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Briefings on How To Use the Federal Register
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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register

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

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

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

WASHINGTON, DC
(TWO BRIEFINGS)

WHEN: January 25 at 9:00 am and 1 30 pm

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

RESERVATIONS: 202–523–4538

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

Rules and Regulations

Federal Register
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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 201

Amendments to Regulations Under the Federal Seed Act

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Correction to Final Rule.

SUMMARY: This document contains a correction to the final regulation (59 FR 64486–64521) published on December 14, 1994. The regulations concerned certain provisions of the Federal Seed Act (FSA).

EFFECTIVE DATE: January 13, 1995.

FOR FURTHER INFORMATION CONTACT: James P. Triplitt, Chief, Seed Regulatory and Testing Branch, Livestock and Seed Division, AMS, USDA, Building 506, BARC-E, Beltsville, Maryland 20705, telephone 301–504–9430.

SUPPLEMENTARY INFORMATION:

Background

As published, this final rule contains changes to the FSA regulations. Common and scientific names of several agricultural and vegetable seeds are updated. Germination evaluation descriptions and use of the fluorescence test in determining pure seed percentages of ryegrasses are changed. Test methods are added for coated seed and for determining the presence of fungal endophyte in seeds. Standards for certified seed are updated and several kinds of agricultural and vegetable seeds are added to those kinds subject to the FSA.

Need for Correction

The final rule as published contains an error in the amendatory language affecting 7 CFR part 201.49.

Correction of Publication

Accordingly, in the December 14, 1994, publication, on page 64498, in the first column, the amendatory language revising § 201.49 should read as follows:

§ 201.49 [Corrected]

"22. Section 201.49 is amended designating the existing text as paragraph (a) and revising it, and adding and reserving paragraph (b) to read as follows:"

Dated: January 4, 1995.

Barry L. Carpenter,

Director, Livestock and Seed Division.

[FR Doc. 95–559 Filed 1–9–95; 8:45 am]

BILLING CODE 3410–02–P

FARM CREDIT ADMINISTRATION

12 CFR Part 630

RIN 3052–AB23

Disclosure to Investors in Systemwide and Consolidated Bank Debt Obligations of the Farm Credit System; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration (FCA) published a final regulation under part 630 on September 12, 1994 (59 FR 46734). The final regulation adds 12 CFR part 630 to ensure that timely and accurate Systemwide financial information continues to be disclosed to investors and the public to assist them in making informed decisions regarding Farm Credit System debt obligations and System institutions. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is January 4, 1995.

EFFECTIVE DATE: The regulation adding 12 CFR part 630 published on September 12, 1994 (59 FR 46734) is effective January 4, 1995.

FOR FURTHER INFORMATION CONTACT:

Tong-Ching Chang, Staff Accountant, Policy Development and Planning Division, Office of Examination, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4483, TDD (703) 883–4444,

or

William L. Larsen, Senior Attorney, Regulatory Operations Division, Office of General Counsel, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4020, TDD (703) 883–4444.

(12 U.S.C. 2252(a)(9) and (10)).

Dated: January 4, 1995.

Floyd Fithian,

Acting Secretary, Farm Credit Administration Board.

[FR Doc. 95–488 Filed 1–9–95; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–CE–14–AD; Amendment 39–9119; AD 95–01–08]

Airworthiness Directives; Jetstream Aircraft Limited (Formerly British Aerospace, Regional Airlines Limited) HP137 Mk1 and Jetstream Series 200 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes AD 81–09–03 R1, which currently requires repetitively inspecting the rudder pedal adjusting mounting bracket for cracks on Jetstream Aircraft Limited (JAL) HP137 Mk1 and Jetstream Series 200 airplanes, and replacing any cracked bracket. The Federal Aviation Administration's policy on aging commuter-class aircraft is to eliminate, or in certain instances, reduce the number of repetitions of certain short-interval inspections when improved parts or modifications are available. This action requires replacing the mounting bracket with a new mounting bracket of improved design as terminating action for the repetitive inspections that are currently required by AD 81–09–03 R1. The actions specified by this AD are intended to prevent inadvertent rudder movement caused by a cracked rudder pedal adjusting bracket, which, if not detected and corrected, could result in loss of rudder control.

DATES: Effective February 20, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 20, 1995.

ADDRESSES: Service information that applies to this AD may be obtained from Jetstream Aircraft Limited, Manager Product Support, Prestwick Airport, Ayrshire, KA9 2RW Scotland; telephone (44–292) 79888; facsimile (44–292) 79703; or Jetstream Aircraft Inc., Librarian, P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029; telephone (703) 406–1161; facsimile (703) 406–1469. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond A. Stoer, Program Officer, Brussels Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B–1000 Brussels, Belgium; telephone (322) 513.3830; facsimile (322) 230.6899; or Mr. John P. Dow, Sr., Project Officer, Small Airplane Directorate, Airplane Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6932; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain JAL HP137 Mk1 and Jetstream 200 series airplanes was published in the **Federal Register** on October 13, 1994 (59 FR 51877). The action proposed superseding AD 81–09–03 R1 with a new AD that would (1) retain the inspections of the rudder pedal adjusting mounting bracket for cracks and require replacing any cracked part as required by the current AD; and (2) require replacing this mounting bracket with an improved part of increased sectional dimension, P/N 1379111E 1 as terminating action for the repetitive inspections. The proposed inspection would be accomplished in accordance with Jetstream Service Bulletin No. 9/10, dated April 28, 1981. The proposed replacement would be accomplished in accordance with the Instructions to Modification No. 5162, Part 1 and Part 2, Issue 1, dated June 1981.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

After careful review of all available information, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

This action is based on the FAA's aging commuter-class aircraft policy. This policy simply states that airplane owners/operators should incorporate a known design change when it could eliminate, or, in certain instances, reduce the number of critical repetitive inspections.

The FAA estimates that 11 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 160 workhours per airplane to accomplish the required action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $1,800 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $116,600.

All 11 of the affected airplanes are HP137 Mk1's; there are no Jetstream series 200 airplanes registered in the United States, but they are type certificated for operation in the United States. According to FAA records, none of these HP137 Mk1 airplanes are in operation or anywhere near operating condition. For this reason, JAL no longer stocks Modification No. 5162, but can develop modification kits within three months after order. Since there are no airplanes currently in operation, the cost impact of this AD is narrowed to only those owners/operators returning their airplane to operation.

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 copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 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. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing AD 81–09–03 R1, Amendment 39–4150, and by adding a new AD to read as follows:

95–01–08 Jetstream Aircraft Limited: Amendment 39–9119; Docket No. 94–CE–14–AD. Supersedes AD 81–09–03 R1, Amendment 39–4150.

Applicability HP137 Mk1 and Jetstream Series 200 airplanes (all serial numbers), certificated in any category.

Compliance Required as indicated in the body of this AD, unless already accomplished.

To prevent inadvertent rudder movement caused by a cracked rudder pedal adjusting mounting bracket, which could result in loss of rudder control, accomplish the following.

(a) Within the next 100 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished (compliance with AD 81–09–03 R1), inspect the rudder pedal adjusting mounting bracket for cracks in accordance with Jetstream Service Bulletin (SB) No. 9/10, dated April 28, 1981.

(1) If cracks are found, prior to further flight, replace the mounting bracket with an improved part of increased sectional dimension, part number (P/N) 1379111E 1 in accordance with the Instructions to Modification No. 5162, Part 1 and Part 2, Issue 1, dated June 1981. This replacement is referenced as Modification No. 5162.

(2) If no cracks are found, reinspect at intervals not to exceed 100 hours TIS until Modification No. 5162 is incorporated.

(b) Upon the accumulation of 15,000 hours TIS or within the next 200 hours TIS after the effective date of this AD, whichever occurs later, replace the rudder pedal adjusting mounting bracket with an improved part of

increased sectional dimension, P/N 1379111E 1 (Modification No. 5162), in accordance with the Instructions to Modification No. 5162, Part 1 and Part 2, Issue 1, dated June 1981.

(c) Incorporating Modification 5162 as specified in paragraphs (a)(1) and (b) of this AD eliminates the repetitive inspection requirement of this AD.

(d) Special flight permits may be issued in accordance with §§ 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) An alternative method of compliance or adjustment of the initial and repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Office (ACO), Europe, Africa, Middle East office, FAA, c/o American Embassy, B–1000 Brussels, Belgium. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels ACO.

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

(f) The inspection required by this AD shall be done in accordance with Jetstream Service Bulletin No. 9/10, dated April 28, 1981. The replacement required by this AD shall be done in accordance with Instructions to Modification No. 5162, Part 1 and Part 2, Issue 1, dated June 1981. 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 Jetstream Aircraft Limited, Manager Product Support, Prestwick Airport, Ayrshire, KA9 2RW Scotland; or Jetstream Aircraft Inc., Librarian, P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment (39–9119) becomes effective on February 20, 1995.

Issued in Kansas City, Missouri, on January 4, 1995.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–518 Filed 1–9–95; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 91–CE–12–AD; Amendment 39–9118; AD 95–01–07]

Airworthiness Directives; Fairchild Aircraft Models SA227–AC and SA227–AT Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes Airworthiness Directive (AD) 83–12–01, which currently requires repetitively inspecting the lower wing skin panel for cracks on certain Fairchild Aircraft Models SA227–AC and SA227–AT airplanes, and installing wing skin reinforcement doublers if any wing skin crack is found. The Federal Aviation Administration's policy on aging commuter-class aircraft is to eliminate, or, in certain instances, reduce the number of certain repetitive short-interval inspections when improved parts or modifications are available. This action requires installing wing skin reinforcement doublers or wing skin stringer ties as terminating action for the repetitive inspections that are currently required by AD 83–12–01. The actions specified by this AD are intended to prevent fatigue failure of the lower wing skin panels, which could result in loss of control of the airplane.

DATES: Effective February 17, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 17, 1995.

ADDRESSES: Service information that applies to this AD may be obtained from Fairchild Aircraft, P.O. Box 790490, San Antonio, Texas 78279–0490; telephone (210) 824–9421. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Hung Viet Nguyen, Aerospace Engineer, FAA, Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone (817) 222–5155; facsimile (817) 222–5959.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Fairchild Aircraft Models SA227–AC and SA227–AT airplanes was published in the **Federal Register** on March 30, 1994 (59 FR 14797). The action proposed to supersede AD 83–12–01 with a new AD that would (1) retain the requirement of repetitively inspecting the lower wing skin panel, and installing wing skin reinforcement doublers if any wing skin crack is found; and (2) require either installing wing skin reinforcement doublers or wing skin stringer ties as terminating action for the repetitive inspections. The proposed actions would be accomplished in accordance with Fairchild SB No. 227–57–002, Issued. June 6, 1983, Revised: January 23, 1984.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

After careful review of all available information, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

This action is based on the FAA's aging commuter-class airplane policy, which briefly states that owners/operators in commuter service should incorporate modifications or install improved parts when the modification or installation would eliminate, or, in certain instances, reduce a repetitive inspection on a critical structure.

The FAA estimates that 125 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 9 workhours per airplane to accomplish the required action if reinforcement doublers were installed (1 workhour/inspection and 8 workhours/modification) or 25 workhours per airplane to accomplish the required action if wing skin stringer ties were installed (1 workhour/inspection and 24 workhours/modification), and that the average labor rate is approximately $55 an hour. Parts cost approximately $56 per airplane for the wing skin reinforcement doublers and $179 per airplane for the wing skin stringer ties. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be either $68,875 for those airplane operators incorporating the reinforcement doubler modification or $194,250 for those airplane operators utilizing the wing skin stringer ties modification. This cost figure is based on the assumption that no affected airplane owner/operator has accomplished one of the required inspection-terminating modifications. The figure does not include repetitive inspection costs. The FAA has no way of determining how many repetitive inspections each owner/operator may incur.

The intent of the FAA's aging commuter airplane program is to ensure safe operation of commuter-class airplanes that are in commercial service without adversely impacting private operators. Of the approximately 125

airplanes in the U.S. registry that will be affected by this AD, approximately 76 are operated in scheduled passenger service. A significant number of the remaining 49 airplanes are operated in other forms of air transportation such as air cargo and air taxi.

This AD allows 500 hours time-in-service (TIS) before mandatory accomplishment of the design modification. The average utilization of the fleet for those airplanes in commercial commuter service is approximately 25 to 50 hours TIS per week. Based on these figures, operators of commuter-class airplanes involved in commercial operation will have to accomplish the required modification within 2 to 5 calendar months after this AD becomes effective. For private owners, who typically operate between 100 to 200 hours TIS per year, this allows 2 to 5 calendar years before the required modification will be mandatory.

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 copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 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. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing AD 83–12–01, Amendment 39–4693, and by adding a new AD to read as follows:

95–01–07 Fairchild Aircraft: Amendment 39–9118; Docket No. 91–CE–12–AD. Supersedes AD 83–12–01, Amendment 39–4693.

Applicability: The following model and serial number airplanes, certificated in any category:

Model	Serial Nos.
SA227–AC	415, 416, and 420 through 554.
SA227–AT	423 through 554.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent fatigue failure of the lower wing skin panels, which could result in loss of control of the airplane, accomplish the following:

(a) Within the next 50 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished (compliance with AD 83–12–01), dye penetrant inspect the lower wing skin panel of both wings in the area of Wing Station (WS) 187.0 in accordance with paragraph IIA of the ACCOMPLISHMENT INSTRUCTIONS section of Fairchild Service Bulletin (SB) 227–57–002, Issued: June 6, 1983, Revised: January 23, 1984.

(1) If cracks are found, prior to further flight, install reinforcement doublers, part number 27K31013–001 LH and 27K31013–002 RH, in accordance with paragraph IIB of the ACCOMPLISHMENT INSTRUCTIONS section of Fairchild SB 227–57–002, Issued: June 6, 1983, Revised: January 23, 1984.

(2) If no cracks are found, reinspect thereafter at intervals not to exceed 50 hours TIS until the modification specified in paragraph (b) of this AD is accomplished.

(b) Within the next 500 hours TIS after the effective date of this AD, unless already accomplished as specified in paragraph (a)(1) of this AD, accomplish one of the following on both wings:

(1) Install reinforcement doublers, part number 27K31013–001 LH and 27K31013–002 RH, in accordance with paragraph IIB of the ACCOMPLISHMENT INSTRUCTIONS section of Fairchild SB 227–57–002, Issued: June 6, 1983, Revised: January 23, 1984; or

(2) Install stringer ties, P/N 27–13869, in accordance with paragraph IIC of the ACCOMPLISHMENT INSTRUCTIONS section of Fairchild SB 227–57–002, Issued: June 6, 1983, Revised: January 23, 1984.

(c) Incorporating (on both wings) the modification specified in paragraph (a)(1), (b)(1) or (b)(2) of this AD terminates the repetitive inspection requirement of this AD.

(d) Special flight permits may be issued in accordance with §§ 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) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Airplane Certification Office (ACO), 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Fort Worth ACO.

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

(f) The inspections and installation required by this AD shall be done in accordance with Fairchild Service Bulletin 227–57–002, Issued: June 6, 1983, Revised: January 23, 1984. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fairchild Aircraft, P.O. Box 790490, San Antonio, Texas 78279–0490. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment (39–9118) supersedes AD 83–12–01, Amendment 39–4693.

(h) This amendment (39–9118) becomes effective on February 17, 1995.

Issued in Kansas City, Missouri, on January 4, 1995.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–517 Filed 1–9–95; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 94–ASW–2]

Alteration of Jet Routes; Louisiana

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This document contains a correction to the final rule published on December 9, 1994. In the airspace designation of Jet Route J–37 the Hobby 084° radial was in error. This correction changes the "Hobby 084°" radial to read the "Hobby 090°" radial.

EFFECTIVE DATE: February 2, 1995.

FOR FURTHER INFORMATION CONTACT: Norman W. Thomas, Airspace and Obstruction Evaluation Branch (ATP–

240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9250.

SUPPLEMENTARY INFORMATION: On December 9, 1994, the FAA published a final rule that revised the description of Jet Route J–37 in the State of Louisiana. In the airspace designation of Jet Route J–37 the Hobby 084° radial was in error. This correction changes the "Hobby O84°" radial to read the "Hobby 090°" radial.

Correction of Final Rule

Accordingly, pursuant to the authority delegated to me, the airspace designation for Jet Route J–37 published in the **Federal Register** on December 9, 1994 (59 FR 63718; **Federal Register** Document 94–30225, Column 3) is corrected as follows:

J–37 [Corrected]

From Hobby, TX, via INT of the Hobby 090° and Harvey, LA, 266° radials; Harvey; Semmes, AL; Montgomery, AL; Spartanburg, SC; Lynchburg, VA; Gordonsville, VA; Brooke, VA; INT Brooke 067° and Coyle, NJ, 226° radials; to Coyle. From Kennedy, NY; Kingston, NY; Albany, NY; Massena, NY, to the INT of the Massena 037° radial and the United States/Canadian Border.

Issued in Washington, DC, on December 30, 1994.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 95–577 Filed 1–9–95; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Parts 121, 129, and 135

[Docket No. 27663; Amdt. No. 121–246]

RIN 2120–AF24

Traffic Alert and Collision Avoidance System, TCAS I

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This document contains a correction to a final rule, Traffic Alert and collision avoidance System, TCAS I, published in the Federal Register on December 29, 1994.

DATES: This document is effective December 29, 1994. The final compliance date is December 31, 1995. Comments on the revision of § 121.356(b) must be received on or before February 27, 1995.

FOR FURTHER INFORMATION CONTACT: Gary E. Davis, telephone (202) 267–8096.

Correction to Final Rule

In the final rule beginning on page 67584, in the issue of Thursday, December 29, 1994, the following correciton is being made:

1. On page 67584, first column, and in the heading, the amendment number should read "121–246", instead of "121–247".

Dated: January 4, 1995.

Donald P. Byrne,

Assistant Chief Counsel, Office of Chief Counsel.

[FR Doc. 95–571 Filed 1–9–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8586]

RIN 1545–AC35

Treatment of Gain From Disposition of Certain Natural Resource Recapture Property

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document provides final regulations relating to the tax treatment of gain from the disposition of certain natural resource recapture property (section 1254 property after enactment of the Tax Reform Act of 1986 and oil, gas, or geothermal property before enactment of the Tax Reform Act of 1986). Changes to the applicable tax law were made by the Tax Reform Act of 1986, the Tax Reform Act of 1984, the Energy Tax Act of 1978, the Tax Reform Act of 1976, the Tax Reform Act of 1969, and the Act of September 12, 1966. The regulations provide the public with guidance in complying with the changed tax laws.

DATES: These regulations are effective January 10, 1995.

For dates of applicability, see § 1.1254–6.

FOR FURTHER INFORMATION CONTACT: Brenda M. Stewart (202–622–3120, not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1545–1352. The estimated annual burden per respondent varies from four to six hours, depending on individual circumstances, with an estimated average of five hours.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, PC:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn. Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Background

On June 11, 1980, the IRS published proposed amendments to the Income Tax Regulations (26 CFR part 1) under sections 170, 301, 312, 341, 453, 751, 1254, and 1502 of the Internal Revenue Code of 1954 in the **Federal Register** (45 FR 39512). These amendments were proposed to conform the regulations to section 205 (a), (b), and (c) (1) and (2) of the Tax Reform Act of 1976, Pub. L. 94–455, 90 Stat. 1533, and section 402(c) of the Energy Tax Act of 1978, Pub. L. 95–618, 92 Stat. 3202, and to make certain other technical amendments to conform the regulations to section 1(c) of the Act of September 12, 1966, Pub. L. 89–570, 80 Stat. 762, to section 211(b)(6) of the Tax Reform Act of 1969, Pub. L. 91–172, 83 Stat. 570, and to sections 1042(c)(2), 1101(d)(2), 1901(a)(93), and 2110(a) of the Tax Reform Act of 1976, 90 Stat. 1637, 1658, 1780, 1905). A public hearing was held on September 9, 1980 After considering all comments regarding the proposed regulations, the proposed regulations (except for the provisions relating to an electing small business corporation (hereinafter referred to as an S corporation)), are adopted as revised by this Treasury decision. The rules under § 1.751–1(c)(6)(ii) are clarified, but no substantive change is intended except to insert additional recapture sections under the Internal Revenue Code of 1986 (Code).

Because of the substantial changes made to the tax treatment of S corporations by section 5(a)(37) of the Subchapter S Revision Act of 1982, Pub L. 97–354, 96 Stat. 1696, section 492 of the Tax Reform Act of 1984, Pub. L. 98–369, 98 Stat. 853, and sections 411 and 413 of the Tax Reform Act of 1986, Pub. L. 99–514, 100 Stat. 2225, 2227, § 1.1254–3 of the proposed regulations (relating to an electing small business),

has not been adopted. Instead, a notice of proposed rulemaking, designated as § 1.1254–4, relating to the recapture of natural resource recapture property by an S corporation and its shareholders will be proposed to conform the regulations to these laws.

I. Intangible Drilling and Development Costs Recapture in a Partnership

The proposed regulations require a partnership to compute the amount of intangible drilling and development costs to be recaptured (entity approach) and, subject to the substantial economic effect test, to allocate that amount among the partners in accordance with their respective distributive shares as provided in the partnership agreement. Some commentators argue that the proposed regulations are inconsistent with partner level (aggregate approach) computation of depletion and gain upon the sale of partnership oil and gas property under section 613A(c)(7)(D).

Under the entity approach of the proposed regulations, some recapture of section 1254 costs may be shifted from the partners who claimed the deductions to other partners who did not receive the benefit of the deductions. Under the aggregate approach, depending on the allocation of gain or amount realized upon sale, some section 1254 costs may not be recaptured though total partnership gain exceeds total partnership section 1254 costs.

The commentators suggest that, consistent with section 613A(c)(7)(D), the final regulations should adopt the aggregate approach. They argue that under the aggregate approach, a partner can more readily compute both the extent of the deductions that were previously allocated to the partner and the appropriate adjustment required by section 1254(a)(4) (as in effect before enactment of the Tax Reform Act of 1986). The commentators contend that it is difficult for a partnership to obtain this information from the individual partners. In addition, they cite section 58(i) (as in effect before enactment of the Tax Reform Act of 1986), which allowed general partners to elect to amortize intangible drilling and development costs over a 5 year period and limited partners to elect to amortize intangible drilling and development costs over a 10 year period. Section 59(e) now provides an analogous amortization election.

Consistent with the commentators' suggestion, the final regulations adopt the aggregate approach. Recapture is determined at the partner level. However, the regulations contain an anti-abuse rule providing that recapture is determined at the partnership level if the Commissioner determines that the amount realized or gain recognized from the disposition of section 1254 property is allocated to partners with a principal purpose of avoiding recapture under section 1254.

II. Recapture of Distributions on the Liquidation of a Partnership

In general, the section 1254 recapture provisions override nonrecognition provisions in the Code. However, section 1254 (b)(1) states that rules similar to the rules of section 1245 (b) and (c) shall be prescribed by regulation. Accordingly, the final regulations limit the amount subject to recapture in certain tax-free transactions to gain that would be recognized without regard to section 1254. Section 1.1254–2(c)(3) lists the transfers in which recapture is limited. All transfers listed involve transferred basis.

Commentators point out that under the proposed regulations recapture is required upon the liquidation of a partnership interest because section 732(b) provides that the basis of property received in a liquidation is a substitute basis equal to the basis of the partner's interest in the partnership. However, under section 1245(b)(6)(A), recapture upon the distribution of partnership assets in liquidation is limited. Accordingly, the commentators suggest that a similar rule should be adopted for section 1254 purposes.

The final regulations adopt the commentators' suggestion. The basis of natural resource recapture property distributed by a partnership to a partner is deemed to be determined by reference to the adjusted basis of the property to the partnership.

III. Recapture Reduction

Under section 1254(a)(4) (as in effect before enactment of the Tax Reform Act of 1986), the amount of intangible drilling and development costs subject to recapture is reduced by the amount, if any, by which the "deduction for depletion" under section 611 "would have been increased" if intangible drilling and development costs had been charged to a capital account rather than currently expensed under section 263(c). The proposed regulations, therefore, require taxpayers to use the excess of the hypothetical cost or percentage depletion deduction over the amount allowed under section 611 (either cost or percentage depletion) in determining the constructive increase in depletion.

By contrast, many commentators argued that, notwithstanding the language of the statute, according to the legislative history, the recapture amount should be reduced even in situations where expensing intangible drilling and development costs did not result in decreased depletion deductions.

The final regulations reject this view and instead continue to follow the statute, which, as noted above, provides that recapturable intangible drilling and development costs are reduced by the amount by which the "deduction for depletion" claimed under section 611 "would have been increased." Thus, the amount of recapturable intangible drilling and development costs is reduced by only the excess, if any, of the hypothetical cost or percentage depletion deduction (computed as if intangible drilling and development costs subject to depletion had been capitalized) over the amount of the cost or percentage depletion deduction the taxpayer actually claimed. Consequently, unless the hypothetical cost or percentage depletion amount is greater than the actual depletion deduction claimed, no depletion deduction is foregone, and all intangible drilling and development costs attributable to the property are recapturable.

The final regulations are clarified to remove uncertainties regarding the method for calculating the reduction in the amount of recapturable intangible drilling and development costs.

IV. Nonproductive Wells

Some commentators state that intangible drilling and development costs allocable to nonproductive wells should not be subject to recapture. They point out that, even if a taxpayer elects to capitalize intangible drilling and development costs, intangible drilling and development costs of nonproductive wells are not added to basis because the operator normally deducts these amounts under § 1.612–4(b)(4) on the return for the first taxable year after abandonment of a nonproductive well.

One reason for the enactment of section 1254 was to prevent the conversion of intangible drilling and development costs currently deducted against ordinary income into capital gain in certain limited risk situations. See H.R. Rep. 94–658, 94th Cong., 1st Sess. 94 (1975). For example, if a well proves to be nonproductive causing a nonrecourse debt to become worthless, the taxpayer generally recognizes income that is treated as capital gain upon foreclosure of the debt, because a foreclosure is deemed to be a sale of the property. Consequently, ordinary income deductions would be converted

into capital gains to the extent of the leveraged amounts.

Aside from foreclosure of a nonrecourse debt, however, a nonproductive well provides no opportunity for converting an ordinary income stream into capital gain. Accordingly, the final regulations provide that section 1254 costs attributable to nonproductive wells are not recapturable, except in certain limited risk situations.

V. Depreciation

Some commentators argue that depreciable costs associated with drilling should not be separated from depletable costs in calculating the hypothetical depletion deduction. Commentators also point out that it is difficult to identify the amount of intangible drilling and development costs that could have been deducted as depreciation, because it is not current industry practice to separate depreciable costs from depletable costs. In response to these comments, the final regulations do not require depreciable costs to be separated from depletable costs in calculating the hypothetical depletion deduction.

VI. Property Interest Subject to Recapture

Under the proposed regulations, each operating mineral interest in an "oil, gas, or geothermal property," as well as any nonoperating mineral interest retained by a lessor or sublessor of a property to which intangible drilling and development costs were properly chargeable when held by such person prior to the creation of the lease or sublease, is subject to recapture.

In *Houston Oil and Minerals Corp. v. Commissioner*, 92 T.C. 1331 (1989), *aff'd*, 922 F.2d 283 (5th Cir. 1991), *Louisiana Land and Exploration Co. v. Commissioner*, 92 T.C. 1340 (1989), and *Southland Royalty Co. v. United States*, 91–1 U.S.T.C. ¶ 50,083 (Cls. Ct. 1991), the Internal Revenue Service took the position that section 1254 requires recapture of intangible drilling and development costs upon the disposition of a nonoperating mineral interest carved out of an operating mineral interest. The courts, however, held instead that the disposition of an overriding royalty interest carved out of an operating mineral interest to which intangible drilling and development costs were charged does not trigger recapture because the overriding royalty interest is not "oil, gas, or geothermal property" within the meaning of section 1254(a)(3).

The Tax Court in *Houston Oil and Minerals Corp.*, 92 T.C. at 1339, and *Louisiana Land and Exploration Co.*, 92 T.C. at 1348, and the Claims Court in *Southland Royalty Co.*, 91–1 U.S.T.C. at 87,337, noted that because the Tax Reform Act of 1986 amended section 1254 to include within the definition of "oil, gas, or geothermal property" property the basis of which has been adjusted for depletion, nonoperating mineral interests come within the ambit of section 1254 after 1986. Consequently, the courts reasoned, the issue considered in these cases would arise only with respect to property placed in service before 1987.

The regulations have been amended to treat a nonoperating mineral interest carved out of an operating mineral interest with respect to which section 1254 costs have been deducted as property to which section 1254 costs are properly chargeable. Thus, the final regulations make clear that natural resource recapture property includes a nonoperating mineral interest if the nonoperating mineral interest was carved out of an operating mineral interest to which section 1254 costs were properly chargeable by the holder of the operating mineral interest. See § 1.1254–1(b)(2). Consistent with the opinions in the litigated cases, however, this provision will be effective only with respect to property placed in service after December 31, 1986.

VII. Disposition

Commentators urge that the regulations state who is liable for recapture if an operating mineral interest shifts automatically or at the option of the person who will receive the interest, as, for example, a farm-out. In response to these comments, the final regulations provide that liability for potential recapture of intangible drilling and development costs attributable to the entire operating mineral interest held by the carrying party prior to reversion or conversion remains attributable to the reduced operating mineral interest retained by the carrying party after a portion of the operating mineral interest has reverted to the carried party or after the conversion of an overriding royalty interest that converts, at the option of the grantor or successor in interest, to an operating mineral interest after a certain amount of production.

VIII. Like Kind Exchanges and Involuntary Conversions

Commentators state that under § 1.1254–4(d) of the proposed regulations liability for recapture of intangible drilling and development costs remains with the property with respect to which the costs were incurred and does not transfer to the property received in a like kind exchange or involuntary conversion. However, under the final regulations recapture liability transfers to the property received by the transferor who received the benefit of the deductions for section 1254 costs. This result is consistent with the section 1245(b)(4) and § 1.1245–2(c)(4) rules for recapture of depreciation. Because section 1254(b)(1) states that the regulations should prescribe rules similar to rules in section 1245 (b) and (c) for like kind exchanges, involuntary conversions, and other nontaxable transfers, the final regulations more closely mirror the section 1245 recapture rules for such transactions.

IX. Filing Requirements

The proposed regulations provide allocation rules for the recapture of section 1254 costs on the sale of a portion of, or an undivided interest in, natural resource recapture property. Under the proposed regulations, a taxpayer is required to attach to the tax return documents sufficient to establish allocation of intangible drilling and development costs to the disposed of portion or undivided interest, notwithstanding that the intangible drilling and development costs do not in fact relate to that portion or undivided interest. Commentators suggest that it is more practical simply to require a taxpayer to state on the tax return that the section 1254 costs do not relate to the property disposed of and to retain verifying documentation. In response to the commentators' suggestion, the final regulations contain a book and records retention requirement.

Effective dates: These regulations are effective January 10, 1995 and §§ 1.1254–1 through 1.1254–3 and § 1.1254–5 apply to any disposition of natural resource recapture property occurring after March 13, 1995. The rule in § 1.1254–1(b)(2)(iv)(A)(*2*), concerning a nonoperating mineral interest carved out of an operating mineral interest with respect to which an expenditure has been deducted, applies to any disposition occurring after March 13, 1995 of property (within the meaning of section 614) that is placed in service by the taxpayer after December 31, 1986. For dispositions of natural resource recapture property occurring on or before March 13, 1995, taxpayers must take reasonable return positions taking into consideration the statute and its legislative history.

Special Analyses

It has been determined that this Treasury decision is not a significant

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

Drafting Information

The principal author of these final regulations is Brenda M. Stewart, Office of Assistant Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding entries in numerical order to read as follows:

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

Section 1.1254–1 also issued under 26 U.S.C. 1254(b).

Section 1.1254–2 also issued under 26 U.S.C. 1254(b).

Section 1.1254–3 also issued under 26 U.S.C. 1254(b).

Section 1.1254–4 also issued under 26 U.S.C. 1254(b).

Section 1.1254–5 also issued under 26 U.S.C. 1254(b).

Section 1.1254–6 also issued under 26 U.S.C. 1254(b). * * *

§ 1.301–1 [Amended]

Par. 2. Section 1.301–1 is amended as follows:

1. Paragraph (d)(1)(iii) is amended by removing the language "or 1252(a)" and adding "1252(a), or 1254(a)" in its place.

2. Paragraph (h)(2)(ii)(*b*) is amended by removing the language "or section 1252(a) (relating to gain from disposition of farm land)" and adding "section 1252(a) (relating to gain from disposition of farm land), or section 1254(a) (relating to gain from disposition of interest in natural resource recapture property)" in its place.

3. Paragraph (j)(1) is amended by removing the language "or 1252(a)" and adding "1252(a), or 1254(a)" in its place.

§ 1.312–3 [Amended]

Par. 3. Section 1.312–3 is amended by removing "or 1252(a)" and adding "1252(a), or 1254(a)" in its place.

§ 1.341–6 [Amended]

Par. 4. Section 1.341–6 is amended as follows:

1. In paragraph (b)(1), the last sentence is amended by removing the language "and 1252 (relating to gain from disposition of farm land)" and adding "1252 (relating to gain from disposition of farm land), and 1254 (relating to gain from disposition of interest in natural resource recapture property)" in its place.

2. In paragraph (b)(2)(i), the first sentence is amended by removing "or 1252)" and adding "1252, or 1254)" in its place.

3. In paragraph (b)(2)(iii), the second sentence is amended by removing "or 1252)" and adding "1252, or 1254)" in its place.

4. In paragraph (b)(3), the first sentence is amended by removing "or 1252)" and adding "1252, or 1254)" in its place.

5. In paragraph (h)(4), the first sentence is amended by removing "or 1252)" and adding "1252, or 1254)" in its place.

6. Paragraph (n) is amended by:

a. Removing the language "*and 1252*" from the paragraph heading and adding "*1252, and 1254*" in its place.

b. Removing from the text the language "and 1252(a) (relating to gain from disposition of farm land)" and adding "1252(a) (relating to gain from disposition of farm land), and 1254(a) (relating to gain from disposition of interest in natural resource recapture property)" in its place.

§ 1.453–9 [Amended]

Par. 5. Section 1.453–9, paragraph (c)(1)(ii) is amended by:

1. Removing from the second sentence the language "or 1252(a)(1)" and adding "1252(a)(1), or 1254(a)(1)" in its place.

2. Removing from the third sentence the language "and paragraph (d)(3) of § 1.1252–1" and adding in its place "paragraph (d)(3) of § 1.1252–1, and paragraph (d) of § 1.1254–1".

Par. 6. Section 1.751–1, paragraphs (c)(4), (c)(5), and (c)(6) are revised to read as follows:

§ 1.751–1 Unrealized receivables and inventory items.

* * * * *

(c) * * *

(4)(i) With respect to any taxable year of a partnership ending after September 12, 1966 (but only in respect of expenditures paid or incurred after that date), the term *unrealized receivables,* for purposes of this section and sections 731, 736, 741, and 751, also includes potential gain from mining property defined in section 617(f)(2). With respect to each item of partnership mining property so defined, the potential gain is the amount that would be treated as gain to which section 617(d)(1) would apply if (at the time of the transaction described in section 731, 736, 741, or 751, as the case may be) the item were sold by the partnership at its fair market value.

(ii) With respect to sales, exchanges, or other dispositions after December 31, 1975, in any taxable year of a partnership ending after that date, the term *unrealized receivables,* for purposes of this section and sections 731, 736, 741, and 751, also includes potential gain from stock in a DISC as described in section 992(a). With respect to stock in such a DISC, the potential gain is the amount that would be treated as gain to which section 995(c) would apply if (at the time of the transaction described in section 731, 736, 741, or 751, as the case may be) the stock were sold by the partnership at its fair market value.

(iii) With respect to any taxable year of a partnership beginning after December 31, 1962, the term *unrealized receivables,* for purposes of this section and sections 731, 736, 741, and 751, also includes potential gain from section 1245 property. With respect to each item of partnership section 1245 property (as defined in section 1245(a)(3)), potential gain from section 1245 property is the amount that would be treated as gain to which section 1245(a)(1) would apply if (at the time of the transaction described in section 731, 736, 741, or 751, as the case may be) the item of section 1245 property were sold by the partnership at its fair market value. See § 1.1245–1(e)(1). For example, if a partnership would recognize under section 1245(a)(1) gain of $600 upon a sale of one item of section 1245 property and gain of $300 upon a sale of its only other item of such property, the potential section 1245 income of the partnership would be $900.

(iv) With respect to transfers after October 9, 1975, and to sales, exchanges, and distributions taking place after that date, the term *unrealized receivables*, for purposes of this section and sections 731, 736, 741, and 751, also includes potential gain from stock in certain foreign corporations as described in section 1248. With respect to stock in such a foreign corporation, the potential gain is the amount that would be treated as gain to which section 1248(a) would apply if (at the time of the transaction described in section 731, 736, 741, or 751, as the case may be) the stock were sold by the partnership at its fair market value.

(v) With respect to any taxable year of a partnership ending after December 31, 1963, the term *unrealized receivables*, for purposes of this section and sections 731, 736, 741, and 751, also includes potential gain from section 1250 property. With respect to each item of partnership section 1250 property (as defined in section 1250(c)), potential gain from section 1250 property is the amount that would be treated as gain to which section 1250(a) would apply if (at the time of the transaction described in section 731, 736, 741, or 751, as the case may be) the item of section 1250 property were sold by the partnership at its fair market value. See § 1.1250–1(f)(1).

(vi) With respect to any taxable year of a partnership beginning after December 31, 1969, the term *unrealized receivables*, for purposes of this section and sections 731, 736, 741, and 751, also includes potential gain from farm recapture property as defined in section 1251(e)(1) (as in effect before enactment of the Tax Reform Act of 1984). With respect to each item of partnership farm recapture property so defined, the potential gain is the amount which would be treated as gain to which section 1251(c) (as in effect before enactment of the Tax Reform Act of 1984) would apply if (at the time of the transaction described in section 731, 736, 741, or 751, as the case may be) the item were sold by the partnership at its fair market value.

(vii) With respect to any taxable year of a partnership beginning after December 31, 1969, the term *unrealized receivables*, for purposes of this section and sections 731, 736, 741, and 751, also includes potential gain from farm land as defined in section 1252(a)(2). With respect to each item of partnership farm land so defined, the potential gain is the amount that would be treated as gain to which section 1252(a)(1) would apply if (at the time of the transaction described in section 731, 736, 741, or 751, as the case may be) the item were sold by the partnership at its fair market value.

(viii) With respect to transactions which occur after December 31, 1976, in any taxable year of a partnership ending after that date, the term *unrealized receivables*, for purposes of this section and sections 731, 736, 741, and 751, also includes potential gain from franchises, trademarks, or trade names referred to in section 1253(a). With respect to each such item so referred to in section 1253(a), the potential gain is the amount that would be treated as gain to which section 1253(a) would apply if (at the time of the transaction described in section 731, 736, 741, or 751, as the case may be) the items were sold by the partnership at its fair market value.

(ix) With respect to any taxable year of a partnership ending after December 31, 1975, the term *unrealized receivables*, for purposes of this section and sections 731, 736, 741, and 751, also includes potential gain under section 1254(a) from natural resource recapture property as defined in § 1.1254–1(b)(2). With respect to each separate partnership natural resource recapture property so described, the potential gain is the amount that would be treated as gain to which section 1254(a) would apply if (at the time of the transaction described in section 731, 736, 741, or 751, as the case may be) the property were sold by the partnership at its fair market value.

(x) For purposes of section 751(c) and this paragraph (c)(4), any arm's-length agreement between the buyer and seller, or between the partnership and distributee partner, will generally establish the fair market value of the property described in this paragraph (c)(4).

(5) For purposes of subtitle A of the Internal Revenue Code, the basis of any potential gain described in paragraph (c)(4) of this section is zero.

(6)(i) If (at the time of any transaction referred to in paragraph (c)(4) of this section) a partnership holds property described in paragraph (c)(4) of this section and if—

(A) A partner had a special basis adjustment under section 743(b) in respect of the property;

(B) The basis under section 732 of the property if distributed to the partner would reflect a special basis adjustment under section 732(d); or

(C) On the date a partner acquired a partnership interest by way of a sale or exchange (or upon the death of another partner) the partnership owned the property and an election under section 754 was in effect with respect to the partnership, the partner's share of any potential gain described in paragraph (c)(4) of this section is determined under paragraph (c)(6)(ii) of this section.

(ii) The partner's share of the potential gain described in paragraph (c)(4) of this section in respect of the property to which this paragraph (c)(6)(ii) applies is that amount of gain that the partner would recognize under section 617(d)(1), 995(c), 1245(a), 1248(a), 1250(a), 1251(c) (as in effect before the Tax Reform Act of 1984), 1252(a), 1253(a), or 1254(a) (as the case may be) upon a sale of the property by the partnership, except that, for purposes of this paragraph (c)(6) the partner's share of such gain is determined in a manner that is consistent with the manner in which the partner's share of partnership property is determined; and the amount of a potential special basis adjustment under section 732(d) is treated as if it were the amount of a special basis adjustment under section 743(b). For example, in determining, for purposes of this paragraph (c)(6), the amount of gain that a partner would recognize under section 1245 upon a sale of partnership property, the items allocated under § 1.1245–1(e)(3)(ii) are allocated to the partner in the same manner as the partner's share of partnership property is determined. See § 1.1250–1(f) for rules similar to those contained in § 1.1245–1(e)(3)(ii).

* * * * *

Par. 7. Sections 1.1254–0 through 1.1254–6 are added to read as follows:

§ 1.1254–0 Table of contents for section 1254 recapture rules.

This section lists the major captions contained in §§ 1.1254–1 through 1.1254–6.

§ 1.1254–1 Treatment of gain from disposition of natural resource recapture property.

(a) In general.
(b) Definitions.
  (1) Section 1254 costs.
  (2) Natural resource recapture property.
  (3) Disposition.
(c) Disposition of a portion of natural resource recapture property.
  (1) Disposition of a portion (other than an undivided interest) of natural resource recapture property.
  (2) Disposition of an undivided interest.
  (3) Alternative allocation rule.
(d) Installment method.

§ 1.1254–2 Exceptions and limitations.

(a) Exception for gifts and section 1041 transfers.
  (1) General rule.
  (2) Part gift transactions.
(b) Exception for transfers at death.
(c) Limitation for certain tax-free transactions.
  (1) General rule.

§ 1.1254–1 Treatment of gain from disposition of natural resource recapture property.

(a) *In general.* Upon any disposition of section 1254 property or any disposition after December 31, 1975 of oil, gas, or geothermal property, gain is treated as ordinary income in an amount equal to the lesser of the amount of the section 1254 costs (as defined in paragraph (b)(1) of this section) with respect to the property, or the amount, if any, by which the amount realized on the sale, exchange, or involuntary conversion, or the fair market value of the property on any other disposition, exceeds the adjusted basis of the property. However, any amount treated as ordinary income under the preceding sentence is not included in the taxpayer's *gross income from the property* for purposes of section 613. Generally, the lesser of the amounts described in this paragraph (a) is treated as ordinary income even though, in the absence of section 1254(a), no gain would be recognized upon the disposition under any other provision of the Internal Revenue Code. For the definition of the term *section 1254 costs,* see paragraph (b)(1) of this section. For the definition of the terms *section 1254 property, oil, gas, or geothermal property,* and *natural resource recapture property,* see paragraph (b)(2) of this section. For rules relating to the *disposition* of natural resource recapture property, see paragraphs (b)(3), (c), and (d) of this section. For exceptions and limitations to the application of section 1254(a), see § 1.1254–2.

(b) *Definitions*—(1) *Section 1254 costs*—(i) *Property placed in service after December 31, 1986.* With respect to any property placed in service by the taxpayer after December 31, 1986, the term *section 1254 costs* means—

(A) The aggregate amount of expenditures that have been deducted by the taxpayer or any person under section 263, 616, or 617 with respect to such property and that, but for the deduction, would have been included in the adjusted basis of the property or in the adjusted basis of certain depreciable property associated with the property; and

(B) The deductions for depletion under section 611 that reduced the adjusted basis of the property.

(ii) *Property placed in service before January 1, 1987.* With respect to any property placed in service by the taxpayer before January 1, 1987, the term *section 1254 costs* means—

(A) The aggregate amount of costs paid or incurred after December 31, 1975, with respect to such property, that have been deducted as intangible drilling and development costs under section 263(c) by the taxpayer or any other person (except that section 1254 costs do not include costs incurred with respect to geothermal wells commenced before October 1, 1978) and that, but for the deduction, would be reflected in the adjusted basis of the property or in the adjusted basis of certain depreciable property associated with the property; reduced by

(B) The amount (if any) by which the deduction for depletion allowed under section 611 that was computed either under section 612 or sections 613 and 613A, with respect to the property, would have been increased if the costs (paid or incurred after December 31, 1975) had been charged to capital account rather than deducted.

(iii) *Deductions under section 59 and section 291.* Amounts capitalized pursuant to an election under section 59(e) or pursuant to section 291(b) are treated as section 1254 costs in the year in which an amortization deduction is claimed under section 59(e)(1) or section 291(b)(2).

(iv) *Suspended deductions.* If a deduction of a section 1254 cost has been suspended as of the date of disposition of section 1254 property, the deduction is not treated as a section 1254 cost if it is included in basis for determining gain or loss on the disposition. On the other hand, if the deduction will eventually be claimed, it is a section 1254 cost as of the date of disposition. For example, a deduction suspended pursuant to the 65 percent of taxable income limitation of section 613A(d)(1) may either be included in basis upon disposition of the property or may be deducted in a year after the year of disposition. See § 1.613A–4(a)(1). If it is included in the basis then it is not a section 1254 cost, but if it is deductible in a later year it is a section 1254 cost as of the date of the disposition.

(v) *Previously recaptured amounts.* If an amount has been previously treated as ordinary income pursuant to section 1254, it is not a section 1254 cost.

(vi) *Nonproductive wells.* The aggregate amount of section 1254 costs paid or incurred on any property includes the amount of intangible drilling and development costs incurred on nonproductive wells, but only to the extent that the taxpayer recognizes income on the foreclosure of a nonrecourse debt the proceeds from which were used to finance the section 1254 costs with respect to the property. For this purpose, the term nonproductive well means a well that does not produce oil or gas in commercial quantities, including a well that is drilled for the purpose of ascertaining the existence, location, or extent of an oil or gas reservoir (e.g., a delineation well). The term *nonproductive well* does not include an injection well (other than an injection well drilled as part of a project that does not result in production in commercial quantities).

(vii) *Calculation of amount described in paragraph (b)(1)(ii)(B) of this section (hypothetical depletion offset)*—(A) *In general.* In calculating the amount

described in paragraph (b)(1)(ii)(B) of this section, the taxpayer shall apply the following rules. The taxpayer may use the 65-percent-of-taxable-income limitation of section 613A(d)(1). If the taxpayer uses that limitation, the taxpayer is not required to recalculate the effect of such limitation with respect to any property not disposed of. That is, the taxpayer may assume that the hypothetical capitalization of intangible drilling and development costs with respect to any property disposed of does not affect the allowable depletion with respect to property retained by the taxpayer. Any intangible drilling and development costs that, if they had not been treated as expenses under section 263(c), would have properly been capitalized under § 1.612–4(b)(2) (relating to items recoverable through depreciation under section 167 or cost recovery under section 168) are treated as costs described in § 1.612–4(b)(1) (relating to items recoverable through depletion). The increase in depletion attributable to the capitalization of intangible drilling and development costs is computed by subtracting the amount of cost or percentage depletion actually claimed from the amount of cost or percentage depletion that would have been allowable if intangible drilling and development costs had been capitalized. If the remainder is zero or less than zero, the entire amount of intangible drilling and development costs attributable to the property is recapturable.

(B) *Example.* The following example illustrates the principles of paragraph (b)(1)(vii)(A).

Example. Hypothetical depletion offset. In 1976, A purchased undeveloped property for $10,000. During 1977, A incurred $200,000 of productive well intangible drilling and development costs with respect to the property. A deducted the intangible drilling and development costs as expenses under section 263(c). Estimated reserves of 150,000 barrels of recoverable oil were discovered in 1977 and production began in 1978. In 1978, A produced and sold 30,000 barrels of oil at $8 per barrel, resulting in $240,000 of gross income. A had no other oil or gas production in 1978. A claimed a percentage depletion deduction of $52,800 (i.e., 22% of $240,000 gross income from the property). If A had capitalized the intangible drilling and development costs, assume that $200,000 of the costs would have been allocated to the depletable property and none to depreciable property. A's cost depletion deduction if the intangible drilling and development costs had been capitalized would have been $42,000 (i.e., (($200,000 intangible drilling and development costs + $10,000 acquisition costs) x 30,000 barrels of production)/ 150,000 barrels of estimated recoverable reserves). Since this amount is less than A's depletion deduction of $52,800 (percentage depletion), no reduction is made to the amount of intangible drilling and development costs ($200,000). On January 1, 1979, A sold the oil property to B for $360,000 and calculated section 1254 recapture without reference to the 65-percent-of-taxable-income limitation. A's gain on the sale is the entire $360,000, because A's basis in the property at the beginning of 1979 is zero (i.e., $10,000 cost less $52,800 depletion deduction for 1978). Since the section 1254 costs ($200,000) are less than A's gain on the sale, $200,000 is treated as ordinary income under section 1254(a). The remaining amount of A's gain ($160,000) is not subject to section 1254(a).

(2) *Natural resource recapture property*—(i) *In general.* The term *natural resource recapture property* means section 1254 property or oil, gas, or geothermal property as those terms are defined in this section.

(ii) *Section 1254 property.* The term *section 1254 property* means any property (within the meaning of section 614) that is placed in service by the taxpayer after December 31, 1986, if any expenditures described in paragraph (b)(1)(i)(A) of this section (relating to costs under section 263, 616, or 617) are properly chargeable to such property, or if the adjusted basis of such property includes adjustments for deductions for depletion under section 611.

