the following information:

(1) Name(s) and qualifications of person(s) conducting the survey;

(2) method(s) used to conduct the survey;

(3) date(s) of survey;

(4) areas surveyed (include mileposts);

(5) potential impacts, both beneficial and negative, that could result from construction of the proposed project; and

(6) proposed mitigation that would substantially minimize or eliminate these potential negative impacts.

b. FWS comments on the survey conducted.

c. A timetable for completion of any surveys for this species that are scheduled for 1997, including all previously unidentified extra work areas, staging areas, and access roads.

18. Provide a copy of the consolidated report on state rare, threatened, and endangered species surveys conducted in 1996 and copies of all relevant recent correspondence with state agencies. Also, provide a timetable for completion of the 1997surveys and filing of the report, and the species to be surveyed.

19. For all staging areas, extra work spaces, pipe storage areas, and other similar areas that would disturb wetlands, provide the following information:

a. MP location;

b. dimensions;

c. type of wetland that would be disturbed;

d. acreage of wetland that would be disturbed; and

e. reasons the wetland cannot be avoided.

20. Table 6–2 identifies 11 active sand and gravel pits where PNGTS and M&NP will coordinate their activities with the owners, and 25 other mineral operations in the project vicinity. Identify any access roads to active sand and gravel pits that would be crossed by the pipeline. Provide the MP location of each road and copies of correspondence and records of communications with the owners/operators of these sand and gravel pits. Discuss plans to minimize disruption of these operations.

21. Provide the locations by MP of all septic systems that would be crossed by

the Joint Facilities Project. What do M&NP and PNGTS intend to do if a septic system is damaged during construction and cannot be repaired to its former capacity?

22. Provide the following information on the proposed developments in Plaistow (MP 19.4), Newton (MPS 21.8 and 23.5), and Greenland (MP 40.1):

a. Development plans filed with the towns;

b. status of permitting; and

c. status of construction.

23. For all public or designated recreation land identified on table 8–3, describe the areas that would be affected and any requested or proposed mitigation to minimize impact on natural resources or recreational activities.

24. If any of the meter stations include pressure reduction/regulation valves and line heaters, provide the expected L_{dn} at the nearest noise sensitive areas (specify direction and distance) near the stations. What measures would be used to limit noise from these meter stations?

25. PNGTS and M&NP have not identified extra work areas, staging areas, or access roads and assessed potential impact on cultural resources from these activities. Please consult with the State Historic Preservation Officers as these locations are identified regarding the need for cultural resources surveys and the appropriate level of intensity of those surveys. If additional surveys are needed, update the schedule provided in your January 27, 1997 filing for when they would be done. Also, update Table 4.5 (areas requiring survey) from the January 27, 1997 filing. Include the following in the updated schedule and Table:

a. Areas where deep testing is required; and

b. areas requiring additional archeological evaluation.

All material filed with the Commission containing location, character, and ownership information about cultural resources must have the cover and any relevant pages therein clearly labeled in bold lettering: ''CONTAINS PRIVILEGED INFORMATION—DO NOT RELEASE.''

26. Provide photoalignment sheets or USGS 7.5-minute-series maps of the Joint Facilities pipeline route and mileposts that show the following:

a. Beginning and ending points of all areas where cultural resource identification surveys have been completed;

b. beginning and ending points of all areas where cultural resource identification surveys remain to be completed; and

c. locations (including boundaries where these are known or can be estimated) of all identified cultural resources located on or immediately adjacent to the project's construction right-of-way or extra work areas, including those listed in table 4–1.

27. Please initiate discussions with the SHPOs regarding the acceptability of letter type clearance reports for individual areas as needed, and a final consolidation report for the entire project, as an approach to the numerous small parcel surveys which this project may require. Provide the results of these discussions and the reaction of each SHPO to this approach.

28. Provide copies of the NRHP nomination forms for the William Fogg Library and the Conway Junction Railroad Turntable Site.

29. Please document all correspondence and other consultation with Indian tribes, Native American groups, ethnic groups, and other interested persons concerning cultural resource issues.

30. Please provide a schedule for when treatment plans for effected significant cultural resources would be submitted. See section VIII in OPR's ''Guidelines for Reporting on Cultural Resources Investigations'' (Guidelines).

31. On October 10, 1996, M&NP's Cultural Resources Executive Summary indicated that Native American archaeological sites were located at M&NP's MPs 21.5 and 31.0. Table 4–1 of Resource Report 4 for the Joint Facilities Project identifies four arheological sites at M&NP MPs 20.4, 22.8, 20.1 and 32.5 Please explain this discrepancy.

32. In order to reduce land use impacts, discuss the feasibility of installing the Dracut Meter Station adjacent to the existing Tennessee Meter Station north of Methuen Street.

33. To minimize impacts within the Arrow Woods subdivision (MPs 4.5 to 5.3), discuss the feasibility of installing the pipeline on the edge or within the existing New England Power right-of-way.

34. Provide an explanation for the selection of the proposed joint route in the following areas:

a. Between MPs 17.1 and 18.0, the proposed route would cross North Avenue between two residences and then use an existing residential road which provides access to six residences. M&NP's original route in this area would only affect three residences and would cross diagonally through an empty lot.

b. The Maine Nature Conservancy has indicated a preference for the pipeline to be placed on the east side of the powerline through the Kennebunk Plains (MPs 71.0 to 72.2). The proposed route (PNGTS's) would be on the west side of the powerline. M&NP's route was on the east side.

c. The National Spiritual Assembly of the Baha's indicated concern with a pipeline crossing through Monsalvat (also known Sunset Hill) because of its significant cultural and religious value (MPs 49.0 to 49.5). The proposed route would cross the western portion of this area. M&NP proposed Reroute 2 would entirely avoid this area.

d. The selection of the PNGTS route for the Westbrook Lateral instead of the M&NP route. Provide an environmental comparison of these two routes that includes:

(1) Acreage of both the permanent and construction right-of-way;

(2) the size and location of any non-typical work areas required;

(3) the length in miles that would be adjacent to existing rights-of-way, including any proposed overlap of the construction or permanent right-of-way;

(4) the number of residences, schools, or hospitals within 50 feet of the edge of the construction right-of-way;

(5) the distances to Westbrook Junior High School (MPs 1.74–1.94), and Westbrook Community Hospital (MPs 2.14–2.24), and copies of all correspondence with these facilities regarding the proposed right-of-way.

(6) the number of waterbodies and wetlands crossed and the length of each wetland crossing; and

(7) the acres of forest that would be cleared.

M&NP and PNGTS may supplement its response with other information that may be relevant to the analysis of the alternative and/or with suggestions to the route that would result in fewer environmental impacts.

35. In our December 10, 1996 letter, we identified the M&NP independent route from MPs 35.8 to 36.9 as part of our potential joint pipeline route. However, you state that your route for that segment is ''virtually the same as M&NP's independent route'', and the same segment of ''the FERC route involves a new ROW alignment''. Please explain.

[FR Doc. 97–5331 Filed 3–4–97; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5696–5]

Agency Information Collection Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following proposed and/or continuing Information Collection Requests (ICRs) to the Office of Management and Budget (OMB). Before submitting the ICRs to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collections as described below.

DATES: Comments must be submitted on or before May 5, 1997.

ADDRESSES: U.S. Environmental Protection Agency, 401 M Street SW, Mail code 2223A, OECA/OC/METD, Washington, DC 20460. A copy of these ICRs may be obtained without charge from Sandy Farmer (202) 260–2740.

FOR FURTHER INFORMATION CONTACT: Jane M. Engert, tel: (202) 564–5021; FAX: (202) 564–0050; e-mail: engert.jane@epamail.epa.gov for NSPS subparts M, P, Q, R, and Z. Scott Throwe tel: (202) 564–7013; FAX: (202) 564–0050; e-mail: Throwe.Scott@epamail.epa.gov for NSPS subpart PP. Steven Hoover—tel: (202) 564–7007; FAX: (202) 564–0050; e-mail: Hoover.Steve@epamail.epa.gov for NSPS subpart SSS. Virginia Lathrop, 202/564–7057. Fax 202/564–0050. Lathrop.Virginia@epamail.epa.gov. For NESHAP subpart D. Jane M. Engert, tel: (202) 564–5021; FAX: (202) 564–0050; e-mail: engert.jane@epamail.epa.gov for NESHAP subpart O. Dave Stangel, (202) 564–4162 fax (202) 564–0085 or Stangel.david@epamail.epa.gov for ''Notification of Stored Pesticides with Suspended or Canceled Registrations.''

SUPPLEMENTARY INFORMATION:

NSPS Subpart M: Secondary Brass and Bronze Production Plants

Affected entities: Entities potentially affected by this action are Secondary Brass and Bronze Production Plants that commenced construction, modification, or reconstruction after the date of proposal (June 11, 1973). The specific units to which this subpart applies are reverberatory and electric furnaces of 1,000 kg (2205 lb) or greater production capacity and blast (cupola) furnaces of 250 kg/h (550 lb/h) or greater production capacity. This subpart does not apply to furnaces from which molten brass or bronze are cast into the shape of finished products, such as foundry furnaces.

Title: New Source Performance Standards (NSPS) for Secondary Brass and Bronze Production Plants [40 CFR Part 60, Subpart M], OMB Control Number: 2060–0110, Expires: 9/30/97.

Abstract: Secondary brass and bronze production activities result in emissions of metallic particulate matter. In the Administrator's judgment, emissions from these sources are in sufficient quantity to cause or contribute to air pollution that may endanger public health or welfare. Consequently, New Source Performance Standards were promulgated for this source category. These standards establish limits for both particulate matter and visible emissions.

In order to ensure compliance with the standards, adequate recordkeeping and reporting is necessary. This information enables the Agency to: (1) Identify the sources subject to the standard; (2) ensure initial compliance with emission limits; and (3) verify continuous compliance with the standard. Specifically, the rule requires an application for approval of construction, notification of startup, notification and report of the initial emissions test, and notification of any physical or operational change that may increase the emission rate. In addition, sources are required to keep records of all startups, shutdowns, and malfunctions.

In the absence of such information collection requirements, enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act. Consequently, these information collection requirements are mandatory, and the records required by this NSPS must be retained by the owner or operator for two years. In general, the required information consists of emissions data and other information deemed not to be private. However, any information submitted to the agency for which a claim of confidentiality is made will be safeguarded according to the Agency policies set forth in Title 40, Chapter 1, Part 2, Subpart B—Confidentiality of Business Information. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The average annual burden to the industry over the next three years from these recordkeeping and reporting requirements is estimated at 7.5 person-hours. This is based on an estimated 5 respondents, with no new plants or potlines expected to be constructed in the next three years. The burden estimate includes only recordkeeping associated with startup, shutdown and malfunction events. Since reporting requirements apply only to new sources, there is no anticipated reporting burden for this industry over the next three years as a result of these standards.

NSPS Subpart P, Primary Copper Smelters; NSPS Subpart Q, Primary Zinc Smelters; NSPS Subpart R, Primary Lead Smelters

Affected entities: Entities potentially affected by this action are Primary Copper Smelters, Primary Lead Smelters, and Primary Zinc Smelters that commenced construction, modification, or reconstruction after the date of proposal (October 16, 1974). The specific units to which this subpart applies are: (1) For primary copper smelters, each dryer, roaster, smelting furnace or copper converter; (2) for primary lead smelters, each sintering machine, sintering machine discharge end, blast furnace, dross reverberatory furnace, electric smelting furnace, and converter; and (3) for primary zinc smelters, each roaster and sintering machine.

Title: New Source Performance Standards (NSPS) for Primary Copper Smelters, Primary Lead Smelters, and Primary Zinc Smelters [40 CFR Part 60, Subparts P, Q, and R] There is no active OMB Control Number.

Abstract: Primary copper, lead and zinc smelter operations result in

emissions of metallic particulate matter and sulfur dioxide. In the Administrator's judgment, emissions from these sources are in sufficient quantity to cause or contribute to air pollution that may endanger public health or welfare. Consequently, New Source Performance Standards were promulgated for these source categories. These standards establish limits for particulate matter, visible emissions and sulfur dioxide.

In order to ensure compliance with the standards, adequate recordkeeping and reporting is necessary. This information enables the Agency to: (1) Identify the sources subject to the standard; (2) ensure initial compliance with emission limits; and (3) verify continuous compliance with the standard. Specifically, the rule requires an application for approval of construction, notification of startup, notification and report of the initial emissions test, and notification of any physical or operational change that may increase the emission rate. In addition, sources are required to keep daily records of average sulfur dioxide concentrations, and records of all startups, shutdowns, and malfunctions as they occur. Excess emissions must be reported semi-annually. For copper smelters only, owners or operators must keep monthly records of the smelter charge rate and weight percent (dry basis) of arsenic, antimony, lead and zinc.

In the absence of such information collection requirements, enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act. Consequently, these information collection requirements are mandatory, and the records required by this NSPS must be retained by the owner or operator for two years. In general, the required information consists of emissions data and other information deemed not to be private. However, any information submitted to the agency for which a claim of confidentiality is made will be safeguarded according to the Agency policies set forth in Title 40, Chapter 1, Part 2, Subpart B—Confidentiality of Business Information. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The average annual burden to the industry over the next three years from these recordkeeping and reporting requirements is estimated at 1445 person-hours. This is based on an estimated 15 respondents, with no new smelters expected to be constructed in the next three years. The burden estimate includes daily and monthly recordkeeping as well as records of startup, shutdown and malfunction events. Since there are no new sources anticipated, the only reporting burden for this industry is the semi-annual reporting of excess emissions which is estimated at 8 hours per report.

NSPS Subpart Z: Ferroalloy Production Facilities

Affected entities: Entities potentially affected by this action are Ferroalloy Production Facilities that commenced construction, modification, or reconstruction after the date of proposal (October 21, 1974). The specific units to which this subpart applies are: Electric submerged arc furnaces that produce silicon metal, ferrosilicon, calcium silicon, silicomanganese zirconium, ferrochrome silicon, silvery iron, high-carbon ferrochrome, charge chrome, standard ferromanganese, silicomanganese, ferromanganese silicon, or calcium carbide; and dust-handling equipment.

Title: New Source Performance Standards(NSPS) for Ferroalloy Production Facilities [40 CFR Part 60, Subpart Z]. No active OMB Control Number.

Abstract: The production of ferroalloys results in emissions of particulate matter and carbon monoxide. In the Administrator's judgment, emissions from these sources are in sufficient quantity to cause or contribute to air pollution that may endanger public health or welfare. Consequently, New Source Performance Standards were promulgated for this source category. These standards establish limits for particulate matter and carbon dioxide, and for visible emissions from dust-handling equipment.

In order to ensure compliance with the standards, adequate recordkeeping and reporting is necessary. This information enables the Agency to: (1) Identify the sources subject to the standard; (2) ensure initial compliance with emission limits; and (3) verify continuous compliance with the standard. Specifically, the rule requires an application for approval of construction, notification of startup, notification and report of the initial emissions test, and notification of any physical or operational change that may increase the emission rate. In addition, sources are required to keep daily records of operating parameters, and record all startups, shutdowns, and malfunctions.

In the absence of such information collection requirements, enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act. Consequently, these information collection requirements are mandatory, and the records required by this NSPS must be retained by the owner or operator for two years. In general, the required information consists of emissions data and other information deemed not to be private. However, any information submitted to the agency for which a claim of confidentiality is made will be safeguarded according to the Agency policies set forth in Title 40, Chapter 1, Part 2, Subpart B—Confidentiality of Business Information. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who

are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The average annual burden to the industry over the next three years from these recordkeeping and reporting requirements is estimated at 177 person-hours. This is based on an estimated 1 respondent, with no new plants expected to be constructed in the next three years. The burden estimate includes recordkeeping associated with daily monitoring, and records of startup, shutdown and malfunction events. There is no anticipated reporting burden for this industry over the next three years as a result of these standards.

NSPS Subpart PP: Ammonium Sulfate Manufacture

Affected entities: Entities potentially affected by this action are facilities with ammonium sulfate dryers within an ammonium sulfate manufacturing plant in the caprolactum by-product, synthetic and coke oven by-product sectors of the ammonium sulfate industry.

Background: The Administrator has judged that PM emissions from ammonium sulfate manufacturing plants cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Owners/operators of ammonium sulfate manufacturing plants must notify EPA of construction, modification, startups, shut downs, date and results of initial performance test and excess emissions. In order to ensure compliance with the standards promulgated to protect public health, adequate reporting and recordkeeping is necessary. In the absence of such information enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: There are 21 sources subject to NSPS subpart PP. No new sources are expected in the next 3 years. The affected sources are required to submit semiannual excess emissions reports. Each report is estimated at 8 hours. The total reporting and recordkeeping burden for this collection of information is estimated to average 336 hours per year for the industry. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

NSPS Subpart SSS Supplementary Information

Affected entities: Entities potentially affected by this action are those which are subject to NSPS Subpart SSS, or each coating operation and each piece of coating mix preparation equipment for which construction, modification or reconstruction commenced after January 22, 1986.

Title: New Source Performance Standards for Magnetic Tape Coating Facilities—Subpart SSS, OMB Number 2060–0171, expires September 30, 1997.

Abstract: The EPA is charged under Section 111 of the Clean Air Act, as amended, to establish standards of performance for new stationary sources that reflect:

* * * Application of the best technological system of continuous emissions reduction which (taking into consideration the cost of achieving such emissions reduction, or any non-air quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated [Section 111(a)(1)].

The Agency refers to this charge as selecting the best demonstrated technology (BDT). Section 111 also requires that the Administrator review and, if appropriate, revise such standards every four years. In addition, Section 114(a) states that:

* * * The Administrator may require any owner or operator subject to any requirement of this Act to (A) establish and maintain such records, (B) make such reports, (C) install, use and maintain such monitoring equipment or methods (in accordance with such methods at such locations, at such intervals, and in such manner as the Administrator shall prescribe, and (D) sample such emissions (E) keep records on control parameters, production variables or other indirect data when direct monitoring of emissions is impractical (submit compliance certifications in accordance with section 114(a)(3), and (G) provide such other information, as he may reasonably require.

In the Administrator's judgement, VOC emissions from the magnetic tape manufacturing industry cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Therefore, the New Source Performance Standards (NSPS) for Magnetic Tape Coating Facilities were proposed on January 22, 1986, and promulgated on October 3, 1988. These standards apply to each coating operation and each piece of coating mix preparation equipment for which construction, modification or reconstruction commenced after January 22, 1986. Volatile organic compounds (VOC's) are the pollutants regulated under this Subpart.

Owners or operators of the affected facilities described must make the following one-time-only reports: notification of the date of construction or reconstruction (40 CFR 60.7(a)(1)); notification of the anticipated and actual dates of startup (40 CFR 60.7 (a)(2) and (a)(3)); notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate (40 CFR 60.7(a)(4)); and notification of the date of demonstration of continuous monitoring system and initial performance test (40 CFR 60.7 (a)(5) and (d)). Owners or operators are also required to maintain records of the occurrence and duration of any startup,

shutdowns, malfunctions, or periods where the continuous monitoring system is inoperative. The owner or operator must also provide notification of the date of the initial performance test (40 CFR 60.8(d)) and the reporting of initial performance test results (40 CFR 60.8(a) and 60.717(a)). The owner or operator must maintain performance test results and continuous monitoring system records (40 CFR 60.714(i)), as well as maintain a file of all measurements including performance test measurements, and all other information required by this subpart recorded in a permanent file suitable for inspection. This file shall be retained for at least two years (40 CFR 60.7(e)).

Recordkeeping specific to magnetic tape coating operations include the requirement to install, calibrate, maintain, and operate a device to indicate cumulative VOC recovered (when monthly liquid balance is to be performed) (40 CFR 60.713(b)(1)). Records must also be maintained of projected and actual solvent consumption (40 CFR 60.714(a), and 40 CFR 60.717 (b) and (c)), as well as the monthly liquid material balance (40 CFR 60.714(b)). Records of the periods when control devices are not operating must also be maintained (40 CFR 60.714(h)). The owner or operator shall install, calibrate, maintain, and operate monitoring devices to record VOC levels in inlet and outlet gas streams controlled by a carbon adsorption system (40 CFR 60.714(c)). A coating operation controlled by a condensation system shall monitor the temperature of the condenser exhaust stream (40 CFR 60.714(d)). Where coating operations or coating mix preparation is controlled by thermal incinerator, the combustion temperature of incinerator must be recorded (40 CFR 60.714(e)). Where the coating operation or affected coating mix preparation equipment is controlled by a catalytic incinerator, the gas temperature of both upstream and downstream of the catalyst bed shall be recorded (40 CFR 60.714(f)). Where a VOC capture system is used, the owner or operator shall identify parameters to be monitored, and then install, calibrate, maintain, and operate a monitoring device that records the value of the chosen parameter (40 CFR 60.714(g)).

Records shall be maintained of the monthly weighted average mass of VOC contained in the coating (40 CFR 60.714(j)). The actual solvent use records shall be submitted at the end of the initial calendar year (40 CFR 60.717(b)). Each owner or operator shall submit quarterly reports which document the VOC content, capture or destruction, and equipment monitoring data (40 CFR 60.717(d)). Each owner or operator not required to submit quarterly reports because no reportable periods have occurred shall submit semiannual reports (40 CFR 60.717(e)).

All reports are sent to the delegated State or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA Regional Office. Notifications are used to inform the Agency or delegated authority when a source becomes subject to the standard. The reviewing authority may then inspect the source to check if the pollution control devices are properly installed and operated, and that the standard is being met. Performance test reports are needed as these are the Agency's record of a source's initial capability to comply with the emission standard, and note the operating conditions (e.g., combustion temperature or concentration of organic compounds in the exhaust stream) under which compliance was achieved. The quarterly reports are used for problem identification, as a check on source operation and maintenance, and for compliance determinations. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a current valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The Agency computed the burden for the currently approved 1994 Information Collection Request (ICR). Where appropriate, the Agency identified specific tasks and made assumptions, while being consistent with the concept of burden under the Paperwork Reduction Act. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

This estimate is based on the assumption that there would be 10 sources currently covered by the ICR and an additional 3.2 sources per year over the three years covered by the ICR. The annual burden of reporting and recordkeeping requirements for facilities subject to Subpart SSS are summarized by the following information. The reporting requirements are as follows: Read Instructions (1 person-hour), Initial performance test (280 person-hours). It is assumed that 20% of tests are repeated due to failure. Performing monthly method 24 analysis (90 person-hours for 12 occurrences per year). Estimates for report writing are: Notification of construction/reconstruction (2 person-hours), Notification of physical/operational changes (8 person-hours), Notification of anticipated startup (2 person-hours), Notification of actual startup (2 person-hours), Notification of initial performance test (2 person-hours), Notification of CMS (2 person-hours), and Report of performance test (included in VOC content of all coatings applied, total amount and percent VOC recovered, and the total amount of coating applied. In addition, facilities utilizing less solvent annually than the applicable cutoff shall make semiannual estimates of projected annual amount of solvent use and maintain records of actual solvent use.

Each owner or operator of an affected magnetic tape coating operation shall install, calibrate, maintain, and operate a monitoring device that continuously indicates and records the concentration level of organic compounds in the outlet gas stream. Certain facilities will also be required to continuously measure and record either the combustion temperature of the incinerator (for those facilities controlled by a thermal incinerator) or the condenser exhaust

temperature (for those facilities controlled by a condensation system).

Owners or operators of the affected facilities described must make the following one-time-only reports: notification of the date of construction or reconstruction; notification of the anticipated and actual dates of startup; notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate; notification of reporting requirements listed above). The report of excess emissions (16 person-hours for 4 occurrences per year) assuming 20 percent of the facilities have excess emissions, and the report of no excess emissions (8 person-hours) on a twice per year basis (assuming 80 percent of the facilities have no excess emissions). Recordkeeping requirements are time to enter information records of startups, shutdown, malfunction, etc. (1.5 person-hours for 50 occurrences/year), records of control device operating parameters (0.25 person-hours for 350 occurrences per year), records of projected/actual solvent use (8.0 person-hours for 2 occurrences per year), records for monthly liquid material balance (2.0 person-hours for 12 occurrences per year), and monthly determination of average VOC content of coating (2.0 person-hours for 12 occurrences per year). Records must be kept for a period of two years.

The average burden to industry over the three years of the current ICR from these recordkeeping and reporting requirements was estimated to be 3982 person-hours on an annual basis. The respondent costs have been calculated on the basis of $14.50 per hour plus 110 percent overhead. The average annual burden to industry over the three year period of the ICR was estimated to be $121,264.

NESHAP Subpart D: Beryllium Rocket Motor Firing

Affected entities: Entities potentially affected by this action are those which are rocket motor test sites using beryllium propellant.

Title: NESHAP subpart D: Beryllium Rocket Motor Firing. There is not an active OMB Control Number for this ICR.

Abstract: Beryllium rocket motor firing operations result in emissions of beryllium. In the Administrator's judgment, emissions from these sources are in sufficient quantity to cause or contribute to air pollution that may endanger public health or welfare. Consequently, National Emission Standards for Hazardous Air Pollutants (NESHAP) subpart D was promulgated on April 6, 1973 and amended November 7, 1985 for this source category. These standards establish limits for beryllium.

In order to ensure compliance with the standards, adequate recordkeeping and reporting is necessary. This information enables the Agency to: (1) Identify the sources subject to the standard; (2) ensure initial compliance with emission limits; and (3) verify continuous compliance with the standard. Specifically, the rule requires subject test sites to test ambient air for Beryllium during and after firing of a rocket motor. Sampling techniques are approved by the Administrator. Samples are analyzed within 30 days and results are reported to the EPA Region by registered letter by the business day following the determination (See 40 CFR 61.43.). In addition stack sampling required at 40 CFR 61.41, requires continuous sampling of beryllium combustion products, analysis and reporting within 30 days. The results are reported to EPA by the day following the determination and calculation. There is one test facility and three to four stored Beryllium fueled rockets subject to NESHAP subpart D.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The estimated burden hours should be 6 hours per year for the one facility in the industry. An average of two reports per year averaging 3 hours each for a total of 6 hours per year. This estimate includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

NESHAP Subpart O: Inorganic Arsenic Emissions From Primary Copper Smelters

Affected entities: Entities potentially affected by this action are those which are subject to the NESHAP for Inorganic Arsenic Emissions from Primary Copper Smelters.

Title: NESHAP subpart O: Inorganic Arsenic Emissions from Primary Copper Smelters. There is not an active OMB Control Number for this ICR.

Abstract: Primary Copper Smelter operations result in emissions of inorganic arsenic emissions. In the Administrator's judgment, emissions from these sources are in sufficient quantity to cause or contribute to air pollution that may endanger public health or welfare. Consequently, National Emission Standards for Hazardous Air Pollutants (NESHAP) subpart O was promulgated on August 4, 1986 for this source category. These standards establish limits for inorganic arsenic.

In order to ensure compliance with the standards, adequate recordkeeping and reporting is necessary. There are currently seven sources subject to this subpart. All sources are covered by section 61.172(a) which exempts them from emission standards. As long as these sources remain in this status their only requirement is to submit an annual report under 61.177(f). This information enables the Agency to be informed of their status.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the

proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The estimated burden hours should be 2 hours per year for each facility to prepare the annual report. An for the seven sources the total burden is 14 hours per year for the industry.

Notification of Stored Pesticides With Suspended or Canceled Registrations

Affected entities: This action affects any producer or exporter of pesticides, registrant of a pesticide, applicant for registration of a pesticide, applicant for or holder of an experimental use permit, commercial applicator, any person who distributes or sells any pesticide, or who possesses any pesticide which has had its registration suspended or canceled.

Title: Notification of Stored Pesticides with Canceled or Suspended Registrations Under Section 6(g) of the Federal Insecticide, Fungicide and Rodenticide Act (EPA Form No. 1519.04), OMB Control Number 2070–0109, Expiration Date: 8/31/97.

Abstract: Section 6(g) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) requires any producer or exporter of pesticides, registrant of a pesticide, applicant for registration of a pesticide, applicant for or holder of an experimental use permit, commercial applicator, or any person who distributes or sells any pesticide, who possesses any pesticide which has had its registration suspended or canceled under section 6 to notify the Administrator and appropriate State and local officials of: (1) Such possession; (2) the quantity of such pesticide such person possesses, and (3) the place at which such pesticide is stored.

EPA may require affected persons to submit information on the storage of canceled or suspended pesticides through FIFRA section 6 Suspension and/or Cancellation orders or through Notices published in the Federal Register. The formats, procedures, and identification of persons who must submit FIFRA section 6(g) information will appear in the Suspension/Cancellation Order or Federal Register Notice itself. The information required by FIFRA section 6(g) will be used by the Agency for compliance monitoring purposes (identification of areas where large amounts of suspended/canceled products are being stored, inspection targeting to assure adequate storage and compliance with the terms of the cancellation or suspension order, inspections to confirm the adequacy of the registrant's recall plans, etc.), indemnification determinations for emergency suspended and canceled products, the determination of disposal burdens, to aid the FIFRA section 19 recall process, and to aid the Agency in the development of a reimbursement plan for the registrant's costs for the storage of canceled and suspended pesticides which have been recalled under FIFRA section 19.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement:

Burden Hours per Response: 1.5 hours per respondent which includes time for reading the Federal Register or Notice of Intent to Cancel, plan activities, create and gather information, process information, and record and report information.

Frequency of Response: As necessary. Burden estimates are based on an estimate of 2 suspensions or cancellations per year.

Number of Respondents: 104,000 respondents (52,000 potential respondents per action) who may be required to submit information per year.

Total Annual Reporting and Recordkeeping Burden: 156,000 hours.

This estimate includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: February 27, 1997.

Elliott J. Gilberg,

Acting Director, Office of Compliance.

[FR Doc. 97–5421 Filed 3–4–97; 8:45 am]

BILLING CODE 6560–50–P

Environmental Statistics Subcommittee of the National Advisory Council for Policy and Technology; Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Environmental Statistics Subcommittee (of the Environmental Information, Economics and Technology Committee) of the National Advisory Council on Environmental Policy and Technology (NACEPT) will hold a one and one-half day meeting of the full Subcommittee.

The Environmental Statistics Subcommittee was formed to provide key recommendations and strategic advice on the statistical products and activities necessary to enhance the Agency's knowledge about environmental statistics and trends, and to explore information gaps from the perspective of the users/products of these data products. The meeting is being held to discuss and offer critical advice on initiatives of the Office of Strategic Planning and Environmental Data.

Scheduling constraints preclude oral comments from the public during the meeting. Written comments can be submitted by mail, and will be transmitted to Committee members for consideration.

DATES: The public meeting will be held on April 10, 1997 from 9:00 a.m. to 5:00 p.m. and April 11, 1997 from 9:00 a.m. to 1:00 p.m.

ADDRESSES: The meetings will be held at the World Resources Institute 1709,

New York Avenue N.W., 2nd Floor Conference Room Washington, D.C. 20006. This meeting is open to the public. Due to limited space, seating at the meeting will be on a first-come basis. Written comments should be sent to: N. Phillip Ross, Office of Strategic Planning and Environmental Data, U.S. Environmental Protection Agency, Mail Code 2161, 401 M Street, S.W., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: N. Phillip Ross, Designated Federal Official, Direct Line (202) 260–0250, General Line (202) 260–5244, FAX (202) 260–8550.

Dated: February 27, 1997.

N. Phillip Ross,

Designated Federal Official.

[FR Doc. 97–5418 Filed 3–4–97; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5698–9]

Science Advisory Board; Notice of Public Teleconferences

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that two Committees of the Science Advisory Board (SAB) will conduct public teleconference meetings on the dates noted below. The meetings are all open to the public. All times noted are Eastern Time.

1. Executive Committee

The Science Advisory Board's (SAB) Executive Committee, will conduct a public teleconference meeting on Monday, March 17, 1997, between the hours of 12:00 and 1:00 p.m. Eastern Time. The meeting will be coordinated through a conference call connection in Room 2103 of the Mall at the Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The public is welcome to attend the meeting physically or through a telephonic link. Additional instructions about how to participate in the conference call can be obtained by calling Ms. Priscilla Tillery-Gadsen at 202–260–4126 by March 12.

In this meeting the Executive Committee plans to review the report from its *Integrated Human Exposure Committee*—Review of the Agency's Exposure Factors Handbook. If time permits, the Committee may discuss other issues.

Any member of the public wishing further information concerning the meeting or who wishes to submit comments should contact Dr. Donald G. Barnes, Designated Federal Official for the Executive Committee, Science Advisory Board (1400), U.S. Environmental Protection Agency, Washington DC 20460; telephone (202) 260–4126; FAX (202) 260–9232; or via the INTERNET at barnes.don@epamail.epa.gov. Copies of the review document are available from the same source.

2. Advisory Council on Clean Air Compliance Analysis

The Advisory Council on Clean Air Compliance Analysis (ACCACA, or the ''Council'') of the Science Advisory Board (SAB) plans to hold four public teleconferences on the dates and times described below. All meetings are open to the public, however, the number of available phone lines is limited. For further information concerning the specific meetings described in this notice, please contact the individuals listed below. Documents that are the subject of SAB reviews are normally available from the originating EPA office and are *not* available from the SAB Office. These teleconferences are a follow-up to earlier Council discussions held on November 7 and 8, 1996 concerning the 1990 Clean Air Act (CAA) Section 812 Retrospective and Prospective Studies (See 61 FR, 54196, Thursday, October 17, 1996).

The Council has allocated four dates for public teleconferences to deal with both the Retrospective and the Prospective Studies. The dates, times, and anticipated topical issues to be discussed are listed as follows:

(a) *Friday, March 14, 1997 (11:00 a.m. to 2:00 p.m.): Prospective Study and Retrospective Study:* The major topic planned for this teleconference is review of the Prospective Study emissions modeling assumptions, methodology, results and documentation. The Council will provide advice to the Agency on the validity and utility of the emissions modeling data within the purposes of the current Prospective Study. It is also planned that logistical and scheduling aspects of both the Prospective and Retrospective Studies will be briefly discussed during this public teleconference. Some discussion may occur on select Retrospective Study issues at this teleconference. However, the preferred plan is to keep these topics separate, with this teleconference being reserved primarily to deal with the Prospective Study.

(b) *Wednesday, March 19, 1997 (11:00 a.m. to 1:00 p.m.): Prospective Study and Retrospective Study:* The major topics for this teleconference are to complete review of the Prospective Study emissions modeling assumptions, methodology, results and documentation (if more time is needed after the discussions of March 14), and to begin closure review on the Retrospective Study issues. The timing of which specific issues are to be discussed at each teleconference will be planned at this or the previous (March 14, 1997) teleconference, and will be driven by the schedule of availability of the Lead Discussants and other Council participants. The Council identified a number of Retrospective Study issue areas, some of which are listed here as follows: valuation of bronchitis and heart disease; presentation of baseline (''but for'' issues, that is, but for the presence of the 1990 Clean Air Act), choice of study for estimating PM-related mortality (includes physical effects); costs (operations and maintenance costs, cost-of-clean, etc.); ecological effects; valuing changes in intelligence quotient (IQ) issues; presentation of life years lost calculations (life years remaining issue); methodological effects; morbidity effects by age; and research needs. Other related issues are planned to be discussed as time permits.

(c) *Friday, March 21, 1997 (11:00 a.m. to 2:00 p.m.): Retrospective Study:* The major topic of this teleconference is to continue closure review on the Retrospective Study issue areas identified above. Specific issue areas will be scheduled to match the availability of the Lead Discussants and other interested Council participants.

(d) *Wednesday, March 26, 1997 (11:00 a.m. to 2:00 p.m.): Retrospective Study:* The major topic of this teleconference is to continue closure review on the Retrospective Study issue areas identified above. If all the issue areas have been discussed in the earlier teleconferences, the Council members may elect to cancel this session. However, this time is being reserved for the Council just in case they need additional discussions to facilitate closure on the Retrospective Study.

After the teleconference sessions are complete, the Agency plans to revise the Retrospective Study Report to Congress and re-issue it to the entire Council and the public for one final closure review prior to submitting the document for Executive Branch review and subsequent submission to Congress.

Please contact the SAB staff (see below) to determine the logistics and details of the individual public teleconference meetings, or if the later planned meetings will be necessary.

Purpose of the Teleconferences

The specific topic of the Prospective Study review is the draft emissions modeling assumptions, methodology,

results and documentation for this study. The Council is being asked by the Agency to review the emissions modeling data (including input, model configurations, and output data) to be used for the first CAA Section 812 prospective analysis and make recommendations to the Administrator on the validity and utility of the emissions modeling data within this analytical context. Specific questions include the following:

(1) Are the regulatory assumptions and other design features of the Pre-Clean Air Act Amendments (CAAA) and Post-CAAA scenarios reasonable and appropriate, given the purposes of the present study?

(2) Are the input data used to configure the emissions models sufficiently valid and reliable for the intended analytical purpose?

(3) Are the emissions models, and the methodologies they employ, sufficiently valid and reliable for the intended analytical purpose?

(4) If the answers to any of the three questions above is negative, what specific alternative assumptions, data or methodologies does the Council recommend the Agency consider using for the prospective analysis?

(5) If the answers to questions (1), (2), and (3) are positive, are the emissions inventories for the Pre-CAAA and Post-CAAA scenarios developed by this modeling exercise sufficiently valid and reliable for the intended purpose?

(6) If the answer to question (5) is negative, what specific improvements does the Council recommend the Agency consider?

The draft documents that present, compile and document the results and methodologies used for the Prospective Study emissions modeling, as well as the Retrospective Study Appendices and select text edits which are the subject of these reviews are available from the originating EPA office. The review materials and supporting documentation for the Prospective Study include the following:

Review Materials

(1) U.S. EPA, Office of Air and Radiation, *Air Emissions Estimates from Electric Power Generation for the CAAA Section 812 Prospective Study,* February 1997,

(2) E.H. Pechan & Associates, Inc., *Emission Projections for the Clean Air Act Section 812 Prospective Analysis,* January 31, 1997,

Supporting Documents

(3) U.S. EPA, Office of Air and Radiation, *Analyzing Electric Power Generation Under the CAAA,* July, 1996,

(4) U.S. EPA, *Natural Gas Supply Assumptions in the Clean Air Power Initiative,* U.S. EPA White Paper, July 31, 1996,

(5) U.S. EPA, *Coal Supply Assumptions in the Clean Air Power Initiative,* U.S. EPA White Paper, July 31, 1996,

(6) ICF Kaiser, Inc., *The 1990 Clean Air Act Amendments (CAAA) and the Increasing Competitiveness of Powder Run River Basin (PRB) Coals,* Memorandum from Charles Mann and Theodore Breton, ICF Kaiser, Inc. to Sam Napolitano, U.S. EPA, Office of Air and Radiation, October 15, 1996.

In addition to the above review materials and supporting documents, it is anticipated that briefing slides or bullet point documents will be circulated to the SAB's Council and made available to the public approximately ten days prior to the first public review teleconference on March 14, 1997. The intent behind the distribution of these briefing materials is to present summaries of the analytical context of the emissions modeling step, key scenario design features, emissions modeling methodologies, and emissions modeling results in order to facilitate the Agency's presentations during the teleconference, and to help focus the Council's subsequent review discussions.

Once the Agency, considering the advice of the Council, determines that the emissions inventories are sufficiently valid and reliable, the Agency will configure and operate the air quality models to translate differences in emissions under the scenarios into differences in air quality conditions. On a parallel track, the costs of compliance with the regulatory programs and standards associated with each of the scenarios will also be developed. The methodological details and results of these subsequent analytical steps will be submitted for the SAB's Council to review at a later date.

To discuss technical aspects or obtain copies of the draft documents pertaining to the CAA Section 812 Prospective Study emissions estimates listed above, or the Appendices and select text edits for the Retrospective Study, as well as the anticipated briefing slides or bullet point documents, please contact Mr. James DeMocker, Office of Policy Analysis and Review (OAR) (MC 6103), US Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Tel. (202) 260–8980; FAX (202) 260–9766, or via the Internet at: democker.jim@epamail.epa.gov. To obtain copies of the latest complete draft of the Retrospective Study Report to Congress dated October 1996 and entitled ''The Benefits and Costs of the Clean Air Act, 1970 to 1990,'' please contact Ms. Michelle Olawuyi, Secretary, Office of Economy and Environment (MC 2172), US Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Tel. (202) 260–5488; FAX (202) 260–5732, or via the Internet at olawuyi.michelle@epamail. epa.gov.

To obtain copies of the teleconference agendas, please contact Mrs. Diana L. Pozun, Secretary to the Council at Tel. (202) 260–8414; FAX (202) 260–7118; or via the Internet: pozun.diana@epamail.epa.gov). To discuss technical or logistical aspects of the Council's review process, please contact Dr. K. Jack Kooyoomjian, Designated Federal Official, Advisory Council on Clean Air Compliance Analysis (the ''Council''), Tel. (202) 260–2560; FAX (202) 260–7118; or via the Internet: kooyoomjian.jack @epamail.epa.gov). Members of the public who wish to physically be present at the teleconferences may do so at the U.S. Environmental Protection Agency (EPA) Headquarters Building, 401 M Street, SW., Washington, DC 20460, Waterside Mall Room Number 2103. Members of the public who wish to obtain logging-on procedures should contact Mrs. Diana L. Pozun at least one week prior to the teleconference(s) of interest.

Public Speaking

To request time for public comments at the Council teleconferences, please contact Mrs. Diana L. Pozun in writing at the mail, FAX or E-Mail addresses given above no later than one week prior to each of the teleconferences.

Providing Oral or Written Comments at SAB Meetings

The Science Advisory Board (SAB) expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, opportunities for oral comment at teleconference meetings will be usually limited to three minutes per speaker and no more than fifteen minutes total. Written comments (at least 35 copies) received in the SAB Staff Office sufficiently prior to a meeting date (usually one week prior to a meeting), may be mailed to the Council prior to its meeting; comments received too close to the meeting date will normally be provided to the Council at its meeting, except for teleconferences, where brief written materials may be FAXed to the participants, with more detailed or lengthy materials received too close to

the teleconference to be mailed to the Council or its appropriate subcommittee participants shortly after the teleconference. Written comments may be provided up until the time of the meeting.

Dated: February 24, 1997.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 97–5309 Filed 3–4–97; 8:45 am]

BILLING CODE 6560–50–P

[PF–705; FRL–5585–6]

Bayer Corporation; Pesticide Tolerance Petition Filing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Filing.

SUMMARY: This notice announces the filing of a pesticide petition proposing the establishment of a tolerance for residues of tebuconazole in or on grapes. This notice contains a summary of the petition that was prepared by the petitioner, Bayer Corporation.

DATES: Comments, identified by the docket control number PF–705 must be received on or before April 4, 1997.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway., Arlington, VA 22202.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket control number PF–705. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). No CBI should be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above from 8:30 a. m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Connie B. Welch, Product Manager (PM) 21, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 227, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–6226; e-mail: welch.connie@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received a pesticide petition (PP) 6F4669 from Bayer Corp., P.O. Box 4913, 8400 Hawthorne Road, Kansas City, MO 64120–0013, proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, to amend 40 CFR 180.474 by establishing tolerances for residues of the fungicide tebuconazole in or on the agricultural commodity grapes at 5.0 ppm. The proposed analytical method for determining residues uses gas-liquid chromatography coupled with a thermionic detector. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

As required by section 408(d) of the FFDCA, as recently amended by the Food Quality Protection Act, (Pub. L. 104–170), Bayer included in the petition a summary of the petition and authorization for the summary to be published in the Federal Register in a notice of receipt of the petition. The summary represents the views of Bayer; EPA is in the process of evaluating the petition. As required by section 408(d)(3) EPA is including the summary as a part of this notice of filing. EPA may have made minor edits to the summary for the purpose of clarity.

I. Petition Summary

A. Residue Chemistry

1. *Nature of residue.* Bayer believes the nature of the residue in plants and animals is adequately understood. The residue of concern is the parent compound only, as specified in 40 CFR 180.474.

2. *Analytical method.* An enforcement method for plant commodities has been validated on various commodities. It has undergone successful EPA validation and has been submitted for inclusion in PAM II. The method should be adequate for grapes. The animal method has also been approved as an adequate enforcement method and will be submitted to FDA for inclusion in PAM II.

3. *Magnitude of residue.* Fifteen separate residue trials have been conducted and submitted to the EPA with tebuconazole on grapes. The EPA has determined that these data show that residues of tebuconazole, α-[2-(4-Chlorophenyl)ethyl]-α-(1,1-dimethylethyl)-*H*-1,2,4-triazole-1-ethanol, are not expected to exceed 5 ppm in grapes as a result of the proposed use. Processing data show that residue of tebuconazole do not concentrate in grape juice and that a tolerance is not required in or on raisins. In addition, since grapes are not normally rotated, the nature of residue in rotational crops is not of concern.

B. Toxicological Profile

The following mammalian toxicity studies have been conducted to support the tolerances of tebuconazole:

1. *Acute toxicity.* i. Rat acute oral study with an LD_{50} of >5,000 milligrams/kilogram (mg)/(kg) (male) and 3,933 mg/kg (female).

ii. Rabbit acute dermal of LD_{50} of >5,000 mg/kg.

iii. Rat acute inhalation of LC_{50} of >0.371 mg/liter(l).

iv. Primary eye irritation study in the rabbit which showed mild irritation reversible by day 7.

v. Primary dermal irritation study which showed no skin irritation.

vi. Primary dermal sensitization study which showed no sensitization.

2. *Genotoxicity.* i. An Ames mutagenesis study in *Salmonella* showed no mutagenicity with or without metabolic activation.

ii. A micronucleus mutagenesis assay study in mice showed no genotoxicity.

iii. A sister chromatid exchange mutagenesis study using CHO cells was negative at dose levels 4 to 30 micrograms/milliliter (μg/mL) without activation or 15 to 120 μg/mL with activation.

iv. An unscheduled DNA synthesis (UDS) study was negative for UDS in rat hepatocytes.

3. *Reproductive and developmental toxicity.* i. A rat oral developmental toxicity study with a maternal no

observed effect level (NOEL) of 30 milligrams per kilogram of body weight per day (mg/kg bw/day) and an lowest effect level (LEL) of 60 mg/kg bw/day based on elevation of absolute and relative liver weights. For developmental toxicity, a NOEL of 30 mg/kg bw/day and an LEL of 60 mg/kg bw/day was determined, based on delayed ossification of thoracic, cervical and sacral vertebrae, sternum, fore and hind limbs and increase in supernumerary ribs.

ii. A rabbit oral developmental toxicity study with a maternal NOEL of 30 mg/kg bw/day and an LEL of 100 mg/kg bw/day based on depression of body weight gains and food consumption.

iii. A developmental NOEL of 30 mg/kg bw/day and an LEL of 100 mg/kg bw/day were based on increased post-implantation losses, from both early and late resorptions and frank malformations in eight fetuses of five litters.

iv. A mouse oral developmental toxicity study with a maternal NOEL of 10 mg/kg bw/day and an LEL of 20 mg/kg bw/day based on a supplementary study indicating reduction in hematocrit and histological changes in liver.

v. A developmental NOEL of 10 mg/kg bw/day and an LEL of 30 mg/kg bw/day based on dose-dependent increases in runts/dam at 30 and 100 mg/kg bw/day.

vi. A mouse dermal developmental toxicity study with a maternal NOEL of 30 mg/kg bw/day and an LEL of 60 mg/kg bw/day based on a supplementary study indicating increased liver microsomal enzymes and histological changes in liver.

vii. The NOEL for developmental toxicity in the dermal study in the mouse is 1,000 mg/kg bw/day, the highest dose tested (HDT).

viii. A 2–generation rat reproduction study with a dietary maternal NOEL of 15 mg/kg bw/day (300 ppm) and an LEL of 50 mg/kg bw/day (1,000 ppm) based on depressed body weights, increased spleen hemosiderosis, and decreased liver and kidney weights.

ix. A reproductive NOEL of 15 mg/kg bw/day (300 ppm) and an LEL of 50 mg/kg bw/day (1,000 ppm) were based on neonatal birth weight depression.

4. *Subchronic toxicity.* i. A 28–day feeding study in the rat with a NOEL of 30 mg/kg/day and a LEL of 100 mg/kg/day based on changes in hematology and clinical chemistry parameters.

ii. A 90–day rat feeding study with a NOEL of 34.8 mg/kg bw/day (400 ppm) and an LEL of 171.7 mg/kg bw/day (1,600 ppm) in males, based on decreased body weight gains and histological changes in the adrenals. For females, the NOEL was 10.8 mg/kg bw/day (100 ppm) and the LEL was 46.5 mg/kg bw/day (400 ppm) based on decreased body weights, decreased body weight gains, and histological changes in the adrenals.

iii. A 90–day dog-feeding study with a NOEL of 200 ppm (73.7 mg/kg bw/day in males and 73.4 mg/kg bw/day in females) and an LEL of 1,000 ppm (368.3 mg/kg bw/day in males and 351.8 mg/kg bw/day in females). The LEL was based on decreases in mean body weights, body weight gains, and food consumption, and an increase in liver *N*-demethylase activity.

5. *Chronic toxicity.* i. A 2–year rat chronic feeding study defined a NOEL of 7.4 mg/kg bw/day (100 ppm) and an LEL of 22.8 mg/kg bw/day (300 ppm) based on body weight depression, decreased hemoglobin, hematocrit, MCV and MCHC, and increased liver microsomal enzymes in females. Tebuconazole was not oncogenic at the dose levels tested (0, 100, 300, and 1,000 ppm).

ii. A 1–year dog feeding study with a NOEL of 1 mg/kg bw/day (40 ppm) and an LEL of 5 mg/kg bw/day (200 ppm), based on lenticular and corneal opacity and hepatic toxicity in either sex (the current Reference Dose was determined based on this study). A subsequent 1–year dog feeding study, using lower doses to further define the NOEL for tebuconazole, defines a systemic LOEL of 150 ppm (based on adrenal effects in both sexes) and a systemic NOEL of 100 ppm.

iii. A mouse oncogenicity study at dietary levels of 0, 20, 60, and 80 ppm for 21 months did not reveal any oncogenic effect for tebuconazole at any dose tested. Because the maximum-tolerated-dose (MTD) was not reached in this study, the study was classified as supplementary. A follow-up mouse study at higher doses (0, 500, and 1,500 ppm in the diet), with an MTD at 500 ppm, revealed statistically significant incidences of hepatocellular adenomas and carcinomas in males and carcinomas in females. The initial and follow-up studies, together with supplementary data were classified as core minimum.

6. *Animal metabolism.* A general rat metabolism study at dietary levels of 2 and 20 mg/kg showed rapid elimination from the rat in 3 days (some 99 percent excreted by the feces and urine and 0.0304 percent in expired air). Increased concentrations of radioactivity from the active ingredient and metabolites were found only in the liver. The bones and the brain were among the tissues showing the least amount of radioactivity.

7. *Metabolite toxicity.* The residue of concern in plants is the parent compound, tebuconazole, only. For animal commodities, the EPA has determined that the tolerance expression should include the HWG 2061 metabolite, α-[2-(4 -Chlorophenyl)-ethyl]-α-[(2-hydroxy-1,1-dimethyl)ethyl]-1*H*-1,2,4-triazole-1-ethanol. An acute oral toxicity study has been submitted to the EPA on this metabolite. This study shows an oral LD_{50} of >5,000 for female rats. This value indicates that the HWG 2061 metabolite is relatively innocuous and less acutely toxic than tebuconazole.

8. *Endocrine effects.* No special studies investigating potential estrogenic or endocrine effects of tebuconazole have been conducted. However, the standard battery of required studies has been completed. These studies include an evaluation of the potential effects on reproduction and development, and an evaluation of the pathology of the endocrine organs following repeated or long-term exposure. These studies are generally considered to be sufficient to detect any endocrine effects but no such effects were noted in any of the studies with either tebuconazole or its metabolites.

9. *Carcinogenicity.* EPA's Carcinogenicity Peer Review Committee (CPRC) has classified tebuconazole as a Group C carcinogen (possible human carcinogen). This classification is based on the Agency's ''Guidelines for Carcinogen Risk Assessment'' published in the Federal Register of September 24, 1986 (51 FR 33992). The Agency has chosen to use the reference dose calculations to estimate human dietary risk from tebuconazole residues. The decision supporting classification of tebuconazole as a possible human carcinogen (Group C) was primarily based on the statistically significant increase in the incidence of hepatocellular adenomas, carcinomas, and combined adenomas/carcinomas in both sexes of NMRI mice both by positive trend and pairwise comparison at the HDT.

C. Aggregate Exposure

1. *Dietary (food) exposure.* For purposes of assessing the potential dietary exposure from food under the proposed tolerances, Bayer has estimated exposure based on the Theoretical Maximum Residue Contribution (TMRC) derived from the previously established tolerances for tebuconazole on cherries, peaches, bananas, barley, oats, wheat, and peanuts as well as the proposed tolerances for tebuconazole on grapes at 5.0 ppm. The TMRC is obtained by

using a model which multiplies the tolerance level residue for each commodity by consumption data which estimate the amount of each commodity and products derived from the commodities that are eaten by the U.S. population and various population subgroups. In conducting this exposure assessment, very conservative assumptions — 100 percent of all commodities will contain tebuconazole residues, and those residues would be at the level of the tolerance — which result in a large overestimate of human exposure. Thus, in making a safety determination for these tolerances, Bayer took into account this very conservative exposure assessment.

2. *Dietary (drinking water) exposure.* There is no Maximum Contaminant Level established for residues of tebuconazole. Bayer was advised by the EPA's Environmental Fate and Ground Water Branch's (EFGWB) May 26, 1993 memorandum for our application for use on bananas and peanuts that all environmental fate data requirements for tebuconazole were satisfied. The EFGWB had determined that tebuconazole is resistant to most degradative processes in the environment, including hydrolysis, photolysis in water and aerobic and anaerobic metabolism. Only minor degradation occurred in soil photolysis studies. The photolytic half-life of tebuconazole is 19 days. Laboratory and field studies have shown that the mobility of tebuconazole in soil is minimal. Therefore, tebuconazole bears no apparent risk to ground water under most circumstances.

3. *Non-dietary exposure.* Although current registrations and the proposed use on grapes are limited to commercial crop production, Bayer has submitted an application to register tebuconazole on turf. Bayer has conducted an exposure study designed to measure the upper bound acute exposure potential of adults and children from contact with tebuconazole treated turf. The population considered to have the greatest potential exposure from contact with pesticide treated turf soon after pesticides are applied are young children. Margins of exposure of 1,518 to 8,561 for 10–year–old children and 1,364 to 7,527 for 5–year–old children were estimated by comparing dermal exposure doses to the tebuconazole no-observable effect level of 1,000 mg/kg/day established in a subacute dermal toxicity study in rabbits. The estimated safe residue levels for tebuconazole on treated turf for 10–year–old children ranged from 4.8 to 27.3 micrograms per square centimeter (μg/cm^2) and for 5–year–old children from 4.4 to 24.0 μg/cm^2. This compares with the average tebuconazole transferable residue level of 0.319 μg/cm^2 present immediately after the sprays have dried. These data indicate that children can safely contact tebuconazole-treated turf as soon after application as the spray has dried.

D. Cumulative Effects

At this time, the EPA has not made a determination that tebuconazole and other substances that may have a common mechanism of toxicity would have cumulative effects. Therefore, for this tolerance, only the potential risks of tebuconazole in its aggregate exposure are considered.

E. Safety Determination

1. *U.S. population.* Based on a complete and reliable toxicity database, the EPA has adopted an RfD value of 0.03 mg/kg/day. This RfD is based on a 1–year dog study with a NOEL of 2.96 mg/kg/day and an uncertainty factor of 100. Using the conservative exposure assumptions described above, Bayer has determined that aggregate dietary exposure to tebuconazole from the previously established and the proposed tolerances will utilize 7.1 percent of the RfD for the U.S. population (48 states) and 29.5 percent of the RfD for the most highly exposed population subgroup (children 1 to 6 years old). There is generally no concern for exposures below 100 percent of the RfD because the RfD represents the level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. Therefore, there is a reasonable certainty that no harm will result from aggregate exposure to tebuconazole.

2. *Infants and children.* In assessing the potential for additional sensitivity of infants and children to residues of tebuconazole, the data from developmental studies in both the rat and rabbit and a 2–generation reproduction study in the rat should be considered. The developmental toxicity studies evaluate any potential adverse effects on the developing animal resulting from pesticide exposure of the mother during prenatal development. The reproduction study evaluates any effects from exposure to the pesticide on the reproductive capability of mating animals through two generations, as well as any observed systemic toxicity.

A developmental toxicity study in the rat, a developmental toxicity study in the rabbit, two developmental studies in the mouse and a 2–generation rat reproduction study have been conducted with tebuconazole. Maternal and developmental toxicity NOELs of 30 mg/kg/day were determined in the rat and rabbit studies. An oral mouse developmental toxicity study had maternal and developmental toxicity NOELs of 10 mg/kg/day while the mouse dermal developmental study had a maternal NOEL of 30 mg/kg/day and a developmental toxicity NOEL of 1,000 mg/kg/day. The parental and reproductive NOELs in the 2–generation rat reproduction study were determined to be 15 mg/kg/day (300 ppm). In all cases, the reproductive and developmental NOELs were greater than or equal to the parental NOELs. Bayer concludes that this indicates that tebuconazole does not pose any increased risk to infants or children.

FFDCA section 408 provides that EPA may apply an additional safety factor for infants and children in the case of threshold effects to account for pre-and post-natal effects and the completeness of the toxicity database. Based on current toxicological data requirements, the toxicology database for tebuconazole relative to pre-and post-natal effects is complete. Further for tebuconazole, the NOEL of 2.96 mg/kg/bw from the 1–year dog study, which was used to calculate the RfD, is already lower than the NOELs from the developmental studies in rats (30 mg/kg bw/day) and rabbits (30 mg/kg bw/day) by a factor of 10 times. Since a 100–fold uncertainty factor is already used to calculate the RfD, Bayer surmises that an additional uncertainty factor is not warranted and that the RfD at 0.03 mg/kg/bw/day is appropriate for assessing aggregate risk to infants and children.

Using the conservative exposure assumptions, Bayer has determined from a chronic dietary analysis that the percent of the RfD utilized by aggregate exposure to residues of tebuconazole ranges from 9.2 percent for children 7 to 12 years old up to 29.5 percent for children 1 to 6 years old. EPA generally has no concern for exposure below 100 percent of the RfD. Therefore, based on the completeness and reliability of the toxicity data and the conservative exposure assessment, Bayer concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the residues of tebuconazole, including all anticipated dietary exposure and all other non-occupational exposures.

F. International Issues

No Codex Maximum Residue Level (MRL) have been established for residues of tebuconazole on any crops at this time. A Codex MRL of 2.0 ppm for residues of tebuconazole on grapes has been proposed. There are no established tolerances for tebuconazole in or on grapes in Canada and Mexico.

G. Mode of Action

Tebuconazole, the active ingredient of Folicur 3.6 F is a sterol demethylation inhibitor (DMI) fungicide. It is systemic and shows activity against powdery mildew and black rot infecting grapes. Tebuconazole provides protective activity by preventing completion of the infection process by direct inhibition of sterol synthesis. It is rapidly absorbed by plants and translocated systemically in the young growing tissues.

II. Public Record

EPA invites interested persons to submit comments on this notice of filing. Comments must bear a notification indicating the docket control number PF–705.

A record has been established for this notice docket under docket control number PF–705 (including any comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:
opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. The official record for this notice of filing, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in ADDRESSES at the beginning of this document.

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping.

Dated: February 19, 1997.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 97–5200 Filed 3–4–97; 8:45 am]

BILLING CODE 6560–50–F

[PF–579A; FRL–5587–1]

Novartis; Pesticide Petition Withdrawal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of withdrawal of pesticide petition.

SUMMARY: EPA is withdrawing a pesticide petition from Novartis (formerly known as Ciba-Geigy Corporation) for the combined residues of the insecticide cyromazine, (*N* cyclopropyl-1,3,5-triazine-2,4,6-triamine plus its major metabolite, melamine, 1,3,5-triazine-2,4-6-triamine) for use in or on certain commodites.

FOR FURTHER INFORMATION CONTACT: George T. LaRocca, Product Manager (PM) 13, Registration Division, (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M. St., SW., Washington, DC 20460. Office location, telephone number and e-mail address: Rm. 200, CM#2, 1921 Jefferson Davis Highway, Arlington, VA; 703–305–6100; e-mail: larocca.george@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA in a notice issued in the Federal Register of August 18, 1993 (58 FR 43892), announced that Novartis, P.O. Box 18300, Greensboro, NC 27419, had filed a pesticide petition (PP) 6F3422 proposing to amend 40 CFR part 180.414 to establish tolerances for the combined residues of the insecticide cyromazine, (*N* cyclopropyl-1,3,5-triazine-2,4,6-triamine plus its major metabolite, melamine, 1,3,5-triazine-2,4-6-triamine) for use in or on cabbage, sweet potatoes, sugar beets (roots and tops), and sorghum (grain, forage and fodder). The tolerances were to cover residues resulting from the planting of these crops as rotational crops following the harvest of cyromazine treated crops. On August 26, 1996 Novartis notified EPA that it requests that the petition be withdrawn without prejudice to future filing. The Agency has withdrawn the subject pesticide petition.

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural Commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 17, 1997.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 97–4884 Filed 3–4–97; 8:45 am]

BILLING CODE 6560–50–F

[PF–700; FRL–5586–1]

Rhone-Poulenc Ag Company; Pesticide Tolerance Petition Filing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of filing.

SUMMARY: This notice announces the filing of a pesticide petition proposing to establish tolerances for residues of thiodicarb and its metabolite in or on leafy vegetables, broccoli, cabbage and cauliflower. The notice includes a summary of the petition prepared by the petitioner, Rhone-Poulenc Ag Company.

DATES: Comments, identified by the docket control number [PF–700], must be received on or before, April 4, 1997.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted either as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be acceped on disks in Wordperfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket control number [PF–700]. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below this document.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. No CBI should be submitted through e-mail. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record.

Information not marked confidential may be disclosed publicly by EPA without prior notice.

FOR FURTHER INFORMATION CONTACT: Dennis H. Edwards, Jr. Product Manager (PM 19), Registration Division, (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC. Office location, telephone number and e-mail address: Rm., 207, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.; Telephone: 703–305–6386, e-mail: edwards.dennis@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions (PP) 6F3417 and 7F3516 from Rhone-Poulenc Ag Company, P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709. These petitions propose, pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act (FFDCA), 21 U.S.C. section 346a, to amend 40 CFR part 180 by establishing tolerances for the combined residues of the insecticide thiodicarb (Dimethyl *N,N*-[thiobis[[(methylimino) carbonyl]oxy]] bis [ethanimidothioate]) and its metabolite methomyl (*S*-methyl *N* [(methylcarbamoyl)oxy]-thioacetimadate) in or on the following raw agricultural commodities: leafy vegetables at 35 parts per million (ppm), broccoli at 7 ppm, cabbage at 7 ppm, and cauliflower at 7 ppm. The proposed analytical method is HPLC.

As required by section 408(d) of the FFDCA, as recently amended by the Food Quality Protection Act (FQPA), Rhone-Poulenc Ag Company included in the petition a summary of the petitions and authorization for the summary to be published in the Federal Register in a notice of receipt of the petition. The summary represents the views of Rhone-Poulenc Ag Company; EPA is in the process of evaluating the petition. As required by section 408(d)(3), EPA is including the summary as a part of this notice of filing. EPA may have made minor edits to the summary for the purpose of clarity.

I. Petition Summary

A. Residue Chemistry

The metabolism of thiodicarb in plants and animals is adequately understood. Adequate analytical methods are available for enforcement purposes. There are no livestock feed items associated with this petition; there are no problems of secondary residues in meat, milk, poultry or eggs.

B. Toxicological Profile

1. *Acute toxicity*. EPA evaluation of the three acute oral toxicity studies in rats indicated the LD_{50} in males and females to be >50 miligrams/kilograms (mg/kg). Based on the results of these studies, thiodicarb is placed in Toxicity Category II. The acute dermal toxicity study in rabbits resulted in a LD_{50} of >2,000 mg/kg for both males and females. The acute inhalation LC_{50} was found to be >0.56 mg/l in male and female rats. The primary eye irritation study showed iridal involvement and moderate to severe conjunctival irritation. All positive reactions cleared within 4 days and eyes had returned to a normal appearance by day 7 following treatment. There was no irritation in the primary dermal irritation study. Thiodicarb was a weak dermal sensitizer in guinea pigs.

Conclusion. Based on the acute toxicity data cited above, Rhone-Poulenc Ag Company concludes that thiodicarb does not pose any acute dietary risks.

2. *Mutagenicity*. Mutagenicity studies completed include *Salmonella typhimurium* mammalian microsome reverse mutation assay (negative), *Saccharomyces cerevisiae* reverse mutation (negative), mitotic crossing over (negative) and gene conversion (positive in strain D7 and negative in strain D4), primary DNA damage in *Escherichia coli* (negative), mouse lymphoma gene mutation assay (equivocal positive), chromosomal aberration assay in CHO cells (negative), UDS assay with primary rat hepatocytes (negative), *in vivo* micronucleus test in mouse bone marrow (negative) and dominant lethal test in rats (negative).

Conclusion. Thiodicarb was tested in a variety of mutagenicity assays and was negative in all but the mouse lymphoma assay, in which there was only a weak to equivocal response and for mitotic gene conversion in *Saccharomyces cerevisiae*. EPA has previously concluded that overall there is low concern for the mutagenicity of thiodicarb.

3. *Metabolism*. The metabolism of thiodicarb has been studied in several animal and plant species and studies submitted and accepted by EPA. The metabolism in plants and animals is adequately understood for the purposes of this tolerance.

4. *Chronic effect*. Based on the available chronic toxicity data, the Health Effects Division-RfD/Peer Review Committee of the EPA recommended in their RfD/Peer Review Report (Ghali, June 18, 1996) that the Reference Dose (RfD) for thiodicarb remain unchanged from the previously established value of 0.03 mg/kg/day. The recently completed rat studies support the no observed effect level (NOEL) of 3 mg/kg/day established in previous studies. An Uncertainty Factor (UF) of 100 was applied to account for both the interspecies extrapolation and intraspecies variability.

5. *Carcinogenicity*. The potential oncogenicity of thiodicarb has been fully evaluated by the EPA's Health Effects Division Carcinogenicity Peer Review Committee (CPRC) (Taylor and Rinde, June 10, 1996). The committee determined that the available database was adequate for the determination of the carcinogenicity of thiodicarb in animals and concluded that thiodicarb should be classified in Group B2. While Rhone-Poulenc disagrees with the classification of thiodicarb and the interpretation of the study results (as described below) Rhone-Poulenc agrees with the risk characterization procedure recommended by the CPRC and concurs that the recommended procedures are fully adequate to protect humans from dietary exposure to thiodicarb.

The CPRC recommended that a margin of exposure methodology be applied for the estimation of human risk because the findings observed in the oncogenicity studies occurred only at the highest doses tested in the studies and in the case of mice the highest dose tested may even have been excessive. In addition, there was no evidence of genotoxicity.

a. Rhone-Poulenc feels that the results in the most recent oncogenicity study in rats should not be considered indicative of a carcinogenic response in the Leydig cells of the rats for the following reasons:

i. Compared to the control groups, both sexes at the high dose level displayed fewer tumors and there were fewer with multiple benign and malignant tumors.

ii. There was a statistically significant decrease in pituitary adenomas in the high dose animals relative to controls (10 percent vs 56 percent) indicating more high dose than control animals had normal pituitaries at the end of the study. The incidence of pituitary adenomas is well below the historical control range (10 percent vs a range of 43 to 80 percent). Pituitary activity is known to be critical in the regulation of benign Leydig cell tumor formation through the secretion of luteinizing hormone. Increased pituitary activity in aged male rats would be expected to secondarily result in increased benign Leydig cell tumor formation.

iii. There was no statistical increase in benign interstitial cell tumors relative to the concurrent controls when all

animals were included in the statistical analysis.

iv. There is clear evidence that exposure to 900 ppm thiodicarb resulted in increased survival for male rats relative to controls. The 2 year survival rate for high dose males was 1.3 times that of controls (58 percent vs 45 percent, respectively). Benign interstitial cell tumors are very common age related tumors. Because survival was 1.3 times higher in the high dose group than in controls, the high dose animals should be expected to have a higher raw incidence of common age related tumors.

v. Benign interstitial cell tumors do not transform into a more aggressive form with time.

vi. Benign interstitial cell tumors are very common in rats and highly uncommon in humans. There is an absence of epidemiological evidence that Leydig cell tumors in rats are relevant for human health risk assessment. The Food and Drug Administration (FDA), and European regulatory authorities in general do not consider these findings to be relevant for human health risk assessment. Numerous scientific symposia/discussions have been held regarding the lack of relevance of rat Leydig cell changes for human risk assessment.

b. Rhone-Poulenc feels that the results in the most recent mouse oncogenicity study should not be considered indicative of a carcinogenic response in the liver cells of the mice for the following reasons:

i. The evidence shows that thiodicarb is not oncogenic in mice at doses which do not exceed the maximum tolerated dose (MTD).

ii. There was no evidence to suggest liver oncogenicity in the first mouse study at doses up to 10 mg/kg/day or in the second study at doses up to 70 mg/kg/day.

iii. In the second study where there was evidence suggestive of an oncogenic response in the liver, the MTD was significantly exceeded based on increased mortality in females and a dramatic body weight gain depression in the males. The body weight gains for males at 1,000 mg/kg/day were 54 percent of the control male gains during the first year of the study. The body weight gains for the 1,000 mg/kg/day group females were 85 percent of controls for the same time period. Survivability at 97 weeks was also significantly decreased in males (41 percent versus 58 percent in control males) and females (24 percent versus 51 percent in control females).

iv. Other evidence that the MTD was exceeded included severe and sustained liver toxicity demonstrated by increased liver weights, hepatocyte hypertrophy, single cell necrosis and hemosiderin deposition by 52 weeks and increased bilirubin and ALT, increased liver weight, hepatocyte hypertrophy, bile duct hyperplasia, hepatocyte pleomorphism and hemosiderin deposition at 97 weeks of treatment.

Conclusion. The oncogenicity studies with thiodicarb fully conform to the currently accepted guidelines for this study type. Rhone-Poulenc Ag Company believes that the results of the studies provide only minimal evidence that the compound is oncogenic in rodents. After analysis of the data, EPA scientists recently determined that a margin of exposure of 100 applied to the lowest NOEL from the chronic studies with thiodicarb would provide adequate safety for any risks to humans. Rhone-Poulenc agrees with this risk assessment approach and is confident that it will provide adequate safety for all human population subgroups including infants and children.

6. *Teratology.* Several teratology studies exist on thiodicarb in rats, rabbits, and mice. These are reviewed below:

a. A teratology study in rats was conducted at doses of 0, 0.5, 1.0, 3, and 100 mg/kg/day. No signs of teratogenicity were observed.

b. A teratology study was conducted in rats at doses of 0, 1, 10 and 30 mg/kg/day. No signs of teratogenicity were observed.

Data from both studies can be (and were by EPA) used to derive maternal and developmental NOELs and lowest observed effect levels (LOELs). Based on data from both studies, the maternal NOEL and LOEL were determined to be 10 and 20 mg/kg/day, respectively. The developmental NOEL and LOEL were determined to be 3 and 10 mg/kg/day, respectively, based on delayed ossification of sternebrae.

c. A teratology study in rabbits was conducted at doses of 0, 5, 20 and 40 mg/kg/day. No signs of teratogenicity were observed. The NOEL and LOEL for maternal toxicity were determined to be 20 and 40 mg/kg/day, respectively. The developmental NOEL was determined to be 40 mg/kg/day. As this was the highest level tested, no LOEL for developmental toxicity was determined.

d. A teratology study in mice was conducted at doses of 0, 50, 100 and 200 mg/kg/day. No signs of teratogenicity were observed. The maternal NOEL and LOEL were determined to be 100 and 200 mg/kg/day, respectively. As no fetal effects were observed at all, the developmental NOEL can be considered to be 200 mg/kg/day.

Conclusion. Based on all the studies above, Rhone-Poulenc Ag Company does not believe that thiodicarb is a teratogen, or that it presents any unreasonable risk to children.

7. *Reproductive effects.* Two reproduction studies were recently conducted with thiodicarb; one dose-rangefinding study and one definitive study.

a. In the dose-rangefinding study, rats were administered thiodicarb in their diets at concentrations of 0, 200, 600, 1,800, and 3,000 ppm. Maternal toxicity, as evidenced by decreased pup viability at birth and day 4, was seen at the three highest doses. Also at the three highest doses, decreased pup growth occurred. Therefore, the NOEL for both maternal and fetal effects was determined to be 200 ppm.

b. In the definitive study, thiodicarb was administered in the diets of rats at concentrations of 0, 100, 300, and 900 ppm. Fetal body weight gain at 100 ppm was significantly decreased when compared with concurrent controls resulting in the conclusion that, strictly speaking, no NOEL was reached for fetal effects in this study. An independent expert consulting firm was contracted with to statistically derive from these data a conservative NOEL for all effects. These experts concluded that a conservative NOEL for all effects would be 80 ppm, equivalent to an average daily dose of 5.20 mg/kg/day. EPA subsequently utilized a Benchmark Dose approach to estimate the NOEL for this study, and ultimately concluded that, based on all the data and all the different analyses of the data, 100 ppm is at or near the NOEL for reproductive/developmental toxicity. It is significant, too, that this NOEL is higher than the NOEL from the chronic toxicity/oncogenicity study in rats, where the NOEL is used to determine the Reference Dose for thiodicarb.

Conclusion. Based on the studies cited above, Rhone-Poulenc Ag Company believes that thiodicarb does not pose an unreasonable risk of reproductive effects to parents or their offspring. Further, as none of the effects observed in the cited studies are classically related to any specific endocrine mechanism, Rhone-Poulenc Ag Company believes that thiodicarb is not an endocrine disrupter.

C. Aggregate Exposure/Cumulative Effects

The Dietary Analysis for the Proposed Use of thiodicarb on leafy vegetables has been run by EPA and summarized in a document dated June 17, 1991 (Schaible, S.A.). Using the Theoretical

Maximum Residue Contributions (TMRC) calculated from the tolerances and estimated consumption data for various populations (very conservative estimates) a value of 0.019213 is obtained for the TMRC which represents 64.0 percent of the established reference dose was reached for the overall U.S. population. The Dietary Analysis for the Proposed Use of thiodicarb on broccoli, cabbage and cauliflower has been run by EPA and summarized in a document dated July 9, 1990 (Briggs, R.). Using the TMRC calculated from the tolerances and estimated consumption data for various populations (very conservative estimates). A value of 0.015225 is obtained for the TMRC which represents 50.8 percent of the established reference dose utilized for the overall U.S. population. None of the population subgroups exceeded the 100 percent level of the reference dose. This value includes all pending and published tolerances, including apples, tomatoes and peppers for which Rhone-Poulenc Ag Company does not currently have a registration. This is a large overestimation of the actual dietary exposure to thiodicarb because it assumes 100 percent of crops treated and maximum residue levels present.

The FQPA of 1996 lists three other potential sources of exposure to the general population that must be addressed, these are pesticides in drinking water, exposure from non-occupational sources, and the potential cumulative effect of pesticides with similar toxicological modes of action. Based on the available studies of thiodicarb in the environment which show a short half-life in soil (1.5 days), Rhone-Poulenc Ag Company does not anticipate residues of thiodicarb in drinking water. There is no established Maximum Concentration Level or Health Advisory Level for thiodicarb under the Safe Drinking Water Act.

The potential for non-occupational exposure to the general public is also insignificant. There are no residential lawn or garden uses for thiodicarb products where the general population may be exposed via inhalation or dermal routes.

Rhone-Poulenc concludes that consideration of a common mechanism of toxicity is not appropriate at this time since there is no reliable data to indicate that the toxic effects caused by thiodicarb would be cumulative with those of any other compound. Based on this point, Rhone-Poulenc has considered only the potential risks of thiodicarb in it's exposure assessment.

D. Safety Determinations

1. *U.S. population in general.* Using the very conservative exposure estimates described above, the conclusion reached is that aggregate exposure to thiodicarb will utilize no more than 64 percent of the established reference dose. Rhone-Poulenc Ag Company has conducted a preliminary Dietary Risk Exposure Study (DRES) with TAS, Inc. which utilizes actual data (where available) for percent crops treated and residue data from FDA and Cal-EPA monitoring programs (no detectable residues of thiodicarb were observed in these databases, so as a conservative estimate, all methomyl residues were assumed to result from thiodicarb use). Only registered and conditionally registered uses (including leafy vegetables, broccoli, cabbage and cauliflower) were included in the analysis. The study concluded that chronic exposure estimates are well below the endpoints of concern. Chronic exposure estimates are 0.1 percent of the RfD or less for all population groups. Based on this study and the above points, Rhone-Poulenc Ag Company believes there is a reasonable certainty that no harm will result from aggregate exposure to thiodicarb.

2. *Infants and children*. Referring to the conclusions and summary in the Developmental and Reproductive Toxicity section stated above, Rhone-Poulenc Ag Company believes there is no additional sensitivity for infants and children and that an additional safety factor for infants and children is not warranted. The RfD of 0.03 mg/kg/day is appropriate for assessing aggregate risk to this subpopulation. For the infant and children (1 to 6 years of age) populations only 0.1 percent of the reference dose was used in the DRES study discussed above.

Based on the completeness and reliability of the toxicology data and the dietary analysis Rhone-Poulenc Ag Company concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to thiodicarb residues.

E. International Tolerances

There are no Codex maximum residue levels established for thiodicarb on leafy vegetables, broccoli, cabbage or cauliflower.

II. Public Record

EPA invites interested persons to submit comments on this notice of filing. Comments must bear a notification indicating the docket control number [PF–700].

A record has been established for this notice under docket control number [PF–700] (including comments and data submitted electronically as described below). A public version of this record, including printed paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official notice record which will also include all comments submitted directly in writing. The official notice record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

Authority: 21 U.S.C. 346a.

List of Subjects

Environmental Protection, Administrative practice and procedure, Agricultural commodities, Pesticide and pest, Reporting and recordkeeping requirements.

Dated: February 10, 1997.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 97–4879 Filed 3–4–97; 8:45 am]

BILLING CODE 6560–50–F

[OPP–181034; FRL 5591–2]

Bifenthrin; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Washington

Department of Agriculture (hereafter referred to as the ''Applicant'') to use the pesticide bifenthrin (CAS 82657–04–3 *cis* and 83322–02–5 *trans*), formulated as Brigade WSB, to treat up to 9,500 acres of raspberries to control weevils. This is the fifth year this use has been requested, and it has been allowed under section 18 for the past 4 years. Since this request proposes a use which has been requested or granted in any 3 previous years, and a complete application for registration and petition for tolerance has not yet been submitted to the Agency, EPA is soliciting public comment before making the decision whether or not to grant the exemption, in accordance with 40 CFR 166.24(a)(6).

DATES: Comments must be received on or before March 20, 1997.

ADDRESSES: Three copies of written comments, bearing the identification notation ''OPP–181034,'' should be submitted by mail to: Public Response and Program Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–181034]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1132, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Andrea Beard, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number and e-mail: Floor 6, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA, (703) 308–8791; e-mail: beard.andrea@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a state agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption. The Applicant has requested the Administrator to issue a specific exemption for the use of bifenthrin on raspberries to control weevils. Information in accordance with 40 CFR part 166 was submitted as part of this request.

According to the Applicant, this emergency exists because of the loss of the chlorinated hydrocarbon insecticides. Initially, raspberry growers obtained some relief through use of carbofuran under an exemption; however, that use was later disallowed due to groundwater concerns. Exemptions were then issued for several years for use of permethrin, but discontinued as the Applicant opted to request bifenthrin instead, due to claims that use of permethrin disrupted natural controls of other raspberry pests, leading to population flare-ups of these pests (primarily mites). This use of bifenthrin has been allowed under section 18 for the past four years, and the Applicant states that alternative controls are not adequate to prevent significant economic losses due to damage and contamination problems from weevils.

Under the proposed exemption, bifenthrin would be applied at a rate of 0.1 lb. a.i. per acre, with no more than 2 applications during the growing season, not to exceed the rate of 0.2 lb. a.i. per acre using ground equipment only. If all 9,500 acres are treated at this maximum rate, this could potentially result in a total use of 1,900 lb. a.i.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require publication of a notice of receipt of an application for a specific exemption proposing a use which has been requested or granted in any 3 previous years, and a complete application for registration and/or tolerance petition has not been submitted to the Agency [40 CFR 166.24 (a)(6)]. Such notice provides for opportunity for public comment on the application.

A record has been established for this notice under docket number [OPP–181034] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document. Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Washington Department of Agriculture.

List of Subjects

Environmental protection, Pesticides and pests, Emergency exemptions.

Dated: February 19, 1997.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 97–5199 Filed 3–4–97; 8:45 am]

BILLING CODE 6560–50–F

[OPP–181033; FRL 5591–1]

Chlorfenapyr; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Texas Department of Agriculture (hereafter referred to as the ''Applicant'') to use the pesticide chlorfenapyr (CAS 122453–73–0), formulated as Pirate 3SC, to treat up to 1.8 million acres of cotton to control the beet armyworm (BAW).The Applicant proposes the use of a new (unregistered) chemical. Therefore, in accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before March 20, 1997.

ADDRESSES: Three copies of written comments, bearing the identification notation ''OPP–181033,'' should be submitted by mail to: Public Response and Program Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–181033]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1132, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Andrea Beard, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number and e-mail: Floor 6, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA, (703) 308–8791; e-mail: beard.andrea@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a state agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption. The Applicant has requested the Administrator to issue a specific exemption for the use of chlorfenapyr on cotton to control beet armyworm. Information in accordance with 40 CFR part 166 was submitted as part of this request.

According to the Applicant, three primary factors have brought about this situation. These are: (1) the resistance to registered alternative pesticides causing control failures when these products are applied on cotton to control BAW; (2) the weather conditions consisting of mild winters and unusually dry hot weather were conducive to a BAW outbreak, and (3) BAW infesting cotton in unusually large numbers. Yield losses due to infestations of beet armyworms in cotton have ranged from 0 percent with light populations to 100 percent, due to the crop being completely devoured or the grower abandoning the field. Combining estimates from the Texas Agricultural Extension Entomologists from the various areas of infestation, at least 40 percent yield losses may occur on approximately 35 percent of the cotton acreage in the requested sites. These yield losses will result in significant economic losses for the cotton producers.

Under the proposed exemption, chlorfenapyr may be applied at a rate of 0.2 lb. a.i. per acre, with no more than 2 applications during the growing season, not to exceed the rate of 0.4 lb. a.i. per acre using ground or aerial equipment. If all 1.8 million acres are treated at this maximum rate, this could potentially result in a total use of 720,000 lb. a.i., or 239,907 gal. of product.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require publication of a notice of receipt of an application for a specific exemption proposing use of a new chemical (i.e., an active ingredient not contained in any currently registered pesticide), [40 CFR 166.24 (a)(1)]. Such notice provides for opportunity for public comment on the application.

A record has been established for this notice under docket number [OPP–181033] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document. Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Texas Department of Agriculture.

List of Subjects

Environmental protection, Pesticides and pests, Emergency exemptions.

Dated: February 25, 1997.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 97–5306 Filed 3–4–97 8:45 am]

BILLING CODE 6560–50–F

[OPP–181032; FRL 5588–6]

Pyriproxyfen and Buprofezin; Receipt of Application for Emergency Exemptions, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received specific exemption requests from the California Environmental Protection Agency, Department of Pesticide Regulation (hereafter referred to as the ''Applicant'') to use the insect growth regulators pyriproxyfen (CAS 95737–68–1) and buprofezin (CAS 69327–76–0) to treat up to 100,000 acres of cotton to control the sweet potato, or silverleaf whitefly *Bemesia species*. In the case of pyriproxyfen, the Applicant proposes the first food use of an active ingredient. Buprofezin is an unregistered material, and its proposed use is thus use of a ''new'' chemical. Therefore, in accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemptions.

DATES: Comments must be received on or before March 20, 1997.