(iii) *Oil, gas, or geothermal property.* The term *oil, gas, or geothermal property* means any property (within the meaning of section 614) that was placed in service by the taxpayer before January 1, 1987, if any expenditures described in paragraph (b)(1)(ii)(A) of this section are properly chargeable to such property.

(iv) *Property to which section 1254 costs are properly chargeable.*—(A) An expenditure is properly chargeable to property if—

(*1*) The property is an operating mineral interest with respect to which the expenditure has been deducted;

(*2*) The property is a nonoperating mineral interest (e.g., a net profits interest or an overriding royalty interest) burdening an operating mineral interest if the nonoperating mineral interest is carved out of an operating mineral interest described in paragraph (b)(2)(iv)(A)(*1*) of this section;

(*3*) The property is a nonoperating mineral interest retained by a lessor or sublessor if such lessor or sublessor held, prior to the lease or sublease, an operating mineral interest described in paragraph (b)(2)(iv)(A)(*1*) of this section; or

(*4*) The property is an operating or a nonoperating mineral interest held by a taxpayer if a party related to the taxpayer (within the meaning of section 267(b) or section 707(b)) held an operating mineral interest (described in paragraph (b)(2)(iv)(A)(*1*) of this section) in the same tract or parcel of land that terminated (in whole or in part) without being disposed of (e.g., a working interest which terminated after a specified period of time or a given amount of production), but only if there exists between the related parties an arrangement or plan to avoid recapture under section 1254. In such a case, the taxpayer's section 1254 costs with respect to the property include those of the related party.

(B) *Example.* The following example illustrates the provisions of paragraph (2)(iv)(A)(*4*) of this section:

Example. Arrangement or plan to avoid recapture. C, an individual, owns 100% of the stock of both X Co. and Y Co. On January 1, 1998, X Co. enters into a standard oil and gas lease. X Co. immediately assigns to Y Co. 1% of the working interest for one year, and 99% of the working interest thereafter. In 1998, X Co. and Y Co. expend $300 in intangible drilling and development costs developing the tract, of which $297 are deducted by X Co. under section 263(c). On January 1, 1999, Y Co. sells its 99% share of the working interest to an unrelated person. Based on all the facts and circumstances, the arrangement between X Co. and Y Co. is part of a plan or arrangement to avoid recapture under section 1254. Therefore, Y Co. must include in its section 1254 costs the $297 of intangible drilling and development costs deducted by X Co.

(v) *Property the basis of which includes adjustments for depletion deductions.* The adjusted basis of property includes adjustments for depletion under section 611 if—

(A) The basis of the property has been reduced by reason of depletion deductions; or

(B) The property has been carved out of or is a portion of property the basis of which has been reduced by reason of depletion deductions.

(vi) *Property held by a transferee.* Property held by a transferee is natural resource recapture property if the property was natural resource recapture property in the hands of the transferor and the transferee's basis in the property is determined with reference to the transferor's basis in the property (e.g., a gift) or is determined under section 732.

(vii) *Property held by a transferor.* Property held by a transferor of natural resource recapture property is natural resource recapture property if the transferor's basis in the property received is determined with reference to the transferor's basis in the property transferred by the transferor (e.g., a like kind exchange). For purposes of this paragraph (b)(2), property described in this paragraph (b)(2)(vii) is treated as placed in service at the time the

property transferred by the transferor was placed in service by the transferor.

(3) *Disposition*—(i) *General rule.* The term *disposition* has the same meaning as in section 1245, relating to gain from dispositions of certain depreciable property.

(ii) *Exceptions.* The term *disposition* does not include—

(A) Any transaction that is merely a financing device, such as a mortgage or a production payment that is treated as a loan under section 636 and the regulations thereunder;

(B) Any abandonment (except that an abandonment is a disposition to the extent the taxpayer recognizes income on the foreclosure of a nonrecourse debt);

(C) Any creation of a lease or sublease of natural resource recapture property;

(D) Any termination or election of the status of an S corporation;

(E) Any unitization or pooling arrangement;

(F) Any expiration or reversion of an operating mineral interest that expires or reverts by its own terms, in whole or in part; or

(G) Any conversion of an overriding royalty interest that, at the option of the grantor or successor in interest, converts to an operating mineral interest after a certain amount of production.

(iii) *Special rule for carrying arrangements.* In a carrying arrangement, liability for section 1254 costs attributable to the entire operating mineral interest held by the carrying party prior to reversion or conversion remains attributable to the reduced operating mineral interest retained by the carrying party after a portion of the operating mineral interest has reverted to the carried party or after the conversion of an overriding royalty interest that, at the option of the grantor or successor in interest, converts to an operating mineral interest after a certain amount of production.

(c) *Disposition of a portion of natural resource recapture property*—(1) *Disposition of a portion (other than an undivided interest) of natural resource recapture property*—(i) *Natural resource recapture property subject to the general rules of § 1.1254–1.* For purposes of section 1254(a)(1) and paragraph (a) of this section, except as provided in paragraphs (c)(1) (ii) and (3) of this section, in the case of the disposition of a portion (that is not an undivided interest) of natural resource recapture property, the entire amount of the section 1254 costs with respect to the natural resource recapture property is treated as allocable to that portion of the property to the extent of the amount of gain to which section 1254(a)(1) applies. If the amount of the gain to which section 1254(a)(1) applies is less than the amount of the section 1254 costs with respect to the natural resource recapture property, the balance of the section 1254 costs remaining after allocation to the portion of the property that was disposed of remains subject to recapture by the taxpayer under section 1254(a)(1) upon disposition of the remaining portion of the property. For example, assume that A owns an 80-acre tract of land with respect to which A has deducted intangible drilling and development costs under section 263(c). If A sells the north 40 acres, the entire amount of the section 1254 costs with respect to the 80-acre tract is treated as allocable to the 40-acre portion sold (to the extent of the amount of gain to which section 1254(a)(1) applies).

(ii) *Natural resource recapture property subject to the exceptions and limitations of § 1.1254–2.* For purposes of section 1254(a)(1) and paragraph (a) of this section, except as provided in paragraph (b)(3) of this section, in the case of the disposition of a portion (that is not an undivided interest) of natural resource recapture property to which section 1254(a)(1) does not apply by reason of the application of § 1.1254–2 (certain nonrecognition transactions), the following rule for allocation of costs applies. An amount of the section 1254 costs that bears the same ratio to the entire amount of such costs with respect to the entire natural resource recapture property as the value of the property transferred bears to the value of the entire natural resource recapture property is treated as allocable to the portion of the natural resource recapture property transferred. The balance of the section 1254 costs remaining after allocation to that portion of the transferred property remains subject to recapture by the taxpayer under section 1254(a)(1) upon disposition of the remaining portion of the property. For example, assume that A owns an 80-acre tract of land with respect to which A has deducted intangible drilling and development costs under section 263(c). If A gives away the north 40 acres, and if 60 percent of the value of the 80-acre tract were attributable to the north 40 acres given away, 60 percent of the section 1254 costs with respect to the 80-acre tract is allocable to the north 40 acres given away.

(2) *Disposition of an undivided interest*—(i) *Natural resource recapture property subject to the general rules of § 1.1254–1.* For purposes of section 1254(a)(1), except as provided in paragraphs (b)(2)(ii) and (b)(3) of this section, in the case of the disposition of an undivided interest in natural resource recapture property (or a portion thereof), a proportionate part of the section 1254 costs with respect to the natural resource recapture property is treated as allocable to the transferred undivided interest to the extent of the amount of gain to which section 1254(a)(1) applies. For example, assume that A owns an 80-acre tract of land with respect to which A has deducted intangible drilling and development costs under section 263(c). If A sells an undivided 40 percent interest in the 80-acre tract, 40 percent of the section 1254 costs with respect to the 80-acre tract is allocable to the transferred 40 percent interest in the 80-acre tract. However, if the amount of gain recognized on the sale of the 40 percent undivided interest were equal to only 35 percent of the amount of section 1254 costs attributable to the 80-acre tract, only 35 percent of the section 1254 costs would be treated as attributable to the undivided 40 percent interest. See paragraph (c)(3) of this section for an alternative allocation rule.

(ii) *Natural resource recapture property subject to the exceptions and limitations of § 1.1254–2.* For purposes of section 1254(a)(1) and paragraph (a) of this section, except as provided in paragraph (b)(3) of this section, in the case of a disposition of an undivided interest in natural resource recapture property (or a portion thereof) to which section 1254 (a)(1) does not apply by reason of § 1.1254–2, a proportionate part of the section 1254 costs with respect to the natural resource recapture property is treated as allocable to the transferred undivided interest. See paragraph (c)(3) of this section for an alternative allocation rule.

(3) *Alternative allocation rule*—(i) *In general.* The rules for the allocation of costs set forth in section 1254(a)(2) and paragraphs (c)(1) and (2) of this section do not apply with respect to section 1254 costs that the taxpayer establishes to the satisfaction of the Commissioner do not relate to the transferred property Except as provided in paragraphs (c)(3)(ii) and (iii) of this section, a taxpayer may satisfy this requirement only by receiving a private letter ruling from the Internal Revenue Service that the section 1254 costs do not relate to the transferred property.

(ii) *Portion of property.* Upon the transfer of a portion of a natural resource recapture property (other than an undivided interest) with respect to which section 1254 costs have been incurred, a taxpayer may treat section 1254 costs as not relating to the transferred portion if the transferred portion does not include any part of any

deposit with respect to which the costs were incurred.

(iii) *Undivided interest.* Upon the transfer of an undivided interest in a natural resource recapture property with respect to which section 1254 costs have been incurred, a taxpayer may treat costs as not relating to the transferred interest if the undivided interest is an undivided interest in a portion of the natural resource recapture property, and the portion would be eligible for the alternative allocation rule under paragraph (c)(3)(ii) of this section.

(iv) *Substantiation.* If a taxpayer treats section 1254 costs incurred with respect to a natural resource recapture property as not relating to a transferred interest in a portion of the property, the taxpayer must indicate on his or her tax return that the costs do not relate to the transferred portion and maintain the records and supporting evidence that substantiate this position.

(d) *Installment method.* Gain from a disposition to which section 1254(a)(1) applies is reported on the installment method if that method otherwise applies under section 453 or 453A of the Internal Revenue Code and the regulations thereunder. The portion of each installment payment as reported that represents income (other than interest) is treated as gain to which section 1254(a)(1) applies until all of the gain (to which section 1254(a)(1) applies) has been reported, and the remaining portion (if any) of the income is then treated as gain to which section 1254(a)(1) does not apply. For treatment of amounts as interest on certain deferred payments, see sections 483, 1274, and the regulations thereunder.

§ 1.1254–2 Exceptions and limitations.

(a) *Exception for gifts and section 1041 transfers*—(1) *General rule.* No gain is recognized under section 1254(a)(1) upon a disposition of natural resource recapture property by a gift or by a transfer in which no gain or loss is recognized pursuant to section 1041 (relating to transfers between spouses). For purposes of this paragraph (a), the term *gift* means, except to the extent that paragraph (a)(2) of this section applies, a transfer of natural resource recapture property that, in the hands of the transferee, has a basis determined under the provisions of sections 1015(a) or (d) (relating to basis of property acquired by gift). For rules concerning the potential reduction in the amount of the charitable contribution in the case of natural resource recapture property, see section 170(e) and § 1.170A–4. See § 1.1254–3(b)(1) for determination of potential recapture of section 1254 costs on property acquired by gift. See § 1.1254–1(c)(1)(ii) and (c)(2)(ii) for apportionment of section 1254 costs on a gift of a portion of natural resource recapture property.

(2) *Part gift transactions.* If a disposition of natural resource recapture property is in part a sale or exchange and in part a gift, the gain that is treated as ordinary income pursuant to section 1254(a)(1) is the lower of the section 1254 costs with respect to the property or the excess of the amount realized upon the disposition of the property over the adjusted basis of the property. In the case of a transfer subject to section 1011(b) (relating to bargain sales to charitable organizations), the adjusted basis for purposes of the preceding sentence is the adjusted basis for determining gain or loss under section 1011(b).

(b) *Exception for transfers at death.* Except as provided in section 691 (relating to income in respect of a decedent), no gain is recognized under section 1254(a)(1) upon a transfer at death. For purposes of this paragraph, the term *transfer at death* means a transfer of natural resource recapture property that, in the hands of the transferee, has a basis determined under the provisions of section 1014(a) (relating to basis of property acquired from a decedent) because of the death of the transferor. See § 1.1254–3(a)(4) and (c) for the determination of potential recapture of section 1254 costs on property acquired in a transfer at death.

(c) *Limitation for certain tax-free transactions*—(1) *General rule.* Upon a transfer of property described in paragraph (c)(3) of this section, the amount of gain treated as ordinary income by the transferor under section 1254(a)(1) may not exceed the amount of gain recognized to the transferor on the transfer (determined without regard to section 1254). In the case of a transfer of both natural resource recapture property and property that is not natural resource recapture property in one transaction, the amount realized from the disposition of the natural resource recapture property is deemed to be equal to the amount that bears the same ratio to the total amount realized as the fair market value of the natural resource recapture property bears to the aggregate fair market value of all the property transferred. The preceding sentence is applied solely for purposes of computing the portion of the total gain (determined without regard to section 1254) that may be recognized as ordinary income under section 1254(a)(1).

(2) *Special rule for dispositions to certain tax-exempt organizations.* Paragraph (c)(1) of this section does not apply to a disposition of natural resource recapture property to an organization (other than a cooperative described in section 521) that is exempt from the tax imposed by chapter I of the Internal Revenue Code. The preceding sentence does not apply to a disposition of natural resource recapture property to an organization described in section 511 (a)(2) or (b)(2) (relating to imposition of tax on unrelated business income of charitable, etc., organizations) if, immediately after the disposition, the organization uses the property in an unrelated trade or business as defined in section 513. If any property with respect to which gain is not recognized by reason of the exception of this paragraph (c)(2) ceases to be used in an unrelated trade or business of the organization acquiring the property, that organization is, for purposes of section 1254, treated as having disposed of the property on the date of the cessation.

(3) *Transfers described.* The transfers referred to in paragraph (c)(1) of this section are transfers of natural resource recapture property in which the basis of the natural resource recapture property in the hands of the transferee is determined by reference to its basis in the hands of the transferor by reason of the application of any of the following provisions:

(i) Section 332 (relating to certain liquidations of subsidiaries). See paragraph (c)(4) of this section.

(ii) Section 351 (relating to transfer to a corporation controlled by transferor).

(iii) Section 361 (relating to exchanges pursuant to certain corporate reorganizations).

(iv) Section 721 (relating to transfers to a partnership in exchange for a partnership interest).

(v) Section 731 (relating to distributions by a partnership to a partner). For purposes of this paragraph, the basis of natural resource recapture property distributed by a partnership to a partner is deemed to be determined by reference to the adjusted basis of such property to the partnership.

(4) *Special rules for section 332 transfers.* In the case of a distribution in complete liquidation of a subsidiary to which section 332 applies, the limitation provided in this paragraph (c) is confined to instances in which the basis of the natural resource recapture property in the hands of the transferee is determined, under section 334(b)(1), by reference to its basis in the hands of the transferor. Thus, for example, the limitation may apply in respect of a liquidating distribution of natural resource recapture property by a subsidiary corporation to the parent corporation, but does not apply in

respect of a liquidating distribution of natural resource recapture property to a minority shareholder. This paragraph (c) does not apply to a liquidating distribution of natural resource recapture property by a subsidiary to its parent if the parent's basis for the property is determined under section 334(b)(2) (as in effect before enactment of the Tax Reform Act of 1986), by reference to its basis for the stock of the subsidiary. This paragraph (c) does not apply to a liquidating distribution under section 332 of natural resource recapture property by a subsidiary to its parent if gain is recognized and there is a corresponding increase in the parent's basis in the property (e.g., certain distributions to a tax-exempt or foreign corporation).

(d) *Limitation for like kind exchanges and involuntary conversions*—(1) *General rule.* If natural resource recapture property is disposed of and gain (determined without regard to section 1254) is not recognized in whole or in part under section 1031 (relating to like kind exchanges) or section 1033 (relating to involuntary conversions), the amount of gain taken into account by the transferor under section 1254(a)(1) may not exceed the sum of—

(i) The amount of gain recognized on the disposition (determined without regard to section 1254); plus

(ii) The fair market value of property acquired that is not natural resource recapture property and is not taken into account under paragraph (d)(1)(i) of this section (that is, qualifying property under section 1031 or 1033 that is not natural resource recapture property).

(2) *Disposition and acquisition of both natural resource recapture property and other property.* For purposes of this paragraph (d), if both natural resource recapture property and property that is not natural resource recapture property are acquired as the result of one disposition in which both natural resource recapture property and property that is not natural resource recapture property are disposed of—

(i) The total amount realized upon the disposition is allocated between the natural resource recapture property and the property that is not natural resource recapture property disposed of in proportion to their respective fair market values;

(ii) The amount realized upon the disposition of the natural resource recapture property is deemed to consist of so much of the fair market value of the natural resource recapture property acquired as is not in excess of the amount realized from the natural resource recapture property disposed of, and the remaining portion (if any) of the amount realized upon the disposition of such property is deemed to consist of so much of the fair market value of the property that is not natural resource recapture property acquired as is not in excess of the remaining portion; and

(iii) The amount realized upon the disposition of the property that is not natural resource recapture property is deemed to consist of so much of the fair market value of all the property acquired which was not taken into account under paragraph (d)(2)(ii) of this section. Except as provided in section 1060 and the regulations thereunder, if a buyer and seller have adverse interests as to such allocation of the amount realized, any arm's-length agreement between the buyer and seller is used to establish the allocation. In the absence of such an agreement, the allocation is made by taking into account the appropriate facts and circumstances.

§ 1.1254–3 Section 1254 costs immediately after certain acquisitions.

(a) *Transactions in which basis is determined by reference to cost or fair market value of property transferred*—(1) *Basis determined under section 1012.* If, on the date a person acquires natural resource recapture property, the person's basis for the property is determined solely by reference to its cost (within the meaning of section 1012), the amount of section 1254 costs with respect to the natural resource recapture property in the person's hands is zero on the acquisition date.

(2) *Basis determined under section 301(d), 334(a), or 358(a)(2).* If, on the date a person acquires natural resource recapture property, the person's basis for the property is determined solely by reason of the application of section 301(d) (relating to basis of property received in a corporate distribution), section 334(a) (relating to basis of property received in a liquidation in which gain or loss is recognized), or section 358(a)(2) (relating to basis of other property received in certain exchanges), the amount of the section 1254 costs with respect to the natural resource recapture property in the person's hands is zero on the acquisition date.

(3) *Basis determined solely under former section 334(b)(2) or former section 334(c).* If, on the date a person acquires natural resource recapture property, the person's basis for the property is determined solely under the provisions of section 334(b)(2) (prior to amendment of that section by the Tax Equity and Fiscal Responsibility Act of 1982) or (c) (prior to repeal of that section by the Tax Reform Act of 1986) (relating to basis of property received in certain corporate liquidations), the amount of section 1254 costs with respect to the natural resource recapture property in the person's hands is zero on the acquisition date.

(4) *Basis determined by reason of the application of section 1014(a).* If, on the date a person acquires natural resource recapture property from a decedent, the person's basis is determined, by reason of the application of section 1014(a), solely by reference to the fair market value of the property on the date of the decedent's death or on the applicable date provided in section 2032 (relating to alternate valuation date), the amount of section 1254 costs with respect to the natural resource recapture property in the person's hands is zero on the acquisition date. See paragraph (c) of this section for the treatment of certain transfers at death.

(b) *Gifts and certain tax-free transactions*—(1) *General rule.* If natural resource recapture property is transferred in a transaction described in paragraph (b)(2) of this section, the amount of section 1254 costs with respect to the natural resource recapture property in the hands of the transferee immediately after the disposition is an amount equal to—

(i) The amount of section 1254 costs with respect to the natural resource recapture property in the hands of the transferor immediately before disposition; minus

(ii) The amount of any gain taken into account as ordinary income under section 1254(a)(1) by the transferor upon the disposition.

(2) *Transactions covered.* The transactions to which paragraph (b)(1) of this section apply are—

(i) A disposition that is a gift or in part a sale or exchange and in part a gift;

(ii) A transaction described in section 1041(a); or

(iii) A disposition described in § 1.1254–2(c)(3) (relating to certain tax-free transactions).

(c) *Certain transfers at death.* If natural resource recapture property is acquired in a transfer at death, the amount of section 1254 costs with respect to the natural resource recapture property in the hands of the transferee immediately after the transfer includes the amount, if any, of the section 1254 costs deducted by the transferee before the decedent's death, to the extent that the basis of the natural resource recapture property (determined under section 1014(a)) is required to be reduced under the second sentence of section 1014(b)(9) (relating to adjustments to basis where the property

is acquired from a decedent prior to death).

(d) *Property received in a like kind exchange or involuntary conversion*—(1) *General rule.* If natural resource recapture property is disposed of in a like kind exchange under section 1031 or involuntary conversion under section 1033, then immediately after the disposition the amount of section 1254 costs with respect to any natural resource recapture property acquired for the property transferred is an amount equal to—

(i) The amount of section 1254 costs with respect to the natural resource recapture property disposed of; minus

(ii) The amount of any gain taken into account as ordinary income under section 1254(a)(1) by the transferor upon the disposition.

(2) *Allocation of section 1254 costs among multiple natural resource recapture properties acquired.* If more than one parcel of natural resource recapture property is acquired at the same time from the same person in a transaction referred to in paragraph (d)(1) of this section, the total amount of section 1254 costs with respect to the parcels is allocated to the parcels in proportion to their respective adjusted bases.

(e) *Property transferred in cases to which section 1071 or 1081(b) applies.* Rules similar to the rules of section 1245(b)(5) shall apply under section 1254.

§ 1.1254–4 Special rules for S corporations and their shareholders. [Reserved].

§ 1.1254–5 Special rules for partnerships and their partners.

(a) *In general.* This section provides rules for applying the provisions of section 1254 to partnerships and their partners upon the disposition of natural resource recapture property by the partnership and certain distributions of property by a partnership. See section 751 and the regulations thereunder for rules concerning the treatment of gain upon the transfer of a partnership interest.

(b) *Determination of gain treated as ordinary income under section 1254 upon the disposition of natural resource recapture property by a partnership*—(1) *General rule.* Upon a disposition of natural resource recapture property by a partnership, the amount treated as ordinary income under section 1254 is determined at the partner level. Each partner must recognize as ordinary income under section 1254 the lesser of—

(i) The partner's section 1254 costs with respect to the property disposed of; or

(ii) The partner's share of the amount, if any, by which the amount realized upon the sale, exchange, or involuntary conversion, or the fair market value of the property upon any other disposition, exceeds the adjusted basis of the property.

(2) *Exception to partner level recapture in the case of abusive allocations.* Paragraph (b)(1) of this section does not apply in determining the amount treated as ordinary income under section 1254 upon a disposition of section 1254 property by a partnership if the partnership has allocated the amount realized or gain recognized from the disposition with a principal purpose of avoiding the recognition of ordinary income under section 1254. In such case, the amount of gain on the disposition recaptured as ordinary income under section 1254 is determined at the partnership level.

(3) *Examples.* The provisions of paragraphs (a) and (b) of this section are illustrated by the following examples which assume that capital accounts are maintained in accordance with section 704(b) and the regulations thereunder:

Example 1 Partner level recapture—In general. A, B, and C, have equal interests in capital in Partnership ABC that was formed on January 1, 1985. The partnership acquired an undeveloped domestic oil property on January 1, 1985, for $120,000. The partnership allocated the property's basis to each partner in proportion to the partner's interest in partnership capital, so each partner was allocated $40,000 of basis. In 1985, the partnership incurred $60,000 of productive well intangible drilling and development costs with respect to the property. The partnership elected to deduct the intangible drilling and development costs as expenses under section 263(c). Each partner deducted $20,000 of the intangible drilling and development costs. Assume that depletion allowable under section 613A(c)(7)(D) for each partner for 1985 was $10,000. On January 1, 1986, the partnership sold the oil property to an unrelated third party for $210,000. Each partner's allocable share of the amount realized is $70,000. Each partner's basis in the oil property at the end of 1985 is $30,000 ($40,000 cost—$10,000 depletion deductions claimed). Each partner has a gain of $40,000 on the sale of the oil property ($70,000 amount realized—$30,000 adjusted basis in the oil property). Assume that each partner's depletion allowance would not have been increased if the intangible drilling and development costs had been capitalized. Each partner's section 1254 costs with respect to the property are $20,000. Thus, A, B, and C each must treat $20,000 of gain recognized as ordinary income under section 1254(a).

Example 2. Special allocation of intangible drilling and development costs. K and L form a partnership on January 1, 1997, to acquire and develop a geothermal property as defined under section 613(e)(2). The partnership agreement provides that all intangible drilling and development costs will be allocated to partner K, and that all other items of income, gain, or loss will be allocated equally between the two partners. Assume these allocations have substantial economic effect under section 704(b) and the regulations thereunder. The partnership acquires a lease covering undeveloped acreage located in the United States for $50,000. In 1997, the partnership incurs $50,000 of intangible drilling and development costs that are allocated to partner K. The partnership also has $30,000 of depletion deductions, which are allocated equally between K and L. On January 1, 1998, the partnership sells the geothermal property to an unrelated third party for $160,000 and recognizes a gain of $140,000 ($160,000 amount realized less $20,000 adjusted basis ($50,000 unadjusted basis less $30,000 depletion deductions)). This gain is allocated equally between K and L. Because K's section 1254 costs are $65,000 and L's section 1254 costs are $15,000, K recognizes $65,000 as ordinary income under section 1254(a) and L recognizes $15,000 as ordinary income under section 1254(a). The remaining $5,000 of gain allocated to K and $55,000 of gain allocated to L is characterized without regard to section 1254.

Example 3. Section 59(e) election to capitalize intangible drilling and development costs. Partnership DK has 50 equal partners. On January 1, 1995, the partnership purchases an undeveloped oil and gas property for $100,000. The partnership allocates the property's basis equally among the partners, so each partner is allocated $2,000 of basis. In January 1995, the partnership incurs $240,000 of intangible drilling and development costs with respect to the property. The partnership elects to deduct the intangible drilling and development costs as expenses under section 263(c). Each partner is allocated $4,800 of intangible drilling and development costs. One of the partners, H, elects under section 59(e) to capitalize his $4,800 share of intangible drilling and development costs. Therefore, H is permitted to amortize his $4,800 share of intangible drilling and development costs over 60 months. H takes a $960 amortization deduction in 1995. Each of the remaining 49 partners deducts his $4,800 share of intangible drilling and development costs in 1995. Assume that depletion allowable for each partner under section 613A(c)(7)(D) for 1995 is $1,000. On December 31, 1995, the partnership sells the property for $300,000. Each partner is allocated $6,000 of amount realized. Each partner that deducted the intangible drilling and development costs has a basis in the oil property at the end of 1995 of $1,000 ($2,000 cost − $1,000 depletion deductions claimed). Each of these partners has a gain of $5,000 on the sale of the oil property ($6,000 amount realized − $1,000 adjusted basis in the property). The section 1254 costs of each partner that deducted intangible drilling and development costs are $5,800 ($4,800 intangible drilling and development costs deducted + $1,000 depletion deductions claimed). Because each partner's section 1254 costs ($5,800) exceed each partner's share of amount realized less each

partner's adjusted basis ($5,000), each partner must treat his $5,000 gain recognized on the sale of the oil property as ordinary income under section 1254(a). Because H elected under section 59(e) to capitalize the $4,800 of intangible drilling and development costs and amortized only $960 of the costs in 1995, the $3,840 of unamortized intangible drilling and development costs are included in H's basis in the oil property. Therefore, at the end of 1995 H's basis in the oil property is $4,840 (($2,000 cost + $4,800 capitalized intangible drilling and development costs) − ($960 intangible drilling and development costs amortized + $1,000 depletion deduction claimed)). H's gain on the sale of the oil property is $1,160 ($6,000 amount realized − $4,840 adjusted basis). H's section 1254 costs are $1,960 ($960 intangible drilling and development costs amortized + $1,000 depletion deductions claimed). Because H's section 1254 costs ($1,960) exceed H's share of amount realized less H's adjusted basis ($1,160), H must treat the $1,160 of gain recognized as ordinary income under section 1254(a).

(c) *Section 1254 costs of a partner*—(1) *General rule.* A partner's section 1254 costs with respect to property held by a partnership include all of the partner's section 1254 costs with respect to the property in the hands of the partnership. In the case of property contributed to a partnership in a transaction described in section 721, a partner's section 1254 costs include all of the partner's section 1254 costs with respect to the property prior to contribution. Section 1.1254–1(b)(1)(iv), which provides rules concerning the treatment of suspended deductions, applies to amounts not deductible pursuant to section 704(d).

(2) *Section 1254 costs of a transferee partner after certain acquisitions*—(i) *Basis determined under section 1012.* If a person acquires an interest in a partnership that holds natural resource recapture property (transferee partner) and the transferee partner's basis for the interest is determined by reference to its cost (within the meaning of section 1012), the amount of the transferee partner's section 1254 costs with respect to the property held by the partnership is zero on the acquisition date.

(ii) *Basis determined by reason of the application of section 1014(a).* If a transferee partner acquires an interest in a partnership that holds natural resource recapture property from a decedent and the transferee partner's basis is determined, by reason of the application of section 1014(a), solely by reference to the fair market value of the partnership interest on the date of the decedent's death or on the applicable date provided in section 2032 (relating to alternate valuation date), the amount of the transferee partner's section 1254 costs with respect to property held by the partnership is zero on the acquisition date.

(iii) *Basis determined by reason of the application of section 1014(b)(9).* If an interest in a partnership that holds natural resource recapture property is acquired before the death of the decedent, the amount of the transferee partner's section 1254 costs with respect to property held by the partnership shall include the amount, if any, of the section 1254 costs deducted by the transferee partner before the decedent's death, to the extent that the basis of the partner's interest (determined under section 1014(a)) is required to be reduced under section 1014(b)(9) (relating to adjustments to basis when the property is acquired before the death of the decedent).

(iv) *Gifts and section 1041 transfers.* If an interest in a partnership is transferred in a transfer that is a gift, a part sale or exchange and part gift, or a transfer that is described in section 1041(a), the amount of the transferee partner's section 1254 costs with respect to property held by the partnership immediately after the transfer is an amount equal to—

(A) The amount of the transferor partner's section 1254 costs with respect to the property immediately before the transfer; minus

(B) The amount of any gain recognized as ordinary income under section 1254 by the transferor partner upon the transfer.

(d) *Property distributed to a partner*—(1) *In general.* The section 1254 costs for any natural resource recapture property received by a partner in a distribution with respect to part or all of an interest in a partnership include—

(i) The aggregate of the partners' section 1254 costs with respect to the natural resource recapture property immediately prior to the distribution; reduced by

(ii) The amount of any gain taken into account as ordinary income under section 751 by the partnership or the partners (as constituted after the distribution) on the distribution of the natural resource recapture property.

(2) *Aggregate of partners' section 1254 costs with respect to natural resource recapture property held by a partnership*—(i) *In general.* The aggregate of partners' section 1254 costs is equal to the sum of each partner's section 1254 costs. The partnership must determine each partner's section 1254 costs under either paragraph (d)(2)(i)(A) (written data) or paragraph (d)(2)(i)(B) (assumptions) of this section. The partnership may determine the section 1254 costs of some of the partners under paragraph (d)(2)(i)(A) of this section and of others under paragraph (d)(2)(i)(B) of this section.

(A) *Written data.* A partnership may determine a partner's section 1254 costs by using written data provided by a partner showing the partner's section 1254 costs with respect to natural resource recapture property held by the partnership unless the partnership knows or has reason to know that the written data is inaccurate. If a partnership does not receive written data upon which it may rely, the partnership must use the assumptions provided in paragraph (d)(2)(i)(B) of this section in determining a partner's section 1254 costs.

(B) *Assumptions.* A partnership that does not use written data pursuant to paragraph (d)(2)(i)(A) of this section to determine a partner's section 1254 costs must use the following assumptions to determine the partner's section 1254 costs:

(*1*) The partner deducted his or her share of deductions under section 263(c), 616, or 617 for the first year in which the partner could claim a deduction for such amounts, unless in the case of expenditures under section 263(c) or 616, the partnership elected to capitalize such amounts;

(*2*) The partner was not subject to the following limitations with respect to the partner's depletion allowance under section 611, except to the extent a limitation applied at the partnership level: the taxable income limitation of section 613(a); the depletable quantity limitations of section 613A(c); or the limitations of section 613A(d)(2), (3), and (4) (exclusion of retailers and refiners).

§ 1.1254–6 Effective date of regulations.

Sections 1.1254–1 through 1.1254–3 and § 1.1254–5 are effective with respect to any disposition of natural resource recapture property occurring after March 13, 1995. The rule in § 1.1254–1(b)(2)(iv)(A)(*2*), relating to a nonoperating mineral interest carved out of an operating mineral interest with respect to which an expenditure has been deducted, is effective with respect to any disposition occurring after March 13, 1995 of property (within the meaning of section 614) that is placed in service by the taxpayer after December 31, 1986.

§ 1.1502–14 [Amended]

Par. 8. In § 1.1502–14, the first sentence of paragraph (c)(1) is amended by removing the language "or 1250(a)(1)" and adding "1250 (a)(1) or 1254(a)(1)" in its place.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 9. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 10. Section 602.101 (c) is amended by adding the following entries in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control number
. . . . .	.
1.1254–1(c)(3)	1545–1352
1.1254–5(d)(2)	1545–1352
. . . . .	.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: November 22, 1994.

Leslie B. Samuels,

Assistant Secretary of the Treasury

[FR Doc. 95–172 Filed 1–9–95; 8:45 am]

BILLING CODE 4830–01–U

FEDERAL MEDIATION AND CONCILIATION SERVICE

29 CFR Part 1425

Mediation Assistance in the Federal Sector

AGENCY: Federal Mediation and Conciliation Service.

ACTION: Final rule.

SUMMARY: This final rule is published in order to renew *Form F–53, Notice to Federal Mediation and Conciliation Service.*

Pursuant to the Paperwork Reduction Act (44 U.S.C. Chapter 35), the Federal Mediation and Conciliation Service submitted its final rule to the Office of Management and Budget (OMB) on November 2, 1994 and received its approval on November 23, 1994 for the use of F–53 through November 30, 1997.

EFFECTIVE DATE: February 9, 1995.

FOR FURTHER INFORMATION CONTACT: Eileen Hoffman, (202) 653–5305.

SUPPLEMENTARY INFORMATION: November 4, 1994, FMCS published a notice of proposed rulemaking in the **Federal Register** (59 FR 55268). This notice was published in order to extend FMCS Form F–53, which is used for notification of contract expirations or reopener in the Federal service, and to revise the text of 29 CFR 1425, which accompanies the illustration of Form F–53 in the agency's regulations (29 CFR 1425.2).

Form F–53 is made available to assist Federal agencies and labor organizations to obtain FMCS services, as provided for in the Title 5 U.S.C. Section 7119(a). The revision of Form F–53 allows parties to more clearly and accurately state the service requested and arranges information in a manner which aids in entry of data into FMCS computer records. The revised version of Form F–53 is shown below in this rule for purposes of identification.

A summary of information pertaining to Form F–53 is as follows:

Form number: FMCS F–53, OMB 3076–0005.

Frequency: On occasion.

Respondent: Parties to a Federal Sector dispute or grievance.

Obligation: Voluntary.

Binder: Approximately 600 responses per year; approximately 100 reporting hours per year; approximately 15 minutes per response.

Need and Use: The information is needed to advise FMCS of Federal Sector disputes pursuant to 29 CFR Part 1425 paragraph 1425.3. It is used in order to make assignments of cases to FMCS mediators.

Comments: No comments were received on the proposed form as it is no change from existing form.

Executive Order 12291

This rule is not a "major rule" under Executive Order 12291 because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) a significant decline in productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, no regulatory impact analysis is required.

Paperwork Reduction Act Notice

The collection of information in this rule was submitted to the Office of Management and Budget under section 3504(h) of the Paperwork Reduction Act [44 U.S.C. 3501 et seq.]. Comments regarding any aspect of this information collection should be submitted to the Federal Mediation and Conciliation Service, 2100 K Street, NW., Washington, DC 20427, Attention: Eileen B. Hoffman, and the Office of Management and Budget, Attention. Desk Officer for FMCS, OMB room 3001, Washington, DC 20503.

Regulatory Flexibility Act Certification

The FMCS finds that this rule will have no significant economic impact on a substantial number of small entities within the meaning of section 3(a) of the Regulatory Flexibility Act, Pub. L. 96–354, 94 Stat. 1164 [5 U.S.C. 605(g)], and will so certify to the Chief Counsel for Advocacy of the Small Business Administration. This conclusion has been reached because the proposed rule does not, in itself, impose any additional economic requirements upon small entities. Accordingly, no regulatory flexibility analysis is required.

List of Subjects in 29 CFR Part 1425

Administrative practice and procedure, collective bargaining, Labor-management relations.

Dated: December 14, 1994.

John Calhoun Wells,

Director, FMCS.

Accordingly, 29 CFR Part 1425 is amended as follows:

PART 1425—MEDIATION ASSISTANCE IN THE FEDERAL SERVICE

1. The authority citation for 29 CFR Part 1425 is revised to read as follows:

Authority: 5 U.S.C. 581(8), 7119, 7134.

2. Section 1425.2 is revised to read as follows:

§ 1425.2 Notice to the Service of agreement negotiations.

(a) In order that the Service may provide assistance to the parties, the party initiating negotiations shall file a notice with the FMCS Notice Processing Unit, 2100 K Street, N.W., Washington, D.C. 20427, at least 30 days prior to the expiration or modification date of an existing agreement, or 30 days prior to the reopener date of an existing agreement. In the case of an initial agreement the notice shall be filed within 30 days after commencing negotiations.

(b) Parties engaging in mid-term or impact and/or implementation bargaining are encouraged to send a notice to FMCS if assistance is desired. Such notice may be sent by either party or may be submitted jointly. In regard to such notices a brief listing should be general in nature e.g., smoking policies, or Alternative Work Schedules (AWS).

(c) Parties requesting grievance mediation must send a request signed by both the union and the agency involved. Receipt of such request does

not commit FMCS to provide its services. FMCS has the discretion to determine whether or not to perform grievance mediation, as such service may not be appropriate in all cases.

(d) The guidelines for FMCS grievance mediation are:

(1) The parties shall submit a joint request, signed by both parties requesting FMCS assistance. The parties agree that grievance mediation is a supplement to, and not a substitute for, the steps of the contractual grievance procedure.

(2) The grievant is entitled to be present at the grievance mediation conference.

(3) Any times limits in the parties labor agreement must be waived to permit the grievance to proceed to arbitration should mediation be unsuccessful.

(4) Proceedings before the mediator will be informal and rules of evidence do not apply. No record, stenographic or tape recordings of the meetings will be made. The mediators notes are confidential and content shall not be revealed.

(5) The mediator shall conduct the mediation conference utilizing all of the customary techniques associated with mediation including the use of separate caucuses.

(6) The mediator had no authority to compel resolution of the grievance.

(7) In the event that no settlement is reached during the mediation conference, the mediator may provide the parties either in separate or joint session with an oral advisory opinion.

(8) If either party does not accept an advisory opinion, the matter may then proceed to arbitration in the manner form provided in their collective bargaining agreement. Such arbitration hearings will be held as if the grievance mediation effort had not taken place. Nothing said or done by the parties or the mediator during the grievance mediation session can be used during arbitration proceedings.

(9) When the parties choose the FMCS grievance mediation procedure, they have agreed to abide by these guidelines established by FMCS, and it is understood that the parties and the grievant shall hold FMCS and the mediator appointed by the Service to conduct the mediation conference harmless of any claim of damages arising from the mediation process.

BILLING CODE 6732-01-M

FMCS FORM F 53
REVISED 5 92

Form Approved
OMB No 3076-0005
Exp Nov. 1997

FEDERAL SECTOR LABOR RELATIONS
NOTICE TO FEDERAL MEDIATION AND CONCILIATION SERVICE

MAIL TO
NOTICE PROCESSING UNIT
FEDERAL MEDIATION AND CONCILIATION SERVICE
2100 K STREET N W
WASHINGTON D C 20427

THIS NOTICE IS IN REGARD TO: (MARK "X")

(1) ☐ AN INITIAL CONTRACT (INCLUDE FLRA CERTIFICATION NUMBER) #_____
☐ A CONTRACT REOPENER REOPENER DATE ____/____/____
☐ THE EXPIRATION OF AN EXISTING AGREEMENT EXPIRATION DATE ____/____/____

(2) ☐ *OTHER REQUESTS FOR THE ASSISTANCE OF FMCS IN BARGAINING (MARK "X")*
SPECIFY TYPE OF ISSUE(S)

(3) ☐ *REQUEST FOR GRIEVANCE MEDIATION (SEE ITEM # 10) (MARK "X")*
ISSUE(S)

(4) NAME OF FEDERAL AGENCY NAME OF SUBDIVISION OR COMPONENT, IF ANY

STREET ADDRESS OF AGENCY CITY STATE ZIP

AGENCY OFFICIAL TO BE CONTACTED AREA CODE & PHONE NUMBER

(5) NAME OF NATIONAL UNION OR PARENT BODY NAME AND / OR LOCAL NUMBER

STREET ADDRESS CITY STATE ZIP

UNION OFFICIAL TO BE CONTACTED AREA CODE & PHONE NUMBER

LOCATION OF NEGOTIATIONS OR WHERE MEDIATION WILL BE HELD

(6) STREET ADDRESS CITY STATE ZIP

(7) APPROX # OF EMPLOYEES IN BARGAINING UNIT(S) >> | | IN ESTABLISHMENT >> | |

(8) THIS NOTICE OR REQUEST IS FILED ON BEHALF OF (MARK "X") ☐ UNION ☐ AGENCY

(9) NAME AND TITLE OF OFFICIAL(S) SUBMITTING THIS NOTICE OR REQUEST AREA CODE & PHONE NUMBER

STREET ADDRESS CITY STATE ZIP

*FOR GRIEVANCE MEDIATION, THE SIGNATURES OF BOTH PARTIES ARE REQUIRED.**

(10) SIGNATURE (AGENCY) DATE SIGNATURE (UNION) DATE

*Receipt of this form does not commit FMCS to offer its services. Receipt of this form will not be acknowledged in writing by FMCS. While use of this form is voluntary, its use will facilitate FMCS service to respondents. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to FMCS, Division of Administrative Services, Washington, D.C. 20427, and to the Office of Management and Budget, Paperwork Reduction Project, Washington, D.C. 20503.

For instructions, see page

BILLING CODE 6732-01-C

Instructions

Complete this form, please follow these instructions.

In *item # 1.* Check the block and give the date if this is for an existing agreement or reopener. The FLRA Certification number should be provided if available. If not known, please leave this item blank. Absence of this number will not impede processing of the Form.

In *item #2.* If other *assistance* in bargaining is requested please specify: e.g.; impact and implementation bargaining (I&I) and/or mid-term bargaining and provide a brief listing of issues, e.g. Smoking, Alternative Work Schedules (AWS), ground rules, office moves, or if desired, add attached list. This is only if such issues are known at time of filing.

In *item #3.* Please specify the issues to be considered for grievance mediation. Please refer to FMCS guidelines for processing these requests. Please make certain that both parties sign this request!

In *item #4.* List the name of the agency, as follows: The Department, and the subdivision or component. For example: U.S. Dept. of Labor, BLS, or U.S. Dept. of Army, Aberdeen Proving Ground, or Illinois National Guard, Springfield Chapter. If an independent agency is involved, list the agency, e.g. Federal Deposit Insurance Corp. (FDIC) and any subdivision or component, if appropriate.

In *item #5.* List the name of the union and its subdivision or component as follows: e.g. Federal Employees Union, Local 23 or Government Workers Union, Western Joint Council.

In *item #6.* Provide the area where the negotiation or mediation will most likely take place, with zip code, e.g., Washington, D.C. 20427. The zip code is important because our cases are routed by computer through zip code, and mediators are assigned on that basis.

In *item #7.* Only the *approximate* number of employees in the bargaining unit and establishment are requested. The establishment is the entity referred to in item 4 as name of subdivision or component, if any.

In *item #8.* The filing need only be sent by one party unless it is a request for grievance mediation. (See item 9.)

In *item #9.* Please give the title of the official, phone number, address, and zip code.

In *item #10.* Both labor and management signatures are required for grievance mediation requests.

Notice

Send original to F.M.C.S.

Send one copy to opposite party.

Retain one copy for party filing notice.

[FR Doc. 95–472 Filed 1–9–95; 8:45 am]

BILLING CODE 6732–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 936

Oklahoma Regulatory Program

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

ACTION: Final rule, approval of amendment.

SUMMARY: OSM is approving, with additional requirements, a proposed amendment to the Oklahoma regulatory program (hereinafter referred to as the "Oklahoma program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Oklahoma proposed to amend its program by revising its Bond Release Guidelines that include revegetation success standards and statistically valid sampling techniques, and guidelines for phase I, II, and III bond release. Oklahoma proposed revisions pertaining to ground cover; requirements for permanent impoundments, ponds, diversions, and treatment facilities; calculations for a technical success standard for productivity; criteria regarding the selection of test plots for demonstrating success of productivity on prime farmland cropland; the definition of "initial establishment of permanent vegetative cover;" the repair of rills and gullies as a normal husbandry practice; a technical document reference; and the correction of certain typographical errors. The amendment is intended to revise the Oklahoma program to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: January 10, 1995.

FOR FURTHER INFORMATION CONTACT: James H. Moncrief, Telephone: (918) 581–6430.

SUPPLEMENTARY INFORMATION:

I. Background on the Oklahoma Program

On January 19, 1981, the Secretary of the Interior conditionally approved the Oklahoma program. General background information on the Oklahoma program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Oklahoma program can be found in the January 19, 1981, **Federal Register** (46 FR 4902). Subsequent actions concerning Oklahoma's program and program amendments can be found at 30 CFR 936.15, 936.16, and 936.30.

II. Submission of Amendment

On February 17, 1994, Oklahoma submitted a proposed amendment to its program pursuant to SMCRA (administrative record No. OK–959.01). Oklahoma submitted the proposed amendment with the intent of revising the State program to be consistent with the corresponding Federal standards. Oklahoma submitted the proposed amendment, in part, in response to required program amendments at 30 CFR 936.16 (a) through (i) and, in part, at its own initiative.

Oklahoma proposed to amend the Bond Release Guidelines that are referenced in Oklahoma Administrative Code (OAC) 460:20–43–46(a)(1) and 460:20–45–46(a)(1). Specifically, Oklahoma proposed to revise the Bond Release Guidelines at subsection I.E.3.b to require ground cover sufficient to control erosion for approved commercial or industrial land uses; subsection I.F.3.d to require, on areas previously disturbed by mining, that ground cover be at least 70 percent and sufficient to control erosion; subsection I.F.5.b to require that water discharged from permanent impoundments, ponds, diversions, and treatment facilities shall meet water quality effluent limitations; subsections II.B.2.d and III.B.2.d to reference Appendix O for the method for calculating a technical success standard for productivity on, respectively, pastureland and grazing land; subsection V.B.2.c to reference Appendix P for the method for calculating a technical success standard for productivity of row crops on prime farmland cropland; subsection V.B.2.d to add criteria regarding the selection of test plots for demonstrating success of productivity on prime farmland cropland; subsection V.B.2.e to reference Appendix O for the method for calculating a technical success standard for productivity of grain or hay crops on prime farmland cropland; subsection VI.B.2.e to reference Appendices P and Q for the methods for calculating technical success standards for productivity of, respectively, row crops and grain or hay crops on nonprime farmland cropland; Appendix A to add the definition of "initial establishment of permanent vegetative cover;" Appendices J and P to correct typographical errors; and Appendix V, to add a technical document reference.

In addition, Oklahoma submitted a letter, dated February 1, 1994, from the U.S. Soil Conservation Service (SCS) that was intended to provide concurrence with Appendix R concerning the repair of rills and gullies as a normal husbandry practice.

OSM published a notice in the March 8, 1994, **Federal Register** (59 FR 10770) announcing receipt of the amendment and inviting public comment on its adequacy (administrative record No. OK–959.06). The public hearing, scheduled for April 4,1994, was not held because no one requested an opportunity to testify.

During its review of the amendment, OSM identified concerns with Oklahoma's proposed revisions to the Bond Release Guidelines. Specifically, OSM identified concerns relating to (1) sections I.E.3, I.F.3, II.A, and III.A, the need to establish a method to determine revegetation success standards for diversity, seasonality, permanence, and regeneration; (2) Appendix O, the method for calculating a technical productivity standard for success of revegetation on soils reclaimed for use as pastureland, grazingland, and grain and hay cropland on both prime and nonprime farmland; (3) subsection V.B.2.d, phase II bond release requirements for the use of test plots to demonstrate productivity on reclaimed prime farmland; and (4) Appendix R, the repair of rills and gullies as a normal husbandry practice. In addition, OSM identified certain editorial concerns relating to (1) subsection I.F.5.b, phase III bond release requirements for permanent drainage control facilities; (2) subsection V.B.2.e, the reference to Appendix O for the method to calculate a technical productivity standard on prime farmland for phase II bond release; and (3) Appendix J, the example calculation for a minimum adequate sample size. OSM notified Oklahoma of these concerns by letter dated May 20, 1994 (administrative record No. OK–959.10).

Oklahoma responded in a letter dated July 21, 1994, by submitting a revised amendment and additional explanatory information (administrative record No. OK–959.11).

Based upon the revisions to and additional explanatory information for the proposed program amendment submitted by Oklahoma, OSM reopened the public comment period in the August 9, 1994, **Federal Register** (59 FR 40505; administrative record No. OK–959.16). The public comment period closed on August 24, 1994.

By letter dated September 2, 1994 (administrative record No. OK–959.19), Oklahoma, and in response to an August 29, 1994, comment letter from SCS (administrative record No. OK–959.18), submitted a revised amendment. Oklahoma proposed revisions to the Bond Release Guidelines in Appendices A, F, and O, concerning, respectively, the definition of "productivity," the method of sampling for production on pastureland and grazingland, and the methods for calculating a technical standard for productivity on lands reclaimed for use as pastureland and grazingland.

Based upon these revisions to the proposed amendment submitted by Oklahoma, OSM reopened the public comment period in the September 27, 1994, **Federal Register** (59 FR 49222; administrative record No. OK–959.22). The public comment period closed on August 12, 1994.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings for the proposed amendment submitted by Oklahoma on February 17, 1994, as revised by it on July 21 and September 2, 1994.

1. Nonsubstantive Revisions to the Bond Release Guidelines

Oklahoma proposed, as State initiatives, revisions to the following previously-approved provisions of the Bond Release Guidelines that are nonsubstantive in nature and consist of minor editorial changes (corresponding Federal provisions are listed in parentheses):

Appendix J, Calculation of Minimum Adequate Sample Size (30 CFR 816.116(a)(2) and 817.116(a)(2)), correction of typographical errors in example calculations, and

Appendix V, References Cited (30 CFR 816.116(a)(2) and 817.116(a)(2)), addition of a reference to Vogel, Willis G., 1987, A Manual for Training Reclamation Inspectors in the Fundamentals of Soils and Revegetation.

Because the proposed revisions to these previously-approved provisions are nonsubstantive in nature, the Director finds that these proposed revisions in Appendices J and V are no less effective than the Federal regulations. The Director approves these proposed revisions.

2. Substantive Revisions to Oklahoma's Bond Release Guidelines

a. *Subsection I.E.3.b, Phase II bond release requirements for ground cover on all land uses.* At 30 CFR 936.16(a), OSM required that Oklahoma revise subsection I.E.3.b to clarify that, in cases of approved commercial or industrial land uses, ground cover must be sufficient to control erosion (finding No 2, 58 FR 64374, 64376, December 7, 1993).

Oklahoma proposed to revise subsection I.E.3.b in the Bond Release Guidelines to add the requirement that, on areas with an approved industrial or commercial postmining land use, ground cover must be sufficient to control erosion.

The Federal regulations at 30 CFR 816.116(b)(4) and 817.116(b)(4) require that the vegetative ground cover shall not be less than that required to control erosion on areas to be developed for an industrial, commercial, or residential land use.

The Director finds that Oklahoma's revision of subsection I.E.3.b in the Bond Release Guidelines is no less effective than the Federal regulations at 30 CFR 816.116(b)(4) and 817.116(b)(4). The Director approves the proposed revision at subsection I.E.3.b and removes the required amendment at 30 CFR 936.16(a).

b. *Subsection I.F.3.d, Phase III bond release requirements for ground cover on areas previously disturbed by mining, and sections VII.A and VII.B, phase II and III bond release requirements for ground cover on areas developed for commercial, industrial, or residential use.* At 30 CFR 936.16(b), OSM required that Oklahoma revise subsection I.F.3.d to require, prior to phase III bond release on previously mined areas (areas that were not reclaimed to the requirements of the permanent regulatory program regulations and that were remined or otherwise disturbed by mining), that vegetative ground cover shall not be less than the ground cover existing before redistrubance (finding No. 3, 58 FR 64374, 64377, December 7, 1993).

Oklahoma proposed to revise subsection I.F.3.d. in the Bond Release Guidelines to require that the ground cover on reclaimed areas that had been previously disturbed by mining cannot be less than the ground cover existing prior to redisturbance. Oklahoma also proposed to revise subsection I.F.3.d. to require that, if the ground cover prior to redisturbance was less than 70 percent, the ground cover on the reclaimed area must be at least 70 percent vegetation and must be sufficient to control erosion. In effect, Oklahoma proposed that the ground cover, on reclaimed areas that had been previously disturbed by mining, cannot be less than 70 percent, must be equal to or greater than the pre-existing ground cover if it was more than 70 percent, and must be sufficient to control erosion.

The Federal regulations at 30 CFR 816.116(b)(5) and 817.116(b)(5) require

on previously mined areas that the reclaimed vegetative ground cover must (1) not be less than the ground cover existing before redisturbance and (2) be adequate to control erosion.

With the exception of a minimum requirement that ground cover must be at least 70 percent, Oklahoma's proposed revisions are substantively identical to the Federal regulations at 30 CFR 816.116(b)(5) and 817.116(b)(5). Oklahoma's proposed requirement that the ground cover on the reclaimed area must be at least 70 percent vegetation has no counterpart in the Federal regulations. However, this proposed requirement is not inconsistent with the Federal regulations and, in those cases where the ground cover of the previously disturbed area was less than 70 percent and was sufficient to control erosion, provides for a greater degree of revegetation of previously mined areas than do the Federal regulations.

Therefore, the Director finds that Oklahoma's proposed revisions of subsection I.F.3.d in the Bond Release Guidelines are no less effective than the Federal regulations at 30 CFR 816.116(b)(5) and 817.116(b)(5). The Director approves the proposed revisions and removes the required amendment at 30 CFR 936.16(b).

Oklahoma also required at sections VII.A and B, for phase II and III bond release on areas developed for commercial, industrial, or residential land use, that the ground cover must be sufficient to control erosion. Oklahoma indicated parenthetically that the ground cover standard would be 70 percent. Oklahoma, at OAC 460:20–43–43(a)(4) and 460:20–45–43(a)(4), and OAC 460:20–43–46(b)(5) and 460:20–45–46(b)(5) require respectively that (1) ground cover for all land uses be capable of stabilizing the soil surface from erosion and (2) ground cover be not less than that required to control erosion for areas with an approved industrial, commercial, or residential land use. Therefore, OSM interprets Oklahoma's parenthetical indication that there must be 70 percent ground cover on land developed for commercial, industrial, or residential use to be a minimum standard that must be increased if it is insufficient to control erosion.

c. *Subsection I.F.5.b, Phase III bond release requirements for permanent drainage control facilities.* At 30 CFR 936.16(d), OSM required that Oklahoma revise subsection I.F.5.b to require that water discharged from permanent impoundments, ponds, diversions, and treatment facilities meet applicable water quality effluent limitations in addition to not degrading the quality of receiving water below applicable water quality standards (finding No. 5, 58 FR 64374, 64378, December 7, 1993).

Oklahoma proposed to revise subsection I.F.5.b in the Bond Release Guidelines to require that water discharged from permanent impoundments, ponds, diversions, and treatment facilities shall meet applicable water quality effluent limitations and not degrade the quality of receiving waters to less than the water quality standards pursuant to applicable State and Federal laws.

The Federal regulations at 30 CFR 816.49(b)(2) and 817.49(b)(2) require for permanent impoundments that the quality of impounded water will meet applicable State and Federal water quality standards, and discharges will meet applicable effluent limitations and will not degrade the quality of receiving water below applicable State and Federal water quality standards.

The Director finds that Oklahoma's proposed revisions of subsection I.F.5.b in the Bond Release Guidelines are substantively identical to and no less effective than the Federal regulations at 30 CFR 816.49(b)(2) and 817.49(b)(2). Therefore, the Director approves the proposed revisions and removes the required amendment at 30 CFR 936.16(d).

d. *Subsections II.B.2.d, III.B.2.d, and V.B.2.c, Phase III bond release requirements for productivity on pastureland, phase III bond release requirements for productivity on grazingland, and phase II bond release requirements for productivity on prime farmland cropland.* At 30 CFR 936.16(f), OSM required that Oklahoma revise subsections II.B.2.d, III.B.2.d, and V.B.2.c to state that productivity standards proposed by an applicant that are not calculated using the method described in Appendix O must be approved by both Oklahoma and OSM (finding No. 6.b, 58 FR 64374, 64378, December 7, 1993).

Oklahoma proposed to revise subsections II.B.2.d and III.B.2.d in the Bond Release Guidelines to require that, when a reference area is not used, a technical success standard for productivity on pastureland and grazingland be calculated by using the method described in Appendix O. Oklahoma also proposed to revise subsection V.B.2.c in the Bond Release Guidelines to require that, when a reference area is not used, a technical success standard for productivity on prime farmland cropland be calculated by using the method described in Appendix O.

The Federal regulations at 30 CFR 816.116(a)(1) and 817.116(a)(1) require that standards for revegetation success shall be selected by the regulatory authority and included in an approved regulatory program. OSM previously approved the methods for calculating technical success standards for productivity in Appendix O in the Bond Release Guidelines.

By referencing Appendix O in subsections II.B.2.d, III.B.2.d, and V.B.2.c, Oklahoma has, in effect, limited technical success standards for productivity on pastureland, grazingland, and prime farmland cropland to only those standards calculated using the methods described in Appendix O.

Because Oklahoma no longer allows unspecified methods that OSM would not have an opportunity to approve, and because OSM previously approved Appendix O, the Director finds that the proposed revisions of subsections II.B.2.d, III.B.2.d, and V.B.2.c in the Bond Release Guidelines are no less effective than the Federal regulations at 30 CFR 816.116(a)(1) and 817.116(a)(1). The Director approves the proposed revisions and removes the required amendment at 30 CFR 936.36(f).

e. *Subsections IV.A.1.a and b and Sections VII.A and B, Phase III bond release requirements for diversity, seasonality, permanence, and regeneration.* At 30 CFR 936.16(c), OSM required that Oklahoma revise the Bond Release Guidelines to identify the revegetation success standards and sampling methods for diversity, seasonality, permanence, and regeneration that will be applied for all land uses prior to phase III bond release (finding No. 1.a, 58 FR 64374, 64375, December 7, 1993).

Oklahoma proposed to revise subsections IV.A.1.a and b, and sections VII.A and B in the Bond Release Guidelines, to require, prior to phase II and III bond release on reclaimed areas with a designated land use of forestry, wildlife habitat, recreation, industrial, commercial, or residential, that the bond release areas must meet permit-specific standards for diversity, seasonality, permanence, and regeneration.

For phase II bond release on pastureland and grazingland, subsections II.A.1.g and III.A.1.g in the Bond Release Guidelines require that perennial species not listed in the approved reclamation plan (but approved by Oklahoma as desirable and compatible with the postmining land use) cannot exceed 20 percent of total ground cover with no more than 5 percent ground cover by any one of these species. Subsections II.A.1.f and III.A.1.f in the Bond Release Guidelines

require, for phase II bond release on pastureland and grazingland, that no more than 10 percent litter and 10 percent desirable annual or biennial forbs can be counted as acceptable ground cover in any single sampling unit. For phase III bond release on pastureland and grazingland, subsections II.B.1.a and III.B.1.a in the Bond Release Guidelines refer the reader to the phase II standards.

As discussed above, Oklahoma does require, for phase II and III bond release on pastureland and grazingland, standards which reflect permanence, seasonality, and regeneration on pastureland and grazingland. However, Oklahoma has not revised the Bond Release Guidelines to address how it would evaluate the reclaimed area for diversity of permanent species prior to phase III bond release on pastureland and grazingland.

The Federal regulations at 30 CFR 816.116(a) and 817.116(a) require that the success of revegetation shall be judged on, among other things, the requirements of 30 CFR 816.111 and 817.111. The Federal regulations at 30 CFR 816.116(a)(1) and 817.116(a)(1) require that all success standards and sampling techniques must be included in an approved regulatory program. Therefore, success standards and sampling techniques must incorporate the various requirements at 30 CFR 816.111 and 817.111 and be approved by OSM. The Federal regulations at 30 CFR 816.111 and 817.111 require, among other things, that a permittee establish where appropriate a vegetative cover that is diverse, effective, and permanent (referred to as diversity and permanence). The Federal regulations at 30 CFR 816.111 and 817.111 also require a permittee to reestablish plant species that have the same seasonal characteristics of growth as the original vegetation and are capable of self-regeneration and plan succession (referred to as seasonality and regeneration).

Standards reflecting diversity, seasonality, permanence, and regeneration on areas with designated land uses of forestry, fish and wildlife habitat, commercial, industrial, and recreation are appropriately addressed on a permit-specific basis, as proposed by Oklahoma, because the standards will vary with the actual needs specific to the area being reclaimed. For example, there may be no need for a diversity standard for an area to reclaimed to an industrial, commercial, or residential land use where reclamation will probably employ a single-species ground cover established for erosion control, but there may be a need for a significant diversity/seasonality standard for an area to be reclaimed to as a wildlife habitat targeted for specific wildlife species.

Therefore, with respect to areas designated for use as forestry, wildlife habitat, recreation, industrial, commercial, or residential, the Director finds that the proposed revisions at subsections IV.A.1.a and b, and sections VII.A and B in the Bond Release Guidelines are no less effective than the Federal regulations at 30 CFR 816.116(a), 817.116(a), 816.111, and 817.111, and approves them.

With respect to areas designated for use as pastureland and grazingland, the Director finds that the Bond Release Guidelines are less effective than the Federal regulations at 30 CFR 816.116(a), 817.116(a), 816.111, and 817.111 because Oklahoma has not addressed how it will evaluate the reclaimed area for diversity of permanent species prior to phase III bond release. Therefore, the Director is revising the required amendment at 30 CFR 936.16(c) to require that Oklahoma revise sections II.B and III.B in the Bond Release Guidelines to address how it will evaluate diversity prior to phase III bond release on areas designated for use as pastureland and grazingland.

f. *Subsections V.B.2.d and V.B.2.e, Phase II bond release requirements for the use of test plots to demonstrate productivity on reclaimed prime farmland cropland.* At 30 CFR 936.16(g), OSM required that Oklahoma revise subsection V.B.2.d to either remove the allowance for the use of test plots as a means of demonstrating productivity success on prime farmlands, or submit a method for demonstrating that the test plots would be representative at a 90-percent statistical confidence level of the total reclaimed prime farmland bond release area. OSM also required Oklahoma to consult with SCS for the proposed method and to document this consultation (finding No. 6.c, 58 FR 64374, 64379, December 7, 1993).

Oklahoma, at OAC 460:20–43–46(c)(2) and 460:20–45–46(c)(2), requires that the measurement period for determining revegetation success of cropland exceed the approved standards any 2 years of the responsibility period, except the first year. Oklahoma's Bond Release Guidelines at subsection V.B.2.a and OAC 460:20–49–8(b)(3) require, for phase II bond release on reclaimed prime farmland, that the measurement period for determining the average annual crop production be a minimum of 3 crop years. OSM interprets Oklahoma's rules and Bond Release Guidelines to require, for phase II bond release on reclaimed prime farmland, that a permittee demonstrate success of productivity with 3 years of crop production during the responsibility period, except the first year.

Subsection V.B.2.d provides for the use of test plots, as an alternative to use of the total reclaimed area, for measuring the success of productivity on prime farmlands. Oklahoma proposed to revise subsection V.B.2.d to require that selected test plots must be representative of geology, soil, and slope of the reclaimed prime farmland area, and, if the test plots are not properly managed during the liability period, they will lose eligibility as a comparison method.

Oklahoma also proposed to revise section V.B.2 by adding a new subsection V.B.2.e that sets forth criteria that must be used to establish test plots in the reclaimed bond release area. At subsections V.B.2.e (1) through (4), Oklahoma proposed to require the following criteria:

(1) A contiguous prime farmland or cropland area represents a single population, test plots are selected at random throughout the contiguous reclaimed area. Appendix C [Methods of Randomized Selection of Sampling Locations] provides methods of selecting randomized sampling locations.

(2) Each test plot represents one sample. Appendix Q [Minimum Sample Size for Row Crops in Prime Farmland (or Nonprime Farmland) Production Determination] provides the minimum sample size formulas for measuring row crops for production standards on prime farmland.

(3) The size of the test plot should be based on the sampling technique (i.e., hand sampling, machine harvest, etc.) that will be used to evaluate crop production. In addition, the plots should be large enough so that impact of any edge effect would be avoided.

(4) The methods for measuring row crop production on prime farmlands is shown in Appendix P [Methods for Measuring Row Crops in Prime Farmland (and Nonprime Farmland) Production].

Oklahoma did not submit evidence of consultation with SCS regarding the use of test plots for measuring productivity on prime farmland.

The Federal regulations at 30 CFR 816.116(a)(2) and 817.116(a)(2) require that reclaimed areas be managed in the same manner as unmined lands with the same land use in the region of the reclaimed area. The Federal regulations at 30 CFR 823.15(b)(2) require that soil productivity shall be measured on a representative sample or on all of the mined and reclaimed prime farmland area using the reference crop determined under 30 CFR 823.15(b)(6), and also require that a statistically valid sampling technique at a 90-percent or

greater statistical confidence level shall be used as approved by the regulatory authority in consultation with SCS.

The Director finds that Oklahoma's proposed requirements for the management of test plots at subsection V.B.2.d are substantively identical to and no less effective than the requirements of 30 CFR 816.116(a)(2) and 817.116(a)(2). Because Oklahoma proposed criteria for establishment of test plots within the reclaimed area that should ensure that the test plots will be representative at a 90-percent statistical confidence level of the total reclaimed prime farmland bond release area, the Director finds that subsections V.B.2.e (1) through (4) are no less effective than the requirements of 30 CFR 823.15(b)(2). The Director approves the proposed revisions at subsections V.B.2.d and V.B.2.e (1) through (4).

However, because Oklahoma did not submit evidence of consultation with SCS as required by the Federal regulations at 30 CFR 823.15(b)(2) for development of statistically valid sampling techniques used on reclaimed prime farmlands, the Director is revising the required amendment at 30 CFR 936.16(g) to require that Oklahoma must submit, before Oklahoma allows the use of test plots as proposed at subsections V.B.2.d and V.B.2.e in the Bond Release Guidelines, evidence of consultation with SCS regarding the use of test plots as a statistically valid sampling technique for demonstrating success of productivity on prime farmlands.

g. *Subsections V.B.2.f and VI.B.2.e, Phase II bond release requirements for productivity on prime farmland cropland.* At 30 CFR 936.16(e), OSM required that Oklahoma revise subsections V.B.2.e and VI.B.2.e to reference Appendix O for the methods to calculate the technical productivity standards for hay crops on prime and nonprime farmland cropland, and to cite the reference for the methods for calculating technical productivity standards that are in Appendix O (finding No. 6.a, 58 FR 64374, 64378, December 7, 1993).

Oklahoma proposed to revise section V.B.2 by adding a new paragraph (e) and redesignating existing paragraph (e) as (f) (see finding No. 2.f for a discussion of new subsection V.B.2.e). Oklahoma proposed to revise subsection V.B.2.f, requirements for phase II bond release on prime farmland cropland, by stating that the method to calculate the technical productivity standard for grain or hay crops on prime farmland cropland is in Appendix O. Oklahoma proposed to revise subsection VI.B.2.e, requirements for phase III bond release on nonprime farmland cropland, by stating that the method to calculate the technical productivity standard for grain or hay crops on nonprime farmland cropland is in Appendix O (see finding No. 2.h for discussion of an additional proposed revision at subsection VI.B.2.e). In addition, Oklahoma stated in its transmittal letter for the proposed amendment that the reference for the methods for calculating technical productivity standards in Appendix O is the "Technical Guides on Use of Reference Areas and Technical Standards for Evaluating Surface Mine Vegetation in OSM Regions I and II," which is listed in the Bond Release Guidelines in Appendix V.

The Federal regulations at 30 CFR 816.116(a)(1) and 817.116(a)(1) require that standards for success and statistically valid sampling techniques for measuring success shall be selected by the regulatory authority and included in an approved regulatory program.

By clearly referencing Appendix O, Oklahoma requires that a calculated technical productivity standard be calculated by the methods described in Appendix O, and has therefore proposed, in its regulatory program, an alternative standard (to the standard determined by a reference area) for measuring success of revegetation on prime and nonprime farmlands.

The Director finds that subsections V.B.2.f and VI.B.2.e in the Bond Release Guidelines are no less effective than the Federal regulations at 30 CFR 816.116(a)(1) and 817.116(a)(1). The Director approves the proposed revisions of subsections V.B.2.f and VI.B.2.e and removes the required amendment at 30 CFR 936.16(e).

h. *Subsection VI.B.2.e, Phase II bond release requirements for productivity on nonprime farmland cropland.* Because subsection VI.B.2.e pertains to productivity on nonprime farmland cropland, OSM required, at 30 CFR 936.16(h), that Oklahoma revise subsection VI.B.2.e to change "prime farmland cropland" to "nonprime farmland cropland" when referencing Appendix P for the methods to measure row crop production (finding No. 6.d, 58 FR 64374, 64379, December 7, 1993).

Oklahoma proposed to revise subsection VI.B.2.e in the Bond Release Guidelines to state that the methods for measuring row crop production on nonprime farmland cropland are described in Appendix P.

The Federal regulations at 30 CFR 816.116(a)(1) and 817.116(a)(1) require that standards for success and statistically valid sampling techniques for measuring success shall be selected by the regulatory authority and included in an approved regulatory program.

By clarifying that the sampling methods for measuring row crop production on nonprime farmland cropland are in Appendix P, Oklahoma has proposed, in its regulatory program, sampling methods for measuring success of revegetation for nonprime farmland cropland.

The Director finds that subsection VI.B.2.e in the Bond Release Guidelines is no less effective than the Federal regulations at 30 CFR 816.116(a)(1) and 817.116(a)(1). The Director approves the revision of subsection VI.B.2.e and removes the required amendment at 30 CFR 936.16(h).

i. *Appendix A, Definition of "productivity".* Oklahoma previously defined, in Appendix A, the term "productivity" to mean

> [T]he amount of *harvestable* standing biomass of desirable species. Standing biomass is the aboveground living portion and the attached litter portion of plants produced within a given growing season. Horizontal runners of stoloniferous plants are also included.

(Emphasis added). Oklahoma proposed, at its own initiative and in response to an SCS comment, a revised definition of "productivity" to refer to "[t]he amount of *total* standing biomass of desirable species" (emphasis added).

There is no counterpart definition for "productivity" in the Federal regulations; however, the Federal regulations at 30 CFR 816.116(a)(2) and 817.116(a)(2) require that standards for success shall include criteria representative of unmined lands in the area being reclaimed to evaluate the appropriate vegetation parameters of ground cover, production, or stocking. Although not explicitly stated, the production parameter must be representative of the total productivity the reclaimed soils were capable of before mining. Oklahoma, by substituting "total standing biomass" for "harvestable standing biomass," has proposed that the term "productivity" refers to the total productivity the reclaimed soils were capable of before mining.

The Director finds that Oklahoma's proposed definition of "productivity" in Appendix A in the Bond Release Guidelines is no less effective than the Federal regulations at 30 CFR 816.116(a)(2) and 817.116(a)(2) and approves it.

j. *Appendices A and R, Definition of "initial establishment of permanent vegetative cover" and the "repair of rills and gullies" as a normal husbandry practice.* At 30 CFR 936.16(i), OSM required that Oklahoma revise Appendix R to either remove any reference to the proposed treatment of

rills and gullies as a normal husbandry practice, or specify what constitutes "initial vegetation establishment" and submit either the actual SCS guideline described in Appendix R or a letter from SCS to Oklahoma stating that the practices described in Appendix R are considered normal husbandry practices for the repair of rills and gullies in the State of Oklahoma (finding No. 7, 58 FR 64374, 64379, December 7, 1993).

Appendix R in Oklahoma's Bond Release Guidelines includes the "Guidelines for the Repair of Rills and Gullies." These guidelines require that the repair of rills and gullies restart the revegetation liability period unless the occurrences and treatment of such rills and gullies constitute a normal conservation practice in the region. Oklahoma sets forth in Appendix R these normal conservation practices, which are the treatment practices that are considered the degree of management customarily performed to prevent exploitation, destruction, or neglect of the soil resource and maintain the productivity of the land use. In Appendix R, Oklahoma requires that the treatment of rills and gullies requiring permanent reseeding of more than 10 acres in a contiguous block or 10 percent of a permit area initially seeded during a single year shall be considered an augmentative practice.

Oklahoma proposed to revise Appendix R to require that any treatment of rills and gullies after "initial establishment of permanent vegetative cover" shall also be considered an augmentative practice that would restart the liability period. In addition, Oklahoma proposed to revise Appendix A in the Bond Release Guidelines to define "initial establishment of permanent vegetative cover" to mean

> [T]he time period between the bond liability start date and final approval of the Phase II bond release on the permit or increment of the permit.

At section I.A.1 in the Bond Release Guidelines, Oklahoma requires that the liability period for revegetation success on reclaimed lands begins with the *successful completion of initial planting* of all required permanent vegetation species on a site. Therefore, Oklahoma proposed to allow the repair of rills and gullies without restarting the liability period during the time period between *successful completion of initial planting* and *initial establishment of permanent vegetative cover.* After phase II bond release, any repair of rills and gullies in the bond release area would be considered an augmentative practice that would restart the liability period.

The Federal regulations at 30 CFR 816.116(c)(4) and 817.116(c)(4) provide that the regulatory authority may approve selective husbandry practices as normal husbandry practices (excluding augmented seeding, fertilization, or irrigation), provided it obtains prior approval of these practices from the Director of OSM in accordance with 30 CFR 732.17. These practices can be implemented as normal husbandry practices without extending the period of responsibility for revegetation success and bond liability, if such practices can be expected to continue as part of the postmining land use or if discontinuance of the practices after the liability period expires will not reduce the probability of permanent revegetation success. Approved husbandry practices must be normal husbandry practices within the region for unmined lands having land uses similar to the approved postmining land use of the disturbed area, and include such practices as disease, pest, and vermin control, and any pruning, reseeding, and transplanting specifically necessitated by such actions.

Because Oklahoma has defined the term "initial establishment of permanent vegetative cover," it is possible to determine when an operator must consider the repair of rills and gullies an augmentative practice that would restart the liability period.

Oklahoma also submitted, as part of the Bond Release Guidelines a letter, dated February 1, 1994, from the Oklahoma State Office of SCS. In this letter, SCS stated that

> [W]e have reviewed the Oklahoma Department of Mines proposed guidelines for the repair of rills and gullies on reclaimed mine land in Oklahoma. We believe these guidelines are complete and adequate for reclamation if they are followed by the operator.

In addition, in a March 14, 1994, letter to OSM (administrative record No. OK–959–.07), SCS commented that

> Appendix R represents normal practices that would be used for gully control in the State of Oklahoma.

Therefore, because Oklahoma has adequately demonstrated that the practices for the repair of rills and gullies in Appendix R are supported by SCS as an acceptable land management technique for similar situations in the State of Oklahoma, the Director finds that Oklahoma's proposal in Appendix R for the repair of rills and gullies as a normal husbandry practice is no less effective than the Federal regulations at 30 CFR 816.116(c)(4) and 817.116(c)(4). The Director approves the proposed definition of "initial establishment of permanent vegetative cover" in Appendix A and, as specified in Appendix R, the repair of rills and gullies as a normal husbandry practice, and removes the required amendment at 30 CFR 936.16(i).

k. *Appendices F and O, Methods of production sampling and methods for calculation of technical productivity standards on pastureland and grazingland.* Oklahoma presented, in Appendix O, an example of the method for calculating a technical productivity standard using soil yield figures expressed in animal unit months (AUM's) that are published in SCS county soil surveys. This example calculation was applicable to lands reclaimed for use as pastureland and grazingland.

In response to OSM's May 20, 1994, issue letter, Oklahoma proposed to revise Appendix O to require the use of SCS county survey soil supplements, if available, and if not available, to use SCS county soil surveys; and to include a separate example calculation for a technical productivity standard on grazingland based on a direct comparison for total productivity with SCS soil productivity figures expressed in pounds per acre (rather than AUM's).

In response to SCS comments, Oklahoma, at its own initiative, proposed to further revise the Bond Release Guidelines. Oklahoma revised Appendix F, concerning the method of production sampling, to (1) recommend that pastureland or grazingland with a predominance of warm season species be clipped during September or October and pastureland or grazingland with a predominance of cool species be clipped during May or June, and (2) requires that all production samples be clipped to ground level. Oklahoma also proposed to further revise Appendix O, concerning the methods of calculating technical productivity standards on pastureland and grazingland, to (1) require that the SCS soil productivity figure expressed in AUM's be multiplied by 1560 in the calculation for a technical productivity standard on pastureland, and (2) clarify that clipping is a direct comparison using the calculation for a technical productivity standard on grazingland based on soil productivity figures expressed in pounds per acre.

The Federal regulations at 30 CFR 816.116(a)(1) and 817.116(a)(1) require that standards for success and statistically valid sampling techniques for measuring success shall be selected by the regulatory authority and included in an approved regulatory program. The Federal regulations at 30 CFR 816.116(a)(2) and 817.116(a)(2) also

require that standards for success shall include criteria representative of unmined lands in the area being reclaimed to evaluate the appropriate vegetation parameters of ground cover, production, or stocking.

Oklahoma's proposed revisions of Appendices F and O will ensure that, on land reclaimed for use as pastureland or grazingland, the demonstration of success of restored productivity, based on technical standards derived from SCS soil surveys, accurately represents the productive potential of similar soils in the region.

The Director finds that Oklahoma's proposed revisions of Appendices F and O are no less effective than the Federal regulations at 30 CFR 817.116(a) (1) and (2) and 817.116(a) (1) and (2). The Director approves them.

IV. Summary and Disposition of Comments

1 Public Comments

OSM invited public comments on the proposed amendment, but none were received.

2. Agency Comments

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Oklahoma program (administrative record No. OK–960).

a. *SCS.* On March 14, 1994, SCS responded with the following comments (administrative record No. OK–959.07). SCS (1) recommended that Oklahoma use the terms "native grazingland" and "introduced grazingland" in place of the terms "grazingland" and "pastureland;" (2) recommended revision of the method described in Appendix O to calculate a technical standard, for total production on grazingland and pastureland; and (3) stated that the methods described for treatment of rills and gullies in Appendix R represent normal practices used for gully control in the State of Oklahoma.

With respect to the recommendation that Oklahoma use the terms "introduced grazingland" and "native grazingland" in place of the terms "pastureland" and "grazingland," the Federal regulations at 30 CFR define (1) "pastureland" to mean land used primarily for the long-term production of adapted, domesticated forage plants to be grazed by livestock or occasionally cut and cured for livestock feed, and (2) "grazingland" to mean land used for grasslands and forest lands where the indigenous vegetation is actively managed for grazing, browsing, or occasional hay production. In addition, Oklahoma's rules at section 701.5 include definitions of "pastureland" and "grazingland" that are identical to the Federal regulations. Oklahoma, in Appendix O of the Bond Release Guidelines, refers to "pastureland" and "grazingland" as, respectively, improved pasture grasses and native range grasses. Therefore, because Oklahoma's use of the terms "pastureland" and "grazingland" in the Bond Release Guidelines is consistent with and no less effective than the use of these terms in Oklahoma rules and the Federal regulations, the Director is not requiring that Oklahoma revise the amendment in response to this comment.

With respect to the recommendation that Oklahoma revise the method described in Appendix O to calculate a technical standard for total production on grazingland and pastureland, OSM required in its May 20, 1994, issue letter that Oklahoma revise the method described in Appendix O to accurately represent the total productive potential of soils based on SCS soil county survey productivity figures expressed in AUM's. Oklahoma responded in its July 21, 1994, revised amendment with explanatory information and revisions to Appendix O that addressed OSM's issue letter with respect to the calculation of a technical standard for total production on grazingland. However, in response to additional August 29, 1994, SCS comments concerning the calculation of a technical standard for total production on pastureland, Oklahoma, at its own initiative, proposed further revisions to Appendix O in its September 2, 1994, revised amendment (see finding No. 2.K).

With respect to the comment that the methods described for treatment of rills and gullies in Appendix R represent normal practices used for gully control in the State of Oklahoma, the Director, as discussed in finding No. 2.f above, is approving the guidelines for repair of rill and gullies in Appendix R as a normal husbandry practice.

SCS also responded on August 29, 1994, with the following comments (administrative record No. OK–959.18). SCS again recommended, that because both the terms "pastureland" and "grazingland" as used by Oklahoma in Appendix O can mean grazingland, Oklahoma use either "native grazingland" or "rangeland" in place of the term "grazingland." As discussed above, in response to a similar comment made by SCS in its March 14, 1994, letter, OSM is not requiring that Oklahoma revise the Bond Release Guidelines in response to this comment.

SCS recommended another means of revising the method for calculating a technical productivity figure on pastureland in Appendix O of Oklahoma's Bond Release Guidelines. SCS recommended revising Appendix O to instruct the permittee to convert the SCS soil survey AUM productivity figure to an air-dried pounds of production per acre figure. The conversion would take into consideration the 50 percent utilization rate that is inherent in the AUM figure by doubling the pounds of vegetation consumed by one animal (780 pounds per acre). That is the SCS AUM productivity figure must be multiplied by 1560 to convert it to a production figure in pounds per acre. This converted figure would reflect the total soil production potential.

In addition, SCS recommended that Oklahoma revise Appendix F to require that each sample be clipped to the ground and that the area be sampled once in the spring for cool season grasses and once in the fall for warm season grasses. SCS also commented that the native grass figures listed in an SCS soil survey are direct production figures and therefore, clipping on grazingland will be a direct comparison.

In response to these SCS comments, Oklahoma, at its own initiative, in its September 2, 1994, submittal, revised, as recommended by the SCS, (1) Appendix F, concerning the method of production sampling, and (2) Appendix O, concerning the methods of calculating technical productivity standards on pastureland and grazingland. As discussed in finding No. 2.k above, the Director is approving Oklahoma's proposed revisions of Appendices F and O.

SCS commented that because of variability in weather and soil conditions, and interpolation of data, that the applicable productivity levels should be set at 90 percent of the yield goal. The Federal regulations at 30 CFR 816.116(a)(2) and 817.116(a)(2) and Oklahoma's rules at OAC 460:20–45–46(a)(2), require for success of revegetation that the operator demonstrate that it has achieved 90 percent of the success standard. In other words, the operation must, in order to demonstrate success of productivity, meet only 90 percent of the technical success standard that is calculated by the methods described in Appendix O of Oklahoma's Bond Release Guidelines. Therefore, because the Federal regulations and State rules already provide for the SCS recommendation, OSM is not requiring that Oklahoma further revise the Bond Release Guidelines in response to this comment.

SCS commented that Oklahoma should revise the definition of "productivity" in Appendix A in the Bond Release Guidelines to refer to the "amount of total standing biomass" rather than "harvestable standing biomass." In response to this SCS comment, Oklahoma at its own initiative in its September 2, 1994, submittal, revised the definition of "productivity" as recommended by the SCS. As discussed in finding No. 2.i above, the Director is approving Oklahoma's proposed revision of the definition of "productivity" in Appendix A.

Finally, SCS responded on October 14, 1994, that because all revisions previously discussed with the Oklahoma State Office had been included in Oklahoma's September 2, 1994, revised amendment, it had no further comments (administrative record No. OK–959.25).

b. *Other Federal agencies.* The U.S. Fish and Wildlife Service responded on February 15 and August 3, 1994, that it had no comments on the proposed amendment (administrative record Nos. OK–959.02 and OK–959.13).

The U.S. Bureau of Mines responded on February 16 and September 25, 1994, that it had no comments regarding the proposed amendment (administrative record Nos. OK–959.03 and OK–959.23).

The U.S. Army Corps of Engineers responded on February 25, August 10, and September 30, 1994, that the proposed revisions were satisfactory (administrative record Nos. OK–959.04, OK–959.17, and OK–959.24).

The U.S. Bureau of Land Management responded on October 12, 1994, that the Bond Release Guidelines appeared to be technically correct (administrative record No. OK–959.26).

3. Environmental Protection Agency (EPA) Concurrence and Comments

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to solicit the written concurrence of EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

None of the revisions that Oklahoma proposed to make in its amendment pertain to air or water quality standards. Therefore, OSM did not request EPA's concurrence.

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from EPA (administrative record No. OK–960). EPA responded on August 24, 1994, that it had no objections to approval of the proposed revisions (administrative record No. OK–962).

4. State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Pursuant to 30 CFR 732.17(h)(4), OSM solicited comments on the proposed amendment from the SHPO and ACHP (administrative record No. OK–960). Neither SHPO nor ACHP responded to OSM's request.

V. Director's Decision

Based on the above findings, the Director approves, with additional requirements, Oklahoma's proposed amendment as submitted on February 17, 1994, and as revised and supplemented with additional explanatory information on July 21 and September 2, 1994.

With the requirement that Oklahoma further revise the Bond Release Guidelines, the Director approves, as discussed in: finding No. 2.e, subsections IV.A.1.a and b, and sections VII.A and B, concerning revegetation success standards for diversity, seasonality, permanence, and regeneration; and finding No. 2.f, subsections V.B.2.d and V.B.2.e, concerning the use of test plots as a statistically valid sampling technique for demonstrating success of productivity on prime farmlands.

The Director approves Oklahoma's revisions to the Bond Release Guidelines, as discussed in: finding No. 1, Appendices J and V, concerning nonsubstantive editorial revisions; finding No. 2.a, subsection I.E.3.b, concerning requirements for ground cover on land reclaimed for commercial or industrial use; finding No. 2.b, subsection I.F.3.d, concerning requirements for ground cover on previously mined areas; finding No. 2.c, subsection I.F.5.b, concerning the requirements for water discharged from permanent impoundments, ponds, diversions, and treatment facilities; finding No. 2.d, subsections II.B.2.d, III.B.2.d, and V.B.2.c, concerning the method for calculating a technical productivity standard on pastureland, grazingland, and prime farmland; finding No. 2.g, subsections V.B.2.f and VI.B.2.e, concerning the method for calculating a technical productivity standard for grain or hay crops on prime and nonprime farmland; finding No. 2.h, subsection VI.B.2.e, concerning the method for measuring row crop production on nonprime farmland; finding No. 2.i, Appendix A, concerning the definition of "productivity;" finding No. 2.j, Appendices A and R, concerning the definition of "initial establishment of permanent vegetative cover" and the repair of rills and gullies as a normal husbandry practice; and finding No. 2.k, Appendix F, concerning the method of production sampling, and Appendix O, concerning the methods of calculating technical productivity standards on pastureland and grazingland.

In accordance with 30 CFR 732.17(f)(1), the Director is also taking this opportunity to clarify in the required amendment section at 30 CFR 936.16 that, within 60 days of the publication of this final rule, Oklahoma must either submit a proposed written amendment, or a description of an amendment to be proposed that meets the requirements of SMCRA and 30 CFR Chapter VII and a timetable for enactment that is consistent with Oklahoma's established administrative or legislative procedures.

The Federal regulations at 30 CFR Part 936, codifying decisions concerning the Oklahoma program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12886 (Regulatory Planning and Review).

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 12550) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of

30 CFR Part 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(c)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 936

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 29, 1994.

Charles E. Sandberg,

Acting Assistant Director, Western Support Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 936—OKLAHOMA

1. The authority citation for Part 936 continues to read as follows:

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

2. Section 936.15 is amended by adding paragraph (n) to read as follows:

§ 936.15 Approval of regulatory program amendments.

* * * * *

(n) Revisions to the following provisions of the Bond Release Guidelines, which include revegetation success standards and statistically valid sampling techniques, and guidelines for phase I, II, and III bond release, as submitted to OSM on February 17, 1994, and as revised and supplemented with explanatory information on July 21 and September 2, 1994, are approved effective January 10, 1995:

Subsection I.E.3.b, concerning requirements for ground cover on land reclaimed for commercial or industrial use;

Subsection I.F.3.d, concerning requirements for ground cover on previously mined areas;

Subsection I.F.5.b, concerning the requirements for water discharged from permanent impoundments, ponds, diversions, and treatment facilities;

Subsections II.B.2.d, III.B.2.d, and V.B.2.c, concerning the method for calculating a technical productivity standard on pastureland, grazingland, and prime farmland;

Subsections IV.A.1.a and b, and sections VII.A and B, concerning revegetation success standards for diversity, seasonality, permanence, and regeneration;

Subsections V.B.2.d and V.B.2.e, concerning the use of test plots as a statistically valid sampling technique for demonstrating success of productivity on prime farmlands;

Subsections V.B.2.f and VI.B.2.e, concerning the method for calculating a technical productivity standard for grain or hay crops on prime and nonprime farmland;

Subsection VI.B.2.e, concerning the method for measuring row crop production on nonprime farmland;

Appendix A, concerning the definitions of "initial establishment of permanent vegetative cover" and "productivity;"

Appendix F, concerning the method of sampling for productivity;

Appendices J and V, concerning editorial revisions; and

Appendix R, concerning the repair of rills and gullies as a normal husbandry practice;

Appendix O, concerning the methods for calculating technical productivity standards on lands reclaimed for use as pastureland and grazingland.

3. Section 936.16 is revised to read as follows:

§ 936.16 Required regulatory program amendments.

Pursuant to 30 CFR 732.17(f)(1), Oklahoma is required to submit to OSM by the specified date the following written, proposed program amendment, or a description of an amendment to be proposed that meets the requirements of SMCRA and 30 CFR Chapter VII and a timetable for enactment that is consistent with Oklahoma's established administrative or legislative procedures.

(a) Reserved.

(b) Reserved.

(c) By March 13, 1995, Oklahoma shall revise sections II.B and III.B in the Bond Release Guidelines to identify the method it will use in developing a phase III revegetation success standard for diversity on lands reclaimed for use as pasturland and grazingland.

(d) Reserved.

(e) Reserved.

(f) Reserved.

(g) By March 13, 1995, Oklahoma must submit, before Oklahoma allows the use of test plots as proposed at subsections V.B.2.d and V.B.2.e in the Bond Release Guidelines, evidence of consultation with the U.S. Soil Conservation Service regarding the use of test plots as a statistically valid sampling technique for demonstrating success of productivity on prime farmlands.

[FR Doc. 95–568 Filed 1–9–95; 8:45 am]
BILLING CODE 4310–05–M

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30 CFR Part 944

Utah Regulatory Program

ACTION: Proposed rule; reopening and extension of public comment period on proposed amendment.

SUMMARY: OSM is announcing receipt of additional explanatory information pertaining to a previously proposed amendment to the Utah regulatory program (hereinafter, the "Utah program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The additional explanatory information for Utah's proposed rule pertains to liability self-insurance requirements for coal mining operations. The amendment is intended to allow coal mining operators who qualify as government entities under the Utah Interlocal Cooperation Act and the Utah Governmental Immunity Act to provide a certain amount of their liability insurance through self-insurance.

DATES: Written comments must be received by 4:00 p.m., m.s.t., January 25, 1995.

ADDRESSES: Written comments should be mailed or hand delivered to Thomas E. Ehmett at the address listed below.

Copies of the Utah program, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Albuquerque Field Office.

Thomas E. Ehmett, Acting Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 505 Marquette Avenue, NW., Suite 1200, Albuquerque, New Mexico 87102

Utah Coal Regulatory Program, Division of Oil, Gas and Mining, 355 West North Temple, 3 Triad Center, Suite 350, Salt Lake City, Utah 84180–1203, Telephone: (801) 538–5340.

FOR FURTHER INFORMATION CONTACT: Thomas E. Ehmett, Telephone: (505) 766–1486.

SUPPLEMENTARY INFORMATION:

I. Background on the Utah Program

On January 21, 1981, the Secretary of the Interior conditionally approved the Utah program. General background information, on the Utah program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Utah program can be found in the January 21, 1981, Federal Register (46 FR 5899). Subsequent actions concerning Utah's program and program amendments can be found at 30 CFR 944.15, 944.16, and 944.30.

II. Proposed Amendment

By letter dated October 4, 1994, Utah submitted a proposed amendment to its program pursuant to SMCRA (administrative record No. UT–979). Utah submitted the proposed amendment at its own initiative with the intention of allowing companies in the coal industry, if they so desire, to provide a certain amount of their liability insurance through self-insurance. The provision of the Utah Coal Mining Rules that Utah proposes to revise is Utah Administrative Rule (Utah Admin. R.) 645–301–890.400, Terms and Conditions for Liability Insurance.

OSM announced receipt of the proposed amendment in the October 21, 1994, **Federal Register** (59 FR 53123), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (administrative record No. UT–982). Because no one requested a public hearing or meeting, none was held. The public comment period ended on November 21, 1994.

During its review of the amendment, OSM identified concerns relating to the provision of Utah's Coal Mining Rules at Utah Admin. R. 645–301–890.400. OSM notified Utah of the concerns by letter dated November 30, 1994 (administrative record No. UT–992). Utah responded in a letter dated December 16, 1994, by submitting additional explanatory information (administrative record No. UT–999).

In response to the issue letter, Utah proposes additional explanatory information with the intention of clarifying that Utah's proposed revision to Utah Admin. R. 645–301–890.400 will allow companies in the coal industry to provide a certain amount of their liability insurance through self-insurance only if they qualify as government entities under (1) a Utah statutory provision allowing for the creation by two or more public agencies of a separate legal or administrative entity at Utah Code Annotated (U.C.A.) § 11–13–5.5(2)(a) of the Utah Interlocal Cooperation Act and (2) a Utah self-insurance statutory provision at U.C.A. § 63–30–28 of the Utah Governmental Immunity Act.

III. Public Comment Procedures

OSM is reopening the comment period on the proposed Utah program amendment to provide the public an opportunity to reconsider the adequacy of the proposed amendment in light of the additional materials submitted. In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Utah program.

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Albuquerque Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

IV. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 12550) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

V. List of Subjects in 30 CFR Part 944

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 3, 1995.

Charles E. Sandberg,

Acting Assistant Director, Western Support Center.

[FR Doc. 95–569 Filed 1–9–95; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AH12

Exclusions from Income (RECA Payments)

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) adjudication regulations concerning income and net worth exclusions. The purpose of the rule is to implement legislation excluding from consideration as countable income and net worth amounts paid to claimants under the Radiation Exposure Compensation Act (RECA). The intended effect of this amendment is to have VA regulations conform to the requirements of that statute.

EFFECTIVE DATE: This amendment is effective October 15, 1990, the date specified in Pub. L. 101–426.

FOR FURTHER INFORMATION CONTACT: Paul Trowbridge, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW, Washington, DC 20420, telephone (202) 273–7210.

SUPPLEMENTARY INFORMATION: Public Law 101–426, the Radiation Exposure Compensation Act (RECA), was enacted by Congress to compensate individuals who may have suffered adverse health effects from working in uranium mines or living downwind of above-ground nuclear tests. Section 6(h) of that law provides that RECA payments shall not be included as income or resources for purposes of determining eligibility for benefits described in section 3803(c)(2)(C) of Title 31, United States Code. Title 31 U.S.C. 3803(c)(2)(C)(viii) lists benefits under chapters 11, 13 and 15 of Title 38, United States Code, which governs payment of VA benefits.

VA administers several income-based benefit programs under which a claimant's countable income determines the rate of VA benefits payable. Net worth may also affect eligibility. Those affected by RECA are death compensation (38 U.S.C. chapter 11); Parents' Dependency and Indemnity Compensation (38 U.S.C. chapter 13) and the Improved Pension program (38 U.S.C. chapter 15). Other VA benefits which are income-based, notably the prior pension programs known as the Section 306 and Old Law pension programs, are no longer authorized under those chapters of 38 U.S.C. listed in Public Law 101–426.

VA regulations at 38 CFR 3.271 state that payments of any kind from any source shall be counted as income for purposes of the Improved Pension program unless specifically excluded under 38 CFR 3.272. 38 CFR 3.261(a) indicates whether various categories of income are included or excluded when determining eligibility for Parents Dependency and Indemnity Compensation or pension programs which were in effect prior to January 1, 1979. It also indicates whether various categories of income are included or excluded when determining whether a parent qualifies as a dependent parent for purposes of 38 U.S.C. chapter 11. 38 CFR 3.274 states that Improved Pension shall be denied or discontinued when the corpus of a claimant's estate is such that it is reasonable that some of the estate be used for the claimant's maintenance.

We are amending 38 CFR 3.261, 3.262, and 3.272 to show that RECA payments are excludable from countable income for Parents' Dependency and Indemnity Compensation, the Improved Pension program, and in determining whether a parent is dependent for purposes of 38 U.S.C. chapter 11. We are amending 38 CFR 3.275 to show that RECA payments are not to be included in computing an Improved Pension claimant's net worth. Net worth is not a factor for Parents' Dependency and Indemnity Compensation. The purpose of this rule is to amend the regulations to be consistent with the provisions of section 6 of Public Law 101–426.

This final rule is made effective without notice and comment since it makes changes merely to reflect statutory requirements.

The Secretary certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. This rule will directly affect VA beneficiaries but will not affect small businesses. Therefore, pursuant to 5 U.S.C. 605(b), this final regulation is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

The catalog of Federal Domestic Assistance program numbers are 64.104, 64.105, 64.109, and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Health care, Individuals with disabilities, Pensions, Veterans.

Approved: December 22, 1994.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR Part 3 is amended as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. In § 3.261, a new paragraph (a)(38) is added to read as follows:

§ 3.261 Character of income; exclusions and estates.

(a) *Income*

* * * * * * * *

(38) Income received under Section 6 of the Radiation Exposure Compensation Act (Pub. L. 101–426)	Excluded	Excluded	Included	Included	3.262(w)

* * * * * * *

3. In § 3.262, paragraph (w) and its authority citation are added to read as follows:

§ 3.262 Evaluation of income.

* * * * *

(w) *Radiation Exposure Compensation Act.* For the purposes of parents' dependency and indemnity compensation, there shall be excluded from income computation payments under Section 6 of the Radiation Exposure Compensation Act of 1990.

(Authority: 42 U.S.C. 2210 note)

4. In § 3.272, paragraph (s) and its authority citation are added to read as follows:

§ 3.272 Exclusions from income.

* * * * *

(s) *Radiation Exposure Compensation Act.* Any payment made under Section 6 of the Radiation Exposure Compensation Act of 1990.