ADDRESSES: Three copies of written comments, bearing the identification notation ''OPP–181032,'' should be submitted by mail to: Public Response and Program Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–181032]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1132, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Andrea Beard, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. Office location, telephone number and e-mail: Floor 6, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA, (703) 308–8791; e-mail: beard.andrea@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a state agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption. The Applicant has requested the Administrator to issue specific exemptions for the use of pyriproxyfen and buprofezin on cotton to control the sweet potato, or silverleaf whitefly (SLW). Information in accordance with 40 CFR part 166 was submitted as part of this request.

The Applicant states that a new strain or possibly a new species, of whitefly, often referred to as the strain B of sweet potato whitefly, or silverleaf whitefly (SLW), has been a major pest of cotton in California since 1991. Since that time, it has steadily spread to new host plants and grown in population size each summer and fall. The SLW causes damage by feeding, and also through the production of honeydew, which encourages growth of sooty mold and other fungi, and leads to sticky cotton. When SLWs become numerous, their direct feeding lowers the yield. The SLW has also been implicated as a vector of virus. The Applicant claims that adequate control of the SLW is not being achieved with currently registered products and alternative cultural practices.

The Applicant points out that the ability to adequately control this pest is further complicated because of the close proximity of these California cotton-growing areas to that of Arizona where large populations of whitefly have demonstrated resistance to available insecticidal control. It has also been demonstrated that there are whitefly populations in California with resistance problems to those being experienced in Arizona. The Applicant indicates that one application of either one or the other of the requested chemicals would not provide adequate control throughout the season, and since application of either would be limited to one, is requesting the use of both materials. The Applicant indicates that without adequate control of the SLW in cotton, significant economic losses will be suffered.

The Applicant proposes to apply pyriproxyfen at a rate of 0.054 lb. active ingredient (a.i.) per acre with a maximum of one application per crop season on up to 100,000 acres of cotton. The Applicant proposes to apply buprofezin at a rate of 0.35 lb., a.i. per acre with a maximum of one application per crop season on up to 100,000 acres of cotton. Therefore, use under these exemptions could potentially amount to a maximum total of 5,400 lbs. of pyriproxyfen and 35,000 lbs. of buprofezin.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require publication of a notice of receipt in the Federal Register for an application for a specific exemption proposing the first food use of an active ingredient, or for use of a new (unregistered) chemical. Such notice provides for opportunity for public comment on the application.

A record has been established for this notice under docket number [OPP–181032] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document. Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the California Department of Pesticide Regulation.

List of Subjects

Environmental protection, Pesticides and pests, Emergency exemptions.

Dated: February 19, 1997.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 97–5198 Filed 3–4–97; 8:45 am]

BILLING CODE 6560–50–F

[FRL–5699–4]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the Office of Management and Budget's (OMB) responses to Agency clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et. seq.*). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer, (202) 260–2740; please refer to the appropriate EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests

OMB Approvals

EPA ICR No. 1746.01; NESHAP for Elastomers—40 CFR 63, Subpart U; was approved 02/04/97; OMB No. 2060–0356; expires 02/28/2000.

EPA ICR No. 0613.06; Trade Secret Clearance Justification; was approved 02/06/97; OMB No. 2070–0053; expires 02/28/2000.

EPA ICR No. 1001.06; Polychlorinated Biphenyls (PCBs); Exclusions, Exemptions, and Use Authorizations; was approved 02/19/97; OMB No. 2070–0008; expires 02/28/2000.

EPA ICR No. 1687.03; National Emission Standards for Hazardous Air Pollutants for Aerospace Manufacturing and Rework Operations; was approved 02/19/97; OMB No. 2060–0314; expires 09/30/98.

EPA ICR No. 1587.04; Part 70 Operating Permits Regulations; was approved 02/20/97; OMB No. 2060–0243; expires 02/28/2000.

EPA ICR No. 1415.03; NESHAP for Dry Cleaning Facilities/Perchloroethylene (PCE)–(63, M) was approved 02/20/97; OMB No. 2060–0234; expires 02/28/2000.

EPA ICR No. 0262.08; RCRA Hazardous Waste Permit Application and Modification, Part A; was approved 09/30/96; OMB No. 2050–0034; expires 10/31/99.

EPA ICR No. 0574.10; Addendum to Existing ICR to Include the Final Rule for Certain Microbial Products of Biotechnology; was approved 02/19/97; OMB No. 2070–0012; expires 02/28/2000.

Extension of Expiration Dates

EPA ICR No. 1665.01; Confidentiality Rules; expiration date was extended from 02/28/97 to 04/30/97.

EPA ICR No. 1759.01; Worker Protection Standard; expiration date was extended from 02/28/97 to 05/31/97.

Dated: February 27, 1997.

Joseph Retzer,

Director, Regulatory Information Division

[FR Doc. 97–5420 Filed 3–4–97; 8:45 am]

BILLING CODE 6560–50–M

[FRC–5699–7]

Release of Volume 2, Risk Assessment and Risk Management in Regulatory Decision-Making; Commission on Risk Assessment and Risk Management

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Commission on Risk Assessment and Risk Management, established as an Advisory Committee under Section 303 of the Clean Air Act Amendments of 1990, will release Volume 2, of its two-volume final report, Risk Assessment and Risk Management in Regulatory Decision-Making, on March 7, 1997. Volume 1 was released in a public meeting held on January 29, 1997.

If you wish to receive a copy of the final report, either fax your request to 202–233–9540, mail your request to the Commission on Risk Assessment and Risk Management, 529 14th Street, NW, Room 420, Washington, DC 20045, or obtain via the internet at http://www.riskworld.com. Be sure to indicate your complete mailing address and a phone number where you can be reached. If you have already requested a copy of the draft report, or a copy of Volume 1, it is not necessary to send another request. Everyone who requested a copy earlier will be sent Volume 2.

If you need additional information, please call 202–233–9537. The report will not be available prior to March 7, 1997.

Dated: February 27, 1997.

Gail Charnley,

Executive Director, Commission on Risk Assessment and Risk Management.

[FR Doc. 97–5417 Filed 3–4–97; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Open Meeting on Implementation of the Hotel and Motel Fire Safety Act of 1990

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of open meeting.

SUMMARY: FEMA announces the following open meeting:

NAME: United States Fire Administration.

DATE OF MEETING: March 12, 1997.

PLACE: Federal Emergency Management Agency, U.S. Fire Administration, Building N, Room 309, 16825 South Seton Avenue, Emmitsburg, MD 21727.

TIME: 9:30 a.m.

PROPOSED AGENDA: Presentation on the Hotel and Motel Fire Safety Act, recent amendments to reporting requirements, successor standards, applicability to the hospitality industry, colleges and universities. Open discussion on these and other related issues.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public with approximately 10 seats available on a first-come, first-served basis. Members of the general public who plan to attend the meeting should contact John Ottoson, U.S. Fire Administration, 16825 South Seton Avenue, Emmitsburg, MD 21727, (301) 447–1272, on or before Monday, March 10, 1997.

Minutes of the meeting will be prepared and will be available for public viewing in the Office of the U.S. Fire Administrator, Federal Emergency Management Agency, 16825 South Seton Avenue, Emmitsburg, MD 21727. Copies of the minutes will be available upon request 30 days after the meeting.

Dated: February 27, 1997.

Donald G. Bathurst,

Deputy Administrator.

[FR Doc. 97–5380 Filed 3–4–97; 8:45 am]

BILLING CODE 6718–08–P

FEDERAL TRADE COMMISSION

[File No. 971–0009]

American Home Products Corporation; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, will settle antitrust concerns stemming from the Madison, New Jersey-based company's proposed acquisition of Solvay, S.A.'s animal health business. The complaint accompanying the consent agreement alleges that the proposed $463 million acquisition would give American Home Products a dominant position in the market for canine lyme vaccines, canine corona virus vaccines, and feline leukemia vaccines. The agreement would require, among other things, that American Home Products divest Solvay's U.S. and Canadian rights to the three types of vaccines to the Schering-Plough Corporation or another Commission-approved buyer.

DATES: Comments must be received on or before May 5, 1997.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: William J. Baer, Federal Trade Commission, H–374, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580. (202) 326–2932; George S. Cary, Federal Trade Commission, H–374, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580. (202) 326–3741; Casey R. Triggs, Federal Trade Commission, S–2308, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580. (202) 326–2804.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the accompanying complaint. An electronic copy of the full text of the consent agreement package can be obtained from the Commission Actions section of the FTC Home Page (for February 25, 1997), on the World Wide Web, at ''http://www.ftc.gov/os/actions/htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission (''Commission'') has accepted, subject to final approval, an agreement containing a proposed Consent Order from American Home Products Corporation (''AHP'') under which AHP would divest Solvay S.A.'s (''Solvay''), canine lyme vaccine, canine corona virus combination vaccines and feline leukemia combination vaccines. The agreement is designed to remedy the anticompetitive effects resulting from AHP's acquisition of Solvay's animal health business.

The proposed Consent Order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed Order.

The proposed complaint alleges that the proposed acquisition, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, in the markets for canine lyme vaccine, canine corona virus combination vaccines and feline leukemia combination vaccines.

The canine lyme, canine corona virus combination and feline leukemia combination vaccines are the only effective method to prevent certain companion animal diseases. These vaccines work by exposing the host animal's own immune system to specific antigens for the disease. These antigens in turn stimulate the immune system's production of antibodies, which protect the host animal against future exposure to the disease.

Companion animal vaccine manufacturers sell vaccines such as canine lyme, canine corona virus combination and feline leukemia combination to veterinarians, who then charge consumers when they bring their companion animals in for treatment. Veterinarians rely on competition among the vaccine manufacturers to drive down the cost of services they provide. Where a single vaccine manufacturer controls a large share of a vaccine market, that manufacturer is able to extract higher prices as a result.

AHP's proposed acquisition of Solvay's animal health business would give the combined entity a dominant position in the canine lyme, canine corona virus combination and feline leukemia combination vaccine markets. As a result, the combined entity would have the ability to raise prices in each of these markets. Furthermore, entry into these markets is difficult and time consuming because of lengthy development periods and the need for approvals by the United States Department of Agriculture (''USDA'') and is unlikely to offset the competitive harm that would result from the combination of AHP and Solvay's animal health business.

The proposed consent order requires AHP to divest certain assets to Schering-Plough, Ltd. (''Schering-Plough'') relating to Solvay's canine lyme, canine corona virus combination and feline leukemia combination vaccines including, but not limited to, master seeds and cell stock, know-how, intellectual property and research and development. In addition, AHP is required to assist Schering-Plough in obtaining USDA certification. These

assets in the hands of Schering-Plough are sufficient to replace the lost competition that would result from the acquisition.

Public comments regarding all aspects of the proposed divestiture to Schering-Plough will be considered with other comments on the proposed Order.

Under the proposed Order, if Schering-Plough ceases to sell contract manufactured canine lyme, canine corona virus combination and feline leukemia combination vaccines prior to obtaining USDA certification, abandons its efforts to obtain USDA approval, or fails to obtain timely USDA approval, or in the event AHP fails to divest the assets absolutely and in good faith, the Commission may terminate the divestiture agreement and appoint a trustee to divest Solvay's canine lyme vaccine, canine corona virus combination vaccines, and feline leukemia combination vaccines, as well as Solvay's Charles City Facility and equine vaccines. The crown jewel provision also includes, at AHP's discretion, a supply contract for a term not to exceed (3) three years from the date of the divestiture, which requires the new acquirer to supply AHP (i) any swine or poultry vaccines for sale worldwide, (ii) any canine lyme vaccine, canine corona virus combination vaccines and feline leukemia combination vaccines for sale by AHP outside the United States and Canada and (iii) single antigen rabies vaccine and feline leukemia combination vaccine with rabies for sale worldwide being produced at the Charles City Facility at the time of divestiture, priced at each vaccine's average total cost. This crown jewel provision will ensure that a trustee can divest a package of assets that is sufficiently attractive to potential buyers.

Under the provisions of the proposed Order, AHP is also required to provide the Commission with a report of compliance with the divestiture provisions of the Order within sixty (60) days following the date this Order becomes final, and every ninety (90) days thereafter until AHP has fully complied with the divestiture provisions of the proposed Order.

The purpose of this analysis is to facilitate public comment on the proposed Order, and it is not intended to constitute an official interpretation of the agreement and proposed Order or to modify in any way their terms.

Donald S. Clark,

Secretary.

Concurring Statement of Commissioner Mary L. Azcuenaga in American Home Products Corp., File No. 971–0009

I concur in the decision to accept the consent agreement for public comment and write separately to invite comment on whether and when the Commission should require the firm divesting assets to give up patent rights beyond those acquired in the transaction at issue. Paragraph IID of the proposed order requires American Home Products (AHP) not only to license the intellectual property that is acquired from Solvay S.A., but also to agree not to sue the acquiring firm for infringement of vaccine patents that AHP owned before the acquisition. The firm purchasing the divested assets will obtain Solvay's intellectual property free and clear of any claim that the Solvay vaccines infringe AHP's patents. Should the Commission resolve the patent dispute regarding whether Solvay's vaccines infringed AHP's patents, and if so, how should such a dispute be resolved?

[FR Doc. 97–5343 Filed 3–4–97; 8:45 am]

BILLING CODE 6750–01–M

[File No. 942–3341]

Schering-Plough Healthcare Products, Inc.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, the marketer of Coppertone Kids sunscreens for children from making deceptive claims about the effectiveness of sunscreens marketed for use on children. The agreement will also require that the company produce and distribute 150,000 consumer education brochures to alert parents to the importance of sunscreen protection for children and the need to reapply sunscreens after toweling or sustained vigorous activity. The complaint accompanying the consent agreement alleges that Schering's ads for Coppertone Kids 6-Hour Waterproof Sunblock make unsubstantiated claims that one application of Coppertone Kids provides six hours of protection from the sun for children engaged in sustained vigorous activity in and out of the water.

DATES: Comments must be received on or before May 5, 1997.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Joel Winston, Federal Trade Commission, S–4002, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580. (202) 326–3153; Toby Milgrom Levin, Federal Trade Commission, S–4002, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580. (202) 326–3156.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the accompanying complaint. An electronic copy of the full text of the consent agreement package can be obtained from the Commission Actions section of the FTC Home Page (for February 18, 1997), on the World Wide Web, at ''http://www.ftc.gov/os/actions/htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Schering-Plough Healthcare Products, Inc. (''Schering-Plough Healthcare''). Schering-Plough Healthcare, a wholly-owned subsidiary of the Schering-Plough Corporation, is a manufacturer and distributor of health care products, including sunscreens.

The proposed consent order has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received

during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter involves alleged deceptive representations made in advertising for Coppertone Kids, a sunscreen product promoted for use on children. According to the FTC complaint, Schering-Plough Healthcare represented, without adequate substantiation, that a single application of Coppertone Kids provides six hours of protection from the sun, at the advertised SPF level, for children engaged in sustained vigorous activity in and out of the water. The complaint also alleges that Schering-Plough Healthcare falsely represented that it had conducted tests demonstrating that the product provides such protection. According to the complaint, among other things, the company's tests did not evaluate a single application of the product under the advertised conditions of use (sustained vigorous activity).

The consent order contains provisions designed to remedy the violations charged and to prevent Schering-Plough Healthcare from engaging in similar acts and practices in the future.

Part I of the proposed order prohibits Schering-Plough Healthcare from representing: (a) the length of time that Coppertone Kids or any other children's sun protection product will provide protection from the sun for persons engaged in sustained vigorous activity in and out of the water; or (b) the efficacy of any children's sun protection product in providing protection against any harmful effect of sun exposure or ultraviolet radiation, unless the company has scientific substantiation for the representation.

The order defines a ''children's sun protection product'' as any sun protection product that uses the word ''babies,'' ''children,'' ''kids,'' or other similar words in the name or promotion of the product, or that is advertised or promoted for use primarily on children under the age of twelve.

Part II of the proposed order prohibits Schering-Plough Healthcare from misrepresenting the existence, contents, validity, or conclusions of any test or study concerning any sun protection product.

Part III of the order allows Schering-Plough Healthcare to make any representation for a sun protection product that is specifically permitted in labeling for that product under any tentative final or final Food and Drug Administration standard or under any new drug application approved by the Food and Drug Administration.

Part IV of the proposed order requires Schering-Plough Healthcare to produce and disseminate a consumer brochure addressing the importance of sunscreen usage to children and the health benefits associated with it, and promoting the proper use and application of sunscreens on children. The brochure, which is subject to FTC approval, will be disseminated by Schering-Plough Healthcare to organizations with direct access to parents or organizations with access to parents or others who work with or care for children under the age of 12.

Parts V, VII, IX, and X of the proposed order require Schering-Plough Healthcare to keep copies of all materials relied upon in making any representations covered by Parts I and II of the order; to provide copies of the order to certain of the company's personnel; to notify the Commission of any change in corporate structure; and to file compliance reports with the Commission. Part VI permits respondent to use existing labeling for 100 days after the date of service of the order. Part VIII provides that the order will terminate after twenty (20) years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

Separate Statement of Commissioner Mary L. Azcuenaga Concurring in Part and Dissenting in Part in Schering-Plough Healthcare, File No. 942 3341

Today, the Commission accepts for public comment a proposed consent agreement resolving allegations about certain claims in the advertising of Coppertone Kids 6-Hour Waterproof Sunblock. I concur except with respect to Part IV of the proposed order, which requires the respondent to develop and disseminate a consumer education brochure addressing the dangers of unprotected exposure to the sun. Consumer education brochures are an integral part of the Commission's consumer protection program, but they are not necessarily defensible adjuncts to Commission orders.

A fencing-in provision will be sustained by the courts as long as it is ''reasonably related'' to the violation found.[1] Fencing-in relief properly may include requirements beyond simply prohibiting the challenged conduct that are designed to ''close all roads to the prohibited goal, so that [the Commission's] order may not be by-passed with impunity.''[2] The allegedly deceptive claim is that the respondent's sunblock for children would remain effective for six hours even if the children engaged in ''sustained vigorous activities in and out of the water,'' such as playing in sand, taking off and putting on clothes and toweling off after swimming. Complaint ¶5. The proposed order expressly enjoins the respondents from making the challenged claim, either directly or indirectly, for the product at issue as well as for ''any other children's sun protection product.'' Order ¶I.

In addition, the proposed order requires the respondent to develop and distribute 150,000 copies of a color brochure concerning the importance of sunscreen usage by children. The order requires that the brochure contain six messages or themes only one of which addresses the issue in this case, the need to reapply so-called water-proof or water-resistant sunblock after vigorous activity or after toweling off. Order ¶ IV–E.

The brochure requirement, even the message that relates most closely to the challenged claim, is not focused on preventing the respondent from making the challenged claim or otherwise from avoiding compliance with the order. The brochure would help educate consumers regarding an important health issue, and, presumably, make them less likely to be misled by the kind of implied claims challenged in this action.[3] There is no reason to think that it would enhance the deterrent effect of the order on Schering.

Presumably, the brochure requirement will not be unduly burdensome or costly for Schering because it will promote the use of its product, and the brochure is undoubtedly commendable as a public health initiative. Nevertheless, under the circumstances, it is an overly broad order requirement as measured against the current standard for ordering relief.[4] There is a

[1] FTC v. Colgate-Palmolive Co., 380 U.S. 374, 394–95 (1965); FTC v. National Lead Co., 352 U.S. 419, 428 (1957).

[2] FTC v. Ruberoid Co., 343 U.S. 470, 473 (1952).

[3] The product label already contains the statement, ''Reapply after toweling.''

[4] It would be even more difficult to justify Part IV of the order as corrective advertising, because it is unlikely that the implied claim challenged in the complaint would linger in the minds of consumers long after it ceased being made. *See Warner-Lambert Co.* v. *FTC,* 562 F.2d 749, 762 (D.C. Cir. 1977), cert. denied, 435 U.S. 950 (1978).

value to the Commission in maintaining the integrity of the standard for imposing a fencing-in remedy.

I respectfully dissent from Part IV of the order.

Separate Statement of Commissioner Roscoe B. Starek, III Concurring in Part and Dissenting in Part in Schering-Plough Healthcare, File No. 9423341

I have voted to accept for public comment the consent agreement with Schering-Plough Healthcare Products, Inc. (''Schering''), because I have reason to believe that the challenged advertisements are deceptive and I find that the proposed order, for the most part, provides appropriate relief. I do not, however, support the requirement that Schering produce and distribute a consumer education brochure that includes numerous specified ''messages or themes.'' As set forth in the proposed order, this consumer education remedy is overbroad and in any event is unlikely to assist in the prevention of the violations alleged in the complaint. Although I am an advocate of a strong Commission consumer education program, and we can be proud of the valuable work done by the Bureau of Consumer Protection's Office of Consumer and Business Education, this remedy is a well-meaning but not legally justifiable effort to fund a general consumer education campaign.

The Commission enjoys extensive authority to fashion fencing-in relief for deceptive practices so long as the remedy has a reasonable relation to the violations alleged in the complaint. *See, e.g., FTC* versus *Colgate-Palmolive Co.,* 380 U.S. 374, 394–95 (1965); *FTC* versus *National Lead Co.,* 352 U.S. 419, 428–29 (1957). With such authority, however, comes the responsibility to exercise it judiciously. In my view, the consumer education remedy mandated by this proposed order bears no reasonable relationship to the violations alleged in the complaint.

The proposed complaint alleges that Schering lacked a reasonable basis for the claim that a single application of Coppertone Kids provides six hours of protection from the sun for children engaged in sustained vigorous activity in and out of the water.[1] The order addresses this allegation by requiring scientific substantiation for claims about the efficacy of any children's sun protection product in providing protection against any harmful effect of sun exposure or ultraviolet radiation, or about the length of time that any such product will provide sun protection for individuals engaged in sustained vigorous activity in and out of the water.

In addition, however, the order would require Schering to design, produce and print a brochure—subject to the approval of the Associate Director of the Division of Advertising Practices (''DAP'') in the Commission's Bureau of Consumer Protection—about the importance of sunscreen usage by children. The order mandates that the brochure include all of the following ''messages or themes'':

(A) The importance of sunscreens in preventing skin damage, including skin cancer, sunburn, and premature skin aging;

(B) Regular use of a high SPF sunscreen during childhood can significantly reduce the risk of certain types of skin cancers later in life;

(C) A single bad sunburn during childhood can significantly increase a child's risk of developing skin cancer later in life;

(D) The importance of proper application of sunscreens;

(E) The need to reapply sunscreens after toweling or sustained vigorous activity; and

(F) The need to use sunscreens during outdoor activities—not only in connection with water activities.

Order ¶ IV. The respondent must disseminate 150,000 copies of this brochure to parents or to organizations with access to parents or others who work with or care for children under age twelve.[2]

Of the six required messages, only statement (E) seems likely to assist in the prevention of future deception like or related to that alleged in the complaint. Yet by including this key reapplication information in an extensive list of other facts about sunscreen, the order makes it less likely that consumers will see the reapplication information. In my view, it is highly unlikely that a parent who receives and reviews whatever brochure is approved will recall the one piece of information related to the complaint allegation when the parent makes a sunscreen purchase. Because the scope of the information to be included in the brochure is so broad, the consumer education remedy is not reasonably related to the violations alleged in the proposed complaint.[3]

It is also troubling that if the Commission issues this order, it essentially will be ordering the respondent to advertise that persons should buy and use more of the respondent's products. Schering already has every incentive to communicate the required messages to consumers. In fact, the consumer education remedy is advertising (''use more sunscreen'') that the company might wish to do in any event since the conduct provisions of the order may prevent it from continuing to distinguish its children's sun protection product from others by claiming that it requires fewer applications. The deterrence value of this remedy is minimal at best.

Finally, if this relief were sought in litigation, rather than obtained through a consent agreement, it would not withstand scrutiny under the First Amendment. For purposes of First Amendment analysis, there is no difference between compelled speech and restrictions on speech. *Riley* v. *National Fed'n of the Blind,* 487 U.S. 781, 796–97 (1988). A valid restriction on commercial speech must be no more extensive than necessary to serve the substantial governmental interest directly advanced by the restriction. *Rubin* v. *Coors Brewing Co.,* 115 S. Ct. 1585, 1591 (1995) (discussing *Central Hudson Gas & Elec. Corp.* v. *Public Serv. Comm'n of N.Y.,* 447 U.S. 557, 566 (1980)). Thus, disclosures compelled by the FTC can be no broader than necessary to prevent future deception or to correct the effects of past deception. *See, e.g., National Comm'n on Egg Nutrition* v. *FTC,* 570 F.2d 157, 164 (7th Cir. 1977), *cert. denied,* 439 U.S. 821 (1978). Additionally, the government bears the burden of showing that a speech restriction will advance its

[1] The proposed complaint challenges as false the claim that Schering has conducted tests demonstrating that a single application of Coppertone Kids provides six hours of protection from the sun for children engaged in sustained vigorous activity in and out of the water. The proposed order broadly prohibits false establishment claims for any sun protection product.

[2] Like the brochure, the dissemination plan is subject to the approval of the Associate Director in charge of DAP.

[3] The consumer education remedy here stands in contrast to a fencing-in provision contained in a consent order issued by the Commission last year. See Blenheim Expositions, Inc., Docket No. C–3633 (Jan. 18, 1996) (requiring a franchise show promoter to undertake a limited distribution of an FTC consumer education brochure to customers attending its franchise shows). The respondent in Blenheim allegedly made unsubstantiated claims regarding the earnings and success of franchise owners and false claims regarding a poll of franchise owners. The brochure specifically identified FTC requirements with which franchisors must comply, including consumers' right to receive an earnings claims document, and it provided instructions on how to evaluate earnings claims. It thus contained information likely to assist the respondent's customers to detect and protect themselves from possible future misrepresentations of earnings like those alleged in the complaint. Although the brochure also addressed other issues related to the purchase of a franchise, all of the advice in the brochure at least arguably would help prospective franchisees avoid becoming victims of future violations by the respondent.

interest ''to a material degree.'' *44 Liquormart, Inc.* v. *Rhode Island,* 116 S. Ct. 1495, 1509 (1996) (plurality opinion of Justice Stevens) (citing *Edenfield* v. *Fane,* 507 U.S. 761, 771 (1993)). A commercial speech restriction that ''provides only ineffective or remote support for the government's purpose'' does not pass this test. *44 Liquormart,* 116 S. Ct. at 1509 (citing *Central Hudson,* 447 U.S. at 564).

The dubious efficacy of the proposed consumer education remedy makes it unlikely that it will directly advance the asserted governmental interest in preventing future deception by the respondent. In addition, I doubt that a credible argument can be made that the information that the order specifically requires be included in the brochure is no more extensive than necessary to prevent future violations by Schering. Certainly Schering has waived any First Amendment objections to this relief by entering into the consent agreement. Nonetheless, when a remedy implicates First Amendment rights, the Commission should be particularly reluctant to obtain through negotiations relief that it lacks at least a colorable chance to obtain in litigation.

In my view, it would be better to have no consumer information remedy in the consent order if the only alternative is an overbroad remedy of doubtful efficacy that raises First Amendment concerns.

[FR Doc. 97–5344 Filed 3–4–97; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Citizens Advisory Committee on Public Health Service (PHS) Activities and Research at Department of Energy (DOE) Sites: Idaho National Engineering Laboratory Health Effects Subcommittee

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Citizens Advisory Committee on PHS Activities and Research at DOE Sites: Idaho National Engineering Laboratory Health Effects Subcommittee (INEL).

Times and Dates: 8:30 a.m.–5 p.m., March 20, 1997. 8:30 a.m.–5 p.m., March 21, 1997.

Place: Red Lion Inn-Riverside, 2900 Chinden Boulevard, Boise, Idaho 83714, telephone 208/343–1871, FAX 208/344–1079.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Purpose: The Subcommittee is charged with providing advice and recommendations to the Director, CDC, and the Administrator, Agency for Toxic Substances and Disease Registry (ATSDR), regarding community, American Indian Tribes, and labor concerns pertaining to CDC's and ATSDR's public health activities and research at this DOE site. Activities shall focus on providing a forum for community, American Indian Tribal, and labor interaction and serve as a vehicle for community concern to be expressed as advice and recommendations to CDC and ATSDR.

Matters to be Discussed: Agenda items include presentations from the National Center for Environmental Health (NCEH) regarding current activities, the National Institute for Occupational Safety and Health, and ATSDR will provide updates on the progress of current studies, and working group discussions. Additional presentations will include prioritization and screening of chemicals for INEL dose reconstruction, discussions of screening methodology, and future dose reconstruction activities.

Agenda items are subject to change as priorities dictate.

Contact Persons for More Information: Arthur J. Robinson, Jr., or Nadine Dickerson, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, 4770 Buford Highway, NE, M/S F–35, Atlanta, Georgia 30341–3724, telephone 770/488–7040, FAX 770/488–7044.

John C. Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–5400 Filed 3–4–97; 8:45 am]

BILLING CODE 4163–18–P

Food and Drug Administration

[Docket No. 95N–0329]

Preclearance of Promotional Labeling; Clarification

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the Center for Biologics Evaluation and Research (CBER) is clarifying its policy regarding the preapproval of promotional labeling for biological products. In the November 1995 report issued by the President and Vice President, ''Reinventing the Regulation of Drugs Made from Biotechnology,'' FDA made a commitment to harmonize immediately CBER's requirements for the preapproval of promotional labeling with those of the Center for Drug Evaluation and Research (CDER) under which a company may submit such information to the agency at the time the company disseminates it. This notice is issued to clarify that FDA has fulfilled the commitment to allow industry to submit promotional labeling to CBER at the time of initial dissemination. Sponsors need not wait for approval from CBER before using promotional labeling.

FOR FURTHER INFORMATION CONTACT: Toni M. Stifano, Center for Biologics Evaluation and Research (HFM–202), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–3028.

SUPPLEMENTARY INFORMATION: Under CBER's previous policy, as announced in the Federal Register of August 9, 1993 (58 FR 42340) and revised in the Federal Register of August 3, 1994 (59 FR 39570), preapproval by CBER was required for promotional labeling prior to introduction of a new biologic, for 120 days following approval of a new biologic, and for 120 days following approval of a new use for a currently licensed biologic. In the November 1995 report issued by the President and Vice President, ''Reinventing the Regulation of Drugs Made from Biotechnology,'' FDA made a commitment that, effective immediately, CBER would no longer require preapproval of promotional labeling. This approach, it was noted, is consistent with that of CDER. FDA has fulfilled its commitment.

In a proposed rule on changes to an approved application, published in the Federal Register of January 29, 1996 (61 FR 2739), FDA took a further step toward harmonizing the two Centers' promotional requirements. Among other things, the proposed rule would amend 21 CFR 601.12 to make CBER requirements for advertisements, as well as promotional labeling, consistent with those of CDER as set forth in 21 CFR 314.81(b)(3)(i).

The scope of this notice does not extend to promotional materials for products reviewed under the regulations for accelerated approval (21 CFR part 601, subpart E), which should be submitted to the agency for consideration as required in 21 CFR 601.45.

Dated: February 28, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–5311 Filed 3–4–97; 8:45 am]

BILLING CODE 4160–01–F

National Institutes of Health

Advertisement of an Opportunity To Investigate the Effect of Nitroxide Compounds on Diseases Relating to Stresses of Aging

AGENCY: National Institute on Aging, NIH.

ACTION: Advertisement of an opportunity.

SUMMARY: The National Institute on Aging is seeking a Cooperative Research and Development Agreement (CRADA) with a pharmaceutical company to investigate the effect of nitroxide compounds on diseases related to the stresses of aging.

The Collaborator must be able to collaborate with NIA staff to explore the effect nitroxides have on diseases of aging. The Collaborator must have a demonstrated record of success in privately producing nitroxide compounds suitable for pharmaceutical application, as well as a reputation for excellence in research.

The term of the CRADA will be up to five (5) years.

DATES: Interested parties should notify this office in writing of their intent to file a formal proposal no later than May 5, 1997. Formal proposals must be submitted to this office no later than June 3, 1997.

ADDRESSES: Inquiries and proposals regarding this opportunity should be addressed to Bruce D. Goldstein, J.D., (Tel. #301–496–0477, FAX # 301–402–2177), Office of Technology Development, National Center Institute, Executive Plaza South, Suite 450, 6120 Executive Blvd. MSC 7182, Bethesda, Maryland, 20892.

SUPPLEMENTARY INFORMATION: A CRADA is the anticipated joint agreement to be entered into by NIA pursuant to the Federal Technology Transfer Act of 1986, as amended by the National Technology Transfer Act (Pub. L. #104–1993 (1996)) and by Executive Order 12591 of October 10, 1987. NIA is presently exploring the protective effects of nitroxide compounds on oxyradical-induced oxidative stress, to the extent such stresses are related to diseases of aging.

- Under the present proposal, the goal of the CRADA will be research into, and development of, the following technology:
- Assessment of the qualitative and quantitative influence nitroxide compounds have on various aspects of the aging process.
- Development of new nitroxide compounds having *in vivo* inhibitive effect on the formation of oxyradicals.
- Development of new nitroxide compounds that enhance neuronal function and performance of aged animals.

Party Contributions

The role of NIA includes the following:

(1) Provide staff, expertise, & materials for the development of the desired compounds;

(2) Evaluate the work product of Collaborator to ensure progress toward meeting the CRADA goals; and

(3) Provide work space, expertise, and equipment for production of any prototypes developed.

The role of the successful Collaborator will include the following:

(1) Provide expertise on biological aging mechanisms and assistance in the development of nitroxide compounds likely to have therapeutic value;

(2) Provide funding, as necessary, in support of production and dissemination of the desired compounds; and

(3) Provide resources and expertise to market any products developed.

Selection Criteria

Proposals submitted for consideration should fully address each of the following qualifications:

(1) Expertise:

(A) Demonstrated expertise in developing and producing nitroxide compounds;

B. Demonstrated expertise on biological aging mechanisms;

C. Demonstrated ability to secure national and international marketing and distribution of nitroxide compounds;

D. Demonstrated expertise in overseeing all aspects of product development; and

E. Demonstrated intellectual ability to participate in the research and commercial ability to guide development of the results into a viable product line.

(2) Physical Resources:

A. An established headquarters with offices, space, and equipment;

B. Access to the organization during business hours by telephone, mail, e-mail, the Internet, and other evolving technologies; and

C. Sufficient financial resources to support the current activities of the CRADA to meet the needs of NIA.

Dated: February 18, 1997.

Thomas D. Mays,

Director, Office of Technology Development, NCI, NIH.

[FR Doc. 97–5322 Filed 3–4–97; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting of the National Cancer Institute Initial Review Group:

Agenda/Purpose: To review and evaluate grant applications.

Committee Name: Subcommittee D—Clinical Research Studies Subcommittee.

Date: April 1–2, 1997.

Time: 8:00 am.

Place: DoubleTree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Martin H. Goldrosen, Ph.D, Scientific Review Administrator, National Cancer Institute, NIH, 6130 Executive Blvd. Room 635C, Bethesda, Md 20892, Telephone: 301–496–7930.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research. 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: February 27, 1997.

LaVerne Y. Springfield,

Committee Management Officer, NIH.

[FR Doc. 97–5319 Filed 3–4–97; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting National Cancer Institute Special Emphasis Panel (SEP) meeting:

Name of SEP: Investigator Grants for Clinical Center Therapy Research.

Date: March 24–26, 1997.

Time: 9:00 am.

Place: DoubleTree Hotel, Halpine Room, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Wilna A. Woods, Ph.D., Scientific Review Administrator, National Cancer Institute, NIH, Executive Plaza North, Room 605, 6130 Executive Boulevard, MSC 7410, Bethesda, MD 20892–7405, Telephone: 301/496–7903.

Purpose/Agenda: To evaluate and review grant applications.

The meeting will be closed in accordance with the provisions set forth in secs.

552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: February 27, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–5320 Filed 3–4–97; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Clinical Sciences.
Date: March 7, 1997.
Time: 1:00 p.m.
Place: NIH, Rockledge 2, Room 4118, Telephone Conference.
Contact Person: Dr. Christine Melchior, Scientific Review Administrator, 6701 Rockledge Drive, Room 4118, Bethesda, Maryland 20892, (301) 435–1713.

This notice is being published less than 15 days prior to the above meeting due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

Name of SEP: Clinical Sciences.
Date: March 17, 1997.
Time: 8:30 a.m.
Place: Holiday Inn, Chevy Chase, Maryland.
Contact Person: Dr. Harold Davidson, Scientific Review Administrator, 6701 Rockledge Drive, Room 4216, Bethesda, Maryland 20892, (301) 435–1776.

Name of SEP: Clinical Sciences.
Date: March 17, 1997.
Time: 1:00 p.m.
Place: NIH, Rockledge 2, Room 4128, Telephone Conference.
Contact Person: Dr. Anshumali Chaudhari, Scientific Review Administrator, 6701 Rockledge Drive, Room 4128, Bethesda, Maryland 20892, (301) 435–1210.

Name of SEP: Biological and Physiological Sciences.
Date: March 20, 1997.
Time: 1:00 p.m.
Place: NIH, Rockledge 2, Room 4202, Telephone Conference.
Contact Person: Dr. Eugene Zimmerman, Scientific Review Administrator, 6701 Rockledge Drive, Room 4202, Bethesda, Maryland 20892, (301) 435–1220.

Name of SEP: Biological and Physiological Sciences.
Date: March 20, 1997.
Time: 2:00 p.m.
Place: NIH, Rockledge 2, Room 4132, Telephone Conference.
Contact Person: Dr. Sayed Quadri, Scientific Review Administrator, 6701 Rockledge Drive, Room 4132, Bethesda, Maryland 20892, (301) 435–1211.

Name of SEP: Clinical Sciences.
Date: March 21, 1997.
Time: 2:00 p.m.
Place: NIH, Rockledge 2, Room 4118, Telephone Conference.
Contact Person: Dr. Christine Melchior, Scientific Review Administrator, 6701 Rockledge Drive, Room 4118, Bethesda, Maryland 20892, (301) 435–1713.

Name of SEP: Biological and Physiological Sciences.
Date: March 24, 1997.
Time: 8:30 a.m.
Place: Doubletree Hotel, Rockville, Maryland.
Contact Person: Dr. Ramesh Nayak, Scientific Review Administrator, 6701 Rockledge Drive, Room 5146, Bethesda, Maryland 20892, (301) 435–1026.

Name of SEP: Clinical Sciences.
Date: March 26, 1997.
Time: 11:00 a.m.
Place: NIH, Rockledge 2, Room 4106, Telephone Conference.
Contact Person: Dr. Josephine Pelham, Scientific Review Administrator, 6701 Rockledge Drive, Room 4106, Bethesda, Maryland 20892, (301) 435–1786.

Name of SEP: Clinical Sciences.
Date: March 26, 1997.
Time: 1:00 p.m.
Place: NIH, Rockledge 2, Room 4118, Telephone Conference.
Contact Person: Dr. Christine Melchoir, Scientific Review Administrator, 6701 Rockledge Drive, Room 4118, Bethesda, Maryland 20892, (301) 435–1713.

Purpose/Agenda: To review Small Business Innovation Research.

Name of SEP: Biological and Physiological Sciences.
Date: March 30–31, 1997.
Time: 12:00 p.m.
Place: River Inn, Washington, DC.
Contact Person: Dr. Anita Sostek, Scientific Review Administrtor, 6701 Rockledge Drive, Room 5202, Bethesda, Maryland 20892, (301) 435–1260.

Name of SEP: Biological and Physiological Sciences.
Date: March 24–25, 1997.
Time: 8:30 a.m.
Place: Doubletree Hotel, Rockville, Maryland.
Contact Person: Dr. Sayed Quadri, Scientific Review Administrator, 6701 Rockledge Drive, Room 4132, Bethesda, Maryland 20892, (301) 435–1211.

The meetings will be closed in accordance with the provisions set forth in sec. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would consistute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.206, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS).

Dated: February 27, 1997.

LaVerne Y. Stringfield,

Committee Management Office, NIH.

[FR Doc. 97–5321 Filed 3–4–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Western Water Policy Review Advisory Commission Meeting

AGENCY: Department of the Interior.

ACTION: Notice of public review of basin study reports.

SUMMARY: Notice is hereby given that the Western Water Policy Review Advisory Commission (Commission), established by the Secretary of the Interior under the Reclamation Projects Authorization and Adjustment Act of 1992, has been conducting studies of water issues in six major river basins. The reports are in the draft stage and are being made available to the public for comment. The basins being studied are the Colorado River, Columbia River, Platte River, Sacramento-San Joaquin Rivers, Truckee-Carson Rivers, and the Upper Rio Grande River.

DATES: Drafts will be available March 5, 1997, for all basins except the Columbia, which will be available March 19, 1997. Comments will be accepted through April 4, 1997, for all studies with the exception of the Colorado and Columbia basins, for which comments will be accepted through April 11, 1997.

ADDRESSES:
email:wwprac@do.usbr.gov.Mail: Western Water Policy Review Office, D–5001; P. O. Box 25007; Denver, CO 80225–0007.

FOR FURTHER INFORMATION CONTACT: The Commission Office at telephone 303–236–6211, FAX 303–236–4286, or email to rgunnar@sondo.usbr.gov.

SUPPLEMENTARY INFORMATION: The Commission has established a Website (address:http//www.den.doi.gov/wwprac) which will be used to facilitate this review and post current information on the Commission's activities. Due to the size of the respective files, the basin reports will be available on the

Commission's Website for downloading only. Printed copies will be available from the Western Water Policy Review Office. All comments must be provided to the Commission Office, and may be provided by email to the Commission email address, or in writing by mail or facsimile.

The Basin Study Researchers will review all comments and may or may not incorporate the comments in the final reports; they will prepare comment and response documents, which will be available to the public after June 30, 1997. Specific replies to comments will not be provided.

Dated: February 27, 1997.

Larry Schulz,

Administrative Officer.

[FR Doc. 97–5347 Filed 3–4–97; 8:45 am]

BILLING CODE 4310–94–M

Bureau of Indian Affairs

Proclaiming Certain Lands as Reservation for the Pinoleville Indian Community of California; Correction

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Correction of notice of reservation proclamation.

SUMMARY: The Assistant Secretary—Indian Affairs proclaimed certain lands in Mendocino County, California, as an addition to the reservation of the Pinoleville Indian Community of California on November 1, 1996. This notice is published to correct the legal description of the land and is in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.1.

FOR FURTHER INFORMATION CONTACT: Larry E. Scrivner, Bureau of Indian Affairs, Chief, Division of Real Estate Services, MS–4510/MIB/Code 220, 1849 C Street, N.W., Washington, D.C. 20240, telephone (202) 208–7737.

SUPPLEMENTARY INFORMATION: On November 1, 1996, a proclamation was issued pursuant to the Act of June 18, 1934, (48 Stat. 986; 25 U.S.C. § 467). The legal description of the tract was in error. The portion reading ''thence North 09°28′20″ West'' is corrected to read ''thence North 01°28′20″ West.'' Corrected legal description is as follows:

Mendocino County, California

Being a portion of Parcel 1, as shown on that map filed in Map Case 2, Drawer 1, Page 74, Mendocino County Records: Beginning at the Southeast corner of the said Parcel 1; thence North 01°28′20″ West along the East line of the said Parcel 1, a distance of 242.55 feet; thence North 01°43′20″West along the said East line, a distance of 103.13 feet; thence South 88°16′40″ West, 185.41 feet; thence North 01°43′20″ West, 40 feet; thence South 88°16′40″West, 140.94 feet to the West line of said Parcel 1; thence South 01°00′00″ East along the said West line, a distance of 367.13 feet to the Southwest corner of said Parcel 1; thence South 88°30′00″ East along the South line of said Parcel 1, a distance of 330.44 feet to the point of beginning.

Dated: January 28, 1997.

Ada E. Deer,

Assistant Secretary, Indian Affairs.

[FR Doc. 97–5379 Filed 3–4–97; 8:45 am]

BILLING CODE 4310–02–P

Bureau of Land Management

[NM–070–1320–01; NM–11670, NM–8128, NM–8130]

Notice of Coal Action; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability, Cost Estimate Document (CED) for the Thermal Energy Preference Right Lease Applications (PRLAs) San Juan County, New Mexico.

SUMMARY: The PRLA process requires that a CED be prepared and made available to the public. The CED estimates the costs of compliance with all laws, regulations, lease terms, and special stipulations intended to protect the environmental impacts of mining. This action establishes the availability of the CED for Thermal Energy's PRLAs.

DATES: On or before May 6, 1997, interested parties may submit comments regarding the CED to the Bureau of Land Management at the following address. All comments will be reviewed by the Bureau of Land Management, Farmington District Manager, 1235 La Plata Hwy., Farmington, New Mexico, 87401.

Dated: February 27, 1997.

Charlie Beecham,

Team Leader for Solid Minerals, Farmington District, Bureau of Land Management.

[FR Doc. 97–5381 Filed 3–4–97; 8:45 am]

BILLING CODE 4310–FB–M

[NM–030–1100–00; NMNM95109]

Notice of Realty Action; Recreation and Public Purposes Act Classification; Socorro County, NM

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of realty action.

SUMMARY: The following public land in Socorro County, New Mexico has been examined and found suitable for classification for lease or conveyance to the County of Socorro under the provisions of the Recreation and Public Purpose Act as amended (43 U.S. 869 *et seq.*). Socorro County proposes to use the land for the San Antonio Volunteer Fire Department, Luis Lopez Substation/Training Facility.

New Mexico Principal Meridian

T. 4 S., R. 1 E.,
Sec. 18, lot 21.
Containing 5.78 acres.

The lands are not needed for Federal purposes. Lease or conveyance is consistent with current BLM land use planning and would be in the public interest.

DATES: Interested parties may submit comments on the classification or purposed lease/conveyance. Comments must be submitted on or before April 21, 1997.

ADDRESSES: Comments should be sent to Area Manager, Socorro Resource Area Office, 198 Neel Avenue NW, Socorro, New Mexico 87801.

FOR FURTHER INFORMATION CONTACT: Lois Bell, BLM, Socorro Resource Area Office, 198 Neel Ave, NW, Socorro, New Mexico 87801, or telephone (505) 835–0412.

SUPPLEMENTARY INFORMATION: Lease or conveyance will be subject to the following terms, conditions, and reservations:

1. Provisions of the R&PP Act and to applicable regulations of the Secretary of the Interior.
2. All valid existing rights documented on the official public land records at the time of lease/patent issuance.
3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.
4. A reservation for the construction of ditches and canals shall be reserved to the United States.
5. Any other reservations that the authorized officer determines appropriate to ensure public access and proper management of Federal lands and interests therein.

Upon publication of this notice in the Federal Register, the land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the R&PP Act and leasing under the mineral leasing laws.

Classification Comments

Interested parties may submit comments involving the suitability of the land for a fire substation/training facility. Comments on the classification are restricted to whether the land is physically suited for a fire substation/training facility, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments

Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a fire substation/training facility.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice.

Dated: February 26, 1997.

Stephanie Hargrove,

Acting District Manager.

[FR Doc. 97–5317 Filed 3–4–97; 8:45 am]

BILLING CODE 4310–VC–M

[UTU–73634 & UTU–73635]

Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification; Utah

AGENCY: Bureau of Land Management.

SUMMARY: The following public lands in Uintah County, Utah have been examined and found suitable for classification for conveyance to Uintah County under the provisions of the Recreation and Public Purposes (R&PP) Act, as amended (43 U.S.C. 869 *et seq.*). Uintah County proposes to purchase these tracts of public land for landfill purposes.

Salt Lake Meridian, Utah

T. 4 S., R. 22 E.,
Sec. 8, Lots 3 and 5, NE¼SW¼, E½NW¼SW¼;
Sec. 17, N½NW¼.
Containing 211.05 acres, more or less.

T. 5. S., R. 19 E.,
Sec. 11, W½W½NW¼NE¼, W½NW¼SW¼NE¼, NE¼NW¼, N½SE¼NW¼.
Containing 75.00 acres, more or less.

The 211.05 acre tract, located near Vernal City, Utah, is needed by Uintah County to expand their Vernal Landfill facility presently situated on adjoining land. The 75.00 acre tract, located near the community of LaPoint, Utah, is currently leased to Uintah County for landfill purposes (R&PP lease, UTU–53917) and would continue to be used for landfill purposes and as a solid waste transfer station. The public lands are not needed for Federal purposes. Conveyance is consistent with current BLM and Uintah County land use planning and would be in the public interest.

The patents, if issued, will be subject to the following terms, conditions and reservations:

1. Provisions of the Recreation and Public Purposes Act, as amended and to all applicable regulations of the Secretary of the Interior.
2. A right-of-way for ditches and canals constructed by the authority of the United States.
3. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals.
4. The patentee shall comply with all federal and state laws applicable to the disposal, placement, or release of hazardous substances (substances as defined in 40 CFR Part 302).
5. Reservation of oil and gas lease UTU–64918.
6. Those rights granted to Utah Power and Light for a 138kV power transmission line under right-of-way (R/W) grant, UTU–0118311.
7. The privilege of grazing permittees to continue to graze livestock on public land adjoining the existing Vernal Landfill would expire on January 31, 1998, unless the permittees choose to waive their grazing privileges earlier.
8. Uintah County, its successors or assigns, shall defend, indemnify, and save harmless the United States and its officers, agents, representatives, and employees (hereinafter referred to in this clause as the United States), from all claims, loss, damage, actions, causes of action, expense, and liability (hereinafter referred to in this clause as claims) resulting from, brought for, or on account of, any personal injury, threat of personal injury, or property damage received or sustained by any person or persons (including the patentee's employees) or property growing out of, or occurring or attributable directly or indirectly, to the disposal of solid waste on, or the release of hazardous substances from Salt Lake Meridian, Utah, Sec. 11, W½W½NW¼NE¼, W½NW¼SW¼NE¼, NE¼NW¼, N½SE¼NW¼, and T. 5 S., R. 19 E., and Sec. 8, Lots 3 and 5, NE¼SW¼ and E½NW¼SW¼, Sec. 17, N½NW¼, T. 4 S., R. 22 E., regardless of whether such claims shall be attributable to: (1) the concurrent, contributory, or partial fault, failure, or negligence of the United States, or (2) the sole fault, failure, or negligence of the United States.

A partial revocation of a withdrawal created by Public Land Order 4522 would be completed prior to issuing a patent for the 75.00 acres of public land located near LaPoint, Utah.

Detailed information concerning this action is available for review at the BLM's Vernal District office, 170 South 500 East, Vernal, Utah 84078.

Classification Comments

Interested parties may submit comments concerning the suitability of these public lands for landfill purposes. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments

Interested parties may submit comments regarding the specific use proposed in the County's applications and plans of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for landfill purposes.

Comments received on the classification will be answered by the State Director with the right to further comment to the Secretary. Comments on the applications will be answered by the State Director with the right of appeal to the Interior Board of Land Appeals.

Upon publication of this notice in the Federal Register, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for conveyance under the R&PP Act, as amended and leasing under the mineral leasing laws. The segregative effect shall terminate upon issuance of a patent, upon final rejection of the applications, or two years from the date of filing of the applications, whichever occurs first.

For a period of 45 days from the date of publication of this notice in the Federal Register, interested parties may submit comments regarding the proposed conveyance or classification of the lands to the District Manager, Vernal District Office, 170 South 500 East, Vernal, Utah 84078. In the absence of any adverse comments, the classification will be effective 60 days from the date of publication of this notice in the Federal Register.

Dated: February 9, 1997.

David E. Howell,

District Manager.

[FR Doc. 97–5009 Filed 3–4–97; 8:45 am]

BILLING CODE 4310–DQ–M

[NV–930–1430–01; N–58667]

Amendment of Lahontan Resource Management Plan (RMP)/ Notice of Realty Action, Recreation and Public Purposes Act Conveyance Churchill County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice is hereby given that the Bureau of Land Management (BLM) has amended the Lahontan RMP to change the land tenure designation from retention to disposal on 840 acres of land generally described as:

Mount Diablo Meridian

T. 16 N., R. 29 E.,
Sec. 20, E½E½, NW¼NE¼ (unsurveyed),
Sec. 21, All (unsurveyed).

Notice is further given that up to 240 acres of this public land, previously classified pursuant to the Recreation and Public Purposes (R&PP) Act of 1926, as amended (43 U.S.C. 869 *et seq.*), is proposed for transfer in accordance with the R&PP Act to the City of Fallon for a solid waste landfill. The exact description of the land to be conveyed is unavailable pending completion of a cadastral survey. No land will be conveyed until a cadastral survey is approved.

PLANNING PROTESTS: Any party that participated in the plan amendment and is adversely affected by the amendment may protest this action as it affects issues submitted for the record during the planning process. The protests shall be in writing and filed with the Director (WO–210) Bureau of Land Management, 1849 ''C'' Street NW., Washington, DC 20240 within 30 days of this notice.

APPLICATION COMMENTS: For a period of 45 days from the date of publication of this notice in the Federal Register, interested persons may submit comments regarding the proposed conveyance of the land to the Assistant District Manager, Non-Renewable Resources, Bureau of Land Management, 1535 Hot Springs Road, Carson City, Nevada 89706. Objections will be reviewed by the District Manager who may sustain, vacate, or modify this realty action. Comments on the application would include whether BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a landfill.

SUPPLEMENTARY INFORMATION: Conveyance of the public land to the City of Fallon for a landfill is consistent with the amended land use plan and would be in the public interest. Patent, when issued, will be subject to the provisions of the R&PP Act and to all applicable regulations of the Secretary of the Interior, and the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All mineral deposits in the land so patented, and to it, or persons authorized by it, the right to prospect for, mine and remove such deposits from the same under applicable law and regulations to be established by the Secretary of the Interior. Planning documents and other pertinent materials may be examined at the Carson City District Office between 7:30 a.m. and 5:00 p.m. Monday through Friday. Further details can be obtained by contacting Jo Ann Hufnagle, Realty Specialist, at (702) 885–6000.

Dated this 21st day of February, 1997.

Daniel L. Jacquet,

Acting Assistant District Manager, Non-Renewable Resources, Carson City District.

[FR Doc. 97–5337 Filed 3–4–97; 8:45 am]

BILLING CODE 4310–HC–P

Minerals Management Service

Agency Information Collection Activities: Submission for Office of Management and Budget Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of revision of a currently approved collection.

SUMMARY: The Department of the Interior has submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act of 1995 (Act) the collection of information discussed below. The Act requires that OMB provide interested Federal agencies and the public an opportunity to comment on information collection requests. The Act also provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Submit written comments by April 4, 1997.

ADDRESSES: Submit comments and suggestions directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Interior Department (1010–0041), 725 17th Street, NW, Washington, D.C. 20503.

Send a copy of your comments to: Rules Processing, Mail Stop 4700, Engineering and Operations Division, Minerals Management Service, 381 Elden Street, Herndon, Virginia 20170–4817.

FOR FURTHER INFORMATION CONTACT: Alexis London, Engineering and Operations Division, Minerals Management Service, telephone (703) 787–1600. You may obtain copies of the proposed collection of information by contacting MMS's Information Collection Clearance Officer at (703) 787–1242.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR 250, Subpart K, Oil and Gas Production Rates.

OMB Number: 1010–0041.

Abstract: Respondents provide information and maintain records on the production of oil and gas. The MMS uses the information in its efforts to conserve natural resources, prevent waste, and protect correlative rights including the Government's royalty interest. Responses to this collection of information are mandatory. The revision to the currently approved collection pertains to § 250.175, Flaring or venting gas and burning liquid hydrocarbons. This section was revised in two separate rulemaking actions. The collections of information associated with each notice of proposed rulemaking were previously approved by OMB in 1993 and 1995. There were only minor comments with respect to the information collections in the proposed rules and no significant changes resulted in the notices of final rulemaking published on May 20, 1996 (61 FR 25147) and January 27, 1997 (62 FR 3793).

Description of Respondents: Federal Outer Continental Shelf oil and gas and sulphur lessees.

Estimated Number of Respondents: 130.

Frequency: The reporting and recordkeeping requirements and number of responses vary for each section and are mostly on occasion.

Estimated Annual Burden on Respondents: Reporting burden of 3,224 hours; recordkeeping burden of 10,426 hours; for a total of 13,650 burden hours.

Form Number: N/A.

Comments: OMB is required to make a decision within 60 days after receiving the MMS request for approval of the collection of information and the publication of this notice. However, OMB shall provide at least 30 days for public comment. Therefore, a comment to OMB is best ensured of having its full effect if OMB receives it within 30 days of publication of this notice.

Bureau Clearance Officer: Carole deWitt (703) 787–1242.

Dated: February 13, 1997.

E.P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 97–5394 Filed 3–4–97; 8:45 am]

BILLING CODE 4310–MR–M

Agency Information Collection Activities: Submission for Office of Management and Budget Review; Comments Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of revision of a currently approved collection.

SUMMARY: The Department of the Interior has submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act of 1995 (Act) the collection of information discussed below. The Act requires that OMB provide interested Federal agencies and the public an opportunity to comment on information collection requests. The Act also provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Submit written comments by April 4, 1997.

ADDRESSES: Submit comments and suggestions directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1010–0053), 725 17th Street, NW., Washington, DC 20503.

Send a copy of your comments to the Minerals Management Service, Mail Stop 4700, 381 Elden Street, Herndon, Virginia 20170–4817, Attention: Rules Processing.

FOR FURTHER INFORMATION CONTACT: Alexis London, Engineering and Operations Division, Minerals Management Service, telephone (703) 787–1600. You may obtain copies of the proposed collection of information by contacting MMS's Information Collection Clearance Officer at (703) 787–1242.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR 250, Subpart D, Oil and Gas Drilling Operations.

OMB Number: 1010–0053.

Abstract: Respondents provide information and maintain records on the conditions of a drilling site in the Outer Continental Shelf (OCS). The MMS needs the information to determine if lessees are properly providing for the safety of operations and protection of human life or health and the environment. The MMS uses the information to avoid and eliminate hazards inherent in drilling operations. Responses to this collection of information are mandatory. The revision to the currently approved collection pertains to a final rule published in the Federal Register on January 27, 1997 (62 FR 3793) to amend 30 CFR 250.67, Hydrogen sulfide. The MMS has provided several opportunities for the public to comment on the collection of information required by 30 CFR part 250, subpart D. We did not receive any comments in response to those notices.

Description of Respondents: Federal OCS oil and gas and sulphur lessees.

Estimated Number of Respondents: 130.

Frequency: The reporting and recordkeeping requirements and number of responses vary for each section and are mostly on occasion.

Estimated Annual burden on Respondents: Reporting burden of 4,141 hours; recordkeeping burden of 112,364 hours; for a total of 116,505 burden hours.

Form Number: N/A.

Comments: Within 60 days after receipt of the collection of information or publication of this notice, OMB is required to make a decision. However, OMB shall provide at least 30 days for public comment. Therefore, a comment to OMB is best ensured of having its full effect if OMB receives it within 30 days of publication of this notice.

Bureau Clearance Officer: Carol deWitt (703) 787–1242.

Dated: January 3, 1997.

E.P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 97–5395 Filed 3–4–97; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

Draft Addendum Valley Housing Plan for the 1992 Supplement to Final Environmental Impact Statement General Management Plan, Yosemite National Park; Notice of Extended Comment Period

Extension for Comments: The comment period for the Yosemite Draft Addendum Valley Housing Plan (DES 96–47) published December 4, 1996 (61 FR 64361) was originally scheduled for 90 days. Due to flooding in and around Yosemite during early January 1997, and considering the ensuing disruption for park visitors, employees, and neighboring county and local residents, businesses, and officials, the National Park Service is extending the comment period for this draft document. Written comments and suggestions are now being accepted through March 31, 1997.

Comments: Written comments on the draft addendum should be directed to the attention of Superintendent, Yosemite National Park, P.O. Box 577, Yosemite National Park, California, 95389. Copies of the draft document are available for public inspection at the park and at area libraries. Requests for copies may also be directed to the Superintendent (at the above address), or by telephone at (209) 372–0202. The draft addendum is also available for review on the InterNet via the NPS Planning Home Page http://www.nps.gov/planning/.

Dated: February 26, 1997.

Bruce M. Kilgore,

Acting Field Director, Pacific West Area.

[FR Doc. 97–5313 Filed 3–4–97; 8:45 am]

BILLING CODE 4310–70–P

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 February 22, 1997. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127. Written

comments should be submitted by March 20, 1997.

Carol D. Shull,

Keeper of the National Register.

Colorado

San Juan County

Silverton Historic District (Boundary Increase), Roughly, along CO 110 and aerial tramway from Lodore Mine to Mayflower Mine, Silverton vicinity, 97000247

Florida

Sarasota County

Burns, William J., House, 47 S. Washington Dr., Sarasota, 97000248

Georgia

Bartow County

Harris, Corra White, House, Study, and Chapel, 659 Mt. Pleasant Rd., NE., Rydal, 97000249

Richmond County

Church of the Most Holy Trinity, 720 Telfair St., Augusta, 97000250

Mississippi

Bolivar County

Sillers, Walter, Sr., House, 307 Levee St., Rosedale, 97000252

Humphreys County

Parker—Summerfield Mound Archeological Site, Address Restricted, Midnight vicinity, 97000251

Montana

Chouteau County

Geraldine Milwaukee Depot, Railroad Ave., SW of MT 80, Geraldine vicinity, 97000254

Mineral County

Superior School, River Rd., approximately .25 mi N of US 10, Superior vicinity, 97000253

North Carolina

Lee County

Rosemount—McIver Park Historic District, Roughly bounded by N. Horner Blvd., N. Vance and Carthage Sts., Sanford, 97000255

New Hanover County

Joy Lee Apartment Building and Annex, 317 Carolina Beach Ave., N., Carolina Beach, 97000256

Tennessee

Roane County

Valley View Farm, 160 Martin Rd., Harriman, 97000257

Texas

Galveston County

Balinese Room, 2107 Seawall Blvd., Galveston, 97000258

Marion County

Hodge—Taylor House, Approximately 1 mi. NW of jct. of TX 49 and US 59 Jefferson vicinity, 97000259

Utah

Cache County

Bankhead, Heber K. and Rachel H., House, 185 E. 800 South, Wellsville, 97000261

West Virginia

Jefferson County

Downtown Charles Town Historic District, Roughly, Washington, Liberty and Congress Sts. from eastern town limits to Water St., Charles Town, 97000263

Mingo County

Mountaineer Hotel, 31 E. 2nd Ave., Williamson, 97000265

Putnam County

Asbury House, 2922 Putnam Ave., Hurricane, 97000266

Webster County

Lowther Store, Co. Rt. 3, jct. with WV 20, Wheeler vicinity, 97000264

Wisconsin

Green Lake County

Luther, J. P., Company Glove Factory, 139 S. Pearl St., Berlin, 97000267

Princeton Downtown Historic District, Roughly, W. Water St. from Pearl to Washington Sts. Princeton, 97000271

Milwaukee County

Wauwatosa Arcade Building, 7210—26 W. North Ave., Wauwatosa, 97000270

Sauk County

Ringling, Charles, House, 201 8th St., Baraboo, 97000268

Wood County

Central Wisconsin State Fair Round Barn, Jct. of Vine Ave. and E. 17th St., Marshfield, 97000269

[FR Doc. 97–5310 Filed 3–4–97; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–380]

Certain Agricultural Tractors Under 50 Power Take-Off Horsepower; Issuance of General Exclusion Order and Cease and Desist Orders

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has issued a general exclusion order and eleven cease and desist orders in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Shara L. Aranoff, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3090.

SUPPLEMENTARY INFORMATION: The authority for the Commission's determination is contained in Section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in §§ 210.45 and 210.50 of the Commission's rules of practice and procedure (19 CFR 210.45 and 210.50).

This trademark-based section 337 investigation was instituted by the Commission on February 14, 1996, based on a complaint filed by Kubota Tractor Corporation (''KTC''), Kubota Manufacturing of America (''KMA''), and Kubota Corporation (''KBT'') (collectively ''complainants''). Complainants alleged unfair acts in violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation, sale for importation, and/or the sale within the United States after importation, of certain agricultural tractors under 50 power take-off horsepower, by reason of infringement of complainants' four registered trademarks, U.S. Reg. Nos. 922,330 (''KUBOTA'' in block letters), 1,775,620 (''KUBOTA'' stylized), 1,028,221 (Gear Design), and 1,874,414 (stylized ''K''). The Commission's notice of investigation named 20 respondents: Eisho World Ltd., Nitto Trading Corporation, Nitto Trading Co. Ltd., Sanko Industries Co., Ltd., Sonica Trading, Inc., Suma Sangyo, Toyo Service Co., Ltd., Bay Implement Company, Casteel Farm Implement Co. of Monticello, Arkansas, Casteel Farm Implement Co. of Pine Bluff, Arkansas, Casteel World Group, Inc., Gamut Trading Co., Gamut Imports, Lost Creek Tractor Sales, MGA, Inc. Auctioneers, Tom Yarbrough Equipment Rental and Sales, Inc., The Tractor Shop, Tractor Company, Wallace International Trading Co. and Wallace Import Marketing Co. Inc. 61 FR 6802 (Feb. 22, 1996).

On May 29, 1996, the Commission determined not to review an ID (Order No. 13) finding respondents Tractor Company, Sonica Trading, and Toyo Service in default pursuant to Commission rule 210.16 (19 CFR 201.16), and ruling that they had waived their respective rights to appear, to be served with documents, and to contest the allegations at issue in the investigation. On June 19, 1996, the notice of investigation was amended to add Fujisawa Trading Company as a respondent. On September 25, 1996, the Commission issued a consent order terminating the investigation as to respondent Nitto Trading Corporation. On September 30, 1996, the Commission issued a consent order terminating the investigation as to

respondent Tom Yarbrough Equipment Rental and Sales, Inc.

On August 21, 1996, the Commission determined not to review an initial determination (ID) (Order No. 40) granting complainants' motion for summary determination that complainants' four trademarks are valid and that the ''KUBOTA'' (block letters) and Gear Design marks are incontestable. On September 6, 1996, the Commission determined not to review an ID (Order No. 47) granting complainants' motion for summary determination that a domestic industry exists with respect to the ''KUBOTA'' (block letters) and ''KUBOTA'' (stylized) trademarks.

The presiding administrative law judge (ALJ) held an evidentiary hearing on the merits between August 29 and September 7, 1996, and heard closing arguments on October 24, 1996. The ALJ issued his final ID finding a violation of section 337 on November 22, 1996. He found that there had been imports of the accused products; that 24 specific models of the accused tractors infringed the ''KUBOTA'' (block letters) trademark (U.S. Reg. No. 922,330); that one model of the accused tractors, the KBT L200, did not infringe the ''KUBOTA'' (block letters) trademark; that none of the 25 accused KBT models considered infringed the ''KUBOTA'' (stylized) trademark (U.S. Reg. No. 1,775,620); and that complainants were no longer asserting violations of section 337 based on infringement of the stylized ''K'' and ''Gear Design'' trademarks.

On January 9, 1997, the Commission determined to review (1) the finding of no infringement and no violation with respect to the KBT model L200 tractor; and (2) the decision to limit infringement analysis to 25 models of accused tractors rather than all models of KBT tractors as to which there is evidence of importation and sale in the United States.

The Commission determined not to review the ID in all other respects. On review, the Commission requested that the parties address the following issues:

(1) Whether the fact that gray market KBT model L200 tractors are imported and sold bearing Japanese-language labels constitutes a ''material difference'' from the authorized KTC model L200 tractors sufficient to establish a likelihood of consumer confusion;

(2) Whether evidence on the record in this investigation demonstrates that specific KBT models other than the 25 identified on (Staff Exhibit) SX–1 have been imported and sold in the United States; and, if so,

(3) Whether evidence on the record in this investigation demonstrates that any specific KBT model identified in number (2) above was imported and sold in the United States bearing Japanese-language labels or is otherwise materially different than the closest corresponding KTC model with respect to any of the differences found to be ''material'' in the ID.

In addition, the Commission requested written submissions on the issues of remedy, the public interest, and bonding. 62 FR 2179 (Jan. 15, 1997).

Submissions and reply submissions on remedy, the public interest, and bonding and on the issues under review were received from complainants, respondents, and the Commission investigative attorney (IA). In addition, complainants filed a request for oral hearing pursuant to Commission rule 210.45, complainants filed a request to strike pages 4–20 of respondents'' brief on review, respondents filed a request to strike certain consumer survey information submitted by complainants and to sanction complainants for submitting that information, complainants filed a motion for leave to file a surreply brief in response to the reply brief filed by the IA, and respondents filed an objection to complainants'' surreply brief.

Having reviewed the record in this investigation, including the written submissions of the parties, the Commission has determined (1) to reverse the ALJ's finding of no infringement and no violation by the KBT model L200 tractor; (2) to find a violation of section 337 with respect to 20 models of KBT tractors in addition to the 25 models considered by the ALJ; and (3) to deny complainants'' request for oral hearing, both requests to strike, respondents'' request for sanctions, and complainants'' motion for leave to file a surreply brief. The Commission has further determined that the appropriate form of relief is a general exclusion order prohibiting the unlicensed entry for consumption of agricultural tractors under 50 power take-off horsepower manufactured by Kubota Corporation of Japan that infringe the federally-registered U.S. trademark ''KUBOTA'' (Reg. No. 922,330) and eleven cease and desist orders directed to respondents Bay Implement Company, Casteel World Group, Inc. (and related entities), Gamut Trading Co. (and related entities), Lost Creek Tractor Sales, MGA, Inc. Auctioneers, The Tractor Shop, Tractor Company, and Wallace International Trading Co. prohibiting the importation, sale for importation, or sale in the United States after importation of agricultural tractors under 50 power take-off horsepower manufactured by Kubota Corporation of Japan that infringe the federally-registered U.S. trademark ''KUBOTA'' (Reg. No. 922,330).

The Commission has also determined that the public interest factors enumerated in subsections 1337(d) and (f) do not preclude the issuance of the general exclusion order and cease and desist orders, and that the bond during the Presidential review period shall be in the amount of 90 percent of the entered value of the articles in question.

Copies of the Commission's order, the public version of the Commission's opinion in support thereof, and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202–205–2000. Hearing impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal at 202–205–1810.

Issued: February 25, 1997.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–5408 Filed 3–4–97; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 731–TA–746 (Final)]

Beryllium Metal and High-Beryllium Alloys From Kazakstan

Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Kazakstan of beryllium metal and high-beryllium alloys,[3] that

[1] The record is defined in § 207.2(f) of the Commission's rules of practice and procedure (19 CFR 207.2(f)).

[2] Chairman Miller dissenting.

[3] The imported products subject to this investigation, as defined by the U.S. Department of Commerce, are beryllium metal and high-beryllium alloys with a beryllium content equal to or greater than 30 percent by weight, whether in ingot, billet, powder, block, lump, chunk, blank, or other semifinished form. These are intermediate or semifinished products that require further machining, casting, and/or fabricating into sheet, extrusions, forgings, or other shapes in order to meet the specifications of the end user. Beryllium metal and high-beryllium alloys in which beryllium predominates over all other metals are provided for in subheadings 8112.11.30 and 8112.11.60 of the Harmonized Tariff Schedules of the United States

have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective March 14, 1996, following receipt of a petition filed with the Commission and the Department of Commerce by Brush Wellman, Cleveland, OH. The final phase of the investigation was scheduled by the Commission following notification of a preliminary determination by the Department of Commerce that imports of beryllium metal and high-beryllium alloys from Kazakstan were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of September 19, 1996 (61 FR 49341). The hearing was held in Washington, DC, on January 22, 1997, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on February 24, 1997. The views of the Commission are contained in USITC Publication 3019 (February 1997), entitled ''Beryllium Metal and High-Beryllium Alloys from Kazakstan: Investigation No. 731–TA–746 (Final).''

Issued: February 27, 1997.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–5413 Filed 3–4–97; 8:45 am]

BILLING CODE 7020–02–P

(HTS). High-beryllium alloys in which beryllium does not predominate are provided for elsewhere in the HTS; e.g., high-beryllium alloys in which aluminum predominates are provided for in HTS subheading 7601.20.90. Although the HTS subheadings are provided for convenience and Customs purposes, the written description of the scope of this investigation is dispositive.

[Inv. No. 337–TA–381]

Certain Electronic Products, Including Semiconductor Products, Manufactured by Certain Processes; Commission Determination Not To Review an Initial Determination Terminating the Investigation on the Basis of a Settlement Agreement

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (ALJ's) initial determination (ID) (Order No. 24) in the above-captioned investigation terminating the investigation on the basis of a settlement agreement.

FOR FURTHER INFORMATION CONTACT: Mark D. Kelly, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3106.

SUPPLEMENTARY INFORMATION: This patent-based section 337 investigation was instituted by the Commission on February 22, 1996, on behalf of Texas Instruments Incorporated, Dallas, Texas. 61 FR 6863. The complaint alleged violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain electronic products, including semiconductor products, that are manufactured, produced, and assembled using processes that are covered by claims 1–8 or 9 of U.S. Letters Patent 4,884,674; claims 1–6 or 7 of U.S. Letters Patent 5,216,613; or claims 1–14 or 15 of U.S. Letters Patent 4,490,209; and that there existed an industry in the United States as required by subsection (a)(2) of section 337. The notice of investigation named Samsung Electronics Company, Ltd., Seoul, Korea and Samsung America, Inc., Ridgefield Park, New Jersey as respondents.

On December 23, 1996, the parties to the investigation, pursuant to Commission rule 210.21(a)(1) and (b)(1), filed a joint motion to terminate the investigation as to all issues based upon a settlement agreement. On January 30, 1997, the presiding ALJ granted the joint motion and issued an ID (Order No. 24) terminating the investigation on the basis of the settlement agreement. The ALJ found that there is no indication that termination of the investigation would have an adverse impact on the public interest and that termination based on settlement is generally in the public interest. No petitions for review were filed.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and Commission rule 210.42, 19 CFR 210.42.

Copies of the public version of the ALJ's ID, and all other nonconfidential documents filed in connection with this investigation, are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

Issued: February 27, 1997.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–5411 Filed 3–4–97; 8:45 am]

BILLING CODE 7020–02–P

[Inv. No. 337–TA–385]

Certain Random Access Memories, Processes for the Manufacture of Same, and Products Containing Same; Commission Determination Not To Review an Initial Determination Terminating the Investigation on the Basis of a Settlement Agreement

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (ALJ's) initial determination (ID) (Order No. 10) in the above-captioned investigation terminating the investigation on the basis of a settlement agreement.

FOR FURTHER INFORMATION CONTACT: Mark D. Kelly, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3106.

SUPPLEMENTARY INFORMATION: This patent-based section 337 investigation was instituted by the Commission on March 19, 1996, on behalf of Samsung Electronics Company, Ltd., Seoul, Korea. 61 FR 11222. The complaint alleged violations of section 337 based on the importation into the United States, the sale for importation, and the sale within the United States after importation of certain random access memories and products containing same that infringe claims 1–3 of U. S. Letters Patent 4,947,059, claims 1–7 of U. S. Letters Patent 5,444,026, and claims 1 and 5 of U. S. Letters Patent 5,072,134. The complaint also alleged that a domestic industry existed or was in the process of being established as required by subsection (a)(2) of section 337. The notice of investigation named Texas Instruments Incorporated of Dallas, Texas, Texas Instruments Singapore (PTE), Ltd., and Texas Instruments Japan, Ltd. as respondents.

On December 23, 1996, the parties to the investigation, pursuant to Commission rule 210.21(a)(1) and (b)(1), filed a joint motion to terminate the investigation as to all issues based upon a settlement agreement. On January 30, 1997, the presiding ALJ granted the joint motion and issued his ID (Order No. 10) terminating the investigation on the basis of the settlement agreement. The ALJ found that there is no indication that termination of the investigation would have an adverse impact on the public interest and that termination based on settlement is generally in the public interest. No petitions for review were filed.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and Commission rule 210.42, 19 CFR 210.42.

Copies of the public version of the ALJ's ID, and all other nonconfidential documents filed in connection with this investigation, are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

Issued: February 27, 1997.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–5412 Filed 3–4–97; 8:45 am]

BILLING CODE 7021–02–P

[Inv. No. 337-TA–394]

Certain Screen Printing Machines, Vision Alignment Devices Used Therein, and Component Parts Thereof; Investigation

AGENCY: International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on January 28, 1997, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of MPM Corporation, 16 Forge Park, Franklin, Massachusetts 02038. Supplements to the complaint were filed on February 11, February 13, and February 18, 1997. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain screen printing machines, vision alignment devices used therein, and component parts thereof that infringe claims 1, 2, 3, 4, 11, 18, and 21 of U.S. Letters Patent 5,060,063 and claims 1 and 7 of U.S. Letters Patent Re. 34,615. The complaint further alleges that there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after a hearing, issue a permanent exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint and supplements, except for any confidential information contained therein, are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

FOR FURTHER INFORMATION CONTACT: Steven Glazer, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2577.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section § 210.10 of the Commission's rules of practice and procedure, 19 CFR 210.10 (1996).

SCOPE OF INVESTIGATION: Having considered the complaint, the U.S. International Trade Commission, on February 27, 1997, *ordered that*

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain screen printing machines, vision alignment devices used therein, or component parts thereof by reason of infringement of claims 1, 2, 3, 4, 11, 18, or 21 of U.S. Letters Patent 5,060,063, or claims 1 or 7 of U.S. Letters Patent Re. 34,615, and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—

MPM Corporation, 16 Forge Park Franklin, MA 02038.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

DEK Printing Machines Limited, 11 Albany Road Granby Industrial Estate, Weymouth, Dorset DT4 9TH, United Kingdom.

DEK USA Inc., 8 Bartles Corner Road, Flemington, NJ 08822.

(c) Steven A. Glazer, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., Room 401–K, Washington, DC 20436, shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Paul J. Luckern is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section § 210.13 of the Commission's rules of practice and procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a) of the Commission's rules, such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

Issued: February 27, 1997.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–5409 Filed 3–4–97; 8:45 am]

BILLING CODE 7020–02–P

[Investigations Nos. 731–TA–761–762 (Preliminary)]

Static Random Access Memory Semiconductors From the Republic of Korea and Taiwan

AGENCY: United States International Trade Commission.

ACTION: Institution of antidumping investigations and scheduling of preliminary phase investigations.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping investigations Nos. 731–TA–761–762 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from the Republic of Korea (Korea) and Taiwan of static random access memory (SRAM) semiconductors,[1] that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. 1673a(c)(1)(B)), the Commission must reach preliminary determinations in antidumping investigations in 45 days, or in this case by April 11, 1997. The Commission's views are due at the Department of Commerce within five business days thereafter, or by April 18, 1997.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207), as amended in 61 FR 37818 (July 22, 1996).

EFFECTIVE DATE: February 25, 1997.

FOR FURTHER INFORMATION CONTACT: Fred Fischer (202–205–3179), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov or ftp://ftp.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted in response to a petition filed on February 25, 1997, by Micron Technology, Inc., Boise, ID.

Participation in the Investigations and Public Service List

Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the Federal Register. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the Federal Register. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on March 18, 1997, at the U.S. International Trade Commission Building, 500 E Street SW, Washington, DC. Parties wishing to participate in the conference should contact Fred Fischer (202–205–3179) not later than March 14, 1997, to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions

As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before March 21, 1997, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.12 of the Commission's rules.

Issued: February 27, 1997.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–5410 Filed 3–4–97; 8:45 am]

BILLING CODE 7020–02–P

[1] The products covered by these investigations are synchronous, asynchronous, and specialty static random access memory semiconductors (SRAMs), whether assembled or unassembled, from the Republic of Korea and Taiwan. Assembled SRAMs include all package types. Unassembled SRAMs include processed wafers, uncut dice, and cut dice. Processed wafers produced in Korea or Taiwan but packaged or assembled into memory modules in a third country are included in the scope; however, wafers produced in a third country and assembled or packaged in Korea or Taiwan are not included in the scope.

The scope of these investigations includes modules containing SRAMs. Such modules include single in-line processing modules (SIPs), single in-line memory modules (SIMMs), dual in-line memory modules (DIMMs), memory cards, or other collections of SRAMs whether unmounted or mounted on a circuit board.

The SRAMs subject to these investigations are currently classified in statistical reporting numbers 8542.13.8037 through 8542.13.8049, the subject modules are classified in statistical reporting number 8473.30.10, and the subject processed wafers, uncut dice and cut dice are classified in statistical reporting number 8542.13.8005 of the Harmonized Tariff Schedule of the United States.

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10307, et al.]

Proposed Exemptions; ADP Fluor Daniel, Incorporated Retirement Savings Plan (the Plan)

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

Unless otherwise stated in the Notice of Proposed Exemption, all interested persons are invited to submit written comments, and with respect to exemptions involving the fiduciary prohibitions of section 406(b) of the Act, requests for hearing within 45 days from the date of publication of this Federal Register Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice of Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the Federal Register. Such notice shall include a copy of the notice of proposed exemption as published in the Federal Register and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

ADP Fluor Daniel, Incorporated Retirement Savings Plan (The Plan) Located in Tucson, Arizona

(Application No. D–10307)

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a) and 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed sale by the Plan of two limited partnership interests (the Units) to ADP Fluor Daniel, Incorporated, a party in interest with respect to the Plan, providing the following conditions are satisfied: (1) the sale is a one-time transaction for cash; (2) the Plan pays no commissions nor other expenses relating to the sale; and (3) the purchase price is the greater of: (a) The fair market value of the Units as determined by a qualified, independent appraiser, or (b) the original acquisition and holding costs, plus attributable opportunity costs.

Summary of Facts and Representations

1. The Plan is a combination 401(K) and profit sharing plan sponsored by ADP Fluor Daniel, Incorporated (ADP). ADP is an Arizona corporation engaged in the business of international architecture and engineering. As of December 31, 1994, the Plan had 250 participants and assets with a fair market value of approximately $4,642,585.00.

2. Among the assets of the Plan are the Units, which are two shares of the Central Corridor-Osborn Investors Limited Partnership (the Limited Partnership), an Arizona limited partnership. The Plan's percentage ownership represented by its Units in the Limited Partnership is 3.11%. The Limited Partnership owns a 2.26 acre property located at the southeast corner of Central Avenue and Osborn Road, in Phoenix, Arizona. The Plan acquired the Units directly from the Limited Partnership, an unrelated third party, in 1987. The decision to acquire the Units was made by the Plan trustees; Richard Anderson, Philip Owen, Dale Harman, Solomon Pan, and Michael Stanley (the Trustees).[1] It is represented that the Plan paid a total of $25,000 to acquire the Units and subsequently made additional cash contributions and various other payments totaling $34,800 between 1989 and 1996 in connection with the holding of the Units. It is further represented that the Plan never derived any income from the investment in the Units to offset the expenditures made by the Plan related to the acquisition and holding of the Units. In this regard, it is represented that the cumulative costs paid by the Plan in connection with the acquisition and holding of the Units is $59,800.

3. The Applicant represents that the Plan wishes to sell the Units in order to divest itself of an asset which has and may continue to depreciate in value. It is further represented that the Units which are not publicly traded are incompatible with the Plan's new administrative investment features, which permits participants to access daily valuations and to individually direct the investments of their accounts. Selling the Units to ADP will enable the Plan to convert an illiquid, non-publicly traded real estate investment into cash,

[1] The Department expresses no opinion herein on whether the acquisition and holding of the Units by the Plan violated any of the provisions of Part 4 of Title I of the Act.

which will then be allocated to the accounts of participants and invested pursuant to the direction of those participants.

The Applicant obtained an independent appraisal of the units from Gary Ringel, President of U.S.L. Valuation, Inc., a real estate appraiser and consultant located in Scottsdale, Arizona. After reviewing the pertinent data, Mr. Ringel estimated that the Units' fair market value as of April 30, 1996 was $20,800.

4. The Applicant proposes to purchase the Units from the Plan for $85,072, which will be allocated on a pro rate basis among the participants' accounts that are invested in the Units. This amount represents the greater of: (a) The fair market value of the Units as determined by a qualified, independent appraiser, or (b) the Units' original acquisition and holding costs to the Plan plus opportunity costs attributable to the Units. It is represented, that because the fair market value of the Units is less than their acquisition cost, ADP will purchase the units for the latter amount. Taking into account the purchase price of the Units ($25,000) and the associated holding costs ($25,272), the Plan will receive a rate of return approximately equal to six percent for each of the eight years that the Plan has held the Units.