(Authority: 42 U.S.C. 2210 note)

5. In § 3.275, paragraph (h) and its authority citation are added to read as follows:

§ 3.275 Criteria for evaluating net worth.

* * * * *

(h) Radiation Exposure Compensation Act. There shall be excluded from the corpus of estate or net worth of a claimant any payment made under Section 6 of the Radiation Exposure Compensation Act of 1990.

(Authority: 42 U.S.C. 2210 note)

[FR Doc. 95–487 Filed 1–9–95; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OAQPS No. CA–102–3–6756b; FRL–5135–6]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; Interim Final Determination That State Has Corrected the Deficiency

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: Elsewhere in today's **Federal Register** EPA has published a notice of proposed rulemaking for full approval of revisions to the California State Implementation Plan. The revisions concern rules from the Placer County Air Pollution Control District (PCAPCD) and the San Diego County Air Pollution Control District (SDCAPCD): PCAPCD Rule 223, Metal Container Coating; PCAPCD Rule 410, Recordkeeping for Volatile Organic Compound Emissions; and SDCAPCD Rule 67.4, Metal Container, Metal Closure, and Metal Coil Coating Operations. The proposed rulemaking provides the public with an opportunity to comment on EPA's action approving PCAPCD Rules 223 and 410, and SDCAPCD Rule 67.4. Based on the proposed full approval, EPA is making an interim final determination by this action that the State has corrected the deficiencies for which sanctions clocks began on June 16, 1993. This action will defer the application of the offset sanctions and defer the application of the highway sanctions. Although the interim final action is effective upon publication, EPA will take comment. If no comments are received on this action or EPA's proposed approval of the State's submittal, EPA will finalize its determination that the State has corrected the deficiencies that started the sanctions clocks by publishing a notice of final rulemaking in the **Federal Register**. If comments are received on EPA's proposed approval and this interim final action, EPA will publish a final notice taking into consideration any comments received.

DATES: Effective Date: January 10, 1995.

Comments: Comments must be received by February 9, 1995.

ADDRESSES: Comments should be sent to: Daniel A. Meer, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

The State submittal and EPA's analysis for that submittal, which are the basis for this action, are available for public review at the above address and at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95814.

Placer County Air Pollution Control District, 11464 B Avenue, Auburn, CA 95603.

San Diego County Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123.

FOR FURTHER INFORMATION CONTACT: Daniel A. Meer, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105. Telephone: (415) 744–1185.

SUPPLEMENTARY INFORMATION:

I. Background

On April 5, 1991, the State submitted PCAPCD Rule 223, Can Coating; PCAPCD Rule 410, Recordkeeping for Volatile Organic Compound Emissions; and SDCAPCD Rule 67.4, Metal Container, Metal Closure, and Metal Coil Coating Operations, for which EPA published limited disapprovals in the **Federal Register** on June 16, 1993. 58 FR 33196. EPA's disapproval actions started 18-month clocks for the application of one sanction (followed by a second sanction 6 months later) under section 179 of the Clean Air Act (Act) and 24-month clocks for promulgation of Federal Implementation Plans (FIP) under section 110(c) of the Act. The State subsequently submitted revised rules on October 19, 1994, November 30, 1994, and December 21, 1994. In the Proposed Rules section of today's **Federal Register**, EPA has proposed full approval of the State of California's submittal of PCAPCD Rule 223, Metal Container Coating; PCAPCD Rule 410, Recordkeeping for Volatile Organic Compound Emissions; and SDCAPCD Rule 67.4, Metal Container, Metal Closure, and Metal Coil Coating Operations.

Based on the proposed approval set forth in today's **Federal Register**, EPA believes that it is more likely than not that the State has corrected the original disapproval deficiencies. Therefore, EPA is taking this interim final rulemaking action, effective on publication, finding that the State has corrected the deficiencies. However, EPA is also providing the public with an opportunity to comment on this final action. If, based on any comments on the action deferring application of sanctions and any comments on EPA's proposed full approval of the State's submittal, EPA determines that the State's submittal is not fully approvable and this interim final action was inappropriate, EPA will either propose or take final action finding that the State has not corrected the original disapproval deficiencies. As appropriate, EPA will also issue an interim final determination or a final determination that the deficiencies have not been corrected. Until EPA takes such an action, the application of sanctions will continue to be deferred and/or stayed.

This action does not stop the sanctions clocks that started for these areas on June 16, 1993. However, this action will defer the application of the offsets sanctions and will defer the application of the highway sanctions. See 59 FR 39832 (Aug. 4, 1994). If EPA publishes a notice of final rulemaking fully approving the State's submittal, such action will permanently stop the sanctions clocks and will permanently lift any applied, stayed or deferred sanctions. If EPA must withdraw the proposed full approval based on adverse comments and EPA subsequently determines that the State, in fact, did not correct the disapproval deficiencies, the sanctions consequences described in the sanctions rule will apply. See 59 FR 39832, to be codified at 40 CFR 52.31.

II. EPA Action

EPA is taking interim final action finding that the State has corrected the disapproval deficiencies that started the

sanctions clocks. Based on this action, application of the offset sanctions will be deferred and application of the highway sanctions will be deferred until EPA's final action fully approving the State's submittal becomes effective or until EPA takes action proposing or disapproving in whole or part the State submittal. If EPA's proposed rulemaking action fully approving the State submittal becomes final, at that time any sanctions clocks will be permanently stopped and any applied, stayed or deferred sanctions will be permanently lifted.

Because EPA has preliminarily determined that the State has corrected the deficiencies identified in EPA's limited disapproval actions, relief from sanctions should be provided as quickly as possible. Therefore, EPA is invoking the good cause exception under the Administrative Procedure Act (APA) in not providing an opportunity for comment before this action takes effect.[1] 5 U.S.C. 553(b)(B). EPA believes that notice-and-comment rulemaking before the effective date of this action is impracticable and contrary to the public interest. EPA has reviewed the State's submittal and, through its proposed action is indicating that it is more likely than not that the State has corrected the deficiencies that started the sanctions clocks. Therefore, it is not in the public interest to initially impose sanctions or to keep applied sanctions in place when the State has most likely done all that it can to correct the deficiencies that triggered the sanctions clocks. Moreover, it would be impracticable to go through notice-and-comment rulemaking on a finding that the State has corrected the deficiencies prior to the rulemaking approving the State's submittal. Therefore, EPA believes that it is necessary to use the interim final rulemaking process to temporarily stay or defer sanctions while EPA completes its rulemaking process on the approvability of the State's submittal. Moreover, with respect to the effective date of this action, EPA is invoking the good cause exception to the 30-day notice requirement of the APA because the purpose of this notice is to relieve a restriction. See 5 U.S.C. 553(d)(1).

III. Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. Section 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U S.C. sections 603 and 604. Alternatively, 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.

This action temporarily relieves sources of an additional burden potentially placed on them by the sanctions provisions of the Act. Therefore, I certify that it does not have an impact on any small entities.

The Office of Management and Budget (OMB) has exempted this action from review under Executive Order 12866.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, hydrocarbons, Intergovernmental regulations, Reporting and recordkeeping, Ozone, and Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: December 27, 1994.

Felicia Marcus,

Regional Administrator.

[FR Doc. 95–520 Filed 1–9–95; 8:45 am]

BILLING CODE 6560–50–P

[1] As previously noted, however, by this action EPA is providing the public with a chance to comment on EPA's determination after the effective date and EPA will consider any comments received in determining whether to reverse such action.

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40 CFR Part 52

[CT–11–1–5813; ME–11–1–6313; RI–10–1–6319; VT–6–1–6312; A–1–FRL–5120–8]

Approval and Promulgation of Air Quality Implementation Plans; Connecticut, Maine, Rhode Island, and Vermont; Emission Statements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving revisions to the respective State Implementation Plans (SIPs) for the following four States: Connecticut, Maine, Rhode Island, and Vermont. Revisions to the SIP were submitted by each of these four States to implement an emission statement program for stationary sources throughout the State. Connecticut submitted section 22a–174–4(c)(1), under the section entitled "Recordkeeping and Reporting", and amendments to the SIP narrative entitled "Revision to State Implementation Plan for Air Quality Emission Statements" on January 12, 1993. On January 3, 1994, Maine submitted Chapter 137, "Emission Statements" and amendments to Chapter 100, "Definitions." Rhode Island submitted amendments to Regulation Number 14 entitled "Record Keeping and Reporting" on January 12, 1993. On August 9, 1993, Vermont submitted a rule entitled "Registration of Air Contaminant Sources," sections 5–801 through 5–806, and a SIP Narrative, "State of Vermont Air Quality Implementation Plan, February 1993." These SIP revisions were submitted by the States to satisfy the Federal requirements for an emission statement program as part of the SIP.

EFFECTIVE DATE: This rule will become effective on February 9, 1995.

ADDRESSES: Copies of the States' submittals and other information are available for inspection during normal business hours, by appointment, at the following locations: Air, Pesticides and Toxics Management Division, US Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA 02203 and Public Information Reference Unit, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. In addition, Connecticut's submittal is available at the Bureau of Air Management, Department of Environmental Protection, State Office Building, 165 Capitol Avenue, Hartford, CT 06106; Maine's submittal is available at the Bureau of Air Quality Control, Department of Environmental Protection, State House, Station 17, Augusta, ME 04333; Rhode Island's submittal is available at the Division of Air and Hazardous Materials, Department of Environmental Management, 291 Promenade Street, Providence, RI 02908–5767; and Vermont's submittal is available at the Air Pollution Control Division, Agency of Natural Resources, Department of Environmental Management, Building 3 South, 103 South Main Street, Waterbury, VT 05676.

FOR FURTHER INFORMATION CONTACT: Daria L. Dilaj at (617) 565–3249.

SUPPLEMENTARY INFORMATION:

Background

On September 21, 1994 (59 FR 48411), EPA published a notice of proposed rulemaking (NPR) for the States of Connecticut, Maine, Rhode Island, and Vermont. The NPR proposed approval of the emission statement regulations adopted by these states. No public comments were received on the NPR.

The following SIP revisions address sections 182(a)(3)(B) and 184(b)(2) of the Clean Air Act, which require that States develop and submit, as SIP revisions, rules which establish annual reporting requirements for precursors of ozone from stationary sources.

The State of Connecticut developed an emission statement program using the existing regulatory authority given

by section 22a–174–4(c)(1), under the section entitled "Recordkeeping and Reporting". Section 22a–174–4(c)(1) was previously numbered as 19–508–4(c)(1) in Connecticut's SIP. In response to additional requirements of the emission statement program which were not covered by section 22a–174–4(c)(1), Connecticut revised its SIP narrative entitled "Revision to State Implementation Plan for Air Quality Emission Statements," and submitted it to EPA as a SIP revision on January 12, 1993.

The State of Maine formally submitted Chapter 137, "Emission Statements" and an amendment to Chapter 100 "Definitions" to address the emission statement requirements of the CAA on January 3, 1994.

On January 12, 1993, the State of Rhode Island formally submitted its Air Pollution Control Regulation Number 14 entitled "Record Keeping and Reporting" which had been amended to require emission statements.

Vermont developed an emission statement program using existing regulatory authority given by Vermont's rule entitled "Registration of Air Contaminant Sources," sections 5–801 through 5–806. In response to additional requirements of the emission statement program which were not covered by sections 5–801 through 5–806, Vermont revised its SIP narrative entitled "State of Vermont Air Quality Implementation Plan, February 1993," and submitted sections 5–801 through 5–806, and the SIP narrative, to EPA as a SIP revision on August 9, 1993.

Other specific requirements of emission statements and the rationale for EPA's proposed action are explained in the NPR and will not be restated here.

Final Action

EPA has evaluated the States' submittals for consistency with the Clean Air Act, EPA regulations, and EPA policy. EPA has determined that the proposed rules meet the Clean Air Act's requirements and is approving or reapproving the following rules under section 110(k)(3): Connecticut's section 22a–174–4(c)(1), under the section entitled "Recordkeeping and Reporting;" Rhode Island's regulation Number 14 entitled "Record Keeping and Reporting;" Vermont's rule entitled "Registration of Air Contaminant Sources," sections 5–801 through 5–806; Maine's Chapter 137, "Emission Statements" and amendments to Chapter 100, "Definitions;" and the SIP narrative revisions from Connecticut entitled "Revision to State Implementation Plan for Air Quality Emission Statements," and Vermont entitled "State of Vermont Air Quality Implementation Plan, February 1993." Based upon EPA's evaluation of Connecticut's and Rhode Island's January 12, 1993 submittals, Vermont's August 9, 1993 submittal, and Maine's January 3, 1994 submittal, EPA is approving the emission statement submissions as revisions to the ozone SIP.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State Implementation Plan. Each request for revision to any State Implementation Plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, 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, 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.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 13, 1995. 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)).

As noted elsewhere in this action, EPA received no adverse public comment on the proposed action. As a direct result, the Regional Administrator has reclassified this action from Table 2 to Table 3 under the processing procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214) and revisions to these procedures issued on October 4, 1993 in an EPA memorandum entitled "Changes to State Implementation Plan (SIP) Tables."

On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. The US EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

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, I certify 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 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).

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Note: Incorporation by reference of the State Implementation Plan for the States of Connecticut, Maine, Rhode Island, and Vermont was approved by the Director of the Federal Register on July 1, 1982.

Dated: November 14, 1994.

John P. DeVillars,

Regional Administrator, Region I.

Part 52 of 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 H—Connecticut

2. Section 52.370 is amended by adding paragraph (c)(66) to read as follows:

§ 52.370 Identification of plan.

* * * * *

(c) * * *

(66) Revisions to the State Implementation Plan submitted by the Connecticut Department of Environmental Protection on January 12, 1993.

(i) Incorporation by reference.

(A) Letter from the Connecticut Department of Environmental Protection dated January 12, 1993 submitting a revision to the Connecticut State Implementation Plan.

(B) Section 22a–174–4(c)(1) of Connecticut Regulations for the Abatement of Air Pollution, under the section entitled "Recordkeeping and Reporting." Section 22a–174–4(c)(1) was previously numbered as 19–508–4(c)(1) in Connecticut's SIP. 19–508–4(c)(1) in Connecticut's SIP. 19–508–4 became effective in the State of Connecticut on October 31, 1977. Connecticut developed an emission statement program using the existing regulatory authority given by section 22a–174–4(c)(1) under the section entitled "Reporting and Recordkeeping".

(ii) Additional information.

(A) State implementation Plan narrative entitled "Revision to State Implementation Plan for Air Quality Emission Statements" which addresses emission statement requirements not discussed specifically in Section 22a–174–4(c)(1).

(B) Nonregulatory portions of the submittal.

Subpart U—Maine

3. Section 52.1020 is amended by adding paragraph (c)(34) to read as follows:

§ 52.1020 Identification of plan.

* * * * * *

(c) * * *

(34) Revisions to the State Implementation Plan submitted by the Maine Department of Environmental Protection on January 3, 1994.

(i) Incorporation by reference.

(A) Letter from the Maine Department of Environmental Protection dated January 3, 1994 submitting a revision to the Maine State Implementation Plan.

(B) Revised Chapter 100 of the Maine Department of Environmental Protection Regulations, "Definitions" effective in the State of Maine on December 12, 1993.

(C) Chapter 137 of the Maine Department of Environmental Protection Regulations, "Emission Statements" effective in the State of Maine on December 12, 1993.

(ii) Additional Information.

(A) Nonregulatory portions of the submittal.

4. In § 52.1031, Table 52.1031 is amended by adding new entries to existing state citation "Chapter 100" and by adding new citation "Chapter 137" to read as follows:

§ 52.1031 EPA-approved Maine regulations.

* * * * *

TABLE 52.1031.—EPA-APPROVED RULES AND REGULATIONS

State citation	Title/subject	Date adopted by state	Date adopted by EPA	Federal Register citation	52.1020	
100	Definitions	Nov. 10, 1993	Jan. 10, 1995	[Insert FR citation from published date].	(c)(34)	Revised to add definitions associated with emission statement rules.
137	Emission Statements.	Nov.10, 1993	Jan. 10, 1995	[Insert FR citation from published date].	(c)(34)	

Subpart OO—Rhode Island

5. Section 52.2070 is amended by adding paragraph (c)(42) to read as follows:

§ 52.2070 Identification of plan.

* * * * *

(c) * * *

(42) Revisions to the State Implementation Plan submitted by the Rhode Island Department of Environmental Management on January 12, 1993.

(i) Incorporation by reference.

(A) Letter from the Rhode Island Department of Environmental Management dated January 12, 1993 submitting a revision to the Rhode Island State Implementation Plan.

(B) Revisions to Air Pollution Control Regulation No. 14, "Record Keeping and Reporting," filed with the Secretary of State on January 11, 1993 and effective in the State of Rhode Island on January 31, 1993.

(ii) Additional materials.

(A) Nonregulatory portions of the submittal.

6. In § 52.2081, Table 52.2081 is amended by adding a new entry to existing state citation "Regulation 14" to read as follows:

§ 52.2081 EPA-approved EPA Rhode Island State regulations.

* * * * *

TABLE 52.2081.—EPA-APPROVED RULES AND REGULATIONS

State citation	Title/subject	Date adopted by state	Date approved by EPA	FR citation	52.2070	Comments/unapproved sections
No. 14	Record Keeping and Reporting.	Jan. 11, 1993	Jan. 10, 1995	[Insert FR citation from published date].	(c)(42)	

Subpart UU—Vermont

7. Section 52.2370 is amended by adding paragraph (c)(21) to read as follows:

§ 52.2370 Identification of plan.

* * * * *

(c) * * *

(21) Revisions to the State Implementation Plan submitted by the Vermont Air Pollution Control Division on August 9, 1993.

(i) Incorporation by reference.

(A) Letter dated August 9, 1993 from the Vermont Air Pollution Control Division submitting revisions to the Vermont State Implementation Plan. Vermont resubmitted Vermont's rule entitled "Registration of Air Contaminant Sources," Sections 5–801 through 5–806 and the SIP narrative entitled "State of Vermont Air Quality Implementation Plan, February 1993" to meet the emission statement requirements of the Clean Air Act Amendments of 1990.

(B) Letter dated February 4, 1993 from the Vermont Air Pollution Control Division submitting revisions to the Vermont State Implementation Plan which included Vermont's rule entitled "Registration of Air Contaminant Sources," Sections 5–801 through 5–806 and the SIP narrative entitled "State of Vermont Air Quality Implementation Plan, February 1993" to meet the emission statement requirements of the Clean Air Act Amendments of 1990. Sections 5–801 through 5–806 were previously adopted by Vermont and became effective on April 20, 1988.

(C) Section 5–801 "Definitions," section 5–802 "Requirement for Registration," section 5–803 "Registration Procedure," section 5–804 "False or Misleading Information," section 5–805 "Commencement or Recommencement of Operation," and section 5–806 "Transfer of Operation" effective on April 20, 1988.

(ii) Additional materials.

(A) Vermont's SIP narrative entitled "State of Vermont Air Quality Implementation Plan, February 1993" which addresses emission statement requirements not covered by sections 5–801 through 5–806.

(B) Letter dated October 5, 1994 from the Vermont Air Pollution Control Division which clarifies Vermont procedures in developing the emission statement information.

(C) Nonregulatory portions of the submittal.

8. In § 52.2381 Table 52.2381 is amended by adding a new entry to existing state citation "section 5–801" and adding new state citations "5–802 through 5–806" to read as follows:

§ 52.2381 EPA-approved Vermont State regulations.

* * * * *

TABLE 52.2381.—EPA-APPROVED RULES AND REGULATIONS

State citation, title and subject	Date adopted by state	Date approved by EPA	Federal Register citation	Section 52.2370	Comments and unapproved sections
• • •	•	•	• •	•	•
Section 5–801, Definitions	4/20/88	Jan. 10, 1995 ...	[Insert *FR* citation from published date].	(c)(21)	
• •	•	•	• •	•	•
Section 5–802, Requirement for Registration.	4/20/88	Jan. 10, 1995 ...	[Insert *FR* citation from published date].	(c)(21)	
• •	•	•	• •	•	•
Section 5–803, Registration Procedure.	4/20/88	Jan. 10, 1995 ...	[Insert *FR* citation from published date].	(c)(21)	
• •	•	•	• •	•	•
Section 5–804, False or Misleading Information.	4/20/88	Jan. 10, 1995 ...	[Insert *FR* citation from published date].	(c)(21)	
• •	•	•	• •	•	•
Section 5–805, Commencement or Recommencement of Operation.	4/20/88	Jan. 10, 1995 ...	[Insert *FR* citation from published date].	(c)(21)	
• •	•	•	• •	•	•
Sections 5–806, Transfer of Operation.	4/20/88	Jan. 10, 1995 ...	[Insert *FR* citation from published date].	(c)(21).	

[FR Doc. 95–567 Filed 1–9–95; 8:45 am]
BILLING CODE 6560–50–P

40 CFR Part 70

[NM002; FRL–5136–1]

Clean Air Act Interim Approval of Operating Permits Program; City of Albuquerque Environmental Health Department, Air Pollution Control Division

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is promulgating interim approval of the operating permits program submitted by the New Mexico Governor's designee, Mr. Lawrence Rael, for the City of Albuquerque as Chief Administrative Officer, and for Bernalillo County as the administrative head of the Albuquerque/Bernalillo County Operating Permits Program, for the

purpose of complying with Federal requirements for an approvable program to issue operating permits to all major stationary sources, and to certain other sources with the exception of Indian Lands.

DATES: This direct final rule is effective on March 13, 1955 unless adverse or critical comments are received by February 9, 1995.

ADDRESSES: Written comments on this action should be addressed to Ms. Jole C. Luehrs, Chief, New Source Review Section, at the EPA Region 6 Office listed. Copies of the City's submittal and other supporting information used in developing the final rule are available for inspection during normal business hours at the following locations. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before visiting day.

Environmental Protection Agency, Region 6, Air Programs Branch (6T–AN), 1445 Ross Avenue, suite 700, Dallas, Texas 75202–2733. City of Albuquerque/Bernalillo County, Environmental Health Department, One Civic Plaza, NW., room 3023, Albuquerque, New Mexico 87103.

FOR FURTHER INFORMATION CONTACT: Adele D. Cardenas, New Source Review Section, Environmental Protection Agency, Region 6, 1445 Ross Avenue, suite 700, Dallas, Texas 75202–2733, telephone 214–665–7210.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Introduction

In title V of the 1990 Clean Air Act Amendments (sections 501–507 of the Clean Air Act ("the Act")), the EPA has promulgated rules which define the minimum elements of an approvable State/local operating permits program, and the corresponding standards and procedures by which the EPA will approve, oversee, and withdraw approval of a State/local operating permits program (see 57 FR 32250 (July 21, 1992)). These rules are codified at 40 Code of Federal Regulations (CFR) part 70. Title V requires States/local areas to develop, and submit to EPA, programs for issuing these operating permits to all major stationary sources and to certain other sources.

The Act requires that States/local areas develop and submit these programs to the EPA by November 15, 1993, and that the EPA act to approve or disapprove each program within one year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations which together outline criteria for approval and disapproval. Where a program substantially, but not fully, meets the requirements of part 70, the EPA may grant the program interim approval for a period of up to two years. If the EPA has not fully approved a program by two years after the date of November 15, 1993, or by the end of an interim program, it must establish and implement a Federal program.

The EPA is publishing this action without prior proposal because the EPA views this as a noncontroversial action and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing interim approval of the operating permits program submitted by the City of Albuquerque/Bernalillo County should adverse or critical comments be filed. Under the procedures established in the May 10, 1994, **Federal Register**, this action will be effective on March 13, 1995 unless, by February 9, 1995 adverse or critical comments are received.

II. Proposed Action and Implications

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document 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. 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 will be effective on March 13, 1995.

A. Analysis of City/County Submission

1. Support Materials

Pursuant to section 502(d) of the Act, the State/local area is required to develop and submit to the Administrator an operating permits program under State or local law or under an interstate compact meeting the requirements of title V of the Act. Bernalillo County and the City of Albuquerque within the County are granted the authority to administer a local air pollution control program by the New Mexico Air Quality Control Act. The Air Pollution Control Division (APCD) of the City of Albuquerque Environmental Health Department requested in the original submittal, under the signature of Governor Bruce King, approval with full authority to administer the City of Albuquerque/Bernalillo County Operating Permits Program, prepared by APCD, in all areas of Bernalillo County in the State of New Mexico with the exception of Indian lands.

Pursuant to NMSA 1978 section 74–2–1 *et seq.* (Repl. Pamph. 1993), Bernalillo County and the City of Albuquerque have created a joint local authority, the Albuquerque/Bernalillo County Air Quality Control Board, to adopt regulations, administer and enforce the State Air Quality Control Act, the City Joint Air Quality Control Ordinance and the Air Quality Control Board Regulations within Bernalillo County.

The City of Albuquerque/Bernalillo County submitted their final operating permits program to the EPA Regional Office on April 4, 1994. The title V program covering the City and County was signed by the Governor's designee Mr. Lawrence Rael, for the City of Albuquerque as Chief Administrative Officer and for Bernalillo County as the administrative head of the Albuquerque/Bernalillo County Operating Permits Program, for the purpose of complying with Federal requirements.

In the APCD operating permits program submittal, the City of Albuquerque/Bernalillo County does not assert jurisdiction over Indian lands or reservations. To date, no tribal government in New Mexico has authority to administer an independent air program in the County of Bernalillo. Upon promulgation of the Indian air regulations, Indian tribes will then be able to apply as States, and receive the authority from the EPA to implement an operating permits program under title V of the Act. The EPA will, where appropriate, conduct a Federal title V operating permits program in accordance with forthcoming EPA regulations, for those Indian tribes which do not apply for treatment as States under the Act.

The City of Albuquerque/Bernalillo County submittal provided an operating permits program plan which outlines items in the following sections: Item II—"Operating Permits Program Description," addresses 40 CFR 70.4(b)(1) by describing how APCD intends to carry out its responsibilities under the part 70 regulations. The program description addresses the following areas: (A) Organizational structure, (B) Regulations, guidelines, policies and procedures, and (C) Future regulatory actions (40 CFR 70.4(b)(3)(i) and (v)). The program description has been deemed to be appropriate for meeting the requirement of 40 CFR 70.4(b)(1).

Pursuant to 40 CFR 70.4(b)(3), the Governor or his designee is required to

submit a legal opinion from the Attorney General (or the attorney for the State or local air pollution control agency that has independent legal counsel) demonstrating adequate authority to carry out all aspects of a title V operating permits program. The Albuquerque City Attorney submitted a Final City Attorney's Opinion and a First and Second Supplemental City Attorney's Opinion on behalf of both the City of Albuquerque and Bernalillo County.

This is because, as explained in the Second Supplemental City Attorney's Opinion, the City Attorney provides legal advice to the City pursuant to City Ordinance 1–20–1 R.O. 1974, and the City Attorney, with the consent of Bernalillo County, is independent counsel for the joint Albuquerque/Bernalillo County Air Quality Control Board. The administrative agency for this joint board is the City Environmental Health Department, as provided in Albuquerque/Bernalillo County AQC regulations 2.12 and 1.13. The APCD, a subdivision of the City Environmental Health Department, was given the responsibility of preparing and implementing the City/County title V program. Therefore, under the authority of NMSA 1978 section 74–2–1, *et seq.*, and consistent with his role as independent counsel for the City of Albuquerque/Bernalillo County Air Quality Control Board and the City Environmental Health Department, the City Attorney in his First and Second Supplemental City Attorney's Opinion addressed the required authority to implement the City/County's title V operating permits program.

As explained in the Second Supplemental City Attorney's Opinion, the City Amended Ordinance and the County Amended Ordinance do not repeat the felony violation language of Air Quality Control (AQC) Act section 74–2–14.C verbatim. This is because of a New Mexico Constitutional requirement that felony violations must be initiated and prosecuted by the State Attorney General or the State District Attorney. State law requires all violations of City and County ordinances to be prosecuted in Metropolitan Court, for which the New Mexico Constitution limits jurisdiction to non-felony cases. Therefore, the City and County ordinances do not state that the felony violations detailed in AQC Act section 74–2–14.C are also ordinance violations. Since State statute requires that felonies committed within the City and County be initiated and prosecuted by the State Attorney General or District Attorney, this is not an obstacle to part 70 approval.

The legal opinions submitted by the City Attorney demonstrate adequate legal authority as required by Federal law and regulation to implement and enforce a part 70 operating permits program except with regard to criminal fine authority as discussed below. The City Attorney, in Albuquerque's Final City Attorney's Opinion, acknowledged that the EPA had determined that a statutory revision would be required to render the State's criminal fine authority consistent with the requirements of 40 CFR 70.11 (a)(3)(ii).

The State statutes and City and County ordinances cited in the Final City Attorney's Opinion for Albuquerque/Bernalillo County authorize the imposition of criminal fines in the amounts of only $1,000 and $5,000 for misdemeanor and felony violations, respectively, rather than the $10,000 per violation amounts required by 40 CFR 70.11(a)(3)(ii) for knowing violations of applicable requirements, permit conditions and fee and filing requirements. Further, those statutes and ordinances do not appear to authorize the fine amounts to be imposed per day per violation as required by 40 CFR 70.11(a)(3)(ii). Although these defects in criminal fine authority preclude the EPA from granting full approval of the City/County's operating permits program at this time, the EPA may grant interim approval, subject to the State, City and County obtaining and submitting to the EPA the needed criminal fine authority within 18 months after the Administrator's approval of the Albuquerque/Bernalillo County title V program pursuant to 40 CFR 70.4(f)(2). This will need to be accomplished through statutory revisions by the State of New Mexico and revisions to the City Joint AQC Board Ordinance and the County Joint AQC Board Ordinance by the City and County consistent with the amendments to State statute, and submission of those revisions to the EPA within the prescribed 18-month period.

As noted in the City Attorney's cover letter accompanying Albuquerque's First Supplemental City Attorney's Opinion, the State statute which provides for the delegation of authority from the State to Albuquerque/Bernalillo County for the City/County's operating permits program, New Mexico Statutes Annotated (NMSA) 1978 section 74–2–4, provides that any ordinances adopted by the City/County must be consistent with the substantive provisions of State statute and provide for standards and regulations not lower than those required by regulations adopted by the New Mexico Environmental Improvement Board. Therefore, as explained in the above-mentioned City Attorney's cover letter, the City/County rely on the interpretation of the State Attorney General contained in the Attorney General's Opinion and Supplemental Attorney General's Opinion submitted with the New Mexico Operating Permits Program, with respect to a number of issues discussed below.

The City/County rely on the State's Supplemental Attorney General's Opinion submitted as part of the New Mexico Operating Permits Program and contained in the EPA's docket for the New Mexico part 70 program, in their interpretation of NMSA 1978 section 74–2–14.E with regard to the underlying criminal fine authority required by 40 CFR 70.11(a)(3)(iii) for tampering and false statement. The Albuquerque Supplemental City Attorney's Opinion and accompanying cover letter also reflect that the City and County rely on the requirements of NMSA 1978 section 74–2–4 for their interpretation of the identical City Amended Ordinance, section 6–16–17.E, and the identical County Amended Ordinance, section 17.B, consistent with State statute.

The EPA is also relying on the State's interpretation of its statute, NMSA 1978 section 74–2–14.E set out in New Mexico's Supplemental Attorney General's Opinion referenced above, as demonstrating that New Mexico law allows criminal fines of at least $10,000 per day for each act of tampering and for each false statement as required by 40 CFR 70.11(a)(3)(iii), and on the City and County interpretation of their identical provisions in the City and County Amended Ordinances reflected in Albuquerque's First Supplemental City Attorney's Opinion consistent with this statutory interpretation as meeting the Federal requirement.

40 CFR 70.4(b)(3)(i) requires that a State/local agency demonstrate adequate legal authority to issue permits and assure compliance with each applicable requirement of 40 CFR part 70. Both the New Mexico regulation, Air Quality Control Regulation (AQCR) 770.III.C.1.d and the Albuquerque/Bernalillo County regulation, Air Quality Control (AQC) 41.03(C)(1)(d), state that "the department may impose conditions regulating emissions during start-up and shutdown." The EPA is relying on the State's interpretation of this language, discussed in the State's Supplemental Attorney General's Opinion referenced above, and the City/County interpretation of their corresponding regulation as set out in Albuquerque's First Supplemental City Attorney's Opinion, in interpreting this language to

allow the permitting authority to impose requirements which exceed title V applicable requirements, but not to waive any title V requirements for title V sources.

40 CFR 70.4(b)(4) requires the submission of relevant permitting program documentation not contained in the regulations, such as permit forms and relevant guidance to assist in the City's implementation of its permits program. The City of Albuquerque/Bernalillo County address this requirement in the operating permits program plan part of the submittal under Section IV—Appendices B, C and H.

2. Regulations and Program Implementation

The City of Albuquerque/Bernalillo County have submitted Air Quality Control (AQC) regulation No. 41—"Operating Permit Regulations" and AQC No. 21—"Fee Regulations," for implementing the City of Albuquerque/Bernalillo County part 70 program as required by 40 CFR 70.4(b)(2). Sufficient evidence of their procedurally correct adoption was submitted in the final submittal on April 4, 1994. Copies of all applicable State and local statutes and regulations which authorize the part 70 program, including those governing State/City administrative procedures, were submitted with the City's program. The City of Albuquerque/Bernalillo County also submitted a list of insignificant activities with the submittal for the EPA's review and approval with the City/County operating permits program. This list, which underwent the City/County public participation process during the operating permits regulation hearing, is being approved by the Regional Office with this document. The list can be found in the submittal under Item II—"Operating Permits Program Description," Attachment II–3—"List of Insignificant Activities."

The City of Albuquerque/Bernalillo County operating permits regulations followed the State of New Mexico operating permits regulation AQCR 770. The State's regulations follow part 70 very closely with a few exceptions. The cross-reference chart submitted with the State's operating permits program submission can also be used for reviewing the City/County's program due to the close similarity of the State and City/County permit regulations. The New Mexico submittal addresses the cross-reference chart under Item VI—"Various Provisions", Attachment VI–1, indicating where each paragraph of the part 70 regulation is addressed in AQCR 770. The City submitted AQC 41, the Operating Permits Regulations for the City, as Attachment I in the Final City Attorney's Opinion. The following requirements, set out in the EPA's part 70 operating permits program review, are addressed in the operating permits program plan and in AQC 41—Attachment I of the City/County's submittal as follows: (A) Applicability criteria, including any criteria used to determine insignificant activities or emissions levels (40 CFR 70.4(b)(2)): AQC 41.02, "List of Insignificant Activities"; (B) Provisions for continuing permits or permit terms if a timely and complete application is submitted, but action is not taken on a request prior to permit expiration (40 CFR 70.4(b)(10)): AQC 41.04(A)(4); (C) Provisions for action on permit applications (40 CFR 70.4(b)(6)): AQC 41.04(A)(3); (D) Provisions for permit content (including 40 CFR 70.4(b)(16)): all applicable requirements: AQC 41.03(C)(1); a fixed term: AQC 41.03(C)(2); monitoring and related recordkeeping and reporting requirements: AQC 41.03(C)(3) through (5); source compliance requirements: AQC 41.03(C)(7); (E) Operational flexibility provisions (40 CFR 70.4(b)(12)): AQC 41.03(C)(8); (F) Provisions for permit issuance, renewals, reopenings and revisions, including public, the EPA and affected State review to be accomplished in an expeditious manner (40 CFR 70.4(b)(13) and (16)): AQC 41.04; and (G) If the permitting authority allows off-permit changes, provisions assuring compliance with sections 70.4(b)(14) and (15): AQC 41(C)(9). The AQC regulations in section 41.04(H) provide that applicants can receive variances from non-Federal conditions only. The City/County prevent any source from receiving a variance from any AQC 41 or part 70 requirement. The City of Albuquerque/Bernalillo County's definition of "title I modification" does not include changes reviewed under a minor new source preconstruction review program ("minor NSR changes"). The EPA is currently in the process of determining the proper definition of that phrase. As further explained below, EPA has solicited public comment on whether the phrase "modification under any provision of title I of the Act" in 40 CFR 70.7(e)(2)(i)(A)(5) should be interpreted to mean literally any change at a source that would trigger permitting authority review under regulations approved or promulgated under Title I of the Act. This would include State preconstruction review programs approved by EPA as part of the State Implementation Plan under section 110(a)(2)(C) of the Clean Air Act and regulations addressing source changes that trigger the application for National Emission Standard for Hazardous Air Pollutants (NESHAP) established pursuant to section 112 of the Act prior to the 1990 Amendments.

For the reasons set forth in the EPA's proposed rulemaking to revise the interim approval criteria of 40 CFR part 70 (59 FR 44572, August 29, 1994), the EPA believes the phrase "modification under any provision of title I of the Act" in 40 CFR 70.7(e)(2)(i)(A)(5) is best interpreted to mean literally any change at a source that would trigger permitting authority review under regulations approved or promulgated under title I of the Act. This would include State/local preconstruction review programs approved by EPA as part of the State Implementation Plan under section 110(a)(2)(C) of the Act and regulations addressing source changes that trigger the application of NESHAPs established pursuant to section 112 of the Act prior to the 1990 amendments, and would include minor NSR changes not covered under the City of Albuquerque/Bernalillo County operating permits program's definition of "title I modification".

On August 29, 1994, the EPA proposed revisions to its criteria for interim approval of State/local operating permits programs under 40 CFR 70.4(d) to allow State/local operating permits programs with a narrower definition of "title I modification" like the City of Albuquerque/Bernalillo County's to receive interim approval (59 FR 44572). The EPA also solicited public comment on the proper interpretation of "title I modification." (59 FR 44572, 44573). The EPA stated that if, after considering the public comments, it continued to believe that the phrase "title I modifications" should be interpreted as including minor NSR changes, it would revise the interim approval criteria as needed to grant States/locals that adopted a narrower definition, interim approval.

The EPA intended to finalize its revisions to the interim approval criteria under 40 CFR 70.4(d) before taking final action on part 70 operating permits programs submitted by the State/locals. However, it will not be possible to delay approval of operating permits programs until final action has been taken on EPA's proposed revisions to the part 70 interim approval criteria. This is because publication of the proposed revisions was delayed until August 29, 1994, and the EPA received several requests to extend the public comment

period until November 27, 1994.[1] Given the importance of the issues in that rulemaking to States/locals, sources and the public, but mindful of the need to take action quickly, the EPA agreed to extend the comment period until October 28, 1994 (see 59 FR 52122 (October 14, 1994)). Consequently, final action to revise the interim approval criteria will not occur before the deadline for EPA action on State/local operating permits programs such as the City of Albuquerque/Bernalillo County's, that were submitted on or before November 15, 1993.[2] The EPA believes it would be inappropriate to delay action on the City of Albuquerque/Bernalillo County's operating permits program, perhaps for several months, until final action is taken on the proposed revisions to the part 70 interim approval criteria. The EPA also believes it would be inappropriate to grant interim approval to the City of Albuquerque/Bernalillo County on this issue before final action is taken to revise the current interim approval criteria of 40 CFR 70.4(b) to provide a legal basis for such an interim approval. Until the revision to the interim approval criteria is promulgated, the EPA's choices are to either fully approve or disapprove the narrower "title I modification" definition in States/locals such as the City of Albuquerque/Bernalillo County. For the reasons set forth below, the EPA believes that disapproving such operating permits programs at this time based solely on this issue would be inappropriate.

First, the EPA has not yet conclusively determined that a narrower definition of "title I modification" is incorrect and thus a basis for disapproval (or even interim approval). The EPA has received numerous comments on this issue as a result of the August 29, 1994, **Federal Register** document, and the EPA cannot and will not make a final decision on this issue until it has evaluated all comments on that proposed rulemaking. Second, the EPA believes that the City of Albuquerque/Bernalillo County Operating Permits Program should not be disapproved because the EPA itself has not yet been able to resolve this issue through rulemaking. Moreover, disapproving operating permits programs from States/locals such as the City of Albuquerque/Bernalillo County that submitted their operating permits programs to the EPA on or before the November 15, 1993, statutory deadline, could lead to the unfair result that these States/locals would receive disapprovals, while States/locals which were late in submitting operating permits programs could take advantage of revised interim approval criteria should those criteria become final. In effect, States/locals would be severely penalized for having made timely operating permits program submissions to the EPA. Finally, disapproval of a State/local operating permits program for a potential problem that primarily affects permit revision procedures would delay the issuance of part 70 permits, hampering State/local/Federal efforts to improve environmental protection through the operating permits program.

For the reasons mentioned above, the EPA is approving the City of Albuquerque/Bernalillo County Operating Permits Program's use of the narrower definition of "title I modification" at this time.[3] However, should the EPA in the interim approval criteria rulemaking make a final determination that such a narrow definition of "title I modification" is incorrect and that a revision of the interim approval criteria is warranted, the EPA will propose further action on City of Albuquerque/Bernalillo County's operating permits program so that the City/County's definition of "title I modification" could become grounds for interim approval requiring revision prior to the EPA's granting of full approval to that program.[4] An operating permits program like the City of Albuquerque/Bernalillo County's that receives full approval of its narrower "title I modification" definition pending completion of the EPA's rulemaking must ultimately be placed on an equal footing with programs of States/locals that receive interim approval in later months under any revised interim approval criteria because of the same issue. Converting the full approval on this issue to an interim approval after the EPA completes its rulemaking would avoid this inequity. The EPA anticipates that an action to convert the full approval on the "title I modification" issue to an interim approval would be effected through an additional rulemaking, so as to ensure that there is adequate notice of the change in approval status.

3. Permit Fee Demonstration

In AQC 21, the City/County's fee regulation, the City/County board established fees for criteria air pollutants which are below the presumptive minimum set out in 40 CFR 70.9(b)(2)(iv). The City/County regulation allows for a fee of $22.00 per ton for criteria pollutants based on allowable emissions at major sources as defined in AQC Number 41—"Operating Permits" regulations. For facilities which are also major for hazardous air pollutants (HAP), the fees are $250 per ton for the 189 HAPs listed in title III of the 1990 Amendments. These fees, when converted using the EPA criteria, result in the collection of an average of $29.84 per ton for title V sources. The City/County board, after careful review, determined that these fees would support the title V permit program costs as required by 40 CFR 70.9(a). The City of Albuquerque/Bernalillo County explain in their fee demonstration that they chose this fee structure because it allowed for program costs to be covered without unduly penalizing any industry, and the fees generated would meet, but not likely exceed, program costs. The APCD will conduct a periodic review of the program fee schedule. The City of Albuquerque/Bernalillo County fee demonstration shows that this fee schedule meets the requirements for an operating permits program in the City of Albuquerque and Bernalillo County. The APCD will collect $292,518 dollars per year to support all applicable part 70 activities for the City/County. The APCD projects the direct cost to fund the operation of the title V program to be approximately $195,000 dollars per year, and the indirect cost to be approximately $97,500. The APCD anticipates increasing its air quality staff by 6.3 new full time employees, a total of ⅓ of the existing air program staff. Any changes in the fees would need to be made by APCD through the Albuquerque/Bernalillo County Air Control Board.

4. Provisions Implementing the Requirements of Other Titles of the Act

The City of Albuquerque/Bernalillo County acknowledge that their request for approval of a part 70 program is also a request for approval of a program for

[1] EPA originally established a 30-day public comment period for the August 29, 1994, proposal. In response to several requests for extension, however, EPA agreed to allow an additional thirty days for public comments. See 59 FR 52122 (October 14, 1994).

[2] Section 502(d) requires, in relevant part, that "[n]ot later than 1 year after receiving a program, and after notice and opportunity for public comment. the Administrator shall approve or disapprove such program, in whole or in part."

[3] At the present time, therefore, the EPA is not construing 40 CFR sections 70.7(e)(2)(i)(A)(3) and 70.7(e)(2)(i)(A)(5) to prohibit Albuquerque/Bernalillo County from allowing minor NSR changes to be processed as minor permit modifications.

[4] State programs with a narrower "title I modification" definition that are acted upon by EPA *after* an Agency decision that such a narrower definition is inappropriate would be considered deficient, but would be eligible for interim approval under revised 40 CFR section 70.4(b).

delegation of unchanged section 112 standards under the authority of section 112(l) as they apply to part 70 sources. Upon receiving approval under section 112(l), the City of Albuquerque/Bernalillo County may receive delegation of any new authority required by section 112 of the Act through the delegation process.

The City of Albuquerque/Bernalillo County have the option at any time to request, under section 112(l) of the Act, delegation of section 112 requirements in the form of City regulations which the City/County demonstrate are equivalent to the corresponding section 112 provisions promulgated by the EPA. At this time, the City/County plan to use the mechanism of incorporation by reference to adopt unchanged Federal section 112 requirements into their regulations.

The radionuclide NESHAP is a section 112 regulation and therefore, also an applicable requirement under the City/County operating permits program for part 70 sources. There is not yet a Federal definition of "major" for radionuclide sources. Therefore, until a major source definition for radionuclides is promulgated, no source would be a major section 112 source solely due to its radionuclide emissions. However, a radionuclide source may, in the interim, be a major source under part 70 for another reason, thus requiring a part 70 permit. The EPA will work with the City/County in the development of their radionuclide program to ensure that permits are issued in a timely manner.

Section 112(g) of the Act requires that, after the effective date of a permits program under title V, no person may construct, reconstruct or modify any major source of any HAPs unless the State/local agency determines that the maximum achievable control technology (MACT) emission limitation under section 112(g) will be met. Such determination must be made on a case-by-case basis where no applicable limitations have been established by the Administrator. During the transition period from the title V effective date to the date the City/County have taken appropriate action to implement the final section 112(g) Federal rule, proposed on April 1994 (59 FR 15504), (either by adoption of the unchanged Federal rule or approval of an existing State rule under section 112(l)), the City of Albuquerque/Bernalillo County intend to implement section 112(g) of the Act through the City/County's preconstruction process using a two-pronged approach.

Immediately upon approval of their operating permits program, the City/County intend to implement section 112(g) through their existing preconstruction rule, AQC Regulation 20. This rule was previously approved by the EPA to implement the preconstruction requirements of title I of the Act.

The second phase of the City/County's section 112(g) implementation approach during the transition period is expected to be based on the City/County board's adoption of the New Mexico State rule, AQCR 755, into their existing City/County regulations, AQC Regulation 20 and Regulation 41. The New Mexico State rule, AQCR 755 clarifies the requirements set out in the proposed Federal section 112(g) rule and its preamble.

The City/County anticipate that the incorporation of the language of the State rule into City/County AQC Regulations 20 and 41 will be effective by mid-March 1995. When final, this incorporation is expected to enhance the mechanism contained in Albuquerque's existing preconstruction rule, AQC Regulation 20, for the implementation of section 112(g). If the New Mexico State rule AQCR 755 is not finally incorporated by the City/County, or is incorporated with substantial changes from the State rule as promulgated, the City/County rule, AQC Regulation 20 will continue to provide authority for the implementation of Federal section 112(g). After the final Federal section 112(g) rule is promulgated, the City/County will be required to formally revise their rules accordingly.

The City of Albuquerque/Bernalillo County commit to appropriately implementing the existing and future requirements of sections 111, 112, and 129 of the Act, and all MACT standards promulgated in the future, in a timely manner. This includes a commitment to implement both promulgated section 112 Federal standards and section 112 requirements such as section 112(g) that are not federally promulgated standards.

The City of Albuquerque/Bernalillo County commit to having an acid rain program in place by April 1995. The EPA acknowledges that this date, which is later than the January 1, 1995, date set out in the EPA policy, is a result of the fact that Albuquerque/Bernalillo County will rely on the State's regulations for the development of their final acid rain regulations. Therefore, the City/County rule adoption process requires that they await final action on the State's rules prior to taking final action on their acid rain rules. This is consistent with the requirement of NMSA section 74–2–4, that the City/County requirements be no less stringent than the corresponding State requirements. The State will meet the January 1995 date as required in policy drafted by the Acid Rain Division, and the City of Albuquerque/Bernalillo County will have their acid rain program in place by April 1995. The City/County commit to submitting copies of their draft acid rain rules, regulations and guidance for review and comment to meet the Federal implementation date to issue permits by December 1997.

5. Enforcement Provisions

The APCD's operating permits program submittal addressed the enforcement requirements of 40 CFR 70.4(b)(4)(ii) and 70.4(b)(5) in the operating permit program plan, Section IV(E)—"Operating Permit Program Enforcement Procedures." A copy of the signed Memorandum of Understanding between the EPA Region 6 and the APCD is kept in the Region 6 file room. This document, which is a product of negotiations between the EPA Region 6 and the APCD, was signed prior to the submittal date of the operating permits program. The Operating Permits Program Plan, Sections IV(D), IV(E) and IV(F) of the City/County's submittal, addresses the following issues: (A) Compliance tracking and enforcement plan (40 CFR 70.4(b)(4)(ii) and 70.4(b)(5)); (B) Commitment to submit enforcement information (40 CFR 70.4(b)(9)); and (C) Enforcement authority (40 CFR 70.4(b)(2) and 70.4(b)(3)(vii)).

6. Technical Support Document

The results of this review are shown in the document entitled "Technical Support Document," which is available in the docket at the locations noted above. The technical support documentation shows that all operating permits program requirements of part 70 and relevant guidance were met by the submittal for the APCD, except with regard to criminal fine authority.

7. Summary

The City of Albuquerque/Bernalillo County submitted to the EPA, an operating permits program under a cover letter dated March 25, 1994, from the New Mexico Governor's designee Mr. Lawrence Rael, for the City of Albuquerque as Chief Administrative Officer and for Bernalillo County as the administrative head of the Albuquerque/Bernalillo County Operating Permits Program. This program was submitted for the purpose of complying with Federal requirements regarding an operating permits program. The submittal has adequately addressed all sixteen (16) elements required for

full approval as discussed in part 70, except with regard to criminal fine authority. The City of Albuquerque/ Bernalillo County addressed appropriately all requirements necessary to receive interim approval of the City/County's operating permits program pursuant to title V, the 1990 Amendments and 40 CFR part 70.

B. Options for Approval/Disapproval and Implications

The EPA is promulgating interim approval of the operating permits program submitted by the City of Albuquerque for Albuquerque/ Bernalillo County on April 4, 1994. Interim approvals under section 502(g) of the Act do not create any new requirements, but simply approve requirements that the State/local area is already imposing. The City/County must make the following changes for this program to receive full approval: Following the State's correction of the statutory defect in criminal fine authority, correct the corresponding defects in City and County Ordinances for Albuquerque and Bernalillo County. In addition to raising the criminal fine amounts to at least $10,000 for all offenses listed in 40 CFR 70.11(a)(3)(ii), statutory and ordinance revisions must provide authority for the imposition of those fines on a per day per violation basis, as required by 40 CFR 70.11(a)(3)(ii).

Evidence of these statutory and ordinance revisions and their procedurally correct adoption must be submitted to the EPA within 18 months of the EPA's approval of the Albuquerque/ Bernalillo County Operating Permits Program. This interim approval, which may not be renewed, extends for a period of two years. During the interim approval period, the City of Albuquerque/ Bernalillo County are protected from sanctions for failure to have a program, and the EPA is not obligated to promulgate a Federal permit program in the City of Albuquerque/ Bernalillo County. Permits issued under a program with interim approval have full standing with respect to part 70, and the one-year time period for submittal of permit applications by subject sources begins upon interim approval, as does the three-year time period for processing the initial permit applications.

If this interim approval is converted to a disapproval, it will not affect any existing City/County requirements applicable to small entities. Federal disapproval of the City of Albuquerque/ Bernalillo County submittal would not affect its local enforceability. Moreover, the EPA's disapproval of the submittal would not impose a new Federal requirement. Therefore, the EPA certifies that such a disapproval action would not have a significant impact on a substantial number of small entities because it would not remove existing City requirements or substitute a new Federal requirement.

III. Proposed Rulemaking Action

In this action, the EPA is promulgating interim approval of the operating permits program submitted by the City of Albuquerque for Albuquerque/Bernalillo County. The program was submitted to EPA by the Governor's designee for the City/County for the purpose of complying with Federal requirements found in title V of the 1990 Amendments, and in 40 CFR part 70, which mandate that States/local areas develop, and submit to the EPA, programs for issuing operating permits to all major stationary sources, and to certain other sources with the exception of Indian Lands.

Requirements for title V approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of Federal section 112 standards as they apply to part 70 sources. Section 112(l)(5) requires that the State/local program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, as part of this interim approval, the EPA is also promulgating approval of the City/ County program under section 112(l)(5) and 40 CFR 63.91 for the purpose of the City/County receiving delegation of section 112 standards that are unchanged from Federal standards as promulgated. This program for delegations only applies to sources covered by the part 70 program.

The EPA's policy is to apply sanctions to State/local programs if the Governor or his designee fails to submit a corrected program for full approval within 18 months after the due date for the submittal. If the City/County fail to submit a complete corrected program for full approval by June 10, 1996, the EPA will start an 18-month clock for mandatory sanctions. If the City/County program fail to submit a complete program before the expiration of that 18-month period, the EPA would impose sanctions. If the EPA disapproves the City/County's corrective program, and has not determined that the City/County have corrected the deficiency within 18 months after the disapproval, then the EPA must impose mandatory sanctions. In either case, if the City/County have not come into compliance, EPA applies the first sanction. In addition, discretionary sanctions may be applied where warranted any time after the end of the interim approval period if the City/County have not submitted a complete corrective program or EPA has disapproved a corrective program. If the EPA has not granted full approval to the City/County program by January 10, 1997, the EPA must promulgate, administer, and enforce a Federal operating permits program for the City of Albuquerque Environmental Health Department, Air Pollution Control Division.

The EPA has reviewed this submittal of the Albuquerque/ Bernalillo County Operating Permits Program and is promulgating interim approval. Certain defects in the State's statutory criminal fine authority and the City/County ordinances preclude the EPA from granting full approval of the City/ County's operating permits program. The EPA is promulgating interim approval of the City/County operating permits program, and the State, City and County will need to obtain the needed criminal fine authority within 18 months after the Administrator's approval of this program pursuant to 40 CFR 70.4 in order for the City of Albuquerque/Bernalillo County's title V program to be eligible for full approval.

IV. Administrative Requirements

A. Request for Public Comments

The EPA is requesting comments on all aspects of this final rule. Copies of the City/County's submittal and other information relied upon for the proposed interim 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 rulemaking. The principal purposes of the docket are:

(1) to allow interested parties a means to identify and locate documents so that they can effectively participate in the rulemaking process, and

(2) to serve as the record in case of judicial review. The EPA will consider any comments received by February 9, 1995.

B. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 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.

Operating permits program approvals under section 502 of the Act do not create any new requirements, but simply approve requirements that the City/County are already imposing. Therefore, because the Federal operating permits program approval does not impose any new requirements, I certify 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 Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State/local action. The Act forbids the EPA from basing its actions concerning operating permits programs 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)).

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedures, Intergovernmental relations, Operating permits.

Dated: December 23, 1994.

A. Stanley Meiburg,

Acting Regional Administrator (6A).

40 CFR part 70 is amended as follows:

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. Appendix A to part 70 is amended by adding paragraph (b) to the entry for New Mexico to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

New Mexico

* * * * *

(b) City of Albuquerque Environmental Health Department, Air Pollution Control Division: submitted on April 4, 1994; effective on March 13, 1995; interim approval expires August 10, 1996.

* * * * *

[FR Doc. 95–547 Filed 1–9–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 271

[FRL–5136–2]

Kentucky; Final Authorization of Revisions to State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: Kentucky has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). Kentucky's revisions consist of the provisions contained in Non-HSWA Clusters IV and V. These requirements are listed in Section B of this notice. The Environmental Protection Agency (EPA) has reviewed Kentucky's applications and has made a decision, subject to public review and comment, that Kentucky's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve Kentucky's hazardous waste program revisions. Kentucky's applications for program revisions are available for public review and comment.

DATES: Final authorization for Kentucky's program revisions shall be effective March 13, 1995 unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. All comments on Kentucky's program revision applications must be received by the close of business February 9, 1995.

ADDRESSES: Copies of Kentucky's program revision applications are available during normal business hours at the following addresses for inspection and copying: Kentucky Department for Environmental Protection, Division of Waste Management, Fort Boone Plaza, Building 2, 18 Reilly Road, Frankfort, Kentucky 40601 (502) 564–6716; U.S. EPA Region IV, Library, 345 Courtland Street, NE, Atlanta, Georgia 30365; (404) 347–4216. Written comments should be sent to Al Hanke at the address listed below.

FOR FURTHER INFORMATION CONTACT: Al Hanke, Chief, State Programs Section, Waste Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, 345 Courtland Street, NE, Atlanta, Georgia 30365; (404) 347–2234.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under Section 3006(b) of the Resource Conservation and Recovery Act ("RCRA" or "the Act"), 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Public Law 98–616, November 8, 1984, hereinafter "HSWA") allows States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive "interim authorization" for the HSWA requirements under Section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later apply for final authorization for the HSWA requirements.

Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR Parts 260–268 and 124 and 270.

B. Kentucky

Kentucky initially received final authorization for its base RCRA program effective on January 31, 1985. Kentucky has received authorization for revisions to its program on December 19, 1988, March 20, 1989, May 15, 1989, and November 30, 1992. On August 3, 1994, Kentucky submitted program revision applications for additional program approvals. Today, Kentucky is seeking approval of its program revisions in accordance with 40 CFR 271.21(b)(3).

EPA has reviewed Kentucky's applications and has made an immediate final decision that Kentucky's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional program modifications to Kentucky. The public may submit written comments on EPA's immediate final decision up until February 9, 1995.

Copies of Kentucky's application for these program revisions are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this notice.

Approval of Kentucky's program revisions shall become effective March 13, 1995, unless an adverse comment pertaining to the State's revisions discussed in this notice is received by the end of the comment period.

If an adverse comment is received EPA will publish either (1) a withdrawal of the immediate final decision or (2) a notice containing a response to

comments which either affirms that the immediate final decision takes effect or reverses the decision.

EPA shall administer any RCRA hazardous waste permits, or portions of permits that contain conditions based upon the Federal program provisions for which the State is applying for authorization and which were issued by EPA prior to the effective date of this authorization. EPA will suspend issuance of any further permits under the provisions for which the State is being authorized on the effective date of this authorization.

Kentucky is today seeking authority to administer the following Federal requirements promulgated on July 1, 1987–June 30, 1988, known as Non-HSWA Cluster IV and on July 1, 1988–June 30, 1989, known as Non-HSWA Cluster V.

Checklist	Federal requirement	FR reference	FR promulgation date	State authority
40	List (Phase I) Hazardous Constituents for Groundwater Monitoring.	52 FR 25942	7/9/87	KRS 224.46–510(3); KRS 224.46–520(1)&(4); 401 KAR 34:060 9(8)(b), 9(8)(c), 9(8)(d)1 & 10(6); 401 KAR 34:360 1 & 2; 401 KAR 38:100 2(4)(b).
41	Identification and Listing of Hazardous Waste.	52 FR 26012	7/10/87	KRS 224.46–510(3); KRS 224.46–530(2); 401 KAR 31:040 4(3), 4(5), 4(6).
43	Liability Requirements for Hazardous Waste Facilities; Corporate Guarantee.	52 FR 44314	11/18/87	KRS 224.46–505; KRS 224.46–520(3)&(6); KRS 224.46–530(1)&(2); 401 KAR 34:120 7(2)(a) & 7(2)(b); 401 KAR 34:165 1(2); 401 KAR 35:120 7(2)(a) & 7(2)(b).
45	Hazardous Waste Miscellaneous Units.	52 FR 46946	12/10/87	KRS 224.46–520(1),(3),(4); 401 KAR 34:050 4(2)(f); KRS 224.46–530(1)(2); 401 KAR 30:010 1(85)(g) & (i); 401 KAR 34:020 1(2), 6(2)(d), 9(2)(a), 9(2)(b); 401 KAR 34:060 1(4); 401 KAR 35:070 2(3), 3(1)(b), 5, 8(1)(a)1, 8(1)(a)2, 9(2)(a), 9(2)(b)1, 9(2)(b)2; 401 KAR 34:090 1(1); 401 KAR 34:100 1(1); 401 KAR 34:120 2; 401 KAR 34:250 1–4; 401 KAR 38:090 2(5)&(13); 401 KAR 38:230 1(1)–(5); KRS 224.40–305.
46	Identification and Listing of Hazardous Waste; Technical Correction.	53 FR 13382	4/22/88	KRS 224.46–510(3); KRS 224.46–530(2); 401 KAR 31:040 4(3); 4(5), 4(6).
49	Identification and Listing of Hazardous Waste; Treatability Studies Sample Exemption.	53 FR 27290	7/19/88	KRS 224.46–510(3); 401 KAR 30:010 1(217); 401 KAR 31:010 4(5).
52	Hazardous Waste Management System; Standards for Hazardous Waste Storage and Treatment Tank Systems.	53 FR 34079	9/2/88	KRS 224.46–520(1); KRS 224.46–530(1)(e), (1)(g), (1)(m), (2); 401 KAR 30:010 1(86)&(87); 401 KAR 34:070 5; 401 KAR 34:190 1(1), 1(2), 4(6)(c), 4(7)(c)3; 401 KAR 35:070 1(2), 5.
53	Identification and Listing of Hazardous Waste and Designation of Reportable Quantities and Notification.	53 FR 35412	9/13/88	KRS 224.01–010(31)(b); KRS 224.46–510(2) & (3); KRS 224.46–530(1) & (2); 401 KAR 31:040 3,4(5) & (6); 401 KAR 31:030; 401 KAR 31:040.
54	Permit Modifications for Hazardous Waste Management Facilities.	53 FR 37912 53 FR 41649	9/28/88 10/24/88	KRS 224.40–310 (2), (4), (5) & (8); KRS 224.46–520(1) & (3); KRS 224.46–530(1)(e) & (1)(g); 401 KAR 38:040 3.
55	Statistical Methods for Evaluating Groundwater Monitoring Data From Hazardous Waste Facilities.	53 FR 39720	10/11/88	KRS 224.46–520; KRS 224.46–530(1)(g), 1(h), (1)(i); 401 KAR 34:060 2(1), 3, 8(1), 8(7)–(10), 9(3)–(4), 9(6)–(8), 10(3)–(4), 10(6)–(10).
56	Identification and Listing of Hazardous Waste; Removal of Iron Dextran from the List of Hazardous Wastes.	53 FR 43878	10/31/88	KRS 224.01–010(31)(b); KRS 224.46–510(2)–(3); KRS 224.46–530(1)–(2); 401 KAR 31:040 3, 4(5)–(6).
57	Identification and Listing of Hazardous Waste; Removal of Strontium Sulfide from the List of Hazardous Wastes.	53 FR 43881	10/31/88	KRS 224.01–010(31)(b); KRS 224.46–510(2)–(3); KRS 224.46–530(1)–(2); 401 KAR 31:040 3, 4(5)–(6).
59	Hazardous Wastes Miscellaneous Units; Standards Applicable to Owners and Operators; Technical Correction.	54 FR 615	1/9/89	KRS 224.01–510(3); KRS 224.46–520(1)&(3); KRS 224.46–530(1)(e)–(g); 401 KAR 38:090 2(5) & 2(13).
60	Amendment to Requirements for Hazardous Waste Incinerator Permits.	54 FR 4286	1/30/89	KRS 224.40–310; KRS 224.46–520(1); 401 KAR 38:060 3(4).
61	Changes to Interim Status Facilities for Hazardous Waste Management Permits; Modifications of Hazardous Waste Permits; Procedures for Post-Closure Permitting.	54 FR 9596	3/7/89	KRS 224.46–520(1)(2)(3)&(4); 401 KAR 38:020 3(1)–(2); KRS 224.46–530(1)(a)–(f)&(2); 401 KAR 38:010 1(2); 401 KAR 38:050 12(1); 401 KAR 38:040 3; 401 KAR 38:070 11.

Kentucky is not authorized to operate the Federal program on Indian Lands. This authority remains with EPA unless provided otherwise in a future statute or regulation.

C. Decision

I conclude that Kentucky's applications for these program revisions meet all of the statutory and regulatory requirements established by RCRA. Accordingly, Kentucky is granted final authorization to operate its hazardous waste program as revised.

Kentucky now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA program, subject to the limitations of its program revision applications and previously approved authorities. Kentucky also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under sections 3008, 3013, and 7003 of RCRA.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Kentucky's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of Sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: December 19, 1994.

Patrick M. Tobin,

Acting Regional Administrator

[FR Doc. 95–592 Filed 1–9–95; 8:45 am]

BILLING CODE 6560–50–M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 302–11

[FTR Amendment 43]

RIN 3090–AF56

Federal Travel Regulation; Relocation Income Tax (RIT) Allowance Tax Tables

AGENCY: Federal Supply Service, GSA.

ACTION: Final rule.

SUMMARY: The Federal, State, and Puerto Rico tax tables for calculating the relocation income tax (RIT) allowance must be updated yearly to reflect changes in Federal, State, and Puerto Rico income tax brackets and rates. The Federal, State, and Puerto Rico tax tables contained in this rule are for calculating the 1995 RIT allowance to be paid to relocating Federal employees.

DATES: *Effective dates:* The new tables in this final rule are effective January 1, 1995. The change to the 1992 Puerto Rico tax table in this final rule is effective January 1, 1993.

Applicability dates: The new tables in this final rule apply for RIT allowance payments made on or after January 1, 1995. The change to the 1992 Puerto Rico tax table in this final rule applies for RIT allowance payments made on or after January 1, 1993.

FOR FURTHER INFORMATION CONTACT: Robert A. Clauson, General Services Administration, Transportation Management Division (FBX), Washington, DC 20406, telephone 703–305–5745.

SUPPLEMENTARY INFORMATION: This amendment provides the tax tables necessary to compute the relocation income tax (RIT) allowance for employees who are taxed in 1995 on moving expense reimbursements. In addition, the Internal Revenue Service (IRS) informed the General Services Administration (GSA) that the Puerto Rico tax table for 1992 which the IRS provided GSA contained an error. This amendment corrects that error.

GSA has determined that this rule is not a significant regulatory action for the purposes of Executive Order 12866 of September 30, 1993. This final rule is not required to be published in the **Federal Register** for notice and comment. Therefore, the Regulatory Flexibility Act does not apply.

List of Subjects in 41 CFR Part 302–11

Government employees, Income taxes, Relocation allowances and entitlements, Transfers.

For the reasons set out in the preamble, 41 CFR part 302–11 is amended to read as follows:

PART 302–11—RELOCATION INCOME TAX (RIT) ALLOWANCE

1. The authority citation for part 302–11 continues to read as follows:

Authority: 5 U.S.C. 5721–5734; 20 U.S.C. 905(a), E.O. 11609, 36 FR 13747, 3 CFR, 1971–1975 Comp., p. 586; E O. 12466, 49 FR 7349, 3 CFR, 1984 Comp., p. 165.

2. Appendixes A, B, C, and D to part 302–11 are amended by adding the following tables at the end of each appendix, respectively; and by removing the rate "33" from the table titled "Puerto Rico Marginal Tax Rates by Earned Income Level—Tax Year 1992" in appendix D, and adding in its place the rate "36":

Appendix A to Part 302–11—Federal Tax Tables for RIT Allowance

* * * * *

Federal Marginal Tax Rates by Earned Income Level and Filing Status—Tax Year 1994

The following table is to be used to determine the Federal marginal tax rate for Year 1 for computation of the RIT allowance as prescribed in § 302–11.8(e)(1). This table is to be used for employees whose Year 1 occurred during calendar year 1994.

Marginal tax rate (percent)	Single taxpayer		Heads of household		Married filing jointly/ qualifying widows and widowers		Married filing separately	
	Over	But not over	Over	But not over	Over	But not over	Over	But not over
15	$6,492	$30,068	$11,603	$43,304	$15,846	$55,773	$7,738	$27,855
28	30,068	67,256	43,304	97,172	55,773	115,653	27,855	58,980

Marginal tax rate (percent)	Single taxpayer		Heads of household		Married filing jointly/ qualifying widows and widowers		Married filing separately	
	Over	But not over	Over	But not over	Over	But not over	Over	But not over
31	67,256	134,936	97,172	155,995	115,653	167,653	58,980	86,842
36	134,936	273,705	155,995	284,250	167,653	277,401	86,842	142,545
39.6	273,705	.....	284,250	.....	277,401	.....	142,545	.....

Appendix B to Part 302–11—State Tax Tables for RIT Allowance

* * * * *

State Marginal Tax Rates by Earned Income Level—Tax Year 1994

The following table is to be used to determine the State marginal tax rates for calculation of the RIT allowance as prescribed in § 302–11.8(e)(2). This table is to be used for employees who received covered taxable reimbursements during calendar year 1994.

State (or district)	Marginal tax rates (stated in percents) for the earned income amounts specified in each column [1,2]			
	$20,000–$24,999	$25,000–$49,999	$50,000–$74,999	$75,000 and over
1. Alabama	5	5	5	5
2. Alaska	0	0	0	0
3. Arizona	3.25	4.0	5.05	6.9
If single status [3]	3.25	4.0	6.4	6.9
4. Arkansas	4.5	7	7	7
If single status [3]	6	7	7	7
5. California	2	4	8	11
If single status [3]	6	9.3	9.3	11
6. Colorado	5	5	5	5
7. Connecticut	4.5	4.5	4.5	4.5
8. Delaware	6	7.6	7.7	7.7
9. District of Columbia	8	9.5	9.5	9.5
10. Florida	0	0	0	0
11. Georgia	6	6	6	6
12. Hawaii	8	9.5	10	10
If single status [3]	9.5	10	10	10
13. Idaho	7.5	7.8	8.2	8.2
14. Illinois	3	3	3	3
15. Indiana	3.4	3.4	3.4	3.4
16. Iowa	6.8	8.8	9.98	9.98
17. Kansas	3.5	6.25	6.25	6.45
If single status [3]	4.4	7.75	7.75	7.75
18. Kentucky	6	6	6	6
19. Louisiana	2	4	6	6
If single status [3]	4	4	6	6
20. Maine	4.5	8.5	8.5	8.5
If single status [3]	8.5	8.5	8.5	8.5
21. Maryland	5	5	5	6
22. Massachusetts	5.95	5.95	5.95	5.95
23. Michigan	4.4	4.4	4.4	4.4
24. Minnesota	6	8	8	8.5
If single status [3]	8	8	8.5	8.5
25. Mississippi	5	5	5	5
26. Missouri	6	6	6	6
27 Montana	6	9	10	11
If single status [3]	8	10	10	11
28. Nebraska	3.65	5.24	6.99	6.99
If single status [3]	5.24	6.99	6.99	6.99
29. Nevada	0	0	0	0
30. New Hampshire	0	0	0	0
31. New Jersey	1.9	2.375	3.325	6.65
If single status [3]	1.9	4.75	6.175	6.65
32. New Mexico	3.2	6	7.9	8.5
If single status [3]	6	7.9	8.5	8.5
33. New York	5	7.875	7.875	7.875
If single status [3]	7.875	7.875	7.875	7.875
34. North Carolina	6	7	7	7.75
35. North Dakota	6.67	9.33	12	12
If single status [3]	8	10.67	12	12
36. Ohio	2.972	4.457	5.201	7.5
37 Oklahoma	5	7	7	7
If single status [3]	7	7	7	7

State (or district)	Marginal tax rates (stated in percents) for the earned income amounts specified in each column [1, 2]			
	$20,000–$24,999	$25,000–$49,999	$50,000–$74,999	$75,000 and over
38. Oregon	9	9	9	9
39. Pennsylvania	2.8	2.8	2.8	2.8
40. Rhode Island	(See footnote 4)			
If single status [3]	(See footnote 5)			
41. South Carolina	7	7	7	7
42. South Dakota	0	0	0	0
43. Tennessee	0	0	0	0
44. Texas	0	0	0	0
45. Utah	7.2	7.2	7.2	7.2
46. Vermont	(See footnote 6)			
47. Virginia	5	5.75	5.75	5.75
48. Washington	0	0	0	0
49. West Virginia	4	4.5	6	6.5
50. Wisconsin	6.55	6.93	6.93	6.93
51. Wyoming	0	0	0	0

[1] Earned income amounts that fall between the income brackets shown in this table (e.g., $24,999.45, $49,999.75) should be rounded to the nearest dollar to determine the marginal tax rate to be used in calculating the RIT allowance.

[2] If the earned income amount is less than the lowest income bracket shown in this table, the employing agency shall establish an appropriate marginal tax rate as provided in § 302–11.8(e)(2)(ii).

[3] This rate applies only to those individuals certifying that they will file under a single status within the States where they will pay income taxes. All other taxpayers, regardless of filing status, will use the other rate shown.

[4] The income tax rate for Rhode Island (for other than single status) is 27.5 percent of Federal income tax liability for employees whose earned income amounts are between $20,000–$24,999; 32 percent of Federal income tax liability for employees whose earned income amounts are between $25,000–$49,999; 27.55 percent of Federal income tax liability for employees whose earned income amounts are between $50,000–$74,999; and 25.05 percent of Federal income tax liability for employees whose earned income amounts are $75,000 and over. Rates shown as a percent of Federal income tax liability must be converted to a percent of income as provided in § 302–11.8(e)(2)(iii).

[5] The income tax rate for Rhode Island (for single status) is 32 percent of Federal income tax liability for employees whose earned income amounts are between $20,000–$24,999; 27.55 percent of Federal income tax liability for employees whose earned income amounts are between $25,000–$74,999; and 25.05 percent of Federal income tax liability for employees whose earned income amounts are $75,000 and over. Rates shown as a percent of Federal income tax liability must be converted to a percent of income as provided in § 302–11.8(e)(2)(iii).

[6] The income tax rate for Vermont is 25 percent of Federal income tax liability for all employees. Rates shown as a percent of Federal income tax liability must be converted to a percent of income as provided in § 302–11.8(e)(2)(iii).

Appendix C to Part 302–11—Federal Tax Tables for RIT Allowance—Year 2

* * * * *

Federal Marginal Tax Rates by Earned Income Level and Filing Status—Tax Year 1995

The following table is to be used to determine the Federal marginal tax rate for Year 2 for computation of the RIT allowance as prescribed in § 302–11.8(e)(1). This table is to be used for employees whose Year 1 occurred during calendar years 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, or 1994.

Marginal tax rate (percent)	Single taxpayer		Heads of household		Married filing jointly/ qualifying widows and widowers		Married filing separately	
	Over	But not over	Over	But not over	Over	But not over	Over	But not over
15	$6,643	$30,783	$11,937	$44,304	$16,387	$57,249	$8,171	$28,637
28	30,783	68,684	44,304	102,201	57,249	119,362	28,637	59,017
31	68,684	139,546	102,201	163,966	119,362	173,514	59,017	88,341
36	139,546	283,746	163,966	294,200	173,514	286,217	88,341	147,650
39.6	283,746	.....	294,200	.....	286,217	.....	147,650	.....

Appendix D to Part 302–11—Puerto Rico Tax Tables for RIT Allowance

* * * * *

Puerto Rico Marginal Tax Rates by Earned Income Level—Tax Year 1994

The following table is to be used to determine the Puerto Rico marginal tax rate for computation of the RIT allowance as prescribed in § 302–11.8(e)(4)(i).

Marginal tax rate (percent)	Single filing status		Any other filing status	
	Over	But not over	Over	But not over
15	.....	.....	.....	$25,000
25	.....	$25,000	.....	.....
36	$25,000	.....	$25,000	.....

Dated: December 28, 1994.

Julia M. Stasch,

Acting Administrator of General Services.

[FR Doc. 95–516 Filed 1–9–95; 8:45 am]

BILLING CODE 6820–24–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 7109

[AK–932–1430–01; AA–6664]

Withdrawal of Public Lands for English Bay Village Selection; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 16,947.99 acres of public lands located within the Kenai Fjords National Park or the Alaska Maritime National Wildlife Refuge, from all forms of appropriation under the public land laws, including the mining and mineral leasing laws, pursuant to Section 22(j)(2) of the Alaska Native Claims Settlement Act. This action also reserves the lands for selection by the English Bay Corporation, the village corporation for English Bay. This withdrawal is for a period of 120 days; however, any lands selected shall remain withdrawn by the order until they are conveyed. Any lands described herein that are not selected by the corporation will remain withdrawn as part of the Kenai Fjords National Park or the Alaska Maritime National Wildlife Refuge, pursuant to the Alaska National Interest Lands Conservation Act, and will be subject to the terms and conditions of any other withdrawal of record.

EFFECTIVE DATE: January 10, 1995.

FOR FURTHER INFORMATION CONTACT: Sue A. Wolf, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513–7599, 907–271–5477.

By virtue of the authority vested in the Secretary of the Interior by Section 22(j)(2) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1621(j)(2) (1988), it is ordered as follows:

1. Subject to valid existing rights, the following described public lands located within the Kenai Fjords National Park or the Alaska Maritime National Wildlife Refuge, are hereby withdrawn from all forms of appropriation under the public land laws, including the mining and mineral leasing laws, and are hereby reserved for selection under Section 12 of the Alaska Native Claims Settlement Act, 43 U.S.C. 1611 (1988), by the English Bay Corporation, the village corporation for English Bay:

Seward Meridian

T. 3 S., R. 2 W., (unsurveyed)
Secs. 22, 23, 25, and 26;
Sec. 33, parcel B;
Secs. 35 and 36.
T. 4 S., R. 2 W., (unsurveyed)
Secs. 2 through 5, inclusive;
Sec. 11.
T. 5 S., R. 5 W., (unsurveyed)
Sec. 33.
T. 6 S., R. 4 W., (unsurveyed)
Sec. 7
T. 6 S., R. 5 W., (unsurveyed)
Secs. 4, 9, 28, 29, 32, and 33.
T. 7 S., R. 5 W., (surveyed)
Sec. 3, lot 2;
Secs. 4, 8, 10, and 11.
T. 8 S., R. 6 W., (surveyed)
Secs. 7 through 12, inclusive;
Secs. 14 through 22, inclusive;
Secs. 27 through 34, inclusive.
T. 8 S., R. 7 W., (surveyed)
Secs. 24, 25, 35 and 36.

The areas described contain 16,947.99 acres.

2. Prior to conveyance of any of the lands withdrawn by this order, the lands shall be subject to administration by the Secretary of the Interior under applicable laws and regulations, and his authority to make contracts and to grant leases, permits, rights-of-way, or easements shall not be impaired by this withdrawal.

3. This order constitutes final withdrawal action by the Secretary of the Interior under Section 22(j)(2) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1621(j)(2) (1988), to make lands available for selection by the English Bay Corporation, to fulfill the entitlement of the village for English Bay under Section 12 and Section 14(a) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1611 and 1613 (1988).

4. This withdrawal will terminate 120 days from the effective date of this order; provided, any lands selected shall remain withdrawn pursuant to this order until they are conveyed. Any lands described in this order not selected by the corporation shall remain withdrawn as part of the Kenai Fjords National Park or the Alaska Maritime National Wildlife Refuge, pursuant to Sections 201(5), 206, 303(1) and 304(c) of the Alaska National Interest Lands Conservation Act, 16 U.S.C. 410(hh) and 668(dd) (1988); and will be subject to the terms and conditions of any other withdrawal of record.

5. It has been determined that this action is not expected to have any significant effect on subsistence uses and needs pursuant to Section 810(c) of the Alaska National Interest Lands Conservation Act, 16 U.S.C. 3120(c) (1988), and this action is exempted from the National Environmental Policy Act of 1969, 42 U.S.C. 4321 note (1988), by Section 910 of the Alaska National Interest Lands Conservation Act, 43 U.S.C. 1638 (1988).

Dated: December 23, 1994.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 95–474 Filed 1–9–95; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 93–02; Notice 07]

RIN 2127–AF42

Federal Motor Vehicle Safety Standards; Fuel System Integrity of Compressed Natural Gas Vehicles

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

ACTION: Final rule; response to petitions for reconsideration.

SUMMARY: On April 25, 1994, NHTSA published a new Federal motor vehicle safety standard, Standard No. 303, *Fuel System Integrity of Compressed Natural Gas Vehicles*. The standard limits the amount of allowable CNG leakage after a crash test by limiting the post-crash pressure drop of the fuel system. Ford Motor Company, Chrysler Corporation, and the American Automobile Manufacturers Association, submitted petitions for reconsideration of the final rule. The issues raised in the petitions include the allowable pressure drop limit, submitted by Ford and Chrysler, and other pre-crash test conditions and procedures, submitted by AAMA. NHTSA is denying the petitions of Ford and Chrysler concerning pressure drop limit, and denying in part and granting in part the requests by AAMA.

DATES: Effective Date: The amendments made in this rule are effective September 1, 1995.

Petitions for Reconsideration: Any petition for reconsideration of this rule must be received by NHTSA no later than February 9, 1995.

ADDRESSES: Petitions for reconsideration should refer to the docket and notice number of this notice and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT:

Mr. Gary R. Woodford, NRM–01.01, Special Projects Staff, Office of Rulemaking, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590 (202–366–4931).

SUPPLEMENTARY INFORMATION: On April 25, 1994, NHTSA published a new Federal motor vehicle safety standard (FMVSS) for the fuel system integrity of compressed natural gas (CNG) vehicles (59 FR 19648). The new standard, FMVSS No. 303, *Fuel System Integrity of Compressed Natural Gas Vehicles,* limits the amount of allowable CNG leakage after a crash test. This is done by placing a limit on the post-crash pressure drop of the fuel system. Vehicles with a gross vehicle weight rating (GVWR) of 10,000 pounds or less are subject to front, rear, and side impact crash tests. Schoolbuses with a GVWR greater than 10,000 pounds are subject to moving contoured barrier crash at any point and angle on the vehicle. The purpose of the new standard, which becomes effective September 1, 1995, is to reduce deaths and injuries caused by fires resulting from fuel leakage during and after crashes involving CNG vehicles.

Ford Motor Company (Ford), Chrysler Corporation (Chrysler), and the American Automobile Manufacturers Association (AAMA) submitted petitions for reconsideration of the final rule. The issues raised in the petitions include the post-crash pressure drop limit of the fuel system, and procedures and test conditions prior to crash testing. A discussion of each issue and the agency's response follows.

Pressure Drop Limit

The final rule, as specified in S5.2(a), sets the allowable pressure drop in the CNG fuel system one hour after any crash test as follows:

(1) 1062 kPa (154 psi), or

(2) 895 (T/V_{FS}), whichever is higher.

T is the average temperature of the test gas in degrees Kelvin, stabilized to ambient temperature before testing. Average temperature T is determined by measuring ambient temperature at the start of the test, and then every 15 minutes until the test time of 60 minutes is completed. The sum of the five ambient temperatures is then divided by five to yield average temperature T. S7.1.7 of the final rule specifies that ambient temperature is not to vary more than 5.6 °C (10 °F) during the course of the test. V_{FS} is the internal volume of the high pressure portion of the vehicle fuel system.

The other allowable pressure drop, 1062 kPa (154 psi), represents the smallest pressure drop measurable using existing pressure drop measurement technology is test gas temperature varies no more than 5.6 °C (10 °F). The agency established this level based on comments from AAMA and others in response to the agency's January 21, 1993 notice of proposed rulemaking (NPRM) (58 FR 5323). In its comments on that notice, AAMA stated that using a state-of-the-art capacitance type pressure transducer could still result in pressure drop measurement error of ±106.1 kPa (±15.4 psi) if test gas temperature varied no more than ±5.6 °C (±10 °F). This is due to the cumulative errors attributable to pressure transducer accuracy, thermal zero shift, thermal coefficient sensitivity, and analogue-digital conversion. These factors, coupled with the accepted engineering practice that measurement error should not exceed ten percent of the value being measured, led to the conclusion that pressure drops less than 1062 kPa (154 psi) should not be measured.

The above pressure drop established in the final rule represents the maximum allowable CNG leakage, 895 (T/V_{FS}), within the limits of current pressure drop measurement technology, 1062 kPa (154 psi).

Both Ford and Chrysler petitioned the agency for reconsideration of the above pressure drop limits in S5.2(a). Ford stated that it believes the agency erred by disregarding certain information provided by AAMA in its response to the January 1993 NPRM (58 FR 5323). Specifically, AAMA stated that "* * * a 10 °F change in the temperature of the test gas would result in a 60 psi change in the pressure of the test gas." Noting that the final rule allows the ambient temperature to vary as much as 5.6 °C (10 °F) during the test, Ford stated that a 10 °F drop in temperature could result in a 60 psi pressure drop even with zero leakage. Thus, according to Ford, the pressure drop limits in the final rule are, in effect, reduced by 60 psi when the ambient temperature drops 10 °F and increased by 60 psi when the ambient temperature increases 10 °F during the test. Ford asserted that the pressure drop limits are, therefore, not reasonable, practicable, or stated in objective terms as required by statute, because they present arbitrary limits that vary depending on whether ambient temperature decreases or increases. Ford further stated that an appropriate corrective action would be to amend S5.2(a) so that it states, "For all vehicles, the pressure drop in the high pressure portion of the fuel system, *excluding pressure changes due to changes in the temperature of the test gas,* expressed in * * *." Ford's recommended language is underlined. Thus, Ford's alternative would eliminate that component of any pressure drop which is due to test gas temperature change.

Chrysler, in its petition, provided an almost identical rationale to that of Ford, stating that the pressure drop limits specified in the final rule do not accurately measure fuel leakage when the internal temperature of the gas causes change to the pressure within the fuel system. However, Chrysler's suggested corrective action differs from that of Ford. Chrysler requested that the agency amend the pressure drop limits in the final rule to incorporate the 60 psi adjustment needed to compensate for the possible change in gas temperature. Under Chrysler's request, the amended pressure drop limits in S5.2(a) would be:

(1) 1476 kPa (214 psi), or

(2) 895 (T/V_{FS}) + 414 kPa (60 psi), whichever is higher.

Chrysler stated that "[t]his would provide the needed compensation without the added difficulty of measuring gas temperature within the high pressure fuel system, which is difficult, impracticable, and risks compromising the fuel system integrity."

After reviewing Ford's and Chrysler's petitions for reconsideration about permissible pressure drop, NHTSA has determined that the requested modifications to S5.2(a) would be inappropriate. NHTSA continues to believe that the pressure drop limits and test procedure established in the final rule are the most appropriate and feasible, and that they provide a relatively simple and accurate method to determine CNG fuel leakage. The agency believes that under real world test conditions, any variation in test gas temperature will not significantly affect test results.

NHTSA notes that because CNG is a gas, and not a liquid, measuring a safe level of allowable leakage after a crash test is much more complex than measuring similar levels for liquid fuels. This is because of the relationship between the temperature and pressure of a gas. The two are directly proportional. A change in either, pressure or temperature, directly affects the other.

In arriving at the allowable pressure drop limit and test procedure established in the final rule, NHTSA addressed the issue of temperature and pressure, along with other related issues

raised by commenters on the January 1993 NPRM. These included whether to measure test gas temperature during the 60-minute period following barrier impact, whether to specify an ambient test temperature, the accuracy of available pressure drop measurement technology, and the time period over which pressure drop is measured. These, along with commenters' concerns, presented complex, and, in some cases, competing issues to resolve. There were a variety of possible solutions, some more feasible than others, to the problem of measuring CNG fuel system leakage.

Contrary to the assertion made by Ford in its petition, the agency considered the information provided by AAMA about the effect of temperature on pressure. That information is specifically referenced in the preamble to the final rule (59 FR 19652). In addition, the agency noted in the preamble that several commenters, including AAMA, stated that temperature variations should be compensated for when conducting the crash test. However, neither AAMA nor other commenters suggested any method to correct for this. After reviewing the components, NHTSA decided not to specify an ambient test temperature, but to limit the amount of ambient temperature variation during the 60-minute test period to 5.6 °C (10 °F). A temperature variation exceeding this amount will invalidate the test results. The agency noted that, "Without such control, a large change in temperature could artificially affect the test results." NHTSA continues to believe that this test condition will sufficiently minimize changes in test gas temperature, as well as pressure drop measurement accuracy.

NHTSA appreciates the concerns expressed by Ford and Chrysler in their petitions. However, as noted above, under real world test conditions, any variation in test gas temperature will not significantly affect test results. The agency believes there are three leakage scenarios that could potentially occur during the 60-minute test period following barrier impact: No leak, a large leak, and a small or marginal leak condition. In the case of no leak, Ford and Chrysler stated in their petitions that a 5.6 °C (10 °F) drop in ambient temperature could result in a 60 psi pressure drop even though there is no leakage. However, since the allowable pressure drop established in the final rule is at least 1062 kPa (154 psi), a 60 psi pressure drop will not affect compliance test results since it is well below the amount allowed in the final rule Similarly, in the case of a large leak, any change in test gas temperature should not influence compliance test results, since all or most of the gas will leak out during the 60-minute test period, thereby making a non-compliance obvious. Based on supplemental information which the agency obtained by telephone from Ford and Blue Bird Body Company on the NPRM, the agency believes these two conditions, no leak or a large leak, will account for most of the leakage scenarios after real world CNG vehicle crash tests. However, in the event there is a slow leak, NHTSA believes that here, too, test gas temperature will remain relatively constant during testing, due to thermal contact between the test gas and fuel container walls. Any change in test gas temperature will tend to be offset by the temperature or thermal energy of the surrounding container walls, which along with the test gas have been stabilized to ambient temperature prior to testing.

NHTSA rejects Ford's recommendation that the final rule exclude pressure changes due to test gas temperature changes, because it would require that test gas temperature be measured. NHTSA believes that this would unnecessarily result in a more costly and complex test procedure. Further, it could make the fuel system more vulnerable to leakage in a crash, since an additional fuel system measurement fitting may be required. In its petition for reconsideration, Chrysler referred to this as "* * * the added difficulty of measuring gas temperature within the high pressure fuel system, which is difficult, impracticable, and risks compromising the fuel system integrity." In addition, supplemental information which the agency obtained by telephone from Ford indicates that measuring gas temperature in a CNG fuel system is not always accurate.

NHTSA also rejects Chrysler's recommendation that an additional 60 psi be added to the allowable pressure drop in the final rule. In the case of an allowable pressure drop of 1062 kPa (154 psi), adopting Chrysler's request would have raised this level by approximately 40 percent. The agency believes that that addition could make the allowable pressure drop levels unsafe, since it would allow more fuel leakage. This would be clearly inconsistent with the agency's goal of establishing a minimum leakage requirement that is as close to a no leakage requirement as possible while still being readily measurable.

For the above reasons, NHTSA denies the requests of Ford and Chrysler regarding pressure drop.

Fill Condition

As part of the test conditions prior to CNG vehicle crash testing, S7.1.1 of Standard No. 304 specifies that, "Each fuel storage container is filled to 100 percent of service pressure with nitrogen, N_2." S4 states that, "Service pressure means the internal pressure of a CNG fuel container when filled to design capacity with CNG at 20° Celsius (68° Fahrenheit)."

In its petition, AAMA stated that since the final rule places no absolute limits on the ambient temperatures at which testing may be performed, but merely requires that ambient temperature not change more than 10 °F during the course of the test, fuel storage containers will not always be filled at and stabilized to a temperature of 20° Celsius (68° Fahrenheit). According to the petitioner, the fill pressure to be used for ambient temperatures other than 20° Celsius (68° Fahrenheit) is unclear and therefore not reasonable, practicable, or stated in objective terms. AAMA further stated that an appropriate corrective action would be to amend S7.1.1 of the Standard to state that, "Each fuel storage container is filled with nitrogen, N_2, to 100 percent of service pressure *adjusted for ambient temperature*." AAMA's suggested language is italicized.

After reviewing AAMA's petition for reconsideration about fill pressure, NHTSA has determined that that organization's requested modification to S7.1.1 would be inappropriate.

The agency's purpose in specifying that CNG containers be filled to 100 percent of service pressure in S7.1.1 is to provide a reference point for the fill condition from which crash tests are performed, e.g., 20,684 kPa (3000 psi) at 20 °C (68 °F). NHTSA recognizes that since the final rule does not specify an ambient temperature at which crash testing is performed, fuel containers will not always be filled and stabilized to 20 °C (68 °F). This will result in CNG container pressures which are different than if testing were performed at 20 °C (68 °F), because of the relationship between gas temperature and pressure. Thus, manufacturers may fill and stabilize the CNG containers prior to testing to a pressure that is adjusted for ambient temperature. The final rule does not prohibit this. However, that pressure, which is adjusted for ambient temperature, must be such that if ambient temperature were 20 °C (68 °F), pressure in the CNG containers would be equal to service pressure. Since the final rule does not prohibit this adjustment for ambient temperature prior to testing, NHTSA sees no need to

adopt the revised language suggested by AAMA. Therefore, AAMA's petition concerning fill condition is denied.

Pressurizing the High Pressure Side

S7.1.2 of the final rule states that, "Any shutoff valve at the fuel container is in the open position." AAMA states in its petition that some CNG fuel systems include additional manual shutoff valves in the high pressure side of the fuel system, and that these valves must also be open so that pressure is distributed to the entire high pressure side of the fuel system. If these valves are closed, the vehicle test conditions would not simulate, to the extent practicable, conditions present in a real world crash. These observations led that organization to conclude that the final rule is not reasonable or practicable. In addition, AAMA stated that this aspect of the final rule does not meet the need for motor vehicle safety. This is because manual valves located downstream from the pressure measurement point, if closed, would seal off part of the high pressure side of the fuel system. Thus, pressure measurement upstream of the closed valve would not detect a leak in the sealed off, high pressure portion of the fuel system.

AAMA stated that an appropriate corrective action would be to amend S7.1.2 to state that "* * * normal operating pressures. All manual shutoff valves are to be left in the open position." AAMA's suggested language is underlined.

After reviewing AAMA's recommendation about shutoff valves, NHTSA has decided to amend S7.1.2 to state "All manual shutoff valves are to be in the open position."

The agency believes that this change is consistent with the goal in S7.1.2 which is to have the vehicle test conditions be representative of real world crash test conditions and to meet the need for motor vehicle safety. The agency was not aware that there may be manual shutoff valves within the high pressure portion of the fuel system other than those located at the fuel containers. In addition, the phrase in S7.1.2 stating "Any shutoff valve * * *" was meant to refer to manual shutoff valves. Based on the above consideration, NHTSA has decided to adopt AAMA's request concerning pressurizing the high pressure side.

Pressure Measurement Location

AAMA stated that the final rule does not specify how fuel system pressure is to be accessed for measurement. In its response to the January 1993 NPRM, AAMA stated that it

> * * * is concerned about adding pressure transducers to points in the fuel line solely for purposes of conducting the test. Doing so creates a point of potential leakage where a fitting joint does not exist in a non-test vehicle.

AAMA stated that if a NHTSA contractor were to test for compliance by creating such a pressure measurement point, AAMA member companies likely would object, pointing out that the fuel system on the vehicle has been disrupted and therefore would not be representative of the vehicle as manufactured. AAMA stated that it is not reasonable, practicable, or appropriate to have a final rule that is silent on where the pressure is to be measured, thereby leaving its selection to the discretion of a NHTSA test contractor.

AAMA stated that an appropriate corrective action would be to add a new S7.1.8, which states, *"The pressure drop measurement specified in S7.2 (sic) is to be made using a location recommended by the vehicle manufacturer."* AAMA's proposed language is underlined. (Note: NHTSA has verified with AAMA that it intended to reference S5.2 rather than S7.2 in this statement.)

NHTSA agrees with AAMA's assessment. Based on additional comments obtained from AAMA in response to the January 1993 NPRM, the agency understands that vehicle manufacturers will be providing a tap point on the vehicle's fuel system where pressure measurement is to be obtained. It would be consistent with the intent of Standard 304 if that pressure measurement of the fuel system were made at the location specified by the vehicle manufacturer. Accordingly, AAMA's petition concerning pressure measurement location is granted.

Miscellaneous Correction

NHTSA is also making a word correction to one of the definitions in S4, which AAMA pointed out in its petition. The definition for *CNG fuel container* currently reads *CNG full container*. Therefore, the word *full* is changed to *fuel*.

Rulemaking Analyses

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was reviewed under E.O. 12866, "Regulatory Planning and Review." This action has been determined to be "non-significant" under the Department of Transportation's regulatory policies and procedures.

B. Regulatory Flexibility Act

NHTSA has also considered the effects of this rulemaking action under the Regulatory Flexibility Act. Based upon the agency's evaluation, I certify that this rule will not have a significant economic impact on a substantial number of small entities. Information available to the agency indicates that currently there are very few businesses manufacturing passenger cars or light trucks for CNG use. The agency further believes that as the market expands for CNG vehicles, original vehicle manufacturers will begin to produce CNG vehicles because they will be able to do so at less expense than final stage manufacturers and alterers. Few, if any, original vehicle manufacturers which manufacture CNG vehicles are small businesses.

C. Executive Order 12612 (Federalism)

NHTSA has analyzed this rulemaking action in accordance with the principles and criteria contained in Executive Order 12612. NHTSA has determined that the rule will not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

D. National Environmental Policy Act

In accordance with the National Environmental Policy Act of 1969, NHTSA has considered the environmental impacts of this rule. The agency has determined that this rule will have no adverse impact on the quality of the human environment. On the contrary, because NHTSA anticipates that ensuring the safety of CNG vehicles will encourage their use, NHTSA believes that the rule will have positive environmental impacts since CNG vehicles are expected to have near-zero evaporative emissions and the potential to produce very low exhaust emissions as well.

E. Civil Justice Reform

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

submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, 49 CFR part 571 is amended as follows:

PART 571—[AMENDED]

1. The authority citation for part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegations of authority at 49 CFR 1.50.

2. Section 571.303 is amended by revising the definition of *CNG fuel container* in S4, revising S7.1.2, and adding S7.1.8 to read as follows:

§ 571.303 Standard No. 303; Fuel system integrity of compressed natural gas vehicles.

* * * * *

S4. Definitions.

* * * * *

CNG fuel container means a container designed to store CNG as motor fuel onboard a motor vehicle.

* * * * *

S7.1.2 After each fuel storage container is filled as specified in S7.1.1, the fuel system other than each fuel storage container is filled with nitrogen, N_2, to normal operating pressures. All manual shutoff valves are to be in the open position.

* * * * *

S7.1.8 The pressure drop measurement specified in S5.2 is to be made using a location on the high pressure side of the fuel system in accordance with the vehicle manufacturer's recommendation.

* * * * *

Issued on: January 4, 1994.

Ricardo Martinez,

Administrator

[FR Doc. 95–464 Filed 1–9–95; 8:45 am]

BILLING CODE 4910–60–M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1002, 1011, and 1130

[Ex Parte No. MC–219]

Implementation of Section 4 of the Negotiated Rates Act of 1993

AGENCY: Interstate Commerce Commission.

ACTION: Adoption of final rules.

SUMMARY: The Commission is adopting final rules to implement section 4 of the Negotiated Rates Act of 1993. These rules provide a mechanism for obtaining Commission review of motor carrier and shipper resolutions of overcharge and undercharge claims resulting from incorrect tariff provisions or billing errors arising from the inadvertent failure to properly and timely file and maintain agreed-upon rates in compliance with 49 U.S.C. 10761 and 10762.

EFFECTIVE DATE: The rules are effective February 9, 1995.

FOR FURTHER INFORMATION CONTACT: Lawrence C. Herzig, (202) 927–5180. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: By a notice of proposed rulemaking (NPR) in Ex Parte No. MC–219, *Implementation of Section 4 of the Negotiated Rates Act* (not printed), served March 4, 1994, and published at 59 FR 11240, March 10, 1994, we proposed rules which would implement section 4 of the Negotiated Rates Act of 1993 (NRA), Pub. L. No. 103–180. The NPR proposed a mechanism for obtaining Commission review of motor carrier and shipper resolutions of overcharge and undercharge claims. These claims result from incorrect tariff provisions or billing errors arising from the inadvertent failure to properly and timely file and maintain agreed-upon rates in compliance with 49 U.S.C. 10761 and 10762.