The Applicant represents that the subject transaction is in the interest of the Plan because if the Plan sold the Units on the open market, the Plan would receive substantially less than the amount the Applicant is willing to pay. In addition, the Plan could not at this time sell the Units to an unrelated third party at other than a substantial discount.

5. In summary, the Applicant represents that the subject transaction satisfies the statutory criteria for an exemption under section 408 of the Act for the following reasons: (1) The sale will be a one-time transaction for cash; (2) the Plan will not pay commissions nor other expenses relating to the sale; (3) the sale will enhance the liquidity of the assets of the Plan; and (4) the purchase price will be the greater of: (a) the fair market value of the Units as determined by a qualified, independent appraiser, or (b) the original acquisition and holding costs of the Units plus attributable opportunity costs.

Tax Consequences of Transaction

The Department of the Treasury has determined that if a transaction between a qualified employee benefit plan and its sponsoring employer (or affiliate thereof) results in the plan either paying less than or receiving more than fair market value, such excess may be considered to be a contribution by the sponsoring employer to the plan and therefore must be examined under applicable provisions of the Code, including sections 401(a)(4), 404 and 415.

Notice to Interested Persons

Notice of the proposed exemption shall be given to all interested persons by personal delivery and by first-class mail within 10 days of publication of the notice of pendency in the Federal Register. Such notice shall include a copy of the notice of proposed exemption as published in the Federal Register and shall inform interested persons of their right to comment and/or request a hearing with respect to the proposed exemption. Comments and requests for a hearing are due within 40 days of the date of publication of the notice in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Ms. Janet L. Schmidt of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

TA Associates, Inc. (TA Associates) Located in Boston, MA

(Application No. D–10314)

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply, effective December 29, 1993, to the making, by an employee benefit plan (the Plan), of capital contributions to any venture capital fund (the TA Fund) that is organized, sponsored and/or managed by TA Associates and/or any of its affiliates (collectively, TA) pursuant to a contractual obligation by a Plan having an interest in the TA Fund.[2]

This proposed exemption is subject to the following conditions:

(a) At the time the Plan undertakes the obligation to make such capital contributions (the Determination Date), the TA Fund is not a party in interest with respect to the Plan.

(b) The decision to make a capital contribution to a TA Fund is made on behalf of the Plan by a Plan fiduciary which is independent of and unrelated to TA and the portfolio company whose interest is acquired by the TA Fund.

(c) TA does not otherwise provide investment advice to the Plan within the meaning of Regulation section 29 CFR 2510.3–21(c) with respect to such Plan's assets that are invested in the TA Fund.

(d) At the Determination Date, the Plan has aggregate assets that are in excess of $50 million. In the case of multiple Plans which are invested through a master or group trust in a TA Fund, the assets of which are ''plan assets'' under 29 CFR 2510.3–101 (the Plan Asset Regulation), the $50 million threshold applies to the aggregate assets of such trust.

(e) Subsequent to the Determination Date, the TA Fund is a party in interest with respect to the Plan solely by reason of a relationship to a portfolio company which is a service provider to a Plan, as described in section 3(14) (H) or (I) of the Act, including a fiduciary with respect to such Plan.

(f) At the Determination Date, the capital commitment of the Plan (together with the capital commitments of any other Plans maintained by the same employer or employee organization) with respect to the TA Fund, does not exceed 15 percent of the total capital commitments with respect to such TA Fund.

(g) At the Determination Date, the percentage of the Plan's assets committed to be invested in the TA Fund does not exceed 5 percent of the Plan's total assets.

(h) At the Determination Date, a Plan's aggregate capital commitment to all TA Funds does not exceed 25 percent of the Plan's total assets.

(i) The Plan receives the following initial and ongoing disclosures with respect to the TA Fund:

(1) A copy of the private placement memorandum applicable to the TA Fund or another comparable document containing substantially the same information;

(2) A copy of the limited partnership or other agreement establishing the TA Fund;

(3) A copy of the subscription agreement applicable to the TA Fund, if any;

(4) Copies of the proposed exemption and grant notice related to the exemptive relief described herein; and

(5) Periodic, but no less frequently than annually, reports relating to the overall financial position and operational results of the TA Fund

[2] As discussed herein, TA Funds are expected to be organized as venture capital operating companies that are managed by TA.

including copies of the TA Fund's annual financial statements.

(j) With respect to capital contributions made to a TA Fund by a Plan after the date of issuance of the final exemption, TA maintains or causes to be maintained for a period of six years from the date of the transaction the records necessary to enable the persons described in paragraph (k) to determine whether the conditions of this exemption have been met, except that—

(1) A prohibited transaction will not be considered to have occurred, if due to circumstances beyond the control of TA, the records are lost or destroyed prior to the end of the six year period; and

(2) No party in interest, other than TA, shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975 (a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (k).

(k)(1) Except as provided in paragraph (k)(2) and notwithstanding any provisions of subsection (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (j) are unconditionally available at their customary location for examination during normal business hours by—

(A) Any duly authorized employee or representative of the Department or the Internal Revenue Service;

(B) Any fiduciary of a Plan who has an interest in the TA Fund and has the authority to acquire or dispose of the interest of the Plan in the TA Fund, or any duly authorized employee or representative of such fiduciary; and

(C) Any participant or beneficiary of any Plans or duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described in paragraph (k)(1)(B) and (k)(1)(C) shall be authorized to examine trade secrets of TA or commercial or financial information which is privileged or confidential.

EFFECTIVE DATE: If granted, this proposed exemption will be effective December 29, 1993.

Summary of Facts and Representations

1. TA is a Delaware corporation involved in the venture capital industry since 1968. TA has organized, sponsored and/or managed 21 venture capital funds, involving total capital commitments of approximately $1.46 billion. The investors in the TA Funds are primarily wealthy individuals and sophisticated investors, including employee benefit plans that are subject to the Act, private foundations, government plans, endowments and other tax exempt organizations. The applicant represents that venture capital funds, such as the TA Funds, allow Plans, particularly those having significant asset bases, to achieve greater diversification by asset class. As such, many of the investors in existing TA Funds and many potential investors in future TA Funds will be Plan investors that are covered by the Act.

2. Each TA Fund is organized and operated so that the assets of such TA Fund will not be deemed to be plan assets under the Plan Asset Regulation. In most cases, this results from the fact that the TA Fund is operated in a manner which causes such fund to qualify as a venture capital operating company.[3] In some cases, it may be the result of the fact that the equity participation in the TA Fund by benefit plan investors is not significant (i.e., more than 75 percent or more of the equity interest in the entity is held by non-benefit plan investors).[4]

3. The TA Funds have typically been structured as limited partnerships with TA serving as general partner and, in some cases, having an interest as limited partner. (TA Funds organized in the future may be organized as limited liability companies.) The TA Funds are managed by TA which receives a pre-specified management fee as well as a pre-specified incentive allocation after investors have received distributions in excess of their capital contributions plus a pre-specified minimum rate of return. Because the TA Funds are expected to be organized as venture capital operating companies, the applicant represents that none of the TA Funds will hold ''plan assets'' and that the compensation paid to TA by the TA Funds will not be subject to the prohibitions under the Act.[5]

TA's most recent fund, Advent VII, has aggregate capital commitments of approximately $303 million from 83 individual and institutional investors. Of the institutional investors, 14 investors are Plans that are covered under the provisions of the Act. These Plans have made a total capital commitment to Advent VII of $95 million.

4. Each investor in a TA Fund, including each Plan investor, enters into a binding commitment to make capital contributions to the TA Fund in an amount specified by the investor. Although an investor's capital commitments are not required to be made at the outset, capital is drawn down over time as the TA Fund identifies and makes its venture capital and other investments. Generally, capital is called down in installments ranging from 5 percent to 10 percent of the total commitment. In most cases, all of the capital commitments will have been drawn down within 3 to 5 years of the establishment of the TA Fund.

5. In recent years, the TA Funds have expanded their focus to include a wide variety of portfolio companies.[6] Specifically, the TA Funds have acquired, and expect to acquire, interests in portfolio companies which are involved, either directly or through subsidiaries, in various aspects of the financial services industry. TA believes this broader scope is necessary to enable the TA Funds to maximize investment opportunities and investment returns. In TA's view, business opportunities can arise in connection with start-up or later-stage companies (including spin-offs and management buy-outs of existing business operations) in

[3] Regulation section 29 CFR 2510.3–101(c) of the Plan Asset Regulation defines the term ''operating company'' as an entity that is primarily engaged, directly or through a majority-owned subsidiary or subsidiaries, in the production or sale of a product or service other than the investment of capital. The term ''operating company'' includes a ''venture capital operating company.''

Regulation section 29 CFR 2510.3–101(d) provides, in part, that an entity is a ''venture capital operating company'' if at least 50 percent of its assets are invested in venture capital investments, and the entity, in the ordinary course of its business, actually exercises management rights with respect to one or more operating companies in which it invests. Regulation section 29 CFR 2510.3–101(d)(3) explains that a venture capital investment is an investment in an operating company (other than a venture capital operating company) as to which the investor has or obtains management rights. The term ''management rights'' is defined under regulation section 29 CFR 2510.3–101(d)(3)(ii) to mean contractual rights directly between the investor and an operating company to substantially participate in, or substantially influence the conduct of, the management of the operating company.

[4] Regulation section 2510.3–101(f)(1) states, in pertinent part, that equity participation in an entity by benefit plan investors is ''significant'' on any date, if immediately after the most recent acquisition of any equity interest in the entity, 25 percent or more of the value of any class of equity interests in the entity is held by benefit plan investors.

[5] The Department is providing no opinion with regard to whether a TA Fund is a venture capital operating company or whether the equity participation by Plans investing in a TA Fund is not significant. In addition, the Department is not expressing any views with respect to the compensation that is paid to TA by a TA Fund.

[6] According to the applicant, the term ''portfolio company'' refers to each of the operating companies in which a venture capital fund has made an investment. Thus, for example, when a venture capital fund, such as a TA Fund, makes an investment in a start-up, high tech company, that company becomes one of the venture capital fund's portfolio companies and will remain so as long as the venture capital fund retains its investment in that high tech company. Similarly, if a venture capital fund acquires an interest in an investment management firm, the investment management firm will become a portfolio company of the venture capital fund.

virtually any type of business rather than exclusively in the hi-technology area.

6. As part of this diversification trend, TA Funds have been and will be acquiring interests in portfolio companies that are involved in providing money management services, brokerage services or other types of services which may be utilized by Plans and institutional investors. The portfolio company may be, or may become, a party in interest with respect to one or more Plans which hold an interest in the TA Fund when such portfolio company, or any subsidiary thereof performs services for a Plan. The services may include fiduciary services (e.g., management of assets of the Plan other than those invested in a TA Fund). In no event will the portfolio company or its subsidiary act in a fiduciary capacity with respect to the assets of the Plan that are invested in the TA Fund.

If the TA Fund owns, directly or indirectly, a 10 percent or more interest in a service provider, TA notes that the Fund will become a party in interest with respect to such Plan under section 3(14) (H) and (I) of the Act.[7] Since a TA Fund frequently purchases a 10 percent or more interest in a portfolio company, TA represents that it is possible that a TA Fund could become a 10 percent or more owner of a service provider and a party in interest with respect to each Plan as to which the portfolio company (or one of its subsidiaries) is a service provider. Once a TA Fund becomes a party in interest with respect to a Plan, TA states that the Plan would be prohibited from engaging in any transaction with that TA Fund.

If a TA Fund were to become a party in interest with respect to a Plan, TA is concerned that a capital contribution made by the Plan subsequent to the TA Fund's becoming a party in interest would violate section 406(a)(1)(D) of the Act notwithstanding the fact that the capital contribution is being made pursuant to a pre-existing binding contractual commitment made by the Plan at a time when the TA Fund was not a party in interest. Therefore, to resolve these potential technical violations of the Act, TA has requested an administrative exemption from the Department.

7. If granted, the proposed exemption will be effective December 29, 1993. On that date, one of the TA Funds acquired 100 percent of the interest in a portfolio company which owned or subsequently acquired several investment managers. At least one of the investment managers provided services to a Plan that was also an investor in the TA Fund. As a result, TA believes that prohibited transactions may have occurred when the Plan subsequently funded its remaining capital contributions to the TA Fund.

It is represented that the discovery of the prohibited transactions was made by TA and not by the investment manager. The only role that the investment manager played in these determinations was its provision to TA of a list of clients which enabled TA to compare the investment manager's clients with the list of investors in the affected TA Fund. It is represented that the investment manager did not have any responsibility with respect to the assets of the Plan that were invested in the TA Fund.

8. The requested exemption is subject to a number of conditions that will apply both retroactively and prospectively. First, the TA Fund's party in interest status will, in all cases, arise on the Determination Date, i.e., after the Plan has made a binding commitment to invest in the TA Fund, including its commitment to make future capital contributions to the TA Fund. Second, the decision to undertake the obligation to make a binding commitment must be made on behalf of the Plan by a Plan fiduciary which is independent of and unrelated to TA and the portfolio company. Third, TA must not otherwise provide investment advice to the Plan within the meaning of Regulation section 29 CFR 2510.3–21(c) with respect to such Plan's assets that are invested in the TA Fund. Fourth, at the Determination Date, the Plan must have aggregate assets that are in excess of $50 million. In the case of multiple Plans which are invested through a master or group trust in an entity, the $50 million threshold will apply to the aggregate assets of such trust or entity. Fifth, as of the Determination Date, the capital commitment of the Plan (together with the capital commitments of any other Plans maintained by the same employer or employee organization) with respect to the TA Fund, must not exceed 15 percent of the total capital commitments with respect to such TA Fund. Sixth, at the Determination Date, the percentage of the Plan's assets committed to be invested in the TA Fund must not exceed 5 percent of the Plan's total assets. Seventh, at the Determination Date, a Plan's aggregate capital commitment with respect to all TA Funds must not exceed 25 percent of such Plan's total assets. TA represents that the transaction which occurred on December 29, 1993 met all of the foregoing substantive conditions.

9. The conditions of the exemption also require that each Plan receive the following initial and ongoing written disclosures from TA: (a) A copy of the private placement memorandum applicable to the TA Fund or another comparable document containing substantially the same information; (b) a copy of the limited partnership or other agreement establishing the TA Fund; (c) a copy of the subscription agreement applicable to the TA Fund, if any; (d) copies of the proposed exemption and grant notice related to the exemptive relief described herein; and (e) periodic, but no less frequently than annually, reports relating to the overall financial position and operational results of the TA Fund including copies of the TA Fund's annual financial statements. In addition, with respect to capital contributions made to a TA Fund by a Plan after the date of issuance of the final exemption, TA will maintain or cause to be maintained for a period of six years from the date of each transaction, records of each Plan investing in a TA Fund and each portfolio company comprising a TA Fund. Such records will enable the Department and other persons to determine whether the terms and conditions of the exemption are being met.

10. If the exemption is not granted, TA represents that it and the TA Funds would be required to make one of several adjustments designed to avoid the prohibited transaction concern that is the subject of this request. However, TA states that it does not believe these adjustments would be in the best interest of existing or prospective Plan investors. In this regard, TA represents that it might attempt to avoid the problem by not acquiring any portfolio companies which are, directly or indirectly, service providers to any of a TA Fund's Plan investors. However, TA does not consider this alternative satisfactory because it would limit the TA Fund's potential range of investments and diminish the expected investment return of such Fund. Moreover, TA points out that a portfolio company which is not a service provider at the time of the TA Fund's investment might become a service provider at some time in the future. Under these circumstances, TA

[7] In this regard, it is noted that the corresponding section of the Code relating to disqualified persons (see section 4975(e)(2) (H) and (I) does not contain a similar provision which would make the owner of 10 percent or more of a service provider a disqualified person with respect to a Plan. Nevertheless, because the service provider is a disqualified person under section 4975(e)(2)(B) of the Code, TA has requested that the exemption extend to both the Code and the Act in order to avoid any potential concerns regarding the possibility of indirect prohibited transactions.

represents that it would be impractical to restrict the activities of all portfolio companies in which the TA Fund invests to assure that no such portfolio company would ever become a service provider to any TA Fund's Plan investors. According to TA, such restriction would be contrary to the best interest of the TA Funds and their investors, particularly, their Plan investors.

As another alternative, TA represents that it could limit the offering of interests in the TA Funds to those Plans which could take advantage of Prohibited Transaction Exemption (PTE) 84–14 (49 FR 9494 March 13, 1984), the Class Exemption for Plan Asset Transactions Determined by Independent Qualified Professional Asset Managers (QPAMs) or PTE 96–23 (61 FR 15975, April 10, 1996), the Class Exemption for Plan Asset Transactions Determined by In-House Asset Managers (INHAMs).[8] However, TA believes that such an approach would be unduly restrictive and not in the best interest of the Plans since relatively few Plans could take advantage of PTE 96–23. Also Plans would be forced to hire a QPAM and incur an additional expense in order to invest in a TA Fund if the Plan's named fiduciary would otherwise make that decision itself.

11. In summary, it is represented that the proposed exemption has satisfied or will satisfy the statutory conditions for an exemption under section 408(a) of the Act because: (a) At the Determination Date, the TA Fund's party in interest status has or will, in all cases, arise after the Plan has made its binding commitment to invest in the TA Fund, including its commitment to make future capital contributions to the TA Fund; (b) the decision by a Plan to make capital contributions to the TA Fund has been and will be made on behalf of the Plan by a Plan fiduciary which is independent of and unrelated to TA and the portfolio company that is acquired by the TA Fund; (c) TA will not otherwise provide investment advice to the Plan within the meaning of 29 CFR 2510.3–21(c) of the Act with respect to such Plan's assets that are invested in the TA Fund; (d) as of the Determination Date, the capital commitment of the Plan (together with the capital commitment of any other related Plans maintained by the same employer or employee organization) has not and will not exceed more than 15 percent of the total outstanding capital commitments with respect to the TA Fund; (d) at the Determination Date, the percentage of the Plan's assets committed to be invested in the TA Fund does not and will not exceed 5 percent of the Plan's total assets and the Plan's aggregate commitment to all TA Funds has not and will not exceed 25 percent of the Plan's total assets; (e) a Plan investing in a TA Fund has or will have assets that are in excess of $50 million; and (f) TA has or will make written disclosures to the Plan regarding the TA Fund both at the time of the initial commitment to invest in such Fund as well as on an ongoing basis.

Notice to Interested Persons

Those persons who may be interested in the pendency of the requested exemption include fiduciaries of Plans whose assets are currently invested in a TA Fund. Accordingly, the Department has determined that the only practical form of providing notice to such Plan fiduciaries is the distribution, by TA, of a copy of the proposed exemption by first class mail within 30 days of the date of publication of the pendency notice in the Federal Register. The notice will include a copy of the notice of proposed exemption, as published in the Federal Register, as well as a supplemental statement, as required, pursuant to 29 CFR 2570.43(b)(2), which shall inform interested persons of their right to comment on the pending exemption. Comments with respect to the proposed exemption are due 60 days after the date of publication of the proposed exemption in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975 (c)(2) of the Code does not believe a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 28th day of February 1997.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 97–5430 Filed 3–4–97; 8:45 am]

BILLING CODE 4510–29–M

[Prohibited Transaction Exemption 97–15; Exemption Application No. D–10172, et al.]

Grant of Individual Exemptions; The Chicago Corporation (TCC), et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of

[8] PTE 84–14 permits various parties which are related to employee benefit plans to engage in transactions involving plan assets, if among other conditions, the assets are managed by QPAMs (i.e., banks, savings and loan associations, insurance companies or investment advisers registered under the Investment Advisers Act of 1940), which are independent of the parties in interest and meet certain financial standards. PTE 96–23 permits various transactions involving employee benefit plans whose assets are managed by INHAMs and party in interest service providers.

the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the Federal Register of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

• In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

The Chicago Corporation (TCC), Located in Chicago, IL

(Prohibited Transaction Exemption 97–15; Application No. D–10172)

Exemption

Section I. Covered Transactions

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to the proposed sale, for cash or other consideration, by the Midwest Banc Fund IV Group Trust (the BF IV Group Trust) in which employee benefit plans (the Plans) invest, of certain securities (the Securities) that are held in the BF IV Group Trust Portfolio, to a party in interest with respect to a participating Plan, where the part in interest proposes to acquire or merge with a bank company (the Bank Company) or a financial services company (the Financial Services Company) that issued such securities.

In addition, the restrictions of section 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(E) of the Code, shall not apply to the payment of a performance fee (the Performance Fee) by Plans investing in the BF IV Group Trust to TCC.

This exemption is subject to the following conditions as set forth below in Section II.

Section II. General Conditions

(a) Prior to a Plan's investment in the BF IV Group Trust, a Plan fiduciary which is independent of TCC and its affiliates (the Independent Fiduciary) approves such investment on behalf of the Plan.

(b) Each Plan investing in the BF IV Group Trust has total assets that are in excess of $50 million.

(c) No Plan invests more than 10 percent of its assets in beneficial interests (the Beneficial Interests) in the BF IV Group Trust and such Beneficial Interests held by the Plan may not exceed 25 percent of the Group Trust.

(d) No Plan may invest more than 25 percent of its assets in investment vehicles (i.e., collective investment funds or separate accounts) managed or sponsored by TCC and/or its affiliates.

(e) Prior to investing in the BF IV Group Trust,

(1) Each Independent Fiduciary receives a Private Placement Memorandum and its supplement containing description of all material facts concerning the purpose, structure and the operation of the BF IV Group Trust.

(2) An Independent Fiduciary who expresses further interest in the BF IV Group Trust receives—

(A) A copy of the Group Trust Agreement outlining the organizational principles, investment objectives and administration of the BF IV Group Trust, the manner in which Beneficial Interests may be redeemed, the duties of the parties retained to administer the BF IV Group Trust and the manner in which BF IV Group Trust assets will be valued;

(B) A copy of the Investment Management Agreement describing the duties and responsibilities of TCC, as investment manager of the BF IV Group Trust, the rate of compensation that it will be paid and conditions under which TCC may be terminated; and

(C) Copies of the proposed exemption and grant notice covering the exemptive relief provided herein.

(3) If accepted as an investor in the Group Trust, the Independent Fiduciary is—

(A) Furnished with the names and addresses of all other participating Plans;

(B) Required to acknowledge, in writing, prior to purchasing a Beneficial Interest in the BF IV Group Trust that such Independent Fiduciary has received copies of such documents; and

(C) Required to acknowledge, in writing, to TCC that such fiduciary is independent of TCC and its affiliates, capable of making an independent decision regarding the investment of Plan assets, knowledgeable with respect to the Plan in administrative matters and funding matters related thereto, and able to make an informed decision concerning participation in the BF IV Group Trust.

(f) Each Plan, including the trustee (the Trustee) of the BF IV Group Trust, receives the following written disclosures from TCC with respect to its ongoing participation in the BF IV Group Trust:

(1) Within 120 days after the end of each fiscal year of the BF IV Group Trust as well as at the time of termination, an annual financial report containing a balance sheet for the BF IV Group Trust as of the end of such fiscal year and a statement of changes in the financial position for the fiscal year, as audited and reported upon by independent, certified public accountants. The annual report will also disclose the fees paid or accrued to TCC.

(2) Within 60 days after the end of each quarter (except in the last quarter) of each fiscal year of the BF IV Group Trust, an unaudited quarterly financial report consisting of at least a balance sheet for the BF IV Group Trust as of the end of such quarter and a profit and loss statement for such quarter. The quarterly report will also specify the fees that are actually paid to or accrued to TCC.

(3) Such other information as may be reasonably requested by the Plans or the Trustee (e.g., certain trading activity and portfolio status reports provided to the Trustee as required by Prohibited Transaction Exemption 86–128 (51 FR

41686, November 16, 1986) in order to comply with the reporting requirements of the Act and the Code.

(g) At least annually, TCC holds a meeting of the participating Plans at which time the Independent Fiduciaries of investing Plans are given the opportunity to decide on whether the BF IV Group Trust, the Trustee or TCC should be terminated as well as to discuss any aspect of the BF IV Group Trust and the agreements promulgated thereunder with TCC.

(h) During each year of the BF IV Group Trust's existence, TCC representatives are available to confer by telephone or in person with Independent Fiduciaries on matters concerning such Group Trust.

(i) The terms of all transactions that are entered into on behalf of the BF IV Group Trust by TCC remain at least as favorable to an investing Plan as those obtainable in arm's length transactions with unrelated parties. In this regard, the valuation of assets in the BF IV Group Trust that is done in connection with the payment of Performance Fees is based upon independent market quotations or (where the same are unavailable) determinations made by an independent appraiser.

(j) In the case of the sale by the BF IV Group Trust of Securities to a party in interest with respect to a participating Plan, the party in interest is not TCC, any employer of a participating Plan, or any affiliated thereof, and the BF IV Group Trust receives the same terms as is offered to other shareholders of a Bank Company or a Financial Services Company.

(k) As to each Plan, the total fees paid to TCC and its affiliates constitute no more than ''reasonable compensation'' within the meaning of section 408(b)(2) of the Act.

(l) TCC's Performance Fee is based upon a predetermined percentage of net realized gains minus net unrealized losses. In this regard.

(1) The Performance Fee is not to be paid before December 31, 2001, which represents the completion of the projected acquisition phase of the BF IV Group Trust, and not until all participating Plans have received distributions equal to 100 percent of their capital contributions made to the BF IV Group Trust.

(2) Prior to the termination of the BF IV Group Trust, no more than 75 percent of the Performance Fee credited to TCC is withdrawn from such Group Trust.

(3) The Performance Fee account established for TCC is credited with realized gains and losses and charged for net unrealized losses and fee payments.

(4) No portion of the Performance Fee is withdrawn if the Performance Fee Account is in a deficit position.

(5) TCC repays all deficits in its Performance Fee account and it maintains a 25 percent cushion in such account before receiving any further fee payment.

(m) Either TCC or the Trustee, on behalf of Plans participating in the BF IV Group Trust, may terminate the Investment Management Agreement at any time pursuant to the provisions in such agreement.

(n) TCC maintains, for a period of six years, the records necessary to enable the persons described in paragraph (o) of this Section II to determine whether the conditions of this exemption have been met, except that—

(1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of TCC and/or its affiliates, the records are lost or destroyed prior to the end of the six year period; and

(2) No party in interest other than TCC shall be subject to the civil penalty that may be assessed under section 502(i) or the Act, or to the taxes imposed by section 4975 (a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (o) below.

(o)(1) Except as provided in section (o)(2) of this paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (n) of this Section II shall be unconditionally available at their customary location during normal business hours by:

(A) Any duly authorized employee or representative of the Department or the Internal Revenue Service;

(B) Any Independent Fiduciary of a participating Plan or any duly authorized representative of such Independent Fudiciary;

(C) Any contributing employer to any participating Plan or any duly authorized employee representative of such employer; and

(D) Any participant or beneficiary of any participating Plan, or any duly authorized representative of such participant or beneficiary.

(o)(2) None of the persons described above in subparagraphs (B)–(D) of this paragraph shall be authorized to examine the trade secrets of TCC or commercial or financial information which is privileged or confidential.

Section III. Definitions

For purposes of this exemption,

(a) the term ''TCC'' means The Chicago Corporation and any affiliate of TCC as defined in paragraph (b) of Section III.

(b) An ''affiliate'' of TCC includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with TCC.

(2) Any officer, director or partner in such person, and

(3) Any corporation or partnership of which such person is an officer, director or a 5 percent partner or owner.

(c) The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) An ''Independent Fiduciary'' is Plan fiduciary who is independent of TCC and its affiliates and is either a Plan administrator, trustee, named fiduciary, as the recordholder of Beneficial Interests in the BF IV Group Trust or an investment manager.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption on January 14, 1997 at 62 FR 1913.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

United States Trust Company of New York and Certain of Its Affiliates, Located in New York, New York

(Prohibited Transaction Exemption 97–17; Application Nos. D–10234 and D–10235)

Section I—Exemption for In-Kind Transfers of Assets

The restrictions of section 406(a) and 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (F) of the Code, shall not apply, effective as of May 31, 1996, to the in-kind transfer to any diversified open-end investment company (the Fund or Funds) registered under the Investment Company Act of 1940 (the ICA) to which the United States Trust Company of New York or any of its affiliates (collectively, US Trust) serves as investment adviser and may provide other services (i.e. ''Secondary Services'' as defined in Section III(h) below, of the assets of various employee benefit plans (the Plan or Plans) that are either held in certain collective investment funds (the CIF or CIFs) maintained by US Trust or

otherwise held by US Trust as trustee, investment manager, or in any other capacity as fiduciary on behalf of the Plans, in exchange for shares of such Funds; provide that the following conditions are met:

(a) A fiduciary (the Second Fiduciary) who is acting on behalf of each affected Plan and who is independent of and unrelated to US Trust, as defined in Section III(g) below, receives advance written notice of the in-kind transfer of assets of the Plans or the CIFs in exchange for shares of the Fund and the disclosures described in Section II(f) below.

(b) On the basis of the information described in Section II(f) below, the Second Fiduciary authorizes in writing the in-kind transfer of CIF or Plan assets in exchange for shares of the Funds, the investment of such assets in corresponding portfolios of the Funds, and the fees received by US Trust in connection with its services to the Fund. Such authorization by the Second Fiduciary is to be consistent with the responsibilities, obligations, and duties imposed on fiduciaries by Part 4 of Title I of the Act.

(c) No sales commissions are paid by the Plans in connection with the in-kind transfers of CIF or Plan assets in exchange for shares of the Funds.

(d) All or a pro rata portion of the assets of the Plans held in the CIFs or all or a pro rata portion of the assets of the Plans held by US Trust in any capacities as fiduciary on behalf of such Plans are transferred in-kind to the Funds in exchange for shares of such Funds. Notwithstanding the foregoing, solely for purposes of this paragraph (d), assets of the 401(k) Plan and ESOP of United States Trust Company of New York and Affiliated Companies (the UST DC Plan) held by US Trust as trustee and allocated to the U.S. Government Short/Intermediate Term Investment Fund shall be treated as assets held in a CIF.

(e) The Plans or the CIFs receive shares of the Funds that have a total net asset value equal in value to the assets of the Plans or the CIFs exchanged for such shares on the date of transfer.

(f) With respect to any in-kind transfer of CIF assets to a Fund, each Plan receives shares of a Fund which have a total net asset value that is equal to the value of the Plan's pro rata share of the assets of the corresponding CIF on the date of the transfer, based on the current market value of the CIF's assets, as determined in a single valuation performed in the same manner as of the close of the same business day with respect to all such Plans participating in the transaction on such day, using independent sources in accordance with the procedures set forth in Rule 17a–7(b) under the ICA (Rule 17a–7) for the valuation of such assets. Such procedures must require that all securities for which a current market price cannot be obtained by reference to the last sale price for transactions reported on a recognized securities exchange or NASDAQ be valued based on an average of the highest current independent bid and lowest current independent offer, as of the close of business on the last business day prior to the in-kind transfers, determined on the basis of reasonable inquiry from at least three sources that are broker-dealers or pricing services independent of US Trust.

(g)(1) Not later than thirty (30) days after completion of each in-kind transfer of CIF or Plan assets in exchange for shares of the Funds (except for certain transactions described in paragraph (g)(2) below), US Trust sends by regular mail to the Second Fiduciary, a written confirmation containing:

(i) the identity of each of the assets that are valued for purposes of the transaction in accordance with Rule 17a–7(b)(4) under the ICA;

(ii) the price of each of the assets involved in the transaction; and

(iii) the identity of each pricing service or market maker consulted in determining the value of such assets;

(2) For the in-kind transfer of CIF assets to the Funds which occurred on June 28 and July 31, 1996, the written confirmations described above in paragraph (g)(1) were made by US Trust to all Second Fiduciaries of the appropriate Plans by October 15, 1996.

(h) For all in-kind transfer of CIF assets, US Trust sends by regular mail to the Second Fiduciary, no later than ninety (90) days after completion of the asset transfer made in exchange for shares of the Funds, a written confirmation containing:

(1) the number of CIF units held by each affected Plan immediately before the in-kind transfer, the related per unit value, and the aggregate dollar value of the units transferred; and

(2) the number of shares in the Funds that are held by each affected Plan following the in-kind transfer, the related per share net asset value, and the aggregate dollar value of the shares received.

(i) The conditions set forth in paragraphs (d), (e), (f), (o), (p), and (q) of Section II below are satisfied.

Section II—Exemption for Receipt of Fees From Funds

The restrictions of section 406(a) and section 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (F) of the Code shall not apply, effective as of June 30, 1996, to the receipt of fees by US Trust from the Funds for acting as the investment adviser for the Funds as well as for acting as the custodian, transfer agent, sub-administrator or for providing other ''Secondary Services'' (as defined in Section III(h) below) to the Funds in connection with the investment in the Funds by Plans for which US Trust acts as a fiduciary (Client Plans), other than Plans established and maintained by US Trust for the benefit of its employees and their beneficiaries (Bank Plans), provided that the following conditions are met:

(a) No sales commissions are paid by the Client Plans in connection with purchases or sales of shares of the Funds and no redemption fees are paid in connection with the sale of such shares by the Plans to the Funds.

(b) The price paid or received by the Client Plans for shares in the Funds is the net asset value per share, as defined in Section III(e), at the time of the transaction and is the same price which would have been paid or received for the shares by any other investor at that time.

(c) Neither US Trust nor any affiliate (including officers, directors and other persons, as defined in Section III(b) below) purchases from or sells to the Client Plans any shares of the Funds.

(d) For each Client Plan, the combined total of all fees received by US Trust for the provision of services to the Client Plan, and in connection with the provision of services to any of the Funds in which the Plan may invest, are not in excess of ''reasonable compensation'' within the meaning of section 408(b)(2) of the Act.

(e) US Trust or an affiliate does not receive any fees payable, pursuant to Rule 12b–1 under the ICA (the 12b–1 Fees) in connection with the transactions.

(f) The Second Fiduciary who is acting on behalf of a Client Plan receives in advance of the investment by a Plan in any of the Funds a full and detailed written disclosure of information concerning such Fund including, but not limited to:

(1) a current prospectus for each portfolio of each of the Funds in which such Client Plan is considering investing;

(2) a statement describing the fees for investment management, investment advisory, or other similar services, any fees for Secondary Services, as defined in Section III(h) below, and all other fees to be charged to or paid by the

Client Plan and by such Funds to US Trust, including the nature and extent of any differential between the rates of such fees;

(3) the reasons why US Trust may consider such investment to be appropriate for the Client Plan;

(4) a statement describing whether there are any limitations applicable to US Trust with respect to which assets of a Client Plan may be invested in the Funds, and, if so, the nature of such limitations; and

(5) upon request of the Second Fiduciary, a copy of the proposed exemption and/or a copy of the final exemption (once such documents are published in the Federal Register).

(g) On the basis of the information described in Section II(f) above, the Second Fiduciary authorizes in writing the investment of assets of the Client Plan in shares of the Fund and the fees to be paid to US Trust in connection with its services to the Funds. The authorization may be the Second Fiduciary must be consistent with the duties, responsibilities and obligations imposed on fiduciaries by Part 4 of Title I of the Act.

(h) The authorization described above in Section II(g) is terminable at will by the Second Fiduciary of a Client Plan, without penalty to such Plan, upon receipt by US Trust of written notice of termination. Such termination will be effected by US Trust selling the shares of the Fund held by the affected Client Plan within one business day following receipt by US Trust of the termination form (the Termination Form), as defined in Section III(i) below, or any other written notice of termination; provided that if, due to circumstances beyond the control of US Trust, the sale cannot be executed within one business day, US Trust shall have one additional business day to complete such sale.

(i) Each Client Plan receives a credit, either through cash or, if applicable, the purchase of additional shares of the Funds, pursuant to an annual election, which may be revoked at any time, made by the Client Plan, of such Plan's proportionate share of all investment advisory fees charged to the Funds by US Trust, including any investment advisory fees paid by US Trust to third party sub-advisers, within not more than one business day after the receipt of such fees by US Trust. The crediting of all such fees to the Client Plans by US Trust is audited by an independent accounting firm on at least an annual basis to verify the proper crediting of the fees to each Client Plan.

(j) In the event of an increase in the rate of any fees paid by the Funds to US Trust regarding any investment management services, investment advisory services, or fees for similar services that US Trust provides to the Funds over an existing rate for such services that had been authorized by a Second Fiduciary, in accordance with Section II(g), US Trust will, at least thirty (30) days in advance of the implementation of such increase, provide a written notice (separate from the Fund prospectus) to the Second Fiduciary of each of the Client Plans invested in a Fund which is increasing such fees.

(k) In the event of an addition of a Secondary Service, as defined in Section III(h) below, provided by US Trust to the Fund for which a fee is charged or an increase in the rate of any fee paid by the Funds to US Trust for any Secondary Service that results either from an increase in the rate of such fee or from the decrease in the number or kind of services performed by US Trust for such fee over an existing rate for such Secondary Service which had been authorized by the Second Fiduciary of a Client Plan, in accordance with Section II(g), US Trust will at least thirty (30) days in advance of the implementation of such additional service for which a fee is charged or fee increase, provide a written notice (separate from the Fund prospectus) to the Second Fiduciary of each of the Client Plans invested in a Fund which is adding a service or increasing fees. Such notice shall be accompanied by the Termination Form, as defined in Section III(i) below.

(l) The Second Fiduciary is supplied with a Termination Form at the times specified in paragraphs (k), (l), and (m) of this Section II, which expressly provides an election to terminate the authorization, described above in Section II(g), with instructions regarding the use of such Termination Form including statements that:

(1) The authorization is terminable at will by any of the Client Plans, without penalty to such Plans. Such termination will be effected by US Trust selling the shares of the Fund held by the Client Plans requesting termination within one business day following receipt by US Trust, either by mail, hand delivery, facsimile, or other available means at the option of the Second Fiduciary, of the Termination Form or any other written notice of termination; provided that if, due to circumstances beyond the control of US Trust, the sale of shares of such Client Plans cannot be executed within one business day, U.S. shall have one additional business day to complete such sale; and

(2) Failure by the Second Fiduciary to return the Termination Form on behalf of a Client Plan will be deemed to be an approval of the additional Secondary Service for which a fee is charged or increase in the rate of any fees, if such Termination Form is supplied pursuant to paragraphs (k) and (l) of this section II, and will result in the continuation of the authorization, as described in Section II(g), of US Trust to engage in the transactions on behalf of such Client Plan.

(m) The Second Fiduciary is supplied with a Termination Form, annually during the first quarter of each calendar year, beginning with the first quarter of the calendar year that begins after the date this exemption is published in the Federal Register and continuing for each calendar year thereafter; provided that the Termination Form need not be supplied to the Second Fiduciary, pursuant to this paragraph (m), sooner than six months after a Termination Form is supplied pursuant to Section II (k) and (l), except to the extent required by such paragraphs to disclose an additional Secondary Service for which a fee is charged or an increase in fees.

(n)(1) With respect to each of the Funds in which a Client Plan invests, US Trust will provide the Second Fiduciary of such Plan:

(A) at least annually with a copy of an updated prospectus of such Fund;

(B) upon the request of such Second Fiduciary, with a report or statement (which may take the form of the most recent financial report, the current statement of additional information, or some other written statement) which contains a description of all fees paid by the Fund to US Trust; and

(2) With respect to each of the Funds in which a Client Plan invests, in the event such Fund places brokerage transactions with US Trust, US Trust will provide the Second Fiduciary of such Plan at least annually with a statement specifying:

(A) the total, expressed in dollars, brokerage commissions of each Fund's investment portfolio that are paid to US Trust by such Fund;

(B) the total, expressed in dollars, of brokerage commissions of each Fund's investment portfolio that are paid by such Fund to brokerage firms unrelated to US Trust;

(C) the average brokerage commissions per share, expressed as cents per share, paid to US Trust by each portfolio of a Fund; and

(D) the average brokerage commissions per share, expressed as cents per share, paid by each portfolio of a Fund to brokerage firms unrelated to US Trust.

(o) All dealings between the Client Plans and any of the Funds are on a

basis no less favorable to such Plans that dealings between the Funds and other shareholders holding the same class of shares as the Plans.

(p) US Trust maintains for a period of six (6) years the records necessary to enable the persons, as described in Section II(q) below, to determine whether the conditions of the exemption have been met, except that:

(1) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of US Trust, the records are lost or destroyed prior to the end of the six (6) year period, and

(2) no party in interest, other than US Trust, shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975 (a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by Section II(q) below.

(q)(1) Except as provided in Section II(q)(2) and notwithstanding any provisions of Section 504 (a)(2) and (b) of the Act, the records referred to in Section II(p) above are unconditionally available at their customary location for examination during normal business hours by—

(i) Any duly authorized employee or representative of the Department or the Internal Revenue Service;

(ii) Any fiduciary of each of the Plans who has authority to acquire or dispose of shares of any of the Funds owned by such a Plan, or any duly authorized employee or representative of such fiduciary; and

(iii) Any participant or beneficiary of the Plans or duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described in paragraph (q)(1)(ii) and (q)(1)(iii) of Section II shall be authorized to examine trade secrets of US Trust, or commercial or financial information which is privileged or confidential.

Section III—Definitions

For purposes of this exemption,

(a) The term ''US Trust'' means the United States Trust Company of New York and an affiliate, as defined in Section III(b)(1).

(b) An ''affiliate'' of a person includes:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) any officer, director, employee, relative, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(c) The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) The term ''Fund or Funds'' means any diversified open-end investment company or companies registered under the ICA for which US Trust serves as investment adviser, and may also provide custodial or other services as approved by such Funds.

(e) The term, ''net asset value'' means the amount for purposes of pricing all purchases and sales calculated by dividing the value of all securities, determined by a method as set forth in a Fund's prospectus and statement of additional information, and other assets belonging to each of the portfolios in such Fund, less the liabilities charged to each portfolio, by the number of outstanding shares.

(f) The term, ''relative,'' means a ''relative'' as that term is defined in section 3(15) of the Act (or a ''member of the family'' as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or a sister.

(g) The term, ''Second Fiduciary,'' means a fiduciary of a plan who is independent of and unrelated to US Trust. For purposes of this exemption, the Second Fiduciary will not be deemed to be independent of and unrelated to US Trust if:

(1) Such Second Fiduciary directly or indirectly controls, is controlled by, or is under common control with US Trust;

(2) Such Second Fiduciary, or any officer, director, partner, employee, or relative of such Second Fiduciary is an officer, director, partners, or employee of US Trust (or is a relative of such persons);

(3) Such Second Fiduciary directly or indirectly receives any compensation or other consideration for his or her own personal account in connection with any transaction described in this exemption; provided, however, that with respect to the Bank Plans, the Second Fiduciary may receive compensation from US Trust in connection with the transactions contemplated herein, but the amount or payment of such compensation may not be contingent upon or be in any way affected by the Second Fiduciary's ultimate decision regarding whether the Bank Plans participate in the transactions.

With the exception of the Bank Plans, if an officer, director, partner, or employee of US Trust (or a relative of such persons), is a director of such Second Fiduciary, and if he or she abstains from participation in (i) the choice of the Plan's investment manager/advisor, (ii) the approval of any purchase or sale by the Plan of shares of the Funds, and (iii) the approval of any change of fees charged to or paid by the Plan, in connection with any of the transactions described in sections I and II above, then Section III(g)(2) above shall not apply.

(h) The term, ''Secondary Service,'' means a service, other than an investment management, investment advisory, or similar service, which is provided by US Trust to the Funds, including but not limited to custodial, accounting, administrative, or any other service. However, for purposes of transactions which occurred prior to the date this exemption is granted, the term ''Secondary Service'' does not include any brokerage services provided by US Trust to the Funds.

(i) The term ''Termination Form,'' means the form supplied to the Second Fiduciary, at the times specified in paragraph (k), (l), and (m) of Section II above, which expressly provides an election to the Second Fiduciary to terminate on behalf of the Plans the authorization, described in Section II(g). Such Termination Form may be used at will by the Second Fiduciary to terminate such authorization without penalty to the Plans and to notify US Trust in writing to effect such termination by selling the shares of the Fund held by the Plans requesting termination within one business day following receipt by US Trust, either by mail, hand delivery, facsimile, or other available means at the option of the Second Fiduciary, of written notice of such request for termination; provided that if, due to circumstances beyond the control of US Trust, the sale cannot be executed within one business day, US Trust shall have one additional business day to complete such sale.

(j) The term ''UST DB Plan'' means the Employees' Retirement Plan of United States Trust Company of New York and Affiliated Companies.

(k) The term ''UST DC Plan'' means the 401(k) Plan and ESOP of United States Trust Company of New York and Affiliated Companies.

(l) The term ''Bank Plan'' means the UST DB Plan and the UST DC Plan.

(m) The term ''Client Plan'' means any ''employee benefit plan'' within the meaning of section 3(3) of the Act and/

or any ''plan'' within the meaning of Code section 4975 (e)(1).[1]

EFFECTIVE DATE: This exemption is effective as of May 31, 1996, for transactions described in Section I, and June 30, 1996, for transactions described in Section II.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on December 17, 1996, at 61 FR 66320.

WRITTEN COMMENTS AND MODIFICATIONS: US Trust submitted the following comments and requests for modifications regarding the notice of proposed exemption (the Proposal).

First, US Trust notes that paragraph 17 of the Summary of Facts and Representations in the Proposal (the Summary) states that to the extent that US Trust does not currently execute brokerage services for any Fund, but proposes to do so in the future, US Trust intends to provide at least 30 days advance written notice of such additional service. US Trust represents that pursuant to a proposal adopted by the Funds' boards of directors prior to the December 17th publication of the Proposal in the Federal Register, the Funds' retained an affiliate of US Trust to provide such brokerage services. US Trust states that these brokerage services commenced on January 3, 1997.

US Trust represents that written notice of this additional service was provided to each Client Plan that was affected by the in-kind conversion transactions prior to the commencement of such service by US Trust. However, due to holiday schedules, the notices were sent late and were not sent at least 3 days in advance of the commencement of the brokerage services, as was intended by US Trust. In addition to the late notices, for all Client Plans, US Trust proposes to include another copy of the notice in each Client Plan's next account statement.

US Trust notes that section II(n)(2) of the Proposal requires certain annual disclosures regarding brokerage services (which US Trust intends to provide). In addition, the definition of ''Secondary Service'' in section III(h) expressly exempts brokerage services from the requirements of section II(k), including the 30-day advance notice requirement for the addition of a Secondary Service. Accordingly, US Trust proposes no change in the language of the Proposal and merely notes for the record this change in the facts from those set out in paragraph 17 of the Summary.

In this regard, the Department acknowledges that advance notices to the Client Plans regarding the brokerage services were not sent at least 30 days prior to the commencement of such services by US Trust, as previously represented. The Department also acknowledges that an advance notice requirement of brokerage services was not specifically set forth in the Proposal. However, the Department believes that prior notice of an additional ''Secondary Service'' to a Fund for which a fee will be charged should include notice of any brokerage services to be provided by US Trust to the Fund. Therefore, the Department has modified the definition of ''Secondary Service'' contained in section III(h) of the Proposal by deleting the reference which exempted brokerage services from the notice requirements of section II(k) and adding the following language:

''* * * However, *for purposes of transactions which occurred prior to the date this exemption is granted,* the term 'Secondary Service' does not include any brokerage services provided by US Trust to the Funds.'' [emphasis added]

Second, US Trust states that the Proposal does not contain a definition of the term ''Plan'' or ''Client Plan''. US Trust notes that in paragraph 2 of the Summary, the Plans to which the exemption would apply presently consist of Code section 401(a) qualified plans that are ''pension plans'' under section 3(2) of the Act. Paragraph 2 states that US Trust requests that the exemption apply to any ''employee benefit plan'' within the meaning of section 3(3) of the Act and/or any ''plan'' within the meaning of Code section 4975(e)(1). Thus, US Trust suggests that the operative language of the exemption be modified to specify that all such plans will be covered.

In this regard, the Department has added, as section III(m) above, a definition of the term ''Client Plan'' (with a footnote regarding references to Title I of the Act and the corresponding provisions of the Code) in order to respond to the clarification request made by US Trust.

Third, US Trust also requests that the Department clarify that the requirement of section II(f)(5)—that US Trust provide each Client Plan's Second Fiduciary (upon request) with a copy of the proposed and/or final exemption in advance of the Plan's investment—does not apply with respect to any Plan that was already invested in the Funds prior to the date of the Proposal. US Trust states that it has provided the Proposal to Client Plans as part of the notice to interested persons described in the Proposal (see 61 FR at 66331). In addition, US Trust states that it will continue to provide to any Client Plan's Second Fiduciary copies of the Proposal, upon request, and will provide copies of the final exemption after it is published in the Federal Register.

In this regard, the Department acknowledges the comments made by US Trust and, in an attempt to clarify this matter, has amended section II(f)(5) by adding the parenthetical phrase ''* * * (once such documents are published in the Federal Register).''

Fourth, US Trust notes that sections II(1) and III(i) state that a Second Fiduciary will be supplied with a Termination Form ''* * * at times specified in paragraphs (k), (l), and (m) of section II''. However, US Trust wishes to clarify that paragraph (1) of section II does not specify any time for providing such Form distinct from the times noted in paragraph (k) and (m) of section II. The Department acknowledges the accuracy of this comment, but does not believe that any change to the language of these sections is necessary.

Finally, US Trust states that the correct figures in the example contained in paragraph 8 of the Summary (at the bottom of the second column on page 66326 of the Federal Register) used to illustrate the interests of the Bank Plans and Client Plans in a particular CIF at the time of the conversion, should be 45 percent and 55 percent, respectively. In this regard, the example in the Summery had incorrectly stated these percentages as 45 percent and 65 percent. The Department acknowledges this correction to the record.

Accordingly, the Department has determined to grant the exemption as modified.

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department, telephone (202) 219–8194. (This is not a toll-free number.)

Consolidated Lumber Corp. Pension Plan (the Plan), Located in Clifton, New Jersey

(Prohibited Transaction Exemption 97–17; Exemption Application No. D–10344)

Exemption

The restrictions of sections 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale for cash (the Sale) by the Plan to Consolidated Lumber Corp., the sponsor of the Plan, of certain wholelife

[1] For purposes of this exemption, references to Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

insurance policies (the Policies) issued by Confederation Life Insurance Company of Canada provided the following conditions are satisfied: (a) All terms and conditions of the Sale are at least as favorable to the Plan as those which the Plan could obtain in arm's-length transactions with unrelated parties; (b) the Plan receives cash consideration from each Sale that is no less than the greater of (1) the fair market value of the Policies as of the date of the Sale, or (2) each of the Policies' net cash surrender value as of the date of the Sale; and (C) the Plan does not incur any expenses or suffer any losses with respect to the transactions.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on December 30, 1996, at 61 FR 68798.

FOR FURTHER INFORMATION CONTACT: Mr. C.E. Beaver of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

The Chase Manhattan Bank, N.A. (Chase), Located in New York, New York

(Prohibited Transaction Exemption 97–18; Exemption Application No. D–10348)

Exemption

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to (1) the granting to Chase, as the representative of lenders (the Lenders) participating in a credit facility, of security interests in limited partnership interests in LF Strategic Real Estate Investors, L.P. (the Partnership) owned by certain employee benefit plans (the Plans) with respect to which some of the Lenders are parties in interest; and (2) the agreements by the Plans to honor capital calls made by Chase in lieu of the Partnership's general partner; provided that (a) the grants and agreements are on terms no less favorable to the Plans than those which the Plans could obtain in arm's-length transactions with unrelated parties; and (b) the decisions on behalf of each Plan to invest in the Partnership and to execute such grants and agreements in favor of Chase are made by a fiduciary which is not included among, and is independent of, the Lenders and Chase.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on December 30, 1996 at 61 FR 68799.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

APA, Inc. 401(k) Profit Sharing Plan (the Plan), Located in Pleasant Hill, California

(Prohibited Transaction Exemption 97–19; Exemption Application No. D–10375)

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to: (1) The loan (the Loan) of $30,000 to Mr. Gary Petsuch (Mr. Petsuch), a party in interest with respect to the Plan, from Mr. Petsuch's segregated account (the Account) in the plan, and (2) the personal guarantee of the Loan by Mr. Petsuch, provided the following conditions are satisfied: (a) The terms of the Loan are at least as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party; (b) the loan does not exceed 25% of the assets of the Account; (c) the Loan is secured by a pledge of Mr. Petsuch's interest in an investment account which has been currently valued by an independent party as having a fair market value approximately 280% of the principal amount of the Loan; (d) the account collateralizing the Loan will be maintained at a collateral-to-Loan ratio of not less than 200% throughout the duration of the Loan; (e) Mr. Petsuch has also personally guaranteed the Loan; and (f) Mr. Petsuch is the only Plan participant to be affected by the Loan.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on January 14, 1997 at 62 FR 1924.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 28th day of February, 1997.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 97–5431 Filed 3–4–97; 8:45 am]

BILLING CODE 4516–29–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency has submitted to OMB for approval the information collection described in this notice. The public is invited to comment on the proposed information collections pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted to OMB at the address below on or before April 4, 1997 to be assured of consideration.

ADDRESSES: Comments should be sent to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: Ms. Maya Bernstein, Desk Officer for NARA, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301–713–6730 or fax number 301–713–6913.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. NARA published a notice of proposed collection for this information collection on December 27, 1996 (61 FR 68305). No comments were received. NARA has submitted the described information collection to OMB for approval.

In response to this notice, comments and suggestions should address one or more of the following points: (a) Whether the proposed collection information is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collections; (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 the use of information technology. In this notice, NARA is soliciting comments concerning the following information collection:

Title: Request to Microfilm Records.

OMB number: 3095–0017.

Agency form number: none.

Type of review: Regular.

Affected public: Companies and organizations that wish to microfilm archival holdings in the National Archives of the United States or a Presidential library for micropublication.

Estimated number of respondents: 5.

Estimated time per response: 10 hours.

Frequency of response: On occasion (when respondent wishes to request permission to microfilm records).

Estimated total annual burden hours: 50.

Abstract: The information collection is prescribed by 36 CFR 1254.92. The collection is prepared by companies and organizations that wish to microfilm archival holdings with privately-owned equipment. NARA uses the information to determine whether the request meets the criteria in 36 CFR 1254.94, to evaluate the records for filming and to schedule use of the limited space available for filming.

Dated: February 27, 1997.

L. Reynolds Cahoon,

Assistant Archivist for Human Resources and Information Services.

[FR Doc. 97–5367 Filed 3–4–97; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meeting; Notice of Change in Time and Date of Meetings

The National Credit Union Administration Board determined that its business requires the previously announced (Federal Register, 62 FR 9213, February 28, 1997) open meeting schedule scheduled for 10:00 a.m., Thursday, March 6, 1997 and the closed meeting scheduled for 11:30 a.m., Thursday, march 6, 1997, to be rescheduled.

TIME AND DATE: 8:10 a.m., Friday, March 7, 1997.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

BOARD BRIEFING: 1. Insurance Fund Report.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meeting.
2. Requests from Federal Credit Unions to Convert to a Community Charter.
3. Charter Application from the Proposed First Combined Community Federal Credit Union.
4. Request from a Corporate Federal Credit Union for a Field of Membership amendment.
5. Final Rule: Part 704, NCUA's Rules and Regulations, Corporate Credit Unions.
6. Proposed Rule: Request for Comments on Federal Credit Union Bylaws.
7. Advance Notice of Proposed Rulemaking: Request for Comments on Interpretive Rulings and Policy Statements (IRPS).
8. Proposed Rule: Amendments to Section 701.26(b), 701.27, and 740.3(c), and addition of part 712, NCUA's Rules and Regulations, Credit Union Service Contracts, Credit Union Service Organizations, and Advertising.

RECESS: 10:00 a.m.

TIME AND DATE: 10:15 a.m., Friday, March 7, 1997.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meeting.
2. Administrative Actions under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (5), (7), (8), (9)(A)(ii), and (9)(B).
3. Personnel Action(s). Closed pursuant to exemptions (2) and (6).

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703)–518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 97–5483 Filed 2–28–97; 4:54 pm]

BILLING CODE 7535–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

TIME: 9:30 a.m., Wednesday, March 12, 1997.

PLACE: The Board Room, 5th Floor, 490 L'Enfant Plaza SW., Washington, DC 20594.

STATUS: Open.

MATTERS TO BE DISCUSSED: 6598A Marine Accident Report: Grounding of the Panamanian Passenger Ship ROYAL MAJESTY on Rose and Crown Shoal near Nantucket, Massachusetts, June 10, 1995.

News Media Contact: Telephone: (202) 314–6100.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 314–6065.

Dated: February 28, 1997.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 97–5482 Filed 3–28–97; 4:55 pm]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recording Requirements: Office of Management and Budget (OMB) Review

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

1. Type of submission, new, revision, or extension: Revision.

2. The title of the information collection: 10 CFR Part 34, ''Licenses for Radiography and Radiation Safety Requirements for Radiographic Operations,'' 10 CFR Part 71, ''Packaging and Transportation of Radioactive Material,'' and NRC Form 313, Application for Material License.

3. The form number if applicable: NRC Form 313.

4. How often is the collection required: On occasion, such as upon submittal of an application for a materials license or renewal, or upon discovery of a leaking source.

5. Who will be required or asked to report: Licensees and applicants requesting approvals in accordance with 10 CFR Part 34.

6. An estimate of the number of responses: Part 34—696, Part 71—(–)450, NRC Form 313—450.

7. The estimated number of annual respondents: 450.

8. An estimate of the number of hours needed annually to complete the requirement or request: Part 34—1,440 hours for reporting (approximately 3.2 hours per response) plus an additional 41,406 hours for recordkeeping (approximately 92 hours per licensee); Part 71—(–)1,440 hours for reporting and recordkeeping (approximately (–)3.2 hours per response); NRC Form 313—5,850 hours for 450 licensees (approximately 13 hours per response).

9. An indication of whether Section 3507(d), Pub. L. 104–13 applies: Applicable.

10. Abstract: The NRC regulation, 10 CFR Part 34, specifies the information and data to be provided by applicants and licensees using byproduct material for industrial radiography. 10 CFR Part 34 has been revised in its entirety. The revision adds to or modifies the requirements to include additional training of radiographers' assistants, leak tests of ''S'' tubes, and specifies records to be kept at various locations. The revision deletes the requirement for radiography licensees to submit a Quality Assurance program under 10 CFR Part 71. The revision requires the following additional information to be reported on NRC Form 313, Application for Materials License: locations and descriptions of all field stations and permanent radiographic installations, designation of a Radiation Safety Officer, and additional information on training and testing. This information is reviewed by NRC to ensure that the safety of radiographers and the public is protected.

Submit by April 4, 1997, comments that address the following question:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the submittal may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC 20555–0001. Members of the public who are in the Washington, DC, area can access this document via modem on the Public Document Room Bulletin Board (NRC's Advanced Copy Document Library), NRC subsystem at FedWorld, 703–321–3339. Members of the public who are located outside of the Washington, DC, area can dial FedWorld, 1–800–303–9672), or use the FedWorld Internet address: fedworld.gov (Telnet). The document will be available on the bulletin board for 30 days after the signature date of this notice. If assistance is needed in accessing the document, please contact the FedWorld help desk at 703–487–4608. Additional assistance in locating the document is available from the NRC Public Document Room, nationally at 1–800–397–4209, or within the Washington, DC, area at 202–634–3273.

Comments and questions should be directed to the OMB reviewer by April 4, 1997: Edward Michlovich, Office of Information and Regulatory Affairs, (3150–0007 and 3150–0120), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo Shelton, (301) 415–7233.

Dated at Rockville, Maryland, this 26th day of February, 1997.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 97–5384 Filed 3–4–97; 8:45 am]

BILLING CODE 7590–01–P

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. Type of submission, new, revision, or extension: Revision.

2. The title of the information collection: Reactor Operator and Senior Reactor Operator Licensing Training and Requalification Programs.

3. The form number if applicable: Not applicable.

4. How often the collection is required: As needed per facility; generally once or less per year.

5. Who will be required or asked to report: All reactor licensees and applicants for an operating license at power and non-power reactors.

6. An estimate of the number of responses: One each for 72 power reactors and 30 non-power reactors annually.

7. The estimated number of annual respondents: 75 for power reactors and 30 for non-power reactors.

8. An estimate of the total number of hours needed annually to complete the requirement or request: 27,882 hours annually (24,882 hours for reporting and 3000 hours for recordkeeping for power reactor licensees (387 hours per response) and 124 reporting hours annually for non-power reactor licensees (4 hours per response).

9. An indication of whether section 3507(d), Public Law. 104–13 applies: Not applicable.

10. Abstract: The NRC requests copies of initial and requalification training material and examinations from reactor licensees/applicants. The training material is used by the NRC staff to develop operator and senior operator licensing and requalification examinations. The initial examinations are reviewed, modified, and approved by the NRC staff for use in licensing operators and senior operators; the requalification examinations are inspected to verify regulatory compliance.

A copy of the submittal may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC. Members of the public who are in the Washington, DC, area can access the submittal via modem on the Public Document Room Bulletin Board (NRC's Advanced Copy Document Library) NRC subsystem at FedWorld, 703–321–3339. Members of the public who are located outside of the Washington, DC, area can dial FedWorld, 1–800–303–9672, or use the FedWorld Internet address: fedworld.gov (Telnet). The document will be available on the bulletin board for 30 days after the signature date of this notice. If assistance is needed in accessing the document, please contact the FedWorld help desk at 703–487–4608. Additional assistance in locating the document is available from the NRC Public Document Room, nationally at 1–800–397–4209, or within the Washington, DC, area at 202–634–3273.

Comments and questions should be directed to the OMB reviewer by April 4, 1997: Edward Michlovich, Office of Information and Regulatory Affairs (3150–0101) NEOB–10202, Office of Management and Budget, Washington, DC 20503. Comments can also be submitted by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 415–7233.

Dated at Rockville, Maryland, this 28th day of February, 1997.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official, Information Resources Management.

[FR Doc. 97–5506 Filed 3–4–97; 8:45 am]

BILLING CODE 7590–01–P

[Docket Nos. 50–237 and 50–249]

Commonwealth Edison Company; 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 (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR–19 and DPR–25, issued to Commonwealth Edison Company (ComEd, the licensee) for operation of the Dresden Nuclear Power Station, Units 2 and 3, located in Grundy County, Illinois.

The proposed amendments would change the Technical Specifications (TS) by relocating the TS requirements associated with the 24/48 Vdc batteries, battery chargers and distribution systems to other licensee administratively controlled documents.

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 amendments requested involve 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) Involve a significant increase in the probability or consequences of an accident previously evaluated because of the following:

Removal of the 24/48 Vdc batteries, chargers, and distribution panels from the Technical Specification requirements of 3/4.9.C, 3/4.9.D, 3/4.9.E, and 3/4.9.F and the subsequent relocation of those requirements to licensee administrative control is an administrative change that will still ensure the availability of the 24/48 Vdc system and will not increase the probability of accidents previously evaluated. Relocation of the 24/48 Vdc requirements to administrative controls will have no effect on the control instrumentation and cannot act as an initiator for any of the accidents evaluated in the UFSAR [Updated Final Safety Analysis Report].

Similarly, relocation of the 24/48 Vdc system requirements to licensee administrative control will have no effect on the availability of the loads which are supplied by the 24/48 Vdc batteries nor on any of the consequences of accidents previously evaluated in the UFSAR. Control of the 24/48 Vdc requirements by station administrative controls under 10 CFR 50.59 will not affect any of the protection or mitigation functions which may be provided by any of the loads supplied by the batteries. Operation under the proposed amendment will not significantly increase the probability or consequences of any accidents previously evaluated.

Because of the above evaluation, removal of the 24/48 Vdc system from the Technical Specifications will not involve a significant increase in the probability or the consequences of an accident previously evaluated.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated because:

The 24/48 Vdc batteries, chargers, and other components will retain the separation, and redundancy under which they are presently installed. No new failure modes are introduced by this administrative relocation of requirements, for the 24/48 Vdc system, from the Technical Specifications to licensee administrative control. The possibility of a new or different accident from any accident previously evaluated is not increased or created by this administrative change.

(3) Involve a significant reduction in the margin of safety because:

Relocation of the TS requirements for the 24/48 Vdc system does not affect the operating points or setpoints of any systems or components. Plant operating points or parameters are not changed by this proposed relocation of requirements in this amendment request. The safety related equipment that is supported by the 24/48 Vdc system will continue to be required in the existing modes of applicability as determined by the individual equipment Technical Specifications. Thus operation under the proposed license amendment removes some redundancy and constraints during refueling but does not significantly reduce the 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 amendments requested involve 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 amendments 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 amendments before the expiration of the 30-day notice period, provided that its final determination is that the amendments involve 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 Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications

Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, 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.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By April 4, 1997, the licensee may file a request for a hearing with respect to issuance of the amendments 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 Morris Area Public Library District, 604 Liberty Street, Morris, Illinois 60450. 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 amendments requested involve no significant hazards consideration, the Commission may issue the amendments and make them immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendments.

If the final determination is that the amendments requested involve a significant hazards consideration, any hearing held would take place before the issuance of any amendments.

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 20555–0001, 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 Robert A. Capra: 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 20555–0001, and to Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603, 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 amendments dated February 19, 1997, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Morris Area Public Library District, 604 Liberty Street, Morris, Illinois 60450.

Dated at Rockville, Maryland, this 26th day of February 1997.

For the Nuclear Regulatory Commission.

John F. Stang,

Senior Project Manager, Project Directorate III–2, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 97–5390 Filed 3–4–97; 8:45 am]

BILLING CODE 7590–01–P

[Docket Nos. 40–8681, 40–9024]

Energy Fuels Nuclear, Inc.; Notice of Opportunity for Hearing

SUMMARY: Notice is hereby given that Energy Fuels Nuclear, Inc. (EFN) has requested U.S. Nuclear Regulatory Commission approval for the transfer of NRC Source Material License Nos. SUA–1358 and SUA–1558, for the White Mesa uranium mill and the Reno Creek facility, respectively, to International Uranium (USA) Corporation. EFN's request was transmitted to NRC by letter dated December 31, 1996. The NRC staff is in the process of reviewing the request.

FOR FURTHER INFORMATION CONTACT: Mr. James R. Park, Uranium Recovery Branch, Mail Stop TWFN 7–J9, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Telephone 301/415–6699.

SUPPLEMENTARY INFORMATION: Section 184 of the Atomic Energy Act of 1954, as amended, states, in part, that no license granted under the Atomic Energy Act of 1954, as amended, can be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of any license to any person, unless the Commission shall, after securing full information, find that the transfer is in accordance with the provisions of the Atomic Energy Act of 1954, as amended, and shall give its consent in writing. Section 40.41(b) of the Commission's regulations, in Title 10 of the Code of Federal Regulations (CFR), states that neither the license, nor any right under the license, can be assigned or otherwise transferred in violation of the provisions of the Atomic Energy Act of 1954, as amended. Section 40.46 of the Commission's regulations requires, in part, the Commission's consent in writing to any transfer of control of a license. In addition, 10 CFR 40.51(a) provides that no licensee shall transfer source or byproduct material except as authorized pursuant to that section, while 10 CFR 40.51(b)(5) provides, in part, that a licensee may transfer source or byproduct material to any person authorized to receive such material under terms of a specific or general license issued by the Commission.

EFN's letter requesting the proposed action, and the accompanying supporting information, are available for public inspection and copying at the NRC Public Document Room, in the Gelman Building, 2120 L Street N.W., Washington, DC 20555.

Notice of Opportunity for Hearing

The Commission hereby provides notice that this is a proceeding on an application for a licensing action falling within the scope of Subpart L, ''Informal Hearing Procedures for Adjudications in Materials Licensing Proceedings, of the Commission's Rules of Practice for Domestic Licensing Proceedings in 10 CFR Part 2'' (54 FR 8269). Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing. In accordance with § 2.1205(c), a request for a hearing must be filed within thirty (30) days from the date of publication of this Federal Register notice. The request for a hearing must be filed with the Office of the Secretary either:

(1) By delivery to the Docketing and Service Branch of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

Each request for a hearing must also be served, by delivering it personally or by mail to:

(1) The applicant, Energy Fuels Nuclear, Inc., 1515 Arapahoe Street, Suite 900, Denver, CO 80202;

(2) The NRC staff, by delivery to the Executive Director of Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the Commission's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor in the proceeding;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(g);

(3) the requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(c).

Any hearing that is requested and granted will be held in accordance with the Commission's Informal Hearing Procedures for Adjudications in Materials Licensing Proceedings in 10 CFR Part 2, Subpart L.

Dated at Rockville, Maryland, this 24th day of February 1997.

For the Nuclear Regulatory Commission.

Joseph J. Holonich,

Chief, Uranium Recovery Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 97–5387 Filed 3–4–97; 8:45 am]

BILLING CODE 7590–01–P

[Docket Nos. 50–387 and 50–388]

Pennsylvania Power and Light Company; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–14 and NPF–22 issued to Pennsylvania Power & Light Company (PP&L, the licensee) for operation of the Susquehanna Steam Electric Station, Units 1 and 2, located in Luzerne County, Pennsylvania.

The proposed amendment would change the Technical Specifications (TSs) for the two units to include sections that would define and permit the withdrawal of control rods in OPERATIONAL CONDITIONS 3 and 4, hot shutdown and cold shutdown, respectively, with the reactor mode switch in the REFUEL position. These specific changes had been included in a submittal dated August 1, 1996, which was the conversion to the Improved Technical Specifications (ITS); but in this current application, the specific ITS Sections 3.10.3 and 3.10.4 have been reformatted for incorporation into the current TSs for each unit.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By April 4, 1997, 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 Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania. 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 a 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.

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 20555–0001, 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: 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 20555–0001, and to Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW, Washington, DC 20037, 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).

If a request for a hearing is received, the Commission's staff may issue the amendments after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendments dated February 11, 1997, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania.

Dated at Rockville, Maryland, this 28th day of February 1997.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 97–5399 Filed 3–4–97; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 40–8681]

Energy Fuels Nuclear, Inc.; Final Finding of No Significant Impact Notice of Opportunity for Hearing

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) proposes to renew NRC Source Material License SUA–1358 to authorize the licensee, Energy Fuels Nuclear, Inc. (EFN), for continued commercial operation of the White Mesa uranium mill, located near Blanding, Utah. An Environmental Assessment was performed by the NRC staff in accordance with the requirements of 10 CFR Part 51. The conclusion of the Environmental Assessment is a Finding of No Significant Impact (FONSI) for the proposed licensing action.

FOR FURTHER INFORMATION CONTACT: Mr. James R. Park, Uranium Recovery Branch, Mail Stop TWFN 7–J9, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Telephone 301/415–6699.

SUPPLEMENTARY INFORMATION:

Background

Source Material License SUA–1358 was originally issued by NRC on August 7, 1979, pursuant to Title 10, Code of Federal Regulations (10 CFR), Part 40, Domestic Licensing of Source Material. This license currently authorizes EFN to (1) receive, acquire, possess, and transfer uranium at the White Mesa mill, (2) possess byproduct material in the form of uranium waste tailings and other uranium byproduct waste generated by operations at the mill, and

(3) accept, for disposal, limited amounts of byproduct material from in-situ leach (ISL) uranium mining facilities. The mill was operated on a continual basis from May 1980 until February 1983, and then intermittently from October 1985 to the present time. SUA–1358 was renewed last in 1985.

Summary of the Environmental Assessment

The NRC staff performed an appraisal of the environmental impacts associated with the continued operation of the White Mesa mill, in accordance with 10 CFR Part 51, Licensing and Regulatory Policy Procedures for Environmental Protection. In conducting its appraisal, the NRC staff considered the following: (1) information contained in previous environmental evaluations of the White Mesa project; (2) information contained in EFN's license renewal application; (3) information contained in EFN's license amendment requests submitted subsequent to its renewal application, and NRC staff approvals of such requests; (4) land use and environmental monitoring reports; and (5) information derived from NRC staff site visits and inspections of the White Mesa mill site and from communications with EFN and the State of Utah Department of Environmental Quality. The results of the staff's appraisal are documented in an Environmental Assessment. The safety aspects for the continued operation of the mill are discussed in a Safety Evaluation Report.

The license renewal would authorize EFN to continue operating the White Mesa mill, at a maximum production rate of 4380 tons of yellowcake per year. Additionally, EFN would continue to be authorized, by license condition, to (1) possess byproduct material in the form of uranium waste tailings and other uranium byproduct waste generated by its milling operations authorized by the renewal license, and (2) accept, for disposal, limited amounts of byproduct material from ISL uranium mining facilities.

All conditions in the renewal license and commitments presented in the licensee's license renewal application are subject to NRC inspection. Violation of the license may result in enforcement action.

Conclusions

The NRC staff has reexamined actual and potential environmental impacts associated with continued yellowcake production at the mill site, and has determined that renewal of the source material license (1) will be consistent with requirements of 10 CFR Part 40, (2) will not be inimical to the public health and safety, and (3) will not have long-term detrimental impacts on the environment. The following statements support the FONSI and summarize the conclusions resulting from the staff's environmental assessment:

1. An acceptable environmental sampling program is in place to monitor effluent releases and to detect if appropriate limits are exceeded;
2. The licensee has implemented an intensive, routine inspection program of the mill process building, associated facilities, and tailings retention impoundments, and conducts an annual ''as low as is reasonable achievable'' (ALARA) audit program;
3. Standard operating procedures are in place for all operational process activities involving radioactive materials that are handled, processed, or stored;
4. Mill tailings and process liquid effluents from the mill circuit are discharged to partially below-grade, lined tailings impoundments, with leak detection systems;
5. The licensee will implement an acceptable groundwater detection monitoring program to ensure compliance with the requirements of 10 CFR Part 40, Appendix A;
6. The licensee will conduct site decommissioning and reclamation activities in accordance with NRC-approved plans; and
7. Because the staff has determined that there will be no significant impacts associated with approval of the license renewal, there can be no disproportionately high and adverse effects or impacts on minority and low-income populations. Consequently, further evaluation of ''Environmental Justice'' concerns, as outlined in Executive Order 12898 and NRC's Office of Nuclear Material Safety and Safeguards Policy and Procedures Letter 1–50, Rev.1, is not warranted.

Alternatives to the Proposed Action

The proposed action is to renew NRC Source Material License SUA–1358, for continued operation of the White Mesa mill, as requested by EFN. Therefore, the principal alternatives available to NRC are to:

(1) Renew the license with such conditions as are considered necessary or appropriate to protect public health and safety and the environment; or

(2) Deny renewal of the license.

Based on its review, the NRC staff has concluded that there are no significant environmental impacts associated with the proposed action; therefore, any alternatives with equal or greater environmental impacts need not be evaluated. Since the environmental impacts of the proposed action and the no-action alternative (i.e., denial of the renewal) are similar, there is no need to further evaluate alternatives to the proposed action.

Finding of No Significant Impact

The NRC staff has prepared an Environmental Assessment for the proposed renewal of NRC Source Material License SUA–1358. On the basis of this assessment, the NRC staff has concluded that the environmental impacts that may result from the proposed action would not be significant, and therefore, preparation of an Environmental Impact Statement is not warranted.

The Environmental Assessment and other documents related to this proposed action are available for public inspection and copying at the NRC Public Document Room, in the Gelman Building, 2120 L Street N.W., Washington, DC 20555.

Notice of Opportunity for Hearing

The Commission hereby provides notice that this is a proceeding on an application for a licensing action falling within the scope of Subpart L, ''Informal Hearing Procedures for Adjudications in Materials Licensing Proceedings, of the Commission's Rules of Practice for Domestic Licensing Proceedings in 10 CFR Part 2'' (54 FR 8269). Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing. In accordance with § 2.1205(c), a request for a hearing must be filed within thirty (30) days from the date of publication of this Federal Register notice. The request for a hearing must be filed with the Office of the Secretary either:

(1) By delivery to the Docketing and Service Branch of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

Each request for a hearing must also be served, by delivering it personally or by mail to:

(1) The applicant, Energy Fuels Nuclear, Inc., 1515 Arapahoe Street, Suite 900, Denver, CO 80202;

(2) The NRC staff, by delivery to the Executive Director of Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the Commission's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor in the proceeding;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(g);

(3) the requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(c).

Any hearing that is requested and granted will be held in accordance with the Commission's Informal Hearing Procedures for Adjudications in Materials Licensing Proceedings in 10 CFR Part 2, Subpart L.

Dated at Rockville, Maryland, this 26th day of February 1997.

For the Nuclear Regulatory Commission.

Joseph J. Holonich,

Chief, Uranium Recovery Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 97–5388 Filed 3–4–97; 8:45 am]

BILLING CODE 7590–01–P

[Licenses SMB–179 and SUB–1452—Dockets 40–672 and 40–8866]

Nuclear Metals, Inc.—Concord, Massachusetts: Renewal of Source Material Licenses; Finding of No Significant Impact and Notice of Opportunity for a Hearing (NUREG/CR–6528)

The U.S. Nuclear Regulatory Commission is considering the renewal of Source Material Licenses SMB–179 and SUB–1452 for the continued operation of Nuclear Metals, Inc. (NMI), located in Concord, Massachusetts.

Summary of the Environmental Assessment

Identification of the Proposed Action

The proposed action is the renewal of NMI's Source Material Licenses SMB–179 and SUB–1452 for at least 5 years. With these renewals, the NMI facility will continue to conduct ongoing operations including the development and manufacture of castings, extrusions, machined parts, and metal powders comprised of depleted uranium and natural uranium metal. The proposed action would permit NMI to possess, under License SMB–179, natural uranium metal, alloy, or oxide; depleted uranium metal, alloy, oxide, or fluoride; natural thorium metal, alloy, or oxide; and depleted uranium slab. The licensed uranium may be an element of any compound except uranium hexafluoride (UF_6). The proposed action would also permit NMI to possess, under License SUB–1452, depleted uranium as contamination in sand; depleted uranium as contamination on metallic components, packaging materials or equipment, or as waste solids; and natural thorium as contamination on metallic components, packaging materials or equipment, or as waste solids.

Prior to September 1985, liquid and sludge wastes from the processes were stabilized and emptied into an unlined holding basin and adjacent bog located on site property. The holding basin was covered by a special membrane in 1986 to reduce infiltration of rain water and discharge of contaminants to surface and ground waters. Remediation of the holding basin and contaminated groundwater is being planned as a separate decommissioning action; therefore, this action and subsequent environmental impacts are outside the scope of this EA.

The Need for the Proposed Action

The action is to determine if the licenses should be renewed or denied. NMI manufactures products composed of depleted uranium and natural uranium that have military, aerospace, industrial, and medical applications. Depleted uranium metal is processed to form armor penetrators, aircraft counterweights and radiation shielding devices. Denial of the license renewals for NMI is an alternative available to NRC, but since approximately half of the U.S. demand for these products is being met by operations at NMI facilities, denying the licenses would not be in the nation's best interest.

Environmental Impacts of the Proposed Action

Both radiological and nonradiological atmospheric emissions occur and were assessed during normal (incident-free) operations at NMI. The radiological impacts of the continued operation of the NMI facility were assessed using atmospheric dispersion modeling to estimate ambient annual dose to the public resulting from emissions at the NMI facility. To assess the impact of uranium emissions on atmospheric resources, the COMPLY computer code was used to determine the maximum annual dose equivalent received from uranium concentrations in the ambient air (at or beyond the site boundary). These estimated annual doses were compared to NRC requirements and EPA standards to gauge impacts to public health and safety.

Ambient air concentrations (at or beyond the site boundary) resulting from the primary sources of nonradiological air emissions were estimated using the Industrial Source Complex—Version 2 (ISC2) air dispersion model (EPA 1992a). Total predicted concentrations were compared to the National Ambient Air Quality Standards (NAAQS) in order to gauge impacts on air quality.

Doses From Routine Airborne Releases

Small amounts of uranium are emitted from 33 stacks at NMI. The town of Concord permits depleted uranium emissions of up to 280 μCi per calendar quarter for operations associated with License Nos. SMB–179 and SUB–1452. NRC's regulations (10 CFR 20.1301) require licensees to limit doses to members of the public to 100mrem per year. Emission rates of depleted uranium in 1994 were less than 60 percent of the 280 μCi per calendar quarter limit. For the modeling, annual emissions were assumed to be at maximum permitted levels (i.e., 1,120 μCi/y as by the town of Concord). The assumptions are conservative in that they result in higher predicted doses than are expected to occur. The maximum annual committed effective dose equivalent predicted was 2.5 mrem. This dose was estimated to occur to a person located 150 m (492 ft) from the nearest building. This is about one-half the distance to the nearest resident. Therefore, 150 m (492 ft) is considered a sufficiently conservative distance to form an upper bound of doses that could be received by the public annually. The predicted annual dose is 2.5 percent of the NRC limit.

The primary sources of nonradiological air emissions at NMI are two boilers, which burn #4 fuel oil, and which emit the following criteria pollutants: SO_2, NO_2, PM–10, and CO. Short-term emission rates, calculated using the maximum monthly fuel usage rates, were used in ISC2 for periods of 24 hr or less. Long-term emission rates, calculated using the maximum annual fuel usage rates, were used in ISC2 for the annual time period. Both site specific data and conservative assumptions were used in the modeling analysis. Total predicted concentrations were compared to the NAAQS in order to gauge impacts on air quality. The results of the analysis show that maximum 3-hr and 24-hr average SO_2 concentrations are about twice their respective NAAQS. For all other criteria

pollutants, maximum concentrations are within the NAAQS, and impacts to local air quality associated with these pollutants would be minor. NMI is prepared to undertake mitigative action to prevent potential exceedances of the short-term SO_2 NAAQS, and the Massachusetts Department of Environmental Protection is prepared to resolve the issue.

Accident Evaluation

The EA evaluated one accident as the bounding accident: the potential quantities of uranium and nonradiological materials that might be released to the atmosphere in the unlikely event of a major fire at the NMI facility. The regulatory analysis documented in NUREG–1140 (McGuire 1988), which assessed the accident potential for doses exceeding EPA protective action guides, was used to evaluate potential impacts. For uranium, NUREG–1140 found that the highest doses come from the inhalation pathway. The analysis shows a committed effective dose equivalent of 0.89 rems at 100 m (330 ft) might occur to a nearby downwind individual that would result from a fire involving the limiting value quantities agreed to by NMI of 454,000 kg (1,000,000 lb) of depleted uranium in any one building. This value is less than the EPA-recommended lower limit for consideration of protective actions (i.e., a dose of 1 rem). Therefore, radiological impacts resulting from exposure to natural uranium during a severe fire would not be major.

NMI's operations with licensed material involve use of several acids. The evaluation of the potential impacts of these nonradiological materials was based on a release to the atmosphere using the same accidental fire scenario as for the radiological materials. The results were compared to the Emergency Response Planning Guidelines (ERPGs) established by the American Industrial Hygiene Association, the immediately dangerous to life and health (IDLH) threshold value, established by the National Institute of Occupational Safety and Health (NIOSH), and the LC_{50}, the concentration which would result in fatalities to 50 percent of the exposed population. Of the acids, only sulfuric (H_2SO_4) caused concern as the predicted concentration of H_2SO_4 is below the LC_{50} but higher than the ERPG levels. These results were discussed with Commonwealth of Massachusetts staff and NMI is prepared to discuss the potential for an accidental H_2SO_4 release with local emergency response officials.

Conclusion

The NRC staff concludes that the environmental impacts associated with the proposed license renewal for continued operation of the NMI's Concord, Massachusetts facility are expected to be insignificant.

Finding of No Significant Impact

The Commission has prepared an EA related to the renewal of Special Nuclear Material Licenses SMB–179 and SUB–1452. On the basis of the assessment, the Commission has concluded that environmental impacts that would be created by the proposed action would not be significant and do not warrant the preparation of an Environmental Impact Statement. Accordingly, it has been determined that a Finding of No Significant Impact is appropriate.

The EA is being made available as NUREG/CR–6528. Copies of NUREG/CR–6528 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20402–9328. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy is also available for inspection and copying for a fee in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC 20555–0001.

Opportunity for a Hearing

Any person whose interest may be affected by the issuance of this renewal may file a request for a hearing. Any request for hearing must be filed with the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, within 30 days of the publication of this notice in the Federal Register; be served on the NRC staff (Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852), and on the licensee (Nuclear Metals, Inc., 2229 Main Street, Concord, MA 01742); and must comply with the requirements for requesting a hearing set forth in the Commission's regulations, 10 CFR Part 2, Subpart L, ''Information Hearing Procedures for Adjudications in Materials Licensing Proceedings.''

These requirements, which the request must address in detail, are:

1. The interest of the requestor in the proceeding;

2. How that interest may be affected by the results of the proceeding (including the reasons why the requestor should be permitted a hearing);

3. The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstances establishing that the request for hearing is timely—that is, filed within 30 days of the date of this notice.

In addressing how the requestor's interest may be affected by the proceeding, the request should describe the nature of the requestor's right under the Atomic Energy Act of 1954, as amended, to be made a party to the proceeding; the nature and extent of the requestor's property, financial, or other (i.e., health, safety) interest in the proceeding; and the possible effect of any order that may be entered in the proceeding upon the requestor's interest.

Dated at Rockville, Maryland, this 20th day of February, 1997.

For the Nuclear Regulatory Commission.

Larry W. Camper,

Chief, Medical, Academic, and Commercial Use Safety Branch, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 97–5385 Filed 3–4–97; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–344]

Portland General Electric Company, Trojan Nuclear Plant; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order approving an application regarding a proposed merger involving the holding company for Portland General Electric Company (PGE, the licensee), holder of Facility Operating License No. NPF–1, for the Trojan Nuclear Plant located on the west bank of the Columbia River in Columbia County, Oregon. The Trojan Nuclear Plant permanently ceased operating in January 1993 and is being decommissioned.

Environmental Assessment

Identification of the Proposed Action

The proposed action would approve, by issuance of an order, the application under 10 CFR 50.80 regarding the merger between Portland General Corporation (PGC), the parent company of PGE, a 67.5 percent holder of the Trojan Nuclear Plant license, and Enron Corporation (Enron). Enron is a Delaware corporation engaged in the gathering, transportation, and wholesale marketing of natural gas. PGC has agreed to a merger with Enron, subject to certain conditions. Those conditions

include approval by the shareholders of the companies and obtaining appropriate governmental approvals which do not impose terms or conditions that would be reasonably likely to have an adverse effect on PGE or Enron. Under an Agreement and Plan of Merger, Enron will become an Oregon corporation (hereinafter referred to as the ''Merger Company''), and PGC will merge with and into the Merger Company. Shares of stock held in Enron and in PGC would be converted into shares of the Merger Company on a one-for-one basis. The proposed action is in accordance with PGE's application dated August 20 1996, as supplemented by letters dated October 16, 1996, and October 30, 1996.

The Need for the Proposed Action

The proposed action is required to facilitate the merger between PGC and Enron.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed merger and concludes that there will be no physical or operational change to the decommissioning activities now in progress at the Trojan Nuclear Plant as a result of the merger. The merger will not affect the qualifications or organizational affiliations of the personnel responsible for the decommissioning activities at the Trojan Nuclear Plant.

The merger will not affect PGE's status as a regulated public utility in the State of Oregon. PGE will continue to be headquartered in Portland, Oregon and senior management will remain in place. According to the licensee, the planned merger of PGE's parent company, PGC, with the Merger Company should improve the overall financial strength and stability of PGE's parent after the merger. After the merger, PGE will continue to be the NRC licensee for Trojan Nuclear Plant and no direct transfer of the operating license or interests in the unit will result from the merger.

The Commission has evaluated the environmental impact of the proposed action and has determined that the probability and consequences of accidents would not be increased by the merger, and that radiological releases, both normal releases and accidental releases, would not be greater than previously evaluated. Further, the Commission has determined that the merger would not increase occupational radiological exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the merger would not affect nonradiological plant effluents and would have no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Having concluded that there are no significant environmental effects that would result from the proposed action, the Commission has no need to evaluate any alternative with equal or greater environmental impacts.

The principal alternative would be to deny the requested action. Denial of the application would not change the environmental impact. The environmental impact of the proposed action and the alternative action are the same.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Trojan Nuclear Plant dated August 1973 or the Final Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities, dated August 1988.

Agencies and Persons Contacted

In accordance with its stated policy, on Feb. 10, 1997, the staff consulted with Mr. Adam Bless, of the Oregon Department of Energy, regarding the environmental impact of the proposed action. Mr. Bless had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated August 20 1996, as supplemented by letters dated October 16, 1996, and October 30, 1996, which are available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street, N.W., Washington, D.C., and at the local public document room for the Trojan Nuclear Plant located at the Branford Price Millar Library, Portland State University, Portland, Oregon 97207.

Dated at Rockville, Maryland, this 27th day of February 1997.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactors and Decommissioning Project Directorate, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 97–5386 Filed 3–4–97; 8:45 am]

BILLING CODE 7590–01–P

Advisory Committee on Nuclear Waste, Revised Notice

The agenda of the 90th meeting of the Advisory Committee on Nuclear Waste (ACNW) scheduled for March 20 and 21, 1997, in Room T–2B3, at 11545 Rockville Pike, Rockville, Maryland is being revised to include a session to discuss:

- *10 CFR Part 960*—The ACNW will review an options paper prepared by the NRC staff for commenting on DOE's recently revised Siting Guidelines in10 CFR Part 960. These guidelines are now Yucca Mountain specific.

All other items pertaining to this meeting remain the same as published in the Federal Register on Tuesday, February 18, 1997 (62 FR 7280).

FOR FURTHER INFORMATION CONTACT: Mr. Richard K. Major, Chief, Nuclear Waste Branch (telephone 301/415–7366), between 8:00 a.m. and 5:00 p.m. EDT.

ACNW meeting notices, meeting transcripts, and letter reports are now available on FedWorld from the ''NRC MAIN MENU.'' Direct Dial Access number to FedWorld is (800) 303–9672; the local direct dial number is 703–321–3339.

Dated: February 27, 1997.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 97–5390 Filed 3–4–97; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A and B, and placed under Schedule C in the excepted service, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Patricia H. Paige, Staffing Reinvention Office, Employment Service (202) 606–0830.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its

last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR 213 on February 7, 1997 (62 FR 5863). Individual authorities established or revoked under Schedules A and B and established under Schedule C between January 1, 1997, and January 31, 1997, appear in the listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30 will also be published.

Schedule A

The following Schedule A authorities were established:

Department of Commerce

One position above GS–15 in support of the President's Commission on Critical Infrastructure Protection. This authority remains in effect for six months after termination of the Commission. Effective January 24, 1997.

Department of Justice

National Drug Intelligence Center. All positions. Effective January 30, 1997.

The following Schedule A authorities were revoked:

Export-Import Bank of the United States

One position of Food Service Worker, WG–7804–3/4/5, in the Office of the President and Chairman. Effective January 23, 1997.

General Services Administration

One position of Deputy Director of Network Services. Effective January 23, 1997.

Schedule B

No Schedule B authorities were established or revoked during January 1997.

Schedule C

The following Schedule C authorities were established during 1997:

Commodity Futures Trading Commission

Administrative Assistant to the Commissioner. Effective January 23, 1997.

Department of Agriculture

Confidential Assistant to the Assistant Secretary for Congressional Relations. Effective January 8, 1997.

Director, Intergovernmental Affairs to the Assistant Secretary for Congressional Relations. Effective January 8, 1997.

Confidential Assistant to the Assistant Secretary for Congressional Relations. Effective January 8, 1997.

Special Assistant to the Director, Empowerment Zone/Enterprise Community. Effective January 16, 1997.

Confidential Assistant to the Chief, Natural Resources Conservation Service. Effective January 17, 1997.

Special Assistant to the Chief, Forest Service. Effective January 23, 1997.

Department of the Army (DOD)

Confidential Assistant to the Secretary of the Army. Effective January 27, 1997.

Department of Commerce

Confidential Assistant to the Director, Office of Business Liaison. Effective January 2, 1997.

Confidential Assistant to the Director, Office of Business Liaison. Effective January 2, 1997.

Confidential Assistant to the Director, Office of Public Affairs, International Trade Administration. Effective January 2, 1997.

Confidential Assistant to the Director, Office of White House Liaison. Effective January 3, 1997.

Confidential Assistant to the Director, Office of Policy and Strategic Planning. Effective January 8, 1997.

Confidential Assistant to the Director, Office of Public Affairs and Press Secretary. Effective January 14, 1997.

Confidential Assistant to the General Counsel. Effective January 17, 1997.

Department of Defense

Staff Specialist to the Assistant to the President/Director, White House Office for Women's Initiative and Outreach, Office of the Secretary. Effective January 17, 1997.

Department of Education

Confidential Assistant to the Under Secretary, Office of the Under Secretary. Effective January 3, 1997.

Special Assistant to the Deputy Secretary, Office of the Deputy Secretary. Effective January 3, 1997.

Special Assistant to the Senior Advisor to the Secretary. Effective January 16, 1997.

Deputy Secretary's Regional Representative to the Secretary's Regional Representative, Region I, Boston, MA. Effective January 17, 1997.

Confidential Assistant to the Special Advisor to the Secretary (Director, America Reads Challenge). Effective January 31, 1997.

Department of Energy

Special Assistant to the Assistant Secretary for Defense Programs. Effective January 6, 1997.

Special Assistant to the Director, Office for Worker and Community Transition. Effective January 10, 1997.

Special Assistant to the Under Secretary of Energy. Effective January 28, 1997.

Department of Health and Human Services

Special Assistant to the Deputy Assistant Secretary for Planning and Evaluation. Effective January 2, 1997.

Department of the Interior

Special Assistant to the Deputy Chief of Staff. Effective January 2, 1997.

Special Assistant to the Director of the Bureau of Land Management. Effective January 17, 1997.

Department of Labor

Executive Assistant to the Assistant Secretary for Veterans' Employment and Training. Effective January 17, 1997.

Environmental Protection Agency

Senior Advisor to the Assistant Administrator for the Office of Policy Planning and Evaluation. Effective January 23, 1997.

General Services Administration

Special Assistant to the Director for Workplace Initiatives. Effective January 10, 1997.

Special Assistant to the Regional Administrator, Region 7. Effective January 17, 1997.

Special Assistant to the Associate Administrator for Enterprise Development. Effective January 29, 1997.

Office of National Drug Control Policy

Events Manager to the Director, Strategic Planning. Effective January 2, 1997.

Research Assistant to the Director, Strategic Planning. Effective January 2, 1997.

Staff Assistant to the Chief of Staff. Effective January 23, 1997.

Staff Assistant to the Director, Office of the National Drug Control Policy. Effective January 23, 1997.

Office of the United States Trade Representative

Writer (Speechwriter) to the Chief of Staff. Effective January 2, 1997.

U.S. International Trade Commission

Confidential Assistant to the Commissioner. Effective January 17, 1997.

United States Information Agency

Confidential Assistant to the Voice of America Director. Effective January 16, 1997.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958. Comp., P. 218.

Office of Personnel Management.

James B. King,

Director.

[FR Doc. 97–5365 Filed 3–4–97; 8:45 am]

BILLING CODE 6325–01–M

POSTAL RATE COMMISSION

[Docket Number A97–11; Order No. 1158]

Cardiff, Maryland 21024 (Mary A. Smith, Petitioner); Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. § 404(b)(5)

Issued February 28, 1997.

Before Commissioners: Edward J. Gleiman, Chairman; H. Edward Quick, Jr., Vice-Chairman; George W. Haley; W.H. ''Trey'' LeBlanc III.

Docket Number: A97–11.

Name of Affected Post Office: Cardiff, Maryland 21024.

Name(s) of Petitioner(s): Mary A. Smith.

Type of Determination: Closing.

Date of Filing of Appeal Papers: February 24, 1997.

Categories of Issues Apparently Raised:

1. Effect on the community [39 U.S.C. § 404(b)(2)(A)].

2. Effect on postal services [39 U.S.C. § 404(b)(2)(C)].

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above. Or, the Commission may find that the Postal Service's determination disposes of one or more of those issues.

The Postal Reorganization Act requires that the Commission issue its decision within 120 days from the date this appeal was filed (39 U.S.C. § 404 (b)(5)). In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service to submit memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request and the Postal Service shall serve a copy of its memoranda on the petitioners. The Postal Service may incorporate by reference in its briefs or motions, any arguments presented in memoranda it previously filed in this docket. If necessary, the Commission also may ask petitioners or the Postal Service for more information.

The Commission orders:

(a) The Postal Service shall file the record in this appeal by March 11, 1997.

(b) The Secretary of the Postal Rate Commission shall publish this Notice and Order and Procedural Schedule in the Federal Register.

By the Commission.

Margaret P. Crenshaw,

Secretary.

Appendix

February 24, 1997
- Filing of Appeal letter

February 28, 1997
- Commission Notice and Order of Filing of Appeal

March 21, 1997
- Last day of filing of petitions to intervene [see 39 C.F.R. § 3001.111(b)]

March 31, 1997
- Petitioner's Participant Statement or Initial Brief [see 39 C.F.R. § 3001.115(a) and (b)]

April 21, 1997
- Postal Service's Answering Brief [see 39 C.F.R. § 3001.115(c)]

May 6, 1997
- Petitioner's Reply Brief should Petitioner choose to file one [see 39 C.F.R. § 3001.115(d)]

May 13, 1997
- Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [see 39 C.F.R. § 3001.116]

June 24, 1997
- Expiration of the Commission's 120-day decisional schedule [see 39 U.S.C. § 404(b)(5)]

[FR Doc. 97–5377 Filed 3–4–97; 8:45 am]

BILLING CODE 7710–FW–P

[Docket No. A97–12 Order No. 1159]

Jackson Junction, Iowa 52150 (Gary L. Holst, Petitioner); Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. § 404(b)(5)

Issued February 28, 1997.

Before Commissioners: Edward J. Gleiman, Chairman; H. Edward Quick, Jr., Vice-Chairman; George W. Haley; W.H. ''Trey'' LeBlanc III.

Docket Number: A97–12.

Name of Affected Post Office: Jackson Junction, Iowa 52150.

Name(s) of Petitioner(s): Gary L. Holst.

Type of Determination: Closing.

Date of Filing of Appeal Papers: February 25, 1997.

Categories of Issues Apparently Raised:

1. Effect on the community [39 U.S.C. § 404(b)(2)(A)].

2. Effect on postal services [39 U.S.C. § 404(b)(2)(C)].

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above. Or, the Commission may find that the Postal Service's determination disposes of one or more of those issues.

The Postal Reorganization Act requires that the Commission issue its decision within 120 days from the date this appeal was filed (39 U.S.C. § 404 (b)(5)). In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service to submit memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request and the Postal Service shall serve a copy of its memoranda on the petitioners. The Postal Service may incorporate by reference in its briefs or motions, any arguments presented in memoranda it previously filed in this docket. If necessary, the Commission also may ask petitioners or the Postal Service for more information.

The Commission orders:

(a) The Postal Service shall file the record in this appeal by March 12, 1997.

(b) The Secretary of the Postal Rate Commission shall publish this Notice and Order and Procedural Schedule in the Federal Register.

By the Commission.

Margaret P. Crenshaw,

Secretary.

Appendix

February 25, 1997
- Filing of Appeal letter

February 28, 1997
- Commission Notice and Order of Filing of Appeal

March 21, 1997
- Last day of filing of petitions to intervene [*see* 39 C.F.R. § 3001.111(b)]

April 1, 1997
- Petitioner's Participant Statement or Initial Brief [*see* 39 C.F.R. § 3001.115(a) and (b)]

April 21, 1997
- Postal Service's Answering Brief [*see* 39 C.F.R. § 3001.115(c)]

May 6, 1997
- Petitioner's Reply Brief should Petitioner choose to file one [*see* 39 C.F.R. § 3001.115(d)]

May 13, 1997
- Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [*see* 39 C.F.R. § 3001.116]

June 25, 1997
- Expiration of the Commission's 120-day decisional schedule [*see* 39 U.S.C. § 404(b)(5)]

[FR Doc. 97–5378 Filed 3–4–97; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Extension.

Reproposed Rule 13h–1, SEC File No. 270–358, OMB Control No. 3235–0408.

Rule 19d–2, SEC File No. 270–204, OMB Control No. 3235–0205.

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget requests for approval of extension on previously approved collections of information:

Reproposed Rule 13h–1 was proposed pursuant to Section 13 of the Securities Exchange Act of 1934 (the ''Act'').[1] Rule 13h–1 will enable the Commission to gather timely large trader information in the form necessary for the reconstruction of trading activity in periods of market stress and for surveillance, enforcement, and other regulatory purposes. Without this information, the Commission would not be able to perform the reconstructions of trading activity necessary for evaluating periods of markets stress and other regulatory purposes.

The staff estimates that there are 630 broker-dealers that will be subject to the recordkeeping and reporting requirements of the reproposed rule. In addition, the staff estimates, based upon analysis of previous requests for similar information, that 750 investors will be large traders subject to the identification requirements of the reproposed rule. Therefore, the Staff estimates that there will be (630+750=1,380) 1,380 respondents under the reproposed rule.

Precise cost estimates are impossible to calculate because the commentators on the original proposal did not provide specific details on costs. Nevertheless, the staff estimates that annually the 1,380 respondents will require approximately 11,444 hours to comply with the reproposed rule. Further, the staff estimates that, on average, each response hour will cost approximately $12.00, and therefore the total annual cost of complying with the rule will be approximately $137,328.

Rule 19d–2 under the Act prescribes the form and content of applications of the Commission by persons desiring stays of final disciplinary sanctions and summary action of self-regulatory organizations (''SROs'') for which the Commission is the appropriate regulatory agency.

It is estimated that approximately 30 respondents will utilize this application procedure annually, with a total burden of 90 hours, based upon past submissions. The staff estimates that the average number of hours necessary to comply with the requirements of Rule 19d–2 is 3 hours. The average cost per hour is approximately $30. Therefore, the total cost of compliance for the respondents is $2,700.

General comments regarding the estimated burden hours should be directed to the Desk Officer for the Securities and Exchange Commission at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549 and Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Dated: February 26, 1997.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–5372 Filed 3–4–97; 8:45 am]

BILLING CODE 8010–01–M

[1] Section 13 of the Act was amended by the addition of Subsection (h) (15 U.S.C. § 78m(h) (1990)) when Section 3 of the Market Reform Act of 1990 (Pub. L. No. 101–432, 104 Stat. 963 (1990)) was enacted.

[Release No. 34–38342; File No. SR–CBOE–97–03]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Options on Interests in Listed, Open-End, Indexed Investment Companies

February 26, 1997.

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 January 22, 1997, 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. 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 CBOE proposes the adoption of rules to permit the trading of options on interests in listed, open-end, investment companies that hold a portfolio of securities comprising or based on a broad-based stock index.

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, 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 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 the proposed rule change is to provide for the trading of options on listed shares or units of open-end, indexed, investment companies. For purposes of this filing, indexed investment companies are those that hold a portfolio of securities comprising or based on a designated broad-based stock index such that the investment company is designed to provide investment results that substantially correspond to the price and yield performance of the designated index. The kinds of shares or units issued by open-end, investment companies that are within the scope of the proposed rule change include listed shares issued by open-end, managed investment companies or by series of such funds, or listed interests in open-end unit investment trusts (''UITs'') that have as their assets either an indexed portfolio of equity securities or shares of an open-end investment company that holds such a portfolio. (Shares or other interests in investment companies are herein referred to as ''shares.''). ''Listed'' shares are those that are principally traded on a national securities exchange or through the facilities of a national

securities association and reported as a ''national market security.''

The open-end investment companies that qualify as underlying securities for options under this proposal continuously offer to sell their shares or interests at net asset value, although in some cases the offering of such shares may be made only in large block-size units (sometimes referred to as ''Creation Units'') in exchange for an in-kind deposit of the underlying indexed portfolio of securities (or in the case of UITs holding shares of an indexed fund, an in-kind deposit of shares of the indexed fund) and a specified amount of cash to make the deposit equal the net asset value of the fund shares being purchased. Thus, it will always be possible for a person to purchase block-size units of shares of an underlying fund or UIT at net asset value by means of an in-kind deposit. The value of a Creation Unit varies from fund to fund, but it generally is of substantial size.[1]

Similarly, redemptions of shares of underlying investment companies may always be made at net asset value, although, as for purchases, in some cases redemptions may be made only in block-size Creation Units, in which case payment of redemption proceeds will be made only in the form of an in-kind distribution of the securities comprising the underlying indexed portfolio or shares of the underlying indexed fund.

Options on open-end investment companies are proposed to be traded on CBOE pursuant to the same rules and procedures that apply generally to trading in options on equity securities or indexes of equity securities, except that special listing criteria are proposed to apply to this category of options, and these options are proposed to be subject to position and exercise limits on the same basis as broad-based index options.

The listing standards proposed for options on open-end investment companies are set forth in proposed Interpretation and Policy. .06 under CBOE Rule 5.3 and in Interpretation .10 under CBOE Rules 5.4. These standards, which provide for the listing of European-style options only, are substantially the same as those that have been applied to the initial and continued listing of various open-end investment companies on other securities exchanges. There is also the requirement, comparable to that which applies to index options, that the preponderant weight of a non-U.S. index must be represented by stocks traded on exchanges that have entered into surveillance sharing agreements with the Exchange. CBOE's proposed listing standards provide that there will be no opening transactions in investment company options and all such options will trade on a liquidation-only basis if the underlying investment companies should cease to trade on an exchange or as national market securities in the over-the-counter market. Conforming the listing standards for options on open-end investment companies to those applicable to the underlying investment companies themselves assures that options may be considered for listing on CBOE on all open-end investment companies that are themselves listed on an exchange or on Nasdaq.

This in turn should be beneficial to investors in listed investment companies enabling them to adjust the risks and rewards of their investments to suit their individual needs. The ability of these options should also add to the depth and liquidity of the market for the underlying investment companies by permitting market makers in that market to hedge the risks of their market-making activities.

Exchange maintenance listing standards for open-end investment companies do not include criteria based on either the number of shares or other units outstanding or on their trading volume.[2] The CBOE believes the absence of such criteria is justified on the ground that since it should always be possible to create additional shares or other interests in open-end investment companies at their net asset value by making an in-kind deposit of the securities that comprise the underlying index or portfolio, there is no limit on the available supply of such shares or interests. This, in turn, in the CBOE's view, should make it highly unlikely that the market for listed, open-end investment company shares could be capable of manipulation, since whenever the market price for such shares departs from net asset value, there will be arbitrage opportunities either to purchase or redeem shares at net asset value that should bring prices back in line.

For this same reason, there is not the same need for option position and exercise limits to protect the underlying market against squeezes and other types of manipulation as their may be for options or securities that are not open-ended. Furthermore, in the absence of any maintenance listing requirements in the underlying market that call for a minimum number of shares or units or for minimum trading volume, position and exercise limits are not meaningful as a percentage of either of these measures. Nevertheless, CBOE is proposing to subject options on indexed, open-end, listed investment companies to the same position and exercise limits that currently apply to indexed European-exercise style options generally. After some period of experience with these limits, CBOE may propose their relaxation or elimination, but any such proposal would be subject to being filed and approved under section 19(b)2) of the Securities Exchange Act of 1934.

Reflecting the indexed nature of the underlying portfolios of the investment companies on which options are proposed to be traded, the Exchange proposes to amend Interpretation and Policy .01 under Exchange Rule 5.5 to provide that the minimum strike price intervals for these options will be $2.50 where the strike price is $200 or less, and $5.00 where the strike price is over $200. These are comparable to the strike price intervals provided in Interpretation and Policy .01 under Exchange Rule 24.9, as applicable to broad-based index options having strike prices at about the level expected for listed investment company options.

Margin requirements are proposed for options on listed investment companies at the same levels that apply to options generally under Exchange Rule 12.3, except that, reflecting the indexed nature of underlying portfolios of these investment companies, minimum margin must be deposited and maintained equal to 100% of the current market value of the option plus 15% (instead of 20%) of the market value of equivalent units of the underlying security value. In this respect, the margin requirements proposed for options on listed, indexed investment companies are comparable to margin requirements that currently apply to

[1] For example, Creation Units for the series of indexed open-end management investment companies approved for listing on the American Stock Exchange and known as ''WEBs'' represent from 80,000 to 600,000 shares, which were valued from $450,000 to $10,000,000, depending on the series, at the time the Amex rules applicable to WEBs were approved. See Securities Exchange Act Release No. 36947 (March 8, 1996) (order approving Amex Rules applicable to WEBs). Similarly, a Creation Unit for listed UITs indexed to the S&P 500 Index represents 50,000 units, valued at $3,750,000 at the current level of that Index.

[2] See, for example, the maintenance listing standards contained in Amex Rules 1002(b) and 1002A(b), applicable to indexed UIT interests and indexed mutual funds, respectively. Notwithstanding the absence of maintenance standards requiring a minimum number of shares outstanding, as a practical matter there can never be trading in a series of a listed investment company in which there is less than one Creation Unit outstanding, since listed open-end investment companies may only be created and redeemed in Creation Unit size, and if the last outstanding Creation Unit should ever be redeemed, the series (and options on that series) will cease to trade.

market index options under Exchange Rule 24.11(b)(i).

CBOE believes it has the necessary systems capacity to support the additional series of options that would result from the introduction of investment company options, and it has been advised that the Options Price Reporting Authority (''OPRA'') also has the capacity to support these additional services.[3]

The proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular because, by providing for the trading of options on listed, indexed, open-end investment companies within the framework of CBOE's regulated market place while there is trading in the underlying investment companies in other exchange markets, the proposed rule change is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change will impose no 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

Within 35 days of the 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 the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying 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–97–03 and should be submitted by March 26, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–5371 Filed 3–4–97; 8:45 am]

BILLING CODE 8010–01–M

[3] See memorandum from Joseph Corrigan, Executive Director, OPRA, to Eileen Smith, CBOE, dated January 21, 1997.

[4] 17 CFR 200.30–3(a)(12).

[Release No. 34–38332; File No. SR–CBOE–97–07]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by Chicago Board Options Exchange, Inc., Relating to Certain Multi-Market Orders Involving Index Options

February 24, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), and Rule 19b–4 thereunder, 17 CFR 240.19b–4, notice is hereby given that on February 12, 1997, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. 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 Exchange proposes to amend Rule 6.48 to specify that certain duties of CBOE members in effecting options transactions on the CBOE that are part of certain stock-option orders on the CBOE involving index options. 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 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 the Statutory Basis for, the Proposed Rule Change

(1) Purpose

In 1995, the Exchange filed a rule change proposal with the Commission that amended Rule 6.48 and set forth the duties of CBOE members executing options orders that constitute a component of a ''package'' stock-options order. The execution of this type of order involves transactions in CBOE's options market and in another market (a ''multi-market'' order).[1] Rule 6.48 specifies the sole basis on which an options trade that is a component of a multi-market order may be canceled by the members that are parties thereto. However, Rule 6.48 does not currently provide for the cancellation of any stock-option order that entails the purchase of sale of index options.

Multi-market orders in index options play an important role in allowing traders to hedge their risks and thus, in providing liquidity to customers in their products. Sometimes, multi-market orders involving index options might consist of a spread between the CBOE option product and another single security traded in another market, *e.g.*, S&P 500 index options (SPX) versus a unit investment trust in the S&P 500. In those instances where an order involves

[1] *See* Securities Exchange Act Release No. 36516 (November 27, 1995), 60 FR 62114 (December 4, 1995).

a CBOE index option and an equity index-based security traded in another market, where both are based upon the same index,[2] the Exchange believes it is appropriate to deem such an order a stock-option order, and thus eligible for the order cancellation provision contained in paragraph (b) of Rule 6.48. Another common type of multi-market order often involves the nearly simultaneous trading of a CBOE option and a basket of stocks in another market. The CBOE does not believe that this type of order should be deemed a stock-option order eligible for the cancellation provisions contained in Rule 6.48 because a ''basket'' of stocks is not an ''underlying or related security'' as required in the definition of stock-option order.[3] To date, CBOE traders in index options have relied on informal trading protocols to ensure fairness and equity in connection with the execution and cancellation of multi-market orders.

Accordingly, the Exchange is proposing to extend the order execution and cancellation provisions contained in Rule 6.48 to stock-option orders involving an index option and a single security equity index-based product traded in another market, where both are based upon the same index.[4] Consequently, the Exchange is proposing the deletion of paragraph (b)(ii) of Rule 6.48 which exempts stock-option orders involving index options from the two requirements set forth in paragraph (b) of Rule 6.48. The first of those requirements is that a member announcing such an order to a trading crowd must disclose all legs of the order and must identify the specific markets and prices at which the non-options leg(s) are to be filed. Second, concurrent with the execution of the option leg of any multi-market order, the initiating member and each member that is a counterparty to the trade must take steps to immediately execute the non-options leg(s) in the identified market(s).

The Exchange believes, as with stock-option orders involving equity options, that these provisions will clarify members' expectations about the execution of each non-option component of such orders.

Current Rule 6.48 provides that a party to an options transaction that is part of a stock-option order may have the options transaction canceled only in the event that market conditions in another market prevents the execution of one or more of the non-option legs of the order.

The current proposal only addresses multi-market orders involving an index option and a single security equity index-based product traded in another market, where both are based upon the same index (*e.g.*, a stock-option order involving SPDRs and SPX options). Additionally, Rule 6.48 is not intended to allow multi-market orders involving index options and ''baskets'' of securities to get the benefit of the order cancellation provisions of the rule. Stock-option orders are just one subset of the types of multi-market orders that are transacted by traders in the index crowds. As mentioned above, some multi-market orders involve a transaction of an index option coupled with a basket of stocks comprising the index. An order for this type of transaction does not meet the definition of a stock-option order which is defined under CBOE Rule 1.1(ii). The Exchange is currently reviewing the protocols used in the execution of these other types of multi-market orders to determine if further rule changes would be beneficial in the handling of these orders.

(2) Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it is designed to deal with the special circumstances of multi-market orders involving index options in a manner that promotes just and equitable principles of trade, and the protection of investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. 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 days prior to the filing date; and (4) does not become operative for 30 days from February 12, 1997, the date on which it was filed, the rule change 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 standards 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 the 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 in 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

[2] The trust which underlies S&P 500 Depositary Receipts (''SPDRs'') is made to replicate the performance of the S&P 500 index; however, there are a couple of reasons why the value of the SPDR trust may deviate slightly from the S&P 500 value. First, the trust underlying SPDRs is subject to slight rounding errors because the trust must contain whole shares while the S&P 500 index is not so limited. Second, the trust underlying SPDRs is required only to make adjustments to the components monthly unless the value of the component deviates by more than a certain percentage from that component's comparable weight in the S&P 500 index.

[3] *See* CBOE Rule 1.1(ii).

[4] Telephone conversation between Tim Thompson, Senior Attorney, CBOE, and John Ayanian, Special Counsel, Office of Market Supervision, Division of Market Regulation, Commission, on February 21, 1997.

should refer to File No. SR–CBOE–97–07 and should be submitted by March 26, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–5373 Filed 3–4–97; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–38338; File No. SR–CHX–97–02]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to Enhanced SuperMAX

February 26, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on January 30, 1997, the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the proposal.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange requests permanent approval of its Enhanced SuperMAX pilot program, as amended, located in subsection (e) of Rule 37 of Article XX.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organizations 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

1. Purpose

On May 22, 1995, the Commission approved a proposed rule change of the CHX that allows specialists on the Exchange, through the Exchange's MAX system, to provide order execution guarantees that are more favorable than those required under CHX Rule 37(a), Article XX.[2] That approval order contemplated that the CHX would file with the Commission specific modifications to the parameters of MAX that are required to implement various options available under this new rule.

On July 27, 1995, the Commission approved a proposed rule change of the CHX that implemented two options available under this new rule.[3] These two new options, Enhanced SuperMAX and Timed Enhanced SuperMAX, we approved on a pilot basis until July 31, 1996. The Commission extended the pilot program until December 31, 1996 and requested that the CHX provide a report to the Commission, by August 31, 1996,[4] describing its experience with the pilot program. On August 30, 1996, the CHX submitted the report. Most recently, the Commission extended the pilot program until March 1, 1997.[5] In connection with the extension, the CHX agreed to provide additional data to the Commission regarding the pilot. On January 31, 1997, the Exchange submitted this data.

The purpose of the proposed rule change is to request permanent approval of the pilot program, as amended by this filing. Specifically, the Exchange is combining the two options currently available under the pilot program into one option, to be called Enhanced SuperMAX. Enhanced SuperMAX was merely a reactivation of the Exchange's Enhanced SuperMAX program, a program originally approved by the Commission on a pilot basis in 1991.[6] The proposed Enhanced SuperMAX program differs from the original pilot program approved in 1991 in that it is available starting at 8:45 a.m. instead of 9:00 a.m. This program also differs from the Exchange's SuperMAX program in that under this program, certain orders are ''stopped'' at the consolidated best bid or offer and are executed with reference to the next primary market sale instead of the previous primary market sale.

The Enhanced SuperMAX program, as amended by this filing, also includes all of the features of the pilot version of the Timed Enhanced SuperMAX program. Essentially, the new Enhanced SuperMAX program will execute orders in the same manner as the pilot Enhanced SuperMAX program, except that if there are no executions in the primary market after the order has been stopped for a designated time period, the order is executed at the stopped price at the end of such period. Such period, known as a time out period, is pre-selected by a specialist on a stock-by-stock basis based on the size of the order, may be changed by a specialist no more frequently than once a month, and may be no less than 30 seconds.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No comments were solicited or received.

III. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission has carefully reviewed the Exchange's proposed rule change and, for the reasons set forth below, finds that the proposed rule change, as amended by this filing, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the Exchange, and, in particular, with Section 6(b)(5)[7] of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and

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[5] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] See Securities Exchange Act Release No. 35753 (May 22, 1995), 60 FR 28007.

[3] See Securities Exchange Act Release No. 36027 (July 27, 1995), 60 FR 39465.

[4] See Securities Exchange Act Release No. 37491 (July 29, 1996), 61 FR 48690.

[5] See Securities Exchange Act Release No. 38098 (December 30, 1996), 62 FR 1008. Commission note: The CHX Form 19b–4 filing indicates incorrectly that the pilot program was extended until March 31, 1997.

[6] See Securities Exchange Act Release No. 30058 (December 10, 1991), 56 FR 65765.

[7] 15 U.S.C. 78f(b)(5).

open market and a national market system, and, in general, to protect investors and the public interest.

The proposed rule change provides for a modified version of the SuperMAX system. SuperMAX is a system that automatically improves executions of small agency market orders from the consolidated best bid or offer according to certain predefined criteria, including the last sale in the primary market. In 1990, the Commission first approved SuperMAX on a pilot basis.[8] In 1991, the Commission approved Enhanced SuperMAX on a pilot basis to run concurrently with SuperMAX, which was still on a pilot at that time.[9] This program differed from the Exchange's SuperMAX program in that under this program, certain orders are ''stopped'' at the consolidated best bid or offer and are executed with reference to the next primary market sale instead of the previous primary market sale. The Exchange sought approval of the Enhanced SuperMAX and SuperMAX systems to evaluate both systems and to determine which system it wanted to implement.

In 1993, the Exchange chose to implement SuperMAX rather than Enhanced SuperMAX and sought approval of SuperMAX on a permanent basis. The Commission permanently approved SuperMAX, believing that the automated execution feature of SuperMAX would provide a more efficient means of bettering the execution price on a large volume of electronically delivered market orders than through manual processing.[10] The Enhanced SuperMAX pilot expired in 1993 without the Exchange requesting an extension or permanent approval. In the initial Enhanced SuperMAX pilot approval order, the Commission had described its concerns with the program and requested that the Exchange submit a report detailing the use of the pilot. The Exchange, however, did not submit a report because specialists on the Exchange made little or no use of the pilot program.[11] Since the Exchange revived the Enhanced SuperMAX pilot program in 1995 (and at the same time requested the Commission approve a pilot of Timed Enhanced SuperMAX), according to reports submitted by the Exchange, no orders have been executed in the Enhanced SuperMAX program because no specialist has chosen this option.[12] According to the Exchange, there are two reasons for the lack of use of this option. First, there has been no interest in this option from customers. Second, competitors (especially third market firms) now give executions with a time-out feature that is akin to Timed Enhanced SuperMAX. As a result, the Exchange states, customers have come to expect, and now desire, an execution after a designated time period.[13]

The Exchange has revised the rule to combine Enhanced SuperMAX and Timed Enhanced SuperMAX into one option, Enhanced SuperMAX, as amended, which preserves the option of the Enhanced SuperMAX in its pilot form while recognizing that customers have almost exclusively chosen the Timed Enhanced SuperMAX option. As a result, if a specialist has selected a time-out period, and there is a sale during the time-out period, the execution price is the same as it would have been under Enhanced SuperMAX. If, however, there is no sale in the primary market during the time-out period, execution will occur at the stopped price at the end of the time-out period.

The Commission finds appropriate the combining of the two options currently available under the pilot program into one option, now called Enhanced SuperMAX, even if no orders have been executed on the Enhanced SuperMAX pilot program. With this approach, the Exchange has streamlined the rule and also preserved the option for customers to use the former Enhanced SuperMAX option. This approach also eliminates the need for the Exchange to apply to the Commission for a re-activation of the Enhanced SuperMAX option.

The Commission finds that the pricing and execution features of Enhanced SuperMAX, as amended, are not inconsistent with the maintenance of fair and orderly auction markets on national securities exchanges and the protection of investors. The execution criteria of Enhanced SuperMAX, as amended, should contribute to an orderly market because they help to reduce the price variations from trade to trade on low volume.

The Commission recognizes that the increased competition that results from permitting regional specialists to attract orders from other markets by providing superior quotations and more efficient order executions generally enhances market making ability and the quality of customer order executions. The Commission believes the automated pricing parameters and execution procedures of the Enhanced SuperMAX system, as amended, may enhance competition by opening an alternative electronic order routing and execution system for smaller size orders.

Although the Commission finds that Enhanced SuperMAX, as amended, would not automatically provide a ⅛ point price improvement, it would provide some opportunity for price improvement. The Exchange indicated in the First Report that 38% of the eligible orders under the Timed Enhanced SuperMAX algorithm received price improvement,[4] and in the Second Report that 44% of the eligible orders under the Timed Enhanced SuperMAX algorithm received price improvement.[15] As part of the Second Report, the Exchange provided a comparison of executions occurring on one day under SuperMAX and Timed Enhanced SuperMAX (Enhanced SuperMAX, as amended) for a single stock, Nike, Inc. Under the SuperMAX algorithm, 12 of 81 eligible trades received ⅛ point price improvement. The Exchange determined that if Nike, Inc, had been on Timed Enhanced SuperMAX, rather than SuperMAX, between two and twelve orders would have received price improvement, depending on the length of the time-out period. If the time-out period had been set at 30 seconds, only two orders would have been price improved. If the time-out period had been set at 30 seconds, only two orders would have been priced improved. If the time-out period had been set at 5 minutes, 12 orders would have been price improved, and one of those orders would have received ¼ price improvement. The Exchange concluded that Timed Enhanced SuperMAX could provide greater price improvement than the SuperMAX algorithm under certain circumstances.[16]

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication thereof in the Federal Register. The Commission believes that it is appropriate to approve the proposed rule change on an accelerated

[8] See Securities Exchange Act Release No. 28014 (May 14, 1990), 55 FR 20880.

[9] *Supra* note 6.

[10] Securities Exchange Act Release No. 32631 (July 14, 1993), 58 FR 30969 (order approving SuperMAX permanently).

[11] *Id.*

[12] Report of the Chicago Stock Exchange Relating to the Enhanced SuperMAX and Timed Enhanced SuperMAX Pilot Programs (August 30, 1996) at 1 (''First Report'') (covering the three month period ending August 27, 1996); Second Report of the Chicago Stock Exchange Relating to the Enhanced SuperMAX and Timed Enhanced SuperMAX Pilot Programs (January 30, 1997) at 1 (''Second Report'') (covering the three month period ending January 20, 1997).

[13] First Report, *supra* note 12 at 1; Second Report, *supra* note 12 at 1.

[14] First Report, *supra* note 12 at 2.

[15] Second Report, *supra* note 12 at 2.

[16] *Id.*

basis so that the Exchange can enable public customers to receive the benefits of Enhanced SuperMAX, as amended, without the interruption that would result if the pilot program were allowed to expire on March 1, 1997 without permanent approval of the program in place. Moreover, both the Enhanced SuperMAX and Timed Enhanced SuperMAX have operated without any significant problems as pilot programs since July, 1995. Finally, the Commission received no comments on the Exchange's earlier request for permanent approval of the pilot, which was published for comment on November 20, 1996.[17] The Commission, therefore, believes that granting accelerated approval of the proposed rule change is appropriate and consistent with Section 6(b)(5) of the Act.[18]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission 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 that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the Exchange. All submissions should refer to File No. SR–CHX–97–02 and should be submitted by March 26, 1997.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[19] that the proposed rule change be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–5369 Filed 3–4–97; 8:45 am]

BILLING CODE 8010–01–M

[17] Securities Exchange Act Release No. 37497 (November 13, 1996), 61 FR 59124.

[18] 15 U.S.C. 78f.

[19] 15 U.S.C. 78s(b)(2).

[20] 17 CFR 200.30–3(a)(12)

[Release No. 34–38340; File No. SR–DTC–22]

Self-Regulatory Organization's; The Depository Trust Company; Notice of Filing of a Proposed Rule Change To Amend DTC's Charge Back and Return of Funds Procedures

February 26, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on December 4, 1996, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change (File No. SR–DTC–96–22) as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change amends DTC's charge back and return of funds policies (''Policy'')[2] to shorten from ten business days to one business day the period within which a paying agent can request that DTC return principal and income (''P&I'') payments that have been allocated to participants.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filings with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Policy[4] currently authorizes DTC to return P&I payments to paying agents after the funds have been credited to the accounts of DTC participants, which is commonly referred to as a ''clawback,'' if the paying agent notifies DTC in writing within ten business days of the payable date that: (i) The issuer has failed to provide the paying agent with sufficient funds to cover the payments; or (ii) the issuer has become bankrupt.[5] The proposed rule change will reduce the period within which a paying agent can request DTC to return funds to such paying agent from ten business days to one business day.[6] Furthermore, the Policy provides that if an agent requests the return of a P&I payment more than ten business days after a payable date, DTC will work with the agent and participate to resolve the matter. However, DTC will not return the allocated payments without the participant's consent.

PSA The Bond Market Trade Association (''PSA'') has expressed concern with the current policy and the associated risk of loss placed on DTC participants in the event a payment is returned to a paying agent.[7] In response, DTC convened a joint working group of

[1] 15 U.S.C. 78s(b)(1).

[2] A copy of the Policy marked to show the specific changes to DTC's procedures is attached as Exhibit C to DTC's proposed rule change which is available for inspection and copying at the Commission's Public Reference Room or through DTC.

[3] The Commission has modified the text of the summaries prepared by DTC.

[4] For a complete description of the procedures relating to the Policy, refer to Securities Exchange Act Release Nos. 23219 (May 8, 1986), 51 FR 17845 [SR–DTC–03] (notice of filing and immediate effectiveness on a temporary basis of a proposed rule change); 23686 (October 7, 1986), 51 FR 37104 [SR–DTC–86–4] (order permanently approving proposed rule change); 26070 (September 9, 1988) 53 FR 36142 [SR–DTC–88–17] (notice of filing and immediate effectiveness of proposed rule change clarifying that charge back proceedings apply to DTC's same-day funds settlement system and next-day funds settlement system); and 35452 (March 7, 1995), 60 FR 13743, [SR–DTC–95–03] (notice of filing and immediate effectiveness of proposed rule change excluding money market instrument programs from DTC's charge back and return of funds procedures).

[5] The Policy also allows DTC to return previously credited payments upon written request from a paying agent within ten business days of the payable date due to an error by the paying agent. The proposed rule change does not alter this position of the Policy.

[6] Under the proposed rule change, although the time within which a paying agent can request a reversal of allocated funds will be reduced from ten business days to one business day following payable date, the actual reversal may take up to two or three business days after the payable date. For example, if a paying agent requests a reversal from DTC late in the day of the first business day after the payable (''P+1''), DTC would likely notify its participants' on the morning of the following business day (''P+2''). In the interest of fairness and pursuant to DTC's procedures, DTC must notify all affected participants one business day prior to the date on which DTC enters the reversal into its participant's daily settlement accounts. Accordingly, the actual reversal will not occur until P+3. Telephone conversation between Larry E. Thompson, Deputy General Counsel and Senior Vice President, DTC; Mark Steffensen, Special Counsel, Division of Market Regulation (''Division''), Commission; and Jeffrey Mooney, Attorney, Division, Commission (December 18, 1996).

[7] Letter from Heather L. Ruth, President, PSA to William F. Jaenike, Chairman of the Board and Chief Executive Officer, DTC (August 16, 1996).

paying agents, PSA representatives, and other interested parties.[8] In October 1996, the working group concluded that DTC should reduce the period within which DTC may return funds to paying agent's from ten business days to one business day.

DTC concurs with the working group's recommendation and proposes to amend the Policy accordingly. Although the current Policy may encourage paying agents to make more timely payments to DTC by offering them more flexibility with regard to the return of funds if an issuer defaults, DTC believes that it has received only one default-related return of funds request since the Policy was promulgated in 1986.[9] Due to the Policy's infrequent use, DTC proposes to finalize P&I payments sooner and minimize the uncertainty and risk of loss that the Policy currently places on DTC's participants.[10] DTC proposes to implement the proposed rule change for all P&I payments made after April 30, 1997.

DTC believes the proposed rule change is consistent with the requirements of Section 17A of the Act [11] and the rules and regulations thereunder because the proposal promotes the prompt and accurate clearance and settlement of transactions in securities. In addition, DTC believes that the proposed rule change will result in increased protection to investors by providing finality of payment within a substantially shorter period of time.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC perceives no impact on competition by reason of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The proposed rule change has been endorsed by the PSA and was recommended by a special industry working group comprised of PSA representatives, paying agents, and other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which DTC consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to the file number SR–DTC–96–22 and should be submitted by March 26, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–5370 Filed 3–4–97; 8:45 am]

BILLING CODE 8010–01–M

[8] The working group is composed of representatives from the Corporate Trust Advisory Board of the American Bankers Association, the Bank Depository User Group, the Corporate Trust Advisory Committee of the Corporate Fiduciaries Association of New York City, the New York Clearing House—Securities Committee, PSA, the Securities Industry Association, and DTC.

[9] In September 1996, a paying agent requested the return of a single payment $30,000 due to nonpayment by an issuer.

[10] DTC has notified its participants, paying agents, trustees, and issuers of the proposed rule change in DTC Important Notice B# 2068–96 (November 26, 1996) and DTC Important Notice B# 2069–96 (November 26, 1996), which are attached as Exhibit B to DTC's proposed rule change.

[11] 15 U.S.C. 78q–1.

[12] 17 CFR 200.30–3(a)(12).

[Release No. 34–38341; File No. SR–Phlx–97–01)

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the U–SAVE Program

February 26, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on January 15, 1997 the Philadelphia Stock Exchange, Inc. (''Phlx'' 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. 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 Phlx proposes to implement a program that will calculate and then display on the execution reports sent to member firms the dollar amounts realized as savings to their customers as a result of price improvement in the execution of their orders on the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to implement a program for calculating and displaying, on a PACE execution report sent to member firms entering orders, the dollar value saved by their customers as a result of price improvement of orders executed on the Exchange. This program does not in any

[1] 15 U.S.C. 78s(b)(1).

way affect the actual execution of PACE orders. The Exchange is proposing to refer to this calculated dollar savings as the ''U–SAVE'' program.

The U–SAVE program is proposed to be made available for intraday round lot and partial round lot market and marketable limit orders [2] entered via the Exchange's PACE system.[3] The U–SAVE (almost of price improvement) is calculated in comparison to the best bid and offer displayed in the national market system at the time the order is received. For buy side orders, only orders executed at a price lower than the national best offer price will receive a U–SAVE indicator. For sell side orders, only orders executed at a price higher than the national best bid price will receive a U–SAVE indicator.

The following examples illustrate how U–SAVE is proposed to work.

Example 1—Assume the national market quote is 50–50¼. A market order to sell 1,000 shares, entered on the Phlx, is stopped at 50, meaning it is guaranteed a price at 50 or a better price. The order is subsequently executed at 50⅛. This is an ⅛ point savings over the national bid price of 50, which translates into $125 savings over the guaranteed price. Thus, the execution report would display U–SAVE $125.

Example 2—Assume the national market quote is 50–50¼. A marketable limit order to sell 800 shares at 50 or better is entered on the Phlx. The order is subsequently executed at 50⅛. This is an ⅛ point savings over taking the prevailing bid of 50. The execution report would display U–SAVE $100.

Example 3—Assume the national market quote is 50–50⅛. A market order to buy 1,000 shares, entered on the Phlx, is executed at 50. This is an ⅛ point savings over taking the prevailing offer of 50⅛. The execution report would display U–SAVE $125.

If no price improvement was provided or if the firm has not requested to participate in the program then no price improvement information would be displayed on the execution report to the entering firm.

The Exchange believes that the U–SAVE program may be expected to enhance the information made available to investors and improve their understanding of the auction market.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) [4] of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. This rule change is designed to perfect the mechanism of a free and open market in that it enhances the information provided to investors by displaying to them the dollar value of the price improvement their orders may have received when executed on the Phlx.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

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, and (3) does not have the effect of limiting access to or availability of any Exchange order entry or trading system, the U–SAVE program has become effective pursuant to Section 19(b)(3)(A)(iii) [5] of the Act and Rule 19b–4(e)(5) [6] thereunder.

At any time within sixty days of the filing of such 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.[7]

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 also will be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–97–01 and should be submitted by March 26, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–5374 Filed 3–4–97; 8:45 am]

BILLING CODE 8010–01–M

[2] Only limit orders that are marketable at the time they are received by the Exchange are considered in calculating price improvement savings. See letter from Michele R. Weisbaum, Vice President and Associate General Counsel, Phlx, to Anthony P. Pecora, Attorney, Division of Market Regulation, SEC, dated February 7, 1997 (''Amendment No. 1'').

[3] Tick sensitive orders and orders entered on the Floor are not included in the U–SAVE program. *Id.*

[4] 15 U.S.C. 78f(b)(5).

[5] 15 U.S.C. 78s(b)(3)(A)(iii).

[6] 17 CFR 240.19b–4(e)(5).

[7] The Commission notes that Amendment No. 1 substantively modifies the proposed rule change. Therefore, the time period within which the Commission may act to summarily abrogate this rule change began on February 11, 1997, the date Amendment No. 1 was received.

[8] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Economic Injury Disaster Loan Area #9378]

North Dakota; (and Contiguous Counties in Minnesota, South Dakota & Montana); Declaration of Disaster Loan Area; Amendment #1

The above-numbered Declaration, approved on February 11, 1997, is hereby amended to include Bowman County and the contiguous Counties of Slope in the State of North Dakota, and Fallon in the State of Montana as economic injury disaster loan areas as a result of severe winter storms and blizzard conditions during the period of January 3 through January 31, 1997. All other contiguous counties not listed herein have already been included in previous declarations.

All other information remains the same, i.e., the termination date for filing applications for economic injury assistance is November 12, 1997.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: February 25, 1997.

Aida Alvarez,

Administrator.

[FR Doc. 97–5318 Filed 3–4–97; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Fitness Determination of Casino Airlines, Inc.

AGENCY: Department of Transportation.

ACTION: Notice of order to show cause (Order 97–2–30).

SUMMARY: The Department of Transportation is proposing to find that Casino Airlines, Inc., is fit, willing, and able, to provide commuter air service under 49 U.S.C. 41738.

DATES: Persons wishing to file objections should do so no later than March 14, 1997.

RESPONSES: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with James A. Lawyer, Air Carrier Fitness Division, X–56, Room 6401, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses should be filed no later than March 24, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. James A. Lawyer, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–1064.

Dated: February 27, 1997.

Patrick V. Murphy,

Deputy Assistant Secretary for Aviation and International Affairs.

[FR Doc. 97–5360 Filed 3–4–97; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

Aircraft Fluorescent Lighting Ballast/Fixture

AGENCY: Federal Aviation Administration.

ACTION: Notice of availability for public comment.

SUMMARY: This notice announces the availability of and request comments on a proposed technical standard order (TSO) pertaining to aircraft fluorescent ballast/fixture. The proposed TSO prescribes the minimum performance standards that aircraft fluorescent ballast/fixture must meet to be identified with the marking ''TSO–C141.''

DATES: Comments must identify the TSO file number and be received on or before June 13, 1997.

ADDRESSES: Send all comments on the proposed technical standard order to: Technical Programs and Continued Airworthiness Branch, AIR–120, Aircraft Engineering Division, Aircraft Certification Service—File No. TSO–C141, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Or deliver comments to: Federal Aviation Administration, Room 804, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Bobbie J. Smith, Technical Program and Continued Airworthiness Branch, AIR–120, Aircraft Engineering Division, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267–9546.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed TSO listed in this notice by submitting such written data, views, or arguments as they desire to the above specified address. Comments received on the proposed technical standard order may be examined, before and after the comment closing date, in Room 804, FAA Headquarters Building (FOB–10A), 800 Independence Avenue, SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m. All communications received on or before the closing date for comments specified above will be considered by the Director of the Aircraft Certification Service before issuing the final TSO.

Background

In June 1991, the FAA requested that the Society of Automotive Engineers (SAE) develop an aerospace standard (AS) for fluorescent lighting systems. This action was prompted by an unsatisfactory service history of this equipment when installed in aircraft.

In the past ten years, the Federal Aviation Administration (FAA) has issued at least five Airworthiness Directives (AD) against various cabin fluorescent lighting systems. These AD's corrected unsafe conditions that resulted in smoke, fire, or electromagnetic interference to essential airplane systems caused by failure conditions of the cabin fluorescent lighting system. The failure conditions generally consisted of failures in the inverters, transformer (ballast) units, or the lamp connector interface.

The resulting document developed by SAE is AS 4914, aircraft Fluorescent Lighting Ballast/Fixture Safety Design Standard. This is the referenced document in proposed TSO–C141.

How To Obtain Copies

A copy of the proposed TSO–C141 may be obtained by contacting **FOR FURTHER INFORMATION CONTACT.** Copies of Society of Automotive Engineers, Inc. (SAE) Aerospace Standard (AS) 4914 may be purchased from SAE, Inc., 400 Commonwealth Drive, Warrendale, PA 15096–0001. Copies of RTCA Document No. DO–160C, ''Environmental Conditions and Test Procedures for Airborne Equipment, ''dated December 1989, may be purchased from the RCTA Inc., 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036.

Issued in Washington, DC, on February 24, 1997.

Brian A. Yanez,

Acting Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 97–5434 Filed 3–4–97; 8:45 am]

BILLING CODE 4910–13–M

Aircraft Mechanical Fasteners

AGENCY: Federal Aviation Administration.

ACTION: Notice of availability for public comment.

SUMMARY: This notice announces the availability of and requests comments on a proposed Technical Standard Order pertaining to aircraft mechanical fasteners. The proposed TSO prescribes the regulatory performance standards that manufacturer-specified parts and appliances must meet to be identified with the marking ''TSO–C148.''

DATES: Comments must identify the TSO file number and be received on or before May 23, 1997.

ADDRESSES: Send all comments on the proposed technical standard order to: Technical Programs and Continued Airworthiness Branch, AIR–120, Aircraft Engineering Division, Aircraft Certification Service—File No. TSO–C148, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Or deliver comments to: Federal Aviation Administration, Room 815, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Bobbie J. Smith, Technical Programs and Continued Airworthiness Branch, AIR–120, Aircraft Engineering Division, Aircraft Certification Service, Federal Aviation Administration, 800

Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267–9546.

Comments Invited

Interested persons are invited to comment on the proposed TSO listed in this notice by submitting such written data, views, or arguments as they desire to the above specified address. Comments received on the proposed technical standard order may be examined, before and after the comment closing date, in Room 815, FAA Headquarters Building (FOB–10A), 800 Independence Avenue, SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m. All communications received on or before the closing date for comments specified above will be considered by the Director of the Aircraft Certification Service before issuing the final TSO.

Background

The FAA established the Aviation Rulemaking Advisory Committee (ARAC) in January 1991 to provide an ongoing mechanism to accept recommendations from the aviation industry in the regulatory process (56 FR 2190; January 22, 1991; and 58 FR 9230; February 19, 1993). In March 1993, the FAA established the Parts Working Group as part of ARAC (58 FR 16572; March 29, 1993). The Parts Working Group was tasked with recommending to ARAC new regulations and guidance material, as appropriate, pertaining to the issuance and administration of approvals of replacement and modification parts for civil aircraft. The proposed TSO in this notice is based on a draft proposed TSO developed by the Parts Working Group and recommended to the FAA by the ARAC.

The standards of proposed TSO–C148 apply to types of mechanical fasteners intended for tension and/or shear applications in the manufacture and maintenance of aircraft products. The standards are also adaptable to fasteners of proprietary designs. Proposed TSO–C148 provides alternative requirements for marking each individual fastener in lieu of the marking specified by 14 CFR § 21.607(d).

How To Obtain Copies

A copy of the proposed TSO–C148 may be obtained by contacting **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on February 26, 1997.

Todd B. Thompson,

Acting Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 97–5432 Filed 3–4–97; 8:45 am]

BILLING CODE 4910–13–M

Lithium Batteries

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability for public comment.

SUMMARY: This notice announces the availability of and request comments on a proposed technical standard order (TSO) pertaining to lithium batteries. The proposed TSO prescribes the minimum performance standards that lithium batteries must meet to be identified with the marking ''TSO–C142.''

DATES: Comments must be received on or before June 13, 1997.

ADDRESSES: Send all comments on the proposed technical standard order to: Technical Programs and Continued Airworthiness Branch, AIR–120, Aircraft Engineering Division, Aircraft Certification Service—File No. TSO–C142, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Or deliver comments to: Federal Aviation Administration, Room 804, 800 Independence Avenue, SW., Washington, DC 20591. Comments must identify the TSO file number.

FOR FURTHER INFORMATION CONTACT: Ms. Bobbie J. Smith, Technical Program and Continued Airworthiness Branch, AIR–120, Aircraft Engineering Division, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267–9546.

Comments Invited

Interested persons are invited to comment on the proposed TSO listed in this notice by submitting such written data, views, or arguments as they desire to the above specified address. Comments received on the proposed TSO order may be examined, before and after the comment closing date, in Room 804, FAA Headquarters Building (FOB–10A), 800 Independence Avenue, SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m. All communications received on or before the closing date for comments specified above will be considered by the Director of the Aircraft Certification Service before issuing the final TSO.

Background

In the late 1970's there were numerous reports of emergency locator transmitters, powered by lithium sulfur dioxide batteries, exploding, corroding, and venting toxic gases in general aviation airplanes. This resulted in a series of three airworthiness directives (Amendment 39–3549 (44 FR 50321, August 27, 1979), Amendment 39–3422 (44 FR 10980; February 26, 1979), and amendment 39–3708 (45 FR 13051, February 28, 1980)) to correct the safety problem and the issuance of TSO–C97, specifically for lithium sulfur dioxide batteries. Since TSO–C97 was issued, there have been few installations using lithium sulfur batteries in aircraft equipment. Other batteries, however, of different lithium chemistries, sizes, and construction are widely used today in non aviation applications.

Lithium batteries are desired for installation in aircraft because of their high energy per unit weight and volume, high cell voltage, relatively constant voltage during discharge, excellent low-temperature performance, and long shelf life. They continue to pose a potential safety hazard if not chosen carefully for the intended use, and used within their design and test limitations throughout their life cycle. Proposed TSO–C142 prescribes a means of assuring that lithium batteries will perform their intended function safely under conditions normally encountered in aeronautical operations.

How To Obtain Copies

A copy of the proposed TSO-C142 may be obtained by contacting **FOR FURTHER INFORMATION CONTACT.** Copies of RTCA Document No. DO–227, ''Lithium Batteries,'' dated June 23, 1995, may be purchased from the RTCA Inc., 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036.

Issued in Washington, DC, on February 24, 1997.

Brian A. Yanez,

Acting Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 97–5433 Filed 3–4–97; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement: Bernalillo County, NM

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS)

for the Gibson East Transportation Corridor Study.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed transportation project in Bernalillo County, New Mexico, in accordance with 23 CFR part 771.

FOR FURTHER INFORMATION CONTACT: Reuben S. Thomas, Division Administrator, Federal Highway Administration, 604 W. San Mateo Rd., Santa Fe, New Mexico 87505, Telephone: (505) 820–2022.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the New Mexico State Highway and Transportation Department and the City of Albuquerque Public Works Department, will prepare an environmental impact statement (EIS) on a proposal to improve Gibson Boulevard in Bernalillo County, New Mexico. The proposed action involves the improvement of Gibson Boulevard beginning at Interstate 25 and extending eastward to the Juan Tabo Boulevard-Interstate 40 interchange for a total corridor distance of about 12.9 kilometers or 8.0 miles.

The proposed action addresses the need to relieve increased traffic congestion in the southeast quadrant of Albuquerque with a safe and efficient transportation system that also serves major employment centers including the Albuquerque International Airport, Kirtland Air Force Base, the Kirtland Airforce Base/Veterans Administration Medical Center, and the Lovelace Medical Center.

Alternatives under consideration include (1) the No Build Alternative; (2) the Arterial Alternative; (3) The Expressway Alternative; (4) the Expressway/Arterial Alternative, and (5) the Transit/High-Occupancy Vehicle Alternative.

The No Build Alternative would maintain the existing condition of Gibson Boulevard as a six-lane principal arterial with varying degrees of access control from the Interstate 25/Gibson Boulevard interchange eastward to its existing terminus at Louisiana Boulevard, a distance of approximately 6.4 kilometers or 4.0 miles.

The Arterial Alternative would reconstruct major street intersections, make some minor roadway improvements on Gibson Boulevard from the Interstate 25/Gibson Boulevard interchange to Louisiana Boulevard, and close several existing roadway medians. It would also extend Gibson Boulevard eastward from Louisiana Boulevard to the Juan Tabo Boulevard/Central Avenue intersection.

The Expressway/Arterial Alternative would upgrade Gibson Boulevard to a high-capacity, high speed, limited access principal arterial with full access limited to major intersections approximately one-half mile apart for its eight mile length.

The Expressway/Arterial Alternative would upgrade Gibson Boulevard to a high-capacity, high-speed, limited-access principal arterial with full access limited to major street intersections approximately one-half mile apart along seven of its eight mile length. For the remaining one-mile segment, between San Mateo Boulevard and Louisiana Boulevard, the Arterial Alternative standards would apply.

The Transit/High-Occupancy Vehicle Alternative would upgrade Gibson Boulevard from Interstate 25 to the Juan Tabo Boulevard/Interstate 40 interchange to a transit/high-occupancy vehicle corridor.

Letters describing the proposed action and soliciting comments have been sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed an interest or are known to have an interest in this proposal. A series of public meetings will be held in Albuquerque, New Mexico beginning in February, 1997. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The Draft EIS will be available for public and agency review and comment prior to the public hearing. No formal scoping meeting is planned at this time.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues and impacts identified, comments and suggestions are invited from all interested parties. Comments and questions concerning this proposed action and the EIS should be directed to FHWA at the address provided above.

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

Issued on: February 12, 1997.

Reuben S. Thomas,

Division Administrator, Santa Fe, NM.

[FR Doc. 97–5338 Filed 3–4–97; 8:45 am]

BILLING CODE 4910–22–M

Maritime Administration

[Docket No. M–030]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intentions to request extension of approval for three years of a currently approved information collection.

DATES: Comments should be submitted on or before May 5, 1997.

FOR FURTHER INFORMATION CONTACT: David Lippold, Division of Capital Assets Management, Office of Ship Financing, Maritime Administration, MAR–533, Room 8122, 400 Seventh Street, S.W., Washington, DC 20590. Telephone (202) 366–5744 or FAX (202) 366–3954. Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: Capital Construction Fund and Exhibits.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0027.

Form Number: No Maritime Administration form is required; only a format specified in 46 CFR Part 390, ''Capital Construction Fund''.

Expiration Date of Approval: April 30, 1997.

Summary of Collection of Information: The collection consists of application for a Capital Construction Fund agreement under section 607 of the Merchant Marine Act, 1936 as amended, and annual submissions of appropriate schedules and exhibits. The Capital Construction Fund is a tax deferred ship construction fund that was created to assist owners and operators of U.S.-flag vessels in accumulating the large amount of capital necessary for the modernization and expansion of the U.S. merchant marine. The program encourages construction, reconstruction, or acquisition of vessels through the deferment of Federal income taxes on certain deposits of money or property placed into a CCF.

Need and Use of the Information: The collected information is used by the Maritime Administration to determine an applicant's eligibility to enter into a CCF Agreement.

Description of Respondents: U.S. citizens which own or lease one or more

eligible vessels and that have a program to provide for the acquisition, construction or reconstruction of a qualified vessel as defined in section 607(k)(2) of the Act.

Annual Responses: 130.

Annual Burden: 15.4 hours average per year per respondent.

Comments: Send all comments regarding this information collection to Joel C. Richard, Department of Transportation, Maritime Administration, MAR–120, Room 7210, 400 Seventh Street, S.W., Washington, D.C. 20590. Send comments regarding whether this information collection is necessary for proper performance of the function of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance quality, utility, and clarity of the information to be collected.

By Order of the Maritime Administrator.

Dated: February 27, 1997.

Joel C. Richard,

Secretary.

[FR Doc. 97–5346 Filed 3–4–97; 8:45 am]

BILLING CODE 4910–81–P

National Highway Traffic Safety Administration

[Docket No. 96–116, Notice 2]

Capacity of Texas, Inc.; Grant of Application for Temporary Exemption From Federal Motor Vehicle Safety Standard No. 121

Collins Industries of Hutchinson, Kansas, on behalf of its subsidiary, Capacity of Texas, Inc., of Longview, Texas, applied for a temporary exemption from paragraph S5.1.6 of Federal Motor Vehicle Safety Standard No. 121 *Air Brake Systems.* The basis of the application was that compliance will cause substantial economic hardship to a manufacturer that has tried to comply with the standard in good faith.

Notice of receipt of the application was published on November 15, 1996, and an opportunity afforded for comment (61 FR 58604).

Paragraph S5.1.6 (which includes S5.1.6.1–S5.1.6.3) of Standard No. 121 requires in pertinent part that each truck tractor manufactured on and after March 1, 1997, be equipped with an antilock brake system. Capacity of Texas (''Capacity'') asked that one of its truck tractor models be exempted for three months from the provisions of S5.1.6 that will apply to it effective March 1, 1997. Capacity manufactures the Trailer Jockey ''Model TJ–5000 (Off Highway)'' truck tractor. Terming it a ''yard tractor'', Capacity stated that ''this type of truck is designed to operate in a freight yard moving trailers from one terminal entrance to another * * * geared to limited speed [45 mph maximum] and to provide start-up torque for repeated stopping and starting.'' The tractors generally operate at 25 mph.

Because these terminal tractors do not appear manufactured primarily for use on the public roads, ordinarily NHTSA would not consider them to be ''motor vehicles'' to which Standard No. 121 applies. However, Capacity is currently working to fill its third contract with the U.S. Postal Service. Unlike the other two contracts, the present Postal Service contract specifies that the truck tractors be certified to comply with all Federal motor vehicle safety standards applicable to on-road truck tractors, even though Capacity estimates that the tractors will spend ''approximately 5% or less of their life in operation on the public highways.'' Capacity's contract is for 210 vehicles, to be produced between September 1996 and June 1997, and it estimated that the final 60 under the order will be completed by the end of May 1997. It thus seeks an exemption from March 1, 1997, to June 1, 1997, from the antilock brake requirements for the 60 tractors.

One option that it examined is acceleration of its production schedule so that manufacture of all vehicles could be completed by March 1, 1997. However, this would require an increase in production rates ''by at least 33% two months prior to the March 1, 1997 date.'' The work in part would have to be performed by newly hired and trained employes, increasing its overtime costs by 100%. It estimates that total costs would be greater by far than its net income for the fiscal year ending October 31, 1996. In addition, it would have to lessen its efforts to fill other orders, with a consequent loss of business. This means that, at the completion of the order as of March 1, 1997, it would have to lay off 50% of its work force until more orders were received and an orderly production schedule established. For these reasons, acceleration of the production schedule would cause it substantial economic hardship.

A further option is to delay production of the 60 vehicles until compliance with Standard No. 121 is achieved. Capacity stated that ''it will be possible to delay delivery of other customer trucks until testing of ABS truck systems is complete.'' However, according to Capacity, delay for conformance is not acceptable to the Postal Service because it would result in a fleet of dissimilar vehicles requiring different spare parts. As Capacity further argued, identical vehicles are desired by the Postal Service because ''all drivers in the fleet can be trained to the same operating procedures'' and ''Fleet maintenance people will be working on these trucks and will be able to maintain all 270 using the same procedures.'' Even if a delay were acceptable to the Postal Service, Capacity would have to absorb the increase in costs since ''the price is fixed by contract and no upward price relief is available.''

In the year preceding the filing of its petition, Capacity produced and certified 47 vehicles for on-road use other than those produced under the postal contract. It also produced less than 500 off-road vehicles. In the same period, its parent corporation, Collins, Inc., manufactured less than 2,000 school buses and less than 2,000 ambulance conversions. Capacity's net income has declined over the past three fiscal years and, in its fiscal year ending October 31, 1996, is far less than $1,000,000.

Capacity argued that a temporary exemption would be in the public interest because the vehicles are produced for the U.S. Postal Service. It submitted that an exemption is also consistent with motor vehicle safety because ''NHTSA is using a staggered effectivity date for addition of antilock brakes to tractors, trucks, and buses.'' It pointed out that ''[t]here will be many vehicles built during the 3 months of this petition that are built under the old standard * * *. The only reason tractors are involved is because they got the first effectivity date instead of buses.''

One comment was received. Carter Hart of Corsicana, Texas, does not like anti-lock brakes and commented that ''[t]he company requesting the exemption from this regulation should not need one because it is the regulation which is flawed.'' NHTSA considers this comment irrelevant to the merits of the application.

Capacity's application presents a situation that differs from the usual hardship case where a small manufacturer's resources may be insufficient to achieve compliance by the effective date of a standard or to test for compliance, or where the small volume manufacturer is experiencing difficulties in obtaining conforming parts in a timely fashion. Capacity and its parent do not have net and cumulative losses in the three years before the application was filed; however, its net income has declined

over these years. Further, Capacity can achieve compliance with Standard No. 121 after some delay, but presents arguments why it may not be in the public interest to do so.

NHTSA has great flexibility in its interpretation of the phrase ''substantial economic hardship.'' Ordinarily it may consider cumulative net losses a per se demonstration of hardship, but it specifically invites applicants to submit ''[a] discussion of any other hardships (e.g., loss of market) that the petitioner desires the agency to consider.'' (49 CFR 555.7(a)(1)(D)(vi)). In this situation, Capacity will not have a problem if it accelerates its manufacturing schedule to complete the order before the effective date of the new provisions of Standard No. 121. But this can be achieved only at the cost of hiring and training additional manufacturing personnel, and requiring its work force to work exclusively and overtime on filling the order of the Postal Service to the detriment of other customers whose orders will then be delayed. These costs cannot be recovered under Capacity's fixed cost contract with the Postal Service. NHTSA also notes that the quality of the vehicles may suffer when vehicles are rushed to completion by a newly-trained work force. All these are hardship factors that NHTSA deems relevant to its determination.

The facts also indicate that the Administrator's findings that a manufacturer has made a good faith effort to conform and that an exemption is in the public interest and consistent with traffic safety objectives stem from the following scenario. Capacity can achieve compliance no later than 3 months after the effective date of the amendments to Standard No. 121. While it is willing to defer completion of its order until then, this is not acceptable to its customer who has already taken delivery of the initial vehicles for which it has contracted. Delayed delivery will not only deprive the Postal Service of vehicles it needs, but also require it to train drivers and maintenance personnel in two differing procedures. NHTSA believes that this may complicate replacement parts inventories as well. All in all, this would appear to increase the costs to the Postal Service which will contribute to the on-going economic pressure for increases in postal rates. The effect on safety of providing an exemption for 60 truck tractors which will spend only an estimated 5% of their lives on the public roads would appear to be *de minimis.*

On the basis of the foregoing, it is hereby found for good cause shown, that compliance with Standard No. 121 would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard. It is further found that a temporary exemption is in the public interest and consistent with the objectives of traffic safety. Accordingly, Capacity of Texas, Inc., is hereby granted NHTSA Temporary Exemption No. 96–1 from paragraph S5.1.6 of 49 CFR 571.121 Motor Vehicle Safety Standard No. 121 ''Air Brake Systems'' expiring June 1, 1997.

(49 U.S.C. 30113; delegation of authority at 49 CFR 1.50.)

Issued on: February 28, 1997.

Ricardo Martinez,

Administrator.

[FR Doc. 97–5427 Filed 3–4–97; 8:45 am]

BILLING CODE 4910–59–P

Bureau of Transportation Statistics

Advisory Council on Transportation Statistics

AGENCY: Bureau of Transportation Statistics, DOT.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Section 10(A)(2) of the Federal Advisory Committee Act (Pub. L. 72–363; 5 U.S.C. App. 2), notice is hereby given of a meeting of the Bureau of Transportation Statistics (BTS) Advisory Council on Transportation Statistics (ACTS) to be held Friday, March 21, 1997, 10:00 to 4:00 p.m. The meeting will take place at the U.S. Department of Transportation, 400 7th Street, SW., Washington, DC, in conference room 9234 of the Nassif Building.

The Advisory Council, called for under Section 6007 of Pub. L. 102–240, Intermodal Surface Transportation Efficiency Act of 1991, December 18, 1991, and chartered on June 19, 1995, was created to advise the Director of BTS on transportation statistics and analyses, including whether or not the statistics and analysis disseminated by the Bureau are of high quality and are based upon the best available objective information.

The agenda for this meeting will include a review of the last meeting, identification of substantive issues, review of plans and schedule, other items of interest, discussion and agreement of date(s) for subsequent meetings, and comments from the floor.

Since access to the DOT building is controlled, all persons who plan to attend the meeting must notify Ms. Carolee Bush, Council Liaison, on (202) 366–6946 prior to March 20. Attendance is open to the interested public but limited to space available. With the approval of the Chair, members of the public may present oral statements at the meeting. Noncommittee members wishing to present oral statements, obtain information, or who plan to access the building to attend the meeting should also contact Ms. Bush.

Members of the public may present a written statement to the Council at any time.

Persons with a disability requiring special services, such as an interpreter for the hearing impaired, should contact Ms. Bush (202) 366–6946 at least seven days prior to the meeting.

Issued in Washington, DC, on February 28, 1997.

Robert A. Knisely,

Executive Director, Advisory Council on Transportation Statistics.

[FR Doc. 97–5428 Filed 3–4–97; 8:45 am]

BILLING CODE 4910–FE–P

DEPARTMENT OF THE TREASURY

Fiscal Service

[Dept. Circ. 570, 1996 Rev., Supp. No. 9]

Surety Companies Acceptable on Federal Bonds; Redland Insurance Company

A certificate of Authority as an acceptable surety on Federal Bonds is hereby issued to the following company under Sections 9304 to 9308, Title 31, of the United States Code. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1996 Revision, on page 34304 to reflect this addition:

Redland Insurance Company, BUSINESS ADDRESS: 222 South 15th Street, Suite 600 North, Omaha, NE, 68102. PHONE: (402) 344–8800. UNDERWRITING LIMITATION *b*/: $3,2240,000. SURETY LICENSES *c*/: AL, AZ, AR, CA, CO, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MN, MS, MO, MT, NE, NV, NH, NM, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Iowa.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR, Part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

The Circular may be viewed and downloaded through the Internet (http:/

/www. fms.treas.gov/c570.html) or through our computerized public bulletin board system (FMS Inside Line) at (202) 874–6887. A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service Washington, DC, telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 048–000–00499–7.

Questions concerning this Notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, 3700 East-West Highway, Room 6F04, Hyattsville, MD 20782, telephone (202) 874–6507.

Dated: February 13, 1997.

Charles F. Schwan III,

Director, Funds Management Division, Financial Management Service.

[FR Doc. 97–5345 Filed 3–4–97; 8:45 am]

BILLING CODE 4810–35–M

UNITED STATES INFORMATION AGENCY

Proposed Collection; Comment Request

AGENCY: United States Information Agency.

ACTION: Proposed collection; Comment request.

SUMMARY: The United States Information Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on an information collection entitled ''Rulemaking Number 102, Camp Counselor Exchanges''. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 [Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)].

The information collection activity involved with this program is conducted pursuant to the mandate given to the United States Information Agency under the terms and conditions of the Mutual Educational and Cultural Exchange Act of 1961, as amended. USIA has been delegated the authority to designate exchange visitor programs for U.S. Government agencies, public and private education and Cultural exchange. In addition, 22 Code of Federal Regulations (CFR), part 514.30, Camp Counselors; Limitation of Program Participation.

DATES: Comments are due on or before May 5, 1997.

COPIES: Copies of the Request for Clearance (OMB 83–I), supporting statement, and other documents that will be submitted to OMB for approval may be obtained from the USIA Clearance Officer. Comments should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USIA, and also to the USIA Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer, Ms. Jeannette Giovetti, United States Information Agency, M/ADD, 301 Fourth Street, S.W., Washington, D.C. 20547, telephone (202) 619–4408; and OMB review: Ms. Victoria Wassmer, Office of Information And Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Docket Library, Room 10202, NEOB, Washington, D.C. 20503, Telephone (202) 395–3176.

SUPPLEMENTARY INFORMATION: Public reporting burden for this collection of information (Paper Work Reduction Project: OMB No. 3116–0213) is estimated to average 5 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.

Responses are required to obtain benefits and respondents will be required to respond only one time.

Comments are requested on the proposed information collection concerning (a) Whether the proposed collection of information is necessary for the proper performance of the agency, including whether the information has practical utility; (b) the accuracy of the Agency's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Send comments regarding this burden estimate or any other aspect of this collection of information to the United States Information Agency, M/ADD, 301 Fourth Street, S.W., Washington, D.C. 20547; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Docket Library, Room 10202, NEOB, Washington, D.C. 20503.

Current Actions: USIA is requesting an extension of this collection for a three-year period.

Title: Rulemaking No. 102, Camp Counselor Exchanges.

Abstract: Approximately 10 Agency-designated for profit and non-profit entities will submit a report listing the names of aliens who have participated in camp counselor exchanges more than twice. This report will be the basis of the Agency's efforts to monitor these exchanges, to prevent inappropriate staffing with alien labor, and to ensure compliance with the articulated policy.

Proposed Frequency of Response:
No. of Respondents—10.
Recordkeeping Hours—.08.
Total Annual Burden—1.0.

Dated: February 28, 1997.

Rose Royal,

Federal Register Liaison.

[FR Doc. 97–5429 Filed 3–4–97; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF VETERANS AFFAIRS

Cost-of-Living Adjustments for Service-Connected Benefits

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: As required by the Veterans' Compensation Cost-of-Living Adjustment Act of 1996, Public Law 104–263, the Department of Veterans Affairs (VA) is hereby giving notice of cost-of-living adjustments (COLAs) in certain benefit rates. These COLAs affect the compensation and dependency and indemnity compensation (DIC) programs.

DATES: These COLAs are effective December 1, 1996, the date provided by Public Law 104–263.

FOR FURTHER INFORMATION CONTACT: Paul Trowbridge, Consultant, Compensation and Pension Service (213B), Veterans Benefit Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–7218.

SUPPLEMENTARY INFORMATION: The Veterans' Compensation Cost-of-Living Adjustment Act of 1996, Public Law 104–263, provides for a COLA for each of the rates in sections 1114, 1115(1), 1162, 1311, 1313, and 1314 of title 38, United States Code. VA is required to increase these benefit rates by the same percentage as increases in the benefit amounts payable under title II of the Social Security Act. In computing increased rates in the cited title 38 sections, fractions of a dollar equaling $.50 or more are rounded to the next higher dollar amount. The increased rates are required to be published in the Federal Register.

The Social Security Administration has announced that there will be a 2.9 percent cost-of-living increase in Social

Security benefits. Therefore, applying the same percentage, the following increased rates for VA compensation and DIC programs will be effective December 1, 1996:

DISABILITY COMPENSATION (38 U.S.C. 1114)

Disability evaluation	Monthly rate
10%	$94
20%	$179
30%	$274
40%	$391
50%	$558
60%	$703
70%	$887
80%	$1,028
90%	$1,157
100%	$1,924
(38 U.S.C. 1114(k) through (s)):	
38 U.S.C. 1114(k)	$74; $2,393; $74; $3,356
38 U.S.C. 1114(l)	$2,393
38 U.S.C. 1114(m)	$2,639
38 U.S.C. 1114(n)	$3,003
38 U.S.C. 1114(o)	$3,356
38 U.S.C. 1114(p)	$3,356
38 U.S.C. 1114(r)	$1,441; $2,145
38 U.S.C. 1114(s)	$2,154
Additional Compensation for Dependents (38 U.S.C. 1115(l)):	
38 U.S.C. 1115(l)	
38 U.S.C. 1115(1)(A)	$112
38 U.S.C. 1115(1)(B)	$191; $59
38 U.S.C. 1115(1)(C)	$77; $59
38 U.S.C. 1115(1)(D)	$91
38 U.S.C. 1115(1)(E)	$211
38 U.S.C. 1115(1)(F)	$177

DISABILITY COMPENSATION (38 U.S.C. 1114)—Continued

Disability evaluation	Monthly rate
Clothing Allowance (38 U.S.C. 1162):	
$518 per year	
DIC to a Surviving Spouse (38 U.S.C. 1311):	
Pay Grade:.	
E–1	$833
E–2	$833
E–3	$833
E–4	$833
E–5	$833
E–6	$833
E–7	$861
E–8	$909
E–9(1)	$949
W–1	$880
W–2	$915
W–3	$943
W–4	$997
O–1	$880
O–2	$909
O–3	$972
O–4	$1,028
O–5	$1,132
O–6	$1,276
O–7	$1,378
O–8	$1,510
O–9	$1,618
O–10(2)	$1,774

(1) If the veteran served as sergeant major of the Army, senior enlisted advisor of the Navy, chief master sergeant of the Air Force, sergeant major of the Marine Corps, or master chief petty officer of the Coast Guard, the surviving spouse's monthly rate is $1,023.

(2) If the veteran served as Chairman or Vice Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, Commandant of the Marine Corps, or Commandant of the Coast Guard, the surviving spouse's monthly rate is $1,902.

DIC TO A SURVIVING SPOUSE (38 U.S.C. 1311 (A) THROUGH (D))

	Monthly rate
38 U.S.C. 1311 (a) through (d):	
38 U.S.C. 1311(a)(1)	$833
38 U.S.C. 1311(a)(2)	$182
38 U.S.C. 1311(b)	$211
38 U.S.C. 1311(c)	$211
38 U.S.C. 1311(d)	$102
DIC to Children (38 U.S.C. 1313):	
38 U.S.C. 1313:.	
38 U.S.C. 1313(a)(1)	$354
38 U.S.C. 1313(a)(2)	$510
38 U.S.C. 1313(a)(3)	$662
38 U.S.C. 1313(a)(4)	$662; $130
Supplemental DIC to Children (38 U.S.C. 1314):	
38 U.S.C. 1314:.	
38 U.S.C. 1314(a)	$211
38 U.S.C. 1314(b)	$354
38 U.S.C. 1314(c)	$179

Dated: February 21, 1997.

Jesse Brown,

Secretary of Veterans Affairs.

[FR Doc. 97–5342 Filed 3–4–97; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register
Vol. 62, No. 43
Wednesday, March 5, 1997

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Citizens Advisory Committee on Public Health Service Activities and Research at Department of Energy (DOE) Sites: Hanford Health Effects Subcommittee

Correction

In notice document 97–3472 appearing on page 6539 in the issue of Wednesday, February 12, 1997 make the following correction:

The meeting schedule in the second column is corrected below.