The NPR proposed two alternate methods of settlement. Under the first method, a petition to depart from the filed rate would be filed which would become equivalent to an order of the Commission after 45 days if it was not protested or investigated; the second method would require a formal order to be issued in all instances, whether or not there was a protest or investigation. The NPR also proposed standards for the information required to be included in a petition to depart from the filed rate, and set a filing fee of $70.

Nine comments were received. In response to these comments, we are modifying the information required to be included in a petition, and we will permit either a carrier or a shipper to file a petition. We will also adopt the first method of settlement and filing fees of $40 and $80, depending on the amount involved in the petition.

Consolidated Freightways Corporation of Delaware states that the proposed rules are too burdensome in requiring written Commission orders in all cases, prefiling of the petitions for relief, and a docketing fee on insignificant amounts. Also, it is concerned that the proposed rules do not clarify that multiple tariff errors may be resolved by a single filing. The final rules will not require an order on any uncontested petition. Also, while each petition should encompass only one shipper or one consignee, it can include multiple tariff errors. However, we will require payment of a fee for all petitions.

D & J Associates, a freight transportation consulting firm, is concerned that the proposed rules apply only to publishing errors and not to billing errors and overcharge claims based on published and timely filed rates. In this regard section 4 of the NRA is very clear; it applies only to overcharge and undercharge claims resulting from incorrect tariff provisions or billing errors arising from the inadvertent failure to properly and timely file and maintain agreed upon rates. Thus, the concerns of D & J Associates need not be addressed further.

The National Industrial Transportation League (NITL) states that the proposed procedures are too complex and formalistic. First, it argues that they will prevent the parties from quickly and efficiently resolving paperwork errors. We agree, and will simplify the requirements for information to be included in each petition. Also, NITL is concerned that any private party, even though not a party to the transportation at issue, could protest petitions. We do not consider this to be a significant problem. The right of any interested party to protest a petition has been part of the rail special docket procedures for a number of years, without causing any problems.

The Transportation Brokers Conference of America generally endorses the proposed rules. However, it favors the method whereby an uncontested petition automatically becomes an order of the Commission after 45 days. We are adopting this method in the final rules.

The National Motor Freight Traffic Association, which publishes the National Motor Freight Classification on behalf of its member carriers, generally supports the proposed rules. However, it suggests that a notice should be published by the Commission when a petition concerning classification matters is investigated on the Commission's own motion or is protested. We consider this publication to be unnecessary. Petitions will concern tariff publishing errors or the failure to publish agreed-upon rates, covering primarily discounts or

commodity rates and not classification matters.

Baldor Electric Company, GAF Building Materials Corp. and W.R. Grace Company filed consolidated comments. These firms assert that shippers should be allowed to initiate tariff reconciliation procedures. We agree, and are amending the rules to this effect. The commenters also believe that the responsibility for serving the petition is unclear. We have amended the regulations to show that the party who files the petition has the responsibility to serve all the parties. These three corporations also argue that the Commission should adopt the second method of reconciliation by issuing an order, and that the procedures should encompass contract carriage. We disagree. To expedite dispute resolution and in light of our limited resources, we will permit uncontested and uninvestigated petitions to become orders of the Commission after 45 days. The contract carriage issue does not lie because contract carriage does not involve filed tariffs.

National Small Shipments Traffic Conference, Inc., considers that the requirements for the information proposed to be contained in each petition are too burdensome. It also favors permitting the petitions to become orders of the Commission after 45 days. We agree in both instances and the final rules respond to both concerns.

The Petroleum Marketing Association of America argues that we should adopt a single-page standardized form for the petitions. We do not consider this necessary. The Association also argues that there should be no fee, or at most a nominal fee for filing the petitions. We are required to assess a fee based on actual cost for services rendered to the public. The fees adopted here are based on the average cost of processing similar applications.

Roadway Services, Inc., a common carrier, is concerned, as is D & J Associates, that the rules not be applied to pure billing errors. We have disposed of this issue in connection with the comments of D & J Associates discussed previously. Also, Roadway indicates that the information required in the proposed 10-step procedures is too complex and burdensome. We agree and in the final rules have significantly reduced the amount of required information. Roadway also believes that nominal claims ($1,000 or less) should be settled without our involvement. We disagree. We do not think that the adopted rules are burdensome, especially since we would permit multiple claims involving one shipper or consignee to be consolidated.

We note that, because it substantially eliminated tariff filing requirements for independently determined rates, enactment of the Transportation Industry Regulatory Reform Act has substantially reduced the need for the remedy authorized by section 4 of the NRA and our proposed regulations. In the past few months we have received fewer than 15 requests for adjustments, and these requests primarily involve one motor carrier. Nevertheless, we expect that, as filed tariff provisions are reviewed, these requests will continue at the rate of one or two per month for some time. Also, because it is possible that tariff errors will be made in collectively set tariffs, we may receive requests pertaining to rate bureau tariffs.

We believe that the simplified regulations adopted here will allow efficient processing of section 4 petitions by the Commission without subjecting petitioners to undue burdens. Actual handling of the petitions will be by our Special Docket Board. The filing fees of $40 for petitions involving $25,000 or less and $80 for petitions involving more than $25,000 correspond to the fees currently in place for rail special dockets.

Environmental Statement

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Regulatory Flexibility Certification

Pursuant to 5 U.S.C. 605(b), we conclude that adoption of these rules will not have a significant economic impact on a substantial number of small entities. The economic impact will be minimal because the rules merely provide a simple, voluntary method to resolve certain billing problems that are likely to arise in only a small proportion of the shipments transported by the motor carrier industry. Thus, the economic impact is unlikely to be significant within the meaning of the Regulatory Flexibility Act.

List of Subjects

49 CFR Part 1002

Administrative practice and procedure, Common carriers, Freedom of information, User fees.

49 CFR Part 1011

Administrative practice and procedure, Authority delegations (Government agencies), Organization and functions (Government agencies).

49 CFR Part 1130

Administrative practice and procedure.

Decided: December 21, 1994.

By the Commission, Chairman McDonald, Vice Chairman Morgan, Commissioners Simmons and Owen.

Vernon A. Williams

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, parts 1002, 1011 and 1130 are amended as set forth below.

PART 1002—FEES

1. The authority citation for part 1002 continues to read as follows:

Authority: 5 U.S.C. 552(a)(4)(A), 5 U.S.C. 553, 31 U.S.C. 9701 and 49 U.S.C. 10321.

2. In § 1002.2(f), in the table, a new No. 81 is added to read as follows:

§ 1002.2 Filing fees.

* * * * *

(f) * * *

Type of proceeding	Fee
(81) Tariff reconciliation petitions from motor common carriers:	
(i) Petitions involving $25,000 or less	$40
(ii) Petitions involving over $25,000	80

* * * * *

PART 1011—COMMISSION ORGANIZATION; DELEGATIONS OF AUTHORITY

3. The authority citation for part 1011 continues to read as follows:

Authority: 5 U.S.C. 553; 31 U.S.C. 9701; 49 U.S.C. 10301, 10302, 10304, 10305, 10321, 10762.

4. Section 1011.6(e) is revised to read as follows:

§ 1011.6 Employee boards.

* * * * *

(e) *Special Docket Board.* Disposition of special docket and tariff reconciliation proceedings under 49 CFR 1130.2(e), (f) and (g).

* * * * *

PART 1130—INFORMAL COMPLAINTS

5. The authority citation for part 1130 is revised to read as follows:

Authority: 5 U.S.C. 553 and 559; 49 U.S.C. 10321, 10707 and 11712.

6. In § 1130.2, paragraph (f) is amended by adding the words "or tariff reconciliation petition" after the word "petition" in the parenthetical phrase in the first sentence and by adding the

words "or tariff reconciliation" after the words "Special Docket" in the second sentence, and by adding a new paragraph (g) to read as follows:

§ 1130.2 When damages sought.

* * * * *

(g) *Tariff reconciliation proceedings for motor common carriers*—(1) *Petitions to waive collection or permit payment.*

Pursuant to 49 U.S.C. 11712, subject to Commission review and approval, motor common carriers (other than household goods carriers) and shippers may resolve, by mutual consent, overcharge and undercharge claims resulting from incorrect tariff provisions or billing errors arising from the inadvertent failure to properly and timely file and maintain agreed-upon rates, rules or classifications in compliance with 49 U.S.C. 10761 and 10762. Under section 11712, the Commission may approve any departure from the filed rate when the shipper and carrier agree, and the departure is needed for the reason(s) stated in section 11712. Petitions for appropriate authority may be filed by either the carrier, shipper or consignee on the Commission's tariff reconciliation docket by submitting a letter of intent to depart from the filed rate. The petitions will be deemed the equivalent of an informal complaint and answer admitting the matters stated in the petition. Petitions shall be sent to the Special Docket Board, Interstate Commerce Commission, Washington, DC 20423. The petitions shall contain, at a minimum, the following information:

(i) The name(s) and address(es) of the payer(s) of the freight charges;

(ii) The name(s) of the carrier(s) involved in the traffic;

(iii) An estimate of the amount(s) involved;

(iv) The time period when the shipment(s) involved were delivered or tendered for delivery;

(v) A general description of the point(s) of origin and destination of the shipment(s);

(vi) A general description of the commodity(ies) transported;

(vii) A statement certifying that the carrier(s) and shipper(s) participating in the shipment(s) or the payer(s) of the freight charges concur(s) with the intent to depart from the filed rate; and

(viii) A brief explanation of the incorrect tariff provision(s) or billing error(s) causing the request to depart from the filed rate.

(2) *Public notice and protest.* Tariff reconciliation petitions (letters of intent) shall be served on all parties named in the petition by the party who files the petition and will be made available by the Commission for public inspection in the Special Docket Board Public File, Interstate Commerce Commission, Washington, DC 20423. Any interested person may protest the granting of a petition by filing a letter of objection with the Special Docket Board within 30 days of Commission receipt of the petition. Letters of objection shall identify the tariff reconciliation proceeding, shall clearly state the reasons for the objection, and shall certify that a copy of the letter of objection has been served on all parties named in the petition. The Commission may initiate an investigation of the petition on its own motion.

(3) *Uncontested petitions.* If a petition is not contested, and if the Commission does not initiate an investigation of the petition on its own motion, approval is deemed granted without further action by the Commission, effective 45 days after Commission receipt of the petition.

(4) *Contested petitions.* If a petition is contested or the Commission initiates an investigation of the petition on its own motion, 15 days will be allowed for reply. The 15-day period will commence on the date of service of the objections or, if the Commission initiates an investigation on its own motion, on the date of service of the decision initiating the investigation. After the period for reply has expired, the Commission will issue a decision approving or disapproving the petition, or requesting further submissions from the parties, and then will issue a decision based on the further submissions.

[FR Doc. 95–579 Filed 1–9–95; 8:45 am]
BILLING CODE 7035–01–P

Proposed Rules

Federal Register
Vol. 60, No. 6
Tuesday, January 10, 1995

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 300

RIN 3206–AG06

Time-In-Grade Rule Eliminated

AGENCY: Office of Personnel Management.

ACTION: Extension of public comment period on proposed elimination of time-in-grade rule.

SUMMARY: On June 15, 1994, the Office of Personnel Management (OPM) proposed regulations to abolish the time-in-grade restriction on promotion of Federal employees to positions in the General Schedule. The National Performance Review and National Partnership Council had recommended the elimination of the 1-year Federal service requirement for promotions because it prevents employees from applying for jobs for which the qualify.

To ensure that the public has ample opportunity to fully review and comment on the proposed rulemaking, this notice extends the public comment period for an additional 60 days.

DATES: Comments must be submitted on or before March 13, 1995.

ADDRESSES: Send or deliver written comments to Leonard R. Klein, Associate Director for Career Entry, Office of Personnel Management, Room 6F08, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Lee Shelkey Edwards on 202–606–0830, TDD 202–606–0023, or FAX 202–606–2329.

SUPPLEMENTARY INFORMATION:

A. Background

Since the early 1950's, Federal employees in General Schedule positions at GS–5 and above have had to serve at least 1 year in grade before being promoted. This restriction originated in statute with the now expired "Whitten Amendment," a series of controls on expansion of the Federal work force during the Korean conflict. The time-in-grade restriction currently is in 5 CFR part 300, subpart F. Prior to the Whitten Amendment, no such regulatory restriction existed.

The National Performance Review recommended abolishing the time-in-grade restriction because it prevents employees from being considered for jobs for which they qualify. On June 15, 1994, OPM proposed regulations (59 FR 30717) to abolish the time-in-grade restriction. We received 241 written comments; 30 agreed with the proposal (22 individuals and 8 agencies) and 211 disagreed with it (197 individuals, 5 employee unions, 2 agencies, and 7 other organizations).

Comments from individuals include 189 form letters expressing serious concern that the proposal would have an adverse impact on minority and disabled employees. Others also commented that the elimination of time in grade could lead to favoritism and inequity in promotions, and promoted employees would not be qualified. A majority of commenters who opposed the proposal requested an extension of the comment period.

As requested, OPM is extending the comment period to allow additional time to examine the proposal. We are also using this notice to provide additional information on the background of the time-in-grade restriction and the impact of its elimination.

B. History of Restriction

In the early 1950's as the conflict in Korea escalated, Congress determined it should take steps to prevent a permanent buildup of the civil service with expanded grade levels as had happened during World War II and, during 1951–52, it adopted the so–called "Whitten Amendment," a series of personnel controls. These statutory controls included a requirement to make all promotions and appointments on a temporary basis to simplify readjustment downward at the end of the conflict, an annual survey of positions to assure they were properly graded, and time-in-grade restrictions to prevent excessively rapid promotions.

Thus, the basis for the original time-in-grade restriction was not to prevent favoritism, but to prevent the permanent upgrading of the work force and avoid the disruption and readjustments required after World War II. The former Civil Service Commission was responsible for administering the restriction for competitive service positions and agency heads for excepted service positions.

Before allowing the Whitten Amendment to expire, Congress sought a review by the Civil Service Commission to determine whether any of its provisions, including time-in-grade, should be retained. The Commission reported that the time-in-grade restriction on competitive service employees had been placed in regulation and would continue even if the Whitten Amendment expired. Subsequently, Congress permitted the Whitten Amendment to expire effective September 14, 1978. Since then, competitive service employees, but not excepted employees, have continued to be subject to the Governmentwide time-in-grade restriction, although individual agencies could at their discretion require it for excepted employees.

Over the 16 years since its expiration, much has happened in Federal personnel administration. The civil service has been subject to numerous reviews, and several reports, most recently from the National Performance Review, have recommended deregulation and simplification of the hiring system. The time-in-grade rule is often seen as a symbol of bureaucratic red tape that binds managers hands and prevents the efficient use of qualified workers.

C. NPR Proposal

In its September 1993 report From Red Tape to Results: Creating a Government That Works Better & Costs Less, the National Performance Review (NPR) recommended abolishing the time in-grade requirement as an arbitrary limit on competition. The requirement excludes from consideration those candidates who meet OPM qualification standards and have the proven ability to perform the duties of higher grade positions, but who have not served at least one year in lower graded Government positions. See pages 11 and 15 of Reinventing Human Resources Management, Accompanying Report of the National Performance Review.

The National Partnership Council, established by Executive Order 12871 of October 1, 1993, was charged with developing legislative proposals for the President to implement the NPR recommendations. The Council's report

also recommended abolishing the time-in-grade restriction. In A Report to the President on Implementing Recommendations of the National Performance Review by the National Partnership Council, January 1994, the Council states on page 30:

"The NPC recommends the following * * * regulatory changes be made to allow employees to compete for job opportunities based on their qualifications and to enable decision makers to utilize employees more fully where needed—

• Abolish the time-in-grade regulatory requirement. For bargaining unit employees, the current requirement should remain in effect until the parties agree to modify it either through consensus or collective bargaining."

Thus, OPM's proposal is consistent with recommendations of both the NPR and National Partnership Council.

D. Impact of Proposal

Shrinking Federal Work Force

When Congress passed the Whitten Amendment in the 1950's, the civil service was expanding to respond to the needs of the growing conflict in Korea. Time in grade was a brake on that expansion.

The situation today is just the opposite. The Federal Workforce Restructuring Act of 1994, Pub. L. 103–226 of March 30, 1994, mandates reductions in Federal employment levels. Employment in executive agencies is to be reduced in each fiscal year from FY 94 through FY 99 by a total of 272,900 positions. Also, the level of agency funding is being reduced because of deficit reduction legislation.

The results is that managers must do more with fewer employees and less money. Managers cannot inflate grade levels because their funds and position authorizations will be tight. And, since agencies are being asked to do more with less, the quality of the work force has become even more important. It makes more sense for managers to be able to select from among the best-qualified employees available, regardless of their existing grade levels.

Another effect of the shrinking work force is fewer opportunities for employee advancement. Agencies traditionally encourage employees to improve their capabilities. Employees who have acquired new skills and knowledge—many on their own time and with their own resources—will find far fewer vacancies available. The time-in-grade restriction is just one more obstacle to prevent them from competing to use the new skills they have worked hard to acquire, even though they meet OPM qualification standards.

Coverage

Not all Federal employees are subject to the restriction. The Whitten Amendment applied to both competitive and excepted employees in GS positions. However, when the law expired in 1978, excepted employees were released from its coverage because OPM's time-in-grade regulations apply only to the competitive service. Other competitive service employees under other pay plans, such as the wage grade system, also are free of the restriction. Yet the lack of a time-in-grade restriction has had no discernible adverse effect on these excepted and wage grade positions. OPM's proposal would put competitive service employees on an equal footing by allowing them to compete for advancement based on their qualifications just as these other employees do.

Qualifications

Many of the commenters who disagreed with the proposal believed that its abolishment would result in the promotion of employees who are not qualified for their jobs. This is not true. When the time-in-grade restriction was implemented in the 1950's, no effective means existed to prevent employees from advancing rapidly through the grades. But there is now in place a comprehensive qualification standards system covering all General Schedule positions in the competitive service.

To qualify for most positions, an individual must have 1 year of specialized experience equivalent in difficulty to the next lower grade level, or equivalent education. Even without the time-in-grade restriction, individuals must meet this specialized experience or education requirement. Thus, this proposal would not result in the hiring of unqualified persons. Nor would this proposal allow persons to be placed in a higher grade position merely because of their "potential" and without the necessary qualifying background. In fact, the only employees who could be promoted in less than 1 year are those who have higher level experience from another job or qualifying education.

Abolishment of time in grade simply means that employees may be considered for any grade for which they meet the qualification requirements, either through education or experience acquired in Federal or any other work settings. Employees may compete in civil service examinations without regard to time in grade, and this proposal would enable them also to compete under internal merit promotion procedures based on qualifications.

The time-in-grade restriction prevents that consideration, as with individuals who take lower graded jobs when nothing else is available and then find they are not allowed to apply for higher graded jobs for which they are well qualified. Letters from individuals supporting the proposed elimination provide other representative examples of how time in grade inhibits employee advancement:

—An employee pursued Bachelors and Masters degrees while balancing time as a student, mother, and Federal clerical employee in positions up to GS–5, yet time in grade prevents her from competing for the GS–9 professional positions for which she now qualifies.

—An employee whose agency has had a longstanding hiring freeze has been detailed to a higher grade position for more than 1 year. Although the employee is now qualified for a position two grades higher, he meets time in grade only for positions one grade higher.

—A minority employee entered Government employment as a GS–9. Despite two Masters degrees, a year and a half of law school, 10 years experience in executive positions at a private corporation, service as adjunct instructor at a major university, and other substantive experience, he was restricted by time in grade from applying for managerial positions for which he qualified.

—A co-op student accepted a GS–4 clerical job when her agency terminated its trainee program. Most jobs in her field start at GS–7, for which she qualifies, but she is eligible only for GS–5 because of time in grade and will have to pursue a different line of work.

—A retired military member with a degree and over 20 years of experience took a Federal wage grade position. A debilitating accident required him to accept a GS–4 position, and now time in grade prevents him from applying for positions consistent with his experience.

Impact on Minorities

Individual commenters and organizations representing minority employees were concerned that eliminating time in grade would lead to abuse and favoritism, with a negative impact on affirmative action and equal employment opportunity. OPM does not believe that retention of time in grade contributes to equality in the work place. Although abolishing the restriction will not eliminate the "glass ceiling," it would be one more step toward eliminating artificial barriers to employees advancement for minorities and nonminorities alike.

Promotions

Even without time in grade, agencies must continue to assure that employees

meet Governmentwide qualification standards to be eligible for promotion, both competitive actions under the merit promotion program and noncompetitive actions such as career ladder promotions. Agencies also must continue to evaluate the relative qualifications of candidates to determine the best-qualified applicants under a competitive promotion action. Therefore, it is not necessary for an agency to have any additional processes or systems in place before implementing the abolishment of time in grade.

Many commenters focused on the impact of the proposal on career ladder promotions. Several thought employees in career ladders would expect rapid advancement without time in grade and that managers could be pressured into making rapid promotions. Again, we must stress that career ladder promotions require an individual to have 1 year of specialized experience equivalent in difficulty to the next lower grade level or possess equivalent education.

Furthermore, agencies have the discretion to specify requirements employees must meet for career ladder promotions, and many have done so. Such requirements include, for example, the level of performance to be met, the range of skills to be acquired, a finding that higher level duties exist, and the availability of funds. Elimination of time in grade will enable agencies to dispel the idea that promotion automatically follows a period of time in grade and instead concentrate on qualifications and the level of performance that is need for the next higher level.

One employee union suggested that OPM consider whether to limit the number of grades an employee could be promoted in a year. The current regulation has such limits only on promotions up to GS–5 because employees in grades GS–1 through GS–4 are not subject to the year in grade requirement. OPM believes grade limits are not needed because they too are arbitrary and disregard employee qualifications.

One employee union felt it would normally disrupt the work place to a great degree if a lower graded employee were promoted over higher graded employees. The union believes this should occur only when there is a specific, identifiable, business-related reason which the agency documents in writing. OPM's view is that managers must be prepared to deal with the impact of selection decisions, such as when selecting an individual from outside an immediate unit instead of an eligible employee within the unit. The manager decide which qualified employee is best able to carry out the duties of the position and must weigh various effects of different options. Abolishment of time in grade would not alter this responsibility.

Several commenters suggested managers hire workers at the grade needed instead of, for example, hiring at the GS–5 level and later promoting the employee to a GS–9. However, there may be instances where a manager hires an employee at a lower level to save money or because the manager feels the individual is not ready for the higher level. If the funding level changes or the employee demonstrates good work, the manager might want to promote the employee is less than 1 year. In neither of these cases is there a merit system violation, and our proposal would allow these employees to advance.

Violations

Some individuals, for personal reasons, must accept jobs lower than their highest skill level and later will seek higher grade jobs. However, it would be improper for an agency to hire someone at a lower grade to avoid proper appointing procedures and then promote the individual to the desired grade. For example, it would be improper to appoint an individual to a clerical job because he or she is not "within reach" for appointment to a professional job, and then promptly promote the person to the professional job. To prevent this, 5 CFR 330.501 prohibits the promotion of an employee within 90 days of a new competitive appointment. OPM continues to enforce violations of that provision and, in the absence of a time-in-grade rule, would closely monitor agency actions for potential violations.

Other protections against potential abuse are the statutory merit principles and prohibited personnel practices (5 U.S.C. 2301 and 2302) in place since January 1979. For example, it is a prohibited personnel practice for an agency official to grant any preference or advantage not authorized by law, rule, or regulation to any employee or applicant for the purpose of improving or injuring the prospects of any particular person for employment (5 U.S.C. 2302(b)(6)). These statutory provisions did not exist when the Whitten Amendment expired in 1978. Alleged violations may be pursued through the independent Office of Special Counsel, which is responsible for investigating allegations of prohibited personnel practices and initiating corrective or disciplinary action where warranted.

Training Agreements

Agencies have long had the authority to establish training agreements under which employees acquire qualifications at a faster than normal rate. This proposal will have no impact on agencies' continued use of training agreements. However, with abolishment of time in grade, agencies no longer will need to obtain OPM approval of training agreements that contain waivers of time in grade.

Training agreements are traditionally used for critical shortage occupations at the entry level. These programs provide a valuable recruitment incentive in filling positions where qualified applicants are in extremely short supply.

E. Waivers

Several commenters recommended the time-in-grade restriction be retained with authority to waive it in inequitable or hardship situations or to promote an outstanding employee. Agencies currently have waiver authority in inequitable or hardship situations. The problem with this approach is that an employee is dependent on agency management to seek a waiver when management needs it. Our proposed elimination of the restriction would free employees to seek other opportunities, in any agency, without being dependent on management's waiver action. Also, because of the restriction, managers often are not aware that lower graded employees may have higher level qualifications and thus seek job candidates from outside the agency.

F. Bargaining Unit Employees

One employee union suggested that OPM should not allow agencies to eliminate time in grade for nonbargaining unit employees while continuing to apply it to those in bargaining units. OPM's proposal is consistent with the National Partnership Council recommendations to abolish the regulatory time-in-grade rule. Inasmuch as time in grade has been a condition of employment for bargaining unit employees, the Council recommended that it should remain in effect until the bargaining unit parties (agency management and union) agree to modify it either through consensus or collective bargaining. In other words, OPM's elimination of the regulation would have no effect on bargaining unit positions unless the parties agreed to modify or eliminate time in grade.

OPM has no authority to require agencies to seek agreement with unions, through consensus or collective bargaining, over time-in-grade

provisions or to prohibit agencies from implementing a regulatory revision affecting nonbargaining unit positions.

G. Public Notice

Many individual commenters asked that we ensure proper dissemination of National Performance Review initiatives to all levels of the work force to allow greater input and commentary. Some commenters suggested that OPM's 60-day comment period on the initial proposal appeared to be designed to restrict the number of comments and commenters.

OPM's 60-day comment period is the standard open period for receiving comments on proposed regulatory changes. As is our usual practice required by law, OPM distributed the time-in-grade proposal to agencies with instructions for public posting. OPM also made the proposal available through its primary electronic bulletin board, Mainstreet, at 202–606–4800. OPM issued a press release on the proposal, and it was widely reported in the press. We are taking the same steps with this notice. Furthermore, the recommendations of the NPR and the National Partnership Council were widely reported in the press and in newsletters that reach employees.

Authority: 5 U.S.C. secs. 552, 3301, 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., page 218, unless otherwise noted.

Secs. 300.101 through 300.104 also issued under 5 U.S.C. secs. 7201, 7204, 7701; E.O. 11478, 3 CFR, 1966–1970 Comp., page 803.

Secs. 300.401 through 300.408 also issued under 5 U.S.C. secs. 1302(c), 2301, and 2302.

Secs. 300.501 through 300.507 also issued under 5 U.S.C. 1103(a)(5).)

Office of Personnel Management.

James B. King,

Director.

[FR Doc. 95–562 Filed 1–9–95; 8:45 am]

BILLING CODE 6325–01–M

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5 CFR Part 551

RIN 3206–AA40

Pay Administration Under the Fair Labor Standards Act

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The U.S. Office of Personnel Management (OPM) is publishing a proposed rule to amend regulations on the Fair Labor Standards Act (FLSA or the "Act"). This rule supersedes 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), provisionally retained through December 31, 1994; and provides for OPM compliance authority regarding FLSA matters.

DATES: Comments must be received on or before February 9, 1995.

ADDRESSES: Written comments may be sent to Bruce Oland, Chief, Program Development Division, Office of Agency Compliance and Evaluation, Room 7661, U.S. Office of Personnel Management, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Jeffery Miller, (202) 606–2530.

SUPPLEMENTARY INFORMATION: In 1974, Congress amended the FLSA to authorize the former Civil Service Commission (CSC) to administer the Act for Federal employees. OPM has since taken over this responsibility and issued substantive regulations at part 551 of title 5, Code of Federal Regulations, prescribing the criteria and conditions for administration of the Act. These regulations have, from time to time, been supplemented by issuances under the Federal Personnel Manual System (FPM). FPM Letter 551–9 describes the complaint and compliance system for FLSA complaints. One of the key features of this system is that OPM served as an adjudicator of individual (and group) FLSA complaints. This role remained essentially unchanged until 1990.

On March 30, 1990, a Federal court in *Carter* v. *Gibbs*, 909 F.2d 1452 (Fed. Cir. 1990), *cert. denied*, 111 S. Ct. 46 (1990), ruled that the rights of certain employees to seek review of FLSA complaints were limited by the *Civil Service Reform Act of 1978* (CSRA). In this regard, the court determined that employees covered by negotiated grievance procedures (NGP's) established under Section 7121 of title 5, United States Code, could not seek judicial review of matters under the Act and that their only forum in which to seek relief is through the NGP up to and including the arbitration process. A subsequent decision by the Federal Circuit in *Muniz* v. *U.S.*, 972 F. 2d 1304 (Fed. Cir. 1992), expanded on *Carter* by holding that its principles also applied to former employees of agencies (including retirees) and employees promoted out of bargaining unit positions.

On October 1, 1990, the Supreme Court denied certiorari of the Federal Circuit's en banc decision in *Carter*. As a result, OPM informed agencies by memorandum dated November 29, 1990, that, in view of *Carter*, OPM would no longer adjudicate complaints from employees covered by NGP's when those NGP's did not exclude grievances over FLSA matters, but would continue to accept complaints from other employees.

On April 23, 1992, the General Accounting Office (GAO), in *Cecil E. Riggs, et al.*, B–222926.3, announced that, in view of *Carter* and other judicial decisions, it too would no longer accept complaints from employees covered by NGP's. The GAO subsequently amended (57 FR 31272, July 14, 1992) its regulations at 4 CFR parts 22 and 30 to reflect this policy change. The GAO noted that it would continue to accept claims from Federal employees not subject to an NGP.

With judicial and GAO decisions placing most FLSA-covered employees under the exclusive jurisdiction of the NGP for the purpose of FLSA complaints, OPM has reviewed its FLSA compliance program to determine whether the program could be changed in a manner that would facilitate efficient governmentwide administration of the Act. Specifically, OPM believes that FLSA complaint adjudication at the agency level, now provided to most FLSA-covered employees under the above decisions, can and should be extended to all employees. In this event, OPM would no longer adjudicate FLSA complaints. In the case of bargaining unit employees, the procedure would be the NGP (unless FLSA complaints are excluded), with the possibility of invoking binding arbitration. All other employees would seek redress through and agency-based review or grievance system. Such employees also would have access to GAO and the courts if they are not satisfied with the agency decision, thus providing them with a third-party review opportunity. OPM believes this change, as well as other provisions of this proposed subpart, will make administration of the Act more efficient and consistent. The subpart more clearly defines the various FLSA complaint resolution forums and explains which employees have access to which forum at a particular time; i.e. negotiated grievance procedures, or other agency-based review or grievance systems, the GAO, and the judiciary.

OPM also believes that the complaints adjudication process is likely to work better if the parties to the dispute are better aware of their respective responsibilities. Therefore, the proposed rule contains sections discussing the responsibilities of both the employee and the agency. Another section describes the responsibilities of OPM. In this regard, while OPM proposes to discontinue accepting complaints, OPM

also proposes to provide guidance and information to agencies and employees on request. OPM would provide legal interpretations on technical FLSA issues (binding on decision-makers in relevant causes) and also would provide general technical assistance (non-binding). OPM's regional offices would be available to provide general assistance but not legal interpretations.

The authority of GAO to settle claims against the United States is contained in 31 U.S.C. 3702 (b)(1) which provides that a claim filed with the Office must be received within 6 years after the date the claim accrues "except * * * as provided by * * * another law." In a decison rendered on May 23, 1994 (Joseph M. Ford, B–250051), GAO announced that the 2-year statute of limitations (3 years for willful violations) as provided in the Portal-to-Portal Act of 1947, as amended, 29 U.S.C. § 255(a), would apply to all FLSA claims with GAO that have not been settled prior to that date and all claims filed with GAO after that date. Section 640 of Public Law 103–329, signed September 30, 1994, provides for a 6-year statute of limitations to any claim of a Federal employee under the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.) *for claims filed before June 30, 1994.* Under this provision, claims filed *on or after* June 30, 1994, are subject to a 2-year statute of limitations, based on the May 23 Comptroller General decision. The 2-year statute of limitations would now apply to employees covered by NGP's when those NGP's do not exclude grievances over FLSA matters; and to employees not covered by an NGP whose pay claims are reviewable under other agency-based review or grievance systems. The GAO decision would not apply to claims that arise solely out of the title 5 overtime provisions; that is, the 6-year limitation period still applies to title 5 claims.

The proposed rule provides for agency maintenance of records of compliance adjudication and would require agencies to forward to OPM copies of final administrative decisions on FLSA adjudication activities. OPM would utilize this information to help ensure that the requirements of the Act are being met by agencies and employees and to help evaluate how well the adjudication system is working.

The proposed rule explains that complaints covered by OPM regulations do not include matters pertaining to equal pay under 29 U.S.C. 206(d). Equal pay matters are resolved by procedures established by the Equal Employment Opportunity Commission.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it applies only to Federal employees.

List of Subjects in 5 CFR Part 551

Government employees, Wages.

Office of Personnel Management.

James B. King,

Director.

Accordingly, OPM is proposing to amend part 551 as follows:

1. The title and authority citation for part 551 is revised to read as follows:

PART 551—PAY ADMINISTRATION UNDER THE FAIR LABOR STANDARDS ACT

Authority: Sec. 4(f) of the *Fair Labor Standards Act of 1938*, as amended by Pub. L. 93–259, 88 Stat. 55 (29 U.S.C. 204f); Sec. 210 of the *Federal Employees Pay Comparability Act of 1990*, Pub. L. 101–509, 104 Stat. 1460.

2. Subpart F is added to read as follows:

Subpart F—Complaints and Compliance

Subpart F—Complaints and Compliance

§ 551.601 Purpose.

This subpart constitutes OPM's complaint and compliance program for the resolution of matters arising under the Act. This subpart, established under OPM's authority to administer the Act as noted in § 551.101, sets forth administrative complaint systems available to Federal employees. The subpart also describes OPM's role in assisting agencies to comply with the Act.

§ 551.602 Administrative complaint forums.

(a) *Negotiated grievance procedures.* An individual covered by a negotiated grievance procedure (NGP) established under section 7121 of title 5, United States Code must utilize that procedure to seek review of FLSA complaints provided the NGP does not exclude such matters.

(b) *Agency-based review or grievance systems.* An individual not covered by an NGP described in paragraph (a) of this section may file a request for review of an agency's FLSA determination under an agency-based review or grievance system. Decisions under such agency-based systems must be in accordance with the Act and the conditions and criteria prescribed by this part for administration of the Act as well as any legal interpretations issued under § 551.606. These procedures do not cover matters concerning "equal pay" under section 206(d) of title 29, United States Code (which are subject to consideration by the Equal Employment Opportunity Commission under its regulations at part 1620 of title 29, Code of Federal Regulations).

(c) *General Accounting Office.* An individual not covered by an NGP described in paragraph (a) of this section may file a claim concerning a dispute under the Act with the GAO under procedures described by GAO at part 30 of title 4, Code of Federal Regulations. Such a complaint may be filed after receiving an agency decision under paragraph (b) of this section or in lieu of requesting a review under paragraph (b).

§ 551.603 Time limits.

(a) *Administrative review.* Complaints involving pay claims under the Act and filed under §§ 551.602 (a) and (b) of this subpart must meet the time limits and procedural requirements of the complaint system used.

(b) *Statute of limitations.* Notwithstanding any time limitations contained in the system being used, pay claims under the Act are subject to the 2-year statute of limitations provided in section 255(a) of title 29, United States Code for claims filed on or after June 30, 1994. This statutory limit is satisfied (or tolled) when:

(1) A claim is received by the agency out of whose activities the claim arose within 2 years from the date the claim or any portion of the claim accrued; or

(2) A claim is filed directly with GAO within 2 years from the date the claim or any portion of the claim accrued.

§ 551.604 Employee responsibilities.

(a) *Filing of claims.* The employee has the burden of proving compliance with § 551.603(b) by providing documentation showing the date when the agency received his or her claim. Absent such documentation, any back payments on the claim can be made only to cover a period up to 2 years prior to the date of actual payment.

(b) *Hours-of-work complaints.* The employee has the burden to provide evidence from which a reasonable inference can be drawn that he or she was improperly compensated for a certain amount and extent of work performed. A reasonable inference may

be rebutted by the agency as described in § 551.605(b).

(c) *Waiver of rights.* An employee who will accept payment in connection with an administrative decision on a claim must first agree in binding written form that, by accepting the award, the employee waives the right to pursue the matter in the courts or in any administrative forum. This requirement does not apply to payments made in connection with administrative adjudication of claims under § 551.602(a).

(d) *Reprisal.* An employee alleging reprisal for filing a complaint or causing one to be filed may file a request for review of the allegation under the procedures described in §§ 551.602 (a) or (b) whichever applies to the employee.

§ 551.605 Agency responsibilities.

(a) *Processing complaints.* Each agency, after providing the complainant written acknowledgement of receipt of the complaint, must process complaints under the Act that are filed under the procedures described in §§ 551.602 (a) and (b). Complaint decisions must apply the requirements of the Act and part 551 and adhere to any relevant legal interpretations issued under § 551.606(a).

(b) *Hours-of-work complaints.* When an employee has established under § 551.604(b) that he or she has been improperly compensated, the agency has the burden to provide evidence of either the precise amount of work performed or evidence to negate the reasonableness of the inference to be drawn from the employee's evidence.

(c) *Records.* Each agency must maintain the following records:

(1) *Hours of work.* Complete and accurate records of all hours worked by an agency's employees are required by section 11(c) of the Act and § 551.402. The agency must keep such records for a minimum period of 6 years or after GAO audit, whichever is sooner.

(2) *Administrative complaint processes.* Records of these processes include, at a minimum, any decisions issued under § 551.602. These records are maintained within an agency's established system of records.

(d) *Legal basis for pay.* An agency cannot voluntarily apply the pay provisions of the Act to an employee not covered by it, or to an employee that has been determined to be exempt from the Act. In such circumstances, no legal basis exists for making payment under the Act.

(e) *Service of administrative adjudication decisions.* Agencies are required to send one copy of each final agency administrative decision issued under §§ 551.602 (a) or (b) to the following address: United States Office of Personnel Management, Office of Agency Compliance and Evaluation, 1900 E Street NW., Washington, DC 20415.

(f) *Prohibition against reprisal.* Section 15(a)(3) of the Act prohibits discharge of an employee, or discrimination against an employee, in reprisal for filing a complaint under the Act or causing one to be filed.

§ 551.606 OPM responsibilities.

(a) *Legal interpretations.* OPM may issue legal interpretations on FLSA matters on its own initiative or at the request of others, including agency officials, individuals, representatives of individuals (or groups), and arbitrators. Legal interpretations are meant to convey official interpretations of the Act and this part and do not constitute findings of fact for individual (or group) complaints. They are, however, binding with respect to policy issues arising in the context of FLSA complaints adjudicated within an agency. Legal interpretations may be requested by writing to the address designated in § 551.608.

(b) *Technical assistance.* OPM provides technical assistance regarding employee or agency obligations under the Act in response to requests from all sources. Such assistance does not have the force and effect of official legal interpretations issued under paragraph (a) of this section.

(c) *Corrective action.* OPM will require agency action to correct violations of the Act except when the same issues affecting the same employees are under consideration in an agency complaint forum that can also lead to corrective action. Corrective actions may include designation of FLSA exemption status, orders to compute back pay, assurance from the agency of future compliance, or other appropriate action.

§ 551.607 Judicial review.

An employee may seek judicial review of a complaint in a manner prescribed by law.

§ 551.608 OPM addresses.

Requests for legal interpretations and technical assistance under § 551.606 (a) or (b) involving an FLSA matter in the Washington, DC Metropolitan Area or anywhere outside the 50 States, Puerto Rico, the Virgin Islands, and the Pacific Ocean area must be sent to: United States Office of Personnel Management, Office of Agency Compliance and Evaluation, 1900 E Street NW., Washington, DC 20415. Requests for legal interpretations involving matters in other geographical areas also must be sent to the above address while requests for technical assistance must be sent to the appropriate OPM regional office as follows:

OPM Regional Office	Areas covered
Atlanta Region, OPM, Richard B. Russell Fed. Building, 75 Spring Street SW., Atlanta, GA 30303, Telephone: (404) 331–3451.	Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia.
Chicago Region, OPM, John C. Kluczynski Fed. Building, 230 South Dearborn Street, Chicago, IL 60604, Telephone: (312) 353–0387.	Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, West Virginia, and Wisconsin.
Dallas Region, OPM, 1100 Commerce Street, Dallas, TX 75242, Telephone: (214) 767–0561.	Arkansas, Arizona, Colorado, Louisiana, Montana, New Mexico, Oklahoma, Texas, Utah, and Wyoming.
Philadelphia Region, OPM, Wm. J. Green, Jr., Fed. Bldg., 600 Arch Street, Philadelphia, PA 19106, Telephone: (215) 597–9797.	Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Puerto Rico, Rhode Island, Vermont, and Virgin Islands.
San Francisco Region, OPM, 120 Howard Street, 7th Floor, San Francisco, CA 94105, Telephone: (415) 281–7050.	Alaska, California, Hawaii, Idaho, Nevada, Oregon, Pacific Ocean Area, and Washington.

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FARM CREDIT ADMINISTRATION

12 CFR Parts 614, 615, and 618

RIN 3052–AB53

Loan Policies and Operations; Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; General Provisions

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration (FCA), by order of the FCA Board (Board), proposes to repeal several regulations as part of an ongoing effort to reduce unnecessary regulatory burden on Farm Credit System (FCS or System) institutions. Comments that the FCA solicited through a notice of intent regarding regulatory burden identified most of the regulations that the FCA now proposes to delete. The FCA concurs with the commenters that these particular regulations should be repealed because they are outdated or impose a burden that is greater than the benefit derived.

DATES: Written comments must be received on or before February 9, 1995.

ADDRESSES: Comments may be mailed or delivered (in triplicate) to Patricia W. DiMuzio, Associate Director, Regulation Development, Office of Examination, 1501 Farm Credit Drive, McLean, VA 22102–5090. Copies of all communications received will be available for examination by interested parties in the Office of Examination, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT:

W. Eric Howard, Policy Analyst, Regulation Development, Office of Examination, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TDD (703) 883–4444,

or

Richard A. Katz, Senior Attorney, Regulatory Operations Division, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION:

I. Background

On June 10, 1993, the FCA Board approved a Statement on Regulatory Burden seeking public comment on the appropriateness of requirements the FCA regulations impose on the FCS. More specifically, the FCA asked the public to identify regulations that either duplicate other governmental requirements, are not effective, or impose a burden that is greater than the benefit derived. The notice of intent was published in the **Federal Register** (58 FR 34003) on June 23, 1993. Although the 90-day comment period expired on September 21, 1993, the FCA considered comments that were received subsequent to that date.

The FCA received a total of 28 responses. The FCA received nine comment letters from individual Farm Credit associations and three letters from groups of associations in particular Farm Credit districts. Seven Farm Credit banks sent 12 comment letters to the FCA. The Farm Credit Council (FCC) sent a comment letter on behalf of its membership. Additionally, three separate work groups of the Farm Credit System Presidents Planning Committee each sent the FCA a position paper containing recommendations to relieve regulatory burdens pertaining to capital, eligibility, and financially related services.

Many of the comments involve regulatory projects that the FCA Board previously identified in the Unified Agenda of Federal Regulations published in the **Federal Register** on October 25, 1993 (58 FR 57276). The FCA work groups organized to develop revised regulations on these issues will consider the comments as they evaluate various policy options during the course of their regulatory projects. The analysis and appropriate response to comments regarding topics under review by these existing work groups will be included as part of any regulatory action published in the **Federal Register**.

The remaining comments contained a number of recommendations for eliminating or modifying specific regulations that are perceived as imposing unnecessary regulatory burdens on the FCS. The FCA's review and analysis of these comments was guided, in part, by the FCA Board's Policy Statement on Regulatory Philosophy (Policy Statement).[1]

The Policy Statement conveys that "[t]he FCA will work to eliminate outdated regulations and ensure that its regulations implement the purposes of the law without unnecessary burden or cost." According to the Policy Statement, the FCA shall only adopt regulations that: (1) Implement or interpret the law; or (2) are necessary to promote the safe and sound operations of System institutions. The Policy Statement also commits the FCA to replacing outmoded regulations with new regulations that implement the purposes of the law without imposing unnecessary costs or burdens on FCS institutions. Another provision in the Policy Statement declares that the FCA will strive to ensure that each regulation has a well-defined objective addressing specific problems or risks. In this context, the FCA will seek to establish a regulatory environment that grants FCS institutions the business flexibility to offer a full range of high-quality, low-cost credit services to borrowers. The Policy Statement also states that the FCA, to the extent feasible, will seek to eliminate regulations that prescribe specific operational or managerial practices to System institutions. If appropriate, the FCA will consider the regulatory approaches of other Federal financial institution regulators. Finally, another provision in the Policy Statement pledges that when the need arises, the FCA will draft new regulations so that they are clear, easy to understand, and designed to minimize the potential for ambiguity, uncertainty, and resultant litigation.

The FCA analyzed the commenters' recommendations, and determined that many of the suggestions warranted the immediate repeal of certain FCA regulations. Other suggestions will require additional research and analysis before the FCA determines whether, and to what extent, changes in the existing regulations should be proposed. Once a determination is made, the public will be notified of the FCA Board's decisions regarding the remaining issues in an appropriate manner.

The FCA is proposing to repeal the following regulatory provisions: §§ 615.5104; 615.5105(c); 615.5170(b) through (e); 615.5190; 615.5498; 615.5500; 615.5520; 615.5530; and 618.8220. In addition, the FCA is proposing to repeal the FCA prior approval requirements in §§ 614.4470(b)(1) and (b)(3). An explanation of the FCA's reasons for proposing the repeal of these regulations follows. The FCA invites public comment on all aspects of the proposed rule.

II. Analysis of Changes and Comments by Section

A. Loans Subject to Bank Approval

A Farm Credit Bank (FCB) and a bank for cooperatives (BC) suggested that the FCA eliminate all agency prior approvals of FCS institution policies, procedures, and transactions that are not required by the Act. The commenters stated that these prior approval requirements are inconsistent

[1] 59 FR 32189, June 22, 1994.

with the FCA's status as an arm's-length regulator, and deny System institutions the opportunity to use their business judgment. The commenters specifically indicated that the agency should give priority to the removal of the prior approval requirements for general financing agreements (GFAs), financially related services (FRS), and certain insider loan transactions.

Since the enactment of the Agricultural Credit Act of 1987 (1987 Act),[2] the FCA has eliminated from the regulations many of the prior approval requirements that are not mandated by the Act. The FCA is in the process of reviewing all the remaining non-statutory prior approvals in order to determine whether they should be retained. The FCA has already established regulatory projects to determine whether the agency prior approvals of GFAs and FRS are still feasible. Another work group is currently reviewing whether the FCA should continue to pre-approve the retirement of protected stock outside the ordinary course of business.

At this time, the FCA is proposing to eliminate from both §§ 614.4470(b)(1) and (b)(3) the requirement that the agency pre-approve certain insider loan transactions at System associations. Section 614.4470(a) requires funding banks to pre-approve loans that their affiliated associations make to: (1) Their own directors or employees; (2) directors or employees of a jointly managed association; or (3) bank employees. Furthermore, § 614.4470(b) requires FCA approval of loans to any borrower whenever certain institution-affiliated parties will: (1) Receive proceeds of a loan in excess of an amount established by the funding bank; or (2) endorse, guarantee, or comake a loan that is in excess of the amount established by the funding bank.

The FCA agrees with the commenters that the prior approval requirements in §§ 614.4470 (b)(1) and (b)(3) are no longer appropriate since the FCA has become an arm's-length regulator. An existing regulation, 12 CFR 620.5, requires that System institutions disclose in their annual reports to shareholders insider loan transactions. In addition, the FCA has sufficient examination and enforcement powers to ensure that loans to institution-affiliated parties do not undermine the solvency of any FCS bank or association. If the agency prior approval requirements in § 614.4470(b) are repealed, the FCA intends to rely upon its examination authority to determine whether: (1) Bank policy adequately deters insider abuses at institutions in its district; and (2) associations are complying with bank policy.

B. Debt Policy and Consolidated Systemwide Notes

Two Farm Credit banks requested that the FCA repeal §§ 615.5104 and 615.5105(c) because they are no longer necessary. Section 615.5104 requires each bank to adopt a policy for the management of its debt. Section 615.5105(c) requires each bank to identify in its debt management policy the maximum amount of discount notes that can be outstanding at any one time.

The FCA recently revised § 615.5135 to require each FCS bank to adopt an asset/liability management policy. *See* 58 FR 63034, November 30, 1993. This new regulation requires the policies of System banks to address the management of both assets and liabilities in a more comprehensive manner than §§ 615.5104 and 615.5105(c) currently require. Since the FCA agrees with the commenters that §§ 615.5104 and 615.5105(c) are now obsolete, the agency proposes to delete these two regulations. The new investment regulations in subpart E of part 615 enhance the ability of Farm Credit banks to control liquidity and solvency risks in their portfolios.

C. Real and Personal Property

An FCB and a BC commented that §§ 615.5170 (c) and (d) are outdated and should be removed from the FCA regulations. These commenters also asserted that the regulation improperly involves banks in the real and personal property acquisitions of their affiliated associations. After carefully evaluating the commenters' suggestions, the FCA proposes to repeal §§ 615.5170 (b) through (e).