Dates:	February 20, 1997	February 21, 1997
Times:	9 a.m.–5 p.m. 6:30 p.m.–8:30 p.m.	9:30 a.m.–12:30 p.m.
Place:	Red Lion Hotel/Jantzen Beach 909 N. Hayden Island Drive Portland, Oregon 97217	Same Location
Tel:	503/283–4466	
Fax:	503/283–4743	
Dates:	May 8, 1997	May 9, 1997
Times:	9 a.m.–5 p.m. 6:30 p.m.–8:30 p.m.	9:30 a.m.–3:30 p.m.
Place:	Cavanaugh's at Columbia Center 101 Columbia Center Boulevard Kennewick, Washington 99336	Same Location
Tel:	509/783–0611	
Fax:	509/735–3087	
Dates:	July 24, 1997	July 25, 1997
Times:	9 a.m.–5 p.m. 6:30 p.m.–8:30 p.m.	9:30 a.m.–3:30 p.m.
Place:	Marine's Memorial Club 609 Sutter Street (at Mason) San Francisco, California 94102	
Tel:	415/673–6672	
Fax:	415/441–3649	
Dates:	October 9, 1997	October 10, 1997
Times:	9 a.m.–5 p.m. 6:30 p.m.–8:30 p.m.	9:30 a.m.–3:30 p.m.
Place:	Coeur d'Alene Inn West 414 Appleway Coeur d'Alene, Idaho 83814	Same Location

Tel:	208/765–3200	
Fax:	208/664–1962	
Dates:	December 11, 1997	December 12, 1997
Times:	9 a.m.–5 p.m. 6:30 p.m.–8:30 p.m.	9:30 a.m.–3:30 p.m.
Place:	Madison Hotel 515 Madison Street Seattle, Washington 98104	Same location
Tel:	206/583–0300	
Fax:	206/624–8125	

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Minerals Management Service

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Outer Continental Shelf Pipelines

Correction

In notice document 97–3769, beginning on page 7037, in the issue of Friday, February 14, 1997, make the following corrections:

1. On page 7037, in the second column, in the second full paragraph, in the sixth line, ''he'' should read ''the''.
2. On the same page, in the third column, under II. Authority, in the first paragraph, in the fourth line ''or'' should read ''of''.
3. On page 7038, in the third column, under V. Limitations, in item 3, in the fourth line, ''of'' should read ''or''.

BILLING CODE 1505-01-D

federal register

Wednesday
March 5, 1997

Part II

Department of Agriculture

Rural Housing Service
Rural Business-Cooperative Service
Rural Utilities Service
Farm Service Agency

7 CFR Part 1951, et al.

Implementation of the Delinquent Account Servicing Provisions of the Federal Agriculture Improvement and Reform Act of 1996; Interim Rule

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Parts 1951, 1956, 1962, 1965

RIN 0560–AE89

Implementation of the Delinquent Account Servicing Provisions of the Federal Agriculture Improvement and Reform Act of 1996

AGENCIES: Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, Farm Service Agency, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: The following changes implement provisions of the Federal Agriculture Improvement and Reform Act of 1996 (1996 Act) that affect the Farm Loan Programs of the Farm Service Agency (FSA), formerly administered by the Farmers Home Administration (FmHA). The provisions of this rule affect the direct and guaranteed farm ownership (FO), operating loan (OL) programs, and the direct emergency (EM) loan program. Implementation of these provisions will result in the streamlining and shortening of the loan servicing process and result in reduced losses to the Government.

DATES: *Effective:* March 14, 1997. Comments must be submitted by May 13, 1997.

ADDRESSES: Submit written comments to Director, Farm Service Agency, United States Department of Agriculture, Farm Loan Programs Loan Servicing and Property Management Division, Ag Code 0523, Post Office Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Kimberly R. Laris, Senior Loan Officer, Farm Service Agency, U.S. Department of Agriculture, Room 5449–S, Washington, DC 20250–0523; Telephone: 202–720–1659; Facsimile: 202–690–0949.

SUPPLEMENTARY INFORMATION

Executive Order 12866

This rule has been determined to be significant and was reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

The Farm Service Agency certifies that this rule will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Pub. L. 96–534, as amended (5 U.S.C. 601).

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, ''Environmental Program.'' The issuing agencies have determined that this action does not significantly affect the quality of human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

Executive Order 12778

This interim rule has been reviewed under Executive Order 12778, Civil Justice Reform. In accordance with this rule: (1) All state and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; (3) administrative proceedings in accordance with 7 CFR parts 11 and 780 must be exhausted before bringing suit in court challenging action taken under this rule unless those regulations specifically allow bringing suit at an earlier time.

Executive Order 12372

For reasons set forth in the notice to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), the programs within this rule are excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

The Unfunded Mandate Reform Act of 1995

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local and tribal governments and the private sector of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA, FSA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to state, local, or tribal governments, in the aggregate, or to the private sector. When such a statement is needed for a rule, section 205 of the UMRA generally requires FSA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under regulatory provisions of title II of the UMRA) for state, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Paperwork Reduction Act

This interim rule does not impose any new information collection or recordkeeping requirements; however, the provisions of the 1996 Act do eliminate the need for some information previously collected and result in a revision to the number of estimated respondents from whom information will be collected. Therefore, the agency will revise the information collection currently approved in support of its regulations pertaining to Farm Loan Programs account servicing policies under the Office of Management and Budget (OMB) control number 0560–0161 and debt settlement regulations under OMB control number 0575–0118. The agency will publish a Federal Register notice in the near future requesting comments for a 60-day period regarding revisions resulting from the 1996 Act; increases or decreases in program activity; and changes to the estimated responses per respondent and estimated average hours per response. OMB emergency clearance has been obtained to allow continued use of the affected regulations and forms under OMB control numbers 0560–0172 and 0560–0173.

Federal Assistance Programs

10.404—Emergency Loans
10.406—Farm Operating Loans
10.407—Farm Ownership Loans
10.416—Soil and Water Loans.

Discussion of the Interim Rule

Enacted on April 4, 1996, the Federal Agriculture Improvement and Reform Act (1996 Act) changed the qualifications for loan servicing benefits for borrowers with farm loans from FSA, formerly FmHA. The specific changes to FSA Farm Loan Programs are as follows:

Leaseback/Buyback Program

The 1996 Act terminated the Leaseback/Buyback program effective April 4, 1996. Borrowers, former owners and their spouses, children, or former operators no longer have any priority right to purchase FSA inventory property or to lease such property with an option to purchase. This action will remove the regulations for this program. A transition rule provides that borrowers who had submitted a complete application for leaseback/buyback before the date of enactment

may still be considered for the program. The regulations governing leaseback/buyback for these applications can be found in the previous CFR volume containing revisions as of January 1, 1996 and the Agency's procedures, (available in any county office.)

Homestead Protection

The application period for this program was changed by the 1996 Act from 90 to 30 days after notification of the former owner of FSA inventory property. The Agency is now required to advise the owner of program availability on or before the date that it acquires the property, instead of within 30 days of acquisition as was required by 7 CFR 1951.911(b)(2)(iii).

Primary Loan Servicing

The 1996 Act requires notification of loan servicing programs to borrowers who are 90 days past due on their FLP loan payment (or 60 days delinquent, since accounts are not considered delinquent until they are 30 days past due). Formerly, these packets were sent when borrowers were 180 days delinquent (210 days past due). Application requirements have been modified to eliminate some forms and clarify that borrowers do not need to provide information that is already in their case files and still current, as determined by the approval official. Borrowers who request servicing before they become delinquent are required to pay at least a portion of the interest due on the account as a condition of rescheduling or reamortization. In making restructuring decisions, FSA will assume that the borrower needs up to 110 percent of the amount indicated for payment of farm operating expenses, debt service obligations, and family living expenses, instead of the 105 percent required before the 1996 Act. Failure to achieve this 110 percent margin will not make a borrower ineligible for loan servicing, but in no case will the account be restructured with a cash flow of less than 100 percent. Borrowers who qualify for debt writedown, but whose accounts could be restructured without writedown at a margin of less than 110 percent, will be allowed to choose between the two options: (1) Restructuring with writedown, or (2) restructuring without writedown at a margin of less than 110 percent. Since section 645 of the 1996 Act, which establishes the 110 percent cash flow, is not mandatory, FSA is offering borrowers the option to forego writedown. Thus, they would avoid the statutory debt forgiveness limitation explained below. Borrowers who choose writedown (with a higher cash flow margin than restructuring without writedown) will not be able to receive any additional debt forgiveness from FSA.

Debt Forgiveness

Under the 1996 Act, borrowers can receive only one reduction or termination of a direct FLP loan in a manner that results in a loss to the Government. Those who have received debt forgiveness on a direct loan at any time in the past are no longer eligible for such relief on another loan. Pursuant to section 640(2) of the 1996 Act, debt forgiveness is defined as writing down or writing off a direct loan, debt settling a direct loan, paying a loss claim on a loan guarantee pursuant to section 357 of the Consolidated Farm and Rural Development Act (Con Act) and discharging a debt as a result of bankruptcy.

Buyout of Debt

The loan servicing option of buying out a debt at its net recovery value was changed by the Act to buyout at current market value. The requirement for a recapture agreement, under which the Agency could recover a portion of its loss if the property is sold within 10 years, was eliminated.

Conservation Contracts

Based on section 642 of the 1996 Act, the Agency has revised Exhibit H of this subpart to change the conservation easement program to a conservation contract program. Since section 642(1) of the 1996 Act removed the requirement that the program restrict the usage of the property for not less than 50 years, FSA has exercised its discretion to provide a graduated reduction in the amount of debt written off, based on the time period that usage is restricted. Borrowers who agree to a 50-year contract will receive the maximum amount of debt writedown. Borrowers who agree to a 30-year contract will receive 60 percent of the maximum writedown. Borrowers who agree to a 10-year contract will receive 20 percent of the maximum writedown.

Graduation

When reviewing accounts for possible graduation from direct FLP credit, the Agency is authorized by the Act to submit a borrower prospectus to potential commercial lenders without the borrower's approval. Borrowers must be notified that such information has been provided. If an approved lender agrees to provide credit to that borrower in accordance with the terms of the prospectus, that borrower is ineligible for Farm Ownership or Farm Operating direct loan credit.

Annual Reviews and Eligibility

Under section 635 of the 1996 Act, the County Committee must certify annually that a review has been made of each borrower's operation and of continued eligibility for Agency assistance. This is an internal agency requirement and therefore regulations governing this requirement are not published in the CFR.

Electronic Filing of Financing Statements

Pursuant to section 662 of the 1996 Act, all lenders are authorized to file financing statements electronically in states having Uniform Commercial Code (UCC) laws allowing that practice.

Appeals

The Agency has removed from this regulation the requirement that the borrower be notified of appeal rights in numerous instances where it previously appeared following authorization for an adverse decision. A guide to the mediation, appeals and review processes has been added as section 1951.904.

Miscellaneous

Some material which was obsoleted, outdated, or repetitive has been omitted. Some references to other sections of the CFR have been revised for conformity purposes.

List of Subjects

7 CFR Part 1951

Account servicing, Accounting, Debt restructuring, Foreclosure, Government acquired property, Credit, Loan programs—agriculture, Loan programs—housing and community development, Low and moderate income housing loans—servicing, Mortgages, Rural areas, Sale of government acquired property, Surplus government property.

7 CFR Part 1956

Accounting, Loan programs—agriculture, Rural areas.

7 CFR Part 1962

Crops, Government property, Livestock, Loan programs—agriculture, Rural areas.

7 CFR Part 1965

Foreclosure, Loan programs—agriculture, Rural areas.

Accordingly, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1951—SERVICING AND COLLECTIONS

1. The authority citation for part 1951 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

Subpart F—Analyzing Credit Needs and Graduation of Borrowers

2. Section 1951.262 is amended by revising paragraphs (f)(1) and (f) (2) to read as follows:

§ 1951.262 Farm Loan Programs—graduation of borrowers.

* * * * *

(f) * * *

(1) The Agency will distribute a borrower's prospectus to local lenders for possible refinancing. The borrower's permission is not required, however, the borrower must be notified of this action.

(2) The borrower is responsible for any application fees. The borrower has 30 days from the date the borrower is notified of lender interest in refinancing to make application, if required by the lender, and refinance the FLP loan. For good cause, the borrower may be granted a reasonable amount of additional time by the Agency.

Subpart J—Management and Collection of Nonprogram (NP) Loans

§ 1951.454 [Amended]

3. Section 1951.454 is amended by revising the words ''chapter; except that a borrower does have appeal rights if the decision involves the denial of NP loan assistance under the Leaseback/Buyback and Homestead Protection provisions of subpart S of this Part 1951'' to read ''chapter or parts 11 and 780 of this title.''

§ 1951.455 [Amended]

4. Section 1951.455 is amended by:

a. In paragraph (a) by removing ''Leaseback/Buyback and'' in the second sentence; by revising the words ''Leaseback/Buyback and Homestead Protection programs,'' to read ''Homestead Protection program'' in the fourth sentence; by removing the words ''FmHA or its successor agency under Public Law 103–354'' in the fifth sentence; by revising the words ''FmHA or its successor agency under Public Law 103–354'' to read ''the Agency'' in the sixth sentence;

b. In paragraph (b) by removing the first sentence; by revising the words ''FmHA or its successor agency under Public Law 103–354'' to read ''FLP'' in the second sentence; by removing the words ''FmHA or its successor agency under Public Law 103–354'' in the fourth sentence; by revising the words ''FmHA or its successor agency under Public Law 103–354'' and ''FP'' to read ''FLP'' in the fifth sentence;

c. In paragraph (c) by revising the words ''FmHA or its successor agency under Public Law 103–354 office'' to read ''agency office'' and the words ''FmHA or its successor agency under Public Law 103–354 credit'' to read ''FLP credit'' in the first sentence;

d. In paragraph (e) by revising the words ''FmHA or its successor agency under Public Law 103–354 office'' to read ''agency office'' in the first sentence and removing the words ''FmHA or its successor agency under Public Law 103–354'' in the fourth sentence;

e. In paragraph (f) by removing the first and third sentence;

f. In paragraph (g) by revising the words ''FmHA or its successor agency under Public Law 103–354'' to read ''FLP'' in the introductory text; by removing paragraphs (g) (1) and (4); by revising the words ''FmHA or its successor agency under Public Law 103–354 may'' to read ''the agency may'' and the words ''FmHA or its successor agency under Public Law 103–354 retains'' to read ''the agency retains'' in the second sentence of paragraph (g)(2); and by redesignating paragraphs (g) (2), (3) and (5) as (g) (1) through (3);

g. In paragraph (h) by revising the word ''FP'' to read ''FLP'';

h. In paragraph (i) by removing the first sentence;

i. In paragraph (j) by revising the words ''an FmHA or its successor agency under Public Law 103–354'' to read ''a''.

5. Section 1951.457 is amended by revising paragraph (a) to read as follows:

§ 1951.457 Payments.

(a) *Receiving payments.* Borrowers will mail or bring their payments to the county office. Borrowers will be responsible for any fees associated with converting cash payments to money orders. If the fee is not paid, it will be deducted from the payment.

* * * * *

6. Section 1951.458 is revised to read as follows:

§ 1951.458 Servicing real estate taxes.

Refer to subpart A of part 1925 of this chapter for servicing real estate taxes.

Subpart S—Farmer Program Account Servicing Policies

7. Section 1951.901 is revised to read as follows:

§ 1951.901 Purpose.

This subpart describes the policies and procedures that the agency will use in servicing most Farm Loan Program (FLP) loans. The loans include Operating Loan (OL), Farm Ownership Loan (FO), Soil and Water Loan (SW), Softwood Timber Production Loan (ST), Emergency Loan (EM), Economic Emergency Loan (EE), Economic Opportunity Loan (EO), Recreation Loan (RL), and Rural Housing Loan for farm service buildings (RHF) accounts. Cases involving unauthorized assistance will be serviced as described in subpart L of this part. When it has been determined that all the conditions outlined in § 1951.558(b) of subpart L of this part have been met, the loan will be treated as an authorized loan and may be serviced under this subpart. Cases involving graduation of borrowers to other sources of credit will be serviced as described in subpart F of this part. This subpart does not apply to FLP Non-Program (NP) loans. Examples of Primary Loan Servicing actions are: consolidation, rescheduling and/or reamortization, deferral of principal and interest payments, reclassifying to ST loans, reducing interest rate on the loan, writedown of debt and conservation contract, or a combination of these actions. Preservation loan servicing is the Homestead Protection program. Any processing or servicing activity conducted pursuant to this subpart involving authorized assistance to agency employees, members of their families, known close relatives, or business or close personal associates, is subject to the provisions of subpart D of part 1900 of this chapter. Applicants for this assistance are required to identify any known relationship or association with an agency employee.

8. Section 1951.902 is revised to read as follows:

§ 1951.902 General.

Supervision and Servicing. It is a primary objective of the Agency to provide supervised credit to borrowers in financial, production or other difficulty in a manner that will assure the maximum opportunity for their recovery and, at the same time, get the best recovery for the Government. Supervision and servicing are continuing processes that begin the day a farmer comes into the office. Providing supervised credit has two objectives:

(a) To help farmers set goals, work on problem areas and work toward graduation to commercial credit;

(b) To recover the maximum possible amount for the Government.

9. Section 1951.903 is revised to read as follows:

§ 1951.903 Authorities and responsibilities.

(a) *Responsibilities.* Servicing officials will make full use of the National automated tracked system to track and manage the FLP primary and preservation loan servicing and debt settlement programs.

(b) *Authorities.* All loan servicing decisions except as set forth in this section will be made by the servicing official except the approval of writedown and buyout of a borrower's debt. Also, all applications for debt settlement of FLP loans must be recommended by the County Committee (except where the debt has been discharged through bankruptcy), approved by the State Executive Director or the Administrator (depending upon the amount of debt to be settled), and processed in accordance with the provisions of subpart B of part 1956 of this chapter. Servicing officials are authorized to accept a buyout payment when the borrower(s) pays the current market value of the security set forth in § 1951.909 of this Instruction. Only State Executive Directors are authorized to approve writedown and buyout in accordance with § 1951.909 of this part and release a divorced spouse from liability on the debt in accordance with § 1951.909(a) of this part.

10. Section 1951.904 is added to read as follows:

§ 1951.904 Mediation, reviews and appeals.

(a) *Participant rights.* (1) For loan servicing under this subpart, mediation or a voluntary meeting of creditors will be offered if the DALR$ calculations indicate that a feasible plan of operation cannot be developed considering all primary loan service programs, Softwood Timber, and Conservation Contracts. In states with a USDA Certified Mediation Program, mediation will be offered. In all other states, a voluntary meeting of creditors will be offered.

(2) Any negotiation of an Agency appraisal must be completed prior to the meeting of creditors or mediation.

(3) If the borrower does not request mediation or a voluntary meeting of creditors as offered in Exhibit E of this subpart within 45 days, the servicing official will issue the appropriate ''Notice of Intent to Accelerate or to Continue Acceleration and Notice of Borrowers' Rights.''

(4) Whenever the servicing official makes a decision that will adversely affect a participant, the participant will be informed that the decision can be reviewed in accordance with 7 CFR part 780 and indicate whether it can be appealed to the USDA National Appeals Division (NAD) according to regulations set forth in 7 CFR part 11. Nonprogram (NP) participants are not entitled to appeal rights.

(b) *Non-appealable decisions.* The following types of decisions are not appealable:

(1) Decisions made by parties outside the agency, even when those decisions are used as a basis for the agency's decisions.

(2) Decisions that do not meet the eligibility requirements of 7 CFR part 11.

(3) Interest rates as set forth in Agency procedures, except appeals alleging application of the incorrect interest rate.

(4) Refusal to request or grant an administrative waiver permitted by program regulations.

(5) Denials of assistance due to lack of funds.

(6) In cases where the adverse decision is based on both appealable and non-appealable actions, the adverse action is not appealable.

(7) Determinations previously made by the Agency that have been appealed, and a NAD decision adverse to the participant has been entered; or upon which the time frame for appeal has expired with no appeal being requested.

(c) *Next-level review.* Any adverse decision, whether appealable or non-appealable, may be reviewed in accordance with 7 CFR part 780.

(d) *NAD review.* (1) A participant may request that NAD review the Agency's determination that the decision may not be appealed.

(2) A participant may request that NAD review any decision that is appealable.

(3) NAD will review the participant's request in accordance with 7 CFR part 11.

(e) *Agency actions pending outcome of appeal.* Assistance will not be discontinued pending the outcome of an appeal of any adverse action. Releases for essential family living and farm operating expenses will not be terminated until the account has been accelerated.

(f) *Time limits.* Time limits for action under this subpart will be tolled during the pendency of an appeal, but not during the pendency of a request that NAD determine that a matter is or is not appealable.

11. Section 1951.906 is revised to read as follows:

§ 1951.906 Definitions.

As used in this subpart, the following definitions apply:

Borrower. An individual or entity which has outstanding obligations to the agency under any Farm Loan Programs (FLP) loan, without regard to whether the loan has been accelerated. This does not include any such debtor whose total loans and accounts have been foreclosed or liquidated, voluntarily or otherwise. Collection-only borrowers are considered borrowers. Borrower also includes any other party liable for the FLP debt. Nonprogram (NP) borrowers are not considered borrowers for the purposes of this subpart.

CONACT or CONACT property. Property which secured a loan made or insured under the Consolidated Farm and Rural Development Act. Within this part, it shall also be construed to cover property which secured other FLP loans.

Conservation contract. A contract under which a borrower agrees to set aside land for conservation, recreation or wildlife purposes in exchange for cancellation of a portion of an outstanding FLP debt. Relief obtained in this manner is not considered debt forgiveness as defined in this section.

Consolidation. The combining and rescheduling of the rates and terms of two or more notes of the same type of OL or EO loans, EE operating-type loans or EM loans. EM actual loss loans will not be consolidated.

Current market value buyout. Termination of a borrower's loan obligations to the agency in exchange for payment of the current appraised value of the security property, less any prior liens.

Debt forgiveness. For the purposes of loan servicing, debt forgiveness is defined as a reduction or termination of a direct FLP loan in a manner that results in a loss to the Agency. Included, but not limited to, are losses from a writedown or writeoff under this subpart, subpart J of this part, subpart B of part 1956 of this chapter, after discharge under the bankruptcy code, and associated with release of liability. Debt cancellation through conservation contracts is not considered debt forgiveness under this subpart.

Debt settlement. The settlement of debts owed the United States for FLP loans. The types of debt settlement programs are: compromise, adjustment, cancellation and chargeoff.These programs are administered in accordance with subpart B of part 1956 of this chapter. Any action through debt settlement which results in a loss to the Agency will be considered debt forgiveness.

Deferral. An approved delay in making regularly scheduled payments, including softwood timber (ST) loans. Deferral is not considered debt forgiveness.

Delinquent borrower. A borrower who has failed to make all or part of a payment which is due for 30 or more calendar days after the due date.

Entity. A corporation, partnership, joint operation, or cooperative.

Farm Loan Programs (FLP) loans. This refers to Farm Ownership (FO), Soil and Water (SW), Recreation (RL), Economic Opportunity (EO), Operating (OL), Emergency (EM), Economic Emergency (EE), Softwood Timber (ST) loans, and Rural Housing loans for farm service buildings (RHF).

Farm plan. Form FmHA 431–2, ''Farm and Home Plan,'' or other plans or documents acceptable to the agency that will accurately reflect the production and financial management of the farming operation for one production cycle. The agency will not require the use of consolidated financial statements.

Feasible plan. A feasible plan must be based upon the applicant or borrower's actual records that show the farming operation's actual income, production and expenses. These records will include income tax returns and supporting documents (hereafter called income tax records). The records must be for the most recent five-year period or, if the borrower has been farming less than five years, for the period which the borrower has farmed. For borrowers who have been farming for less than five years, other available records will be used in the order listed in section § 1924.57(d)(1) of subpart B of part 1924 of this chapter to complete a five-year history. Future production yields will be based on an average of the most recent past five years' actual production yields. Borrowers with yields affected by disasters in at least two of the five most recent years may exclude the crop year with the lowest actual yield. In addition, in accordance with section § 1924.57(d)(1) of subpart B of part 1924 of this chapter, if the applicant's remaining disaster years' yields are less than the County average yield, and the borrower's yields were affected by the disaster, County average yields will be used for those years. If County average yields are not available, State average yields will be used. These records will be used along with realistic anticipated prices, including any planned FLP loan payments, to determine that the income from the farming operation, and any reliable off-farm income, will provide the income necessary for an applicant or borrower to at least be able to:

(1) Pay all operating expenses and taxes which are due during the projected farm business accounting period.

(2) Meet scheduled payments on all debts.

(3) Meet up to 110 percent, but not less than 100 percent, of the amount indicated for payment of farm operating expenses, debt servicing obligations and family living expenses. The Agency will assume that a borrower needs this margin to meet all obligations and continue farming. However, this will not prohibit a borrower from receiving debt restructuring because the farm and home plan shows less than such a margin. In no case will a borrower with a cash flow of less than 100 percent receive restructuring.

(d) Provide living expenses for the family members of an individual borrower or a wage for the farm operator in the case of a cooperative, corporation, partnership, or joint operation borrower, which is in accordance with the essential family needs. Family members include the individual borrower or farm operator in the case of an entity, and the immediate members of the family which reside in the same household.

Financially distressed. A financially distressed borrower is one who will not be able to make payments as planned for the current or next business accounting period. Borrowers will also be considered as in financial distress if it is determined that they will not be able to project a feasible plan of operation for the next business accounting period.

Foreclosed. The completed act of selling security either under the ''power of sale'' in the security instrument or through court proceedings.

Good faith. An eligibility requirement for Primary Loan Servicing and Current Market Value Buyout. Borrowers are considered to have acted in ''good faith'' if they have demonstrated ''honesty'' and ''sincerity'' in complying with the requirements of Form 1962–1, ''Agreement for the Use of Proceeds/Release of Chattel Security,'' and any other written agreements made with the agency, as documented in the case file. In addition, the agency must substantiate any allegations of fraud, waste, or conversion with a written legal opinion from the Office of the General Counsel (OGC) when such allegations are used to deny a servicing request. A borrower will not be considered to lack ''good faith'' if the sole basis for such a determination was the disposition of normal income security (§ 1962.4 of subpart A of part 1962 of this chapter) prior to October 14, 1988, without the Agency's consent and the borrower demonstrates that the proceeds were used to pay essential family living and farm operating expenses that could have been approved according to § 1962.17 of subpart A of part 1962 of this chapter.

Homestead Protection. The right of a former owner to apply to lease, with an option to purchase the Homestead Protection property, not to exceed 10 acres.

Homestead Protection property. This refers to the principal residence which secured a FLP loan.

Indian Reservation. Indian reservation means all land located within the limits of any Indian reservation under the jurisdiction of the United States, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation; trust or restricted land located within the boundaries of a former reservation of a Federally recognized Indian tribe in the State of Oklahoma; or all Indian allotments the Indian titles to which have not been extinguished if such allotments are subject to the jurisdiction of a Federally recognized Indian Tribe.

Limited Resource Program. A reduction of interest rates for operating loans (OL), farm ownership loans (FO) and soil and water loans (SW).

Liquidated. The completed act of voluntarily selling security to end the obligation for the debt, or involuntarily as the result of a completed civil suit against a borrower to recover collateral against the debt. The filing of a claim in a bankruptcy action is not a complete liquidation of the borrower's accounts. Collection-only accounts are not considered liquidated.

Loan service program. A Primary Loan Servicing program or a Preservation Loan Servicing program (Homestead Protection) for FLP loan borrowers.

New application. An application submitted on or after November 28, 1990, for loan servicing programs. This does not include an application reconsidered after an appeal or revision of an application submitted before November 28, 1990.

Nonessential assets. Nonessential assets are those in which the borrower has an ownership interest, that:

(1) do not contribute a net income to pay essential family living expenses or to maintain a sound farming operation (see 1962.17 of subpart A of part 1962 of this chapter); and

(2) are not exempt from judgment creditors or in a bankruptcy action. Each State Executive Director, with the guidance of the Office of the General Counsel, will issue a State Supplement to establish guidelines on items that are exempt from judgment creditors and are exempt under bankruptcy law in accordance with statute.

Nonprogram (NP) loan. An NP loan results when a loan is made to an ineligible applicant or transferee in connection with a loan assumption and sale of inventory properties at ineligible

terms. Borrowers originally determined eligible by the agency and found to be ineligible after the loan was made due to an agency error are not considered to have nonprogram loans.

Preservation loan service program. See Homestead Protection.

Primary loan service program. Primary loan service program means:

(1) loan consolidation, rescheduling, or reamortization;

(2) interest rate reduction, including use of the limited resource program;

(3) loan restructuring, including deferral, or writing down of the principal or accumulated interest; or

(4) any combination of the above.

Reamortization. Reamortization is rearranging the installment payments of a real estate loan, and may include changing the interest rate and terms of a loan made for Subtitle A purposes.

Rescheduling. Rescheduling is rewriting the rates and/or terms of OL, SL, EO loans, EE operating-type loans or EM loans made for Subtitle B purposes.

Writedown. For purposes of this subpart, writedown is reducing a borrower's debt to an amount that will result in a feasible plan of operation.

12. In § 1951.907, paragraphs (c), (d) and (e) are revised to read as follows and paragraph (f) is removed:

§ 1951.907 Notice of loan service programs.

* * * * *

(c) *Notification of borrowers 90 days past due on payments.* FLP borrowers who are at least 90 days past due (60 days delinquent) will be sent Exhibit A of this subpart with attachments 1 and 2 by certified mail, return receipt requested. If the borrower submits an incomplete application, see paragraph (e) of this section for procedures on requesting additional information. Delinquent borrowers who have also violated their loan agreements with the agency will be handled in accordance with § 1951.907(e). In addition to the requirements set forth above, servicing officials will provide Attachments 1 and 2 of Exhibit A of this subpart to these borrowers, as set forth below:

(1) At the time an application is made for participation in an FLP loan service program, unless such application is the result of the notice provided to the borrower in accordance with this section,

(2) On written request of any FLP borrower, whether delinquent or not, prior to the sending of a packet under paragraph (c) of this section, and

(3) If a borrower has not previously received exhibit A and attachments 1 and 2 of this subpart, such exhibit and attachments will be provided before the earliest of:

(i) Initiating any liquidation action,

(ii) Accepting a voluntary conveyance of security, or the borrower requesting permission to sell security,

(iii) Accelerating payments on the loan,

(iv) Repossessing the borrower's property,

(v) Foreclosing on property, or

(vi) Taking any other collection action.

(d) *Notification of borrowers in non-monetary default; delinquent borrowers also in non monetary default, or when a junior or senior lienholder is foreclosing.* FLP borrowers who are in non-monetary default will be sent attachments 1, 3, and 4 of exhibit A of this subpart by certified mail, return receipt requested. If a case is in the hands of the Department of Justice or in litigation, no loan servicing action will be taken without Department of Justice or OGC concurrence (see 1962.49 of this chapter). Any servicing request will be processed as indicated in § 1951.909. The account will not be liquidated until the borrower has the opportunity to appeal any adverse decision. After any final appeal decision that does not result in a resolution of the loan defaults, the account will be accelerated.

(e) *Request for primary and preservation loan service programs.*(1) To request consideration for Primary and Preservation Loan Service programs, borrowers who are sent exhibit A, with attachments 1 and 2 or attachments 1, 3, and 4 must complete and return attachment 2 or attachment 4, as appropriate, to the local county office within 60 days after receiving those documents, with the forms required by this paragraph for a completed application.

(2) If borrowers are sent attachments 3 and 4 and do not request servicing within 60 days, the agency will proceed with liquidation in accordance with § 1955.15 of this chapter.

(3) If borrowers are sent exhibit A and attachments 1 and 2 of this subpart and do not submit a completed application within the 60-day time period, the servicing official will send attachments 9 and 10, or 9–A and 10–A of exhibit A of this subpart, as applicable. These attachments will not be sent to borrowers who are being serviced in accordance with § 1951.908. For borrowers receiving attachments 9 and 10 or 9–A and 10–A, the agency will proceed with liquidation in accordance with § 1955.15 of this chapter.

(4) If a borrower has moved and left a forwarding address, the certified mail will be forwarded. If no forwarding address is given, the mail will be returned to the county office. The servicing official will immediately send the documents from the certified mail package to the borrower's last known address, first class mail. The borrower's response date for a completed application will begin on the date of receipt of the certified mail or 3 days following the date of first class mailing, whichever is earlier.

(5) An application for loan service programs must include the following forms (available in any agency office), and data, unless the information is already in the borrower's case file and still current, as determined by the approval official:

(i) Attachment 2 or 4 of exhibit A to this subpart, response form to apply for loan servicing.

(ii) Form 410–1, ''Application for FmHA Services,'' including a current (within 90 days) financial statement of all individuals and entities personally liable for the FLP debt.

(iii) Form 431–2, ''Farm and Home Plan,'' or any other form or submission acceptable to the agency that sets forth a plan of operation and the necessary information. Commodity prices supplied by the agency will be used to complete the forms.

(iv) Form 440–32, ''Request for Statement of Debts and Collateral.''

(v) Form RD 1910–5, ''Request for Verification of Employment.''

(vi) Form AD–1026, ''Highly Erodible Land Conservation (HELC) and Wetland Conservation (WC) Certification,'' if the one on file with the agency does not reflect all the land owned and leased by the borrower.

(vii) Form SCS CPA–26, ''Highly Erodible Land and Wetland Determination,'' if not previously on file with the agency for the farm operation. This form is included as part of the application after being completed by NRCS. (This form is available at NRCS local offices.)

(viii) If the applicant wants to be considered for a conservation contract, a map or copy of an aerial photo of the farm, on which the applicant must show that portion of the farm and approximate acres to be considered in a request for debt restructuring provided for in the conservation contract program.

(ix) The most recent five years' income tax returns and supporting documents, unless the borrower has been farming for less than five years. In such case, income tax returns and supporting documents for the tax years that the borrower farmed.

(x) If the borrower is applying for debt settlement, Form RD1956–1,

''Application for Settlement of Indebtedness.''

(6) The borrower will be provided with copies of these forms when Exhibit A is sent, and may request copies of regulations and the forms manual inserts (FMI) in writing within 30 days of receipt of the loan servicing notice. If these latter items are not provided within 10 days of such a request, the borrower's time for submission of a complete application will be increased by the period of delay in excess of 10 days caused by the Agency.

(7) Not more than one 60-day period will be provided to a borrower to respond to the notice of loan service programs except in accordance with § 1951.908. Subsequent notices as provided for in this section will not be issued until the first notice is resolved.

13. Section 1951.908 is revised to read as follows:

§ 1951.908 Servicing financially distressed current borrowers.

A borrower who is financially distressed, but is not yet delinquent on FLP payments, may request servicing at any time.

(a) *Notification.* If a current plan of operation demonstrates that the borrower is or will be financially distressed, as defined in § 1951.906, or if the borrower otherwise requests servicing, the servicing official will provide attachments 1 and 2 of exhibit A of this subpart.

(b) *Eligibility.* To be considered for servicing in accordance with this section, the borrower must submit to the county office within 60 days Attachment 2 of exhibit A of this subpart and a complete application in accordance with the requirements of § 1951.907(e).

(1) The eligibility requirements of § 1951.909(c) (1) and (2) apply to servicing under this section.

(2) Eligible financially distressed borrowers who are current on their FLP loan payments may be considered for the Primary Loan Service programs described in §§ 1951.909(e) (1), (2) and (3).

(3) Financially distressed borrowers who are not delinquent are not eligible for writedown of debt or buyout as described in 1951.909.

(c) *Processing the application.* The servicing official must process a completed application and notify the borrower of the decision.

(1) Current borrowers will be considered only for the Primary Loan Servicing programs described in §§ 1951.909 (e) (1), (2), and (3). The servicing official must use the Debt and Loan Restructuring System (DALR$) program, in accordance with exhibit J–1 of this subpart, to determine if a feasible plan can be developed as defined in § 1951.906.

(2) If a feasible plan can be developed, the borrower will be sent exhibit B of this subpart with attachment 1 and the printout of the DALR$ calculations as notification of the favorable decision. The borrower must accept the offer within 45 days of its receipt by returning attachment 1 to exhibit B of this subpart or the offer will expire. If the borrower accepts, loan restructuring will be processed in accordance with §§ 1951.909 (e) (1), (2), or (3), as applicable.

(3) If a feasible plan cannot be developed, the borrower will be informed of the reasons for the adverse decision. The DALR$ printout will be attached.

(4) Current borrowers who have received notices under this section and who do not apply for primary loan servicing, or who refuse an offer to restructure their debt, and later become 90 days past due on the FLP loan payment, will be sent notices as described in § 1951.907.

(5) Borrowers whose accounts are not delinquent may receive rescheduling, reamortization, consolidation, or deferral under this subpart only after they have paid at least a portion of the interest due on their FLP debt. The portion due will be based on the applicant's ability to pay, as determined by thoroughly analyzing the farm operation, including any off-farm income. The payment must be made on or before the date that restructuring is closed. Borrowers in non-monetary default, but not delinquent on their FLP debt, must cure the non-monetary default before they may be considered for servicing under this paragraph.

14. Section 1951.909 is revised to read as follows:

§ 1951.909 Processing primary loan service programs requests.

(a) *Servicing official responsibilities.* (1) After receipt of attachment 2 or 4 and a completed application in accordance with § 1951.907(e), the servicing official will consider all primary service programs options in this subpart. That official must use the Debt and Loan Restructuring System (DALR$) computer program, in accordance with exhibit J–1 of this subpart for borrowers who submit a new application, to attempt to find the combination of loan service programs that will result in a feasible plan. Borrowers who request loan servicing and who have disposed of all the FLP loan security, including Collection-Only borrowers, will be processed in accordance with part 1956, subpart B, of this chapter. If the application includes a request for the Conservation Contract program, as indicated by the submission of the information required in § 1951.907(e)(5)(viii), the servicing official will determine whether the borrower is eligible, based on criteria as set forth in exhibit H of this subpart. If the borrower is eligible, the servicing official will make an estimate of the information needed to permit the DALR$ program to make the calculations of feasibility of the Conservation Contract. The assumptions used to establish the estimates will be based on the servicing official's knowledge of the farmland values, the borrower's repayment ability, and the proposed contract acreage. When the DALR$ calculations for restructuring are completed, the borrower will be notified as set forth in paragraph (h) of this section.

(2) When jointly liable individual borrowers have been divorced and one has withdrawn from the operation, the State Executive Director will consider, upon the recommendation of the servicing official, the release of liability for the individual who has withdrawn if the following conditions are met.

(i) A divorce decree or property settlement document held the withdrawing party not responsible for the loan payments;

(ii) The withdrawing party's interest in the security is conveyed to the borrower with whom the loan will be continued;

(iii) The person withdrawing does not have any repayment ability for the loan, and does not own any nonessential assets, as defined in § 1951.906;

(iv) The individual withdrawing has never received debt forgiveness on another direct loan; and.

(v) The withdrawing party provides a copy of the divorce decree and property settlement, evidence of conveyance, a current financial statement, verification of income and debts, and Form 431–2 or Form RD–1944–3 as applicable.

(3) If a completed application includes a request for a waiver from the training required by paragraph (c)(5) of this section, the County Committee will, prior to any offer of Primary Loan Servicing, evaluate the borrower's knowledge and ability in production and financial management and determine the need for additional training as set out in § 1924.74 of this chapter.

(b) *Adverse determination.* (1) If the approval official determines that the borrower is not eligible for any of the Primary Loan Service programs or

restructuring is not feasible because of debt held by other lenders, the borrower will be advised of mediation or meeting of creditors as provided in paragraph (h)(3) of this section. If mediation or the meeting of creditors does not result in a feasible plan, the borrower will be sent attachments 5 and 6, or 5–A and 6–A, of exhibit A of this subpart, as applicable.

(2) Borrowers who do not buy out their debt at its current market value, or who indicate in writing that they do not wish to buy out, will automatically be considered for debt settlement if they submitted an ''Application For Debt Settlement.'' Any appeal of a primary loan servicing denial will be completed before the servicing official begins any further processing of a Debt Settlement or Homestead Protection request. If the adverse decision on restructuring is upheld on appeal, the borrower will be considered for these options. The servicing official will complete the processing of the borrower's application for Debt Settlement in accordance with part 1956 of this chapter. Homestead Protection will be processed in accordance with § 1951.911. No acceleration or foreclosure will occur until the appeal process has been completed for servicing or debt settlement requests timely submitted under this subpart.

(3) Applicants may request a negotiated appraisal in accordance with paragraph (i) of this section if they object to the agency's appraisal. Negotiation of the appraisal, if requested by the borrower, will take place before mediation or a voluntary meeting of creditors.

(c) *Eligibility*. Applicants will be eligible for Primary Loan Service programs if the servicing official has determined that they meet all of the following requirements:

(1) The delinquency or financial distress does exist and is due to circumstances beyond the control of the borrower, due to a reduction in income which reduces cash flow to a point where outflows exceed inflows, only as follows:

(i) The reduction in essential income from a non-farm job due to unemployment or underemployment of the borrower-operator or spouse is caused by circumstances beyond their control;

(ii) Illness, injury, or death of an individual borrower, stockholder, member or partner who operates the farm;

(iii) Natural disasters, an outbreak of uncontrollable disease, or uncontrollable insect damage which caused severe loss of agricultural production that reduced repayment ability so that scheduled payments cannot be made; or

(iv) Economic factors that are widespread and not limited to an individual case, such as high interest rates or low market prices for agricultural commodities as compared to production costs, that reduce repayment ability so that the scheduled payments cannot be made.

(2) The borrower has acted in good faith.

(3) Borrowers who do not meet the eligibility requirements of this section will be notified of the adverse decision by sending attachments 5 and 6, or 5–A and 6–A, of exhibit A of this subpart, as appropriate.

(4) Borrowers with sufficient nonessential assets to bring the FLP loan account current are not eligible for assistance under this subpart and will be processed in accordance with § 1951.910 of this subpart.

(5) The borrower must agree to meet the training requirements of § 1924.74 of this chapter unless a waiver is granted in accordance with that section. The training requirement applies to all primary loan servicing programs.

(d) *Feasibility determinations*. The servicing official must determine:

(1) That the borrower will be able to develop a feasible plan.

(2) If restructured, the loan will result in a net recovery to the Government that will be equal to or greater than the net recovery value from involuntary liquidation or foreclosure as calculated in accordance with paragraph (f) of this section. A comparison with net recovery to the Government, however, will not be made when establishing conservation contracts under exhibit H of this subpart.

(e) *Primary loan service programs*. Any FLP borrower may request Primary Loan Servicing Programs described in this subpart at any time prior to becoming 90 days past due. However, borrowers must show that they are not able to pay their debt as scheduled before the agency will approve Primary Loan Servicing Programs. The agency will consider the borrower's other assets in accordance with § 1951.910 of this subpart. Rescheduling, reamortization, consolidation, or deferral may be utilized for any eligible borrower. Existing deferrals will be cancelled at the same time additional primary loan servicing is received. The loan will be entered into DALR$ as if the deferral were already cancelled. If DALR$ shows that a borrower can develop a feasible plan without a writedown at a lower cash flow margin than with a writedown, that borrower will be provided the opportunity to choose between restructuring with or without a writedown.

(1) *Consolidation and rescheduling of OL and EO loans, EE operating-type loans and EM loans made for subtitle B purposes including EM loss loans*. This subsection explains how to consolidate and/or reschedule *existing* loans, providing the borrower agrees to such actions. When the servicing official determines that consolidation and/or rescheduling will assist in the orderly collection of the loan, the servicing official should take such action provided all of the following conditions exist:

(i) The borrower meets the eligibility requirements in paragraph (c) of this section;

(ii) Such action is not taken to circumvent the FLP graduation requirements;

(iii) The borrower's account is not being serviced by the OGC or the U.S. Attorney and there are no plans to have the account serviced by either of these offices in the near future;

(iv) Loans may be rescheduled or reamortized, as appropriate, to bring the account current or to keep the account from becoming delinquent. A sufficient number of notes including all delinquent notes will be rescheduled to permit the development of a feasible plan of operation;

(v) The borrower will comply with the highly Erodible Land and Wetland Conservation provisions of exhibit M of subpart G of part 1940 of this chapter, if applicable;

(vi) Loans secured by real estate will not be consolidated and/or rescheduled, until the servicing official reviews the Government's real estate lien priority and value of security and decides that such an action will be in the best interest of the Government and the borrower. If there are any liens which were not in existence at the time the note was signed, the servicing official will ask the OGC for an opinion as to what lien position the Government will have if a new note is taken unless a State supplement authorizing this action has been issued on this subject;

(vii) Only loans of the same type will be consolidated;

(viii) EM actual loss loans will not be consolidated;

(ix) Loans serviced under subpart L of this part will not be consolidated with another loan;

(x) Loans that have been deferred under this section will not be consolidated and/or rescheduled during the deferral period;

(xi) Terms of consolidated and/or rescheduled loans are as follows:

(A) Consolidated and/or rescheduled loans will be repaid according to the borrower's repayment ability, but will not exceed 15 years from the date of the consolidation and/or rescheduling action, except:

(B) Repayment of loans solely for recreation and/or nonfarm enterprise purposes may not exceed seven years from the date of the consolidation and/or rescheduling action (the date the new note is signed).

(C) Repayment of EE loans may not exceed 15 years from the date of rescheduling.

(xii) Interest rates of consolidated and/or rescheduled loans will be as follows:

(A) The interest rate for consolidated and/or rescheduled loans will be the lesser of the current interest rate for that type of loan or the lowest *original* loan note rate on any of the original notes being consolidated and/or rescheduled. In the case of an OL-limited resource loan, it will be the lesser of the current limited resource OL loan rate or the original note rate. The interest rate for loans rescheduled but not consolidated will be the lesser of the current interest rate for that type of loan or the *original* loan note rate.

(B) At the time of the consolidation and/or rescheduling action, OL loans that were not assigned a limited resource rate when the loan was received, may be assigned a limited resource rate if:

(*1*) The borrower meets the requirements for the limited resource interest rate, and

(*2*) A feasible plan cannot be developed at regular interest rates and maximum terms permitted in this section.

(xiii) The original (old) note(s) will be marked ''Rescheduled'' and stapled to the new rescheduled promissory note and will be filed in the operation file. Copy(ies) for the borrower's(s') case file should be marked and stapled the same and filed in position 2 of the case file. If a transfer is involved, assumption agreement(s) will be marked and stapled with the note(s) and copies filed as indicated above. If part of a note is written down, the written down note will be marked ''Rescheduled with Debt Write Down,'' and will be filed in the operation file.

(xiv) For applications received before November 28, 1990, the amount of outstanding accrued interest more than 90 days overdue and any outstanding protective advances, as defined in § 1965.11(b) of subpart A of part 1965 of this chapter, made on the loan will be added to the principal at the time of consolidation and/or rescheduling (the date the new note is signed by the borrower). Protective advances are not authorized for the payment of prior or junior liens except real estate tax liens. See section II E of exhibit J of this subpart for an explanation of how to schedule payment of interest not more than 90 days overdue; and

(xv) For new applications, the amount of outstanding accrued interest and any outstanding protective advances, as defined in § 1965.11(b) subpart A of part 1965 of this chapter, made on the loan will be added to the principal at the time of consolidation and/or rescheduling (the date the new note is signed by the borrower) in accordance with the provisions of exhibit J–1 of this subpart. Protective advances are not authorized for the payment of prior or junior liens except real estate tax liens.

(2) *Reamortization of FO, SW, RL, RHF, EE, or EM loans made for real estate purposes.* When the servicing official determines that a reamortization action will assist in the orderly collection of the loan, the servicing official should take such action, provided:

(i) The borrower meets the eligibility requirements of 1951.909(c) of this subpart;

(ii) Such action is not taken to circumvent the FLP graduation requirements;

(iii) The borrower's account is not being serviced by the OGC or the U.S. Attorney, and there are no plans to have the account serviced by either of these offices in the foreseeable future;

(iv) A feasible plan for the borrower cannot be developed with the existing repayment schedule. A sufficient number of notes, including all delinquent notes, will be reamortized to permit the development of a feasible plan of operation;

(v) The borrower will comply with the Highly Erodible Land and Wetland Conservation requirements of exhibit M of subpart G of part 1940 of this chapter, if applicable;

(vi) Loans that have been deferred in this supbart will not be reamortized during the deferral period unless the deferral is cancelled;

(vii) Terms of repayment of reamortized loans are as follows:

(A) Reamortized installments usually will be scheduled for repayment within the remaining time period of the note or assumption agreement being reamortized. If repayment terms are extended, the new repayment period may not exceed 40 years from the date of the original note or assumption agreement or the useful life of the security, whichever is less. EE loans for real estate purposes, which are secured by chattels only, may be reamortized over a period not to exceed 20 years from the date of the original note or assumption agreement, or the useful life of the security, whichever is less. RHF loans may not exceed 33 years from the date of the original note or assumption agreement.

(B) The Agency's lien priority may be affected if the final due date of the original loan is extended. A State supplement will be issued to provide instructions on the effect that a change in the final due date has on security instruments and the actions necessary to retain the Government's lien priority. The State supplement will also include instructions for releasing the original security instrument when a new one is obtained.

(viii) Interest:

(A) The interest rate will be the current interest rate in effect on the date of reamortization (the date the new note is signed by the borrower), or the interest rate on the *original* Promissory Note to be reamortized, whichever is less. In the case of a limited resource loan, it will be the limited resource FO or SW loan rate or the original loan note rate, whichever is less.

(B) At the time of the reamortization, an FO or SW loan that was not assigned a limited resource rate when the loan was received, may be changed to a limited resource interest rate if:

(*1*) The borrower meets the requirements for a limited resource interest rate,

(*2*) A feasible plan cannot be developed at regular interest rates and at the maximum terms permitted in this section, and

(*3*) For SW loans, the loans funds were used for soil and water conservation and protection purposes as set forth in § 1943.66 (a)(1) through (a)(5) of subpart B of part 1943 of this chapter.

(C) For applications received before November 28, 1990, the amount of accrued interest more than 90 days overdue and any protective advances, as defined in § 1965.11(b) of subpart A of part 1965 of this chapter, charged to the borrower's account, will be added to the principal at the time of the reamortization action (the date the new note is signed by the borrower). *Protective advances are not authorized for the payment of prior or junior liens except real estate tax liens.* If there are no deferred installments, the first installment payment under the reamortization will be at least equal to the interest amount which will accrue on the new principal between the date the Form 1940–17 is processed and the next installment due date. See section II

E of exhibit J of this subpart for an explanation of how to schedule payments of interest not more than 90 days overdue. For new applications, the amount of outstanding accrued interest and any outstanding protective advances made on the loan will be added to the principal at the time of reamortization (the date the new note is signed by the borrower) in accordance with the provisions of exhibit J–1 of this subpart.

(ix) The original (old) note(s) will be marked ''Reamortized'' and will be stapled to the new promissory note and filed in the operational file. Copies for the borrower(s) case file should be marked and stapled the same and filed in position 2 of the case file. If a transfer is involved, assumption agreement(s) will be marked and stapled with the note(s) and copies filed as indicated above. If a part of a note is written down, the written down note will be marked ''Reamortized with Debt Writedown'' and will be filed as indicated above in this paragraph.

(3) *Deferral of existing OL, FO, SW, RL, EM, EO, RHF, and EE loans.—(i) Loan deferrals.* Deferrals will be considered only after it has been determined that consolidation, rescheduling, and reamortization, in accordance with this subpart, will not provide a feasible plan.

(ii) *Conditions.* In order to be considered for a deferral, the borrower must meet both of the following conditions:

(A) The need for the deferral must be temporary. To be *temporary* means that the borrowers will be able to show to the satisfaction of the servicing official that they will be able to resume payment on the debt by the end of the deferral period, or the new payments, as established by using consolidation, rescheduling, or reamortization can be resumed at the end of the deferral period; and

(B) Continuation of loan payments as presently scheduled without change, will unduly impair the borrower's standard of living. An unduly impaired standard of living is a condition whereby the borrower, due to circumstances beyond the borrower's control, is unable to pay essential family living expenses (partnerships, joint operators, corporations, and cooperatives do not have family living expenses), pay normal farm operating expenses, including reasonable and customary hired labor and/or salary paid to the operator(s) of a partnership, a joint operation, a corporation, or a cooperative, maintain essential chattels and real estate, and meet the scheduled payments of all debts.

(iii) *Approval offical determinations.* The approval official must:

(A) Determine that the borrower meets the eligibility requirements of § 1951.909(c) of this subpart;

(B) Determine that a deferral of payments is necessary and appropriately document the conditions causing the need for deferral;

(C) If a borrower owns 50 acres or more of marginal land as defined in exhibit G of this subpart and a feasible plan cannot be developed after consideration of a deferral, the servicing official will inform the borrower about the Softwood Timber (ST) loan program authorized by exhibit G of this subpart by sending Attachment 1 of exhibit G of this subpart by certified mail, return receipt requested, within 5 days after the adverse deferral determination. If the borrower requests the servicing official to determine that an ST loan may allow the borrower to continue to farm, within 15 days of the borrower's receipt of attachment 1, the servicing official will determine if the borrower is eligible, based on criteria as set forth in exhibit G of this subpart. If the borrower is eligible the servicing official will help the borrower to develop a plan to determine if a feasible operation can be developed utilizing this program. The discussion will be documented in the borrower's case file.

(iv) *Loan deferral considerations.* The servicing official will assist the borrower in completing a typical-year plan. If there is no typical year, the servicing official will assist the borrower with completing a plan of operation for each year of the deferral. The plans must be considered in DALR$.

(A) A sufficient number of loans must be considered for deferral to permit the borrower to have a feasible plan.

(B) A deferral plan may include a reorganization of the farming operation, including the use of new enterprises, to overcome existing financial, economic or other limitations of the operation. If the proposed restructuring requires capital expenditures, a subordination or additional loan will be considered. Deferral of additional loan installments beyond those needed to allow the borrower to develop a feasible plan will not be used to create additional cash reserve for capital purchases. Such purchases are not considered operating expenses.

(C) A typical year during the deferral period is a year which most closely represents the borrower's average operation for the entire deferral period. There may be no typical year for farming or ranching operations undergoing a major reorganization. If there is no typical year, then it will be necessary to develop a plan of operation for each year of the deferral. The plans must be considered in DALR$ to determine if each plan is feasible.

(D) The deferral of loan installments is not intended to create a high net cash reserve where revenue substantially exceeds expenses. If the deferral of a complete note would cause a high net cash reserve during the entire deferral period, a full deferral should not be granted. In such a case, a partial deferral should be considered to obtain a feasible plan of operation. The same approach should be used for situations in which there is no typical year and debt payments must vary throughout the deferral period.

(E) The borrower must have feasible plans of operation to support any deferral request. Plans of operation in conjunction with loan deferrals must be realistic and supported by the borrower's actual records.

(v) *Additional and subsequent deferrals.* If, during the period of the initial deferral, the borrower is unable to make the scheduled payments, the borrower may again request primary loan service actions. When considering primary servicing actions, existing deferred notes must be entered into DALR$ as if they had not been deferred. If it is necessary to defer additional loans to develop a feasible plan, such action will be taken if the deferral will result in a greater net recovery to the Government than debt writedown. Borrowers may obtain subsequent deferrals after the deferral period provided the conditions of this subsection are met.

(vi) *Term and interest rate.* A deferral period will not exceed five (5) annual installments. Deferral interest rates will be determined as specified in paragraphs (e)(1)(xii) and (e)(2)(viii) of this section.

(A) All loans being deferred will be consolidated, rescheduled or reamortized, as applicable. The promissory note rescheduled, reamortized or consolidated for the deferral will show ''zero'' as the installments due during the period of the deferral if the whole note is deferred and will not be changed during the deferral period unless the conditions of paragraph (e)(3)(v) of this section are met. The servicing official will determine the amount of interest that will accrue during the deferred period. This interest will be repaid in equal amortized installments during the term of the loan remaining after the deferral period. The calculated installments will be added to the remaining installments for the remaining principal balance and

inserted on the promissory note as a scheduled installment for the remaining period of the loan. The Finance Office will apply the payments made on the note in accordance with subpart A of this part. For applications received before November 28, 1990, the amount of outstanding accrued interest more than 90 days overdue and any outstanding protective advances, as described in § 1965.11(b) of subpart A of part 1965 of this chapter, made on the loan will be added to the principal at the time of the deferral (the date the new note is signed by the borrower). Protective advances are not authorized for the payment of prior or junior liens except real estate taxes. See section II E of exhibit J of this subpart for an explanation of how to schedule payment of interest not over 90 days overdue. For new applications, the amount of outstanding accrued interest and any outstanding protective advances made on the loan will be added to the principal at the time of deferral (the date the new note is signed by the borrower).

(B) The field office will process the deferral via the Automated Discrepancy Processing System (ADPS).

(C) If a deferral is approved, the borrower's name and the date of approval will be recorded and maintained in accordance with subpart A of part 1905 of this chapter. The Finance Office will provide the county office with a quarterly status report for each borrower who has received a deferral.

(D) Six months prior to the end of the deferral period the servicing official will notify the borrower in writing of the expiration of the deferral and the amount and date of the borrower's first upcoming installment of the debt.

(E) A deferral will be cancelled if the loan is later restructured in accordance with this subpart. The cancellation will be processed via ADPS.

(vii) *Increase in repayment ability.* At the time the servicing official makes the analysis required by § 1924.60 of subpart B of part 1924 of this chapter, the servicing official will determine whether the borrower has had an increase in income and repayment ability. If an income increase is substantial enough to enable the borrower to graduate, the case will be handled in accordance with subpart F of this part. If an increase would enable the borrower to make some payments during the deferral period, the servicing official will, in writing, ask the borrower to sign a Form 440–9, ''Supplementary Payment Agreement,'' within 30 days of the date of the written request. The borrower will be provided appeal rights. When doing the analysis to determine whether there is a substantial increase in income and repayment ability, the servicing official will determine whether this increase exists by comparing it to the original plan developed in the deferral application and also to plans developed for the current operating year to determine that the excess income is not needed for essential living and operating expenses or scheduled debt payment. Refusal to sign Form 440–9 will be considered a non-monetary default and will be handled as set forth in § 1951.907(e) of this subpart. If the borrower signs Form 440–9 and later does not honor the terms and conditions of the repayment agreement, the borrower's account will be handled as set forth in § 1951.907 of this subpart.

(4) *Writedown.* The following conditions shall be met in order for a borrower to receive writedown of FLP debts:

(i) No other Primary Loan Service programs, including deferral, nor any combination thereof, will produce a feasible plan that will permit the borrower to continue the operation. However, if DALR$ shows that a borrower can develop a feasible plan without a writedown at a lower cash flow margin than with a writedown, then the borrower will be provided the opportunity to choose between restructuring with or without a writedown;

(ii) The borrower must never have received debt forgiveness on another direct loan at any time;

(iii) The amount written off may not exceed $300,000.

(iv) A feasible plan must be developed that will result in a present value of loans to be repaid to the Government which is equal to or more than a net recovery from an involuntary liquidation or foreclosure;

(v) The borrower must comply with the Highly Erodible Land and Wetland Conservation requirements of exibibit M of subpart G of part 1940 of this chapter, if applicable;

(vi) The borrower must agree to a Shared Appreciation Agreement if the loan is secured by real estate;

(vii) Loans written down with the Primary Loan Servicing programs will be rescheduled, reamortized, or deferred in accordance with paragraph (e) of this section; and

(viii) Borrower must agree to a lien on certain assets as provided in 1951.910 of this subpart, including nonessential assets, where the net recovery value of these assets was not paid to the Agency. (The Agency's lien will be taken only at the time of closing the restructured loans); and

(ix) Debt reduction received through conservation easements or contracts will not be counted toward the limitations in paragraphs (e)(4) (ii) and (iii) of this section.

(f) *Determining value of net recovery from involuntary liquidation.* After receipt of a complete application for Primary and Preservation Loan Service programs, the servicing official will make the calculations required in this section and notify the borrower of the result. For New Applications, nonessential assets will be considered in accordance with § 1951.910(a) of this subpart.

(1) The servicing official will use the computer program, DALR$, to determine the net recovery to the Government equivalent to involuntary liquidation of the collateral securing the FLP debt in accordance with Exhibit J or J–1 of this subpart, ''Debt and Loan Restructuring System,'' as applicable, and will follow the guidance provided by State supplements and Exhibit I of this subpart, ''Guidelines for Determining Adjustments for Net Recovery Value of Collateral.'' The servicing official will determine the current market value of the collateral in the borrower's possession including tangible property in existence and of record in accordance with subpart E of part 1922 of this chapter for real estate property, and on Form 440–21, ''Appraisal of Chattel Property.'' The servicing official also will determine the current market value of any bank accounts, stocks and bonds, certificates of deposit and the like pledged to and/or in the possession of the Agency. Collateral may include real estate, chattels, tangible property and property such as bank accounts, stocks and bonds, certificates of deposit, and the like. Chattels include machinery, equipment, livestock, growing crops, and crops in storage. Tangible property may include accounts receivable (including Government payments), inventories, supplies, feed, etc. From the current market value of the collateral in the borrower's possession, or pledged to and/or in the possession of the Agency (in the case of bank accounts, stock and bonds, certificates of deposit, and the like), the following adjustments will be made:

(i) Subtract the amount which would be required to pay prior liens on the collateral;

(ii) Subtract taxes and assessments, depreciation, management costs, and interest cost to the Government based on the 90-day Treasury Bills (published in a National Office issuance). Taxes

and assessments, depreciation, management costs, as well as interest costs will be calculated on the current market value of the property for the average inventory holding period. The holding period for suitable inventory farm property will be established by each State as of July 1 each year using Report Code 597. The months that the suitable property is under lease will not be included in determining the average holding period for purposes of this subpart;

(iii) Adjust the current market value for estimated increases or decreases in value of the property for the holding period specified in paragraph (f)(1)(ii) of this section;

(iv) Subtract resale expenses, such as repairs, commissions, and advertising;

(v) Other administrative and attorney's expenses;

(vi) Add income which will be received after acquisition; and

(vii) For a borrower who submits a ''new application'' as defined in § 1951.906 of this subpart, add the value of any collateral that is not in the borrower's possession and that has not been approved on the Form 1962–1 or released in writing by the Agency, minus the value of any prior lienholder's interest. Collateral not in possession of the borrower is defined as any property specified in any agency security instruments for such borrower's FLP debt that the borrower has disposed of and that the Agency has not approved or released in writing. The value of normal income security not in possession of the borrower will not be added to the NRV if it could be post-approved for release in accordance with § 1962.17 of subpart A of part 1962. The value of any collateral that is not in the possession of the borrower will be determined by the servicing official based upon the best information available about the value of the collateral on or about the time of its disposition. In determining the value of such property, the Agency will use such sources as the publications Hotline (Farm Equipment Guide) and Official Guide (Tractor and Farm Equipment), sale prices at local public auctions, public livestock sale barn prices, comparable real estate sales, etc. Agency appraisal forms will be used to record the value of the missing collateral and the basis for the valuation.

(2) The State Executive Director will determine costs of involuntary liquidation of collateral for farm loans by analyzing the costs of involuntary liquidation within the geographic areas of their jurisdiction. The State Executive Director also will issue a State supplement of estimated costs and average holding time to be used as guidelines by servicing officials in making calculations of net recovery value under this subsection. Such cost analyses will be carried out in July of each year. The State Executive Director will consult with State Executive Directors of adjoining States, other lenders, real estate agents, auctioneers, and others in the community to gather and analyze the information specified in this subpart.

(g) *Determining net recovery value resulting from primary servicing.* The value of the restructured debt will be based on the present value of payments the borrower would make to the Agency using any combination of primary loan service programs that will provide a feasible plan. Present value is a calculation concept which assigns a lower current value to dollars received in later years than to dollars received at the present time. Servicing officials will use a discount rate based on 90-day Treasury Bills as of the date the borrower files the application for restructuring. The National Office will publish the 90-day Treasury Bill rate in a National Office issuance.

(h) *Notification requirements.* In those instances where the applicable notice is sent certified mail, and the certified mail is not accepted by the borrower, the servicing official will immediately send the documents from the certified mail package to the borrower's last known address, first class mail. The appropriate response time will commence 3 days following the date of mailing.

(1) *Offer.* If the calculations show that the value of the restructured debt is greater than or equal to the NRV as determined in paragraph (f) of this section, the servicing official will forward to the State Executive Director the borrower's Farm and Home Plan and the original printout of the DALR$ calculations. The servicing official will certify that the borrower meets all requirements for debt restructuring with the writedown amount specified on the printout. The State Executive Director's authorization to the servicing official to proceed with the writedown will be evidenced by the State Executive Director's signature affixed to the original copy of the DALR$ printout returned to the servicing official. Within 60 days after receiving a complete application, the servicing official will notify the borrower of the results of the calculations by sending Exhibit F of this subpart, certified mail, return receipt requested, and offer to restructure the debt. A printout of the DALR$ calculations will be attached to Exhibit F of this subpart.

(i) Exhibit F of this subpart will inform the borrower(s) of the Agency's offer to restructure the debt, the right to request a copy of the agency's appraisal, and other options which may include payment of nonessential assets and negotiation of the appraisal. If the borrower accepts the offer within 45 days following any appeal, the servicing official will restructure the debt within 45 days after receipt of the written notice of the borrower's acceptance.

(ii) If the borrower does not respond to exhibit F within 45 days, or declines the Agency's offer to restructure the debt without requesting an appeal or negotiation, the servicing official will send attachments 9 and 10, or 9–A and 10–A of exhibit A of this subpart, as applicable. If the borrower requests an appeal and the Agency is upheld, attachments 9–A and 10–A will not be sent until the borrower is given the opportunity to accept the original offer within 45 days following the final appeal decision. These borrowers will not have an additional opportunity to appeal the offer in attachments 9–A and 10–A. If attachment 10 or 10–A is not returned within 30 days of the borrower's receipt of the attachments, the account will be accelerated or foreclosed in accordance with § 1955.15 of subpart A of part 1955 of this chapter.

(iii) If the borrower submitted a new application and requests a negotiated appraisal within 30 days of receiving exhibit F, the negotiation of the appraisal will be completed in accordance with paragraph (i) of this section.

(A) After completing a negotiation of the appraisal, if the debt can be restructured, the servicing official will send exhibit F to the borrower making the new offer in accordance with paragraph (h)(1)(i) of this section.

(B) If the negotiated appraisal changes the DALR$ calculations so that the debt cannot be restructured, the borrower will be sent exhibit E, ''Notification of Adverse Decision for Primary Loan Servicing, Mediation or Meeting of Creditors and Other Options,'' in accordance with paragraph (h)(3) of this section. The appraisal cannot be negotiated again and is not subject to appeal.

(2) *Conservation contracts.* If the borrower returned attachment 2 or 4 to Exhibit A of this subpart within 60 days, requesting a conservation contract by submitting a map or aerial photo showing the portion of the farm and approximate acres to be considered in the request, the servicing official will proceed with processing the request for debt relief as set forth in Exhibit H of this subpart. Borrowers who did not

previously ask for this option can make a request for the contract at this time by submitting a map or copy of an aerial photo indicating that portion of the farm and appropriate acres to be considered. Borrowers must submit the photo within 30 days of receiving Exhibit E of this subpart.

(3) *Mediation/voluntary meeting of creditors.* If the DALR$ calculations indicate a feasible plan of operation *cannot* be developed considering all Primary Loan Service Programs, Softwood Timber, or Conservation Contracts, the servicing official will take the following actions within 15 days from the date of the determination that the borrower's debt cannot be restructured as requested:

(i) Exhibit E, ''Notification of Adverse Decision for Primary Loan Servicing, Mediation or Meeting of Creditors and Other Options,'' of this subpart will be sent to the borrower in all cases by certified mail, return receipt requested. A printout of the DALR$ calculations will be attached to exhibit E of this subpart.

(A) When the borrower is in a State *with* a USDA Certified Mediation Program, paragraph I in exhibit E will be used. Paragraph I tells the borrower that the Agency is requesting mediation with the borrower's creditors in an effort to obtain debt adjustment which would permit the development of a feasible plan of operation. If the borrower submitted a new application, the borrower must respond to exhibit E of this subpart if the borrower wants to negotiate the Agency's appraisal in accordance with paragraph (i) of this section. The borrower may request a copy of the Agency's appraisal. The Agency must participate in USDA Certified Mediation Programs whether or not the borrower responds to exhibit E of this subpart. Any negotiation of the appraisal must be completed prior to any mediation.

(B) In States *without* a certified mediation program, exhibit E of this subpart will be sent by certified mail, return receipt requested, to inform the borrower about the applicable options which may include a request for a copy of the Agency's appraisal, a meeting of creditors, payment of nonessential assets, negotiation of the appraisal and a request for an independent appraisal. Paragraph I of exhibit E of this subpart will be deleted. The purpose of the voluntary meeting of creditors is to develop a feasible plan. Paragraph II of exhibit E of this subpart, therefore, will be used to offer a voluntary meeting of creditors when the borrower has undersecured creditors who hold a substantial part of the borrower's total debt. A ''substantial part of the borrower's total debt'' means that the debt of the undersecured creditors is large enough so that if it were written down to zero, a feasible plan could be developed considering all primary servicing options. The servicing official will document such determination in the case file, and the servicing official will not offer to carry out a voluntary meeting of creditors when the undersecured debt is not a substantial part of the borrower's total debt. Such borrower will be informed later of additional rights, including appeal rights, when the Agency sends attachments 5 and 6, or attachments 5–A and 6–A, of exhibit A of this subpart. Any appeal may challenge the Agency's determination not to offer a voluntary meeting of creditors because the undersecured debt is not a substantial part of the borrower's total debt.

(C) Any negotiation of the Agency's appraisal must be completed prior to the meeting of creditors or mediation. If the borrower does not request any of the options offered in exhibit E of this subpart within 45 days, the servicing official will send attachments 5 and 6, or 5–A and 6–A of exhibit A of this subpart, as applicable, certified mail, return receipt requested.

(ii) If mediation or the voluntary meeting of creditors is held but is not successful, the borrower will be sent attachments 5 and 6, or 5–A and 6–A, of exhibit A of this subpart, as applicable, certified mail, return receipt requested, within 15 days of the unsuccessful mediation or meeting. The DALR$ computer printout will be attached to attachment 5 or 5–A of exhibit A of this subpart.

(4) *Buyout of loans.* The following notification and processing provisions also apply to buyout as offered in Attachments 5 and 5–A of Exhibit A of this subpart. After July 3, 1996, buyout will be at the Current Market Value (CMV) of the security.

(i) Eligible borrowers will have 90 days after the receipt of the notification of ineligibility for Primary Loan Service programs to buy out their loans at Current Market Value, or the balance of their unpaid FLP debt, whichever is lower.

(ii) The present value of the restructured loan must be less than the net recovery value to receive buyout.

(iii) The Agency will not provide direct or guaranteed credit for a buyout.

(iv) The borrower must never have received debt forgiveness on another direct loan. (Applies if any debt will be written off.)

(v) The amount written off may not exceed $300,000.

(vi) The borrower must have acted in good faith.

(vii) Debt reduction received through conservation easements or contracts will not be counted toward the limitations in paragraphs (h)(4) (iv) and (v) of this section.

(viii) The mortgage or deed of trust will be released in accordance with paragraph (k) of this section.

(ix) The State Executive Director must approve the buyout prior to offering buyout to the borrower if the Agency will be writing off any debt.

(i) *Administrative appeals and negotiation of appraisals.*—(1) *Appeals.* The time limit to pay the current market value of the security, as set out in paragraph (h)(4) of this section, will start on the day the borrower receives the final appeal or review decision upholding the initial decision. The borrower will have conclusively presumed to have received that decision within 3 days of mailing.

(2) *Appeal process.* (i) If the administrative appeal process results in a determination that the borrower is *eligible* for Primary Loan Servicing, the servicing official will process the request pursuant to § 1951.909 of this subpart. The information used will be that which the appeal officer used in making the decision on the appeal, unless stated otherwise in the final appeal decision letter. In cases of debt restructure resulting from appeals, the interest rate will be the lesser of the current rate or the original note rate on the date of the closing of the transaction. If implementation of the appeal decision would cause writedown or writeoff of more than $300,000 because of interest accrued after the adverse decision, the servicing official will process the action so as to complete the transaction.

(ii) If the administrative appeal process results in a determination that the borrower is *ineligible* for Primary Loan Servicing, the servicing official will send Exhibit K and Attachment 1 of this subpart and continue processing any application for debt settlement that may have been submitted in accordance with subpart B of part 1956 of this chapter. If the borrower does not return Attachment 1 of Exhibit K within 15 days of the date that it is sent, the servicing official will continue to process the application for Preservation Loan Servicing and any debt settlement. The account will not be accelerated or foreclosure will not continue until the borrower has the opportunity to appeal any denial of the Preservation Loan Servicing and any Debt Settlement request. If the borrower returns Attachment 1 of Exhibit K within 15

days of its mailing, the account will be accelerated.

(3) *Appraisal appeals.* (i) Borrowers appealing the current market appraisal completed by the Agency may obtain an appraisal by an independent appraiser selected from a list of at least three names provided by the servicing official. A borrower who submitted a new application may appeal the Agency's appraisal, if it has not previously been negotiated under paragraph (i)(4) of this section, and the denial of other issues of Primary Loan Service programs in which the appraisal, as part of the NRV calculation, is relevant. The cost of the independent appraisal must be paid by the borrower. The borrower will, upon request, have access to the case file and receive a copy of the Agency's appraisal. The independent appraiser must be a State certified general appraiser.

(ii) The appraisal report must conform to subpart E of part 1922 of this chapter for real estate and Form 440–21 for chattels.

(iii) If either the servicing official or the borrower discovers any mathematical or property description errors in the appraisal prior to or at the time of the review and comparison, necessary corrections may be made if both parties agree. The party discovering the error must contact the other for a meeting to approve the corrections.

(iv) If the Agency's appraisal and the borrower's independent appraisal vary in value by five percent or less, the borrower will select the appraisal to be used for servicing under this subpart.

(4) *Negotiation of appraisals.* A borrower who submits a new application may request to negotiate the appraisal one time only. Negotiation of appraisals is offered in Exhibits E and F of this subpart, as discussed in paragraph (h) of this section. All appraisals used in the negotiations must reflect the value of the property as of the same time frame as the Agency's initial appraisal. Errors will be handled in accordance with paragraph (i)(3)(iii) of this section.

(i) The borrower can request the list of independent appraisers from the servicing official on Attachment 2 of Exhibits E and F of this subpart. The borrower must provide the servicing official with a copy of his or her independent appraisal within 30 days of requesting negotiation. The borrower must pay for this independent appraisal. The borrower's independent appraiser and appraisal report must meet the qualifications described in paragraph (i)(3)(ii) of this section, but the independent appraiser need not be on the Agency's list of qualified appraisers. If the Agency's appraisal and the borrower's independent appraisal vary in value by five percent or less, the borrower will select the appraisal to be used for servicing under this subpart. No further negotiation will occur.

(ii) If the two appraisals differ by more than five percent, the servicing official will give the borrower a list of qualified, independent appraisers. The borrower will select one appraiser from the Agency's list to conduct a third appraisal. The appraiser cannot have conducted either the Agency's or the borrower's independent appraisal, and must meet the qualifications set out in paragraph (i)(3) of this section. The borrower, the appraiser and the servicing official will complete and sign the Appraisal Agreement (Attachment 3 of Exhibit F of this subpart). The appraiser will be sent a copy of the appraisal standards, subpart E of part 1922 of this chapter, for real estate and Form 440–21 for chattels. The borrower will submit to the servicing official the original or a copy of the third appraisal and its attachments and the appraiser's bill. The Agency will pay 50 percent of the cost. The borrower is responsible for paying the appraiser directly the remaining 50 percent of the cost.

(iii) Following the completion of the third appraisal, the three appraisals will be compared by the servicing official, who will average the two that are the closest in value. The average of the two closest in value will become the final appraised value. Errors will be handled in accordance with paragraph (i)(3)(iii) of this section.

(j) *Processing of writedown.* Borrowers who are eligible for Primary Loan Service Programs with writedown will have their loans rescheduled or reamortized in accordance with this subpart. All loan servicing actions approved in connection with the writedown must take place simultaneously. The borrower and servicing official will complete exhibit D to this subpart, ''Shared Appreciation Agreement.'' Exhibit D provides for recapture as specified in 1951.914 of this subpart of a portion of any appreciation in the value of the real property securing the debt remaining after the writedown. The DALR$ computer program will be used to determine the notes to be written down.

(1) A separate Form 1940–17, ''Promissory Note,'' will be used for each note or assumption agreement being reamortized.

(2) A Form 1940–17 will be completed, signed, and distributed as provided in the FMI.

(3) The loan servicing action date of approval is also the date that will be inserted on the rescheduled or reamortized Form 1940–17 in accordance with the provisions in the ADPS manual when establishing an equity record.

(4) A Form 1940–17 may be processed provided the County Office has possession of the original note being reamortized. If the County Office does not have possession of the original note, the servicing official will ask the Finance Office to return the original note so that it is in the County Office before Form 1940–17 is processed.

(5) The field office will process the reamortization or consolidation via the Automated Discrepancy Processing System (ADPS) in accordance with Form 1940–17, and complete exhibit D of this subpart.

(6) The original (old) note(s) will be marked ''Rescheduled or Reamortized with Writedown of Debt'' and stapled to the new rescheduled or reamortized promissory note(s) and will be filed in the promissory note file in the operation file. Copies for the borrower(s) case file should be marked and stapled the same and filed in position 2 of the case file. If a transfer is involved, assumption agreement(s) will be marked and stapled with the note(s) and copies will be filed as indicated above.

(7) A lien will be taken on assets in accordance with § 1951.910 of this subpart.

(k) *Real estate liens.* The Agency's real estate liens will be maintained even if the writedown of the borrower's real estate debt results in all real estate debts to the Agency being written down. The Agency's real estate lien will not be subordinated to increase the amount of the prior liens during the shared appreciation period. Shared appreciation agreements will be serviced in accordance with § 1951.914 of this subpart. Upon payment by the borrower of current market value in a buyout, the original mortgage or deed of trust will be released on real estate for the FLP loans bought out. The notes will be marked ''Satisfied at Current Market Value'' and returned to the debtor or the debtor's legal representative. Existing net recovery buyout recapture agreements will be serviced in accordance with § 1951.913 of this subpart.

(l) *Non-real estate liens.* If a borrower's FLP loan(s) were not secured by real estate, there will be no recapture and the borrower will not be required to enter into a recapture agreement. Upon payment by the borrower of the current market value in a buyout, the original security instruments will be released on

chattel security for the FLP loans bought out. These notes will be marked ''Satisfied at Current Market Value'' and returned to the debtor or the debtor's legal representative.

(m) *Notes.* Notes evidencing real estate debts written down in full or written off as a result of Primary Servicing will be returned to the debtor at the end of any recapture period. If there is no recapture period, the notes will be returned when the County Office verifies that the transaction has been recorded in the Finance Office. For a market value buyout, the original and copies of the notes will be marked ''Satisfied by Approved Current Market Value Buyout.'' For writedown in full, the original and copies of the notes will be marked ''Satisfied by Approved Debt Writedown.'' If a note is only partially written-down, it will be returned to the debtor when paid in full. The original and copies of such notes will be marked ''Satisfied by Approved Partial Writedown.'' Original chattel security notes will be marked ''Satisfied at Current Market Value'' and released to the debtor upon payment of their current market value in a buyout.

15. Section 1951.910 is revised to read as follows:

§ 1951.910 Consideration of borrower's other assets for new applications.

If a delinquent borrower has other assets that are not serving as collateral for the FLP debt, the servicing official will determine whether these assets are nonessential, as defined in § 1951.906 of this subpart.

(a) *Nonessential assets.* The net recovery value (NRV) of nonessential assets must be considered when the borrower's application is processed for loan servicing in accordance with this subpart. The Agency will not write down or write off any debt or portion of a debt that could be paid by liquidation of nonessential assets, or by payment of the loan value of the assets that could be received from non-Agency sources. The loan value of the assets will be considered as the same as the NRV of the assets.

(1) *Determining the value of nonessential assets.* The NRV of the nonessential assets is the market value less any prior liens and any selling costs which may include such items as taxes due, commissions and advertising costs. The determination of NRV of nonessential assets does not include a deduction for carrying the property in inventory. The market value of the nonessential assets must be estimated by a current appraisal in accordance with subpart E of part 1922 of this chapter for real estate property, and on Form 440–21, ''Appraisal of Chattel Property,'' for chattels. Borrowers who disagree with the Agency's appraisal may request a negotiated appraisal or appeal in accordance with § 1951.909(i) of this subpart.

(2) *Eligibility.* If the NRV of the nonessential assets is sufficient to bring the delinquent FLP account current, the borrower is not eligible for primary loan servicing including buyout in accordance with this subpart. The borrower, instead, will be sent attachments 5–A and 6–A of exhibit A of this subpart. The servicing official will indicate the values of both the NRV of nonessential assets and the FLP security on attachment 5–A. The borrower's nonessential assets and their NRVs also will be listed on attachment 5–A. The borrower will have 90 days to bring the FLP account current from the date of the receipt of attachments 5–A and 6–A. If the borrower does not pay current within this time period, the account will be accelerated after all appeal rights have been exhausted. If the NRV of the nonessential assets is not sufficient to bring the FLP account current, then the nonessential assets will be considered as set out in paragraph (a)(3) of this section.

(3) *Inclusion in NRV.* If the NRV of the nonessential assets is not sufficient to bring the FLP account current, then the servicing official will add the NRV of these assets to the NRV of the FLP collateral according to § 1951.909(f) of this subpart. The servicing official will encourage, but not require the borrower to liquidate those nonessential assets and apply the proceeds to his/her outstanding debts. If the borrower liquidates the nonessential assets, or obtains a loan against the equity in such assets, and pays the Agency the NRV of the nonessential assets within 45 days of receiving exhibit E or F of this subpart, as appropriate, the payment will be subtracted from the FLP debt and then the servicing official will recalculate the debt restructuring without considering the NRV of the nonessential assets. If the borrower does not sell these assets, the servicing official will include their NRV in calculating the debt restructuring and take a lien on the assets at the time of closing the restructured loan.

(b) *Lien on certain assets.* Delinquent borrowers must pledge certain assets, essential and nonessential, unencumbered to the Agency as security at the time FLP loans are restructured, as follows:

(1) The best lien obtainable will be taken on all assets owned by the borrower. When the borrower is an entity, the best lien obtainable will be taken on all assets owned by the entity, and all assets owned by all members of the entity. Different lien positions on real estate are considered separate and identifiable collateral.

(2) Security will include, but is not limited to, the following: land, buildings, structures, fixtures, machinery, equipment, livestock, livestock products, growing crops, stored crops, inventory, supplies, accounts receivable, certain cash or special cash collateral accounts, marketable securities, certificates of ownership of precious metals, and cash surrender value of life insurance.

(3) Security will also include assignments of leases or leasehold interests having mortgageable value, revenues, royalties from mineral rights, patents and copyrights, and pledges of security by third parties.

(4) The exceptions set forth in § 1941.19(c) of subpart A of part 1941 of this chapter apply.

(5) These assets will be considered as additional security for the loans as well as any shared appreciation agreement. The value of the essential assets will not be included in the NRV calculation to determine restructuring. The Agency's lien will be taken only at the time of closing the restructured FLP loans.

16. Section 1951.911 is revised to read as follows:

§ 1951.911 Homestead protection.

(a) *General.* If the Agency has only chattel property as security, preservation servicing will not be offered. Borrowers who submitted a complete application prior to April 4, 1996 will be considered for leaseback/buyback in accordance with the previous CFR volume containing revisions as of January 1, 1996 and Agency procedures, (available in any county office.) Inventory property which is located within the boundaries of an Indian reservation of a Federally recognized Indian Tribe and the previous owner is a member of the Indian Tribe that has jurisdiction over that reservation should be handled in accordance with § 1955.66(d) of subpart A of part 1955 of this chapter.

(b) *Homestead protection.* Borrowers and former borrowers who had or have an FLP loan secured by the real property containing the dwelling owned by them and used as their principal residence may apply for homestead protection before or after the Agency acquires the property. Real property that is in inventory as of the effective date of the statute or is acquired in the future will be considered for homestead protection as set forth in this subpart.