The FCA has concluded that §§ 615.5170 (b) through (d) prescribe detailed operational standards, rather than performance criteria, for ensuring the safe and sound operation of System banks and associations. Furthermore, these provisions neither implement nor interpret provisions in the Act that govern the acquisition of real or personal property by FCS banks and associations. The FCA believes that these regulatory provisions impose burdens on System institutions that produce no corresponding benefits. The FCA also observes that paragraphs (b), (c), and (d) of § 615.5170 are obsolete because they impose responsibilities on the "district boards" that were abolished by section 409(d) of the Agricultural Credit Technical Corrections Act of 1988.[3]

The FCA also believes that § 615.5170 (d) and (e) are no longer necessary because the safety and soundness concerns posed by information system processing technology are now adequately addressed in FCA Information Systems Bulletins. Additionally, Information Systems Bulletin 92–1 addresses information system risks in mergers and acquisitions.

The FCA proposes, however, to retain § 615.5170(a) because this provision implements the applicable sections of the Act. Sections 1.5(5) and 3.1(5) of the Act authorize each bank, subject to regulation by the FCA, to acquire, hold, dispose, and otherwise exercise all the usual incidents of ownership of real and personal property necessary or convenient to its business. Sections 2.2(5) and 2.12(5) of the Act provide associations with similar authorities subject to the supervision by the district bank and regulation by the FCA. Section 615.5170(a) implements these sections of the Act by specifically stating that the ownership of real estate for office quarters of any bank or association "shall be limited to facilities reasonable and necessary to meet the foreseeable requirements of the institution." Furthermore, § 615.5170(a) expressly prohibits any FCS institution from acquiring real property "if it involves, or appears to involve, a bank or association in the real estate or other unrelated business." For safety and soundness reasons, § 615.5170(a) also prohibits banks and associations from directly investing in real estate because such extraneous business activities may increase the exposure of System institutions to loss.

D. Deposits of Funds

The FCA proposes to repeal § 615.5190. The FCA did not receive any comments concerning § 615.5190(a), but it proposes to repeal this provision. The FCA has determined that § 615.5190(a) is unnecessary because sections 1.5(14), 2.2(10), 2.12(18) and 3.1(12) of the Act provide the requisite authority for FCS institutions to deposit current funds in commercial banks that are either members of the Federal Reserve System, or are insured by the Federal Deposit Insurance Corporation (FDIC).

Two Farm Credit banks recommended that the FCA repeal § 615.5190(b) because there is no statutory basis for requiring the National Bank for Cooperatives (CoBank) to make foreign

[2] Pub. L. No. 100–233, 101 Stat. 1568, (January 6, 1988).

[3] Pub. L. No. 100–399, Section 409(d), 102 Stat. 989, 1003, (August 17, 1988).

deposits for the other BCs. The commenters also assert that § 615.5190(b) unnecessarily restricts other BCs from becoming active in the international arena.

Section 615.5190(b) was originally adopted in 1981 (46 FR 51881, October 22, 1981), when there were 12 BCs and the Central Bank for Cooperatives (CBC). After section 304 of the Farm Credit Act Amendments of 1980[4] granted international lending authorities to the BCs, the FCA decided that the CBC should conduct all international banking transactions on behalf of the district BCs. At the time, only the CBC had the expertise to reduce the safety and soundness risks that derive from currency exchange transactions. After the CBC and 10 district BCs merged to form the CoBank, the FCA amended § 615.5190(b) to require CoBank to assume the CBC's function. *See* 56 FR 2671, January 24, 1991.

After careful reflection on this issue, the FCA has determined that the safety and soundness risks inherent in currency exchange transactions should not be controlled by a regulation which flatly prohibits a BC or an agricultural credit bank (ACB), other than CoBank, from independently exercising its international banking authorities under section 3.7(a) of the Act. The existing regulation unduly restricts the business flexibility of BCs and ACBs, other than CoBank, to offer a full range of high-quality, low-cost international financial and credit services to their customers.

If § 615.5190(b) is repealed, the FCA will rely upon its examination and enforcement powers to ensure that all BCs and ACBs conduct their currency exchange transactions in a safe and sound manner. The FCA emphasizes that each BC and ACB is responsible for employing personnel who have the competency and expertise to conduct its international banking operations. In the alternative, a BC or an ACB may contract with commercial banks, other FCS banks operating under title III of the Act, or other qualified institutions for the management of its currency exchange transactions.

Another provision in § 615.5190(b) prohibits FCS banks from holding certificates of deposit that are denominated in foreign currencies as investments under § 615.5140. This provision predates the revisions to § 615.5140, which now requires System banks to acquire investments that are denominated only in United States dollars. The duplicative nature of § 615.5190 supports FCA's decision to repeal this regulation.

E. Farm Credit Securities as Illustrations

The FCA is proposing to repeal § 615.5498, which regulates the illustration of Farm Credit securities that are used for educational or illustrative purposes. The FCA proposes to delete § 615.5498 although it received no comments about this regulation. The purpose of this regulation is to deter counterfeiting of definitive FCS securities. Since virtually all FCS securities are now issued in book-entry form, § 615.5498 is obsolete. The Federal Farm Credit Banks Funding Corporation and individual System banks can implement adequate safeguards to minimize the risk of counterfeiting of the few securities that are still issued in definitive form.

F. Open Registered Mail and Express Policy

The FCA is proposing to repeal subpart P of part 615, which consists of §§ 615.5500, 615.5520, and 615.5530. These three regulations govern the shipment of negotiable securities through the United States Postal Service. The regulations of subpart P of part 615 were designed to eliminate the System's exposure to loss at a time when FCS negotiable securities were routinely shipped by mail between the Bureau of Printing and Engraving and the Federal Reserve Bank of New York. The practice of shipping negotiable securities through the mail was discontinued several years ago. The advent of electronic and computer technology for transferring negotiable securities through the book-entry system has rendered subpart P of part 615 obsolete.

G. Contributions and Membership in Other Organizations

Two FCBs petitioned the FCA either to delete or amend § 618.8220. This regulation requires the boards of directors of FCS banks and associations to approve: (1) Charitable contributions; and (2) the payment of membership dues in any voluntary association, club, or society. The regulation further requires boards of directors, during the approval process, to consider the business benefits and tax consequences of such contributions and memberships for the bank or association.

The commenters contend that § 618.8220 prohibits an institution's board of directors from delegating responsibility for such matters to management. The commenters also assert that board approval often prevents a Farm Credit bank or association from honoring unforeseen charitable requests in a timely manner. In this context, the commenters expressed concern that an FCS institution's reputation in its community will suffer damage if it does not respond to requests from charities and benevolent societies in a prompt and prudent manner.

The FCA agrees with the commenters that § 618.8220 unnecessarily interferes in the business operations of System institutions. Furthermore, § 618.8220 unnecessarily prescribes management practices to System banks and associations. The FCA observes that § 618.8220 imposes requirements on FCS institutions that are not commensurate with the safety and soundness risks posed by System charitable and social activities. The FCA's examination and enforcement powers can adequately deter System institutions from conducting these activities in an unsafe and unsound manner. For these reasons, the FCA is proposing to remove § 618.8220 to provide FCS institutions the additional flexibility they are seeking.

List of Subjects

12 CFR Part 614

Agriculture, Banks, Banking, Foreign trade, Reporting and recordkeeping requirements, Rural areas.

12 CFR Part 615

Accounting, Agriculture, Banks, Banking, Government securities, Investments, Rural areas.

12 CFR Part 618

Agriculture, Archives and records, Banks, Banking, Insurance, Reporting and recordkeeping requirements, Rural areas, Technical assistance.

For the reasons stated in the preamble, parts 614, 615, and 618 of chapter VI, title 12 of the Code of Federal Regulations are proposed to be amended to read as follows:

PART 614—LOAN POLICIES AND OPERATIONS

1. The authority citation for part 614 continues to read as follows:

Authority: Secs. 1.3, 1.5, 1.6, 1.7, 1.9, 1.10, 2.0, 2.2, 2.3, 2.4, 2.10, 2.12, 2.13, 2.15, 3.0, 3.1, 3.3, 3.7, 3.8, 3.10, 3.20, 3.28, 4.12, 4.12A, 4.13, 4.13B, 4.14, 4.14A, 4.14C, 4.14D, 4.14E, 4.18, 4.19, 4.36, 4.37, 5.9, 5.10, 5.17, 7.0, 7.2, 7.6, 7.7, 7.8, 7.12, 7.13, 8.0, 8.5, of the Farm Credit Act (12 U.S.C. 2011, 2013, 2014, 2015, 2017, 2018, 2071, 2073, 2074, 2075, 2091, 2093, 2094, 2096, 2121, 2122, 2124, 2128, 2129, 2131, 2141, 2149, 2183, 2184, 2199, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2206, 2207, 2219a, 2219b, 2243, 2244, 2252, 2279a, 2279a-2, 2279b, 2279b-1, 2279b-2,

[4] Pub. L. No. 96-592, Section 304, 94 Stat. 3437, 3444, (December 24, 1980).

2279f, 2279f-1, 2279aa, 2279aa-5); sec. 413 of Pub. L. 100–233, 101 Stat. 1568, 1639.

Subpart M—Loan Approval Requirements

§ 614.4470 [Amended]

2. Section 614.4470 is amended by removing the words "and approved by the Farm Credit Administration" from paragraphs (b)(1) and (b)(3).

PART 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS

3. The authority citation for part 615 continues to read as follows:

Authority: Secs. 1.5, 1.7, 1.10, 1.11, 1.12, 2.2, 2.3, 2.4, 2.5, 2.12, 3.1, 3.7, 3.11, 3.25, 4.3, 4.9, 4.14B, 4.25, 5.9, 5.17, 6.20, 6.26, 8.0, 8.4, 8.6, 8.7, 8.8, 8.10, 8.12 of the Farm Credit Act (12 U.S.C. 2013, 2015, 2018, 2019, 2020, 2073, 2074, 2075, 2076, 2093, 2122, 2128, 2132, 2146, 2154, 2160, 2202b, 2211, 2243, 2252, 2278b, 2278b-6, 2279aa, 2279aa-4, 2279aa-6, 2279aa-7, 2279aa-8, 2279aa-10, 2279aa-12); sec. 301(a) of Pub. L. 100–233, 101 Stat. 1568, 1608.

Subpart C—Issuance of Bonds, Notes, Debentures and Similar Obligations

§ 615.5104 [Removed]

4. Section 615.5104 is removed.

§ 615.5105 [Amended]

5. Section 615.5105 is amended by removing paragraph (c).

Subpart F—Property and Other Investments

§ 615.5170 [Amended]

6. Section 615.5170 is amended by removing paragraphs (b), (c), (d), (e) and the designation for paragraph (a).

Subpart G—[Removed and reserved]

7. Subpart G, consisting of § 615.5190, is removed and reserved.

Subpart O—Issuance of Farm Credit Securities

§ 615.5498 [Removed and reserved]

8. Section 615.5498 is removed and reserved.

Subpart P—[Removed and reserved]

9. Subpart P, consisting of §§ 615.5500, 615.5520, and 615.5530, is removed and reserved.

PART 618—GENERAL PROVISIONS

10. The authority citation for part 618 continues to read as follows:

Authority: Secs. 1.5, 1.11, 1.12, 2.2, 2.4, 2.5, 2.12, 3.1, 3.7, 4.12, 4.13A, 4.25, 4.29, 5.9, 5.10, 5.17 of the Farm Credit Act (12 U.S.C. 2013, 2019, 2020, 2073, 2075, 2076, 2093, 2122, 2128, 2183, 2200, 2211, 2218, 2243, 2244, 2252).

Subpart F—Miscellaneous Provisions

§ 618.8220 [Removed and reserved]

11. Section 618.8220 is removed and reserved.

Dated: January 4, 1995.

Floyd Fithian,

Acting Secretary, Farm Credit Administration Board.

[FR Doc. 95–489 Filed 1–9–95; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–CE–30–AD]

Airworthiness Directives; B. Grob Flugzeugbau Model G109B Gliders

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD) that would apply to B. Grob Flugzeugbau (Grob) Model G109B gliders. The proposed action would require replacing the elevator inner hinges with hinges of improved design. Two occurrences where the elevator inner hinges separated from the elevator prompted the proposed action. The actions specified by the proposed AD are intended to prevent failure of these hinges because of delamination or corrosion, which, if not detected and corrected, could lead to loss of control of the glider.

DATES: Comments must be received on or before March 14, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–CE–30–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from B. Grob Flugzeugbau, D–8939 Mattsies, Germany. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Herman C. Belderok, Project Officer, Sailplanes, Small Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6932; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 94–CE–30–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–CE–30–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Luftfarht-Bundesant (LBA), which is the airworthiness authority for Germany, recently notified the FAA that an unsafe condition may exist on certain Grob Model G109B gliders. The LBA reports that delamination and corrosion have caused the elevator inner hinges to separate from the elevator on two of the affected gliders. Under the original and current design, these hinges receive excessive stress on the laminated attachment point on the stabilizer and elevator, which causes the laminates to separate and moisture to become

entrapped in this area (eventual corrosion). If not detected and corrected, elevator inner hinge failure could lead to loss of control of the glider.

Grob has issued Service Bulletin TM 817–25, dated November 9, 1987, which includes Repair Instructions for replacing the elevator inner hinges with hinges of improved design. The LBA classified this service bulletin as mandatory and issued LBA AD 88–50, dated March 14, 1988, in order to assure the continued airworthiness of these gliders in Germany.

This glider model is manufactured in Germany and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above. The FAA has examined the findings of the LBA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop in other Grob Model G109B gliders of the same type design, the proposed AD would require replacing the elevator inner hinges with hinges of improved design. The proposed action would be accomplished in accordance with Grob Repair Instructions No. 817–25 for Service Bulletin TM 817–25, dated November 9, 1987.

The unsafe condition referenced in this proposed action is caused by both stress loads and corrosion. Stress loads are a direct result of airplane usage and corrosion can occur regardless of whether the airplane is utilized in flight or is on the ground. With this in mind, the FAA has determined that the compliance time of the proposed AD should be in both calendar time and hours time-in-service (TIS).

The FAA estimates that 30 gliders in the U.S. registry would be affected by the proposed AD, that it would take approximately 8 workhours per glider to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Parts will be provided by the manufacturer at no cost to the operator. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $14,400. This figure is based on the assumption that no affected glider owner/operator has accomplished the proposed replacement of the elevator inner hinges.

Grob has informed the FAA that approximately 20 of the affected gliders already have the proposed replacement incorporated. With this in mind, the cost impact upon the public of the proposed action would be reduced from $14,400 to $5,280.

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

For the reasons discussed above, I certify that this 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) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 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. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new AD to read as follows:

B. Grob Flugzeugrau: Docket No. 94–CE–30–AD.

Applicability: Model G109B gliders, serial numbers 6200 through 6445, certificated in any category.

Compliance: Required within the next 25 hours time-in-service after the effective date of this AD or the next 6 calendar months after the effective date of this AD, whichever occurs first, unless already accomplished.

To prevent failure of the elevator inner hinges because of delamination or corrosion, which, if not detected and corrected, could lead to loss of control of the glider, accomplish the following:

(a) Replace the elevator inner hinges (2) with hinges of improved design, part number 109B–3550, in accordance with Grob Repair Instructions No. 817–25 for Service Bulletin TM 817–25, dated November 9, 1987.

Note: The service instructions of this AD call for "the execution of the instructions to be certified in the log-book by an authorized inspector class 3." This type of inspector is not applicable in the United States and the person accomplishing the AD is as outlined in part 43 of the Federal Aviation Regulations (14 CFR part 43). This is not a change over normal AD procedures.

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

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(d) All persons affected by this directive may obtain copies of the document referred to herein upon request to B. Grob Flugzeugbau, D–8939 Mattsies, Germany; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on January 4, 1995.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–519 Filed 1–9–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 91

[Docket No. 93–AWA–13]

RIN 2120–AF38

Proposed Alterations of the Los Angeles, CA, Class B Airspace

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); extension of comment period.

SUMMARY: This notice announces an extension of the comment period for Notice No. AF38, "Proposed Alteration of the Los Angeles, CA, Class B Airspace" (59 FR 60244; November 22, 1994). This comment period is extended from January 23, 1995 to February 22, 1995. The extension responds to requests from the Aircraft Owners and Pilots Association (AOPA) and the Southern California Airspace User's Working Group (SCAUWG) to allow additional time for specific comments responsive to Notice No. AF38.

DATES: The comment period is being extended from January 23, 1995 to February 22, 1995.

ADDRESSES: As stated in Notice No. AF38, comments should be mailed in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC–200), Airspace Docket No. 93–AWA–13, 800 Independence Avenue, SW., Washington, DC 20591.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Norman W. Thomas, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–9230.

SUPPLEMENTARY INFORMATION: On November 22, 1994, the FAA published Notice No. AF38, "Proposed Alteration of the Los Angeles, CA, Class B Airspace." This notice invites comments on issues related to the modification of the existing Los Angeles, CA, Class B Airspace area.

Written requests from both AOPA and SCAUWG were received by the FAA for a 30-day extension of the originally established comment period. This extension is requested to allow sufficient time for AOPA to disseminate the Notice information to the aeronautic public and provide sufficient time for airspace users and SCAUWG members to submit meaningful comments.

In order to give all interested persons additional time to be notified of the issues, and submit their specific comments, the FAA finds that it is in the public interest to extend the comment period. Accordingly, the comment period for Notice No. AF38 is extended to February 22, 1995.

Issued in Washington, DC on December 29, 1994.

Harold W. Becker,

Acting Director, Air Traffic Rules and Procedures Service.

[FR Doc. 95–578 Filed 1–9–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[PS–80–93]

RIN 1545–AS38

Rules for Certain Rental Real Estate Activities

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations providing rules for rental real estate activities of taxpayers engaged in certain real property trades or businesses. The proposed regulations reflect changes to the law made by the Omnibus Budget Reconciliation Act of 1993, and affect taxpayers subject to the limitations on passive activity losses and passive activity credits.

DATES: Written comments must be received by April 10, 1995. Outlines of oral comments to be presented at a public hearing scheduled for Thursday, May 11, 1995, at 10 a.m. must be received by April 20, 1995.

ADDRESSES: Send submissions to: CC:DOM:CORP:T:R (PS–80–93), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:T:R (PS–80–93), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC.

The public hearing will be held in the auditorium of the Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, William M. Kostak, (202) 622–3080; concerning submissions and the hearing, Carol Savage, (202) 622–8452 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, PC:FP, Washington, DC 20224.

The collection of information is in § 1.469–9(g). This information is required by the IRS to administer the rules under section 469(c)(7). This information will be used to determine whether a taxpayer that qualifies for relief under section 469(c)(7) has made the election to treat all of the taxpayer's interests in rental real estate as a single rental real estate activity as provided in section 469(c)(7)(A). The likely respondents are individuals or households, business or other for-profit institutions, and small businesses or organizations.

Estimated total annual reporting burden for making or revoking the election: 3,015 hours.

The estimated annual burden per respondent varies from 0.10 hours to 0.25 hours, depending on individual circumstances, with an estimated average of 0.15 hours.

Estimated number of respondents: 20,000 electing/100 revoking.

Estimated annual frequency of responses: on occasion.

Background

This document proposes amendments to 26 CFR part 1 to provide rules relating to the treatment of rental real estate activities of certain taxpayers under the passive activity loss and credit limitations of section 469. Section 469 disallows losses from passive activities to the extent they exceed income from passive activities and similarly disallows credits from passive activities to the extent they exceed tax liability allocable to passive activities. In general, passive activities are activities in which the taxpayer does not

materially participate. In addition, until the enactment of the Omnibus Budget Reconciliation Act of 1993 (OBRA 1993), all rental activities (including those in which a taxpayer materially participated) were passive.

OBRA 1993 added a new section 469(c)(7), which provides that rental real estate activities of qualifying taxpayers are not subject to the rule that treats all rental activities as passive. Thus, a rental real estate activity of a qualifying taxpayer is not passive if the taxpayer materially participates in the activity. Second, the new rules provide that each of a qualifying taxpayer's interests in rental real estate is treated as a separate activity unless the taxpayer elects to treat all interests in rental real estate as a single activity.

To qualify for this treatment under section 469(c)(7) for a taxable year, a taxpayer must perform, during that year, over 750 hours of personal services, and over half of the taxpayer's total personal services, in real property trades or businesses in which the taxpayer materially participates. A closely held C corporation is treated as satisfying these tests if more than 50 percent of its gross receipts for the taxable year are derived from real property trades or businesses in which it materially participates. For purposes of the qualification tests, a real property trade or business is defined as any real property development, redevelopment, construction, reconstruction, acquisition, conversion, rental, operation, management, leasing, or brokerage trade or business.

Explanation of Provisions

1. Treatment of Rental Real Estate Activities of Qualifying Taxpayers

The proposed regulations provide that a rental real estate activity of a qualifying taxpayer will remain passive for a taxable year unless the taxpayer materially participates in the activity. This rule applies to all rental real estate activities of a qualifying taxpayer, including those giving rise to expenses described in section 212 of the Code.

2. Determination of Rental Real Estate Activities

The proposed regulations provide that the election to treat all interests in rental real estate as a single activity is binding for the taxable year in which it is made and for all future years in which the taxpayer is a qualifying taxpayer unless there is a material change in the taxpayer's facts and circumstances and the election is revoked. In addition, the regulations clarify that an electing taxpayer's limited partnership interests in rental real estate are combined with the taxpayer's other interests in rental real estate into a single rental real estate activity. The regulations also clarify that interests in rental real estate cannot be combined with other trades or businesses of the taxpayer into a single activity. For this purpose, however, any rental real estate that a taxpayer groups with a trade or business activity under § 1.469–4(d)(1)(i) (A) or (C) is not treated as an interest in rental real estate.

3. Treatment of Limited Partners

Section 469(c)(7) provides that the new rules for rental real estate activities are not to be construed as affecting the determination of whether a qualifying taxpayer materially participates with respect to any interest in a limited partnership as a limited partner. Thus, material participation with respect to a limited partnership interest is determined in accordance with section 469(h)(2), which provides that limited partners are treated as material participants only to the extent provided in regulations. The existing temporary regulations provide that material participation can generally be established by satisfying one of seven tests, but only three of these tests can be used to establish material participation with respect to limited partnership items. Accordingly, the proposed regulations provide that a qualifying taxpayer generally must establish material participation in a rental real estate activity held, in whole or part, through limited partnership interests under one of the three tests available to limited partners under the temporary regulations. This rule does not apply if the taxpayer elects to treat all interests in rental real estate as a single activity and less than 10 percent of the taxpayer's gross rental income from the activity is attributable to limited partnership interests. In that case, the taxpayer may use any of the seven tests under the temporary regulations to establish material participation in the activity.

4. Qualification Tests

As noted above, a taxpayer qualifies for the treatment prescribed in section 469(c)(7) by performing personal services in real property trades or businesses in which the taxpayer materially participates. The proposed regulations provide that, for purposes of the qualification tests, the determination of a taxpayer's real property trades or businesses is based on all of the relevant facts and circumstances. A taxpayer may use any reasonable method of applying the facts and circumstances, but the determination must generally be applied consistently from year to year. The proposed regulations also provide that material participation in a real property trade or business is determined under the generally applicable rules of the existing temporary regulations.

5. Coordination With Former Passive Activity Rules

The proposed regulations clarify the treatment of suspended losses and credits allocable to a nonpassive rental real estate activity. They provide that the former passive activity rules of section 469(f) apply. Thus, the suspended loss or credit may be used to offset income from, or tax liability allocable to, the rental real estate activity, and any remaining loss or credit is treated as a loss or credit from a passive activity.

6. Coordination With $25,000 Offset for Rental Real Estate Activities

The proposed regulations clarify that a suspended loss or credit attributable to a nonpassive rental real estate activity may qualify under section 469(i) as a loss or credit from a rental real estate activity in which the taxpayer actively participates. Under section 469(i), such a loss or credit may be used to offset nonpassive income or tax liability attributable to nonpassive income, subject to a $25,000 limitation and an adjusted gross income phaseout. The proposed regulations also clarify that the $25,000 limitation is not reduced by losses or credits that are allowable under section 469(c)(7).

7. Regrouping Under the Activity Rules

The regulations defining an activity for purposes of section 469 (§ 1.469–4) include a consistency requirement. Once a taxpayer has grouped activities, they may not be regrouped unless the grouping is clearly inappropriate or there has been a material change in the facts and circumstances. The proposed regulations provide an exception to the consistency requirement for the first taxable year in which section 469(c)(7) applies. In that year, a taxpayer is permitted to regroup its activities to the extent necessary or appropriate to avail itself of the new rules.

The proposed regulations also provide that a taxpayer who adopted (or retained) a grouping of activities under Project PS–1–89 (the proposed definition of activity regulations) published in 1992 may regroup activities in the first taxable year in which the taxpayer determines tax liability under the rules of the final definition of activity regulations rather than under the proposed definition of activity regulations. The regulations also clarify that, in the first taxable year in

which a taxpayer applies the rules of either the proposed definition of activity regulations or the final definition of activity regulations in determining tax liability, the taxpayer must regroup its activities if its previous grouping is inconsistent with the applicable rules. Although the rules permitting or requiring a taxpayer to regroup activities refer to the taxpayer's determination of tax liability under section 469, they will be applied to partnerships and S corporations conducting activities subject to section 469.

Special Analyses

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

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for Thursday, May 11, 1995, at 10:00 a.m. in the auditorium of the Internal Revenue Building. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit written comments and outlines of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by April 20, 1995.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is William M. Kostak, Office of Assistant Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read as follows:

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

Section 1.469–9 also issued under 26 U.S.C. 469(c)(6), (h)(2), and (l)(1).

Par. 2. Section 1.469–0 is amended by:

1. Revising the entry for § 1.469–4(h).
2. Revising the heading for § 1.469–9 and adding entries for paragraphs (a) through (j) of § 1.469–9.
3. Revising the entry for § 1.469–11(b)(2) and removing the entries for § 1.469–11(b)(2) (i) and (ii).
4. Revising the entry for § 1.469–11(b)(3).
5. Adding an entry for § 1.469–11(b)(4).
6. The revisions and additions read as follows:

§ 1.469–0 Table of contents.

* * * * *

§ 1.469–4 Definition of Activity.

* * * * *

(h) Rules for grouping rental real estate activities for taxpayers qualifying under section 469(c)(7).

* * * * *

§ 1.469–9 Rules for certain rental real estate activities.

(a) Scope and purpose.
(b) Definitions.
(1) Trade or business.
(2) Real property trade or business.
(3) Rental real estate.
(4) Personal services.
(5) Material participation.
(6) Qualifying taxpayer.
(c) Requirements for qualifying taxpayers.
(1) In general.
(2) Requirement of material participation in the real property trades or businesses.
(3) Treatment of spouses.
(4) Employees in real property trades or businesses.
(d) General rule for determining real property trades or businesses.
(1) Facts and circumstances.
(2) Consistency requirement.
(e) Treatment of rental real estate activities of a qualifying taxpayer.
(1) In general.
(2) Treatment as a former passive activity.
(3) Grouping rental real estate activities with other activities.
(f) Limited partnership interests in rental real estate activities.
(1) In general.
(2) De minimis exception.
(g) Election to treat all interests in rental real estate as a single rental real estate activity.
(1) In general.
(2) Certain changes not material.
(3) Filing a statement to make or revoke the election.
(h) Interests in rental real estate held by certain passthrough entities.
(1) General rule.
(2) Special rule if a qualifying taxpayer holds a fifty-percent or greater interest in a passthrough entity.
(i) [Reserved].
(j) $25,000 offset for rental real estate activities of qualifying taxpayers.
(1) In general.
(2) Example.

* * * * *

§ 1.469–11 Effective date and transition rules.

* * * * *

(b) * * *
(2) Additional transition rule for 1992 amendments.
(3) Fresh starts under consistency rules.
(i) Regrouping when tax liability is first determined under Project PS–1–89.
(ii) Regrouping when tax liability is first determined under § 1.469–4.
(iii) Regrouping when taxpayer is first subject to section 469(c)(7).
(4) Certain investment credit property.

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Par. 3. Section 1.469–4 is amended by revising paragraph (e)(1) and the heading of paragraph (h) and by adding the text of paragraph (h) to read as follows:

§ 1.469–4 Definition of Activity.

* * * * *

(e) * * *

(1) *Original groupings.* Except as provided in paragraph (e)(2) of this section and § 1.469–11, once a taxpayer has grouped activities under this section, the taxpayer may not regroup those activities in subsequent taxable years. Taxpayers must comply with disclosure requirements that the Commissioner may prescribe with respect to both their original groupings and the addition and disposition of specific activities within those chosen groupings in subsequent taxable years.

* * * * *

(h) *Rules for grouping rental real estate activities for taxpayers qualifying under section 469(c)(7).* See § 1.469–9

for rules for certain rental real estate activities.

Par. 4. The heading of section 1.469–9 is revised, and the text of this section is added to read as follows:

§ 1.469–9 Rules for certain rental real estate activities.

(a) *Scope and purpose.* This section provides guidance to taxpayers engaged in certain real property trades or businesses on applying section 469(c)(7) to their rental real estate activities.

(b) *Definitions.* The following definitions apply for purposes of this section:

(1) *Trade or business.* A *Trade or business* is any trade or business determined by treating the types of activities in § 1.469–4(b)(1) as if they involved the conduct of a trade or business, and any interest in rental real estate, including any interest in rental real estate that gives rise to deductions under section 212.

(2) *Real property trade or business. Real property trade or business* is defined in section 469(c)(7)(C).

(3) *Rental real estate. Rental real estate* is any real property used by customers or held for use by customers in a rental activity within the meaning of § 1.469–1T(e)(3). However, any rental real estate that the taxpayer grouped with a trade or business activity under § 1.469–4(d)(1)(i) (A) or (C) is not an interest in rental real estate for purposes of this section.

(4) *Personal services. Personal services* means any work performed by an individual in connection with a trade or business. However, personal services do not include any work performed by an individual in the individual's capacity as an investor as described in § 1.469–5T(f)(2)(ii).

(5) *Material participation. Material participation* has the same meaning as under § 1.469–5T. Paragraph (f) of this section contains rules applicable to limited partnership interests in rental real estate that a qualifying taxpayer elects to aggregate with other interests in rental real estate of that taxpayer.

(6) *Qualifying taxpayer.* A *qualifying taxpayer* is a taxpayer that owns at least one interest in rental real estate and meets the requirements of paragraph (c) of this section.

(c) *Requirements for qualifying taxpayers*—(1) *In general.* A qualifying taxpayer must meet the requirements of section 469(c)(7)(B). A closely held C corporation meets these requirements by satisfying the requirements of section 469(c)(7)(D)(i). For purposes of section 469(c)(7)(D)(i), gross receipts do not include items of portfolio income within the meaning of § 1.469–2T(c)(3).

(2) *Requirement of material participation in the real property trades or businesses.* A taxpayer must materially participate in a real property trade or business in order for the personal services provided by the taxpayer in that real property trade or business to count towards meeting the requirements of paragraph (c)(1) of this section.

(3) *Treatment of spouses.* Spouses filing a joint return are qualifying taxpayers only if one spouse separately satisfies both requirements of section 469(c)(7)(B). In determining the real property trades or businesses in which a married taxpayer materially participates (but not for any other purpose under this paragraph (c)), work performed by the taxpayer's spouse in a trade or business is treated as work performed by the taxpayer under § 1.469–5T(f)(3), regardless of whether the spouses file a joint return for the year.

(4) *Employees in real property trades or businesses.* For purposes of paragraph (c)(1) of this section, personal services performed during a taxable year as an employee generally will be treated as performed in a trade or business but will not be treated as performed in a real property trade or business, unless the taxpayer is a five-percent owner (within the meaning of section 416(i)(1)(B)) in the employer at all times during the taxable year.

(d) *General rule for determining real property trades or businesses*—(1) *Facts and circumstances.* The determination of a taxpayer's real property trades or businesses for purposes of paragraph (c) of this section is based on all of the relevant facts and circumstances. A taxpayer may use any reasonable method of applying the facts and circumstances in determining the real property trades or businesses in which the taxpayer provides personal services. Depending on the facts and circumstances, a real property trade or business consists either of one or more than one trade or business specifically described in section 469(c)(7)(C).

(2) *Consistency requirement.* Once a taxpayer determines the real property trades or businesses in which personal services are provided for purposes of paragraph (c) of this section, the taxpayer may not redetermine those real property trades or businesses in subsequent taxable years unless the original determination was clearly inappropriate or there has been a material change in the facts and circumstances that makes the original determination clearly inappropriate.

(e) *Treatment of rental real estate activities of a qualifying taxpayer*—(1) *In general.* Section 469(c)(2) does not apply to any rental real estate activity of a taxpayer for a taxable year in which the taxpayer is a qualifying taxpayer under paragraph (c) of this section. Instead, a rental real estate activity of a qualifying taxpayer is a passive activity under section 469 for the taxable year unless the taxpayer materially participates in the activity. Each interest in rental real estate of a qualifying taxpayer will be treated as a separate rental real estate activity, unless the taxpayer makes an election under paragraph (g) of this section to treat all interests in rental real estate as a single rental real estate activity.

(2) *Treatment as a former passive activity.* For any taxable year in which a qualifying taxpayer materially participates in a rental real estate activity, that rental real estate activity will be treated as a former passive activity under section 469(f) if disallowed deductions or credits are allocated to the activity under § 1.469–1(f)(4).

(3) *Grouping rental real estate activities with other activities.* For purposes of this section, a qualifying taxpayer may not group a rental real estate activity with any other activity of the taxpayer. For example, if a qualifying taxpayer develops real property, constructs buildings, and owns an interest in rental real estate, the taxpayer's interest in rental real estate may not be grouped with the taxpayer's development activity or construction activity. Thus, only the participation of the taxpayer with respect to the rental real estate may be used to determine if the taxpayer materially participates in the rental real estate activity under § 1.469–5T.

(f) *Limited partnership interests in rental real estate activities*—(1) *In general.* If a taxpayer elects under paragraph (g) of this section to treat all interests in rental real estate as a single rental real estate activity, and at least one interest in rental real estate is held by the taxpayer as a limited partnership interest (within the meaning of § 1.469–5T(e)(3)), the combined rental real estate activity will be treated as a limited partnership interest of the taxpayer for purposes of determining material participation. Accordingly, the taxpayer will not be treated under this section as materially participating in the combined rental real estate activity unless the taxpayer materially participates in the activity under the tests listed in § 1.469–5T(e)(2) (dealing with the tests for determining the material participation of a limited partner).

(2) *De minimis exception.* If a qualifying taxpayer elects under

paragraph (g) of this section to treat all interests in rental real estate as a single rental real estate activity, and the taxpayer's share of gross rental income from all of the taxpayer's limited partnership interests in rental real estate is less than ten percent of the taxpayer's share of gross rental income from all of the taxpayer's interests in rental real estate for the taxable year, paragraph (f)(1) of this section does not apply. Thus the taxpayer may determine material participation under the seven tests listed in § 1.469–5T(a).

(g) *Election to treat all interests in rental real estate as a single rental real estate activity*—(1) *In general.* A qualifying taxpayer may make an election to treat all of the taxpayer's interests in rental real estate as a single rental real estate activity. This election is binding for the taxable year in which it is made and for all future years in which the taxpayer is also a qualifying taxpayer. However, if there is a material change in a taxpayer's facts and circumstances, the taxpayer may revoke the election using the procedure described in paragraph (g)(3) of this section.

(2) *Certain changes not material.* The fact that an election is less advantageous to the taxpayer in a particular taxable year is not, of itself, a material change in the taxpayer's facts and circumstances. Similarly, a break in the taxpayer's status as a qualifying taxpayer is not, of itself, a material change in the taxpayer's facts and circumstances.

(3) *Filing a statement to make or revoke the election.* A qualifying taxpayer makes the election to treat all interests in rental real estate as a single rental real estate activity by filing a statement with the taxpayer's original income tax return for the taxable year. This statement must contain a declaration that the taxpayer is a qualifying taxpayer for the taxable year and is making the election pursuant to section 469(c)(7)(A). The taxpayer may make this election for any taxable year in which section 469(c)(7) is applicable. A taxpayer may revoke the election only in the taxable year in which a material change in the taxpayer's facts and circumstances occurs. To revoke the election, the taxpayer must file a statement with the taxpayer's original income tax return for that year. This statement must contain a declaration that the taxpayer is revoking the election under section 469(c)(7)(A) and an explanation of the nature of the material change.

(h) *Interests in rental real estate held by certain passthrough entities*—(1) *General rule.* Except as provided in paragraph (h)(2) of this section, a qualifying taxpayer's interest in rental real estate held by a partnership or an S corporation (passthrough entity) is treated as a single interest in rental real estate if the passthrough entity grouped its rental real estate as one rental activity under § 1.469–4(d)(5). If the passthrough entity groups its rental real estate into separate rental activities under § 1.469–4(d)(5), each rental real estate activity of a passthrough entity will be treated as a separate interest in rental real estate of a qualifying taxpayer. However, a taxpayer may elect under paragraph (g) of this section to treat all interests in rental real estate, including the rental real estate interests held through passthrough entities, as a single rental real estate activity.

(2) *Special rule if a qualifying taxpayer holds a fifty-percent or greater interest in a passthrough entity.* If a qualifying taxpayer holds a fifty-percent or greater interest in the capital, income, gain, loss, deduction, or credit of a passthrough entity at any time during the taxable year, each interest in rental real estate held by the passthrough entity will be treated as a separate interest in rental real estate of the qualifying taxpayer, regardless of the passthrough entity's grouping of activities under § 1.469–4(d)(5). However, the taxpayer may elect under paragraph (g) of this section to treat all interests in rental real estate, including the rental real estate interests held through passthrough entities, as a single rental real estate activity.

(i) [Reserved].

(j) *$25,000 offset for rental real estate activities of qualifying taxpayers*—(1) *In general.* A qualifying taxpayer's passive losses and credits from rental real estate activities (including suspended passive activity losses and credits from rental real estate activities in which the taxpayer materially participates) are allowed to the extent permitted under section 469(i).

(2) *Example.* The following example illustrates the application of this paragraph (j).

Example. (i) Taxpayer *A* owns building *X* and building *Y*, both interests in rental real estate. In 1995, *A* is a qualifying taxpayer within the meaning of paragraph (c) of this section. *A* does not elect to treat *X* and *Y* as one activity under section 469(c)(7)(A) and paragraph (g) of this section. As a result, *X* and *Y* are treated as separate activities pursuant to section 469(c)(7)(A)(ii). *A* materially participates in *X* which has $100,000 of passive losses disallowed from prior years and produces $20,000 of losses in 1995. *A* does not materially participate in *Y* which produces $40,000 of income in 1995. *A* also has $50,000 of income from other nonpassive sources in 1995. *A* otherwise meets the requirements of section 469(i).

(ii) Because *X* is not a passive activity in 1995, the $20,000 of losses produced by *X* in 1995 are nonpassive losses that may be used by *A* to offset part of the $50,000 of nonpassive income. Accordingly, *A* is left with $30,000 ($50,000 − $20,000) of nonpassive income. In addition, *A* may use the prior year disallowed passive losses of *X* to offset any income from *X* and passive income from other sources. Therefore, *A* may offset the $40,000 of passive income from *Y* with $40,000 of passive losses from *X*.

(iii) Because *A* has $60,000 ($100,000 − $40,000) of passive losses remaining from *X* and meets all of the requirements of section 469(i), *A* may offset up to $25,000 of nonpassive income with passive losses from *X* pursuant to section 469(i). As a result, *A* has $5,000 ($30,000 − $25,000) of nonpassive income remaining and disallowed passive losses from *X* of $35,000 ($60,000 − $25,000) in 1995.

Par. 5. Section 1.469–11 is amended as follows:

1. Paragraph (a)(2) is amended by removing "; and" and adding ";" in its place.

2. Paragraph (a)(3) is redesignated as paragraph (a)(4) and a new paragraph (a)(3) is added.

3. Paragraph (b)(2)(ii) is removed, paragraph (b)(2)(i) is redesignated as paragraph (b)(2), and the heading for paragraph (b)(2) is revised.

5. Paragraph (b)(3) is redesignated as paragraph (b)(4).

6. A new paragraph (b)(3) is added.

7. The added and revised provisions read as follows:

§ 1.469–11 Effective date and transition rules.

(a) * * *

(3) The rules contained in § 1.469–9 apply for taxable years beginning on or after January 1, 1995, and to elections made under § 1.469–9(g) with returns filed on or after January 1, 1995; and

* * *

* * * * *

(b) * * * (2) *Additional transition rule for 1992 amendments.* * * *

(3) *Fresh starts under consistency rules*—(i) *Regrouping when tax liability is first determined under Project PS–1–89.* For the first taxable year in which a taxpayer determines its tax liability under Project PS–1–89, the taxpayer may regroup its activities without regard to the manner in which the activities were grouped in the preceding taxable year and must regroup its activities if the grouping in the preceding taxable year is inconsistent with the rules of Project PS–1–89.

(ii) *Regrouping when tax liability is first determined under § 1.469–4.* For the first taxable year in which a

taxpayer determines its tax liability under § 1.469–4, rather than under the rules of Project PS–1–89, the taxpayer may regroup its activities without regard to the manner in which the activities were grouped in the preceding taxable year and must regroup its activities if the grouping in the preceding taxable year is inconsistent with the rules of § 1.469–4.

(iii) *Regrouping when taxpayer is first subject to section 469(c)(7).* For the first taxable year beginning after December 31, 1993, a taxpayer may regroup its activities to the extent necessary or appropriate to avail itself of the provisions of section 469(c)(7) and without regard to the manner in which the activities were grouped in the preceding taxable year.

* * * * *

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 95–170 Filed 1–9–95; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–94–104]

RIN 2115–AE47

Drawbridge Operation Regulations; West Bay, Osterville, MA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is considering a change to the regulations governing the West Bay Bridge at mile 1.2 over West Bay in Osterville, Massachusetts. The special operating regulations formerly published at 33 CFR 117.78 were deleted in error. The bridge has not been operating in accordance with the existing general regulations. This proposal would correct the deletion error and publish the correct operating regulations for the bridge.

DATES: Comments must be received on or before March 13, 1995.

ADDRESSES: Comments should be mailed to Commander (obr), First Coast Guard District, Captain John Foster Williams Federal Building, 408 Atlantic Ave, Boston, Massachusetts 02110–3350. Comments may also be hand-delivered to room 628 at the same address between 6:30 a.m. and 3 p.m., Monday through Friday, except federal holidays. The telephone number is (617) 223–8364. Comments will become part of this docket and will be available for inspection or copying at the above address.

FOR FURTHER INFORMATION CONTACT: John W. McDonald, Project Manager, Bridge Branch, (617) 223–8364.

SUPPLEMENTARY INFORMATION:

Request for Comments

Interested persons are invited to participate in this rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD01–94–104), the specific section of this proposal to which each comment applies, and give reasons for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying and electronic filing. If that is not practical, a second copy of any bounded material is requested. Persons desiring acknowledgement that their comments have been received should enclose a stamped, self-addressed post card or envelope.

The Coast Guard will consider all comments received during the period, and may change this proposal in light of comments received. The Coast Guard plans no public hearing. Persons may request a public hearing by writing to Commander (obr), First Coast Guard District at the address listed under **ADDRESSES**. The request should include reasons why a hearing would be beneficial. If the Coast Guard determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The drafters of this notice are Mr. John McDonald, Project Manager, Bridge Branch, and Lieutenant Commander Samuel R. Watkins, Project Counsel, District Legal Office.

Background and Purpose

The West Bay Bridge over West Bay in Osterville, Massachusetts has a vertical clearance of 15′ above mean high water (MHW) and 17′ above mean low water (MWL). Through an error, the special operating regulations for this bridge were deleted from 33 CFR 117.78. Therefore, the bridge is required to open on signal at all times under the general drawbridge operating regulations. Regulations published in the **Federal Register** of October 7, 1982 (47 FR 44258) read as follows:

(a) The draw shall open on signal from April 1 through October 31 on the following schedule:

(1) April 1 through June 14 and October 12 through October 31; 8 a.m. to 4 p.m.

(2) June 15 through June 30; 8 a.m. to 6 p.m.

(3) July 1 until Labor Day; 8 a.m. to 8 p.m.

(4) Labor Day through October 11; 8 a.m. to 5 p.m.

(5) For the remainder of this period the draw will open on signal if 4 hours notice is given in advance.

(b) From November 1 through March 31 the draw shall open on signal if a 24-hour notice is given in advance.

The bridge owner, the Massachusetts Highway Department (MHD), has been operating the bridge in accordance with the deleted regulations on an unofficial basis. The Coast Guard is proposing to publish regulations that reinstate the operating hours of the bridge contained in the erroneously deleted rule.

Discussion of Proposed Amendments

The MHD, after being advised of the deletion of the regulations covering its West Bay Bridge, has requested that operating hours be published to read as follows:

(a) The draw shall open or signal from April 1 through October 31 on the following schedule:

(1) From April 1 through June 14 and October 12 through October 31; 8 a.m. to 4 p.m.

(2) June 15 through June 30; 8 a.m. to 6 p.m.

(3) July 1 until Labor Day; 8 a.m. to 8 p.m.

(4) Labor Day through October 11; 8 a.m. to 5 p.m.

(5) At all other times from April 1 through October 31, the draw shall open on signal if at least four (4) hours advance notice is given by calling the number posted at the bridge.

(b) From November 1 through March 31, the draw shall open if at least twenty-four (24) hours advance notice is given by calling the number posted at the bridge.

The drawtenders will be on call to open the draw when the advance notice is given.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact to be so minimal that a full Regulatory Evaluation, under paragraph 10e of the regulatory policies and procedures of DOT, is unnecessary. This conclusion is based on the fact that the regulation will

not prevent mariners from transiting the West Bay Bridge. It will require only that mariners plan their transits.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this action will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Because of the reasons discussed in the Regulatory Evaluation above, the Coast Guard certifies under 5 U.S.C. 605(b) that this action, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this proposed regulation does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that, under section 2.B.2.e.(32)(e) of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.622 is added to read as follows:

§ 117.622 West Bay.

(a) The draw of the West Bay Bridge, in Osterville, Massachusetts, shall open on signal from April 1 through October 31 on the following schedule:

(1) From April 1 through June 14 and October 12 through October 31; 8 a.m. to 4 p.m.

(2) June 15 through June 30; 8 a.m. to 6 p.m.

(3) July 1 until Labor Day; 8 a.m. to 8 p.m.

(4) Labor Day through October 11; 8 a.m. to 5 p.m.

(5) At all other times from April 1 through October 31, the draw shall open on signal if at least four (4) hours advance notice is given by calling the number posted at the bridge.

(b) From November 1 through March 31, the draw shall open if at least twenty-four (24) hours advance notice is given by calling the number posted at the bridge.

(c) The owners of this bridge shall provide and keep in good legible condition clearance gauges for each draw with figures not less than 12 inches high designed, installed and maintained according to the provisions of section 118.160 of this chapter.

Dated: December 29, 1994.

J.L. Linnon,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 95–565 Filed 1–9–95; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OAQPS No. CA–102–3–6756a; FRL–5135–5]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Placer County Air Pollution Control District (PCAPCD) and San Diego County Air Pollution Control District (SDCAPCD)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP) which concern recordkeeping requirements for sources emitting volatile organic compounds (VOCs) and which concern the control of VOC emissions from metal can and coil coating operations.

The intended effect of proposing approval of these rules is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA's final action on this notice of proposed rulemaking (NPRM) will incorporate these rules into the federally approved SIP. EPA has evaluated each of these rules and is proposing to approve them under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: Comments must be received on or before February 9, 1995.

ADDRESSES: Comments may be mailed to: Daniel A. Meer, Rulemaking Section [A–5–3], Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rules and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rules are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95814.

Placer County Air Pollution Control District, 11464 B Avenue, Auburn, CA 95603.

San Diego County Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123.

FOR FURTHER INFORMATION CONTACT: Nikole Reaksecker, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, (415) 744–1187.

SUPPLEMENTARY INFORMATION:

Applicability

The rules being proposed for approval into the California SIP include: PCAPCD Rule 223, Metal Container Coating; PCAPCD Rule 410, Recordkeeping for Volatile Organic Compound Emissions; and SDCAPCD Rule 67.4, Metal Container, Metal Closure, and Metal Coil Coating Operations. These rules were submitted by the California Air Resources Board to EPA on November 30, 1994, December 21, 1994, and October 19, 1994, respectively.

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 CAA or pre-amended Act), that included Placer

County and San Diego County. 43 FR 8964; 40 CFR 81.305. Because these areas were unable to meet the statutory attainment date of December 31, 1982, California requested under section 172(a)(2), and EPA approved, an extension of the attainment date to December 31, 1987. 40 CFR 52.222. On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the pre-amended Act, that the above districts' portions of the California SIP were inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies. Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in pre-amendment guidance.[1] EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. Both Placer County and San Diego County are classified as serious;[2] therefore, these areas were subject to the RACT fix-up requirement and the May 15, 1991 deadline.

The State of California submitted many revised RACT rules for incorporation into its SIP on October 19, 1994, November 30, 1994, and December 21, 1994, including the rules being acted on in this document. This document addresses EPA's proposed action for PCAPCD Rule 223, Metal Container Coating; PCAPCD Rule 410, Recordkeeping for Volatile Organic Compound Emissions; and SDCAPCD Rule 67.4, Metal Container, Metal Closure, and Metal Coil Coating Operations. PCAPCD adopted Rules 223 and 410 on October 6, 1994 and November 3, 1994, respectively. SDCAPCD adopted Rule 67.4 on September 27, 1994. These submitted rules were found to be complete on December 7, 1994, December 23, 1994, and December 1, 1994, pursuant to EPA's completeness criteria that are set forth in 40 CFR Part 51 Appendix V[3] and are being proposed for approval into the SIP.