(1) *Purpose.* The purpose of the Homestead Protection Program is to permit borrowers or former borrowers to retain their dwellings through a lease or purchase. Such lease or purchase could permit these individuals to have a home and providing an opportunity to continue to farm.

(2) *Notification and processing.* If a feasible plan for restructuring debt cannot be developed using Primary Loan Service programs, the borrower will be advised by the use of Exhibit K with Attachment 1 of this subpart that the Agency will continue with the processing of Preservation Service programs, if applicable. A borrower who desires homstead protection must request it in accordance with § 1951.907. A borrower who meets the eligibility requirements of paragraph (b)(3) of this section will be permitted to retain possession of the homestead, in accordance with paragraph (b)(2)(ii) of this section, before title is acquired or under a lease with an option to purchase after title is acquired.

(i) *Determining homestead protection property.* (A) The homestead protection property will include the borrower's principal residence and not more than 10 acres of adjoining land that is used to maintain the borrower's family and a reasonable number of farm service buildings located on land adjoining the residence which are useful to the occupants of the dwelling.

(B) The servicing official will review the proposed homestead protection property. If the servicing official does not agree with the proposed shape or size of the property, an alternate configuration will be negotiated with the borrower.

(C) If the borrower and the servicing official cannot agree on the proposed shape and size of the property, the servicing official will make the determination.

(D) When the size and shape of the property is agreed upon and the borrower has been found eligible, the servicing official will request a licensed surveyor to survey the property, have a legal description prepared, and mark the property lines with permanent type markers.

(E) Appraisals will be completed in accordance with paragraphs (b)(6) and (b)(7)(ii)(B) of this section.

(ii) *Processing homestead protection before the Agency acquires title.* (A) A borrower will be considered for homestead protection when it is determined that the Primary Loan Service programs cannot resolve the delinquency. To process an application, the borrower must indicate the buildings and land to be included in the request for homestead protection. If determined eligible for homestead protection, the borrower and the servicing official will enter into a Homestead Protection Program Agreement (Exhibit L of this subpart) to lease the property if and when the Agency acquires title. A copy of Form 1955–20, ''Lease of Real Property,'' will be attached to the agreement as an exhibit.

(B) Concurrently with the execution of the preacquisition Homestead Protection Program Agreement, the borrower will deliver a completed Form RD 1955–1 to the Agency. The Agreement is subject to the provisions of subpart A of part 1955 of this chapter. If the Agency acquires title during the processing of a preacquisition Homestead Protection Agreement, processing of the agreement will be terminated and the owner will be given homestead protection rights pursuant to paragraph (b)(2)(iii) of this section.

(C) The Agency's obligation to lease the dwelling to the borrower will be contingent on the Agency's prior compliance with all State and local laws, ordinances and regulations governing the subdivision of land. If the Agency cannot satisfy the conditions within 2 years from the date of the agreement, the agreement (and the Agency's obligation to lease with option to purchase) will terminate. If an agreement has been entered into, but title to the property has not been conveyed to the Agency (or acquisition has been determined not to be in its financial interest), the Agency will continue with acceleration and foreclosure of the property. It is not the intent of the 2-year term of the agreement to limit the Agency's ability to foreclose on the property, provided that all the terms have been met except that title has not been conveyed.

(iii) *Application for homestead protection when the Agency acquires title.* When the Agency acquires title to the farm property, the borrower will be sent Exhibit M of this subpart, by certified mail, return receipt requested, no later than the date of acquisition. The borrower must request homestead protection by notifying the servicing official in writing not later than 30 days after the date of acquisition and must provide the information set forth in § 1951.907(e) of this subpart and indicate the buildings and land to be included in the request.

(iv) *Lease with option.* A lease with an option to purchase will be entered into with an eligible borrower on Form 1955–20 after the Agency acquires title to the property. Form 1955–20 will be completed in accordance with § 1951.911 (b)(8) of this subpart.

(3) *Eligibility.* The servicing official will make the determination on eligibility. To qualify for homestead protection, the borrower must meet the following requirements:

(i) An applicant must be an individual who is or was personally liable for the Farm Loan Programs (FLP) loan that was secured in part by the Homestead Protection property, or, if a non-borrower pledged the property to secure the FLP loan, the owner of the property. In either case, the applicant must be or have been the owner of the Homestead Protection property. A member of an entity who is or was personally liable for a loan that is or was secured by the Homestead protection property is considered an owner for homestead protection purposes, so long as either the member of the entity or the entity itself held fee title to the property.

(ii) When more than one member of an entity was personally liable for an FLP loan, each such member who possessed and occupied a separate dwelling as his or her principal residence, on property that is or was security for the loan may apply separately for homestead protection of their individual dwellings;

(iii) The applicant and any spouse must have received, from the farming or ranching operations, gross farm income reasonably commensurate with the size and location of the farm and reasonably commensurate with local agricultural conditions (including natural and economic conditions) in at least 2 calendar years during the 6-year period preceding the calendar year in which the application is made. Farms used for comparison purposes must be of similar size, type of operation and locality. For the purposes of §§ 1951.911(b)(3) (iii) and (iv) of this subpart, income from farming or ranching operations will include rent paid by a lessee of agricultural land during any period in which the borrower, due to circumstances beyond his or her control, such as economic, natural disaster or health problems, was unable to actively farm that property. The borrower's records will be used in determining whether the gross farm income was reasonably commensurate with the farm size and location and local agricultural conditions. When applying for homestead protection, the borrower will give the servicing official at least 2 calendar years of records of planned and actual gross farm income for the 6-year period preceding the calendar year in which the application is made. If such records do not exist, they may be developed by the applicant

and servicing official from information relating to yields, expenses and prices found in the borrower's county office case file, agency records, or other reliable sources;

(iv) The applicant and any spouse must have received, from the farming or ranching operations, at least 60 percent of their gross annual income in at least 2 of the 6 calendar years preceding the calendar year in which the application is made;

(v) The applicant must have continuously occupied the homestead protection property during the 6-year period preceding the calendar year in which the application is made, unless it was necessary to leave for a period of time not to exceed 12 months during the 6-year period due to circumstances beyond the borrower's control, such as illness, employment, or conditions that made the dwelling uninhabitable; and

(vi) The applicant must have sufficient income to make rental payments for the term of the lease and the ability to maintain the property in good condition, and must agree to all the terms and conditions set forth in paragraph (b)(7) of this section and in Form 1955–20.

(4) *Transfer of homestead protection.* An applicant's right to request homestead protection and rights under the Agreement or lease entered into pursuant to this section are not transferable or assignable by the applicant or by operation of law, except that, in the case of death or incompetency of the applicant, such rights and agreements shall be transferable to the spouse upon agreement to comply with the terms and conditions of the lease.

(5) *Property requirements.* (i) The proposed homestead protection property tract must meet all requirements for the division into a separate legal lot as required by State and local laws. All environmental considerations required under subpart G of part 1940 of this chapter will be complied with.

(ii) Costs for a survey, legal description or other service needed to establish, appraise, define or describe the homestead protection property as a separate tract, will be paid for by the Agency. No repairs or improvements will be paid for by the Agency except as provided for in § 1955.64 (a) of subpart A of part 1955 of this chapter.

(iii) If necessary, the Agency will grant or retain for the benefit of adjoining property reasonable easements for ingress, egress, utilities, water rights, etc.

(6) *Appraisal.* The current market value of the homestead protection property shall be determined by an independent appraisal made within 6 months from the date of the borrower's application for homestead protection. The applicant will select an independent real estate appraiser from a list of appraisers approved by the servicing official. The cost of such an appraisal will be handled in accordance with paragraph (b)(5)(ii) of this section.

(7) *Terms of the lease and exercising the option.* (i) All leases will have an option to purchase. Any reference to a lease for homestead protection purposes will mean a lease with an option to purchase. The lease will be offered with an option to purchase on Form 1955–20 and will be for a period of not more than 5 years as requested by the applicant. A lease of less than 5 years may be extended, but not beyond 5 years from the date of the beginning of the term of the original lease.

(A) The amount of the rent will be based upon equivalent rents charged for similar residential properties in the area in which the dwelling is located.

(B) Lease payments will be retained by the Government.

(C) Failure to make lease payments as scheduled or to maintain the property in good condition shall constitute cause for the termination of all rights of the lessee to possession and occupancy of the dwelling and property under this section. If a lease default is not cured within 30 days of notice, the servicing official will notify the lessee in writing of the termination of the lease and option.

(D) Any interference by the lessee with the Government's efforts to lease or sell the remainder of farm inventory property shall constitute cause for the termination of all rights of the lessee to possession and occupancy of the dwelling and property including the right to exercise the option to purchase.

(ii) Exercising the option to purchase.

(A) The lessee may exercise the option in writing at any time prior to the expiration of the lease by delivering to the servicing official a signed, written statement notifying the Agency that the lessee is exercising the option to purchase the property. Failure to exercise the option within the lease period will end the lessee's rights under the option to purchase.

(B) When the lessee exercises the option to purchase the property, the purchase price will be the current market value of the property. That value will be determined by an appraisal in accordance with paragraph (b)(6) of this section providing the appraisal is not more than 1 year old. If the appraisal is more than 1 year old, the current market value will be determined by a new appraisal requested in accordance with paragraph (b)(6) of this section.

(C) At the time the lessee exercises the option, the lessee must notify the servicing official if he or she wants to purchase the property for cash or finance it through a credit sale from the Agency.

(D) If a credit sale is involved, the applicant must furnish the servicing official the information required by § 1951.907 (e) to assist in determining whether or not the applicant has adequate repayment ability.

(8) *Rates and terms for a credit sale.* Terms for a credit sale of homestead protection property when the lessee is exercising the option to purchase will be in accordance with subpart J of this part.

(9) *Closing.* A credit sale will be closed in accordance with subpart J of this part.

(10) *Conflict with State law.* In the event of a conflict between a borrower's homestead protection rights and any provisions of the law of any State relating to the right of a borrower to designate for separate sale or redeem part or all of the property securing a loan foreclosed on by a lender, such provision of State law shall prevail. A State supplement will be prepared as necessary to supplement paragraph (b) of this section.

(11) *Servicing homestead protection loans.* Homestead protection loans will be serviced as set forth in subpart J of this part.

§ 1951.914 [Amended]

17. Section 1951.914 is amended by removing paragraph (a)(5)(iii) and redesignating paragraphs (a)(5)(iv) through (a)(5)(vi) to (a)(5)(iii) through (a)(5)(v) respectively.

§§ 1951.917 and 1951.918 [Removed and reserved]

18. Sections 1951.917 and 1951.918 are removed and reserved.

19. Exhibit A is revised to read as follows:

Exhibit A—Notice of the Availability of Loan Servicing and Debt Settlement Programs for Delinquent Farm Borrowers

Dear (Borrower's Name):

This notice is to inform you that you are behind with your loan payments and to inform you of your options.

I. Loan Servicing Programs Available

Primary loan servicing programs are intended to adjust the debt so that you can continue farming and the Agency will receive a better recovery on the money it loaned you.

The Preservation loan servicing program (Homestead Protection) is intended to help

farmers who may lose their land to the Agency get their home back through a lease with an option to buy.

II. Application Information

Time Limits

You must notify the county office within 60 days of getting this notice if you want to be considered for these programs.

How to Apply

To apply, you must complete and return the required forms enclosed with this notice, including your signed Acknowledgment Of Notice Of Program Availability within the 60-day time limit. The county office will process your completed forms and let you know if you qualify.

Included With This Notice You Will Find:

(1) A summary of primary loan servicing programs options;

(2) A summary of the preservation loan servicing program;

(3) A summary of debt settlement programs;

(4) The forms you need to apply for services;

(5) Information on how to get copies of the Agency's regulations;

(6) A description of the National Appeals Division appeal process.

III. Foreclosure and Liquidation

What Happens if You Do Not Apply Within 60 Days?

The Agency will accelerate your loan if you continue to be delinquent or in nonmonetary default. Acceleration of your loan is very severe. This means the Agency will take legal action to collect all the money you owe them.

After acceleration, the Agency will start foreclosure proceedings. They will repossess or take legal action to take any real estate, personal property, crops, livestock, equipment, or any other assets in which the Agency has a security interest. The Agency will also stop allowing you to use your crop, livestock, and milk checks to pay living and operating expenses. The Agency will also take by administrative offset money which other federal agencies owe you.

Sincerely,

Attachment 1—Primary and Preservation Loan Servicing and Debt Settlement Programs Purpose

Purpose

These programs are to help you repay the loan and keep your farm property and settle your Farm Loan Programs loan debt. This notice tells you:

(1) How To get more information
(2) How to apply
(3) Your appeal rights if you apply and are turned down

How To Get More Information

Ask at any county office for copies of the rules describing these programs. These rules must be given to you within 10 days of when we receive your request.

Who Can Apply?

All ''farm loan programs borrowers'' who have one of the following loans:

Operating (OL)
Farm Ownership (FO)
Emergency (EM)
Economic Emergency (EE)
Soil and Water (SW)
Recreation (RL)
Rural Housing Loans made for farm service buildings (RHF)
Economic Opportunity (EO)

Borrowers that are current on their scheduled payments but are financially distressed through no fault of their own may be eligible for some assistance to restructure their debt.

You May Need Help in Applying

The legal requirements for these programs are very complicated. You may need help to understand them. You may want to ask an attorney to help you. If you cannot get an attorney, there are organizations that give free or low-cost advice to farmers. Ask your State Department of Agriculture or the USDA Extension Service what services are available to your state.

Note: Agency employees cannot recommend a particular attorney or organization.

I. Primary Loan Service Programs

(1) Loan Consolidation

Two or more of the same type of loans can be combined into one larger loan. For example, operating loans can only be joined with operating loans.

(2) Loan Rescheduling

The payment schedule can be altered to give you longer to repay loans secured by equipment, livestock, or crops. For example, the time for repayment of an operating-type loan can be extended up to 15 years from the date the loan is rescheduled. When a loan is rescheduled, the interest rate may be reduced.

(3) Loan Reamortization

The payment schedule can be changed to give you longer to repay loans secured by real estate. For example, a Farm Ownership loan payback period may be extended to 40 years from the date the original loan was signed. When a loan is reamortized, the interest rate may be reduced.

(4) Interest Rate Reduction

Regular Interest Rate

FSA has specific interest rates for each type of loan. These interest rates change quite often. They depend on what it costs the Government to borrow money. Each type of loan will have a regular rate.

Limited Resource Interest Rate

If you have an Operating Loan (OL), Soil and Water (SW) loan or a Farm Ownership (FO) loan, it may be possible for you to get a ''limited resource interest rate.'' The limited resource interest rate can be as low as 5 percent. It changes quite often and depends on what it cost the Government to borrow money.

Interest Rate for Loan Servicing

When loans are consolidated, rescheduled, or reamortized, the interest rate on the new loan will be either the interest rate on the original loan or the current regular rate of interest for that type of loan, whichever is less. The borrower may be able to get the limited resource interest rate on OL, SW, or FO loans.

For information about current interest rates, contact the FSA county office.

(5) Loan Deferral

Payments of principal and interest can be temporarily delayed for up to 5 years. You must show that you cannot pay essential living expenses or maintain your property and pay your debts. You must also show you will be able to pay at the end of the deferral period.

The interest rate on a deferred loan will be either the current rate of interest for loans of the same type or the original rate on the loan, whichever one is lower.

The interest that builds up during the deferral period will be added to the principal of the loan. You must pay this interest in yearly payments for the rest of the loan term.

Note: You can only get a loan deferral if the FSA determines options 1–4 will not work for you.

(6) Softwood Timber Program

Marginal land including highly erodible land and pasture can be planted in softwood timber. If you qualify, a debt of up to $1000 an acre can be deferred up to 45 years. Interest will be charged during the deferral period. The debt must be paid when the timber is sold.

(7) Conservation Contract Program

You may enter into a contract with the Secretary of Agriculture to protect highly erodible land, wetlands, or wildlife habitat located on your property that serves as security for your farm loan debt. In exchange for the contract, FSA will reduce your FSA debt. The amount of land left after the contract must be enough to continue your farming operation.

(8) Debt Writedown

This is not available to borrowers who are current in their loan payments or to borrowers who have had previous debt forgiveness on another direct loan.

Debt writedown means the FSA debt you owe is reduced. FSA can reduce both the principal and interest of your debt. Your debt can be reduced to the recovery value.

Recovery value. The recovery value is the fair market value of the collateral pledged as security for FSA loans minus all of the expenses such as sale costs, attorneys fees, management costs, taxes and payment of prior liens on the collateral that FSA would have to pay if it foreclosed on and sold the collateral. The fair market value of any collateral that is not in your possession and has not been released for sale by FSA in writing will also be used in determining recovery value.

Also considered, will be the fair market value of any other assets that you may own that are not essential for family living or for farm operation, and are not exempt from your judgment creditors or in a bankruptcy action, minus the value of any creditors' prior security interests and your selling costs. The

value of the collateral and any other assets must be decided by a qualified appraiser.

In order to get debt writedown, you must show that after the writedown, you will have up to 110 percent, but not less than 100 percent, of income available to pay all of your family living and farming operating expenses and scheduled debt payments. This means you must have a feasible plan of operation. FSA will not write down more of the debt than is necessary for you to show a feasible plan. You have the choice to select a smaller cash flow margin without a writedown. If you choose to do this, you will avoid taking your one time debt forgiveness as explained below.

The writedown is used only when the loan servicing programs listed in 1–7 above alone will not be enough for you to have a feasible plan. If you get writedown, some of the principal and interest on your loans will be written down in addition to changing the payback period, and possibly the interest rate, using 1–7 above.

You can receive a writedown if you have not previously received any form of debt forgiveness from FSA on any other direct farm loan. The maximum debt that can be written down on all loans is $300,000.

II. *Who Can Qualify for Primary Loan Service Programs*

To qualify you must prove that:

(1) You cannot repay your FSA debt due to circumstances beyond your control. If you have certain nonessential assets with a value high enough to bring your account current, then you are not eligible for Primary Loan Service Programs. These assets are only those that are not essential for necessary family living or for your farm operation. FSA cannot reduce or write off any of your debt that you could pay by selling any of these assets or borrowing against your equity in the assets.

You must have had less income than expected due to such things as:

(a) A natural disaster, weather, or insect problems;
(b) Family illness or injury;
(c) Loss or reduction of off-farm income;
(d) Disease in your livestock;
(e) Low commodity prices and high operating expenses in your local area; or
(f) Other circumstances beyond your control.

(2) You have acted in ''good faith'' to keep your agreements with FSA in that you have kept all written agreements with FSA including those for the use of proceeds and release of property used to secure the loan, and your file shows no fraud, waste, or conversion.

You must agree to give FSA a lien on certain other assets for additional security for the FSA debt. If you are offered restructuring and accept the offer, you must provide this lien at closing.

You must agree to meet, at your own cost, FSA's training requirements in production and financial management. The cost will be included in your farm plan as an operating expense. The training must be completed within 2 years from the date of restructuring. This requirement may be waived if you are able to demonstrate that you have adequate training in this area. To request a waiver of this training requirement, complete Form FmHA 1924–27, ''Request for Waiver of Borrower Training Requirements,'' and submit with your request for FSA servicing. This training requirement is not applicable if you have previously received a waiver or you have successfully completed the required FSA Borrower Training program.

Who Will Decide if You Qualify?

The FSA servicing official will decide if you qualify. The servicing official will decide whether you can pay as much or more on the loan as FSA would get if they foreclosed and sold the collateral for the loan plus the value of any nonessential assets. To do this, the servicing official must decide whether the total payments of principal and interest on your adjusted debt will be at least as much as the ''recovery value'' defined in part I above.

Can You Get Your Debts Written Down?

Only if FSA will get as much or more by writing down part of your debt than through foreclosure or sale of the collateral for the loan and any nonessential assets. You also must be delinquent on your FSA debt payments.

Conditions of the New Agreement if You Qualify

You must sign a shared appreciation agreement for 10 years. Under the terms of the agreement:

- You must repay a part of the sum written down.
- The amount you must repay depends on how much your real estate collateral increases in value.

During this 10 years, FSA will ask you to repay part of the debt written down if you do one of the following:

(1) Sell or convey the real estate
(2) Stop farming
(3) Pay off the entire debt

If you do not do one of these things during the 10 years, FSA will ask you to repay part of the debt written down at the end of the 10 year period.

FSA can only ask you to repay if the value of your real estate collateral goes up.

If either 1, 2, or 3 above occurs in the first four years of the agreement, FSA will ask you to pay 75 percent of the increase in value of the real estate. In the last 6 years, you will be asked to pay only 50 percent of the increase in value. FSA will not ask you to pay more than the amount of the debt written down.

Date To Begin Restructured Agreement

If you are found eligible, you will be informed of the date for an appointment so your debt can be restructured. You must notify FSA that you accept its offer to restructure your debt within 45 days of when you receive the offer.

III. Preservation Loan Servicing Program

Purpose

This program applies when the primary loan service programs cannot help you.

Homestead Protection. (Keeping your farm home.) You may lease your farm home, certain outbuildings and up to 10 acres of land. The lease time will be for up to 5 years. The lease will include an option for you to purchase the property you lease.

IV. Who Can Qualify for Homestead Protection?

(1) Your gross annual income from your farm or ranch must have been similar to other comparable operations in your area. This must be true for at least 2 years of the last 6 years.

(2) Sixty percent (60%) of your gross annual income in at least 2 of the last 6 years must have come from the farming operation.

(3) You must have lived in your homestead property for 6 years immediately before your application. If you had to leave for less than 12 months during the 6-year period and you had no control over the circumstances, you still may qualify.

(4) You must be the owner or former owner of the property.

(5) If FSA has already taken your property, you must apply within 30 days of the date FSA took your property.

How To Lease Your Dwelling

(1) You may lease your home and up to 10 acres if you pay FSA reasonable rent. The rent prices FSA charges you will be similar to comparable property in your area.

(2) You must maintain the property in good condition during the term of the lease.

(3) You may lease for up to 5 years.

(4) You cannot sublease your property.

(5) If you do not keep up your rental payments to FSA, FSA will force you to leave.

You can buy back your homestead property at current market value at any time during the lease. FSA may place an easement on your property to protect and restore any wetlands or converted wetlands. Current market value will be decided by an independent appraiser. The appraisal will be made within 6 months of your application for homestead protection. The appraised value of your property will reflect the value of the land after any placement of a wetland conservation easement.

You should be aware that any real property, located in special areas or having special characteristics, which comes into FSA's inventory, may have restrictions or easements placed on the property which prevent your use of all or a portion of the property, should you choose to lease or buy your former dwelling. These restrictions and encumbrances will be placed in leases and in deeds on properties containing wetlands, floodplains, endangered species, wild and scenic rivers, historic and cultural properties, coastal barriers, and highly erodible soils.

V. Debt Settlement Programs.

Purpose

These programs apply after it has been determined that primary loan service programs cannot help you. You may be eligible for both debt settlement and homestead protection. If you do not have FSA collateral you will need to apply for debt settlement only. Under these programs, the debt you owe FSA may be settled for less than the amount you owe. You may apply for debt settlement at any time by submitting an application for debt settlement on Form

FmHA 1956–1. These programs are subject to the discretion of the agency and are not a matter of entitlement or right.

Programs Available

(1) Compromise offer: A lump-sum payment of less than the total FSA debt owed.

(2) Adjustment offer: One or more payments of less than the total amount owed to FSA. Your payments can be spread out over a maximum of five years if FSA decides you will be able to make the payments as they become due.

(3) Cancellation: The final settlement of a debt without any payment. FSA must decide there is no FSA security or other asset from which FSA can collect. You must be unable to pay any part of the debt now or in the future.

Approval Requirements

If you sell your collateral, you must apply the proceeds from the sale to your FSA account before you can be considered for debt settlement. In the case of compromise and adjustment, however, you may keep your collateral if you are unable to pay your total FSA debt and pay FSA the present fair market value of your collateral along with any additional amount you are able to pay as determined by FSA. You will be allowed to retain a reasonable equity in essential nonsecurity property to continue your normal operations and meet minimum family living expenses. FSA will not finance a compromise or adjustment offer.

All debt settlements of FLP loans must be recommended by the County Committee with a finding that the statements on your application are true. The committee must certify that you do not have assets or income in addition to what you stated in your application. You must also have not previously received any form of debt forgiveness from FSA on any other direct farm loan. If you qualify, your application must also be approved by the FSA State Executive Director or the FSA Administrator depending on the amount of the debt to be settled.

VI. How to Apply for Primary and Preservation Loan Servicing Programs.

Application Forms and Information Needed

The forms set out below should be included with this notice. If they are not, you can obtain them from the FSA county office or as directed below.

(1) Attachment 2 or 4 of Exhibit A Response form to apply for loan services.

(2) FmHA 410–1 Application for FSA Services (The financial statement on this form must include information no more than 90 days old. The financial statement must be for all individuals and entities personally liable for the FSA debt.

(3) FmHA 431–2 Farm and Home Plan, or other acceptable plan of operation. The commodity prices to use for this plan of operation or Farm and Home Plan are included with the form. You may request the servicing official to assist you in completing your plans.

(4) FmHA 440–32 Request for Statement of Debts and Collateral. Complete the name and address of the creditor, account number, if applicable, and your name. All parties liable to the creditor must sign and date the forms. FSA will obtain the creditor information.

(5) FmHA 1910–5 Request for Verification of Employment. Complete employer's name and address, employee's name and address, social security number, sign and date. FSA will send the form to your employer to obtain the needed information.

(6) SCS–CPA–026 Highly Erodible Land and Wetland Conservation Determination (This form must be obtained from and completed by the Natural Resources Conservation Service office, if not already on file with FSA.)

(7) AD–1026 Highly Erodible Land Conservation (HELC) and Wetland Conservation (WC) Certification (You will be required to complete this form in the FSA office if the one you have on file does not reflect all the land you own and lease.)

(8) FmHA 1960–12 Financial and Production Farm Analysis Summary (Complete the backside of the form or other similar type worksheets to provide production and expense history for crops, livestock, livestock products, etc. for each of the five years immediately preceding the year of application or the years you have been farming, whichever is less and if not already in the FSA case file. You must be able to support this information with farm or income tax records.)

(9) Copies of income tax records and any supporting documents for the last five years immediately preceding the year of application if not already on file with the FSA county office. (If you have been farming for less than 5 years, submit the tax records for the tax years immediately preceding the year of application during which you farmed. If copies of tax records are not readily available, you can obtain copies from the Internal Revenue Service (IRS).)

(10) Map or aerial photo of your farm from FSA or Natural Resources Conservation Service if you are applying for the conservation contract program. (Identify on the map or photo the portion of the land and approximate number of acres to be considered in the contract.)

(11) RD 1956–1 Application for Settlement of Indebtedness (Complete this form only if you wish to apply for debt settlement.)

Time to Apply for Primary and Preservation Loan Servicing Programs

To apply, you must complete the appropriate forms and return them and the required information to the FSA county office within 60 days from the date you received this notice.

VII. What Happens When You Are Not Eligible for Primary Loan Service Programs?

If the servicing official decides you are not eligible, you may request a meeting with that official so the official can explain the decision.

If you do not agree with the FSA servicing official's decision, you can tell the official why. If you can make the necessary realistic changes to your Farm and Home Plan to show a feasible plan, you should show these changes to the servicing official.

Negotiation of the Appraisal

A negotiation of the appraisal is a process whereby the borrower objects to the FSA appraisal, obtains an independent appraisal at the borrower's own costs, pays one-half of the cost for a third appraisal, and the average of the two appraisals closest in value is taken as the final appraised value to be used in considering restructuring. In all cases of primary and preservation loan servicing where the borrower presents an independent appraisal which is conducted by a qualified appraiser and is within 5 percent of the value of the FSA appraisal, the borrower must choose one of these two appraisals for the servicing official to use to continue processing the request. Negotiation of appraisal may affect your right to appeal the appraisal.

You May Request Mediation of Other Loans

If you cannot show a feasible farm plan because you owe too much to other creditors and suppliers, FSA will help you try to get your other creditors to adjust your debts. This will be done by FSA asking for mediation if your State has a mediation program approved by the United States Department of Agriculture. If there is no State mediation program, FSA will try to set up a meeting with your other creditors and suppliers if it can be shown that a reduction in these debts can provide a feasible farm plan.

You Have the Right to Appeal

Appeal. Appeal rights will be provided to you after FSA has made a decision on your request for primary loan servicing. If you first request a meeting with the servicing official instead of an appeal, the time for requesting an appeal will be extended until you are advised of the results of your meeting. You will be provided with the address of USDA's National Appeals Division. Your request for an appeal must be postmarked no later than 30 days from the date you received the agency's adverse decision. If you disagree with FSA's determination that any determination is not appealable, you may request a determination of appealability from the National Appeals Division.

You May Buyout (Pay Off) Your Loan at the ''Current Market Value''

(1) *Current market Value.* If the analysis of your debt shows that you cannot ''cash flow'' even if your debt to FSA is reduced to the value of the collateral, the servicing official will advise you in writing that you can buyout the loan by paying the ''current market value'' minus any prior liens. The current market value is determined by a current appraisal completed by a qualified appraiser.

(2) *Limits.* You may receive a buyout if you have not previously received any form of debt forgiveness from FSA on any other direct farm loan. The maximum debt that can be written off with buyout is $300,000.

(3) *Eligibility.* To qualify you must prove that:

You cannot repay your FSA delinquent debt and the reason you cannot repay was due to circumstances beyond your control,

You have acted in good faith, and

The value of your restructured loan is less than the recovery value.

(4) *Time Limit.* If you want to buy out your farm loan debt at the current market value, you must pay FSA within 90 days of the date you receive the offer. If you appeal the servicing official's decision not to give you primary loan servicing, this 90 days will not start until the administrative appeal process ends.

(5) *Cash.* If you pay off the loan at the current market value, you must pay in cash. FSA will not make or guarantee a loan for this purpose.

Consideration for Preservation Loan Service Program

(Homestead Protection)

You will be considered for homestead protection if:

(1) You applied for primary loan servicing as required and did not qualify.

(2) You do not appeal your primary loan servicing denial, or do not win your appeal.

(3) You do not pay off the loan through buyout.

(4) You agree to give FSA title to your land at the time FSA signs the written homestead protection agreement with you. FSA will not accept title and will deny your preservation request if it is not in FSA's best financial interest to accept title. FSA will compute the costs of taking title including the cost of paying other creditors who have outstanding liens on the property. FSA will take title only if it can obtain a recovery on its cost. Any written agreement for preservation loan servicing will include the amount you must pay for rent, the number of years you can rent, and an option to purchase the property at the fair market value at the time you exercise the option to purchase.

(5) You must request Homestead Protection within 30 days of FSA obtaining title to the property.

Consideration for Debt Settlement Programs

If you wish to be considered for debt settlement, you will need to request and return a completed Form RD 1956–1. You may request debt settlement at any time. Usually, the most appropriate time for making this request is when FSA has determined that Primary Loan Servicing options will not provide the best net recovery to the Government and you are requesting preservation loan servicing. If you no longer have any security remaining for the outstanding FSA loans, you may want to request debt settlement instead of primary and preservation loan servicing.

VIII. What Happens When You Are Turned Down for Homestead Protection or Debt Settlement Programs?

If FSA decides that you cannot get homestead protection or debt settlement you can ask for

(1) A meeting with FSA to discuss the decision, or

(2) Appeal the determination.

The Right to a Meeting

The servicing official will send you a letter telling you why FSA decided not to give you homestead protection or debt settlement. That letter will give you 15 days to ask for a meeting with FSA.

The Right to an Appeal

Appeal rights will be provided to you after FSA has made a decision on your request for homestead protection. If you first request a meeting with the servicing official instead of an appeal, the time for requesting an appeal will be extended until you are advised of the results of your meeting. You will be provided with the address of USDA's National Appeals Division. Your request for an appeal must be postmarked no later than 30 days from the date you received the final determination.

On appeal, you can contest FSA's rental amount and its decision not to give you homestead protection. You can also contest FSA's decision to reject your debt settlement application.

IX. Acceleration and Foreclosure

If you do not appeal an adverse determination or if you are denied relief on appeal, FSA will accelerate your loan account and make demand for payment of the whole debt. FSA will stop allowing you to use any of your crop, livestock, and milk checks, on which they have a claim, to pay for living and operating expenses. FSA will repossess the collateral or start legal foreclosure or liquidation proceedings to take and sell the collateral, including your equipment, livestock, crops, and land. FSA will also take by administrative offset money which FSA and other Federal Government agencies owe you.

FSA may refrain from taking these actions if you agree to do one, or a combination of the following actions, within an agreed upon time, with FSA's approval:

(1) Sell all the collateral for the loan at market value.

(2) Convey (legally transfer) the collateral to FSA.

(3) Apply to transfer the collateral to someone else and have that person assume all or part of the FSA debt. (This is called transfer and assumption.)

If any of these options result in payment of less than you owe, you may apply or reapply for debt settlement. You may apply or reapply for homestead protection even if you applied before and were not accepted. However, applications for homestead protection or debt settlement filed after the 60-day time period provided in this notice will not delay acceleration, offset, and foreclosure.

Attachment 2—Acknowledgment of Notice of Program Availability

I have been given a notice explaining the primary and preservation loan service and debt settlement programs.

The date on the notice was

_____.

This notice explained that FSA programs are available to help me keep my property or settle my debt with FSA.

I ask FSA to consider me for all of these programs.

I understand that I will be notified of my rights to appeal after FSA decides on my request.

Signature _____

Date _____

Attachment 3—Notice to Borrowers With Non-Monetary Defaults, Non-Monetary Defaults and Delinquency, or That a Prior Lienholder or Junior Lienholder is Foreclosing

Dear

FSA has reviewed your loan account. Our record shows:

[ ] You are now $_____ behind on your payments. This is a violation of your loan agreement.

[ ] You have disposed of some of your property used to secure your loan. You did not get written approval for this. This property is

_____

(Describe property.)

[ ] You have stopped farming or ranching. This is a violation of your loan agreement.

[ ] A foreclosure action has been filed against you by _____. This is a violation of your loan agreement.

[ ] You have _____

(Insert reasons for proposed action.)

FSA Will Accelerate Your Loans

FSA will take legal action to collect the money you owe. They will foreclose on real estate and repossess equipment and other property used to secure your loans. They will also stop the release of money from the sale of crops or other property. They will take by administrative offset money you are owed by other Federal agencies.

Steps You Can Take Before FSA Accelerates Your Loans

You can apply for the programs described in Attachment 1. These are called Primary and Preservation Loan Service and Debt Settlement Programs. You can also ask for a meeting. At this meeting you can explain why you think FSA's records, as indicated on this Notice, are wrong. You can also suggest things you can do to correct these problems, so as to avoid acceleration and foreclosure. You can request loan servicing, debt settlement and a meeting at the same time. For example, if this Notice states that you are delinquent, and also have disposed of property without FSA's written consent, you can request servicing to deal with the delinquency problem and request a meeting on the question of unauthorized disposition of property. Please read the section on debt settlement programs for guidance in requesting and receiving consideration of a request for debt settlement.

Forms Attached to This Notice

You will find:

(1) A summary of all primary loan service programs;

(2) A summary of the preservation loan servicing program;

(3) A summary of all debt settlement programs;

(4) Copies of the forms needed to apply; and

(5) Advice on how to get copies of FSA regulations.

Purpose of Primary Service Programs

These loan service programs are to help you repay the loan and keep your farm property.

Purpose of the Preservation Loan Service Program

This program is intended to help farmers who may lose their land to FSA to get their home back, either by purchase or through a lease with an option to purchase.

Purpose of Debt Settlement Programs

These programs apply after it has been determined that primary loan service programs cannot help you. You may be eligible for both debt settlement and preservation loan service programs. If you no longer have FSA collateral you will need to apply for debt settlement only. Under these programs, the debt you owe FSA may be settled for less than the amount you owe. You may apply for debt settlement at any time by requesting and submitting an application for debt settlement on Form RD 1956–1.

How to Apply for Loan Servicing

Complete Attachment 4 and the appropriate forms included with this notice.

You must return these within 60 days of receiving this notice.

Right to a Meeting

You have the right to meet with your FSA servicing official before they decide to accelerate your loan. You must check the box on Attachment 4 saying you want a meeting. (Attachment 4 is the ''Response to Notice of Intent to Accelerate and Notice of Borrower Rights.'')

How to Ask for a Meeting

You must check the box on Attachment 4 asking for a meeting within 15 days from the date of this notice. Return it to your county office. Do this as soon as possible. It is wise to call also to set up the meeting.

The Right to Appeal

- You can ask for an administrative appeal even if the meeting does not resolve your problems.
- You can ask for an appeal even if you do not have a meeting.
- You have the right to appeal even if you do not want to apply for loan servicing programs or debt settlement.

How to Ask for an Appeal

Your request for appeal must be in writing and sent directly to the National Appeals Division, (NAD), <NAD Area Director's address>. Your letter must describe FSA's decision and why you believe the decision was not correct. In order for this decision to be changed, you will have to show why the decision should be reversed. Mail a copy of your request to the FSA county office. Your request for appeal must be postmarked no later than 30 days from the date you receive this notice.

Note: If you do not check the box on the Attachment 4 to ask for primary and preservation loan service programs, you will not be considered for those programs.

If you do not ask for a meeting to try and resolve the issues, you will not get another chance later.

The Right Not To Be Discriminated Against

Federal law does not allow discrimination of any kind. You cannot be denied a loan because of your race, color, religion, national origin, sex, marital status, handicap, or age (if you can legally sign a contract). You cannot be denied a loan because all or part of your income is from a public assistance program. If you believe that you have been discriminated against for any of these reasons, you can write the Secretary of Agriculture, Washington, D.C. 20250.

You cannot be denied a loan because you exercised your rights under the Consumer Credit Protection Act. You must have exercised these rights in good faith. The Federal Agency responsible for seeing this law is obeyed is the Federal Trade Commission, Washington, DC 20580.

Sincerely,

Attachment 4—Response to Notice Informing Me of FSA's Intent To Accelerate My Loan

Notice of My Rights

TO: Farm Service Agency

FROM: _____

(Please print your name and address.)

I have read the notice informing me of FSA's intent to accelerate my loan which I received with this form.

I want to: (Check one or more of the following boxes).

[ ] 1. Request a meeting with the FSA servicing official.

My phone number is _____.

I must return this form in 15 days. I understand I do not lose my right to appeal by asking for a meeting.

[ ] 2. Be considered for all primary and preservation loan service and debt settlement programs. I must return this form along with all applicable forms in 60 days.

I understand that if I want to appeal FSA's decision to accelerate my loan, I must send a letter requesting an appeal to the National Appeals Division. My letter must describe FSA's decision and why I believe the decision was not correct. I should also send the FSA county office a copy of my appeal request. I understand that I will be contacted by the National Appeals Division to set up the appeal hearing date and give me more information. My request for an appeal must be postmarked no later than 30 days from the date I received this notice.

Date: _____

Signature: _____

(Sign here.)

Attachment 5—Notice of Intent To Accelerate or To Continue Acceleration and Notice of Borrowers' Rights

Name and Address

Dear (Borrower's Name):

You are not eligible for debt restructuring.

I. [ ] FSA has reviewed your application for primary loan servicing (debt restructuring) and based upon the information available, you are not eligible.

Your Farm and Home Plan does not show you can pay all your family living expenses, farm operating expenses, and scheduled debt repayments even with FSA help.

The attached computer printout shows that in order to develop a feasible plan and receive primary loan servicing, you would need to increase your cash available to pay your debts by $_____.

II. [ ] FSA has reviewed your application and your case file. You have broken your agreement with FSA. Your Farm and Home Plans shows you can pay all of your family living expenses, farm operating expenses, and scheduled debt repayments if FSA uses primary loan servicing, softwood timber, and conservation contract programs to restructure your loans.

You have broken loan agreements with FSA in the following way:

[ ] You are $_____ behind in your scheduled loan payments.

[ ] You have sold or otherwise disposed of property you used to secure the FSA loan without proper approval from FSA. This property is _____

(Describe property.)

[ ] You no longer are farming or ranching.

[ ] You have _____

III. [ ] You have already received your lifetime limit of at least one form of debt forgiveness on other direct loans.

IV. FSA Intends to Foreclose

FSA will accelerate your loan because you are not eligible for primary loan servicing.

FSA will take legal action to collect the money you owe.

FSA may:

(1) Repossess and sell your equipment, crops, livestock, livestock products, and other personal property used to secure your FSA loan;

(2) Foreclose and sell your real estate mortgaged to FSA;

(3) Stop any release of money from the sale of crops, livestock, livestock products, or other property you need to live and operate your farm;

(4) Take by administrative offset any money you are owed by Federal agencies;

(5) File lawsuits to collect money you owe to FSA.

V. WHAT YOU CAN DO TO STOP FORECLOSURE

Before FSA can take action against you, you can:

(1) *Request a meeting with the FSA servicing official.*

If you disagree with FSA's decision that you broke your loan agreement or the decision not to give you debt restructuring, you should request a meeting with the FSA servicing official. The servicing official can explain the FSA decision. You can also present changes in your Farm and Home Plan which may show that you can make the amount of payment listed above in Section I.

To ask for this meeting, check the box #1 on the Response Form: (Attachment 6).

Time limit: You must return the ''Response Form'' to the county FSA office within 15 days from the date you get this letter. You should also call the county office to set up the meeting.

(2) *Appeal.*

You may appeal FSA's decision. On appeal, you may challenge the ways FSA says you broke your loan agreement. You may also challenge FSA's decision that you cannot present a feasible Farm and Home Plan for primary loan servicing if your notice states FSA believes you cannot present a feasible plan.

You may also ask for an independent appraisal of your property used to secure the FSA loan. This independent appraisal may be important if you think FSA has put too high or too low a value on your property when it considered you for primary loan servicing. You will have to pay for this appraisal. FSA will give you three names of appraisers to choose from. Check box #2 on the ''Response Form'' if you want the independent appraisal.

If you request a meeting with the FSA servicing official, you will be given another chance to appeal after that meeting. If you do not want to request the meeting but do want to appeal, you must send a letter requesting appeal directly to the National Appeals Division, (NAD), <NAD Area Director's address>. Your letter must describe FSA's decision and why you believe the decision was not correct. In order for this decision to be changed, you will have to show why the decision should be reversed. Mail a copy of your request to the FSA county office. Your request for appeal must be postmarked no later than 30 days from the date you receive this notice.

If you want to request a meeting and appeal at the same time, you must request the meeting on the ''Response Form'' and appeal in writing to NAD.

(3) *Buy Out the Loan at the Current Market Value.*

You have this option if you meet the eligibility requirements and the recovery value is greater than the value of the restructured loan. The recovery value is $_____. The restructured loan value is $_____.

You [may] or [may not] buy out your FSA loans at the current market value of the property securing the loan, minus prior liens, in the amount of $_____. (This amount could change if the prior lien indebtedness changes before the buyout date.)

Note: The attached computer printout summarizes FSA's calculations.

If you are eligible and pay the buyout amount, FSA will write off the rest of your debt.

Time Limit. If you are eligible and want to buy out your FSA debt, you must pay FSA the above amount within 45 days from the date you received this letter. You must pay FSA in cash, legal money order, or certified check.

If you appeal FSA's adverse decision, the 45-day period to buy out will not start until all of the appeals are completed. Check box #3 on the ''Response Form'' if you want to buy out.

(4) Consideration for Homestead Protection

After all appeals are concluded, and your time to buy out, if eligible, has expired, FSA will automatically consider you for Homestead protection if your home is mortgaged to FSA. [You applied for this program when you applied for primary loan servicing (debt restructuring).] FSA will notify you that it will be considering you for this program and will request some additional information when the time comes to consider you.

VI. What Happens If You Do Not Cure Your Default or Buyout?

If you do not cure your default or buyout, FSA will accelerate or continue with acceleration of your FSA debts. This is a very severe action. FSA will take any of the actions listed above to collect on your debt.

The Right Not to Be Discriminated Against

Federal law does not allow discrimination of any kind. You cannot be denied a loan because of your race, color, religion, national origin, sex, marital status, handicap, or age (if you can legally sign a contract.) You cannot be denied a loan because all or part of your income is from a public assistance program. If you believe you have been discriminated against for any of these reasons, you can write the Secretary of Agriculture, Washington, DC 20250.

You cannot be denied a loan because you exercised your rights under the Consumer Credit Protection Act. You must have exercised these rights in good faith. The Federal Agency responsible for seeing that this law is obeyed is the Federal Trade Commission, Washington, DC 20580.

Sincerely,

Attachment 5–A—Notice of Intent To Accelerate or To Continue Acceleration and Notice of Borrowers' Rights

(To Be Used for Applications Submitted On or After November 28, 1990)

Name and Address

Dear (Borrower's Name):

You are not eligible for debt restructuring.

I. [ ] FSA has reviewed your application for primary loan servicing (debt restructuring) and based upon the information available, you are not eligible.

Your Farm and Home Plan does not show you can pay all your family living expenses, farm operating expenses, and scheduled debt repayments even with FSA help.

The attached computer printout shows that in order to develop a feasible plan and receive primary loan servicing, you would need to increase your cash available to pay your debts by $_____.

II. [ ] FSA has reviewed your application and your case file. Your Farm and Home Plans shows you can pay all of your family living expenses, farm operating expenses, and scheduled debt repayments if FSA uses primary loan servicing, softwood timber, and conservation contract programs to restructure your loans.

But you have not acted in good faith.

You have broken loan agreements with FSA in the following way:

[ ] You are $_____behind in your scheduled loan payments.

[ ] You have sold or otherwise disposed of property you used to secure the FSA loan without proper approval from FSA.

This property is _____

_____

_____

(Describe property.)

[ ] You no longer are farming or ranching.

[ ] You have _____

_____

III. [ ] FSA has reviewed your application and case file. You have sufficient nonessential assets to bring your FSA account current. The net recovery value (NRV) of the nonessential assets is $_____. Your nonessential assets and their NRVs are as follows:

Nonessential Assets _____

_____

_____

NRVs _____

_____

_____

The NRV is the current appraised market value minus any prior liens and any costs of sale such as taxes due, commissions and advertising costs.

The amount needed to bring your FSA account current is $_____.

If you intend to sell the nonessential assets or borrow against their value to obtain the money to pay FSA current, you must do so immediately so that you can pay FSA current within 90 days from the date you receive this letter.

If you do not pay FSA current within 90 days or appeal this adverse decision (see part VI of this notice), FSA will accelerate your account (see part V). If you appeal the decision, the 90-day period to pay FSA current will not start until all the appeals are completed. You must check the appropriate block on the response form and return it to FSA within the specified time limit. Since FSA believes you have sufficient nonessential assets to bring your FSA account current, you are not now eligible for buyout (option 3 on Attachment 6–A). If you disagree, see part VI for an explanation of your rights.

IV. [ ] You have already received your lifetime limit of at least one form of debt forgiveness for which you are entitled.

[ ] Your writedown or writeoff of debt exceeded $300,000.

V. FSA Intends to Foreclose

FSA will accelerate your loan because you are not eligible for primary loan servicing.

FSA will take legal action to collect the money you owe.

FSA may:

(1) Repossess and sell your equipment, crops, livestock, livestock products, and other personal property used to secure your FSA loan;

(2) Foreclose and sell your real estate mortgaged to FSA. This could include your dwelling, if it was used to secure your farm loan;

(3) Stop any release of money from the sale of crops, livestock, livestock products, or other property you need to live and operate your farm;

(4) Take by administrative offset any money you are owed by Federal agencies;

(5) File lawsuits to collect money you owe to FSA.

VI. What You Can Do To Stop Foreclosure

Before FSA can take action against you, you can:

(1) Pay your FSA account current.

(2) Request a meeting with the FSA servicing official.

If you disagree with FSA's decision that you broke your loan agreement or the decision not to give you debt restructuring, you should request a meeting with the FSA servicing official. The servicing official can explain the FSA decision. You can also present changes in your Farm and Home Plan which may show that you can make the amount of payment listed above in section I.

To ask for this meeting, check the box #1 on the Response Form: (Attachment 6–A).

Time limit: You must return the ''Response Form'' to the county FSA office within 15 days from the date you get this letter. You should also call the county office to set up the meeting.

(3) Appeal.

You may appeal FSA's decision. On appeal, you may challenge the ways FSA says you broke your loan agreement. You may challenge FSA's decision that you cannot present a feasible Farm and Home Plan for primary loan servicing if your notice states FSA believes you cannot present a feasible plan. You may challenge FSA's decision that you are ineligible for debt restructuring because you have already received a writedown, buyout, or other form of debt forgiveness from FSA on another direct farm loan.

If you did not previously negotiate your appraisal, you may ask for an independent appraisal of your property including any nonessential assets that FSA says you own. This independent appraisal may be important if you think FSA has put too high or too low a value on your property. You will have to pay for this appraisal. The FSA servicing official will give you a list of three appraisers to choose from. Check box #2 on the ''Response Form'' if you want the independent appraisal. If the FSA appraisal contains mathematical or property description errors, you and the servicing official can make the necessary corrections if you both agree to such changes.

If you submit an independent appraisal and it is within five percent of the value of the FSA appraisal, you must select which of the two appraisals you want FSA to use for your request. This will be the final appraisal. It cannot be appealed.

If you request a meeting with the FSA servicing official, you will be given a chance to appeal after that meeting. If you do not want to request the meeting but do want to appeal, you must send a letter requesting appeal directly to the National Appeals Division, <NAD Area Director's address>. Your letter must describe FSA's decision and why you believe the decision was not correct. In order for this decision to be changed, you will have to show why the decision should be reversed. A copy of your request should be sent to the FSA county office. Your request for an appeal must be postmarked no later than 30 days from the date you received this notice.

If you want to request a meeting and appeal at the same time, you must request the meeting on the ''Response Form'' and appeal in writing to NAD.

(4) Buy Out the Loan at the Current Market Value.

You have this option if the recovery value is greater than the value of the restructured loan, you cannot repay your FSA debt due to circumstances beyond your control, and you have acted in good faith and tried to keep your loan agreements with FSA. The recovery value in this case is $_____. The restructured loan value is $_____.

In addition, buyout is subject to certain lifetime limitations regarding the maximum amount and number of benefits that can be received. A further explanation of these limits can be found in the Primary and Preservation Loan Service and Debt Settlement Programs Purpose notice which was sent to you earlier.

You [may] or [may not] buy out your FSA debt at the current market value of the property securing the loan and any nonessential assets, minus prior liens, in the amount of $_____. (This amount could change if the prior lien indebtedness changes before the buyout date.)

Note: The attached computer printout summarizes FSA's calculations.

If you are eligible and pay the buyout amount, FSA will write off the rest of your debt up to $300,000.

Time Limit. If you are eligible and want to buy out your FSA debt, you must pay FSA the above amount within 90 days from the date you received this letter. You must pay FSA in cash, legal money order, or certified check.

If you appeal FSA's adverse decision, the 90-day period to buy out will not start until all of the appeals are completed. Check box #3 on the ''Response Form'' if you want to buy out.

(5) Consideration for Homestead Protection and Debt Settlement.

After all appeals are concluded and your time to buyout, if eligible, has expired, FSA will automatically consider you for Homestead protection if your home is mortgaged to FSA. [You applied for this program when you applied for primary loan servicing (debt restructuring).] FSA will notify you that it will be considering you for this program and will request some additional information when the time comes to consider you. If you applied for Debt Settlement by returning Form FmHA 1956–1, will also consider you for this option at this time. If you did not apply for Debt Settlement before, you can apply now. Copies of Form FmHA 1956–1 are available at your FSA County Office.

VII. WHAT HAPPENS IF YOU DO NOT CURE THE DEFAULT OR BUYOUT?

If you do not cure the default or buyout, or if you do not respond to this letter by completing and returning the enclosed Attachment 6–A, FSA will accelerate or continue with acceleration of your FSA debts. This is a very severe action. FSA will take any of the actions listed in section V above to collect on your debt.

The Right Not To Be Discriminated Against

Federal law does not allow discrimination of any kind. You cannot be denied a loan because of your race, color, religion, national origin, sex, marital status, handicap, or age (if you can legally sign a contract.) You cannot be denied a loan because all or part of your income is from a public assistance program. If you believe you have been discriminated against for any of these reasons, you can write to the Secretary of Agriculture, Washington, D.C. 20250.

You cannot be denied a loan because you exercised your rights under the Consumer Credit Protection Act. You must have exercised these rights in good faith. The Federal Agency responsible for seeing this law is obeyed is the Federal Trade Commission, Washington, DC 20580.

Sincerely,

Attachment 6—Response to Notice Informing Me of FSA'S Intent To Accelerate or Continue With Acceleration and Notice of My Rights

TO: Farm Service Agency

FROM: _____

(Please print your name and address.)

I have read the notice informing me of FSA's intent to accelerate or continue with acceleration of my loan which I received with this response form.

I want to:

[Check appropriate box or boxes.]

[ ] (1) Request a meeting with an FSA servicing official.

My current telephone number is _____.

I understand that I do not lose my appeal rights by asking for this meeting.

[ ] (2) Request an independent appraisal of my property that secures the FSA loans.

I understand that I must pay for this appraisal. I understand that the FSA servicing official will give me the names of three appraisers, from which I must choose one.

[ ] (3) Buy out my loan at the current market value.

I understand that I must pay FSA _____ in cash, certified check, or legal money order. I understand I should contact the servicing official when I am ready to pay this amount as it may be different if my prior lien indebtedness changes before the buyout date. I understand that I must pay FSA within 45 days of the date I received this letter, or if I appeal, I must pay within 45 days from the adverse decision on appeal. I understand that if I pay this amount FSA will write off the rest of my debt.

I understand that if I want to appeal FSA's decision to accelerate my loan, I must send a letter requesting an appeal to the National Appeals Division. My letter must describe FSA's decision and why I believe the decision was not correct. I should also send the FSA county office a copy of my appeal request. I understand that I will be contacted by the National Appeals Division to set up the appeal hearing date and give me more information. My request for an appeal must be postmarked no later than 30 days from the date I received this notice.

Borrower's signature _____

Date _____

Attachment 6–A— Response to Notice Informing Me of FSA'S Intent To Accelerate or Continue With Acceleration and Notice of My Rights

TO: Farm Service Agency

FROM: _____

(Please print your name and address.)

I have read the notice informing me of FSA's intent to accelerate or continue with acceleration of my loan which I received with this response form.

I want to:

[Check appropriate box or boxes.]

[ ] (1) Request a meeting with an FSA servicing official.

I must return this ''Response Form'' within 15 days to request a meeting.

My current telephone number is _____.

I understand that I do not lose my appeal rights by asking for this meeting.

[ ] (2) Request an independent appraisal of my property including any nonessential assets.

I must return this ''Response Form'' within 30 days to request an independent appraisal.

I understand that I must pay for this appraisal. I understand that the FSA servicing official will give me names of three appraisers, from which I must choose one if I am also requesting an appeal.

[ ] (3) Buy out my loans at the current market value.

I understand that I must pay FSA $_____ in cash, certified check, or legal money order. I understand I should contact the servicing official when I am ready to pay this amount as it may be different if my prior lien indebtedness changes before the buyout date. I understand that I must pay FSA within 90 days of the date I received this letter, or if I appeal the FSA decision, I must pay within 90 days from the end of the appeal of the FSA decision.

[ ] (4) Pay my FSA account current.

I understand that I must pay FSA $_____ to pay my account current. I will pay this amount to FSA within 90 days of the date I received this letter, or if I appeal the FSA decision, I will pay within 90 days from the end of the appeal process on the FSA decision. I understand that when I pay this amount FSA will continue with my account.

I understand that if I want to appeal FSA's decision to accelerate my loan, I must send a letter requesting an appeal to the National Appeals Division. My letter must describe FSA's decision and why I believe the decision was not correct. I should also send the FSA county office a copy of my appeal request. I understand that I will be contacted by the National Appeals Division to set up the appeal hearing date and give me more information. My request for an appeal must be postmarked no later than 30 days from the date I received this notice.

Borrower's signature _____

Date _____

Attachments 7 and 8—Obsolete

Attachment 9—Notification of Intent To Accelerate or Continue Acceleration of Loans and Notice of Your Rights

Name and Address

Date

Dear (Borrower's Name):

FSA will accelerate your loan because you have not asked or have not accepted the offer for primary loan service programs.

You can:

(1) Ask for meeting with your FSA servicing official.

(2) Appeal FSA's decision.

(3) Ask to voluntarily convey to FSA the property used to secure your loan and ask to be released from your debt.

(4) Ask to keep your home if the FSA acquires ownership of it.

You are behind with your payments to FSA, and a review of your account shows:

[ ] You are _____ behind in your FSA loan payments.

This is a violation of your loan agreement.

[ ] You have sold or otherwise disposed of property used to secure your FSA loan. You did not get written approval for this. The property is _____

_____

(Describe property.)

[ ] You are no longer farming or ranching.

This is a violation of your loan agreement.

[ ] You have _____

_____

(Insert reason for proposed action.)

FSA Will Accelerate Your Loans

FSA will take legal action to collect the money you owe. They will foreclose on real estate and other property used to secure your loans. They may also stop the release of money from the sale of crops or other property. They will take by administrative offset any money you are owed by other Federal agencies.

Steps You Can Take Before FSA Accelerates or Continues Acceleration of Your Loans

(1) Ask for a meeting. You can ask to meet with your FSA servicing official before they decide to accelerate or continue acceleration of your loan. You must check the box on Attachment 10 saying you want a meeting. [Attachment 10 is the ''Response to Notice of Intent to Accelerate or Continue Acceleration of My Loan.'']

How Soon Must I Ask for a Meeting? You must ask for a meeting within 15 days from the date of this notice. Check the box on Attachment 10. Return it to your county office. Do this as soon as possible.

(2) Appeal. You can ask for an administrative appeal. On appeal, you can contest FSA's decision to accelerate or continue acceleration of your loan. You can ask for an independent appraisal of your land. You will have to pay for this appraisal. FSA will give you three names of approved appraisers to choose from. Check box 3 if you want an independent appraisal.

You can ask for an administrative appeal, even if you have asked for a meeting and your problems were not resolved at that meeting. However, you only have the opportunity to appeal an issue once. For example, if you previously appealed or had the opportunity to appeal a favorable debt restructuring offer and were not successful on appeal, or did not appeal within the time alloted, you cannot appeal this offer again. You can ask for an appeal even if you do not have a meeting.

How to Ask for an Appeal. Your request for appeal must be in writing and sent directly to the National Appeals Division, (NAD), <NAD Area Director's address>. Your letter must describe FSA's decision and why you believe the decision was not correct. In order for this decision to be changed, you will have to show why the decision should be reversed. Mail a copy of your request to the FSA county office. Your request for appeal must be postmarked no later than 30 days from the date you receive this notice.

What Happens if You Do Not Respond? If you do not respond to this notice by filling out Attachment 10, or requesting an appeal, FSA will accelerate or continue acceleration of any loans. This means they will take legal action to collect the unpaid loan, including foreclosure as described above.

Note: Foreclosure means you lose the title to your land. But you can still apply for homestead protection to keep possession of your house. [See Exhibit A, Attachment 1 sent to you on _____. If you did not get these forms, contact your county office within 15 days of this notice.]

The Right Not to Be Discriminated Against

Federal law does not allow discrimination of any kind. You cannot be denied a loan because of your race, color, religion, national origin, sex, marital status, handicap, or age (if you can legally sign a contract). You cannot be denied a loan because all or a part of your income is from a public assistance program. If you believe you have been discriminated against for any of these reasons, you can write to the Secretary of Agriculture, Washington, D.C. 20250.

You cannot be denied a loan because you exercised your rights under the Consumer Credit Protection Act. You must have exercised these rights in good faith. The Federal Agency responsible for seeing this law is obeyed is the Federal Trade Commission, Washington, DC 20580.

Sincerely,

Attachment 9–A—Notification of Intent To Accelerate or Continue Acceleration of Loans and Notice of your Rights

(To Be Used for Borrowers Receiving Notices on or After November 28,1990)

Name and Address

Date

Dear (Borrower's Name):

FSA will accelerate your loan because you have not asked or have not accepted the offer for primary loan service programs.

You can:

(1) Ask for meeting with your FSA servicing official.

(2) Appeal FSA's decision.

(3) Ask to voluntarily sign over to FSA the property used to secure your loan and ask to be released from your debt.

(4) Ask to keep your home if the FSA acquires ownership of it.

You are behind with your payments to FSA, and a review of your account shows:

[ ] You are $_____ behind in your FSA loan payments.

This is a violation of your loan agreement.

[ ] You have sold or otherwise disposed of property used to secure your FSA loan. You did not get written approval for this. The property is _____

_____

(Describe property.)

[ ] You are no longer farming or ranching.

This is a violation of your loan agreement.

[ ] You have _____

_____

(Insert reason for proposed action.)

FSA Will Accelerate Your Loans

FSA will take legal action to collect the money you owe. They will foreclose on real estate and other property used to secure your loans. They may also stop the release of money from the sale of crops or other property. They will take by administrative offset any money you are owed by other Federal agencies.

Steps You Can Take Before FSA Accelerates or Continues Acceleration of Your Loans

(1) Ask for a meeting. You can ask to meet with your FSA servicing official before they decide to accelerate or continue acceleration of your loan. You must check the box on Attachment 10–A saying you want a meeting. [Attachment 10–A is the ''Response to Notice of Intent to Accelerate or Continue Acceleration of My Loan.'']

How Soon Must I Ask for a Meeting? You must ask for a meeting within 15 days from the date of this notice. Check the box on Attachment 10–A. Return it to your county office. Do this as soon as possible.

(2) Appeal. You can ask for an administrative appeal. On appeal, you can contest FSA's decision to accelerate or continue acceleration of your loan. You can ask for an administrative appeal, even if you have asked for a meeting and your problems were not resolved at that meeting. However, you only have the opportunity to appeal an issue once. For example, if you previously appealed or had the opportunity to appeal a favorable debt restructuring offer and were not successful on appeal, or did not appeal within the time alloted, you cannot appeal this offer again. You can ask for an appeal even if you do not have a meeting.

How to Ask for an Appeal. Your request for appeal must be in writing and sent directly to the National Appeals Division, (NAD), <NAD Area Director's address>. Your letter must describe FSA's decision and why you believe the decision was not correct. In order for this decision to be changed, you will have to show why the decision should be reversed. Mail a copy of your request to the FSA county office. Your request for appeal must be postmarked no later than 30 days from the date you receive this notice.

What Happens if You Do Not Respond? If you do not respond to this notice by filling out Attachment 10–A, or request an appeal, FSA will accelerate or continue acceleration of any loans. This means they will take legal action to collect the unpaid loan, including foreclosure as described above.

Note: Foreclosure means you lose the title to your land. But you can still apply for homestead protection to keep possession of your house. [See Exhibit A, Attachment 1 sent to you on _____. If you did not get these forms, contact your county office within 15 days of this notice.]

The Right Not To Be Discriminated Against

Federal law does not allow discrimination of any kind. You cannot be denied a loan because of your race, color, religion, national origin, sex, marital status, handicap, or age (if you can legally sign a contract). You cannot be denied a loan because all or a part of your income is from a public assistance program. If you believe you have been discriminated against for any of these reasons, you should write to the Secretary of Agriculture, Washington, DC 20250.

You cannot be denied a loan because you exercised your rights under the Consumer Credit Protection Act. You must have exercised these rights in good faith. The Federal Agency responsible for seeing this law is obeyed is the Federal Trade Commission, Washington, DC 20580.

Sincerely,

Attachment 10—Response to Notice Informing Me of FSA'S Intent To Accelerate or Continue To Accelerate My Loan

Notice of My Rights

TO: Farm Service Agency

FROM: _____

(Please print your name and address.)

I want to: (Check one or more of the following boxes)

[ ] (1) Request a meeting with the FSA servicing official.

My telephone number is _____.

I understand I do not lose my right to appeal if I ask for a meeting.

[ ] (2) Voluntarily sign over to FSA all the property used to secure my loan and settle my debt.

[ ] (3) Request an independent appraisal of property securing my loans. I understand I must pay for this appraisal. I understand FSA will give me names of three qualified appraisers.

[ ] (4) Homestead Protection.

I understand that if I want to appeal FSA's decision to accelerate my loan, I must send a letter requesting an appeal to the National Appeals Division. My letter must describe FSA's decision and why I believe the decision was not correct. I should also send the FSA county office a copy of my appeal request. I understand that I will be contacted by the National Appeals Division to set up the appeal hearing date and give me more information. My request for an appeal must be postmarked no later than 30 days from the date I received this notice.

Signed _____

Date _____

Attachment 10–A—Response to Notice Informing Me of FSA'S Intent To Accelerate or Continue To Accelerate My Loan

(To Be Used for Borrowers Receiving Notices on or After November 28, 1990)

Notice of My Rights

TO: Farm Service Agency

FROM: _____

(Please print your name and address.)

I want to: (Check one or more of the following boxes)

[ ] (1) Request a meeting with the FSA servicing official.

My telephone number is _____.

I must return this form within 15 days.

I understand I do not lose my right to appeal if I ask for a meeting.

[ ] (2) Voluntarily sign over to FSA all the property used to secure my loan and settle my debt.

[ ] (3) Homestead Protection.

I understand that if I want to appeal FSA's decision to accelerate my loan, I must send a letter requesting an appeal to the National Appeals Division. My letter must describe FSA's decision and why I believe the decision was not correct. I should also send the FSA county office a copy of my appeal request. I understand that I will be contacted by the National Appeals Division to set up the appeal hearing date and give me more information. My request for an appeal must be postmarked no later than 30 days from the date I received this notice.

Signed _____

Date _____

20. Exhibit B is revised to read as follows:

Exhibit B—Notification of Offer To Restructure Debt for Financially Distressed Borrowers Current on Their Loan Payments

(Borrower's Name and Address)

(Date)

Dear (Borrower's Name):

We have determined that the Farm Service Agency (FSA) can approve your request for primary loan servicing programs.

Our calculations indicate that you will be able to make the necessary annual payment on your FSA loan if your loan is restructured through the use of primary loan servicing programs. The attached computer printout indicates the primary loan servicing program that will help you overcome your financial difficulty and provide the greatest net recovery to the Government. Therefore, We are offering to restructure your FSA debt in the following fashion:

_____

_____

* As a condition of this restructuring, you must agree to meet, at your own cost, FSA's training requirements which provide instruction in production and financial management within 2 years of the date your loans are restructured. The cost will be included in your farm plan as an operating expense. Upon completion of the training, the instructor will assign a score according to the following criteria:

Score

1 The borrower attended classroom sessions as agreed, satisfactorily completed all assignments, and demonstrated an understanding of the course material.

2 The borrower attended classroom sessions as agreed and attempted to complete all assignments; however, the borrower does not demonstrate an understanding of the course material.

3 The borrower did not attend classroom sessions as agreed or did not attempt to complete assignments. In general, the borrower did not make a good faith effort to complete the training.

Attached is a list of courses you will be required to complete to fulfill the training requirement. A list of approved vendors in your area for these courses is also attached. Any denial of a request for a waiver of the training requirement is not appealable. If you fail to complete the training as agreed, you will be ineligible for future FSA benefits including future direct and guaranteed loans, Primary Loan Servicing, Interest Assistance renewals, and restructuring of guaranteed loans.

* The County Committee has waived the training requirement for the restructuring offered in this notice.

If you want FSA to use the primary servicing program identified on the computer printout, you must accept this offer in writing. Your acceptance must be received by FSA not later than *45 days* from your receipt of this letter. You may accept this offer in writing by signing and returning the attached form titled ''Acceptance of Offer to Restructure my Debt.''

If you do not accept this offer within 45 days, and your account becomes delinquent, FSA will renotify you of all servicing options available at that time.

Sincerely,

* Indicates optional paragraphs to fit the individual circumstances.

Attachment 1—Acceptance of Offer to Restructure My Debt

(Date)

TO: Farm Service Agency

FROM: (Please print your name and address)

I have received your offer to restructure my FSA debt. I would like to accept that offer.

Sincerely,

(Borrower's signature)

_____

(Date)

21. Exhibit C is revised to read as follows:

Exhibit C—Net Recovery Buyout Recapture Agreement

In consideration of the Farm Service Agency (FSA) allowing me to purchase the real estate property securing my FSA Farm Loan Programs loan obligations at the net recovery value of $ _____ in accordance with 7 CFR part 1951, subpart S, I agree to pay to difference between the net recovery value of the security of $ _____ and the fair market value of the real estate property of $ _____ as of the date of this agreement, if I sell or otherwise convey the security within 2 years of this agreement for an amount which exceeds the net recovery value. This amount is $ _____. I further agree to give FSA a mortgage or deed of trust to secure this amount for the best lien obtainable which will be subordinate to any purchase money security instrument which does not exceed the fair market value of the property to enable the borrower to purchase the property from FSA at the net recovery value. This mortgage or deed of trust will be released 2 years from the date of this agreement if I do not sell or convey the property during the two year period.

I understand that the difference between the net recovery value of the real estate securing the FSA loan obligations and the fair market value of the real estate security specified above will all be due and payable on the day of sale or conveyance if I sell or otherwise convey the real estate property within two (2) years from the date of this agreement, if I realize a gain in this transaction.

Loan Balance $ _____.

Amount of Buyout $ _____.

_____

Date of Agreement

_____

Borrower

22. Exhibit C–1 is revised to read as follows:

Attachment C–1—Net Recovery Buyout Recapture Agreement

Purpose

This agreement with FSA will allow you to buy out your loan at the net recovery value.

1. I _____ understand and agree to the following conditions.

2. I will give FSA a lien (mortgage or deed of trust) on the FSA real estate security property I own to secure this agreement.

The lien is to secure the maximum recapture amount listed in item 6.c. of this agreement. This lien is secondary to the following liens, including any lien used to obtain the net recovery buyout amount up to the net recovery value.

_____

(name, address, and unpaid balance of liens)

3. I agree that if I do not sell or convey any portion of the real estate used as security for 10 years, the agreement and any liability you have under it will be satisfied at the end of 10 years, and then FSA will release its lien.

Note: Convey includes, but is not limited to, any form of transfer in all or any portion of the real estate property, including sale, gift, Contract Sale or Purchase Agreement, foreclosure, and below-fair-market sale, but does not include a mortgage or deed of trust. Transfer of title to property to a spouse or child who is actively engaged in farming the property upon the death or retirement of a borrower will not be treated as a conveyance. In such a transaction, FSA will not release its lien, and the transferee will assume liability under the agreement.

4. I agree that as of the date of this agreement, the net recovery value of the real estate is $ _____.

5. I agree that as of the date of this agreement, the total amount of the FSA debt secured by real estate including principal and interest before buyout is $ _____.

6. If I do sell or convey any part or all of this real estate within 10 years of this agreement, I must pay FSA the recapture amount for that part sold or conveyed which is the smaller of a., b., or c.

a. The Fair Market Value of the real estate parcel at the time of the sale or conveyance, as determined by an FSA appraisal, minus that portion of the recovery value of the real estate represented in item 4,

b. The Fair Market Value of the real estate parcel at the time of the sale or conveyance, as determined by an FSA appraisal, minus the unpaid balance of prior liens at the time of the sale or conveyance, minus the net recovery value of the real estate in item 4 if this amount has not been accounted for as a prior lien, or

c. The total amount of the FSA debt written off for loans secured by real estate.

I agree that the amount in Item 5 is the outstanding balance of principal and interest owed on the FSA Farm Loan Programs loans as of the date of this agreement, minus the net recovery value of the real estate in item 4. This amount is $ _____ and is the maximum amount that can be recaptured.

7. When I pay the recapture amount due, FSA will release its lien on the property sold or conveyed. The agreement and any liability I have under it will be satisfied at the end of 10 years if I have made all the required payments under the recapture agreement. The agreement and any liability I have under it will be satisfied before this time only if I sell or convey all of the real estate securing this agreement and make all the required payments under the agreement.

8. This agreement is subject to FSA regulations in 7 CFR part 1951, subpart S, and any future regulations which are consistent with this agreement.

9. The date of this agreement is the latest date of the dates below.

Signed _____

(borrower or obligor)

Date _____

Signed _____

(borrower or obligor)

Date _____

_____

(FSA)

Date _____

23. Exhibit E is revised to read as follows:

Exhibit E—Notification of Adverse Decision for Primary Loan Servicing, Mediation or Meeting of Creditors and Other Options

(Borrower's Name and Address)

Dear (Borrower's Name):

The Farm Service Agency (FSA) has carefully considered your request for primary loan servicing programs. Due to your debt with lenders other than FSA, you are unable to develop a feasible plan. Your Farm and Home Plan must show that you have enough income after payment of your essential living and operating expenses and other non-FSA debts to make an annual payment to FSA of at least $ _____. The attached computer printout shows that in order to develop a feasible plan and receive primary

loan servicing, you would need to increase your cash available to pay FSA and your other debts by $ _____.

If you did not previously request a Conservation Contract, you may request this servicing action by submitting a map or FSA aerial photo indicating that portion of the farm and the appropriate acres to be considered. You must submit this information to FSA within 30 days of receiving this notice.

(To be used when Certified State Mediation is available)

Certified State Mediation

We are requesting mediation under the (Name) State Certified Mediation Program. We will work with you and your creditors to determine if your debts can be adjusted sufficiently to permit you to develop a feasible plan of operation. If, with the adjustment of your debt, you are able to develop a feasible plan of operation which shows that you can make an annual payment to FSA of at least $_____, FSA will reconsider your application for primary loan servicing.

(To be used when Certified State Mediation is not available and undersecured creditors have a substantial part of the total borrower's debt.)

Meeting of Creditors

If you request, we will schedule a meeting with you and your other creditors in an effort to reach agreements with them to adjust your debts sufficiently to permit you to develop a feasible plan of operation. The FSA State Executive Director will contract for a mediator or appoint an FSA representative not previously involved in servicing of your account upon your written request to participate in the meeting with creditors. Sign the attached acknowledgement within 30 days of the date of this letter. The acknowledgment will be your written request and consent to FSA releasing information concerning your account to other creditors who participate in the meeting.

(To be used when Certified State Mediation is not available and undersecured creditors do not hold a substantial part of the total borrower's debt.)

We will not be scheduling a meeting with you and your other creditors in an effort to reach agreements with them to adjust your debts. We have determined that your other creditors do not hold a sufficient amount of your total debt to permit you to develop a feasible plan of operation even if their debts are entirely written off. You may object to our determination not to give you a voluntary meeting of creditors in any appeal you may have. You will be notified of your appeal rights in a later notice.

(The following paragraphs will be removed if the application was submitted before November 28, 1990, or the borrower does not have any nonessential assets.)

Nonessential Assets

FSA has determined that you have nonessential assets that do not contribute income to pay essential family living and farm operating expenses. The net recovery value (NRV) of the nonessential assets has been added to the NRV of the FSA collateral for the calculation on the attached printout. The NRV of the nonessential assets is $_____. Your nonessential assets and their NRVs are as follows:

Nonessential Assets

_____
_____
_____
_____

NRVs

_____
_____
_____
_____

FSA encourages you to sell the nonessential assets or borrow against their value. If you pay the NRV of the nonessential assets on your FSA debt, that amount will be subtracted from your debt and FSA will reevaluate your servicing request. If you are going to pay FSA the NRV of your nonessential assets, you must do so within 45 days of the date of receiving this letter. You must check the appropriate block on the response form and return it to FSA within 45 days with $_____ for payment of the NRV of the nonessential assets. If you want to reduce the NRV, you must pay FSA before any mediation or meeting of creditors.

If you wish to dispute FSA's decision that you own nonessential assets, you will be given the opportunity to appeal if mediation or the meeting of creditors is unsuccessful. If mediation or a meeting of creditors is not held, you will be notified of your appeal rights in a later notice.

Negotiation of the Appraisal

If you object to the FSA appraisal of your property, you may ask the FSA by returning the ''Response Form'' to negotiate the appraisal with you. You must ask to negotiate the FSA appraisal within 30 days from the date you receive this notice. To do this you must provide FSA with a copy of your current independent appraisal or you must now obtain, at your cost, an independent appraisal of your property. The appraisal and the appraiser must meet certain standards published in FSA regulations.

If you do not have a current independent appraisal and wish FSA to assist you, check option 2 of the ''Response Form'' and FSA will provide you with a list of such appraisers.

You must provide FSA a copy of your independent appraisal within 30 days of requesting negotiation.

If your current independent appraisal is within five percent of the FSA appraisal, you must select which appraisal of the two you want FSA to use in processing your request. The appraisal you select will be the final appraisal. It cannot be further negotiated or appealed. If the difference is more than five percent and you have requested a negotiated appraisal, you and FSA will choose an independent appraiser to complete a third appraisal. You must pay one-half of the cost of the third appraisal. FSA will pay for the other half of the third appraisal. You, the appraiser and the servicing official must complete and sign an appraisal agreement. Following the completion of the third appraisal, the average of the two appraisals that are closest in value, as determined by FSA, shall establish the appraised value to be used. This final negotiated appraisal is not appealable. Do not select this option of the ''Response Form'' if you and FSA have already negotiated your appraisal.

If you choose not to negotiate and wish to dispute FSA's appraisal, you will be given the opportunity to appeal in a later notice. If you believe there are mathematical or property description errors in the appraisals, you should immediately contact the servicing official. If you and the servicing official agree, the corrections will be made and initialed by both you and the servicing official.

If you want information on the requirements of an FSA appraisal, you may request a copy of the FSA appraisal regulations from the servicing official.

Sincerely,

Attachment

Attachment 1—Borrower's Request for Meeting of Creditors and Acknowledgment

I have been given a notice explaining that I am not eligible for primary loan service programs. FSA has told me that due to my debt with other lenders it does not believe I can develop a feasible plan. I request that you schedule a meeting with my undersecured creditors to assist me in developing a feasible plan of operation. I consent to FSA releasing information concerning my FSA account to these creditors to assist me in developing a feasible plan.

(Date) _____

(Borrower's signature) _____

Attachment 2—Borrower's Request for Meeting of Creditors or Request to Negotiate the FSA Appraisal and Acknowledgment

I have been given a notice explaining that I am not eligible for primary loan service programs.

I want to:

[Check the appropriate box or boxes.]

[ ] (1) Request an independent appraisal of my property including any nonessential assets.

I must return this ''Response Form'' within 30 days to request an independent appraisal.

I understand that I must pay for this appraisal. I understand that the FSA servicing official will give me a list of appraisers.

If the independent appraisal is within five percent of the FSA appraisal, I must select which of the two appraisals I want to be used for processing my request.

[ ] (2) Request Negotiation of the Appraisal.

I must return this ''Response Form'' within 30 days to request a negotiation of my appraisal.

I understand that I must provide FSA with a copy of my independent appraisal within 30 days of requesting negotiation. I understand that I must pay for this appraisal and one-half of a third appraisal, if necessary. I understand that FSA will not negotiate the appraisal more than once.

[ ] (3) I request a copy of the recent FSA appraisal of my property.

[ ] (4) I am paying FSA the net recovery value of any nonessential assets that FSA has

said I own. I will pay this amount within 45 days.

Please recalculate the restructuring of the FSA debt.

* [ ] (5) Request that you schedule a meeting with my undersecured creditors to assist me in trying to develop a feasible plan of operation. I consent to FSA releasing information concerning my FSA account to these creditors to assist me in developing a feasible plan. I must return this ''Response Form'' within 30 days if I want a meeting.

(Date) _____

(Borrower's signature) _____

* Optional paragraph depending on the circumstances.

24. Exhibit F is revised to read as follows:

Exhibit F—Notification of Offer to Restructure Debt

(Borrower's Name and Address)

Date

Dear (Borrower's Name):

We have determined that the Farm Service Agency (FSA) can approve your request for primary loan servicing programs.

Offer

Our calculations indicate that you will be able to develop a feasible plan and make the necessary annual payment on your FSA loan if your loan is restructured in the following fashion:

_____

_____

_____

The attached computer printout indicates the primary loan servicing program that will keep you on the farm and provide the greatest net recovery to the Government.

* Our calculations indicate that a feasible plan can be found with or without a writedown, as described below. However, with a writedown, your cash flow margin would be _____ percent, whereas without a writedown, your cash flow margin would only be _____ percent. You can choose to accept the restructuring offer with or without a writedown on the attached response form. If you choose a writedown, you will not be able to receive future loans through FSA, except for annual operating loans.

* As a condition of this restructuring, you must agree to meet, at your own cost, FSA's training requirements which provide instruction in production and financial management within 2 years of the date your loans are restructured. The cost will be included in your farm plan as an operating expense. Upon completion of the training, the instructor will assign a score according to the following criteria:

Score

1 The borrower attended classroom sessions as agreed, satisfactorily completed all assignments, and demonstrated an understanding of the course material.

2 The borrower attended classroom sessions as agreed and attempted to complete all assignments; however, the borrower does not demonstrate an understanding of the course material.

3 The borrower did not attend classroom sessions as agreed or did not attempt to complete assignments. In general, the borrower did not make a good faith effort to complete the training.

Attached is a list of courses you will be required to complete to fulfill the training requirement. A list of approved vendors in your area for these courses is also attached. Any denial of a request for a waiver of the training requirement is not appealable. If you fail to complete the training as agreed, you will be ineligible for future FSA benefits including future direct and guaranteed loans, Primary Loan Servicing, Interest Assistance renewals, and restructuring of guaranteed loans.

* The County Committee has waived the training requirement for the restructuring offered in this notice.

If you want FSA to use the primary servicing program identified on the computer printout to restructure your debt, you must accept this offer in writing. Your acceptance must be received by FSA no later than 45 days from your receipt of this letter. You may accept this offer in writing by signing and returning the attached form titled ''Acceptance of Offer to Restructure my Debt.''

** Nonessential Assets*

FSA has determined that you have nonessential assets that do not contribute a net income to pay essential family living expenses or maintain a sound farming operation. The net recovery value (NRV) of the nonessential assets has been added to the NRV of the FSA collateral for the calculation on the attached printout. The NRV of the nonessential assets is $ _____. Your nonessential assets and their NRVs are as follows:

Nonessential Assets

_____

_____

_____

NRVs _____

_____

_____

_____

_____

FSA encourages you to sell the nonessential assets or borrow against their value. If you pay the NRV of the nonessential assets, the amount will be subtracted from your debt and FSA will recalculate the value of your FSA debt. If you are going to pay FSA the NRV of your nonessential assets, you must do so within 45 days of the date of receiving this letter. You must check the appropriate block on the response form and return it to FSA within 45 days with your payment for the NRV of the nonessential assets of $_____.

If you wish to dispute FSA's decision that you own nonessential assets or disagree with the offer presented, you may request a meeting and/or an appeal.

Negotiation of the Appraisal

If you object to the FSA appraisal of your property, you may ask the FSA to negotiate the appraisal with you by returning the ''Response Form.'' You must ask to negotiate the FSA appraisal within 30 days from the date you receive this notice. To do this, you must provide FSA with a copy of your current independent appraisal or you must now obtain, at your cost, an independent appraisal of your property. The appraisal and the appraiser must meet certain standards published in FSA regulations.

If you do not have a current appraisal and wish FSA to assist you, check option 2 of the ''Response Form'' and FSA will provide you with a list of such appraisers.

You must provide FSA a copy of your independent appraisal within 30 days of requesting negotiation.

If your current independent appraisal is within five percent of the FSA appraisal, you must select which appraisal of the two you want FSA to use in processing your request. The appraisal you select will be the final appraisal. It cannot be further negotiated or appealed. If the difference is more than five percent and you have requested a negotiated appraisal, you and FSA will choose an independent appraiser to complete a third appraisal. You must pay one-half of the cost of the third appraisal. You, the appraiser and the servicing official must complete and sign an appraisal agreement for this appraisal. FSA will pay for the other half of the third appraisal. Following the completion of the third appraisal, the average of the two appraisals that are closest in value, as determined by FSA, shall establish the appraised value to be used. This final negotiated appraisal is not appealable. Do not select this option on the ''Response Form'' if you and FSA have already negotiated your appraisal.

If you wish to dispute FSA's appraisal, but do want to reach agreement with FSA by negotiating the appraisal, you may also request a meeting or appeal of other items of the decision that you do not agree with by checking the appropriate box on the attached response form. If you believe there are mathematical or property description errors in the appraisals, you should immediately contact the servicing official. If you and the servicing official agree, the corrections will be made and initialed by both you and the servicing official.

If you want information on the requirements of an FSA appraisal, you may request a copy of the FSA appraisal regulations from the servicing official.

What Happens If You Do Not Accept the Offer

If you do not accept the restructuring offer on page 1, FSA will deny your request for primary loan servicing and send you an additional notice stating that FSA intends to liquidate your account. You can appeal FSA's offer by sending a letter requesting appeal directly to the National Appeals Division, (NAD), <NAD Area Director's address>. Your letter must describe FSA's decision and why you believe the decision was not correct. In order for this decision to be changed, you will have to show why the decision should be reversed. A copy of your request should be sent to the FSA county office. Your request must be postmarked no later than 30 days from the date you received this notice.

YOU MAY HAVE A FEDERAL INCOME TAX LIABILITY IF FSA RESTRUCTURES YOUR FSA INDEBTEDNESS WITH A

WRITEDOWN. YOU SHOULD CONTACT THE INTERNAL REVENUE SERVICE (IRS) FOR INFORMATION.

Sincerely,

* Optional paragraphs depending on circumstance.

Attachment 1—Acceptance of Offer To Restructure My Debt

TO: Farm Service Agency

FROM: (Please print your name and address)

I have received your offer to restructure my FSA debt.

I would like to accept that offer.

Sincerely.

(Borrower's signature)

(Date) _____

Attachment 2—Acceptance of Restructuring Offer, Request To Negotiate Appraisal or Pay FSA the NRV of Nonessential Assets

(This Attachment Will Be Used Instead of Attachment 1 for Borrowers Who Submitted Applications On or After November 28, 1990)

TO: Farm Service Agency

FROM: (Please print your name and address)

I have received your offer to restructure my FSA debt.

(Check the appropriate blocks.)

* [ ](1) I accept FSA's offer to restructure my debt. I understand that I must accept FSA's offer within 45 days of receiving Exhibit F.

* [ ](1) I accept FSA's offer to restructure my debt as follows: (Put an ''X'' in Block (a) or (b).) I undestand I must accept FSA's offer within 45 days of receiving Exhibit F.

(a) [ ] With a writedown giving me a higher cash flow margin than without a writedown.

(b) [ ] Without a writedown giving me a lower cash flow margin than if I would take the writedown.

[ ](2) I request an independent appraisal of my property including any nonessential assets. If the difference between my independent appraisal and the FSA appraisal is not more than five percent, I understand that I must select which of the two appraisals I want to be used for reconsidering my request. In such a case, there will not be an appeal of the appraisal or any further negotiation of the appraisal.

I must return this ''Response Form'' within 30 days to request an independent appraisal.

I understand that I must pay for this appraisal. I understand that the FSA servicing official will give me a list of appraisers.

[ ](3) I request a copy of the FSA recent appraisal of my property.

[ ](4) Request Negotiation of the Appraisal.

I must return this ''Response Form'' within 30 days to request a negotiation of my appraisal.

I understand that I must provide FSA with a copy of my independent appraisal within 30 days of requesting negotiation. I understand that I must pay for this appraisal plus one-half of a third appraisal, if necessary. I understand that FSA will not negotiate the appraisal more than once.

[ ](5) I intend to pay FSA the net recovery value of any nonessential assets that FSA has said I own.

I understand that I must pay the net recovery value of the nonessential assets within 45 days of receiving Exhibit F.

I understand that if I want to appeal FSA's offer to restructure, I must send a letter requesting an appeal to the National Appeals Division. My letter must describe FSA's decision and why I believe the decision was not correct. I should also send the FSA county office a copy of my appeal request. I understand that I will be contacted by the National Appeals Division to set up the appeal hearing date and give me more information. My request for an appeal must be postmarked no later than 30 days from the date I received this notice. If possible, I should submit a copy of my independent appraisal to the FSA servicing official and the hearing officer prior to the appeal hearing if I am appealing the appraisal.

Sincerely,

(Borrower's signature)

_____

(Date)

* Optional paragraphs depending on the circumstance.

25. Exhibit H is revised to read as follows:

Exhibit H—Conservation Contract Program

I. General

A Conservation Contract (CC) may be exchanged, when requested by a borrower (current or delinquent), for a cancellation of a portion of the borrower's FSA indebtedness. The CC may be considered alone, or with other Primary Loan Servicing Programs as set forth in 7 CFR 1951.909. These contracts can be established for conservation, recreational, and wildlife purposes on farm property that is wetland, wildlife habitat, upland or highly erodible land. Such land must be suitable for the purposes involved. All Farm Loan Programs loans which are secured by real estate may be considered for a CC. Non-program loan debtors are not eligible to receive any benefits under this section.

Definitions

(1) *Conservation purposes.* These include protecting or conserving any of the following environmental resources or land uses:

(a) *Wetland,* except when such term is part of the term *Converted wetland,* is land that the Natural Resources Conservation Service (NRCS) has determined has a predominance of hydric soils and that is inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions, except that this term does not include lands in Alaska identified as having a high potential for agricultural development and a predominance of permafrost soils.

(i) *Hydric soils* means soils that, in an undrained condition, are saturated, flooded, or ponded long enough during a growing season to develop an anaerobic condition that supports the growth and regeneration of hydrophytic vegetation;

(ii) *Hydrophytic vegetation* means a plant growing in—

(*A*) Water; or

(*B*) A substrate that is at least periodically deficient in oxygen during a growing season as a result of excessive water content;

(b) *Highly erodible land* is land that NRCS has determined has an erodibility index of 8 or more.

(c) *Upland* is a term used in the law to refer to land other than highly erodible land and wetland. Although upland in its normal use implies many types of land, it has been more narrowly defined for this purpose to include land or water areas that meet any one of the following criteria:

(i) One-hundred year floodplain,

(ii) Aquatic life, or wildlife habitat or endangered plant habitat of local, regional, State or Federal importance,

(iii) Aquifer recharge area of local, regional or State importance, including lands in the wellhead protection program for public water supplies authorized by the Safe Drinking Water Act Amendments of 1986,

(iv) Area of high water quality or scenic value,

(v) Area containing historic or cultural property, which is listed in or eligible for the National Register of Historic Places, as provided by the National Historic Preservation Act (NHPA),

(vi) Area that provides a buffer zone necessary for the adequate protection of proposed conservation contract areas,

(vii) Area within or adjacent to a National Park, U.S. Fish and Wildlife Service administered area, State Fish and Wildlife agency administered area, a National Forest, a Bureau of Land Management administered area, a Wilderness Area, a National Trail, a unit of the Coastal Barrier Resource System, abandoned railroad corridors contained in local, State or Federal open space, recreation or trail plans, Federal or State Wild or Scenic River, U.S. Army Corps of Engineers land designated for flood control or recreation purposes, State and local recreation, natural or wildlife areas or State Conservation Agency administered areas.

(viii) Area that NRCS determines contains soils that are generally not suited for cultivation such as soils in land capability classes IV, V, VI, VII or VIII in the NRCS's Land Capability Classification System.

(d) *Wildlife habitat* is a term used to include the area that provides direct support for given wildlife species, species life stages, populations, or communities determined appropriate by the Conservation Agency within the State as being of State, regional or local importance or as determined by the Fish and Wildlife Service to be of national importance. This wildlife habitat area includes all acceptable environmental features such as air quality, water quality, vegetation, and soil characteristics.

(2) *Management authority.* Any agency of the United States, a State, or a unit of local Government of a State, a person, or an

individual that is designated in writing by FSA to carry out all or a portion of the activities necessary to manage and implement the terms and conditions of a contract or its management plan. The borrower whose land is subject to the contract may be eligible to be designated as a management authority.

(3) *Person.* Any agency of the United States, a State, a unit of local Government within a State, or a private or public nonprofit organization.

(4) *Recreational purposes.* These activities include providing public use for both consumption (e.g. hunting, fishing) and nonconsumption (e.g. camping, hiking) recreational activities, in a manner that conserves wildlife and their habitats, ensures public safety, complies with applicable laws, regulations, and ordinances and permits the operation of the remaining farm enterprise.

(5) *Wildlife.* Means any wild animal, whether alive or dead, including any wild mammal, bird, reptile, amphibian, fish, mollusk, crustacean, arthropod, coelenterate, or other invertebrate, whether or not bred, hatched, or born in captivity, and includes any part, product, egg, or offspring.

(6) *Wildlife purposes.* These program objectives include establishing and managing areas that contain fish and wildlife habitats of local, regional, State or Federal importance.

II. Eligibility

The following steps must be taken to determine if the borrower is eligible for a conservation contract. If the borrower is found to be ineligible, the FSA servicing official will notify the borrower of the opportunity to appeal the adverse decision on the eligibility for the contract after a final decision is made on whether the borrower qualifies for any other servicing options. The servicing official must find that:

(1) All Farm Loan Programs loans which are secured by real estate may be considered for a CC. A real estate mortgage or deed of trust taken on a borrower's real estate as additional security for a Farm Loan Programs loan qualifies as real estate security.

(2) The proposed contract helps a qualified borrower to repay the loan in a timely manner.

(3) If the land being proposed for the contract is within the FSA Conservation Reserve Program, both the requirements of that program and this section can be met.

III. Establishing the Contract Review Team

The servicing official will establish a contract review team by notifying the appropriate field offices of the Natural Resources Conservation Service (NRCS), U.S. Fish and Wildlife Service (FWS), State Fish and Wildlife Agencies, Conservation Districts, National Park Service, Forest Service (FS), State Historic Preservation Officer, State Conservation Agencies, State Environmental Protection Agency, State Natural Resource Agencies, adjacent public landowner, and any other entity that may have an interest and qualifies to be a management authority for a contract. The notified parties may in turn notify other eligible entities. NRCS, for example, may want to notify the appropriate Conservation District. As part of the notification, the servicing official will provide an approximate location and a general description of the potentially affected land. All notified parties will be invited to serve on the contract review team.

IV. Responsibilities of the Contract Review Team

NRCS will lead the contract review team which in every case will be composed of an NRCS, FSA and FWS representative, plus all other parties that accepted the invitation to participate. To the extent practicable, a site visit will be conducted within fifteen days from the date the review team members are invited to participate. Any lien holder and the borrower will be informed of the site visit time and invited to attend. Within thirty days after the site visit, a report will be developed by the review team and provided to the servicing official. The report will cover the items listed in paragraphs (A) through (F) of this paragraph and will be prepared by the review team. The items to be addressed in the review team report are:

(A) The amount of land, if any, which is wetland, wildlife habitat, upland or highly erodible land and the approximate boundaries of each type of land. If applicable, contract boundaries may be recommended which go beyond the wetland, upland, or highly erodible land but are necessary for either the establishment of identifiable contract boundaries or are required for the efficient management of the contract's terms and conditions.

(B) A finding of whether the land is suitable for conservation, recreation or wildlife habitat purposes and a priority ranking of purposes included, if the land can be so classified and ranked.

First, priority will be given to land contract opportunities to benefit wildlife species of Federal Trust responsibility (e.g., migratory birds and endangered species) and their habitats (e.g., wetlands). Special consideration will be given to opportunities to benefit a combination of conservation, recreation and wildlife habitat purposes. When there are other land contracts already established or under review within the local area and the intent of these contracts has been established, the review team will consider these actions as purpose rankings are developed.

(C) If appropriate, any special terms or conditions that would need to be placed on the contract plus unique or important features of the property which would not be adequately addressed by the standard contract terms and conditions.

(D) A proposed management plan consistent with the purpose or purposes for which the contract would be established. The management plan will outline the various management alternatives for the proposed contract. The selection of the alternatives to be followed will be based upon future needs, fund availability, and identification within the management plan. The management plan will provide guidance as to the conservation practices to be followed and the costs which may occur in the establishment and maintenance of the contract. This management plan will specifically recommend whether or not public recreational use and public hunting should be allowed on the contract and provide supporting reasons for the recommendation made. Whenever changes are required in the management plan, FSA, may update the management plan to reflect the changes.

V. FSA's Review of Contract Team's Report

Upon receipt, the Servicing Official will review the contract team's report. If the report indicates that a contract is not feasible given the nature of the land, or other factors, the servicing official will inform the borrower of the reasons that the contract has been denied and that the borrower may appeal the denial of the contract or meet with the servicing official.

VI. Terms of Contracts

Borrowers participating in the debt cancellation conservation contract program will be given the option of selecting a 50, 30 or 10 year contract term. The amount of debt to be canceled will be directly proportional to the length of the contract. The area placed under the conservation contract cannot be used for the production of agricultural commodities during the term of the contract.

VII. Determining the Amount of Farm Loan Programs (FLP) Debt That Can Be Canceled

(A) *Calculate the amount of debt to be canceled for a delinquent borrower as follows:*

(1) *Step 1.* Determine what percent the number of contract acres is of the total acres of land that secures the borrower's FLP loans by dividing the contract acres that secure the borrower's FLP loans by the total acres that secure the borrower's FLP loans.

Contract acres divided by *Total Farm and Ranch Acres = Percent of Contract Acres to Total Acres.*

(2) *Step 2.* Determine the amount of FLP debt that is secured by the contract acreage by multiplying the borrower's total unpaid FLP loan balance (principal, interest and recoverable costs already paid by FSA) by the percentage calculated in step 1. *Total FLP Debt × Percent Calculated in step 1 =* _____

(3) *Step 3.* Determine the current value of the land in the contract by multiplying the present market value of the farm that secures the borrower's FLP loans by the percent calculated in step 1. *PMV of Total Farm × Percent Calculated in step 1 =* _____

(4) *Step 4.* Subtract the current value of the contract acres in step 3 from the FLP debt that is secured by the contract acres in step 2. *Result from step 2 − Result from step 3 =* _____

(5) *Step 5.* Select the greater of the amounts calculated in step 3 and step 4.

(6) *Step 6.* Select the lessor of the amounts calculated in steps 2 and 5. This will be the maximum amount of debt that can be canceled for a 50-year contract term.

(7) *Step 7.* For a 30-year contract term, the borrower will receive 60 percent of the amount calculated in step 6. *Result from Step 6 × 60% =* _____

(8) *Step 8.* For a 10-year contract term, the borrower will receive 20 percent of the

amount calculated in step 6. *Result from Step 6 × 20% =* _____

(B) Calculate the amount of debt to be canceled for a current borrower as follows:

(1) *Step 1.* Determine what percent the number of contract acres is of the total acres of land that secures the borrower's FLP loans by dividing the contract acres that secure the borrower's FLP loans by the total acres that secure the borrower's FLP loans. *Contract Acres* divided by *Total Farm and Ranch Acres =* _____%

(2) *Step 2.* Determine the amount of FLP debt that is secured by the contract acreage by multiplying the borrower's total unpaid FLP loan balance (principal, interest and recoverable costs already paid by FSA) by the percentage calculated in step 1. *Total FLP Debt × Percent Calculated in step 1 =* _____

(3) *Step 3.* Multiply the borrower's total unpaid FLP loan balance (principal, interest and recoverable costs already paid by thirty-three (33) percent. *Total FLP Debt × 33% =* _____

(4) *Step 4.* Select the lessor of the amounts calculated in steps 2 and 3. This is the maximum amount of debt that can be canceled for a current borrower receiving a 50-year contract.

(5) *Step 5.* For a 30-year contact term, the borrower will receive 60 percent of the amount calculated in step 4. *Amount calculated in step 4 × 60% =* _____

(6) *Step 6.* For a 10-year contract term, the borrower will receive 20 percent of the amount calculated in step 4. *Amount calculated in Step 4* X *20% =* _____

(C) *Feasibility of debt cancellation.* The servicing official will determine whether or not the borrower, if provided the amount of debt cancellation allowed by paragraph (VII) coupled with other servicing options will be able to develop a feasible plan for farm operations for the current and coming year. In no instance will the total debt cancellation exceed the maximum amount calculated in paragraphs (A) or (B) above. If the borrower would not be able to develop a feasible plan, the servicing official will notify the borrower of the reason that the contract has been denied and that the borrower may appeal this adverse decision after the servicing official has decided whether the borrower qualifies for the additional servicing programs in this subpart.

(D) *The boundaries of the contract area will be determined by the most appropriate method including rectangular surveys, and aerial photographs.* A professional survey of the contract area will not be required but can be used where needed.

(E) *Reaching an agreement with the borrower.* The borrower will be informed of the contract's value, the impact on the remaining financial obligation, and the terms and conditions of the contract. The borrower also will be provided a copy of the contract review team's report. If the borrower decides to enter into the contract, approval will be made by the servicing official, and the borrower by signing Form FSA 1951–39.

(F) *Recording of noncash credit.* The total credit to the borrower's account will not exceed the greater of the value of the land on which the contract is acquired; or the difference between the amount of the outstanding indebtedness secured by the real estate, and the value of the real estate taking into consideration the term of the contract. In the case of a non-delinquent borrower, the amount to be credited will not exceed 33 percent of the amount of the loan secured by the real estate on which the contract is obtained taking into consideration the term of the contract. In all cases, the amount credited will be applied on the FSA loan as an extra payment in order of lien priority on the security. The loan may be reamortized if needed for both current and delinquent borrowers.

(H) *Contract Records.* If State law allows, the CC will be recorded in the real estate records.

VIII. Violation of Terms and Conditions

If the borrower violates any of the terms or conditions of the contract, the violations will be handled in accordance with the provisions outlined in the contract.

IX. Authorization Requests

When under the circumstances stated in the contract's terms and conditions (Form FSA 1951–39), the grantor needs the Government's written authorization to proceed with an action, a written request for such authorization must be provided by the grantor to the servicing official. In order to provide the requested written authorization, the servicing official must determine that the request does not violate the contract's terms and conditions and must receive the written concurrence of the enforcement authority.

26. Exhibit J–1 is revised to read as follows:

EXHIBIT J–1—The Debt and Loan Restructuring System (DALR$) (For applications filed for primary loan servicing on or after November 28, 1990)

I. INTRODUCTION TO DALR$.

Farm Service Agency (FSA) primary loan service programs provide a large number of alternatives for restructuring an agency loan. Additionally, borrowers may request consideration for the Softwood Timber (ST) and Conservation Contract (CC) Programs. The number of loans a borrower has increases the number of combinations of possible servicing alternatives. It is difficult and virtually impossible to manually calculate all the potential combinations of servicing actions. To assure that all the various possible combinations of programs are considered, FSA has developed the Debt and Loan Restructuring System (DALR$) for operation on the county office computer system.

DALR$ is a menu driven computerized support tool that assists FSA field offices in determining and evaluating the effects of primary loan servicing in accordance with 7 CFR part 1951, subpart S. DALR$ will complete a series of mathematical calculations based on information regarding the borrower's cash flow and loan status obtained from the borrower's case file. This information is used in attempting to restructure the borrower's debt and maximize their repayment ability, while avoiding or minimizing loss to the Government. DALR$ will provide a printed summary of the computations and outcome of the calculations.

FSA personnel will not manually perform the calculations in this exhibit. This exhibit is provided as a benefit to those who may want to perform manual calculations, or understand the procedures DALR$ utilizes during the execution of the program.

II. ADVANTAGES OF DALR$

The DALR$ system provides the following benefits to FSA borrowers:

A. Speed of Calculation—Calculations which would take hours or days are reduced to minutes. This not only speeds the processing of servicing requests, but provides the flexibility to consider several alternative plans of operation within the same time constraints.

B. Consistency—The use of DALR$ assures that the feasibility of all requests for primary loan servicing will be evaluated on using the same calculation methods.

C. Full Consideration—DALR$ considers primary loan service programs and combinations of those programs for every borrower entered into the system. Thus, borrowers can be assured that they will be considered for as many of these actions as necessary to develop a feasible plan, if a feasible plan is possible.

D. Reduction of Errors—Use of DALR$ greatly reduces the potential for errors and inadvertent denial of assistance due to those errors. DALR$ eliminates errors in the calculations. The only potential errors related to the calculations are input errors, which are much easier to detect and correct than calculation errors. However, DALR$ results are only as reliable as the input data.

IV. OVERVIEW

When computing debt restructuring, DALR$ will consider all primary loan service programs, if necessary in attempting to develop a feasible plan. A combination of loan service programs may be necessary. DALR$ will consider each combination until a feasible plan is developed, or it is determined that a feasible plan is not possible with full utilization of primary loan servicing, ST and CC.

DALR$ will attempt to provide the maximum margin available up to ten percent above the total amount needed for payment of farm operating, family living expenses and debt repayment after restructuring. If a feasible plan cannot be developed, DALR$ will determine if the writeoff with market value buyout (less prior liens) is less than or equal to the statutory ceiling for writedown and writeoff. A DALR$ report can be printed which will detail the offer to restructure the borrower's FSA debt, offer to buyout the FSA Farm Loan Programs (FLP) loans at the market value, less prior liens, or inform the borrower that the borrower is not eligible for primary loan servicing or debt forgiveness.

The DALR$ calculations proceed in the following general order:

A. DALR$ calculates the net recovery value (NRV) for FSA security and nonessential assets.

B. DALR$ computes new loan and annual operating expense payments at regular interest rates.

C. DALR$ applies loan payments that will pay loans in full on the proposed restructure date.

D. DALR$ considers conservation contract, if requested, to the maximum extent permitted under the regulations. Conservation contract (CC) will not be provided unless a feasible plan is developed after considering CC and other loan servicing options.

E. DALR$ reschedules or reamortizes all delinquent loans at the maximum term with an interest rate at the lower of the original note rate or current loan program rate. Limited resource rate loans will be rescheduled or reamortized at the lower of the original note rate or the current limited resource loan rate. After rescheduling or reamortizing all delinquent loans, DALR$ will determine if a feasible plan has been developed with the appropriate debt service margin.

F. DALR$ reschedules or reamortizes non-delinquent loans at the maximum term and with an interest rate at the lower of the original note rate or the current loan program rate. Limited resource rate loans will be rescheduled or reamortized at the lower of the original note rate or the current limited resource rate. Non-delinquent loans are rescheduled or reamortized one loan at a time until a feasible plan is developed with the appropriate debt service margin, or until all non-delinquent loans have been processed.

G. DALR$ reschedules or reamortizes limited resource eligible loans at the maximum term and with an interest rate at the lower of the original note rate or the current limited resource program interest rate. Limited resource eligible loans are rescheduled or reamortized one at a time until a feasible plan has been developed with the appropriate debt service margin, or all limited resource eligible loans have been processed.

H. DALR$ reschedules or reamortizes unequal payment loans at the maximum term and with an interest rate at the lower of the original note rate or the current loan program rate (limited resource, if applicable). Unequal payment loans are rescheduled or reamortized one at a time until a feasible plan has been developed with the appropriate debt service margin, or all unequal payment loans have been processed.

I. DALR$ determines the cash available to repay the FSA debt for the first year and the year after the deferral period by subtracting non-FSA payments, farm operating expenses, excluding interest, and family living expenses from the adjusted balance available. If the first year cash available is negative, DALR$ will proceed with paragraph M of this section. If the first year cash available is positive and less than the cash available for the year after the deferral period, DALR$ will consider loan deferral. Loans will be selected for deferral so as to minimize the debt repayment in the year after the deferral period. If the full deferral of a loan will result in a cash flow for the first year that exceeds the appropriate debt service margin, a partial deferral of the loan is used to eliminate the excess cash flow margin. A partial deferral has the added benefit of reducing the payment amount in the years after the deferral period.

J. DALR$ considers ST loan deferral, when requested by the borrower, to the maximum limits permitted. Previously calculated regular deferrals will be cancelled prior to DALR$ considering ST loan deferral. If the cash available after the deferral period is greater than the first year cash available, and ST loan deferral fails to produce a feasible plan at the applicable debt service margin, non-ST deferred loans will be reconsidered. Regular loan deferrals are recalculated after selecting loans for ST to:

1. Minimize any decrease in present value caused by the conversion to ST, and

2. Minimize the increase in payments in the year after the deferral period.

A ST loan deferral has the same effect on the debt repayment ability as a writedown of the same amount. However, a ST loan deferral will always have a greater present value. Therefore, after a loan is selected for ST loan deferral, it will not be considered for writedown since this will always decrease the present value of restructured loans.

K. DALR$ considers writedown of FSA debt for those borrowers who have not received their lifetime limit for writedown and writeoff (with market value buyout).

1. If the cash available for the first year is greater than the cash available for the year after the deferral period, DALR$ considers writedown, in combination with other primary loan service programs (except ST deferrals as noted in paragraph K of this section). When considering a borrower for writedown, DALR$ will attempt to maximize the borrower's repayment ability and minimize losses to the Government.

The amount of writedown cannot exceed the $300,000 limitation. In addition, the present value of the restructured loan plus the amount of the CC cannot be less than the total NRV of the FSA security and non-essential assets.

2. If the cash available after the deferral period is greater than the cash available in the first year, DALR$ will consider a combination of deferral and writedown.

Loans are selected for deferral to achieve a cash flow in the first year. If deferral of loans will result in a cash flow in the first year that exceeds the applicable debt service margin, DALR$ partially defers the loan to reduce the excess cash flow. If there is a negative cash flow after the expiration of the deferral period, DALR$ provides writedown of one loan to attempt to develop a feasible plan in the year after the deferral period. This process is repeated until a feasible plan is developed for both the first year and the year after the deferral period, or until all loans have been processed. The amount of the writedown cannot exceed the $300,000 limitation and the present value of the restructured loans plus the value of the CC cannot be less than the total NRV of the FmHA security and non-essential assets.

L. DALR$ considers market value buyout when a feasible plan cannot be developed after considering the borrower for all combinations of the above servicing options and the borrower has not received the lifetime limitation for writedown and writeoff. The amount of FSA debt to be written off must be less than or equal to the $300,000 limitation, otherwise the borrower is not eligible for primary loan servicing or market value buyout.

M. DALR$ determines the amount of cash improvement needed in the first year Balance Available to cash flow with a zero percent debt service margin when a feasible plan cannot be developed.

N. DALR$ offers to print a servicing report which provides a summary of the computations and the outcome of the calculations.

V. Information Entered in DALR$

The following information will be entered in DALR$ prior to beginning the calculations.

A. Borrower Case Number and Name—The borrower's case number is a concatenation of the State Code, County Code, and Borrower ID (usually the borrower's social security number or tax identification number). Borrowers are entered as either an individual or entity.

B. Date Servicing Actions Requested—This is the date that the borrower submitted a complete application for primary loan servicing. The discount rate used in the calculations of the present value of restructured loans and the NRV will be the rate in effect on this date.

C. Proposed Restructure Date—This is the projected effective date of the restructuring. The interest rate used for restructuring loans and the net recovery constants used in the calculation of the NRV will be those in effect on this date as of the date DALR$ was prepared.

D. Eligibility for Writedown or Writeoff—This field determines if writedown or writeoff (with buyout) should be considered when attempting to restructure the borrower's debt. Borrowers that are not delinquent, or that have met the lifetime limitation regarding writedown and writeoff are not eligible for writedown or writeoff. If the borrower is not eligible, DALR$ will consider the borrower for all primary loan servicing except writedown and market value buyout.

E. Period of Deferral—DALR$ will default to the maximum deferral period of 5 years. The field can be cleared and a lessor period entered if applicable.

F. Adjusted Balance Available—The adjusted balance available for the first year is obtained from Form FmHA 431–2, ''Farm and Home Plan'' developed for the current production cycle or the typical plan, if applicable. Adjusted balance available is the sum of total planned family living expenses from Table F, total planned cash farm operating expenses, less interest from Table G, and line 16, ''Balance Available,'' from Table J of the Farm and Home Plan. If loan deferral or debt writedown is anticipated or needed, the balance available for the year after the deferral period must also be calculated and entered.

G. Non-Agency Debts, Family Living Expenses and Adjusted Operating Expenses—This is the sum of total planned family living expenses from Table F, total planned cash farm operating expenses, less interest, from table G, and total non-Agency debt repayment (principal and interest) from Table K of Form FmHA 431–2, ''Farm and

Home Plan''. If future non-agency loans are planned that will affect the first year or the year after the deferral, the annual debt repayment for these loans should be included. Debt repayment on FSA nonprogram loans should be included when determining this amount. FSA nonprogram debts must be entered here to assure that these loans are not included in the present value calculations or when determining if the $300,000 writedown or writeoff limitation was exceeded.

H. FSA Loan for Annual Operating Expense—The amount of FSA loan for annual operating expenses is the amount of annual operating expense loan principal which is due in the applicable planning year. The estimated average number of months the annual operating loan will be outstanding is also entered.

If some of the principal will be carried over to future years, then that amount is either:

1. Included in the new loan payments computed using the amortization factor over the applicable loan term at the regular loan program interest rate, or

2. If the amount to be carried over was entered as an existing loan, it is rescheduled with the applicable term and interest rate permitted by the program regulation.

I. New FSA Loans and Scheduled Advances—The amount of the loan, loan type, regular program interest rate, and year that the cash flow will be affected will be entered. DALR$ will consider a reduction from the regular program interest rate to the limited resource interest rate (if applicable) during the rescheduling or reamortizing process if necessary to develop a feasible plan.

J. NRV Data—Information pertaining to FSA security and nonessential assets owned by the borrower will be entered in accordance with Exhibit I of part 1951, subpart S. Prior liens will include other creditors debts that hold a prior lien to FSA on the security property. Prior liens may also include FSA nonprogram loans if the same security is cross-collateralized with the program loans and they hold a prior lien to the program loans.

K. Existing Loan Data—Loan information will be obtained from the borrower's case file and Finance Office status inquiry screens. The date of status screens must be after the date of the last payment or other transaction on the loan. The loan information includes the consideration for servicing actions, unpaid principal and interest, amount of next payment, maximum term, original and existing interest rate, security priority, information regarding any portion of the loan not to be rescheduled, and proposed payment in full on the restructure date.

1. If the interest accrual date of the status screen precedes the proposed restructure date, DALR$ will calculate the additional interest accrual. Interest accrual is calculated in accordance with section I of attachment 1 to this exhibit.

2. Loan selection for many of the calculation processes is based partly on the security priority identified for each loan. There are three priorities:

a. Low—These loans are unsecured. If FSA loan security was liquidated, the proceeds would not be sufficient to result in a payment on this loan.

b. Medium—These loans are undersecured. If FSA security was liquidated, the proceeds would be sufficient to result in a partial payment on this loan.

c. High—These loans are fully secured. If FSA security was liquidated, the proceeds would be sufficient to pay this loan in full.

L. Conservation Contract Data—If the borrower requested a conservation contract, the total acreage of the farm, acres to be included in the conservation contract, unpaid debt secured by the farm, and the current market value of the farm must be entered.

M. Softwood Timber (ST) Loan Data—If ST deferral was requested by the borrower, the acreage eligible for ST must be entered.

N. Interest Rate Tables—Interest rates and the effective date provided in Exhibit B of FmHA Instruction 440.1 will be entered.

O. Discount Rate Tables—The discount rate and the effective date provided in Exhibit B of FmHA Instruction 440.1 will be entered.

P. Net Recovery Constants Tables—Net Recovery Constants and the effective date determined in accordance with exhibit I of part 1951, subpart S will be entered.

VI. CALCULATION PROCESS.

As described in section IV of this exhibit, the DALR$ calculations are a repetitive process. During the first phase of the calculations, DALR$ will attempt to restructure the borrower's debt utilizing all necessary combinations of loan servicing and provide a ten percent debt service margin. Debt service margin is calculated in accordance with section II of attachment A of this exhibit. If a feasible plan cannot be developed after considering all combinations of loan servicing, the debt service margin will be reduced to nine percent and all combinations of servicing will again be considered. DALR$ will continue to reduce the debt service margin by one percent until a feasible plan is developed or the debt service margin falls below zero and a feasible plan is not possible with any combination of servicing options.

The calculation process proceeds as follows:

A. Calculation of NRV

As required by §§ 1951.909 and 1951.910 of title 7, DALR$ computes total NRV of agency loan security and non-essential assets. Exhibit I of part 1951, subpart S, ''Guidelines for Determining Adjustments for Net Recovery Value'', provides guidance in determining the value of specific items utilized in the net recovery calculations outlined below.

NRV is computed for all Farm Loan Programs loan security, other non-essential assets owned by the borrower, and assets not in the borrower's possession. If the agency's lien position, or the amount of prior liens vary from item to item, separate NRV will be computed for each item which has a different lien structure.

Example: FSA has a first lien on a borrower's equipment, except for two tractors. One tractor was financed by non-agency credit, and FSA has a junior lien subject to the purchase money financing. In the case of the second tractor, FSA subordinated its lien to another lender to finance repairs, thus, FSA has a junior lien to the amount subordinated. In this example, there would be three net recovery calculations. One for each tractor, and one for the remaining equipment. The same logic applies to real estate security. The total of all net recovery calculations will be the total NRV.

The general formula for calculating NRV is as follows:

* Current market value of the security
* Minus prior liens
* Minus property taxes while in inventory
* Minus depreciation on buildings and improvements
* Minus management charges
* Minus repairs necessary for resale
* Minus legal and administrative costs
* Minus sales cost
* Minus advertising cost
* Minus miscellaneous expenses
* Minus interest cost while in inventory
* Plus or minus the increase or decrease, as applicable, in value while in inventory
* Plus anticipated income while in inventory
* Equals NRV of the individual property items

The sum of the NRV of individual property items minus:

* Real estate property management costs
* Real estate or real estate and chattel costs, and
* Chattel only costs as applicable, equals the total NRV of FSA security, non-essential assets, and assets not in possession.

The factors listed above do not apply to the calculation of NRV for non-essential assets and assets not in possession.

B. Calculation of Payments for New FSA Loans

DALR$ calculates debt repayment for new FSA term loans and FSA loans for annual operating expenses as follows:

1. Repayment for new term loans will be calculated based on the regular loan program interest rate and the term of the loan. The payment will be calculated in accordance with section III A of attachment 1 to this exhibit.

2. Repayment of loans for annual operating expenses will be calculated based on the regular interest rate and the projected number of months the loan will be outstanding determined in accordance with section III B of attachment 1 to this Exhibit. DALR$ will calculate interest accrual for the annual operating loan by multiplying the amount of principal to be repaid during the period of the plan by the monthly decimal equivalent for the regular program interest rate. This amount is then multiplied by the average number of months that the loan will be outstanding. The amount of debt repayment due on annual operating expense will be the total of interest accrual plus the principal amount of the loan.

DALR$ will initially calculate payments for new FSA loans and FSA loans for annual operating expenses at the regular program interest rate. If a feasible plan cannot be developed, DALR$ will reduce the interest rate to limited resource rates (if applicable) during the calculations completed in paragraph F of this section.

C. Application of Payment on the Effective Date of Servicing.

DALR$ will apply loan payments to be made on the effective date of loan servicing. DALR$ can only consider a full payoff of a loan. If a payment for less than the full amount of the loan is expected or received, the payment must be applied to the loan prior to completing the DALR$ calculations.

If after the application of payments to pay loans in full, there is a debt repayment margin of ten percent or more and none of the borrowers remaining loans are delinquent, no further servicing action in DALR$ is required.

D. Conservation Contract.

DALR$ will consider Conservation Contract (CC), if requested by the borrower, prior any other loan servicing option. CC can be requested by both current and delinquent borrowers. Only FLP loans secured by real estate are eligible. A borrower will not be offered CC unless, the CC or CC in combination with other loan servicing options results in a feasible plan. Debt cancellation as a result of CC will be applied against the borrowers loans as a noncash credit and will not affect the borrowers debt repayment unless the loan is fully written down.

CC eligible loans will be selected in the order of lowest security priority first. For loans with equal security priority, the secondary selection will be the loan with the largest amortization factor determined in accordance with section IV of attachment 1 to this Exhibit.

The calculations completed during this process are as follows:

1. Determine the maximum amount of CC in accordance with attachment 1 of exhibit H of part 1951, subpart S.

2. Deduct the lessor of the unpaid loan balance or the maximum CC from the first loan selected. Repeat this step until the maximum CC debt cancellation has been deducted, or all CC eligible loans have been written down in full.

3. If a feasible plan was developed with a debt service margin greater than or equal to ten percent, and the borrower does not have any remaining delinquent loans, no further servicing is required. DALR$ will offer the user the opportunity to print the servicing report.

4. If the borrower has delinquent loans, or the debt service margin is less than five percent after consideration of CC, DALR$ will proceed with paragraph E of this section.

E. Rescheduling or Reamortization of Delinquent Loans

DALR$ will reschedule or reamortize existing loans to eliminate any delinquency. All delinquent loans will be restructured. Loans with regular interest rates will be restructured at the lower of the original note rate or the current program rate. Loans that currently have a limited resource rate will be restructured at the lower of the original note rate or the current limited resource rate.

Only loans that are delinquent will be restructured during this process. Loans will be selected in the order of lowest security priority first. For loans with equal security priorities, the secondary selection will be based on the loan with the lowest amortization factor. For loans with an equal amortization factor, the final selection will be based on the loan with the lowest present value calculated in accordance with section V of attachment 1 of this Exhibit.

The calculations completed during this process are as follows:

1. Combine recoverable cost items with parent loans.

2. Reschedule or reamortize the delinquent loan over the maximum term entered for the loan.

3. Calculate debt repayment for the first year for the rescheduled or reamortized loan based on the new interest rate and term.

4. Repeat steps 2 and 3 until all delinquent loans have been processed.

5. Determine if a feasible plan was developed with the appropriate debt service margin by rescheduling or reamortizing all delinquent loans.

6. If a feasible plan was developed, no further servicing is required. The combination of a recoverable cost item with the parent loan will be reversed if the combined loans did not require servicing. DALR$ will provide the user with the opportunity to print the servicing report.

7. If a feasible plan was not found, DALR$ will reschedule or reamortize non-delinquent loans in accordance with paragraph F of this section.

F. Reschedule or Reamortize Non-Delinquent Loans

DALR$ will reschedule or reamortize non-delinquent loans one at a time to attempt to develop a feasible plan. Loans with regular interest rates will be restructured at the lower of the original note rate, or the current program rate. Loans that currently have a limited resource rate will be restructured at the lower of the original note rate or current limited resource rate.

Loans will be selected in the order of lowest security priority first. For loans with equal security priorities, the secondary selection will be based on the loan with the lowest amortization factor. For loans with equal amortization factors, the final selection will be based on the loan with the lowest present value.

After each non-delinquent loan has been rescheduled or reamortized, DALR$ will determine if a feasible plan was developed with the appropriate debt service margin prior to proceeding to the next loan.

The calculations completed during this process are as follows:

1. Reschedule or reamortize the non-delinquent loan over the maximum term entered for the loan.

2. Calculate debt repayment for the first year for the restructured loan based on the new interest rate and term.

3. Determine if a feasible plan was developed with the appropriate debt repayment margin.

4. If a feasible plan was developed, no further servicing is required. The combination of a recoverable cost item with the parent loan will be reversed if the combined loans did not require servicing. DALR$ will provide the user with the opportunity to print the servicing report.

5. If a feasible plan is not found, repeat steps 1 through 3 until a feasible plan is found with the appropriate debt service margin, or all non-delinquent loans have been rescheduled.

6. If a feasible plan was not found, DALR$ will reschedule or reamortize delinquent and non-delinquent loans at limited resource rates (if applicable), in accordance with paragraph G of this section.

G. Rescheduling or Reamortization of Limited Resource Eligible Loans at Limited Resource Rates

DALR$ will attempt to reschedule or reamortize limited resource eligible loans at the limited resource rate to develop a feasible plan. Debt repayment for new FSA term loans and for annual operating expenses will be recalculated at limited resource rates (if applicable). The interest rate for existing loans will be the lessor of the original note rate or the current limited resource rate.

Loans will be selected in the order of lowest security priority first. For loans with equal security priorities, the secondary selection will be based on the loan with the lowest amortization factor. For loans with equal amortization factors, the final selection will be based on the loan with the lowest present value.

After each limited resource eligible loan has been rescheduled or reamortized at the limited resource rate, DALR$ will determine if a feasible plan was developed with the appropriate debt service margin prior to proceeding to the next loan.

The calculations completed during this process are as follows:

1. Recalculate repayment for new FSA term loans and annual operating loans at the limited resource rate.

2. Determine if a feasible plan was found with the appropriate debt service margin after reducing the interest rate on new loans.

3. If a feasible plan was developed, no further servicing is required. Proceed to step 7.

4. Reschedule or reamortize an existing limited resource eligible loan at the limited resource interest rate.

5. Calculate debt repayment for the first year for the rescheduled or reamortized loan at the maximum term entered for the loan with limited resource rates.

6. Determine if a feasible plan was found with the appropriate debt service margin.

7. If a feasible plan was developed, no further servicing is required. The combination of a recoverable cost item with the parent loan will be reversed if the combined loans did not require servicing. DALR$ will provide the user with the opportunity to print the servicing report.

8. If a feasible plan was not found, repeat steps 4 through 6 until a feasible plan is found with the appropriate debt service

margin, or until all limited resource eligible loans have been processed.

9. If a feasible plan was not found, DALR$ will reschedule or reamortize loans with unequal payment schedules in accordance with paragraph H of this section.

H. Rescheduling or Reamortizing Loans with Unequal Payment Schedules

DALR$ will reschedule or reamortize loans with unequal payment schedules. These loans were not previously restructured in sections F or G as rescheduling or reamortization would have resulted in an increase in debt repayment in the first year. However, if the loan was delinquent, the loan would have been rescheduled or reamortized under section E regardless of the impact on the first year debt repayment. Loans will be restructured at the lower of the original note rate or the current loan program rate (limited resource if applicable).

Loans selected for rescheduling or reamortization in this process will not have been restructured during any of the earlier calculations and cannot be a ST loan.

Loans will be selected in the order of lowest security priority first. For loans with equal security priorities, the secondary selection will be based on the loan with the lowest amortization factor. For loans with equal amortization factors, the final selection will be based on the loan with the lowest present value.

After each loan with an unequal payment schedule has been rescheduled or reamortized, DALR$ will determine if a feasible plan was developed with the appropriate debt service margin prior to proceeding to the next loan.

The calculations completed during this process are as follows:

1. Reschedule or reamortize an unequal payment loan over the maximum term.

2. Calculate the debt repayment for the first year for the restructured loan based on the new term and interest rate.

3. Determine if a feasible plan was developed with the appropriate debt service margin.

4. If a feasible plan was developed, no further servicing is required. The combination of a recoverable cost item with the parent loan will be reversed if the combined loans did not require servicing. DALR$ will offer the user the opportunity to print the servicing report.

5. If a feasible plan is not developed, repeat steps 1 through 3 until a feasible plan is developed with the appropriate debt service margin, or until all unequal payment schedule loans have been processed.

6. If a feasible plan is not developed, calculate the necessary cash improvement required to cash flow in the first year using the rescheduling or reamortization process. Retain this amount for later use in the cash improvement process.

7. If a feasible plan was not developed, DALR$ will consider deferrals in accordance with paragraph I of this section.

Rescheduling or Reamortization with Deferral

If a feasible plan cannot be developed by utilization of rescheduling or reamortizing delinquent and non-delinquent loans with the maximum terms and lowest interest rates available under the regulations with a ten percent margin, deferral data must be entered in DALR$. DALR$ will not consider the borrower for writedown (discussed in paragraph J of this section) unless deferral data has been entered.

DALR$ will attempt to develop a feasible plan for the first year by deferring payments on FSA loans until the end of the deferral period (1–5 years). A deferral will decrease the payment during the period of the deferral, and increase the payment for the remaining term after the deferral period. Deferrals will only be beneficial if the debt repayment margin increases in the year after the deferral period. This improvement must be no later than six years after the current planning year, since the maximum deferral period is five years.

To determine the appropriate deferral period, the servicing official and borrower will review the farm operation over the next five years. Loans should be deferred to the year when the improvement from the first planning year is the greatest and the improvement in the following years are at least as good.

Loans will be deferred at the lower of the original note rate, or current program interest rate (limited resource, if applicable). ST will not be considered for regular deferral.

To select loans for deferral, DALR$ will calculate the payment after the deferral period for each loan as if the loan had been fully deferred. (This is only a side calculation to determine the best order of selection.) The ratio of the difference between the post deferral year payment and first year payment will be calculated as follows:

(Post Deferral Payment—First Year Payment)

First Year Payment

The loan with the smallest ratio will be deferred first and so forth.

The calculations completed during this process are as follows:

1. Defer the selected loan and calculate debt repayment in the first year and the year after the deferral period.

2. Determine if a feasible plan was developed for the first year with the appropriate debt service margin. If a feasible plan was developed proceed with step three, otherwise, repeat step one until a feasible plan for the first year is developed or all loans have been deferred.

3. If the applicable debt service margin for the first year was exceeded (this indicates that the last loan deferred did not require a full deferral), the following will occur:

a. DALR$ will determine the amount of the partial deferral needed on the last loan selected to maintain the feasible plan developed for the first year. See section VI of attachment 1 of this Exhibit for formulas used in calculating partial deferral.

b. DALR$ will calculate the debt repayment for this loan for the first year and the year after the deferral period.

4. Calculate total debt repayment for the year after the deferral period.

5. If a feasible plan exists for the year after the deferral period, then no further servicing actions are required. DALR$ will offer the user the opportunity to print the servicing report.

6. If the deferral of loans will not permit the borrower to cash flow in the first year, DALR$ will calculate the cash improvement required to cash flow in the first year using deferral. This amount will be retained for later use in the cash improvement process.

7. If a feasible plan does not exist for the year after the deferral period, DALR$ will consider the borrower for ST, if requested in accordance with paragraph J of this section. Otherwise, DALR$ will consider the borrower for debt writedown in accordance with paragraph K of this section.

J. Softwood Timber (ST)

DALR$ will consider ST, if requested by the borrower, to the maximum limit permitted under the regulations. Deferral of payment on ST until the end of the ST deferral period must improve the borrowers debt repayment ability during the first year and the year after the deferral period. All previously calculated regular deferrals will be cancelled. Only loans eligible for ST will be considered. If the entire unpaid balance of a loan is not converted to a ST loan, the loan will be split into two loans. The interest rate for the ST portion will be the lessor of the original note rate or the current ST loan program interest rate. The non ST portion of the loan will retain the interest rate and term determined prior to ST consideration.

Loans will be selected to maximize the present value of the loan after ST deferral. This will minimize or eliminate loss to the Government. DALR$ will calculate the present value for each eligible loan before and after ST and compute the decrease in present value using the following formula:

(Present Value w/ Full ST Deferral—Present Value if not Deferred)

Nondeferred First Year Payment

Note: For loans in which the present value increases, this will be a negative number.

The ratio of the decrease in present value to the first year payment will be calculated. The loan with the smallest (or most negative) ratio will be selected first. For loans with equal ratios, the secondary selection will be based on the loan with the lowest security priority.

The calculations completed during this process are as follows:

1. Starting with the first loan selected for ST, defer the loan. The amount of ST deferral cannot exceed the maximum limit permitted under the regulations.

2. Determine if a feasible plan was developed for the first year with the appropriate debt service margin. If a feasible plan was found, proceed with step three, otherwise, repeat step one until a feasible plan is found or the maximum for ST deferral has been reached.

3. If the full deferral of a loan results in the applicable debt service margin being exceeded, DALR$ will determine the amount of partial deferral required for a feasible plan. If a loan is only partially deferred, DALR$ will create a new loan identity for the partially deferred portion of the loan. The portion not deferred will maintain the interest rate and term prior to the deferral.

4. If full utilization of the ST program does not result in a positive cash flow in the first

year, repeat the regular deferral process (see paragraph J of this section. Loans selected for ST will not be deferred when repeating the regular deferral calculations.

5. If the deferral of loans under the ST program results in a positive cash flow with the applicable debt service margin for the first year, no further servicing is required. DALR$ will provide the user with the opportunity to print the servicing report.

6. If the deferral of loans under the ST program will not permit the borrower to cash flow in the first year, DALR$ will calculate the cash improvement required to cash flow in the first year using the ST program. This amount will be retained for later use in the cash improvement process.

7. If a feasible plan is not found, DALR$ will consider the borrower for writedown in accordance with paragraph K of this section.

K. Writedown

If a feasible plan could not be developed utilizing CC, rescheduling or reamortization, limited resource rates, regular deferral and ST deferral, and the borrower is eligible for writedown or writeoff, DALR$ will attempt to develop a feasible plan by writing down the borrower's FSA debt. Borrowers who have met the lifetime limitation for writedown or writeoff will not be considered for writedown. The amount of the writedown necessary to develop a feasible plan must be less than or equal to $300,000 in accordance with section 1951.909 of part 1951, subpart S.

DALR$ will prioritize the loans for writedown and attempt to develop a feasible plan (pass one). If a feasible plan is not found, DALR$ will re-order the loans based on different criteria and again attempt to develop a feasible plan with writedown (pass two). Loans deferred under the ST program will not be considered for writedown.

For the first attempt to writedown (pass one), loan selection will be based on an attempt to maximize the amount of writedown. The loan with the lowest security priority will be selected first. For loans with an equal security priority, the secondary selection will be based on the loan with the largest amortization factor.

If a feasible plan was not developed, DALR$ will re-order the loans based on new criteria, and will again attempt writedown (pass two). Loan selection will be based on lowest security priority. For loans with equal security priority, the secondary selection will be based on the loan with the smallest present value factor. For loans with an equal present value factor, the final selection will be based on the loan with the highest amortization factor.

The calculations completed during this process are as follows:

1. From the list of loans for the first method of loan prioritization (pass one), select the first from the list ordered and apply writedown. This step will be repeated until the borrower cash flows in the first year, or until all selected loans have been written down. The writedown amount for each loan will be retained and added to the total writedown amount.

2. If a cash flow for the first year was achieved and the full writedown of the last loan selected results in the applicable debt service margin being exceeded, this implies that a full writedown was not required. DALR$ will compute the amount of partial writedown on the last loan selected necessary to achieve a cash flow in the first year at the appropriate debt service margin and reschedule or reamortize the remaining unpaid balance.

3. If the present value of all FSA remaining debt plus the total CC equals or exceeds the NRV, and the total writedown amount is less than or equal to $300,000, no further serving is required. DALR$ will offer the user the opportunity to print the servicing report.

If this step fails, the process will be repeated from step one using the second method for ordering loans for writedown.

4. If step three fails after repeating the writedown calculations based on the second method of prioritizing loans for writedown, DALR$ will consider the borrower for a combination of deferral and writedown in accordance with paragraph L of this section.

L. Writedown with Deferral

This process will defer payment on FSA loans in combination with debt writedown in an effort to develop a feasible plan for the first year and the year after the deferral period. Regular and ST deferrals did not result in a feasible plan for the first year and the year after the deferral period.

The deferral period will be 1–5 years as entered by the user.

To select loans for deferral, DALR$ will calculate the payment for each loan as if it had been fully deferred. (This is a side calculation used only to prioritize the loans.) The ratio between the post deferral year payment and the first year payment will be calculated as follows:

(Post Deferral Payment—First Year Payment)

First Year Payment

The loan with the smallest ratio is deferred first and so on until the borrower cash flows in the first year with the appropriate debt service margin or all loans have been deferred.

Loans will be selected for writedown based on the selection criteria established in paragraph J of this section. The deferred portion of the loan is considered a separate loan in this process and must be prioritized for selection with the remaining loans.

The calculations completed during this process are as follows:

1. Loans are deferred to obtain a positive cash flow in the first year as described in paragraph J of this section.

2. DALR$ will create a new loan identity for the partially deferred portion of any loan.

3. If the borrower cash flows with the appropriate debt service margin in both the first year and the year after the deferral period, no further servicing is required. DALR$ will offer the user the opportunity to print the servicing report.

Otherwise, using the first method of loan selection (pass one) described in paragraph L of this section, DALR$ will select one loan at a time and attempt to develop a feasible plan by utilization of full or partial writedown.

4. If the borrower does not cash flow in the year after the deferral period, or the cash flow in the first year exceeds the appropriate debt service margin, DALR$ retains the writedown amount, all loans not completely written down are converted to non-deferred status, and the process will begin again at step one.

5. If the present value of all FSA remaining debt plus the total CC equals or exceeds the NRV, and if the writedown amount is less than or equal to $300,000, a feasible plan has been found and no further servicing is required. Otherwise, repeat this process beginning from step one using the second method of prioritizing loans for writedown described in paragraph L of this section.

6. If step three fails after repeating the writedown calculations based on the second method of prioritizing loans for writedown, DALR$ will determine if the borrower will be offered buyout at the current market value. If the writeoff amount (total principal and interest minus the total market value) is less than or equal to $300,000, DALR$ will compute an offer to the borrower for buyout at the current maket value. Otherwise, the borrower is not eligible for debt forgiveness. DALR$ will offer the user the opportunity to print the servicing report.

M. Cash Improvement

If a feasible plan could not be developed after considering all available primary loan servicing, DALR$ will provide the user with the opportunity to determine the amount of cash improvement in the first year balance available to produce a feasible plan.

The calculations completed during this process are as follows:

1. Collect cash improvement solutions from the reschedule or reamortize debt process, the regular deferral process, and the softwood timber deferral process.

2. Determine the cash improvement required in the first year to cash flow using conservation contract, if applicable.

3. Determine the cash improvement required in the first year to cash flow using writedown, if applicable.

4. Determine the cash improvement required in the first year to cash flow using writedown with deferrals, if applicable.

5. Select the lowest of all the cash improvements and display it to the screen. DALR$ will offer the user the opportunity to print the servicing report.

O. SUMMARY

At this point, DALR$ has finished its calculations. A feasible plan has been developed, or all possible combinations of servicing actions has been considered. DALR$ will provide a report of the results of the calculations performed.

If DALR$ does not find a solution that will provide a feasible plan, FSA will proceed with the other actions authorized in this subpart, including mediation, offer the opportunity to purchase collateral for market value, and consideration for Homestead Protection.

Attachment 1—Formulas Used in DALR$ Calculations

I. INTEREST ACCRUAL ON EXISTING LOANS

If the interest accrual date for an existing loan precedes the proposed restructure date,

DALR$ will determine the amount of additional interest which will accrue between these dates. This amount will be added to the unpaid interest that was outstanding as of the accrual date. The calculations used are as follows:

A. Interest Accrual After the Loan Status Date Equals

[(Principal × Interest Rate)/365] × (Effective Date − Accrual Date)

B. Total Accrued Interest Equals

Interest Accrual After the Loan Status Date + Accrued Interest as of the Loan Status Date

II. DEBT SERVICE MARGIN

DALR$ will attempt to develop a feasible plan that provides the borrower with a ten percent margin above the amount needed for family living expenses, farm operating expenses and debt service obligations. If a feasible plan cannot be found with a ten percent debt service margin, DALR$ will reduce the margin in increments of one percent until a feasible plan is found, or the debt service margin falls below zero. DALR$ will consider all loan servicing options prior to reducing the debt service margin.

The debt service margin is applicable in both the first year and the post deferral year calculations if deferral is being considered. The debt service margin is used to calculate the cash available restructure FSA debt and is calculated as follows:

Cash Available = ((balance available + family living expenses + farm operating expenses − interest expense) / applicable debt service margin) − —family living expenses − farm operating expenses (excluding interest) − non-agency debt repayment

The debt service margin used in the above calculations is set initially at 1.10. If a feasible plan is not found after consideration of all loan servicing options, the margin is reduced incrementally by .01. After the reduction is completed, DALR$ will reconsider the borrower for all loan servicing requested. DALR$ will continue to reduce the debt service margin until a feasible plan is developed, or until it has been determined that a feasible plan is not possible with a debt service margin of 1.00.

III. LOAN PAYMENT CALCULATIONS

Loan payments are calculated using amortization factors rounded to the nearest five places. All payments are rounded up to the next dollar. The equations used to calculate loan payments are as follows:

A. Payments on New FSA Loans

Payment = Principal Amount × Amortization Factor

B. Payments on FSA Loans for Annual Operating Expenses

1. Determine the average number of months that the loan for annual operating expenses will be outstanding. It may be estimated or calculated from the projected advance and payment schedule for the loan.

For example, the loan for annual operating expenses is estimated to be $15,000 and the projected advance and repayment schedule is planned as follows:

Principal balance outstanding	Number of months out-standing
$15,000	3
$8,000	2
$6,000	4

Average Months = (3 × 15,000) + (2 × 8,000) + (4 × 6000) 15,000

Average Months = 45,000 + 16,000 + 24,000 15,000

Average Months = 85,000 15,000

Average Months = 5.7

2. Determine interest accrual on annual operating expense loan.

Interest Accrual = [(Principal Amount × Interest Rate)/12] × Number of Months Outstanding

3. Determine total payment.

Total Payment = Principal Amount + Interest Accrual

C. Payments for Rescheduled or Reamortized Loans

1. Determine interest accrual if loan status date precedes the proposed restructure date in accordance with section I of this attachment.

2. Determine unpaid loan balance.

Unpaid Loan Balance = Principal Amount + Unpaid Interest (as of the loan status date) + Interest Accrual

3. Determine payment amount.

Payment = Unpaid Balance × Amortization Factor

D. Payments for Deferred Loans

1. Determine term of loan entered in DALR$.

2. Determine remaining term after deferral period.

Remaining Term = Term—Deferral Period

Remaining Term = Term-Deferral Period

3. Determine payment during deferral period.

Payment = Nondeferred Principal x Amortization Factor

Note: Amortization factor is based on the full term of the loan.

4. Determine payment after deferral.

a. Determine interest accrual on deferred principal.

Interest Accrual = Deferred Principal x Interest Rate x Deferral Period

b. Determine payment on interest accrual.

Payment = Interest Accrual / Remaining Term

c. Determine payment on deferred principal.

Payment = Deferred Principal x Amortization Factor

Note: Amortization factor is based on the remaining term after the expiration of the deferral period.

d. Determine total payment after deferral.

Payment = Payment of Nondeferred Principal + Payment on Interest Accrual + Payment on Deferred Principal

IV. LOAN AMORTIZATION FACTORS

Loan amortization factors are calculated using the following equations:

A. Non-deferred loan

A = [(i(l + i)n)/((l + i)n − l)]

A—amortization factor

i—interest rate

n—term

B. Deferred loan

A = [((i(l + i)n − t)/((l + i)n − t − l)) + ((i x t)/(n-t))]

A—amortization factor

i—interest rate

n—term

t—deferral period

C. Deferred interest

A = l/(n − t)

A—amortization factor

n—term

t—deferral period

V. Present value calculations

A. The net present value factors for each loan are calculated using the following equations:

1. Non-deferred loan

P = [((l+ i)n − l/(i(l+ i)n)]

P—net present value factor

i—discount rate

n—term

2. Deferred loan

P = [[((l+ i)n − t − l/(i(l+ i)n − t)]/(l+ i)t]

P—net present value factor

i—discount rate

n—term

t—deferral period

B. The loan net present is calculated using the following equation:

NPV = (P)(p)

NPV—loan net present value

P—loan net present value factor

p—loan payment

VI. Partial deferral calculations

Whenever full deferral of a loan results in excess cash flow (above the applicable debt service margin) in the first year, a partial deferral of that loan will decrease future payments on that loan and eliminate the excess cash flow in the first year. A partial loan is created by apportioning the loan balance into two distinct parts (nondeferred and deferred).

Partial deferrals are calculated as follows:

A. Determine the amount of deferral necessary to achieve cash flow in the first year.

d = l − (r/R)

d = The fraction of the loan which must be deferred.

r = The amount of excess cash flow in the first year with full deferral.

R = The debt repayment on the loan in the first year with out deferral.

B. Determine the deferred and nondeferred portion of the loan.

1. P1 = (1-d) x P

P1 = (r/R) x P

P1—Nondeferred Portion

d—Fraction of the Loan which must be deferred

P—Principal Balance

2. P2 = P—P1

P2—Deferred Portion

P—Principal Balance

P1—Nondeferred Portion

VII. $300,000 Debt writedown and buyout limitation

DALR$ will attempt to develop a feasible plan with a ten percent margin. All loan servicing, including writedown will be considered prior to reducing the debt service margin. However, DALR$ will only consider writedown for those borrowers that have not received the lifetime limitations for writedown or writeoff (with buyout). If a feasible plan is found with writedown, DALR$ will:

A. Writedown

1. Determine the amount of writedown that was necessary for the borrower to have a positive cash flow.

2. If the amount of the writedown is less than or equal to $300,000, a feasible plan has been found.

3. If the amount of the writedown is greater than $300,000, and the debt service margin exceeds 1.00, reduce the debt service margin by .01 and repeat from step 1.

4. If the amount of writedown is greater than $300,000, and the debt service margin equals 1.00, or a feasible plan cannot be developed, determine the amount of writeoff (with buyout at the current market value).

5. If the amount of writeoff (with buyout at the current market value) is less than or equal to $300,000, the borrower will be offered buyout.

6. If the amount of writeoff (with buyout at the current market value) is greater than $300,000, the borrower is not eligible for loan servicing or buyout.

27. Exhibit K is revised to read as follows:

Exhibit K—Notification of Consideration for Homestead Protection

Purpose: To notify borrowers of preacquisition homestead protection consideration when there is a dwelling on the security property and a complete application was submitted for primary and preservation loan servicing or requested from the notice of intent to accelerate notice.

Dear (Borrower's Name)

This notice is to inform you that, per your request, you are being considered for Homestead Protection.

We will need the following additional information to complete our processing of your request:

1.

2.

3.

Please provide the above information within 30 days from the date of this letter. If we do not receive the above requested information within 30 days, we will deny your request for Homestead Protection.

If you wish to withdraw your request for Homestead Protection, please complete and return the enclosed Attachment 1, ''Response to Notification of Consideration for Homestead Protection,'' within 15 days of the date of this letter.

[FOR INDIVIDUAL BORROWERS ONLY—INSERT EQUAL CREDIT OPPORTUNITY PARAGRAPH]

Sincerely,

Attachment 1—Response to Notification of Consideration for Homestead Protection

TO: Farm Service Agency

FROM: (Please Print your Name and Address)

I have read the Notification of Consideration for Homestead Protection which I received with this response form.

I want to withdraw my request for Homestead Protection.

_____

Borrower's Signature

_____

(Date)

28. Exhibit L is revised to read as follows:

Exhibit L—Homestead Protection Program Agreement

This agreement is entered into this _____ day of _____, 19 ____, by and between the Farm Service Agency (FSA) of the United States Department of Agriculture and _____ (''Borrower'').

Concurrently, with the execution of the pre-acquisition Homestead Protection Program Agreement, the borrower will deliver a completed Form FmHA 1955–1 to FSA. The Homestead Protection Program Agreement is subject to the provisions of 7 CFR part 1955, subpart A.

A. Borrower has received a loan or loans from FSA secured by real property which includes the Borrower's dwelling, and adjoining land that is used to maintain the Borrower and the Borrower's family (the Homestead Protection property). In some cases the FSA loans may also have been included one or more outbuildings that are useful to the Borrower and the Borrower's family and in such cases these outbuildings are included in the definition of Homestead Protection property.

B. Borrower's FSA loan is in default which could result in the loss of the borrower's Homestead Protection property.

C. Borrower wants to continue to occupy the Homestead Protection property after FSA acquires title to it.

D. FSA has already determined that Borrower has satisfied the requirements for its Homestead Protection Program.

E. FSA agrees to permit Borrower to retain occupancy of the Homestead Protection property on the following terms and conditions:

1. Subject to the terms and conditions set forth below FSA agrees to lease the Homestead Protection property, as more particularly described in attachment 1 hereto, to Borrower on the terms and conditions set forth in the lease as attachment 2 (the ''lease''). Borrower agrees to enter into the lease of the Homestead Protection property.

2. FSA's obligation to enter into the lease of the Homestead Protection property is subject to the occurrence of the following conditions:

a. FSA acquires fee title to the Homestead Protection property in connection with the liquidation of the farm property of which the Homestead Protection property is a portion.

b. All State and local governmental laws, ordinances and regulations concerning the creation of the Homestead Protection property as a separate legal parcel which can be leased and sold have been satisfied.

3. The term of the lease will begin on the date the later of the conditions set forth in paragraph 2 is satisfied and such date will be inserted into the lease.

4. The term of the lease will be ____ years. This term will be inserted in the lease.

5. The rent to be charged during the term of the lease will be determined by FSA as of the commencement date of the lease and will be in an amount substantially equivalent to rents charged for similar residential properties in the area. The borrower will be notified by letter of the amount of the rent and the amount of the rent will be inserted in the lease form, Form FmHA 1955–20.

6. Borrower agrees to cooperate with FSA in applying for and securing whatever local governmental approvals are necessary in order for the Homestead Protection property to be a separate legal parcel. FSA will bear the cost and expense of obtaining such approvals.

7. If the term of the lease has not begun on or before 2 years from the date of this agreement, the agreement shall end and be of no further force or effect.

Farm Service Agency

By: _____

Borrower:

_____

_____

_____

Attachment 1, Legal Description of the Property.

Attachment 2, Lease Form, Form FmHA 1955–20.

29. Exhibit M is revised to read as follows:

Exhibit M—Notice of the Availability of Homestead Protection

(Insert Borrower's Name and Address)

(Date)

On [acquisition date], FSA acquired the property which was security for your FSA loan. FSA has a program called the Homestead Protection Program under which you may be allowed to lease (with an option to purchase) the house which you owned and used as your principal residence, a reasonable number of farm buildings located near the house that are useful to the occupants of the house, and not more than 10 acres of land adjoining the house. If you would like to be considered for the Homestead Protection Program, you must notify this office, in writing, by [date 30 days from acquisition date] of the buildings and land you wish to retain.

If you would like more information about the Homestead Protection Program, you should contact the FSA servicing official at [insert county office telephone number].

Failure to respond by the above date will terminate any rights that you have to lease

and purchase the property under the Homestead Protection Program.

Sincerely,

Exhibits N, O, P and Q [Removed]

30. Exhibits N, O, P and Q are removed.

Subpart T—Disaster Set-Aside Program

§ 1951.958 [Amended]

31. Section 1951.958 is amended in paragraph (a)(2) by revising the words ''net recovery buyout in accordance with subpart S of part 1951, or operating loan assistance in accordance with § 1941.14 of subpart A of 7 CFR part 1941'' to read ''buyout in accordance with subpart S of this part.''

PART 1956—DEBT SETTLEMENT

32. The authority citation for part 1956 is revised to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 31 U.S.C. 3711; 42 U.S.C. 1480.

Subpart B—Debt Settlement—Farm Loan Programs and Multi-Family Housing

33. Subpart B is amended by revising the heading of the subpart to read as set forth above.

34. Section 1956.54 is amended in the definition of ''Farmer programs loans'' by revising the words ''Farmer programs loans'' to read ''Farm Loan Programs (FLP) loans;'' and by adding a definition of ''Debt Forgiveness'' as follows:

§ 1956.54 Definitions.

* * * * *

Debt forgiveness. For the purposes of servicing Farm Loan Programs loans, debt forgiveness is defined as a reduction or termination of a direct FLP loan in a manner that results in a loss to the Government. Included, but not limited to, are losses from a writedown or writeoff under subpart S of part 1951 of this chapter, debt settlement, after discharge under the provisions of the bankruptcy code, and associated with release of liability. Debt cancellation through conservation easements or contracts is not considered debt forgiveness for loan servicing purposes.

* * * * *

35. Section 1956.57 is amended in paragraph (b) by revising the words ''Agricultural Stabilization and Conservation Service'' to read ''Farm Service Agency'' in the second sentence and by revising the term ''FP'' to read ''FLP'' in the third sentence and by revising paragraph (k) and adding a paragraph (l) to read as follows:

§ 1956.57 General provisions.

* * * * *

(k) *Settlement where debtor owes more than one type of Agency loan.* It is not the policy to settle any loan indebtedness of a debtor who is also indebted on another agency loan and who will continue as an active borrower. In such case, the facts will be fully documented in part VIII of Form RD 1956–1.

(l) *No previous debt forgiveness.* Debt settlement may not be approved for any direct Farm Loan Programs loan if the borrower has received debt forgiveness on any other direct loan as defined in § 1956.54 of this subpart.

§ 1956.66 [Amended]

36. Section 1956.66 is amended in the introductory text by revising the words ''FmHA or its successor agency under Public Law 103–354'' to read ''RD'' in the second sentence and by revising the words ''FmHA or its successor agency under Public Law 103–354'' to read ''the Agency'' in the fourth sentence and in paragraph (a), introductory text, by revising the term ''FP'' to read ''FLP'' each time it appears.

PART 1962—PERSONAL PROPERTY

37. The authority citation for part 1962 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

Subpart A—Servicing and Liquidation of Chattel Security

§ 1962.13 [Amended]

38. Section 1962.13 is amended in paragraph (a)(1) by removing the words '', with signature.''

39. Section 1962.34 is amended in paragraph (b)(3) by revising the words ''exhibit B of Agency Instruction 440.1 (available in any Agency office) to read ''a National Office issuance'' and by adding a new paragraph (b)(6) and a new second sentence in paragraph (d) to read as follows:

§ 1962.34 Transfer of chattel security and EO property and assumption of debts.

* * * * *

(b) * * *

(6) The transferee has never been liable for a previous Farm Loan Programs (FLP) loan or loan guarantee which was reduced or terminated in a manner that resulted in a loss to the Government.

* * * * *

(d) * * * However, no such release will be granted to any borrower who was liable for any direct FLP loan which was reduced or terminated in a manner that resulted in a loss to the Government. * * *

* * * * *

§ 1962.40 [Amended]

40. Section 1962.40 is amended by revising the words ''FmHA or its successor agency under Public Law 103–354'' to read ''the agency'' every time it is mentioned in paragraph (a) and paragraph (b)(1) and by revising the words ''Farmer Program'' to read ''Farm Loan Programs'' in the heading and first sentence of the introductory text of paragraph (b)(2) and by revising the words ''180 days delinquent'' to read ''90 days past due (60 days delinquent) on their payments'' in the first sentence of the introductory text of paragraph (b)(2).

41. Section 1962.41 is amended by revising in paragraph (a) the words ''FmHA or its successor agency under Public Law 103–354'' to read ''RD'' in the second sentence and by revising the words ''FmHA or its successor agency under Public Law 103–354'' to read ''Agency'' in the third and fourth sentence and by revising the words ''FmHA or its successor agency under Public Law 103–354'' to read ''the Agency'' in the fifth sentence; and by revising paragraphs (c), (d), (e), and (f) to read as follows:

§ 1962.41 Sale of chattel security or EO property by borrowers.

* * * * *

(c) *Government takes possession.* The borrower may also turn over possession of the chattels to the agency by signing Form RD 455–4, ''Agreement for Voluntary Liquidation of Chattel Security.'' This form authorizes the agency to sell the security at either public or private sale. If the agency hires a caretaker, services should be obtained by use of Form AD–838, ''Purchase Order.''

(d) *Record of Sale.* The sale will be recorded on Form FmHA 1962–1.

(e) *Unpaid debt.* If the sale results in less than full payment of the debt, the servicing official will have the County Committee review the case to determine if the borrower can be released of personal liability in accordance with paragraph (f) of this section. The borrower will be notified of the County Committee's recommendation for or against a release of personal liability.

(f) *Release of liability.* The borrower and any co-signer may be released from personal liability to the agency when all the chattel security or EO property is sold at the present market value and the proceeds are applied on the loan accounts. If the County Committee recommends a release of liability based on the following comment, the comment will be typed on the County Committee Certification and executed by the committee, and be further processed

and approved in accordance with § 1962.34(h) of this subpart:

In our opinion (name of borrower and any co-signer) does not have reasonable ability to pay all or a substantial part of the balance of the debt owed after the cash sale, taking into consideration his or her assets and income at the time of the conveyance. The borrower has cooperated in good faith, used due diligence to maintain property against loss, and has otherwise fulfilled the convenants incident to the loan to the best of his or her ability. (Name of borrower and any cosigner) has not been liable for a previous Farm Loan Programs (FLP) loan which was reduced or terminated in a manner that resulted in a loss to the Government. Therefore, we recommend that the borrower and any cosigner be released from personal liability for any balance due on the indebtedness upon completion of the transaction.

Form RD 1965–8, ''Release From Personal Liability'' will be given to the borrower to release him/her from liability. If a release from liability cannot be granted, the borrower will be sent a letter similar to exhibit F of subpart A of part 1955 of this chapter (available in any agency office). The account will then be considered for debt settlement.

42. Section 1962.42 is amended by revising in the introductory text of paragraph (a) the words ''FmHA or its sucessor agency under Public Law 103–354'' to read ''agency'' in the first sentence; by revising in paragraphs (a)(1)(i) and (a)(1)(iii) the words ''FmHA or its successor agency under Public Law 103–354'' to read ''RD;'' by revising in paragraph (a)(1)(iv) the words ''FmHA or its successor agency under Public Law 103–354'' to read ''the agency;'' and by revising paragraphs (a)(1)(v) and (a)(2) and the first sentence in paragraph (b)(1) to read as follows:

§ 1962.42 Repossession, care, and sale of chattel security or EO property by the County Supervisor.

(a) * * *

(1) * * *

(v) When Form RD 455–5, ''Agreement of Secured Parties to Sale of SecurityProperty,'' is executed by all prior lienholders. If prior lienholders will not agree to liquidate the property, their liens may be paid if their notes and liens are assigned to the agency on forms prepared or approved by OGC. When prior liens are paid, the payment will be made in accordance with RD Instruction 2024–A (available in any agency office) and charged to the borrower's account.

* * * * *

(2) *Recording.* A list, dated and signed by the servicing official, of all security or EO property repossessed except for those items on Form RD 455–4, will be maintained in the borrower's case file. Whenever the servicing official is transferred to another position or leaves the agency or there is a change in jurisdiction, the District Director will give the succeeding servicing official in writing, the names of such borrowers and a list of the property repossessed in the custody of the servicing official and caretakers, its location, and the names and addresses of the caretakers.

(b) * * *

(1) * * * Care and feeding of livestock will be obtained by contract pursuant to subpart B of part 1955 of this chapter. * * *

* * * * *

43. Section 1962.46 is amended by adding a new paragraph (g)(2)(iv) to read as follows:

§ 1962.46 Deceased borrowers.

* * * * *

(g) * * *

(2) * * *

(iv) The transferee has never been liable for a previous Farm Loan Programs direct farm loan or loan guarantee which was reduced or terminated in a manner that resulted in a loss to the Government.

* * * * *

Exhibit D–1 of Subpart A [Removed]

44. Exhibit D–1 of subpart A is removed and reserved.

PART 1965—REAL PROPERTY

45. The authority citation for part 1965 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

Subpart A—Servicing of Real Estate Security for Farm Loan Programs Loans and Certain Note-Only Cases

46. Subpart A is amended to revise the heading of the subpart to read as set forth above.

47. Section 1965.26 is amended by revising paragraph (a)(1)(iv), by revising paragraph (a)(2), by revising paragraph (b), by revising paragraphs (c)(1) and (c)(3), by revising paragraphs (f)(4), (f)(5)(ii), adding a new paragraph (f)(5)(iii) and revising paragraph (f)(6) to read as follows:

§ 1965.26 Liquidation action.

* * * * *

(a) * * *

(1) * * *

(iv) Refinancing the Farm Loan Programs debt with another lender. The servicing official will explain the provisions of these regulations to the borrower.

(2) *Sale or transfer for less than secured debt.* If the property is to be sold or transferred for less than the total secured debts against it, the property will be appraised immediately to determine its present market value. The appraisal will be completed by an authorized agency employee in accordance with subpart E of part 1922 of this chapter and placed in the borrower's case file. If a qualified agency appraiser is not available, the State Executive Director may contract for an appraisal in accordance with RD Instruction 2024–A (available in any agency office).

(b) *Involuntary liquidation*—(1) *General.* When the servicing official, with the advice of the District Director, determines that continued servicing of the loan will not accomplish the objectives of the loan, or that further servicing cannot be justified under the policy stated in § 1965.2 of this subpart, liquidation of the account will be accomplished as quickly as possible under this section and subpart A of part 1955 of this chapter.

(2) *Farm Loan Programs loan cases.* In Farm Loan Programs loan cases, borrowers who are 90 days past due (60 days delinquent) on their payments, must receive Exhibit A with attachments 1 and 2, or attachments 1, 3, and 4 of exhibit A of subpart S of part 1951 of this chapter in cases involving nonmonetary default. The servicing official will send these forms to the borrower as soon as a decision is made to liquidate. The procedures set out in subpart S of part 1951 of this chapter shall be followed and any appeal must be concluded before any liquidation action, including termination of releases of sales proceeds, is taken. If the borrower fails to return attachment 2 of exhibit A of subpart S of part 1951 of this chapter and a complete application within 60 days, the servicing official will send attachments 9 and 10 or 9–A and 10–A of exhibit A of subpart S of part 1951 of this chapter. If the borrower fails to return attachment 4, 6, 6–A, 10, or 10–A of exhibit A of subpart S of part 1951 of this chapter within 60 days, the servicing official will submit the case to the District Director in accordance with the provisions of § 1955.15 of subpart A of part 1955 of this chapter.

(3) Reserved.

(4) Acceleration of account. When foreclosure is approved, acceleration of the account and demand for payment will be accomplished according to the applicable paragraphs of § 1955.15 of subpart A of part 1955 of this chapter.

(c) * * *

(1) When a borrower is indebted to the agency for more than one type of FLP loan, a thorough study should be made of each loan and the effect

liquidation of one or more of the loans would have on any and all other loans. When liquidation of one or more FLP loans secured by real estate and chattels is necessary, and it will jeopardize the repayment of or the accomplishment of the purpose of the other loans, liquidation of all real estate and all chattel security for all loans will be started at the same time. Chattel security will be liquidated under subpart A of part 1962 of this chapter, except when real estate is transferred in accordance with § 1965.27 of this subpart.

* * * * *

(3) RHS SFH loans on farm tracts must be considered for payment assistance and/or moratorium at the time servicing options are being considered for the FLP loan(s) prior to acceleration. The RHS county office file will be documented to show that payment assistance and moratorium were considered. When the Notice of Intent notices, set forth in subpart S of part 1951 of this chapter are sent to a borrower who also has an RHS loan, and the dwelling is security for the farm loan(s) and is located on the farm tract, it will not be necessary for RHS to meet the additional requirements of subpart G of part 1951 of this chapter prior to accelerating the RHS loan accounts. The RHS accounts will be accelerated at the same time the Notice of Intent notices, set forth in subpart S of part 1951 of this chapter are sent to the borrower. If it is later determined that the FLP loan(s) is to receive additional servicing in lieu of liquidation, the RHS loan will be reinstated simultaneously with the FLP servicing actions and may be reamortized in accordance with § 1951.315 of subpart G of part 1951 of this chapter.

* * * * *

(f) * * *

(4) The agency's liens against the security property are not released until the appropriate sale proceeds for application on the Government's claim are received. The release will be made on forms approved or prepared by OGC.

(5) * * *

(ii) When the Agency debt less the market value and prior liens is $1 million or more (including principal, interest, and other charges), release of liability must be approved by the Administrator or designee; otherwise, the State Executive Director must approve the release of liability. All cases requiring a release of liability will be submitted in accordance with exhibit A of subpart B of part 1956 of this chapter (available in any agency office).

(iii) The borrower has never been liable for any direct FLP loan or loan guarantee which was reduced or terminated in a manner resulting in a loss to the Government.

(6) If a release from liability cannot be granted, the borrowers will be sent a letter similar to exhibit F of subpart A of part 1955 of this chapter (available in any agency office). The servicing official will meet with the borrower within 30 days to assist the borrower in the development of a debt settlement offer in accordance with subpart B of part 1956 of this chapter. (available in any agency office).

* * * * *

§ 1956.27 [Amended]

48. Section 1965.27 is amended by:

a. In the introductory paragraph by revising the words ''FmHA or its successor agency under Public Law 103–354'' to read ''Agency'' in the first sentence; revising the words ''Farmer program'' to read ''Farm Loan Programs (FLP)'' in the second sentence; revising the words ''FmHA or its successor agency under Public Law 103–354'' to read ''FLP'' in the third and fourth sentence; by revising the words ''FmHA or its successor agency under Public Law 103–354'' to read ''the Agency's'' in the sixth sentence; by revising the words ''FmHA or its successor agency under Public Law 103–354'' to read ''agency'' in the seventh sentence; by removing the words ''FmHA or its successor agency under Public Law 103–354'' in the eighth sentence in both places they appear;

b. In paragraph (c)(2) by revising the words ''FmHA or its successor agency under Public Law 103–354'' to read ''the agency'' in the first sentence; by revising the third sentence to read ''Interest rates are specified in agency National Office issuances (available in any agency office) for the type of loan involved.''; by revising the words ''FmHA or its successor agency under Public Law 103–354'' to read ''RD'' in the fourth sentence; by revising the fifth sentence to read ''The field office will process the assumption via the field office terminal system in accordance with Form 1965–13.'';

c. In paragraph (d) by adding a sentence to the end of the paragraph to read ''No assumption can be approved if the transferee has been liable for any Farm Loan Program (FLP) loan or loan guarantee which was reduced or terminated in a manner resulting in a loss to the Government.'';

d. In paragraph (e) by revising the words ''FmHA or its successor agency under Public Law 103–354'' to read ''agency'';

e. In paragraph (f) by adding a new sentence after the first sentence to read ''Release shall not be granted to any borrower or cosigner who was liable for any FLP direct loan which was reduced or terminated in a manner resulting in a loss to the Government''; by revising the word ''FP'' to read ''FLP'' in the third and fifth sentence; by revising the words ''FmHA or its successor agency under Public Law 103–354'' to read ''agency'' in the third sentence; by removing the fourth sentence that read ''SFH borrowers will be released from liability in accordance with § 1965.127 of subpart C of part 1965 of this chapter.''; and by removing the words ''FmHA or its successor agency under Public Law 103–354'' in the seventh sentence.''

Dated: February 13, 1997.

James W. Schroeder,

Acting Under Secretary for Farm and Foreign Agricultural Services.

Dated: February 14, 1997.

Jill Long Thompson,

Under Secretary for Rural Development.

[FR Doc. 97–5115 Filed 3–4–97; 8:45 am]

BILLING CODE 3410–05–P

federal register

Wednesday
March 5, 1997

Part III

Department of Education

Emergency Immigrant Education Program; Notice

DEPARTMENT OF EDUCATION

(CFDA No.: 84.162A)

Emergency Immigrant Education Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1997

Purpose of Program: This program provides grants to State educational agencies (SEAs) to assist local educational agencies (LEAs) that experience unexpectedly large increases in their student population due to immigration. These grants are to be used to provide high-quality instruction to immigrant children and youth and to help those children and youth make the transition into American society and meet the same challenging State performance standards expected of all children and youth.

Eligible Applicants: State educational agencies.

Deadline for Transmittal of Applications: May 15, 1997.

Deadline for Intergovernmental Review: July 15, 1997.

Applications Available: March 10, 1997.

Available Funds: $100 million.

Project Period: Up to 16 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 76, 77, 79, 80, 81, 82, and 85.

Programmatic Information: An SEA is eligible for a grant if it meets the eligibility requirements specified in sections 7304 and 7305 of the Elementary and Secondary Education Act of 1965 (the Act), as amended by the Improving America's School's Act of 1994 (Pub. L. 103–382, enacted October 20, 1994). (20 U.S.C. 7544 and 7545). In order to receive an award under this program, an SEA must provide a count, taken during April 1997, of the number of immigrant children and youth enrolled in public and nonpublic schools in eligible LEAs in accordance with the requirements specified in section 7304 of the Act. An eligible LEA is one in which the number of immigrant children and youth enrolled in the public and nonpublic elementary and secondary schools within the district is at least either 500 or 3 percent of the total number of students enrolled in those public and nonpublic schools. (20 U.S.C. 7544(b)(2)). Under section 7501(7) of the Act, the term ''immigrant children and youth'' means individuals who are aged 3 through 21, were not born in any State, and have not been attending one or more schools in any one or more States for more than 3 full academic years. (20 U.S.C. 7601(7)).

For Applications or Information Contact: Ms. Harpreet K. Sandhu, U.S. Department of Education, 600 Independence Avenue, SW., Room 5086, Switzer Building, Washington, DC 20202–6510. Telephone: (202) 205–9808. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of the application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; on the Internet Gopher Server (at Gopher.//gcs.ed.gov); or on the World Wide Web (at http://www.ed.gov/money.html). However, the official application notice for this grant program is the notice published in the Federal Register.

Program Authority: 20 U.S.C. 7541–7549.

Dated: February 27, 1997.

Delia Pompa,

Director, Office of Bilingual Education and Minority Language Affairs.

[FR Doc. 97–5424 Filed 3–4–97; 8:45 am]

BILLING CODE 4000–01–P

federal register

Wednesday
March 5, 1997

Part IV

Department of Justice

Bureau of Prisons

28 CFR Part 511 et al.

Progress Reports: Triennial Preparation; Proposed Rule

Searching and Detaining or Arresting Persons Other Than Inmates; Proposed Rule

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 524

[BOP–1067–P]

RIN 1120–AA63

Progress Reports: Triennial Preparation

AGENCY: Bureau of Prisons, Justice.

ACTION: Proposed Rule.

SUMMARY: The Bureau of Prisons is proposing to amend its regulations on progress reports to require that progress reports for designated inmates be prepared at least once every 36 months. The purpose of this change is to streamline operations at Bureau facilities while continuing to provide appropriate program services to inmates.

DATES: Comments due by May 5, 1997.

ADDRESSES: Rules Unit, Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514–6655.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is proposing to amend its regulations on progress reports (28 CFR part 524, subpart E). A final rule on this subject was published in the Federal Register on December 3, 1990 (55 FR 49977), and was amended February 11, 1994 (59 FR 6856) and February 27, 1995 (60 FR 10722).

Progress reports are used to maintain current information on an inmate such as his/her institutional adjustment, program participation, and readiness for release. Paragraph (e) of § 524.41 had previously specified that a progress report shall be prepared on each federal inmate at least once every 24 months, if for no other reason than to update report information. This paragraph was amended in 1995 to allow for a triennial rather than biennial progress report for inmates at independent camps. This amendment allowed the Bureau to allocate staff resources at independent camps in a more efficient manner. The Bureau wishes to extend such streamlining of operations to its other facilities, and therefore proposes to require that a progress report be prepared on each designated inmate at least once every 36 months if not previously generated for another reason required by § 524.41.

The Bureau of Prisons has determined that this rule is not a significant regulatory action for the purpose of E.O. 12866, and accordingly was not reviewed by the Office of Management and Budget. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), does not have a significant impact on a substantial number of small entities. Because this rule pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, its economic impact is limited to the Bureau's appropriated funds.

Interested persons may participate in this proposed rulemaking by submitting data, views, or arguments in writing to the Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., HOLC Room 754, Washington, DC 20534. Comments received during the comment period will be considered before final action is taken. Comments received after the expiration of the comment period will be considered to the extent practicable. All comments received remain on file for public inspection at the above address. The proposed rule may be changed in light of the comments received. No oral hearings are contemplated.

List of Subjects in 28 CFR Part 524

Prisoners.

Ronald G. Thompson,

Acting Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(p), part 524 in subchapter B of 28 CFR, chapter V is proposed to be amended as set forth below.

SUBCHAPTER B—INMATE ADMISSION, CLASSIFICATION, AND TRANSFER

PART 524—CLASSIFICATION OF INMATES

1. The authority citation for 28 CFR part 524 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3521–3528, 3621, 3622, 3624, 4001, 4042, 4046, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 21 U.S.C. 848; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

2. In § 524.41, paragraph (e) is revised to read as follows:

§ 524.41 Types of progress reports.

* * * * *

(e) *Triennial Report*—prepared on each designated inmate at least once every 36 months if not previously generated for another reason required by this section.

* * * * *

[FR Doc. 97–5397 Filed 3–4–97; 8:45 am]

BILLING CODE 4410–05–P

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 511

[BOP 1066–P]

RIN 1120–AA61

Searching and Detaining or Arresting Persons Other Than Inmates

AGENCY: Bureau of Prisons, Justice.

ACTION: Proposed Rule.

SUMMARY: In this document, the Bureau of Prisons is proposing to amend its regulations on searching/detaining of non-inmates to authorize the Warden to conduct visual searches of visitors suspected of introducing contraband into a low and above security level institution (or administrative institution, or in a pretrial or in a jail unit within any security level institution) when there is reasonable suspicion that the visitor possesses contraband or is introducing or attempting to introduce contraband into the institution. Currently, such searches are authorized at medium and higher security level institutions (or administrative institution, or in a pretrial or in a jail unit within any security level institution). This amendment is intended to provide for the continued secure and safe operation of Bureau institutions.

DATES: Comments due by May 5, 1997.

ADDRESSES: Rules Unit, Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514–6655.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is proposing to amend its regulations on searching/detaining non-inmates (28 CFR part 511, subpart A. A final rule on this subject was published in the Federal Register on November 1, 1984 (49 FR 44057) and was amended on July 18, 1986 (51 FR 26126), February 1, 1991 (56 FR 4159), and on February 8, 1994 (59 FR 5924).

Current regulations in § 511.12(d) permit the Warden to authorize a visual

search (visual inspection of all body surfaces and cavities) of a visitor as a prerequisite to a visit in a medium or high security level institution, or administrative institution, or in a pretrial or in a jail (detention) unit within any security level institution when there is reasonable suspicion that the visitor possesses contraband or is introducing or attempting to introduce contraband into the institution. Any visitor who objects to the search procedure has the option of refusing and leaving the institution property, unless there is reason to detain and/or arrest.

Low security level institutions, like medium and higher security level institutions, maintain secure perimeter barriers and, to various degrees, are characterized by security factors similar to those of medium and higher security level institutions. Consistent with the needs of these secure institutions, the Bureau proposes to authorize the use of a visual search at low security level institutions. Minimum security level institutions are unaffected by this proposal.

As an editorial change, the Bureau is also revising the title of the regulation to ''Searching and Detaining or Arresting Persons Other Than Inmates.'' This title more completely reflects the scope of the regulation.

The Bureau of Prisons has determined that this rule is not a significant regulatory action for the purpose of E.O. 12866, and accordingly was not reviewed by the Office of Management and Budget. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), does not have a significant impact on a substantial number of small entities. Because this rule pertains to institution security requirements, its economic impact is limited to the Bureau's appropriated funds.

Interested persons may participate in this proposed rulemaking by submitting data, views, or arguments in writing to the Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., HOLC Room 754, Washington, DC 20534. Comments received during the comment period will be considered before final action is taken. Comments received after the expiration of the comment period will be considered to the extent practicable. All comments received remain on file for public inspection at the above address. The proposed rule may be changed in light of the comments received. No oral hearings are contemplated.

List of Subjects in 28 CFR Part 511

Prisoners.

Kathleen M. Hawk,

Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(p), part 511 in subchapter A of 28 CFR, chapter V is proposed to be amended as set forth below.

SUBCHAPTER A—GENERAL MANAGEMENT AND ADMINISTRATION

PART 511—GENERAL MANAGEMENT POLICY

1. The authority citation for 28 CFR part 511 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 751, 752, 1791, 1792, 1793, 3050, 3621, 3622, 3624, 4001, 4012, 4042, 4081, 4082 (Repealed as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99, 6.1.

2. In 28 CFR part 511, the heading for subpart B is revised to read as follows:

Subpart B—Searching and Detaining or Arresting Persons Other Than Inmates

3. In § 511.12, paragraph (d) is revised to read as follows:

§ 511.12 Procedures for searching visitors.

* * * * *

(d) The Warden may authorize a visual search (visual inspection of all body surfaces and cavities) of a visitor as a prerequisite to a visit to an inmate in a low and above security level institution, or administrative institution, or in a pretrial or in a jail (detention) unit within any security level institution when there is reasonable suspicion that the visitor possesses contraband or is introducing or attempting to introduce contraband into the institution.

* * * * *

[FR Doc. 97–5398 Filed 3–4–97; 8:45 am]

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Wednesday
March 5, 1997

Part V

Environmental Protection Agency

40 CFR Part 141

National Primary Drinking Water Regulations: Analytical Methods for Radionuclides; Final Rule and Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 141

[WH–FRL–5689–9]

RIN 2040–AC88

National Primary Drinking Water Regulations: Analytical Methods for Radionuclides

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving the use of 66 additional analytical methods for compliance with current radionuclide drinking water standards and monitoring requirements. The methods are applicable to gross alpha, gross beta, tritium, uranium, radium-226, radium-228, gamma emitters, and radioactive cesium, iodine and strontium. This rule is expected to satisfy public requests for approval of new analytical technologies for measuring contaminants in drinking water. This rule imposes no burden, because it does not withdraw approval of any previously approved method. Today's final rule follows the Proposed Notice of Rulemaking for Radionuclides in Drinking Water published on July 18, 1991. The 1991 rulemaking proposed to approve analytical methods and establish Maximum Contaminant Level Goals (MCLGs) and National Primary Drinking Water Regulations (NPDWRs) for several radionuclides. Today's final rule is limited to the approval of additional analytical methods. In addition, since EPA received comments suggesting approval of additional methods during the comments period, EPA is proceeding with direct final rule making on 12 of the suggested methods. EPA is inviting comments on these 12 methods elsewhere in today's rule.

DATES: The effective date for amendment 2 is April 4, 1997. The effective date for amendment 3 is May 5, 1997 unless EPA receives adverse comments by April 4, 1997 requiring a response. If EPA receives adverse comments, EPA will publish a timely withdrawal of amendment 3.

The incorporation by reference of the publications listed in this regulation is approved by the Director of the Federal Register as of April 4, 1997.

This regulation shall be considered final Agency action on May 9, 1997 at 1:00 p.m. Eastern Standard Time for purposes of judicial review in accordance with 40 CFR 23.7.

ADDRESSES: Adverse comments on the direct final rule must be submitted to Chemistry Methods Docket Clerk, MC 4101, 401 M street, S.W., Washington, D.C. 20460. Copies of the public comments received, EPA responses, and all other supporting documents (including references included in this notice) are available for review at the U.S. Environmental Protection Agency, Water Docket, 401 M Street, S.W. Washington, D.C. 20460. For access to the docket materials, call 202–260–3027 on Monday through Friday, excluding Federal holidays, between 9:00 a.m. and 3:30 p.m. Eastern Time for an appointment. Copies of methods published by EPA are available for a nominal cost through the National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161. NTIS also may be reached at 800–553–6847. All other methods must be obtained from the publisher. Sources (with addresses) for all approved methods are cited at 40 CFR Part 141 and in the References section of today's rule.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Reding, Office of Ground Water and Drinking Water, U.S. Environmental Protection Agency, 26 West Martin Luther King Drive, Cincinnati, OH 45268, 513–569–7961; Dr. Jitendra Saxena, Office of Ground Water and Drinking Water (4603), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, 202–260–9579; or one of the EPA Regional Office contacts listed below. General information may also be obtained from the EPA Drinking Water Hotline. Callers within the United States may reach the Safe Drinking Water Hotline at 800–426–4791. The Safe Drinking Water Hotline is open Monday through Friday, excluding Federal holidays, from 9:00 a.m. to 5:30 p.m. Eastern Time.

For technical information regarding the methods contact Stephen Pia, National Exposure Research Laboratory, Office of Research and Development, U.S. Environmental Protection Agency, P.O. Box 93478, Las Vegas, NV 89193–3478, 702–798–2102.

EPA Regional Offices:

I JFK Federal Bldg., One Congress Street, 11th floor, Boston, MA 02203, Phone: 617–565–3602, Jerry Healey

II 290 Broadway, 24th Floor, New York, NY 10007, Phone: 212–637–3880, Walter Andrews

III 841 Chestnut Building, Philadelphia, PA 19107, Phone: 215–597–6511, Victoria Binetti

IV 345 Courtland Street, N.E., Atlanta, GA 30365, Phone: 404–347–2207, Wayne Aronson

V 77 West Jackson Boulevard, Chicago, IL 60604, Phone: 312–886–6206, Charlene Denys

VI 1445 Ross Avenue, Suite 1200, Dallas, TX 75202, Phone: 214–655–7150, Oscar Cabra

VII 726 Minnesota Avenue, Kansas City, KS 66101, Phone: 913–551–7682, Robert Morby

VIII One Denver Place, 999 18th Street, Suite 500, Denver, CO 80202, Phone: 303–293–1652, Patrick Crotty

IX 75 Hawthorne Street, San Francisco, CA 94105, Phone: 415–744–1817, Doris Betuel

X 1200 Sixth Avenue, Seattle, WA 98101, Phone: 206–553–1893, Larry Worley.

SUPPLEMENTARY INFORMATION:

Regulated entities: Entities potentially regulated by this action are listed below:

Category	Example of regulated entities
Public Water Systems	All public water systems that have at least 15 service connections or regularly serve an average of at least 25 individuals daily at least 60 days out of the year.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the type of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your business is regulated by this action, you should carefully examine the applicability of the current radionuclide drinking water standards and monitoring requirements in § 141.15 and 141.16 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

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I. Statutory Authority

The Safe Drinking Water Act (SDWA), as amended in 1996, requires EPA to promulgate national primary drinking water regulations (NPDWRs) which

specify maximum contaminant levels (MCLs) or treatment techniques for drinking water contaminants (42 USC 300g–1). NPDWRs apply to public water systems (42 USC 300f(1)(A)). According to section 1401(1)(D) of the Act, NPDWRs include ''criteria and procedures to assure a supply of drinking water which dependably complies with such maximum contaminant levels; including quality control and testing procedures * * *.'' In addition, Section 1445(a) of the Act authorizes the Administrator to establish regulations for monitoring to assist in determining whether persons are acting in compliance with the requirements of the SDWA. EPA's promulgation of analytical methods is authorized under these sections of the SDWA as well as the general rulemaking authority in SDWA Section 1450(a) (42 USC 300j–9(a)).

II. Regulatory Background

EPA has promulgated analytical methods for all currently regulated drinking water contaminants for which MCLs or monitoring requirements have been promulgated. In most cases, the Agency has promulgated regulations specifying (i.e., approving) use of more than one analytical method for measurement of a contaminant, and laboratories may use any approved method for determining compliance with an MCL or monitoring requirement. After any regulation is published, EPA may amend the regulations to approve additional methods, or modifications to approved methods, or withdraw methods that become obsolete.

On July 18, 1991 (56 FR 33050), EPA proposed to increase the number of methods approved for radionuclide monitoring by proposing the use of several new methods. EPA believed that these methods were as good as, or better than, existing approved methods and procedures. EPA also proposed drinking water standards (NPDWRs and MCLGs) and laboratory certification criteria for several radionuclides, including radon. EPA requested public comments on all of these proposed actions. Today's notice takes final action only on the approval of methods for gamma emitters, gross alpha, gross beta, radium-226, radium-228, uranium, tritium and radioactive cesium, iodine, and strontium. For the reasons discussed below, revision of standards for these radionuclides, and standards and analytical methods for radon-222 may be addressed in a separate rule.

In 1995 EPA initiated a dialogue with stakeholders to prioritize EPA drinking water activities in order to maximize health risk reduction. That dialogue resulted in a draft report, published for comment in November, 1995 (EPA 1995), proposing to reallocate EPA's resources to those projects which have the highest risk reduction potential. Assuring that analytical test methods for determining compliance with existing standards remained ''up to date'' received significant stakeholder support. Therefore, in today's rule, EPA is approving some of the proposed radionuclide methods. EPA is not taking action on any radon analytical methods or on any of the MCLGs or NPDWRs that were proposed in the 1991 notice. Schedule for rulemaking on radon and other radionuclides is governed by the 1996 SDWA Amendments.

III. Explanation of Today's Action

Today's action promulgates analytical methods for measurement of radionuclides in drinking water based on the 1991 proposal (54 methods) and on the public comments received on the 1991 proposal (12 methods). This action also corrects method citation and typographical errors made in the 1991 proposal. EPA is not withdrawing any of the 14 previously approved methods in today's action, which means the EPA Methods, the Standard Methods (13th edition) and ASTM methods that were previously cited at 40 CFR 141.25(a) are still approved and included in amendments 2 and 3. Laboratories may continue to use these 14 methods or they may choose from a group of 66 methods approved in today's rule. The effective date for approval of the 54 methods based on the 1991 proposal is April 4, 1997. The effective date for approval of the 12 methods submitted as public comments is May 5, 1997 (see explanation below).

In the 1991 notice the Agency proposed 56 new methods for measuring radionuclides in drinking water. The Agency is approving all but two of these methods. The analytical methods proposed were considered to be economically and technologically feasible for compliance monitoring. EPA analyzed the most recent available information and considered public comments on the proposal in arriving at the final selection of methods in the table at 40 CFR 141.25(a). Method D–1943–81 was proposed but is not approved today for gross alpha determinations because EPA realized that the 500 pCi/L lower limit of the method is too high to be of use for drinking water analysis. A precipitation method (Cs–01) for cesium was also proposed but is not approved because the method is no longer supported by its developer, the U.S. Department of Energy.

Twelve of the methods approved in today's rule using direct final rulemaking, are based on the public comments received on the 1991 proposal. Commenters submitted several methods or techniques for consideration for approval. EPA evaluated and compared the sensitivity, accuracy, precision and selectivity of the suggested methods to the method performance requirements at 40 CFR 141.25 and to the data in previously approved methods. EPA also determined whether the performance data submitted by the commenter would insure compliance with the radionuclide MCLs and monitoring requirements at 40 CFR 141.15, 141.16, 141.25 and 141.26. Based on this evaluation EPA is approving twelve of these methods all of which are published, supported and extensively peer reviewed by highly respected method organizations. Of the twelve methods, six are published by the Standard Methods Committee, two by the American Society for Testing and Materials (ASTM), two by the U.S. Geological Survey (USGS) and two by the Department of Energy (DOE). Eleven of these methods use technologies that underlie methods that were proposed. Only one method uses a technology that was not proposed in the 1991 rule. This new cost-saving technology, pulsed laser phosphorimetry, was not proposed because no validated method was available at the time of proposal. Approving these additional methods will cause no burden because their use, like use of all of the methods approved in this rule, is optional.

The Agency is publishing the twelve methods suggested by public comment on the 1991 proposed rule as a ''direct final'' rule. A direct final rule is not an ''interim final'' rule (i.e. a rule which provides for public comment after it has gone into effect); rather it is a rule which is published with a delayed effective date allowing for the receipt of and response to public comment before the rule goes into effect. If EPA receives comments requiring response, then EPA will take additional action necessary to respond to those comments prior to the effective date (i.e. either withdraw the direct final rule or promulgate today's companion proposal). This rule thus complies with notice-and-comment requirements under the Administrative Procedure Act (APA). EPA has chosen to use the direct final approach for these twelve methods because the Agency does not expect to receive adverse public comment and to allow for the most expeditious implementation

possible consistent with the APA. Elsewhere in today's Federal Register, EPA is proposing these twelve methods. If EPA decides to withdraw any or all of these methods based on public comment, EPA will proceed with a revised rule based on this proposal. There will not be an additional comment period, so parties interested in commenting on the proposed rule should do so at this time.

The methods approved based on public comments and their analytes are: a co-precipitation method for gross alpha (7110C), two radon emanation and two radiochemical methods for radium-226 (7500–Ra C, Ra–05, D 2460–90 and R–1140–76), an alpha spectrometry and a laser phosphorimetry method for uranium (7500–U C and D 5174–91), one radiochemical and one gamma spectrometry method for cesium (R–1111–76 and 7120), one radiochemical and one gamma spectrometry method for iodine (7500–I C and 7500–I D) and a radiochemical method for strontium (SR–02). EPA evaluated and selected these methods using the same criteria (sensitivity, accuracy, precision and selectivity) that were used to select methods for the 1991 proposal (56 FR 33092–33093). In the proposal EPA stated that the ''reliability of these [proposed] methods has been demonstrated by a history of many years' use by state, federal and private laboratories''. Most of the methods approved in today's rule have been collaboratively validated in multi laboratory studies and the remainder in single laboratory studies.

Today's rule also corrects method citations and typographical errors made in the 1991 proposal. EPA has clarified the status of method 7500–U C to reflect a change made by the publisher. In the 18th edition of Standard Methods (1992), the fluorometric method 7500–U C for determination of uranium was dropped and the method number, 7500–U C, was assigned to an alpha spectrometry method for uranium. If the Standard Methods version of the alpha spectrometry method had been published earlier, EPA would have proposed it along with the four alpha spectrometry and five fluorometric methods for uranium that were proposed in the 1991 rule (56 FR 33124). As EPA is interested in approving both fluorometric and alpha spectrometric methods for uranium, this final rule approves method 7500–U C as a fluorometric method in the 17th edition of Standard Methods and as an alpha spectrometry method in the 18th and 19th editions of Standard Methods.

The method numbers in the 1991 proposal for a radiochemical iodine method and a liquid scintillation method were incorrect. These methods are approved and correctly listed in today's rule as methods D 4785–93 and D 4107–91. Other errors, which include page number references in the ''Interim Radiochemical Methodology for Drinking Water'' manual (EPA 1976), method numbers in the ''EML Procedures Manual'' (DOE 1990) and in the ''Radiochemical Procedures Manual'' (EPA 1987), and the publication date of the U.S. Geological Survey (USGS) book, are also corrected in today's rule.

IV. Response to Comments Received on the Proposed Rule

EPA received 160 analytical method related comments on the 1991 proposed rule. Commenters represented analytical laboratories, water utilities, instrument manufacturers, State and local governments, and trade associations. The majority of these comments dealt with radon methods, laboratory certification criteria and questions about the applicability of the methods to the proposed regulations. Only 27 comments were related to the methods covered by today's rule. Overall, public comments strongly supported approval of new and innovative methods for compliance with current radionuclide drinking water standards and monitoring requirements. A summary of major comments and the Agency's response to the issues raised are presented in this section. The Agency's detailed response to these comments is available in the public docket for this rule (EPA 1996).

Several commenters submitted radiochemical analytical methods or techniques to EPA for consideration for approval. EPA has approved 12 of the suggested methods because EPA believes they are as good as or better than existing methods and procedures, and have been extensively validated and peer reviewed. EPA has not approved 7 methods because these methods were not accompanied with the supporting data that the Agency believes is necessary for their evaluation.

Commenters recommended approval of pulsed laser phosphorimetry for analysis of uranium because it uses modern technology that is easier to use than the currently approved fluorometric methods. EPA agrees with this suggestion and as noted above, is approving laser phosphorimetry method D–5174–91. This method was published by ASTM in 1992 and has been validated to show that laser phosphorimetry is as good as or better than previously approved techniques, such as fluorometry, for the analysis of uranium in drinking water samples. EPA believes that laboratories may adopt the laser phosphorimetry method because this technology can increase hourly sample production to 15–20 samples as compared to 2–5 samples using current fluorometric and alpha spectrometric technologies.

EPA was asked to withdraw approval of the fluorometric methods for determination of uranium because the methods are old and somewhat cumbersome compared to laser phosphorimetry. EPA disagrees that fluorometric methods should be withdrawn. Although these methods were approved about twenty years ago, they are not obsolete. These methods provide acceptable results and they are still used by many laboratories. It would be costly, burdensome and unnecessary to require laboratories to adopt to another technique. The commenter did not provide (and EPA does not have) data to show that these methods have become unacceptable for compliance determinations of uranium.

In the 1991 notice EPA proposed to replace americium-241 (Am–241) with thorium-230 (Th–230) as the calibration standard in gross alpha activity methods because Am–241 ''tended to bias analytic results'' (56 FR 33094). Commenters agreed with EPA's proposal but recommended that EPA also allow use of natural uranium (Unat) as a calibration standard. They stated that the alpha energies of both Unat and Th–230 better approximate the alpha energies of uranium and radium-226, and both isotopes also better approximate the attenuation of the alpha particles caused by drinking water dissolved solids. EPA agrees with the comment and a footnote in the table of approved methods at 40 CFR 141.25(a) now approves use of either Unat or Th–230 as calibration standards for gross alpha analyses with co-precipitation and evaporation methods. EPA believes that Am–241 is only suitable for use with co-precipitation methods. Therefore, future revisions of the evaporation methods may specify use of only Unat and Th–230 as calibration standards. One commenter asked where to obtain standards of Th–230 for use with the gross alpha methods. Th–230 is readily available in a concentrated form from commercial vendors.

In the 1991 proposal EPA solicited comment on what conversion factor to use with the approved methods that measure uranium in mass units (micrograms) rather than in activity units (picocuries) (56 FR 33095). Uranium is measured in activity units

with radiochemical and alpha spectrometry methods and in mass units with fluorometric and laser phosphorimetry methods. All of these techniques are acceptable provided a conversion factor is used to convert the fluorometric or laser phosphorimetric uranium result from micrograms to picocuries. The factor is required because the uranium contribution to the gross alpha activity MCL of 15 pCi/L must be evaluated in picocuries not micrograms (40 CFR 141.15(b)).

This conversion factor is not specified in the instructions in the approved mass-type methods for uranium determinations. In the 1991 proposal EPA solicited comment on use of a conversion factor of 1.38 pCi/µg or 0.67 pCi/µg. No public comments were received with respect to what factor to use to determine the activity contribution of uranium to the current gross alpha activity 15 pCi/L MCL. In today's rule the Agency is selecting the lower conversion factor, 0.67 pCi/µg, because it is a conservative factor that is based on the 1:1 activity ratio of U–234 to U–238 characteristic of naturally occurring uranium.

Several commenters expressed confusion and wanted clarification about the approval status of methods appearing in multiple editions of the ASTM and Standard Methods publications. As ASTM annually reprints all of the methods contained in the Annual Book of ASTM Methods, even methods that have not been editorially or technically revised, EPA permits the use of any edition of the ASTM book that contains the EPA-approved version of the compliance method. EPA is also approving at this time versions of the radionuclide methods in Standard Methods for the Examination of Water and Wastewater that are in the 13th, 17th, 18th and 19th editions of this publication. In the 1994 methods rule which covered chemistry and microbiology methods (59 FR 62456), EPA approved only one version of each compliance method that was published in Standard Methods. EPA approved only one version because later versions generally contained improvements in safety, quality assurance or performance. EPA feels that changes in the recent versions of radionuclide methods have not been significant enough to warrant withdrawing the previous versions.

V. Regulation Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735; October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule specifies additional analytical methods that laboratories may choose to use in lieu of existing approved methods for compliance measurement of radionuclides in drinking water. The rule does not impose any new requirements on small entities. Monitoring requirements were promulgated in earlier notices and are unaffected by this rule. This rule merely increases operational flexibility under these existing monitoring requirements. The rule may actually reduce the cost of compliance monitoring for radionuclides by allowing laboratories to use equipment and procedures that they may already own or have developed. Therefore, the Agency believes that this notice would have no adverse effect on any number of small entities.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. Today's rule approves use of optional analytical methods and thus provides operational flexibility to laboratories conducting analysis for radionuclides in drinking water. The rule does not withdraw approval of any previously approved methods. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. The rule is highly technical and narrow in scope, and the sole objective of the rule is to increase the number of methods approved for measurement of radionuclides in drinking water. Thus, the rule actually provides regulatory relief in the form of increased operational flexibility for laboratory analysts.

D. Paperwork Reduction Act

The rule contains no reporting or record keeping requirements and consequently not subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

E. Science Advisory Board and National Drinking Water Advisory Council, and Secretary of Health and Human Services

In accordance with Section 1412(d) and (e) of the SDWA, the Agency consulted with the Science Advisory Board, the National Drinking Water Advisory Council, and the Secretary of Health and Human Services for this action. They had no comments..

F. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

VI. References

APHA. Thirteenth, seventeenth, eighteenth and nineteenth editions of Standard Methods for the Examination of Water and Wastewater, 1971, 1989, 1992, 1995, American Public Health Association, 1015 Fifteenth Street N.W., Washington, D.C. 20005.

ASTM. Annual Book of ASTM Methods, Vol. 11.02, 1994. American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428.

DOE. ''EML Procedures Manual'', 27th Edition, Volume 1,1990. Available at the Environmental Measurements Laboratory, U.S. Department of Energy (DOE), 376 Hudson Street, New York, NY 10014–3621.

EPA. 1976. ''Interim Radiochemical Methodology for Drinking Water'', EPA 600/4–75–008 (revised), March 1976. Available at U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161 (Telephone 800–553–6847), PB 253258

EPA. 1979. ''Radiochemical Analytical Procedures for Analysis of Environmental Samples'', March 1979, NTIS EMSL LV 053917.

EPA. 1980. ''Prescribed Procedures for Measurement of Radioactivity in Water'', EPA 600/4–80–032, August 1980, NTIS PB 80–224744.

EPA. 1987. ''Radiochemistry Procedures Manual'', EPA 520/5–84–006, December 1987, NTIS PB 84–215581.

EPA. 1995. Drinking Water Program Redirection Proposal, November 1995, pages 8–11, U.S. Environmental Protection Agency, Office of Water Resource Center (RC–4100), 401 M. Street S.W., Washington, D.C. 20460, EPA 810 D–95–001.

EPA. 1996. ''Response to Comments on Radionuclide Methods on the July 18, 1991 (56 *FR* 33050) Radionuclides Proposed Rule'', Office of Water Docket (MC 4101), 401 M. St. S.W., Washington, D.C. 20460, July 1996.

NJ. ''Determination of Radium-228 in Drinking Water'', August 1990, New Jersey Department of Environmental Protection, Division of Environmental Quality, Bureau of Radiation and Inorganic Analytical Services, 9 Ewing Street, Trenton, NJ 08625.

NY. ''Determination of Ra–226 and Ra–228 (Ra–02)'', January 1980, Revised June 1982, Radiological Institute Center for Laboratories and Research, New York State Department of Health, Empire State Plaza, Albany, NY 12201.

USGS. ''Methods for Determination of Radioactive Substances in Water and Fluvial Sediments'', Chapter A5 in Book 5 of Techniques of Water-Resources Investigations of the United States Geological Survey, 1977. Available at U.S. Geological Survey (USGS), Information Services, Box 25286, Federal Center, Denver, CO 80225–0425.

List of Subjects in 40 CFR Part 141

Environmental protection, Analytical Methods, Incorporation by reference, Intergovernmental relations, Monitoring, National Primary Drinking water regulations, Radionoclides, Water supply.

Dated: February 10, 1997

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, part 141 of title 40, Code of Federal Regulations, are amended as follows:

PART 141—NATIONAL PRIMARY DRINKING WATER REGULATIONS

1. The authority citation for part 141 continues to read as follows:

Authority: 42 U.S.C. 300f, 300g–1, 300g–2 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, 300j–9.

2. Section 141.25 is amended by revising paragraph (a) effective April 4, 1997 to read as follows:

§ 141.25 Analytical methods for radioactivity.

(a) Analysis for the following contaminants shall be conducted to determine compliance with §§ 141.15 and 141.16 (radioactivity) in accordance with the methods in the following Table, or their equivalent as determined by EPA in accordance with § 141.27.

Contaminant	Methodology	Reference (method or page number)								
		EPA [1]	EPA [2]	EPA [3]	EPA [4]	SM [5]	ASTM [6]	USGS [7]	DOE [8]	Other
Naturally occurring:										
Gross alpha [11] and beta.	Evaporation.	900.0	p 1	00–01	p 1	302, 7110 B.	.....	R–1120 –76	.....	
Gross alpha [11]	Co-precipitation.	.....		00–02		.....	.....	.....	.....	
Radium 226 ...	Radon emanation, Radiochemical.	903.1 903.0	p 16 p 13	Ra-04 Ra-03	p 19	..... 304, 305, 7500-Ra B.	D 3454 –91	R–1141–76	.....	N.Y.[9]
Radium 228 ...	Radiochemical.	904.0	p 24	Ra-05	p 19	304, 7500-Ra D.	.....	R–1142 –76	.....	N.Y.[9] N. J.[10]
Uranium [12] ..	Radiochemical. Fluorometric.	908.0 908.1				7500-U B 7500-U C (17th Ed.).	D 2907–91	R–1180–76 R–1181–76 R–1182–76	U–04 U–2	

Contaminant	Methodology	Reference (method or page number)								
		EPA [1]	EPA [2]	EPA [3]	EPA [4]	SM [5]	ASTM [6]	USGS [7]	DOE [8]	Other
	Alpha spectrometry.	.....		00–07	p 33	.....	D 3972–90	.....	.....	
Man-made:										
Radioactive cesium.	Radiochemical.	901.0	p 4			7500-Cs B	D 2459–72	.....	.....	
	Gamma ray spectrometry.	901.1			p 92	.....	D 3649–91	R–1110 –76	4.5.2.3	
Radioactive iodine.	Radiochemical.	902.0	p 6 p 9			7500-I B ..	.....	.....	.....	
	Gamma ray spectrometry.	901.1			p 92	7120 (19th Ed.).	D 3649–91 D 4785–88	.....	4.5.2.3	
Radioactive Strontium 89, 90.	Radiochemical.	905.0	p 29	Sr-04	p. 65	303, 7500-Sr B.	.....	R–1160 –76	Sr-01	
Tritium	Liquid scintillation.	906.0	p 34	H–02	p. 87	306, 7500–3H B.	D 4107 –91	R–1171 –76	.....	
Gamma emitters.	Gamma ray.	901.1			p 92	7120 (19th Ed.).	D 3649 –91	R–1110 –76	4.5.2.3	
	Spectrometry.	902.0 901.0				7500-Cs B 7500-I B ..	D 4785 –88	.....	.....	

The procedures shall be done in accordance with the documents listed below. The incorporation by reference of documents 1 through 10 was approved by the Director of the FEDERAL REGISTER in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the documents may be obtained from the sources listed below. Information regarding obtaining these documents can be obtained from the Safe Drinking Water Hotline at 800–426–4791. Documents may be inspected at EPA's Drinking Water Docket, 401 M Street, SW., Washington, DC 20460 (Telephone: 202–260–3027); or at the Office of the FEDERAL REGISTER, 800 North Capitol Street, NW., Suite 700, Washington, DC.

1. ''Prescribed Procedures for Measurement of Radioactivity in Drinking Water'', EPA 600/4–80–032, August 1980. Available at U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161 (Telephone 800–553–6847), PB 80–224744.

2. ''Interim Radiochemical Methodology for Drinking Water'', EPA 600/4–75–008 (revised), March 1976. Available at NTIS, ibid. PB 253258.

3. ''Radiochemistry Procedures Manual'', EPA 520/5–84–006, December 1987. Available at NTIS, ibid. PB 84–215581.

4. ''Radiochemical Analytical Procedures for Analysis of Environmental Samples'', March 1979. Available at NTIS, ibid. EMSL LV 053917.

5. ''Standard Methods for the Examination of Water and Wastewater'', 13th, 17th, 18th, 19th Editions, 1971, 1989, 1992, 1995. Available at American Public Health Association, 1015 Fifteenth Street N.W., Washington, D.C. 20005 . All methods are in the 17th, 18th and 19th editions except 7500-U C Fluorometric Uranium was discontinued after the 17th Edition, and 302, 303, 304, 305 and 306 are only in the 13th Edition.

6. *Annual Book of ASTM Standards*, Vol. 11.02, 1994. Available at American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428.

7. ''Methods for Determination of Radioactive Substances in Water and Fluvial Sediments'', Chapter A5 in Book 5 of *Techniques of Water-Resources Investigations of the United States Geological Survey*, 1977. Available at U.S. Geological Survey (USGS) Information Services, Box 25286, Federal Center, Denver, CO 80225–0425.

8. ''EML Procedures Manual'', 27th Edition, Volume 1, 1990. Available at the Environmental Measurements Laboratory, U.S. Department of Energy (DOE), 376 Hudson Street, New York, NY 10014–3621.

9. ''Determination of Ra-226 and Ra-228 (Ra-02)'', January 1980, Revised June 1982. Available at Radiological Sciences Institute Center for Laboratories and Research, New York State Department of Health, Empire State Plaza, Albany, NY 12201.

10. ''Determination of Radium 228 in Drinking Water'', August 1980. Available at State of New Jersey, Department of Environmental Protection, Division of Environmental Quality, Bureau of Radiation and Inorganic Analytical Services, 9 Ewing Street, Trenton, NJ 08625.

11. Natural uranium and thorium-230 are approved as gross alpha calibration standards for gross alpha with co-precipitation and evaporation methods; americium-241 is approved with co-precipitation methods.

12. If uranium (U) is determined by mass, a 0.67 pCi/µg of uranium conversion factor must be used. This conservative factor is based on the 1:1 activity ratio of U–234 to U–238 that is characteristic of naturally occurring uranium.

3. Section 141.25 is amended by revising paragraph (a) effective May 5, 1997 to read as follows:

§ 141.25 Analytical Methods for Radioactivity.

(a) Analysis for the following contaminants shall be conducted to determine compliance with §§ 141.15 and 141.16 (radioactivity) in accordance with the methods in the following Table, or their equivalent determined by EPA in accordance with § 141.27.

Contaminant	Methodology	Reference (method or page number)								
		EPA[1]	EPA[2]	EPA[3]	EPA[4]	SM[5]	ASTM[6]	USGS[7]	DOE[8]	Other
Naturally occurring:										
Gross alpha [11] and beta.	Evaporation	900.0	p 1	00–01	p 1	302, 7110 B		R–1120–76		
Gross alpha [11] ..	Co-precipitation.	.....		00–02		7110 C				

Contaminant	Methodology	Reference (method or page number)								
		EPA[1]	EPA[2]	EPA[3]	EPA[4]	SM[5]	ASTM[6]	USGS[7]	DOE[8]	Other
Radium 226 ..	Radon emanation,.	903.1 903.0	p 16 p 13	Ra-04 Ra-03	p 19	7500-Ra C ..... 304, 305, ... 7500-Ra B	D 3454–91 D 2460–90	R–1141–76 R–1140–76	Ra-05	N.Y.[9]
	Radio chemical.									
Radium 228 ..	Radio chemical.	904.0	p 24	Ra-05	p 19	304, 7500-Ra D		R–1142–76		N.Y.[9] N.J.[10]
Uranium[12]	Radio chemical.	908.0				7500-U B				
	Fluorometric	908.1				7500-U C (17th Ed.).	D2907-91	R-1180-76 R-1181-76	U-04	
	Alpha spectrometry.	.....		00–07	p33	7500-U C (18th or 19th Ed.).	D 3972–90	R-1182-76	U-02	
	Laser Phosphorimetry.	.....				.....	D 5174–91			
Man-made:										
Radioactive cesium.	Radio chemical.	901.0	p 4			7500-Cs B	D 2459–72	R–1111–76		
	Gamma ray spectrometry.	901.1			p 92	7120 (19th Ed.)	D 3649–91	R–1110–76	4.5.2.3	
Radioactive iodine.	Radio chemical.	902.0	p 6 p 9			7500-I B ..... 7500-I C ..... 7500-I D	D3649-91		4.5.2.3	
	Gamma ray spectrometry.	901.1			p 92	7120 (19th Ed.)	D 4785–88		4.5.2.3	
Radioactive Strontium 89, 90.	Radio chemical.	905.0	p 29	Sr-04	p. 65	303, 7500-Sr B		R–1160–76	Sr-01 Sr-02	
Tritium	Liquid scintillation.	906.0	p 34	H–02	p. 87	306, 7500–3H B.	D 4107–91	R–1171–76		
Gamma emitters	Gamma ray	901.1			p92	7120 (19th Ed.)	D 3649–91	R–1110–76	4.5.2.3	
	Spectrometry	902.0 901.0				7500-Cs B ..... 7500-I B	D 4785–88			

The procedures shall be done in accordance with the documents listed below. The incorporation by reference of documents 1 through 10 was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the documents may be obtained from the sources listed below. Information regarding obtaining these documents can be obtained from the Safe Drinking Water Hotline at 800–426–4791. Documents may be inspected at EPA's Drinking Water Docket, 401 M Street, SW., Washington, DC 20460 (Telephone: 202–260–3027); or at the Office of Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

[1] ''Prescribed Procedures for Measurement of Radioactivity in Drinking Water'', EPA 600/4–80–032 , August 1980. Available at U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161 (Telephone 800–553–6847), PB 80–224744.

[2] ''Interim Radiochemical Methodology for Drinking Water'', EPA 600/4–75–008(revised), March 1976. Available at NTIS, ibid. PB 253258.

[3] ''Radiochemistry Procedures Manual'', EPA 520/5–84–006, December 1987. Available at NTIS, ibid. PB 84–215581.

[4] ''Radiochemical Analytical Procedures for Analysis of Environmental Samples'', March 1979. Available at NTIS, ibid. EMSL LV 053917.

[5] ''Standard Methods for the Examination of Water and Wastewater'', 13th, 17th, 18th, 19th Editions, 1971, 1989, 1992, 1995. Available at American Public Health Association, 1015 Fifteenth Street N.W., Washington, D.C. 20005. All methods are in the 17th, 18th and 19th editions except 7500-U C Fluorometric Uranium was discontinued after the 17th Edition, 7120 Gamma Emitters is only in the 19th Edition, and 302, 303, 304, 305 and 306 are only in the 13th Edition.

[6] *Annual Book of ASTM Standards,* Vol. 11.02, 1994. Available at American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428.

[7] ''Methods for Determination of Radioactive Substances in Water and Fluvial Sediments'', Chapter A5 in Book 5 of *Techniques of Water-Resources Investigations of the United States Geological Survey,* 1977. Available at U.S. Geological Survey (USGS) Information Services, Box 25286, Federal Center, Denver, CO 80225–0425.

[8] ''EML Procedures Manual'', 27th Edition, Volume 1, 1990. Available at the Environmental Measurements Laboratory, U.S. Department of Energy (DOE), 376 Hudson Street, New York, NY 10014–3621.

[9] ''Determination of Ra-226 and Ra-228 (Ra-02)'', January 1980, Revised June 1982. Available at Radiological Sciences Institute Center for Laboratories and Research, New York State Department of Health, Empire State Plaza, Albany, NY 12201.

[10] ''Determination of Radium 228 in Drinking Water'', August 1980. Available at State of New Jersey, Department of Environmental Protection, Division of Environmental Quality, Bureau of Radiation and Inorganic Analytical Services, 9 Ewing Street, Trenton, NJ 08625.

[11] Natural uranium and thorium-230 are approved as gross alpha calibration standards for gross alpha with co-precipitation and evaporation methods; americium-241 is approved with co-precipitation methods.

[12] If uranium (U) is determined by mass, a 0.67 pCi/g of uranium conversion factor must be used. This conservative factor is based on the 1:1 activity ratio of U–234 to U–238 that is characteristic of naturally occurring uranium.

* * * * *

[FR Doc. 97–4889 Filed 3–4–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 141

[WH–FRL–5694–7]

RIN 2040–AC88

National Primary Drinking Water Regulations: Analytical Methods for Radionuclides

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: Today, EPA is proposing to approve twelve analytical test procedures for monitoring compliance with radionuclide standards under the Safe Drinking Water Act. During the public comment period on an earlier rulemaking proposal (56 FR 33050, July 18, 1991), EPA received comments requesting approval of additional analytical test procedures for radionuclides. In the final rules section of this Federal Register, the Agency is promulgating these twelve analytical test procedures as a ''direct'' final rule because the Agency does not expect adverse comments and wants to provide for use of these additional test procedures as soon as possible. This proposal invites comment on the substance of the direct final rule (addressing twelve unproposed test methods) in the ''final rules'' section of today's Federal Register.

DATES: Comments on the twelve methods in this proposed rule must be received in writing by April 4, 1997.

ADDRESSES: Written comments on this proposed rule may be submitted to Chemistry Methods Docket Clerk, Water Docket, MC 4101, 401 M Street, SW, Washington, DC 20460. Comments will be considered to be timely if they are postmarked by April 4, 1997. Commenters who would like acknowledgement of receipt of their comments should include a self-addressed, stamped envelope. No facsimiles (faxes) will be accepted.

A copy of the supporting information for this rule is available for review at EPA's Water Docket, 401 M Street, SW, Washington, DC 20460. For access to the docket materials, call (202) 260–3027 between 9 a.m. and 3:30 p.m. (Eastern time) for an appointment.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Reding, Office of Ground Water and Drinking Water, U.S. Environmental Protection Agency, 26 West Martin Luther King Drive, Cincinnati, OH 45268, 513–569–7961; Dr. Jitendra Saxena, Office of Ground Water and Drinking Water (4603), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, 202–260–9579; or one of the EPA Regional Office contacts listed below. General information may also be obtained from the EPA Drinking Water Hotline. Callers within the United States may reach the Safe Drinking Water Hotline at 800–426–4791. The Safe Drinking Water Hotline is open Monday through Friday, excluding Federal holidays, from 9:00 a.m. to 5:30 p.m. Eastern Time.

For technical information regarding the methods contact Stephen Pia, National Exposure Research Laboratory, Office of Research and Development, U.S. Environmental Protection Agency, P.O. Box 93478, Las Vegas, NV 89193–3478, 702–798–2102.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final action which is located in the rules section of this Federal Register.

List of Subjects in 40 CFR Part 141

Environmental protection, Analytical methods, Incorporation by reference, Intergovernmental relations, Monitoring, Radionuclides, Water supply, National primary drinking water regulations.

Dated: February 10, 1997.

Carol M. Browner,

Administrator.

[FR Doc. 97–4890 Filed 3–4–97; 8:45 am]

BILLING CODE 6560–50–P

federal register

Wednesday
March 5, 1997

Part VI

Department of Transportation

Federal Highway Administration

23 CFR Parts 657 and 658

Truck Size and Weight; Technical Corrections; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Parts 657 and 658

RIN 2125–AE08

Truck Size and Weight; Technical Corrections

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule; technical corrections.

SUMMARY: This document amends the rule on truck size and weight in Part 658 to extend the Interstate System axle weight exemption for intrastate public agency transit buses; reduce the maximum length limit on trailers in triple trailer combinations in Alaska from 45 to 28.5 feet and change the beginning date when they may operate from April 15 to May 1 of each year; correct the maximum weight of LCV's that may operate on I–15 in Arizona to 129,000 pounds; amend appendix C to show that longer and heavier vehicles allowed in Nebraska and South Dakota may operate into Sioux City, Iowa and its commercial zone; correct the listing of a vehicle combination in Oregon from a longer combination vehicle (LCV) to a commercial motor vehicle combination subject to the ISTEA freeze on the length of its cargo carrying units; correct the maximum weight for LCV's in Michigan to 164,000 pounds; add a listing in Nebraska for a truck tractor and two trailing unit combination to operate at a length of 71.5 feet; correct the maximum cargo carrying length for a truck tractor and two trailing units in Missouri from 109 to 110 feet; exclude I–39 in Wisconsin and exclude I–99 in Pennsylvania from the Interstate System weight limits; and add regulations for transporters of vehicles used in motorsport competition events. Four additional technical corrections clarify the overhang regulations for automobile transporters, clarify what citations or civil assessments must be reported by the States in their annual certifications; and update statutory references in 23 CFR 657 and 658 to reflect 23 U.S.C. 127(d) and 9 U.S.C. 31111–31114, as appropriate.

EFFECTIVE DATE: March 5, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Klimek, Office of Motor Carrier Information Analysis, (202) 366–2212 or Mr. Charles Medalen, Office of the Chief Counsel, (202) 366–1354, Federal Highway Administration, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION

Transit Vehicles

Section 341 of the Department of Transportation and Related Agencies Appropriations Act of 1993 (Pub. L. 102–388, 106 Stat. 1520, at 1552, October 6, 1992) added subsection (h) to section 1023 of the Intermodal Surface Transportation Efficiency Act of 1992 (ISTEA) (uncodified, see 23 U.S.C. 127 note). Under subsection (h)(1), ''[t]he second sentence of section 127 of title 23, United States Code, relating to axle weight limitations for vehicles using the Dwight D. Eisenhower System of Interstate and Defense Highways, shall not apply, for the 2-year period beginning on the date of enactment of this Act, to any vehicle which is regularly and exclusively used as an intrastate public agency transit passenger bus. The Secretary may extend such 2-year period for an additional year.'' The FHWA extended the exemption to October 6, 1995 (59 FR 60242, November 22, 1994).

Section 326 of the National Highway System Designation Act of 1995 (NHS Act), Pub. L. 104–59, 109 Stat. 568, 592, November 29, 1995, amended section 1023(h)(1) of the ISTEA to provide that Federal axle weight limitations ''shall not apply, for the period beginning on October 6, 1992, and ending on the date on which Federal-aid highway and transit programs are reauthorized after the date of the enactment of the National Highway System Designation Act of 1995 (November 28, 1995).'' The current transit programs are authorized through the end of Fiscal Year 1997 (September 30, 1997). It is expected that these programs will be reauthorized on or about that date.

The new exemption, like the old, does not mean that transit buses are exempt from axle weight limits when operating on the Interstate System. It simply means that the FHWA may not impose financial sanctions on States that allow transit buses with axle weights in excess of the Federal limits to operate on the Interstate System.

Section 658.17(k) of 23 CFR will be amended to remove the October 6, 1995, expiration date for the exemption and reflect the statutory expiration date.

ISTEA Freeze

In its Fiscal Year 1995 certification, Alaska advised that the maximum length of each trailing unit in a triple trailer combination has been reduced from 45 to 28.5 feet. It also advised that the beginning date when triple trailer combinations may operate has been changed from April 15 to May 1 of each year. Appendix C to 23 CFR part 658 will be amended accordingly.

The weight limits shown in appendix C to 23 CFR part 658 for travel on I–15 in Arizona are 111,000 pounds for twin trailer combinations and 123,500 pounds for triple trailer combinations. However, the State has furnished information showing that on or before June 1, 1991, it authorized twin and triple trailer combinations weighing up to 129,000 pounds, the same as in Nevada and Utah, to operate on I–15 and that they did operate on I–15 on or before that date. The incorrect listing was caused by transcription errors compounded by miscommunication. Appendix C is being amended accordingly.

As shown in appendix C, Iowa did not allow longer combination vehicles (LCVs) to operate on its Interstate highways on or before June 1, 1991. LCVs are defined as combinations consisting of truck tractors with two or more semitrailers or trailers that operate on the Interstate System at weights in excess of 80,000 pounds. In addition, the State did not allow commercial motor vehicles with two or more cargo carrying units which exceeded the minimum lengths authorized by the Surface Transportation Assistance Act of 1982 (STAA) to operate on the NN on or before June 1, 1991. However, both types of vehicles operated in Nebraska and South Dakota. Consequently, these heavier and longer vehicles could not operate across their respective borders into Sioux City, Iowa. The Congress enacted an exception to the ISTEA freeze in section 312 of the NHS Act by providing that the heavier and longer vehicles authorized in Nebraska and South Dakota could travel across their respective borders into Sioux City, Iowa.

More specifically, Section 312(a) of the NHS Act amended 23 U.S.C. 127(a) to allow vehicles with a gross weight of more than 80,000 pounds to operate on I–29 and I–129 in Sioux City; amended 23 U.S.C. 127(d)(1) to permit Iowa to allow longer combination vehicles (LCV's) that were not in operation in that State on June 1, 1991, to operate on I–29 between the South Dakota border and Sioux City and on I–129 between the Nebraska border and Sioux City; and amended 49 U.S.C. 31112(c) to permit Iowa to allow (1) combinations with two or more cargo carrying units of the length allowed by South Dakota on June 1, 1991, on I–29 between the South Dakota border and Sioux City, and (2) combinations with two or more cargo carrying units of the length allowed by Nebraska on June 1, 1991, on I–129 between the Nebraska border and Sioux City. This provision is permissive and

not mandatory. However, Mr. Darrel Rensink, Director of the Iowa Department of Transportation, in a letter dated February 12, 1996, advised that the State was adopting legislation to implement the congressional authorization. The legislation, Iowa House Bill 2066, (76th General Assembly, 2d Sess. (1996))with an immediate effective date, was signed by the Governor on March 1, 1996. (Iowa Code § 321.457(2)(f) (1995)).

In subsequent correspondence, Sioux City officials advised that their intent in seeking Federal legislation was to enable these vehicles to operate not only in Sioux City proper, but also ''Siouxland'', the commercial zone listed in 49 CFR 1048.101. Although the Sioux City commercial zone is not mentioned in Sec. 312(a), Iowa Code Annotated § 321.457.2.g (1985) authorized vehicles of legal length and weight in adjoining States to operate in the commercial zone of Iowa border cities. The inclusion of this statute in the Iowa code for more than 20 years strongly suggests that the supporters and sponsors of this Federal exception intended it to have the same geographical reach. Under the circumstances, we believe it is reasonable to allow the larger and heavier vehicles from Nebraska and South Dakota to operate on Interstate and NN routes not only in Sioux City but also in its commercial zone, as that zone existed on the date of enactment of the NHS Designation Act (November 28, 1995). Further expansion of the area covered by the exception will not be allowed even if the Sioux City commercial zone later expands as a result of population increase or expansion of the corporate limits of Sioux City. Appendix C will be amended accordingly.

Appendix C lists a truck-trailer—LCV combination authorized to operate in Oregon. Information received from the State dated January 31, 1992, and November 2, 1994, shows that the vehicle in actual and lawful operation in the State before June 2, 1991, was a truck-trailer combination operating at a maximum overall length of 75 feet. However, a truck-trailer combination cannot be an LCV, since the latter is defined as a combination of a truck tractor and two or more trailers. Appendix C will be corrected to delete the LCV listing and show the maximum cargo carrying unit length for this truck-trailer combination as 70 feet, 5 inches.

The maximum weight in Michigan for a truck tractor and 2 trailing units shown in appendix C of 23 CFR part 658 was corrected from 154,000 to 164,000 pounds in the Federal Register of March 22, 1995 (60 FR 15212) for the reasons given. However, the correction was inadvertently not made in the ''STATE'' section and is being done at this time.

The listing for Nebraska in appendix C is being corrected based on material previously submitted to the FHWA by the State as described in a March 20, 1992 (57 FR 9900) notice of proposed rulemaking. The State may issue permits for a truck tractor and 2 trailing unit combination to exceed 65 feet in length by 10 percent (up to 71.5 feet) when carrying seasonally harvested products from the field where they are harvested to storage, market, or stockpile in the field or from stockpile to market or factory when failure to move such product or products in abundant quantities would cause an economic loss to the person or persons whose product or products are being transported or when failure to move such product or products in as large quantities as possible would not be in the best interests of the national defense or general welfare. Permits are valid for 30 days and are renewable four times per year. Such a combination may not travel on the Interstate System and is limited to a maximum of 70 miles per permitted trip between origin and destination.

Appendix C provides that vehicles from Kansas, Nebraska, and Oklahoma that do not exceed the ISTEA length freeze may travel up to 20 miles into Missouri. The maximum cargo carrying length for a truck tractor and 2 trailing units listed for Missouri is 109 feet, the same as in Kansas, rather than 110 feet as in Oklahoma. The maximum cargo carrying length for Missouri will be corrected to 110 feet.

Additions to Interstate System

Section 312(b) of the NHS Act provided that if the 104-mile portion of Wisconsin State Route 78 and U.S. Route 51 between I–90/94 near Portage, Wisconsin, and Wisconsin State Route 29 south of Wausau was designated as part of the Interstate System, the Interstate weight limits would not apply with respect to the operation of any vehicle that could legally operate on this 104 mile segment before November 28, 1995. The route was designated as I–39 on January 11, 1996, and, therefore, 23 CFR 658.17 is amended to reflect that State weight limits in effect before November 28, 1995, will continue to apply for vehicles that could legally operate on it at that time.

Section 404 of the ICC Termination Act of 1995 (ICCTA), Pub. L. 104–88, 109 Stat. 803, 956, December 29, 1995, amended 23 U.S.C. 127 by adding new subsection (g) which provided that if the segment of U.S. Route 220 between Bedford and Bald Eagle, Pennsylvania, was designated as part of the Interstate System, the single axle weight, tandem axle weight, gross vehicle weight, and the bridge formula limits would be those that applied to any vehicle which could have operated on it before December 29, 1995. The route from the I–70/76 Pennsylvania Turnpike Exit 11 connection interchange near Bedford northerly to the U.S. 220/PA 350 interchange near Bald Eagle was designated as I–99 on January 26, 1996. Therefore, 23 CFR 658.17 is amended to reflect that State weight limits in effect before December 29, 1995, will continue to apply for vehicles that could legally operate on what is now I–99.

Motorsports Trailers

Section 104(b) of the ICCTA amended 49 U.S.C. 31111(b)(1), part of the Surface Transportation Assistance Act of 1982 (STAA), by adding a new paragraph (E) which, in context, provides as follows:

> (b) GENERAL LIMITATIONS.—(1) Except as provided in this section, a State may not prescribe or enforce a regulation of commerce that * * *.
>
> (E) imposes a limitation of less than 46 feet on the distance from the kingpin to the center of the rear axle on trailers used exclusively or primarily in connection with motorsports competition events.

Although the statute uses the word ''trailers,'' the issue of kingpin settings arises almost exclusively in connection with semitrailers. The FHWA does not believe the word ''trailers'' was used as a term of art to mean a freight vehicle where no part of its weight, except the hitch, rests on the towing unit but was intended to include and primarily refer to semitrailers, where the front of the towed unit rests upon the self-propelled towing unit.

The STAA requires all States to allow truck tractors to operate in combination with 48-foot or grandfathered length semitrailers on the National Network and reasonable access routes. In the States of California, Indiana, and Wisconsin, where 53 feet is the grandfathered semitrailer length, subject to minimum kingpin distances of 38 feet, 40.5 feet, and 41 feet, respectively, these kingpin distances have been superseded for vehicles subject to 23 CFR 658.13(h). The grandfathered lengths remain 53 feet but the minimum kingpin settings have been amended to reflect the minimum 46-foot distance required for the vehicles described in paragraph (h). A minimum kingpin setting of 46 feet also applies to motorsports semitrailers to which States might later attempt to apply a kingpin

rule. The 46-foot minimum applies whether the length of such semitrailers is grandfathered under appendix B to part 658 or governed solely by State law.

The statute prohibits States from setting kingpin distances of less than 46 feet for trailers used exclusively or ''primarily'' in connection with motorsports competition events. This would include such trailers when transporting competition vehicles to or from off-track repair shops, storage facilities between races, or similar facilities.

A question may arise as to whether a vehicle transporting competition vehicles may be considered an automobile transporter subject to a 65-foot minimum overall length limit (75-foot if stinger steered). Although the statute does not specifically address this issue, kingpin settings are seldom at issue in automobile transporters since States may not require settings that would prevent them from realizing the minimum overall lengths. Furthermore, automobile transporters are defined as vehicle combinations ''designed and used specifically for the transport of assembled highway vehicles,'' while the title of section 104(b) makes it clear that these trailers are designed to carry ''off-road, competition vehicles.'' In addition, the trailers that are used to haul competition vehicles usually include other facilities, such as workshops or lounges. This fact would disqualify them from being considered automobile transporters.

Technical Amendments

A sentence in 23 CFR 658.13(e)(1)(ii) reads, ''Further, no State shall impose a front overhang limitation of less than three (3) feet nor a rearmost overhand limitation of less than four (4) feet.'' The word ''overhand'' is an obvious error and will be changed to ''overhang.''

Regulations in 23 CFR 657.15(f)(3)(ii) read as follows:

> Penalties reported shall include citations issued, civil assessments, and incidences of load shifting or off-loading of excess weight categorized as follows: violations of axle and/or gross vehicle weights, or violations resulting from application of the bridge formula.

One State has interpreted this to mean that it may choose between reporting only axle and gross weight violations or only bridge formula violations. The purpose of the regulation is to require States to provide information used in evaluating the adequacy of their enforcement efforts, as explained in the preamble to the final rule published on August 7, 1980 (45 FR 52365):

> The certification shall include citations for gross and axle weights and also now must include, by specific reference, violations of the bridge formula, which is the central element in ensuring compliance with 23 U.S.C. 127. * * * It is essential that the bridge formula be enforced and it is not possible to evaluate State efforts in this respect without a specific reporting of activity. (45 FR 52368).

The regulation will be clarified accordingly.

Statutory references in 23 CFR 657.15 (b) and (c)(2), and 23 CFR 658.23 (c) and (e) will be updated to the current codification or recodification.

Regulatory Analyses and Notices

The Administrative Procedure Act allows agencies engaged in rulemaking to dispense with prior notice to the public when the agency for good cause finds that such procedure is impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b). The FHWA has determined that providing prior notice on this action is unnecessary because it merely amends regulations to incorporate statutory requirements and makes several technical corrections to 23 CFR parts 657 and 658, and appendix C to 23 CFR part 658. This document also contains several interpretations and general statements of policy which are not subject to notice and comment procedures under the Administrative Procedure Act. For the reasons set forth here, the FHWA has also determined that it has good cause under 5 U.S.C. 553(d)(3) to make the rule effective upon publication in the Federal Register.

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

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of U.S. Department of Transportation Regulatory Policies and Procedures. The changes will reflect the statutory requirements and make several technical corrections. It is anticipated that the economic impact of this rulemaking will be minimal. Most of the new regulations adopted here codify statutes designed to preserve the status quo. The amended regulations were requested by the States, are substantively insignificant even to the parties affected or correct ministerial errors in previous rules; some fall into more than one category. Therefore a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this rule on small entities. Most of these rules simply preserve the current status quo. Many of the changes benefit truckers by removing restrictions on their operations or correcting errors that could have led them inadvertently to violate Federal standards. The change with the greatest apparent impact—reducing the length of the trailers allowed in a triple-trailer combination in Alaska—is a ministerial amendment to codify a decision made by the State under State law. For these reasons, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that it does not have sufficient federalism implications to warrant the preparation of a federalism assessment. The Statutes underlying this rule—primarily the ISTEA, the NHS Designation Act, and the ICC Termination Act—specify the Department's role. These technical amendments carry out the various Congressional mandates. Nearly all of the changes that affect the States were requested by the States. None preempts any significant State activity or authority.

Executive Order 12372 (Intergovernmental Review)

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this proceeding.

Paperwork Reduction

This action does not add or expand a collection of information requirement for purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 et seq.

National Environmental Policy Act

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

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and

October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects

23 CFR Part 657

Enforcement, Enforcement plan, Highways and roads, Sanctions, and Vehicle size and weight certification.

23 CFR Part 658

Grant programs—transportation, Highways and roads, and Motor carrier size and weight.

Issued on: February 5, 1997.

Rodney E. Slater

Federal Highway Administrator.

In consideration of the foregoing, the FHWA is amending 23 CFR, subchapter G, parts 657 and 658 as set forth below.

PART 657—CERTIFICATION OF SIZE AND WEIGHT ENFORCEMENT

1. The authority citation for 23 CFR part 657 is revised to read as follows:

Authority: Sec. 123, Pub. L. 95–599, 92 Stat. 2689; 23 U.S.C. 127, 141, and 315; 49 U.S.C. 31111–31114; sec. 1023, Pub. L. 102–240, 105 Stat. 1914; and 49 CFR 1.48 (b) and (c).

2. In § 657.15, paragraphs (b) and (c)(2) are amended removing the words ''49 U.S.C. app. 2311(j)'' and adding ''49 U.S.C. 31112''.

3. In § 657.15, paragraph (f)(3)(ii) is revised to read as follows:

§ 657.15 Certification content.

* * * * *

(f) * * *

(3) * * *

(ii) *Penalties.* Penalties reported shall include the number of citations or civil assessments issued for violations of each of the following: Axle, gross and bridge formula weight limits. The number of vehicles whose loads are either shifted or offloaded must also be reported.

* * * * *

PART 658—TRUCK SIZE AND WEIGHT, ROUTE DESIGNATIONS—LENGTH, WIDTH, AND WEIGHT LIMITATIONS

4. The authority citation for 23 CFR part 658 is revised to read as follows:

Authority: 23 U.S.C. 127 and 315; 49 U.S.C. 31111–31114; 49 CFR 1.48 (b) and (c).

5. In § 658.13, paragraph (e)(1)(ii) is amended by removing the word ''overhand'' and adding the word ''overhang'', and paragraph (h) is added to read as follows:

§ 658.13 Length.

* * * * *

(h) No State shall impose a limitation of less than 46 feet on the distance from the kingpin to the center of the rear axle on trailers or semitrailers used exclusively or primarily to transport vehicles in connection with motorsports competition events.

6. In § 658.17, paragraph (k) is revised and new paragraphs (l) and (m) are added to read as follows:

§ 658.17 Weight.

* * * * *

(k) Any vehicle which is regularly and exclusively used as an intrastate public agency transit passenger bus is excluded from the axle weight limits in paragraphs (c) through (e) of this section from October 6, 1992, until the date on which Federal-aid highway and transit programs are reauthorized after November 28, 1995.

(l) The provisions of paragraphs (b) through (e) of this section shall not apply to the operation, on the 104 mile portion of I–39 between I–90/94 near Portage, Wisconsin, and Wisconsin State Route 29 south of Wausau, Wisconsin, of any vehicle that could legally operate on this highway section before November 28, 1995.

(m) The provisions of paragraphs (b) through (e) of this section shall not apply to the operation, on I–99 between Bedford and Bald Eagle, Pennsylvania, of any vehicle that could legally operate on this highway section before December 29, 1995.

7. In 23 CFR 658.23, paragraphs (c) and (e) are amended by removing the words ''sections 1023 and 4006 of Pub. L. 102–240'' and adding ''23 U.S.C. 127(d) and 49 U.S.C. 31112'' wherever they appear.

8. Appendix B to part 658 is amended by revising footnote numbers 1, 2, and 3 for the States of California, Indiana, and Wisconsin, respectively, to read as follows:

Appendix B to Part 658—Grandfathered Semitrailer Lengths

* * * * *

[1] Semitrailers up to 53 feet may also operate without a permit by conforming to a kingpin-to-rearmost axle distance of 38 feet. Semitrailers that are consistent with 23 CFR 658.13(h) may operate without a permit provided the distance from the kingpin to the center of the rear axle is 46 feet or less.

[2] Semitrailers up to 53 feet in length may operate without a permit by conforming to a kingpin-to-rearmost axle distance of 40 feet 6 inches. Semitrailers that are consistent with 23 CFR 658.13(h) may operate without a permit provided the distance from the kingpin to the center of the rear axle is 46 feet or less.

[3] Semitrailers up to 53 feet in length may operate without a permit by conforming to a kingpin-to-rear axle distance of 41 feet, measured to the center of the rear tandem assembly. Semitrailers that are consistent with 23 CFR 658.13(h) may operate without a permit provided the distance from the kingpin to the center of the rear axle is 46 feet or less.

9. Appendix C to part 658 is amended as follows:

A. By revising the entries for the States of Arizona, Iowa, Missouri, and Oregon in the table entitled ''Vehicle Combinations Subject to Pub. L. 102–240''.

B. By changing the maximum length of each trailing unit in a triple trailer combination in Alaska from 45 to 28.5 feet and also changing the beginning date when they may operate from April 15 to May 1 of each year.

C. By changing the maximum weight for double and triple trailer combinations that may operate in Arizona on I–15 from 111,000 and 123,500 pounds, respectively, to 129,000 pounds.

D. By adding the State of Iowa to the detailed State listing to reflect the fact that vehicles subject to the ISTEA freeze in Nebraska and South Dakota are authorized to operate on I–29 and I–29 from their borders into Sioux City.

E. In the listing for the State of Michigan for the combination ''Truck tractor and 2 trailing units—LCV'' by revising the weight under the heading ''Maximum Allowable Gross Weight''.

F. By adding a listing in Nebraska for a truck tractor and 2 trailing unit combination over 65 feet up to 71.5 feet in length when carrying seasonally harvested products for a maximum of 70 miles per permitted trip between origin and destination.

G. In the listing for the State of Missouri for the combination ''Truck tractor and 2 trailing units—LCV'' by revising the ''Length of the Cargo-Carrying Units'' from 109 to 110 feet.

H. In the listing for the State of Oregon by removing the combination ''Truck-trailer—LCV'' and by adding new text for the combination ''Truck-trailer''.

The amended, added, and revised portions of appendix C read as follows:

Appendix C to Part 658—Trucks Over 80,000 Pounds on the Interstate System and Trucks Over STAA Lengths on the National Network

* * * * *

VEHICLE COMBINATIONS SUBJECT TO PUB. L. 102–240

State	Truck tractor and 2 trailing units	Truck tractor and 3 trailing units	Other
* * * *	*	*	*
Arizona	95′ 129K	95′ 129K	(1)
* * * *	*	*	*
Iowa	100′ 129K	100′ 129K	78′
* * * *	*	*	*
Missouri	110′ 120K(4)	109′ 120K	NO
* * * *	*	*	*
Oregon	68′ 105.5K	96′ 105.5K	70′ 5″
* * * *	*	*	*

(4) These dimensions do not apply to the same combinations. The 110-foot length is limited to vehicles entering from Oklahoma, also limited to 90K gross weight. The 120K gross weight is limited to vehicles entering from Kansas, also limited to a cargo carrying length of 109 feet.

* * * * *

State: Alaska

Combination: Truck Tractor and 3 Trailing Units.

* * * * *

Vehicle: Individual trailer length in a three trailing unit combination shall not exceed 28.5 feet. Engine horsepower rating shall not be less than 400 horsepower.

These combinations are allowed to operate only between May 1 and September 30 of each year. Weather restrictions are imposed when hazardous conditions exist, as determined by the Alaska DOT&PF and the Department of Public Safety, Division of State Troopers. No movement is permitted if visibility is less than 1,000 feet.

State: Arizona

Combination: Truck Tractor and 2 Trailing Units—LCV.

* * * * *

Maximum Allowable Gross Weight: 129,000 pounds.

Operational Conditions:

* * * * *

Weight: Single-axle maximum weight limit is 20,000 pounds, tandem-axle maximum weight limit is 34,000 pounds, and the gross vehicle weight limit is 129,000 pounds, subject to the Federal Bridge Formula.

* * * * *

Access: Access is allowed for 20 miles from I–15 Exits 8 and 27 or 20 miles from other authorized routes.

* * * * *

State: Arizona

Combination: Truck tractor and 3 trailing units—LCV.

* * * * *

Maximum Allowable Gross Weight: 123,000 pounds (129,000 pounds on I–15).

Operational Conditions:

* * * * *

Weight: Single-axle maximum weight limit is 20,000 pounds, tandem-axle maximum weight limit is 34,000 pounds, and the gross vehicle weight is 123,500 pounds (129,000 on I–15), subject to the Federal Bridge Formula.

State: Iowa

Combination: Truck tractor and 2 trailing units—LCV.

Length of the Cargo-Carrying Units: 100 feet when entering Sioux City from South Dakota or South Dakota from Sioux City; 65 feet when entering Sioux City from Nebraska or Nebraska from Sioux City..

Maximum Allowable Gross Weight: 129,000 pounds when entering Sioux City from South Dakota or South Dakota from Sioux City; 95,000 pounds when entering Sioux City from Nebraska or Nebraska from Sioux City.

Operational Conditions:

Iowa allows vehicles from South Dakota and Nebraska access to terminals which are located within the corporate limits of Sioux City and its commercial zone as shown in 49 CFR 1048.101 on November 28, 1995. These vehicles must be legal in the State from which they enter Iowa.

Weight, Driver, Vehicle, and Permit: Same conditions which apply to a truck tractor and 2 trailing units legally operating in South Dakota or Nebraska.

Access: These combinations may operate on any road within the corporate limits of Sioux City and its commercial zone as shown in 49 CFR 1048.101 on November 28, 1995, when authorized by appropriate State or local authority.

Routes: LCV combinations may operate on all Interstate System routes in Sioux City and its commercial zone as shown in 49 CFR 1048.101 on November 28, 1995. If subject only to the ISTEA freeze on length, they may operate on all NN routes in Sioux City and its commercial zone, as above.

Legal Citations: Iowa Code § 321.457(2)(f) (1995).

State: Iowa

Combination: Truck tractor and 3 trailing units—LCV

Length of Cargo-Carrying Units: 100 feet when entering Sioux City from South Dakota or South Dakota from Sioux City.

Maximum Allowable Gross Weight: 129,000 POUNDS when entering Sioux City from South Dakota or South Dakota from Sioux City.

Operational Conditions:

Weight, Driver, Vehicle, and Permit: Same as the SD–TT3 combination.

Access: Same as the IA–TT2 combination.

Routes: Same as the IA–TT2 combination.

Legal Citation: Same as the IA–TT2 combination.

State: Iowa

Combination: Truck-trailer

Length of the Cargo-Carrying Units: 78 feet when entering Sioux City from South Dakota or South Dakota from Sioux City; 68 feet when entering Sioux City from Nebraska or Nebraska from Sioux City.

Operational Conditions:

Iowa allows vehicles from South Dakota and Nebraska access to terminals which are located within the corporate limits of Sioux City and its commercial zone, as shown in 49 CFR 1048.101 on November 28, 1995. These vehicles must be legal in the State from which they enter Iowa.

Weight, Driver, Vehicle, and Permit: Same conditions which apply to a truck-trailer combination legally operating in Nebraska or South Dakota.

Access: Same as the IA–TT2 combination.

Routes: Same as IA–TT2 combination.

Legal Citation: Same as the IA–TT2 combination.

* * * * *

State: Michigan

* * * * *

Combination: Truck tractor and 2 trailing units—LCV.

* * * * *

Maximum Allowable Gross Weight: 164,000 pounds.

Operational Conditions:

Weight: The single-axle weight limit for LCV's is 18,000 pounds for axles spaced 9 feet or more apart. For axles spaced more than 3.5 but less than 9 feet apart, the single-axle weight limit is 13,000 pounds. The tandem-axle weight limit is 16,000 pounds per axle for the first tandem and 13,000 pounds per axle for all other tandems. Axles spaced less than 3.5 feet apart are limited to 9,000 pounds per axle. Maximum load per

inch width of tire is 700 pounds. Maximum gross weight is determined based on axle and axle group weight limits.

When restricted seasonal loadings are in effect, load per inch width of tire and maximum axle weights are reduced as follows: Rigid pavements—525 pounds per inch of tire width, 25 percent axle weight reduction; Flexible pavements—450 pounds per inch of tire width, 35 percent axle weight reduction.

* * * * *

State: Missouri

Combination: Truck tractor and 2 trailing units—LCV.

Length of the Cargo Carrying Units: 110 feet.

State: Nebraska

Combination: Truck tractor and 2 trailing units—LCV

Length of the Cargo-Carrying Units: 95 feet for combination units traveling empty. 65 feet for combination units carrying cargo, except those carrying seasonally harvested products from the field where they are harvested to storage, market, or stockpile in the field, or from stockpile to market, which may extend the length to 71.5 feet.

Operational Conditions:

Weight: Maximum weight:

Single axle = 20,000 pounds

Tandem axle = 34,000 pounds

Gross = Determined by Federal Bridge Formula B, but not to exceed 95,000 pounds.

* * * * *

Permit: A weight permit in accordance with Chapter 12 of the Nebraska Department of Roads (NDOR) Rules and Regulations is required for operating on the Interstate System with weight in excess of 80,000 pounds.

A length permit, in accordance with Chapters 8 or 11 of the NDOR Rules and Regulations, is required for two trailing unit combinations with a length of cargo-carrying units over 65 feet. Except for permits issued to carriers hauling seasonally harvested products in combinations with a cargo-carrying length greater than 65 feet but not more than 71.5 feet which may move as necessary to accommodate crop movement requirements, holders of length permits are subject to the following conditions.

Movement is prohibited on Saturdays, Sundays, and holidays; when ground wind speed exceeds 25 miles per hour; when visibility is less than 800 feet; or when steady rain, snow, sleet, ice, or other conditions cause slippery pavement. Beginning November 15 until April 16 permission to move must be obtained from the NDOR Permit Office within 3 hours of movement. Beginning April 16 until November 15 permission to move must be obtained within 3 days of the movement.

Fees are charged for all permits. Length permits for combinations carrying seasonally harvested products are valid for 30 days and are renewable but may not authorize operation for more than 120 days per year.

All permits are subject to revocation if the terms are violated.

Access: Access to NN routes is not restricted for two trailing unit combinations with a cargo-carrying length of 65 feet or less, or 71.5 feet or less if involved in carrying seasonally harvested products. For two trailing unit combinations with a cargo-carrying length greater than 65 feet and not involved in carrying seasonally harvested products, access to and from I–80 is limited to designated staging areas within six miles of the route between the Wyoming State Line and Exit 440 (Nebraska Highway 50); and except for weather, emergency, and repair, cannot reenter I–80 after exiting.

Routes: Except for length permits issued to carriers hauling seasonally harvested products in combinations with a cargo-carrying length greater than 65 feet but not more than 71.5 feet which may use all non-Interstate NN routes, vehicles requiring length permits are restricted to Interstate 80 between the Wyoming State Line and Exit 440 (Nebraska Highway 50). Combinations not requiring length permits may use all NN routes.

* * * * *

State: Nebraska

Combination: Truck tractor and 3 trailing units.

* * * * *

Operational Conditions:

* * * * *

Driver: Same as the NE–TT2 combination.

Permit: A length permit, in accordance with Chapter 11 of the NDOR Rules and Regulations is required for a three trailing unit combination. Conditions of the length permit prohibit movements on Saturdays, Sundays, and holidays; when ground wind speed exceeds 25 miles per hour; and when visibility is less than 800 feet. Movement is also prohibited during steady rain, snow, sleet, ice, or other conditions causing slippery pavement. Beginning November 15 until April 16 permission to move must be obtained from the NDOR Permit Office within 3 hours of movement. Beginning April 16 until November 15 permission to move must be obtained within 3 days of the movement. A fee is charged for the annual length permit. These permits can be revoked if the terms are violated.

Access: Access to and from I–80 is limited to designated staging areas within 6 miles of the route between Wyoming State Line and Exit 440 (Nebraska Route 50). Except for weather, emergency, and repair, three trailing unit combinations cannot reenter the Interstate after having exited.

* * * * *

State: Oregon

Combination: Truck-trailer.

Length of Cargo-Carrying Units: 70 feet, 5 inches.

Weight: This combination must operate in compliance with State laws and regulations. Because it is not an LCV, it is not subject to the ISTEA freeze as it applies to maximum weight.

Driver, Access, Routes, and Legal Citations: Same as OR–TT2 combination.

Vehicle: The truck or trailer may be up to 40 feet long not to exceed 75 feet overall. The truck may have a built-in hoist to load cargo. Any towed vehicle in a combination must be equipped with safety chains or cables to prevent the towbar from dropping to the ground in the event the coupling fails. The chains or cables must have sufficient strength to control the towed vehicle in the event the coupling device fails and must be attached with no more slack than necessary to permit proper turning. However, this requirement does not apply to a fifth-wheel coupling if the upper and lower halves of the fifth wheel must be manually released before they can be separated.

Permit: No overlength permit required.

* * * * *

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Laidlomycin propionate potassium; published 3-5-97

Human drugs:

Antiflatulent products (OTC); monograph amendment; published 3-5-96

NATIONAL LABOR RELATIONS BOARD

Procedural rules:

Subpoenas; issuance and service; published 3-5-97

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Pratt & Whitney; published 2-3-97

TRANSPORTATION DEPARTMENT

Federal Highway Administration

Engineering and traffic operations:

Truck size and weight--

Technical corrections; published 3-5-97

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Vegetables; import regulations:

Banana/fingerling potatoes, etc.; removal and exemption; comments due by 3-13-97; published 2-11-97

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Interstate transportation of animals and animal products (quarantine):

Brucellosis in cattle and bison--

State and area classifications; comments due by 3-11-97; published 1-10-97

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Northeastern United States fisheries--

New England and Mid-Atlantic Fishery Management Councils; public hearings; comments due by 3-14-97; published 2-21-97

DEFENSE DEPARTMENT

Acquisition regulations:

Information Technology Management Reform Act of 1996; implementation; comments due by 3-10-97; published 1-8-97

ENERGY DEPARTMENT

Energy Efficiency and Renewable Energy Office

Energy efficiency program for certain commercial and industrial equipment:

Electric motors; test procedures, labeling, and certification requirements; comments due by 3-10-97; published 2-14-97

ENVIRONMENTAL PROTECTION AGENCY

Air programs:

Ambient air quality standards, national--

Ozone and particulate matter, etc.; comments due by 3-12-97; published 2-20-97

Air quality implementation plans; approval and promulgation; various States:

Alaska; comments due by 3-13-97; published 2-11-97

Illinois; comments due by 3-13-97; published 2-11-97

Air quality implementation plans; √A√approval and promulgation; various States; air quality planning purposes; designation of areas:

Louisiana; comments due by 3-10-97; published 2-6-97

Superfund program:

National oil and hazardous substances contingency plan--

National priorities list update; comments due by 3-12-97; published 2-10-97

National priorities list update; comments due by 3-12-97; published 2-10-97

Toxic substances:

Significant new uses--

Alkenoic acid, trisubstituted-benzyl-disubstituted-phenyl ester, etc.; comments due by 3-13-97; published 2-11-97

FEDERAL COMMUNICATIONS COMMISSION

Radio stations; table of assignments:

Arizona; comments due by 3-10-97; published 1-27-97

Arkansas; comments due by 3-10-97; published 1-21-97

California; comments due by 3-10-97; published 1-27-97

Colorado; comments due by 3-10-97; published 1-21-97

Idaho; comments due by 3-10-97; published 1-24-97

Louisiana; comments due by 3-10-97; published 1-27-97

Nevada; comments due by 3-10-97; published 1-27-97

Oregon; comments due by 3-10-97; published 1-27-97

Texas; comments due by 3-10-97; published 1-27-97

Utah; comments due by 3-10-97; published 1-27-97

Washington; comments due by 3-10-97; published 1-24-97

Wisconsin; comments due by 3-10-97; published 1-24-97

FEDERAL RESERVE SYSTEM

Bank holding companies and change in bank control (Regulation Y):

Nonbank subsidiaries; limitations on underwriting and dealing in securities; review; comments due by 3-10-97; published 1-17-97

Consumer leasing (Regulation M):

Official staff commentary; revision; comments due by 3-13-97; published 2-19-97

FEDERAL TRADE COMMISSION

Trade regulation rules:

Textile wearing apparel and piece goods; care labeling; comments due by 3-10-97; published 2-6-97

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Food for human consumption:

Food labeling--

Free glutamate content of foods; label information requirements; comments due by 3-12-97; published 11-13-96

Nutrient content claims; general principles; comments due by 3-10-97; published 1-24-97

Medical devices:

Investigational devices; export requirements streamlining; comments due by 3-10-97; published 1-7-97

HEALTH AND HUMAN SERVICES DEPARTMENT

Health Care Financing Administration

Medicaid:

Redetermination due to welfare reform; comments due by 3-14-97; published 1-13-97

INTERIOR DEPARTMENT

Land Management Bureau

Minerals management:

Oil and gas leasing--

Stripper oil properties; royalty rate reduction; comments due by 3-14-97; published 1-13-97

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:

Bruneau hot springsnail; comments due by 3-10-97; published 1-23-97

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:

Montana; comments due by 3-11-97; published 1-10-97

NUCLEAR REGULATORY COMMISSION

Uranium enrichment facilities; certification and licensing; comments due by 3-14-97; published 2-12-97

SMALL BUSINESS ADMINISTRATION

Small business investment companies:

Examination fees; comments due by 3-13-97; published 2-11-97

SOCIAL SECURITY ADMINISTRATION

Supplemental security income:

Aged, blind, and disabled--

Institutionalized children; comments due by 3-10-97; published 1-8-97

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Airbus; comments due by 3-10-97; published 1-29-97

Boeing; comments due by 3-10-97; published 2-12-97

Bombardier; comments due by 3-14-97; published 2-3-97

Fokker; comments due by 3-14-97; published 2-28-97

Hiller Aircraft Corp.; comments due by 3-10-97; published 1-7-97

Pratt & Whitney; comments due by 3-10-97; published 1-9-97

Airworthiness standards:

Special conditions--

Ballistic Recovery Systems, Inc.; Cirrus SR-20 model; comments due by 3-10-97; published 2-6-97

Class E airspace; comments due by 3-10-97; published 1-24-97

Class E airspace; correction; comments due by 3-11-97; published 2-12-97

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Motor vehicle safety standards:

Lamps, reflective devices, and associated equipment--

Auxiliary signal lamps and safety lighting inventions; comment request; comments due by 3-13-97; published 12-13-96

TRANSPORTATION DEPARTMENT

Surface Transportation Board

Rate procedures:

Simplified rail rate reasonableness proceedings; expedited procedures; comments due by 3-14-97; published 2-12-97

VETERANS AFFAIRS DEPARTMENT

Vocational rehabilitation and education:

Veterans education--

State approving agencies; school catalog submission; comments due by 3-10-97; published 1-8-97

Survivors and dependents education; eligibility period extension; comments due by 3-10-97; published 1-9-97