PCAPCD Rule 223 controls VOC emissions from metal container coating operations. PCAPCD Rule 410 establishes recordkeeping requirements for sources emitting VOCs. SDCAPCD Rule 67.4 controls VOC emissions from metal container, metal closure, and metal coil coating operations. VOCs contribute to the production of ground level ozone and smog. These rules were adopted as part of the districts' effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and proposed action for these rules.

EPA Evaluation and Proposed Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and Part D of the CAA and 40 CFR Part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 1. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "fix-up" their RACT rules. See section 182(a)(2)(A). The CTG applicable to PCAPCD Rule 223 and SDCAPCD Rule 67.4 is entitled, "Control of Volatile Organic Emissions from Existing Stationary Sources—Volume II: Surface Coating of Cans, Coils, Paper, Fabrics, Automobiles, and Light-Duty Trucks", EPA–450/2–77–008. The guidance document used to evaluate PCAPCD Rule 410 is entitled, "Recordkeeping Guidance Document for Surface Coating Operations and the Graphics Arts Industry", EPA–340/1–88–003. Further interpretations of EPA policy are found in the Blue Book, referred to in footnote 1. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

PCAPCD Rule 223 includes the following significant changes from the current SIP:

- Adds definitions which improve rule clarity and enforceability,
- Regulates emissions from coil coating, the interior body spray of three piece cans, tab press lubricant, and necker lubricants,
- Lowers emission limits for the interior body spray of two piece cans and new drums, pails and lids coatings,
- Allows emission control systems to be used by sources using noncomplying coatings,
- Specifies coating application methods,
- Prohibits use of coatings which could violate the provisions of the rule,
- Regulates the use of surface preparation and clean-up solvents,
- Adds a compliance schedule to the administrative requirements,
- Requires sources using an emission control device to submit an Operation and Maintenance Plan and to maintain daily records,
- States that compliance with the standards of Section 302 shall be demonstrated by conducting annual source testing of the emission control equipment and by analyzing coating VOC content,
- Includes test methods for determining vapor pressure of an organic solvent used in a gun washing system and for determining capture and control efficiency.

PCAPCD Rule 410 includes the following significant changes from the current SIP:

- Removes reference to unspecified test methods. SDCAPCD's submitted Rule 67.4 includes the following significant changes from the current SIP:
- Redefines "closure", "exempt compound", and "volatile organic compound (VOC)", and defines

[1] Among other things, the pre-amendment guidance consists of those portions of the proposed Post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" (Blue Book) (notice of availablity was published in the **Federal Register** on May 25, 1988); and the existing control technique guidelines (CTGs).

[2] Placer County and San Diego County retained their designations of nonattainment and were classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 55 FR 56694 (November 6, 1991).

[3] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

"exterior body spray" and "letterpress coating".

- Specifies VOC limits for letterpress coatings, other coil coatings, and end sealing compounds applied to pet food and non-food containers.
- Removes portions containing Air Pollution Control Officer Discretion.
- Requires air pollution control systems installed to include emissions collection systems with an overall capture and control device efficiency of at least 85 percent by weight.
- Adds recordkeeping requirements for solvent usage and sources using noncomplying coatings.
- Allows the measurement of VOC content in letterpress coatings to be determined using SDCAPCD's Method 24D.
- Requires the measurement of VOC content in noncomplying coatings to be conducted in accordance with EPA Methods 18 and 25 or 25A.
- Includes requirements when perfluorocarbon (PFC) compounds and other exempt compounds are present in the coating, cleaning, or surface preparation material.

EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. Therefore, PCAPCD Rule 223, Metal Container Coating; PCAPCD Rule 410, Recordkeeping for Volatile Organic Compound Emissions; and SDCAPCD Rule 67.4, Metal Container, Metal Closure, and Metal Coil Coating Operations, are being proposed for approval under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and Part D.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. Section 600 et. seq., 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, 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 sections 110 and 301 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, 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 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).

The OMB has exempted this action from review under Executive Order 12866.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compound.

Authority: 42 U.S.C. 7401–7671q.

Dated: December 27, 1994.

Felicia Marcus,

Regional Administrator.

[FR Doc. 95–521 Filed 1–9–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[WI45–01–6501; FRL–5136–3]

Approval and Promulgation of Implementation Plans; Wisconsin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: USEPA proposing to approve the State Implementation Plan (SIP) revision, for the Milwaukee ozone nonattainment area (Kenosha, Milwaukee, Ozaukee, Racine, Washington, and Waukesha counties), as submitted by the State of Wisconsin. The purpose of the revision is to offset any growth in emissions from growth in vehicle miles traveled (VMT), or number of vehicle trips, and to attain reduction in motor vehicle emissions, in combination with other measures, as needed to comply with Reasonable Further Progress (RFP) milestones of the Clean Air Act (Act). Wisconsin submitted the implementation plan revision to satisfy the statutory mandates, found in section 182 of the Act, which requires the State to submit a SIP revision that identifies and adopts specific enforceable Transportation Control Measures (TCM) to offset any growth in emissions from growth in VMT, or number of vehicle trips, in severe ozone nonattainment areas.

The rationale for this proposed approval is set forth below; additional information is available at the address indicated below.

DATES: Comments on this proposed rule must be received on or before February 9, 1995.

ADDRESSES: Written comments should be sent to: Carlton T. Nash, Chief, Regulation Development Section, Air Toxics and Radiation Branch (AT–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the Wisconsin SIP revision request and USEPA's analysis are available for inspection at the following address: (It is recommended that you telephone Michael Leslie at (312) 353–6680 before visiting the Region 5 Office.) U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.

A copy of the Wisconsin SIP revision request is available for inspection at the office of: Jerry Kurtzweg (ANR–443), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Michael G. Leslie, Air Toxics and Radiation Branch, Regulation Development Section (AT–18J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 353–6680.

SUPPLEMENTARY INFORMATION:

I. Background

Section 182(d)(1)(A) of the Act requires States that contain severe ozone nonattainment areas to adopt transportation control measures and transportation control strategies to offset growth in emissions from growth in VMT or number of vehicle trips and to attain reductions in motor vehicle emissions (in combination with other measures) as needed to comply with the Act's RFP milestones and attainment requirements. The requirements for establishing a VMT Offset program are set forth in 182(d)(1)(A) and discussed in the General Preamble to Title I of the Act (57 FR 13498 April 16, 1992).

For certain program required under the Act (including VMT-Offset), USEPA had earlier adopted a policy pursuant to section 110(k)(4) of the Act to conditionally approve SIPs that committed to provide the USEPA by a

date certain. That interpretation was challenged in the *Natural Resources Defense Council* v. *Browner* consolidated lawsuits brought in the United States Court of Appeals for the District of Columbia Circuit. In a full opinion dated May 6,1994 (and in a March 8, 1994 and April 22, 1994 Amended order issued earlier) the court found that USEPA's conditional approval interpretation exceeded USEPA's statutory authority. While the court opinion did not specifically address the VMT offset program in its opinion or orders, USEPA believes that the courts general conclusion that the Agency's construction of the conditional approval provision was unlawful, and precludes USEPA from taking action to approve any submitted VMT offset committal sip revision request.

On October 4, 1993 the USEPA published a proposed rule (58 FR 51593) to conditionally approve Wisconsin's commitment for the VMT Offset requirement. In light of the court opinion, USEPA has decided not to go forward with the conditional approval of the VMT Offset committal SIPs, but believes that it would be appropriate to interpret the VMT Offset provisions of the Act to account for how States can practicably comply with each of the provision's elements, as discussed in detail below.

The VMT Offset provision requires that States submit by November 15, 1992 specific enforceable TCMs and Strategies to offset any growth in emissions from growth VMT or number of vehicle trips, sufficient enough to allow total area emissions to comply with the RFP and attainment requirements of the Act. The USEPA has observed that these three elements (i.e. offsetting growth in mobile source emissions, attainment of the RFP reduction, and attainment of the ozone National Ambient Air Quality Standard (NAAQS) create a timing problem of which Congress was perhaps not fully aware. As discussed in USEPA's April 16, 1992 General Preamble to Title I, ozone areas affected by this provision were not otherwise required to submit SIPs that show attainment of the 1996 15 percent Rate-of-Progress (ROP) milestone until November 15, 1993 and likewise are not required to demonstrate post-1996 RFP and attainment of the NAAQS until November 15, 1994. The SIP revisions due on November 15, 1993 and November 15, 1994 are broader in scope than growth in VMT or vehicle trips in that they necessarily address emissions trends and control measures for non motor vehicle emissions sources and, in the case of attainment demonstrations, complex photochemical modeling studies.

The USEPA does not believe that Congress intended the VMT Offset provisions to advance the dates for these broader submissions. Further, USEPA believes that the November 15, 1992 date would not allow sufficient time for States to have fully developed specific sets of measures that would comply with all of the elements of the VMT Offset requirements of section 182(d)(1)(A) over the long term. Consequently, USEPA believes it would be appropriate to interpret the Act to provide the following alternative set of staged deadlines for submittal of the elements of the VMT Offset SIP.

II. Review Criteria

Section 182(d)(1)(A) sets forth three elements that must be met by a VMT Offset SIP. Under USEPA's alternative interpretation, the three required elements of section 182(d)(1)(A) are separable, and can be divided into three separate submissions that could be submitted on different dates. Section 179(a) of the Act, in establishing how USEPA would be required to apply mandatory sanctions if a State fails to submit a full SIP, also provides that the sanctions clock starts if a State fails to submit one or more SIP elements, as determined by the Administrator. The USEPA believes that this language provides USEPA the authority to determine that the different elements of the SIP submissions are separable. Moreover, given the continued timing problems addressed above, USEPA believes it is appropriate to allow States to separate the VMT Offset SIP into three elements, each to be submitted at different times: (1) The initial requirement to submit TCMs that offset growth in emissions; (2) the requirement to comply with the 15 percent periodic reduction requirement of the Act; and (3) the requirement to comply with the post-1996 periodic reduction and attainment requirements of the Act.

Under this approach, the first element, the emissions growth offset element, was due on November 15, 1992. The USEPA believes this element is not necessarily dependent on the development of the other elements. The State could submit the emissions growth offset element independent of an analysis of that element's consistency with the RFP or attainment requirements of the Act. Emissions trends from other sources need not be considered to show compliance with this offset element. As submitting this element does not implicate the timing problem of advancing the deadlines for RFP and attainment demonstrations, USEPA does not believe it is necessary to extend the statutory deadline for submittal of the emissions growth offset element. The first element requires that a State submit a revision that demonstrates the trend in motor vehicle emissions from a 1990 baseline to the year for attaining the NAAQS for ozone. As described in the General Preamble, the purpose is to prevent growth in motor vehicle emissions from canceling out the emissions reduction benefits of the federally mandated programs in the Act. The USEPA interprets section 182(d)(1)(A) to require that sufficient measures be adopted so that projected motor vehicle VOC emissions will never be higher during the ozone season in 1 year, than during the ozone season in the year before. When growth in VMT and vehicle trips would otherwise cause a motor vehicle emissions upturn, this upturn must be prevented. The emissions level at the point of potential upturn becomes a ceiling on motor vehicle emissions. This requirement applies to projected emissions in the years between the submission of the SIP revision and the attainment deadline and is above and beyond the separate requirements for the RFP and attainment demonstration.

The ceiling is therefore defined, up to the point of upturn, as motor vehicle emissions that would occur in the ozone season of that year, with VMT growth, if all measures for that area in that year were implemented as required by the Act. When this curve begins to turn up due to growth in VMT or vehicle trips, the ceiling becomes a fixed value. The ceiling would include the effects of Federal measures such as new motor vehicle standards, Phase II Reid Vapor Pressure (RVP) controls, and reformulated gasoline, as well as Act mandated SIP requirements such as enhanced inspection and maintenance, the clean-fuel vehicle fleet program, and the employee commute options (ECO) program. The ceiling would also include the effect of forecasted growth in VMT and vehicle trips in the absence of new discretionary measures to reduce them. Any VMT reduction measures or other actions to reduce motor vehicle emissions adopted since November 15, 1990 that are not specifically required for the area by another provision of the Act would not be included in the calculation of the ceiling.

If projected motor vehicle emissions for the ozone season in 1 year are not higher than the projected motor vehicle emissions during the previous year's ozone season, given the control measures in the SIP, the VMT offset requirement is satisfied.

Projected motor vehicle emissions must be held at or below the level of the ceiling. Offset measures implemented earlier than required and sufficient to prevent an emissions upturn, will be viewed as a temporary reduction in emissions to a level below the ceiling required by this provision. In this case, the forecasted motor vehicle emissions could increase from 1 year to the next, as long as forecasted motor emissions never exceed the ceiling.

Under the staged submittal approach, the second element, which requires the VMT offset SIP to be consistent with the 15 percent ROP reduction requirements of the Act, was due on November 15, 1993 which is the same date on which the 15 percent ROP SIP was due under section 182(b)(1) of the Act. USEPA believes that it is reasonable to extend the deadline of this element to the date on which the entire 15 percent periodic reduction SIP was due under section 182(b)(1)(A) of the Act, since this allows States to develop a more comprehensive strategy to address the ROP requirement and assure that the TCM elements of that strategy required under section 182(d)(1)(A) are consistent with the remainder of the ROP demonstration.

The third element requires the VMT offset SIP to comply with the post-1996 RFP and attainment requirements of the Act and to identify and adopt specific enforceable transportation control strategies and TCMs. The due date for submittal of this element is extended to November 15, 1994 under the staged submittal approach. USEPA believes that the deadline for this element can be reasonably extended to November 15, 1994 because the broader post-1996 RFP and attainment SIP demonstrations are not due until that date. This extension will enable the State to ensure that the TCM elements of the broader submittals are consistent with the States' overall post-1996 RFP and attainment strategies. Indeed, it is arguably impossible for a State to make the showing for the third element until the broader demonstrations have been developed by the State, and extending the submittal date will result in a better program for reducing emissions in the long term.

III. Summary of State Submittal

The State of Wisconsin has submitted a SIP revision implementing the first two required elements contained in section 182(d)(1)(A) of the Act.

Mobile source emissions are a function of many specific factors including vehicle fleet, age and mix, the Reid Vapor Pressure ((RVP) fuel volatility), and temperature. The magnitude of mobile source emissions is particularly a function of vehicle speeds and the amount of VMT. To obtain mobile source emissions, the usual process is to multiply VMT by an appropriate emission factor to derive an estimate of total motor vehicle emissions.

The State has met the requirement of the first element of section 182(d)(1)(A) by forecasting VMT from the year 1990 to the year 2007, and then estimating mobile source emissions by applying USEPA's required mobile source emissions factor model MOBILE5a to generate the appropriate emissions factors for the analysis. This analysis shows a continued decrease in emissions throughout the analysis period without the implementation of additional TCMs.

In developing the VMT offset program, WDNR modeled a mobile source control program for the offset analysis which included: the Federal Motor Vehicle Control Program, Phase II RVP controls, Reformulated gasoline, VMT reductions due to the implementation of the ECO program, a Enhanced Inspection/Maintenance (I/M) program, and an Anti-Tampering Program (ATP). WDNR generated Emissions Factors (EF) for the analysis using the USEPA mobile source emissions factor model MOBILE5a.

The first step in the analysis of projected mobile source emissions was to project the area's VMT from the 1990 levels to 2007. The 1990 level of VMT (estimated to be 37,988,300 miles per day) was developed for the 1990 base year inventory, and was submitted to USEPA on July 16, 1993 was prepared by the Southeastern Wisconsin Regional Planning Commission (SEWRPC), the Metropolitan Planning Organization for the severe ozone nonattainment area. The aggregate 1990 VMT level was then projected to year 2007 level by using a 2.0 percent growth rate. This growth rate corresponds to the growth rate used in the ROP plan. The 2.0 percent per year increase in VMT will result in a total VMT growth of 40 percent for the analysis period.

The aggregate VMT was adjusted for the implementation of the ECO program. In years 1996 and 1997 the ECO program was assumed at two-thirds effectiveness, yielding a 2-percent reduction of VMT. In years 1998 through 2007 the ECO program was assumed at full effectiveness, yielding a 3-percent reduction of VMT.

The next step in the analysis was to develop an aggregate EF for each analysis year. Four speeds were modeled to obtain EFs for the analysis: 15 mph, 25 mph, 40 mph, and 62 mph. These speeds were used to represent the varied operating conditions which exist for the severe ozone nonattainment area roadway system. The percentages of aggregate VMT for the speeds of 15 mph, 25 mph, 40 mph, and 62 mph, were 10 percent, 30 percent, 39 percent, and 21 percent, respectively. These VMT percentages can be directly translated into EF percentages, *i.e.*, $EF_{15\ mph} = 0.10\ EF_{total}$, $EF_{25\ mph} = 0.30\ EF_{total}$, $EF_{40\ mph} = 0.39\ EF_{total}$, $EF_{62\ mph} = 0.21\ EF_{total}$. Each of the generated emissions factors were multiplied by the appropriate EF percentage and then added to yield an aggregate emissions factor. The percentage of breakdown in VMT as a percentage of total VMT is based on the information included in the 1990 base year inventory.

The aggregate average was multiplied by an inventory adjustment factor of 1.0207 yielding a Final Emissions Factor (FEF). This inventory adjustment was performed so that the 1990 level of total emissions in the VMT offset analysis was consistent with 1990 base year inventory (a total of 147.2 tons/day for the six severe ozone nonattainment counties). Finally, the amount of VOC emissions per year was calculated by multiplying the FEF and the aggregate VMT adjusted for ECO implementation.

The State of Wisconsin's submittal predicts that the growth in VMT in the Milwaukee severe ozone area will not result in a mobile source emissions upturn. This prediction of a continued decline in mobile source emissions beyond the attainment year demonstrates satisfaction of the first element.

Wisconsin submitted a 15-percent ROP SIP for Milwaukee severe ozone to the USEPA in November 1993, but the submittal was found incomplete in a letter dated January 21, 1994. Although the ROP SIP contained feasible measure that could add up to the required 15 percent reduction in emissions, the SIP submittal was found incomplete because it lacked enforceable regulations. In the submittal, the State indicated it would attain its 15 percent reduction in VOCs by 1996 without relying on TCMs. Consequently, Wisconsin has shown that it does not plan to submit specific enforceable TCMs for the second VMT offset SIP element.

The State is in the process of developing fully enforceable regulations that achieve a 15-percent reduction in VOCs. The USEPA is proposing approval of the second VMT offset SIP element, but will not take final action on this element until the State has submitted a complete 15 percent ROP plan and the USEPA is certain that it

need not evaluate these TCMs for purposes of the second element.

WDNR is currently working with the State Department of Transportation, SEWRPC, and the Lake Michigan Regional States to assess the emissions reductions and the need to implement TCMs to meet the post-1996 RFP and attainment demonstration for the area. The State is required to submit a list of TCMs used to meet the post-1996 and attainment requirements of the Act by November 15, 1994. This third element of the VMT offset SIP will be the subject of a future rulemaking.

II. Proposed Rulemaking

In this action, USEPA is proposing to approve the first two elements of the VMT offset SIP revision submitted by the State of Wisconsin. It is noted that the USEPA will not take final action on the second element until the State has submitted a complete 15 percent ROP plan. The third element of the Wisconsin VMT offset SIP will be the subject of a future rulemaking. Public comment is solicited on the request SIP revision and USEPA's proposed action. Comments received by February 9, 1995 will be considered in the development of USEPA's final rule.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. USEPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Procedural Background

This document has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael Shapiro, Acting Assistant Administrator for Air and Radiation.

Administrative Requirements

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, USEPA 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, USEPA 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.

The SIP approvals under section 110 and subchapter I, part D of the Act 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, I certify that this does not have a significant impact on small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids USEPA to base its actions concerning SIPs on such grounds. See *Union Electric CO. v. U.S.E.P.A.*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2).

Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Executive Order 12866.

List of Subjects in 40 CFR Part 52

Environmental Protection, Air Pollution Control, Ozone.

Authority: 42 U.S.C. 7401–7671q.

Dated: December 19, 1994.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 95–551 Filed 1–9–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[IN42–1–6344; FRL–5136–5]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On February 25, 1994, the State of Indiana submitted regulations as a revision to the ozone State Implementation Plan (SIP), governing the control of Volatile Organic Compound (VOC) emissions from graphic arts facilities, as part of the Reasonably Available Control Technology (RACT) Catch-up requirements. Amendments to the graphic arts operation regulation, Indiana Administrative Code 326 IAC 8–8–5 are intended to require existing graphic arts operations, which have the potential to emit 25 tons per year or more of VOC, to comply with VOC RACT regulations previously applicable to graphic arts operations with the potential to emit 100 tons per year or more of VOC. However, the graphic arts regulation contains insufficient recordkeeping and reporting requirements. Because the State has committed to correcting this deficiency by January 31, 1996, USEPA is proposing conditional approval of this SIP revision request. If the State fails to correct the deficiency, the conditional approval will convert to a disapproval.

DATES: Comments on this revision request and on the proposed USEPA action must be received by February 9, 1995.

ADDRESSES: Copies of the SIP revision request and USEPA's analysis are available for inspection at the following address:

U.S. Environmental Protection Agency, Region 5, Air and Radiation Division (AR–18J), 77 West Jackson Boulevard, Chicago, Illinois 60604. (It is recommended that you telephone Rosanne Lindsay at (312) 353–1151, before visiting the Region 5 Office.)

Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Rosanne Lindsay at (312) 353–1151.

SUPPLEMENTARY INFORMATION:

I. Summary of State Submittal

The State of Indiana submitted a revision request for its Ozone SIP on February 25, 1994, amending the graphic arts rule. The amendments for graphic arts (326 IAC 8–5–5) function to reduce the source size applicability cut-off for graphic arts facilities located in the severe ozone nonattainment area (Lake and Porter Counties) from 100 to 25 tons of VOC per year (potential to emit) as required by the Clean Air Act (the Act), as amended in 1990. The USEPA, on May 17, 1993, commented on a draft version of this regulation, noting several deficiencies, including the lack of recordkeeping and reporting requirements to show compliance with the regulation required by section 182(b)(2) of the Act. The State of Indiana responded with a copy of the current recordkeeping and reporting rule (8–1–1), and stated that USEPA had not previously required any revisions of the rule based on numerous recent changes to the VOC Reasonably Available Control Technology (RACT) rules. The rules were adopted by the Indiana Pollution Control Board on June 2, 1993.

II. Analysis of State Submittal

The State of Indiana has corrected most of the deficiencies noted in the USEPA comments of May 17, 1993. However, the recordkeeping and

reporting requirements, contained in Title 326 IAC 8–1–2, do not provide for adequate enforcement of the graphic arts rule. Region 5 has provided the Indiana Department of Environmental Management with a copy of the June 1992 Model VOC Rules. The following deficiencies must be corrected in order for USEPA to take final action approving the rule:

1 General

(a) The monitoring, recordkeeping and reporting (MRR) requirements must be made more comprehensive to include more than: (1) Daily volume-weighted averages of all coatings applied in a coating or printing line; and (2) records of daily usage of gallons of solids coating and VOC content of each coating or ink solvent. For instance, when a source does not comply with daily weighted averaging (i.e., when the source complies with "complying coatings or inks" such as low VOC coating), then daily recordkeeping must be kept which specifies both the VOC content and the ink or coating identification. Alternatively, when a source complies by using control devices, then records of monitoring parameters and other information must also be kept (See (B) Sources Using Control Devices, below; See also, June 1992 Model VOC Rules).

(b) The MRR requirements, should specify a period of time (i.e., 5 years) during which records shall be maintained at the facility The rules only require that: (1) The owner/operator "keep records to demonstrate compliance with the permit or document restrictions" (326 IAC 8–1–1); and (2) "records * * * shall be made available upon request" (326 IAC 8–1–2).

2 Sources Using Control Devices

The Indiana recordkeeping/reporting rules do not contain the requirement for the recordkeeping or reporting of new or existing control devices. Records and reports that should be maintained include monitoring data, calibration and maintenance logs, and logs of operating time. Indiana rule 326 IAC 8–1–2(7) only requires the maintenance of records of daily usage of gallons of solids coating, VOC content of each coating or ink solvent, and daily emissions in pounds of VOC (See June 1992 Model VOC Rules).

3. Exempt Sources

The Indiana rules do not require the maintenance of records and reports for exempt sources such as: Information pertaining to the initial certification, calculations demonstrating that total potential emissions of VOC from all flexographic and rotogravure printing presses at the facility will be less than the required limits for each year, the maintenance of records for a period of 5 years, and the requirement that any exceedances will be reported to the Administrator within 30 days after the exceedance occurs (See Model VOC Rules). Exempt sources should calculate: (1) Yearly potential emissions, (2) yearly actual emissions, and (3) the name, identification, VOC content, and yearly volume of coatings/inks.

Based on EPA's preliminary analysis that the State's submittal was unapprovable. Indiana submitted to USEPA, a letter dated December 14, 1994, committing to the necessary rule revision. In accordance with an attached schedule, Indiana expects a final rule to be adopted and submitted to USEPA by January 1996.

III. Proposed Rulemaking Action and Solicitation of Public Comment

The USEPA has reviewed the Indiana graphic arts rule against the June 1992 Model Rule and is proposing a conditional approval because the State has committed to correct the rule so that it fully comports with the Federal requirements described above. Upon a final conditional approval by USEPA, if the State ultimately fails to meet its commitment to correct the deficiency, noted herein, by January 31, 1996, the date the State committed to in its commitment letter, then USEPA's action for the State's requested SIP revision will automatically convert to a final disapproval.

Public comments are solicited on the requested SIP revision and on USEPA's proposed conditional approval. Public comments received by February 9, 1995 will be considered in the development of USEPA's final rulemaking action.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989, (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP Each request for revision to any SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., USEPA 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, USEPA 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 Act 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, I certify 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 Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids USEPA 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).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: December 29, 1994.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 95–550 Filed 1–9–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 70

[FRL–5136–6]

Operating Permits Program Rule Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of comment period for proposal to revise the operating permits program regulations.

SUMMARY: On August 29, 1994, EPA proposed in the **Federal Register** (59 FR 44460) revisions to the operating permits regulations in part 70 of chapter I of title 40 of the Code of Federal Regulations. The comment period provided in that notice was 90 days, closing on November 28, 1994. On November 21, 1994, a **Federal Register** notice was published (59 FR 59974)

extending that comment period an additional 45 days until January 12, 1995. Today's action extends that comment period an additional 19 days until January 31, 1995.

DATES: Comments must be received by January 31, 1995.

ADDRESSES: Comments must be mailed (in duplicate if possible) to: EPA Air Docket (LE–131), Attn: Docket No. A–93–50, room M–1500, Waterside Mall, 401 M Street SW, Washington, DC 20460

FOR FURTHER INFORMATION CONTACT: Michael Trutna (telephone 919/541–5345), mail drop 12, United States Environmental Protection Agency, Office of Air Quality Planning and Standards, Information Transfer and Program Integration Division, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: Part 70 contains regulations requiring States to develop, and submit to EPA for approval, programs for issuing operating permits to major, and certain other, stationary sources of air pollution. The minimum elements of operating permits programs are contained in part 70 which was promulgated on July 21, 1992 (57 FR 32250).

Subsequent to promulgation of part 70, nearly 20 entities, including State and local governments, environmental groups, and industry associations, petitioned for judicial review of the part 70 regulations. One of the key aspects of the litigation and of an operating permits program is the system for revising permits to incorporate changes at permitted sources.

Because of the complexity of the proposed revisions, potential commenters asserted that the 90-day comment period provided was not long enough to prepare comprehensive comments on the permit revision system as well as all the other proposed revisions. The comment period was subsequently extended an additional 45 days to allow time for preparation of comments, primarily on how to fashion a more workable permit revision system. Several requests for an additional extension of the comment period on the proposal notice have been received to allow completion of comment preparation. An additional 19 days is therefore being provided for development and submittal of comments.

Dated: December 28, 1994.

Mary Nichols,

Assistant Administrator for Air and Radiation.

[FR Doc. 95–549 Filed 1–9–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 70

[AD–FRL–5135–9]

Clean Air Act Interim Approval of Operating Permits Program; City of Albuquerque/Bernalillo County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes interim approval of the Operating Permits Program submitted by the City of Albuquerque/Bernalillo County. The City of Albuquerque/Bernalillo County's Operating Permits Program was submitted for the purpose of complying with Federal requirements which mandate that States develop, and submit to EPA, programs for issuing operating permits to all major stationary sources, and to certain other sources. In the final rules section of this **Federal Register**, the EPA is promulgating interim approval of the City of Albuquerque/Bernalillo County's Operating Permits Program as a direct final rule without prior proposal because the Agency views this submittal as noncontroversial 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, then the direct final will be withdrawn and all public comments 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 on this proposed action must be received in writing by February 9, 1995.

ADDRESSES: Copies of the City/County's submittal and other supporting information used in developing the final rule are available for inspection during normal business hours at the following locations. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before visiting day.

Environmental Protection Agency, Region 6, Air Programs Branch (6T–AN), 1445 Ross Avenue, suite 700, Dallas, Texas 75202–2733.

City of Albuquerque/Bernalillo County, Environmental Health Department, One Civic Plaza, NW., room 3023, Albuquerque, New Mexico, 87103.

FOR FURTHER INFORMATION CONTACT: Adele D. Cardenas, New Source Review Section, Environmental Protection Agency, Region 6, 1445 Ross Avenue, suite 700, Dallas, Texas 75202–2733, telephone (214) 665–7210.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule of the same title which is located in the Rules section of this **Federal Register**.

Authority: 42 U.S.C. 7401–76719.

Dated: December 23, 1994.

A. Stanley Meiburg,

Acting Regional Administrator (6A).

[FR Doc. 95–548 Filed 1–9–95; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 60, No. 6
Tuesday, January 10, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Technology Administration.
Title: Foreign Science and Technical Information Survey
Form Number(s): NA.
Agency Approval Number: NA.
Type of Request: New collection.
Burden: 80 hours.
Number of Respondents. 80.
Avg Hours Per Response. 1 hour
Needs and Uses: The purpose of this survey is to determine how best to meet the foreign scientific and technical information needs of U.S. business and industry through gaining a better understanidng of how U.S. firms use such information.
Affected Public: Businesses or other for–profit organizations.
Frequency: One time.
Respondent's Obligation: Voluntary
OMB Desk Officer: Maya A. Bernstein, (202) 395–3785.

Copies of the above information collection proposal can be obtained by calling or writing Gerald Taché, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maya A. Bernstein, OMB Desk Officer, room 10236, New Executive Office Building, Washington, DC 20503.

Dated: January 5, 1995.

Gerald Taché,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 95–581 Filed 1–9–95; 8:45 am]

BILLING CODE 3510–CW–F

International Trade Administration

[C–542–401]

Certain Textile Mill Products From Sri Lanka; Notice of Scope Amendment

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice Of Amendment to the Existing Conversion of the Scope of the Order from the Tariff Schedules of the United States Annotated to the Harmonized Tariff Schedule.

SUMMARY: On January 1, 1989, the United States fully converted to the international harmonized system of tariff classification. On January 11, 1989, the Department of Commerce (the Department) published the *Conversion to Use of the Harmonized Tariff Schedule of Classifications for Antidumping and Countervailing Duty Proceedings* (54 FR 993; January 11, 1989) (1989 Conversion) for all antidumping and countervailing duty orders in effect or investigations in progress as of January 1, 1989. On March 29, 1994, the Department published a proposed amendment to the conversion (59 FR 14609). Interested parties were invited to comment on this proposed amended conversion. The Department also requested the U.S. Customs Department to comment on the proposed amendment to the conversion. Based on our analysis of the comments received, the Department is now publishing an amended conversion of the scope of the countervailing duty order on certain textile mill products from Sri Lanka.

EFFECTIVE DATE: January 10, 1995.

FOR FURTHER INFORMATION CONTACT: Martina Tkadlec or Kelly Parkhill, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230, telephone (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

In 1985, the Department issued a countervailing duty order on Certain Textile Mill Products from Sri Lanka (C–542–401) (50 FR 9826; March 12, 1985). The scope of this order was originally defined solely in terms of the Tariff Schedules of the United States Annotated (TSUSA) item numbers; no narrative product description was provided. On January 1, 1989, the United States fully converted from the TSUSA to the Harmonized Tariff Schedule (HTS). Section 1211 of the Omnibus Trade and Competitiveness Act of 1988 directed the Department to "take whatever actions are necessary to conform, to the fullest extent practicable, with the tariff classification system of the Harmonized Tariff Schedule [for] all . orders " in effect at the time of the implementation of the HTS.

Accordingly, on January 11, 1989, after reviewing comments received from the public, the Department published the 1989 Conversion for all antidumping and countervailing duty orders in effect or investigations in progress as of January 1, 1989 (54 FR 993). That notice also included the conversion of the scope of the countervailing duty order on certain textile mill products from Sri Lanka from TSUSA to HTS item numbers. The 1989 Conversion was based on a one-to-one correspondence of the TSUSA and HTS item numbers. In the notice, the Department stated that it would review the HTS classifications at any time during a proceeding upon receipt of new information or additional comments.

Subsequently, as a result of comments submitted to the Department by the importing public and advice received from the U.S. Customs Service, the Department determined (1) that the 1989 Conversion did not accurately reflect the scope of the countervailing duty order on certain textile mill products from Sri Lanka and, therefore, (2) that the 1989 Conversion should be amended. On March 29, 1994, the Department published a proposed amendment to the 1989 Conversion and invited interested parties to comment (59 FR 14609). The Department also requested comments on the proposed conversion from the U.S. Customs Service. The Department received comments from the U.S. Customs Service. Based on our analysis of the comments received, the Department has amended the 1989 Conversion governing the countervailing duty order on certain textile mill products from Sri Lanka. The HTS numbers included in this order are listed in the attached Appendix.

Analysis of Comments Received

Comment 1: The U.S. Customs Service recommends that we delete the following HTS numbers from the proposed conversion: 6306.1100 and 6306.2100.

Department's Position: We agree and accept this recommendation because these subheadings cover products that were not included in the TSUSA-defined scope of the countervailing duty order on certain textile mill products from Sri Lanka.

Comment 2: The U.S. Customs Service recommends that we delete subheading 6307.1020 and insert subheadings 6307.10.2005, 6307 10.2015, and 6307.10.2020.

Department's Position: We agree and accept this recommendation in order to be more precise in coverage of products included in the scope of the countervailing duty order on certain textile mill products from Sri Lanka.

In addition to the changes we are making in response to comments submitted by the U.S. Customs Service, we are also deleting subheading 4202 2245 from the proposed conversion because this subheading covers products that were originally covered by the scope of the countervailing duty order on certain apparel from Sri Lanka which was revoked effective May 18, 1992 (59 FR 43814; August 25, 1994).

All of these changes are reflected in the new Amended Conversion. The attached Appendix incorporates all of these amendments.

Instructions to Customs

The Department will instruct the U.S. Customs Service to liquidate without regard to countervailing duties all unliquidated entries of certain textile mill products from Sri Lanka not covered by the attached Appendix that were exported from Sri Lanka on or after May 18, 1992.

In addition, we are instructing the Customs Service to terminate the suspension of liquidation for all entries of certain textile mill products from Sri Lanka not covered in the attached Appendix, that are entered or withdrawn from the warehouse on or after the date of publication of this notice. The Department will also instruct the U.S. Customs Service to continue to suspend liquidation and collect the appropriate cash deposit of estimated countervailing duties for the subject merchandise listed in the attached Appendix, entered or withdrawn from the warehouse, on or after the date of publication of this notice.

Dated: January 4, 1995.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

Appendix: Amended HTS List for Certain Textile Mill Products From Sri Lanka (C–542–401)

6305.3100
6305.3900
6307.10.2005
6307.10.2015
6307.10.2020

[FR Doc. 95–580 Filed 1–9–95; 8:45 am]
BILLING CODE 3510–DS–P

Export Trade Certificate of Review

ACTION: Notice of Issuance of an Export Trade Certificate of Review, Application No. 94–0006.

SUMMARY: The Department of Commerce has issued an Export Trade Certificate of Review to P & B International ("P & B"). This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: W. Dawn Busby, Director, Office of Export Trading Company Affairs, International Trade Administration, 202–482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR Part 325 (1994).

The Office of Export Trading Company Affairs ("OETCA") is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register.** Under Section 305 (a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

Export Trade

1. *Products*
All products
2. *Services*
All services
3. *Export Trade Facilitation Services (as they Relate to the Export of Products and Services)*

Export Trade Facilitation Services including, but not limited to, consulting; foreign market research; marketing and trade promotion; financing; insurance; licensing; services related to compliance with customs documentation and procedures; transportation and shipping; warehousing and other services to facilitate the transfer of ownership and/or distribution; and communication and processing of export orders.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.)

Export Trade Activities and Methods of Operation

To engage in Export Trade in the Export Markets, as an Export Intermediary, P & B may:

1. Provide and/or arrange for the provision of Export Trade Facilitation Services;
2. Engage in promotional and marketing activities as they relate to exporting Products and/or Services to the Export Markets;
3. Enter into exclusive export sales agreements with Suppliers regarding sales of Products and/or Services in the Export Markets; such agreement may prohibit Suppliers from exporting independently of P & B;
4. Enter into exclusive sales and/or territorial agreements with distributors in Export Markets;
5. Establish the price of Products and/or Services for sale in the Export Markets;
6. Allocate export orders among its Suppliers; and,
7 Exchange information on a one-on-one basis with individual Suppliers regarding inventories and near-term production schedules for the purpose of determining the availability of Products for export and coordinating export with distributors.

Members (Within the Meaning of Section 325.2(1) of the Regulations)

Peter T. Peterson
Oliver L. Brown

Terms and Conditions of Certificate

1. In engaging in Export Trade Activities and Methods of Operation, P & B and its Members will not intentionally disclose, directly or indirectly, to any Supplier any information about any other Supplier's costs, production, capacity, inventories, domestic prices, domestic sales, or U.S. business plans, strategies, or methods that is not already generally available to the trade or public.

2. P & B and its Members will comply with requests made by the Secretary of Commerce on behalf of the Secretary of Commerce or the Attorney General for information or documents relevant to conduct under the Certificate. The Secretary of Commerce will request such information or documents when either the Attorney General or the Secretary of Commerce believes that the information or documents are required to determine that the Export Trade, Export Trade Activities, and Methods of Operation of a person protected by this Certificate of Review continue to comply with the standards of Section 303(a) of the Act.

Definitions

1. *Export Intermediary* means a person who acts as a distributor, sales representative, sales or marketing agent, or broker, or who performs similar functions, including providing or arranging for the provision of Export Trade Facilitation Services.

2. *Supplier* means a person, including each Member, who produces, provides, or sells a Product, Service, or Export Trade Facilitation Services.

Protection Provided by the Certificate

This Certificate protects P & B, its Members, and their employees acting on their behalf from private treble damage actions and government criminal and civil suits under U.S. federal and state antitrust laws for the export conduct specified in the Certificate and carried out during its effective period in compliance with its terms and conditions.

Effective Period of Certificate

This Certificate continues in effect from the effective date indicated below until it is relinquished, modified, or revoked as provided in the Act and the Regulations.

Other Conduct

Nothing in this Certificate prohibits P & B and its Members from engaging in conduct not specified in this Certificate, but such conduct is subject to the normal application of the antitrust laws.

Disclaimer

The issuance of this Certificate of Review to P & B by the Secretary of Commerce with the concurrence of the Attorney General under the provisions of the Act does not constitute, explicitly or implicitly, an endorsement or opinion by the Secretary or by the Attorney General concerning either (a) the viability or quality of the business plans of P & B or (b) the legality of such business plans of P & B under the laws of the United States (other than as provided in the Act) or under the laws of any foreign country. The application of this Certificate to conduct in export trade where the United States Government is the buyer or where the United States Government bears more than half the cost of the transaction is subject to the limitations set forth in Section V. (D.) of the "Guidelines for the Issuance of Export Trade Certificates of Review (Second Edition)", 50 Fed. Reg. 1786 (January 11, 1985).

A copy of this certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: January 4, 1995.

W. Dawn Busby,

Director, Office of Export Trading Company Affairs

[FR Doc. 95–582 Filed 1–9–95; 8:45 am]

BILLING CODE 3510–DR–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

AmeriCorps State and Direct Grant Program, Learn and Serve America K–12 Grant Program, and Learn and Serve America Higher Ed Grant Program 1995 Policies and Preferences

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (the Corporation) in the **Federal Register** of October 27, 1994 (59 FR 53963) proposed changes and invited comments with regard to three of its main programs: AmeriCorps*USA, Learn & Serve America K–12, and Learn & Serve America Higher Education. The Corporation is now proposing additional policy changes and program preferences for funding for these three programs. This notice addresses previously established rules concerning the percentage of time a program must commit to direct service activity and a new policy issue focusing on fee-for-service. Moreover, the Corporation has decided to give special consideration for programs that have received funding from the Corporation in the past. The Corporation invites all interested parties to comment on the issues discussed in this notice. Any comments received will be given careful consideration in the development of final FY 1995 policies and grant applications.

DATES: Comments on the Corporation's proposal for Direct Service Time and Special Consideration for Past Corporation Funded Programs must be received no later than January 25, 1995. Comments specifically addressing the Corporation's proposal for Fee-for-service must be received no later than March 13, 1995.

ADDRESSES: Responses to this notice may be mailed to Ethan Kline of the Office of General Counsel, Corporation for National Service, 1201 New York Avenue, NW., Washington, DC 20525.

FOR FURTHER INFORMATION CONTACT: Ethan Kline at (202) 606–5000 x. 467 between the hours of 9 a.m. and 6 p.m. Eastern Standard Time. For individuals with disabilities, information will be made available in alternative formats, upon request.

I. Policies and Guidelines

A. Direct Service Time

The Corporation's position has been that in order for programs to have direct and demonstrable results in communities, at least 80% of each AmeriCorps Members required 1700 hours of service (1360 hours) must be spent in direct service activities, with no more than 20% of the required service time (340 hours) spent in training, education, and other non-direct service activities. In general, eligible direct service activities are those service activities that directly relate to a programs Community Service Objectives and may include on-site training, specific instructions related to a service project, developing relevant lesson plans, and imparting specific knowledge through workshops and presentations. Eligible non-direct service activities, including training and education, are those that relate to the fulfillment of a program's Community Building and Participant Development Objectives, and may include meeting with a community-based organization in order to develop a relationship with that organization or having Members attend GED preparation classes.

The Corporation now proposes to refine this policy and apply the "80/20" Rule to the general design of the AmeriCorps program, not to each individual Member. This change allows for variances among the individual Members (some of whom will spend more time performing direct service while others will spend more time in education, training, or other non-direct service activities) and for variances throughout the course of the year (a program may choose to spend more time in training sessions at the beginning of the year rather than at the end of the year). The 80/20 Rule will apply only to the required minimum of 1700 hours,

and if a program exceeds 1700 hours, the extra hours will not fall under these guidelines. For example, if a program is designed so that Members complete an average of 1900 hours of service, an average of 1360 of those hours must be spent in direct service and 540 hours may be spent on eligible non-direct service activities such as training and education.

B. Fee-for-Service Definition

The Corporation recognizes that fee-for-service is a term that changes within the specific context of a program. Therefore, for purposes of discussion and potential future policy guidance, the Corporation defines Fee-for-service as specific time-limited activities undertaken by an AmeriCorps program for which the program charges the organization for which the activity is undertaken. This could result from a bid the AmeriCorps program placed in an RFP process or a cooperative agreement with other agencies. Typically, the agreement or contract specifies a scope of work and the fee to be charged for the activity.

For future policy guidance, the Corporation is considering setting quality parameters relative to fee-for-service activities and limiting the scope of fee-for-service work that can be applied to the state and local match requirements of AmeriCorps. This would not limit the fee-for-service activity a program could accomplish with participants other than AmeriCorps Members.

Possible ways of limiting fee-for-service activity could include: restrictions on the percentage of the total budget or the total non-Corporation budget that may be derived from fees for service; restrictions on the abilities of programs to conduct fee-for-service projects using Corporation support or to count fee-for-service activities toward required service hours; and restrictions on the project selection process (e.g. require programs to demonstrate that the availability of fees did not enter into the project selection process).

II. Special Consideration for Past Corporation Funded Programs

The following programs were funded previously by the Corporation, but due to regulatory changes they are no longer eligible to apply directly to the Corporation and thus they might elect to apply through the state process. Because their current funding is based upon priorities established for the 1994 grant cycle, they may apply under either 1994 priorities or the new 1995 priorities, but they are encouraged to use those for 1995. These programs will apply to the state using the application instructions for new programs. If these programs meet quality standards, they will receive preference over other new program applications in the Corporation selection process:

A. Defense Conversion Assistance programs.

B. Summer of Safety Continuation Programs.

C. Subtitle D programs originally funded for two year grants under the National and Community Service Act of 1990. These programs did not compete under the 1994 funding cycle.

D. Subtitle H Programs of the National and Community Service Act of 1993 renewed from Subtitle E, which were programs under the National and Community Service Act of 1990.

Dated: January 4, 1995

Terry Russell,

General Counsel.

[FR Doc. 95–532 Filed 1–9–95; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Conference Meeting of the National Advisory Panel on the Education of Handicapped Dependents

AGENCY: Department of Defense, Dependents Schools.

ACTION: Notice.

SUMMARY: Notice is hereby given of a forthcoming meeting of the National Advisory Panel on the Education of Handicapped Dependents. This notice describes the functions of the Panel. Notice of this meeting is required under the National Advisory Act.

DATES: February 1–2, 1995.

ADDRESSES: Office of Dependents Education (ODE), 4040 N. Fairfax Dr., Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Dr. Rebecca Posante, Special Education Coordinator, ODE, (703) 696–4493, extension 147.

SUPPLEMENTARY INFORMATION: The National Advisory Panel on the Education of Handicapped Dependents is established under the Individuals with Disabilities Education Act (20 U.S.C., sections 1400 *et seq.*) The Panel is directed to: (1) review information regarding improvements in services provided to students with disabilities in DoDDS; (2) receive and consider the views of various parents, students, individuals with disabilities, and professional groups; (3) review the finding of fact and decision of each impartial due process hearing; (4) assist in developing and reporting such information and evaluations as may aid DoDDS in the performance of its duties; (5) make recommendations based on program and operational information for changes in the budget, organization, and general management of the special education program, and in policy and procedure; (6) comment publicly on rules or standards regarding the education of children with disabilities; (7) submit an annual report of its activities and suggestions to the Director, DoDDS, by July 31 of each year. The Panel will review the following areas: the proposed revision of the Department of Defense Instruction 1342.12, Education of Handicapped Children in the DoD Dependents Schools (codified at 32 CFR, part 57), the comprehensive system of personnel development, and the DoDDS approach to inclusive education practices (least restrictive environment). This meeting is open to the public; however due to space constraints, anyone wishing to attend should contact the ODE special education coordinator.

Dated: January 3, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–475 Filed 1–9–95; 8:45 am]

BILLING CODE 5000–04–M

Defense Science Board Task Force on Cost Reduction Strategies for V–22

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Cost Reduction Strategies for V–22 will meet in closed session on January 18, February 21, and March 20, 1995 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will address promising cost reduction strategies and their impact on our cost estimating methodologies. The V–22 will be the model and initial focus of this review.

In accordance with Section 10(d) of the Federal Advisory Committee Act, P.L. No. 92–463, as amended (5 U.S.C. App. II, (1988)), it has been determined that these DSB Task Force meetings, concerns matters listed in 5 U.S.C. § 552b(c) (1) and (4) (1988), and that

accordingly these meetings will be closed to the public.

Dated: January 3, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–476 Filed 1–9–95; 8:45 am]

BILLING CODE 5000–04–M

Defense Science Board/Defense Policy Board Task Force on Theater Missile Defense (TMD)

ACTION: Notice of advisory committee meeting.

SUMMARY: The Defense Science Board/Defense Policy Board Task Force on Theater Missile Defense (TMD) will meet in closed session on January 17–18, 1995 in the Pentagon, Arlington, Virginia. In order for the Task Force to obtain time sensitive classified briefings, critical to the understanding of the issues, this meeting is scheduled on short notice.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will review the purposes of the U.S. theater missile defense effort, including the nature of the threat (types and quantities of missiles and payloads); how might it evolve; the degree of defense we seek; what we wish to defend; under what circumstances; and to what levels.

In accordance with Section 10(d) of the Federal Advisory Committee Act, P.L. No. 92–463, as amended (5 U.S.C. App. II, (1988)), it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. § 552b(c)(1) (1988), and that accordingly this meeting will be closed to the public.

Dated: January 3, 1995.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95–477 Filed 1–9–95; 8:45 am]

BILLING CODE 5000–04–M

Department of the Army

Notice of Availability for Exclusive or Partially Exclusive Licensing of U.S. Patents

AGENCY: Department of the Army, DOD.

ACTION: Notice of availability.

SUMMARY: In accordance with 37 CFR 404.7(a)(1)(i), announcement is made of the following U.S. Patents for licensing. These patents are assigned to the United States of America as represented by the Secretary of the Army, Washington, DC. Any license granted shall comply with 35 U.S.C. 209 and 37 CFR Part 404.

Patent No.	Title	Issue date
5,316,412	Remote Controlled Underwater Joint and Crack Sealing	05/31/94
5,317,914	Hardened Data Acquisition System	06/07/94
5,139,959	Air Lubricated Penetrometer Rod System	06/14/94
5,323,681	Shaping Apparatus for an Explosive Charge	06/28/94
5,327,734	Passive-Active Thermosyphon	07/12/94
5,328,150	Digital Damper Actuator	07/12/94
5,335,298	Automated Extraction of Airport Runway Patterns from Radar Imagery	08/02/94
5,339,893	Apparatus for Containing Toxic Spills Employing Hybrid Thermosyphons	08/23/94
5,346,547	Method of Making Concrete Electrically Conductive for Eletromagnetic Shielding Purposes	09/12/94
5,351,529	Apparatus for Bench Testing a Governor	10/14/94
5,358,057	Modular Device for Collecting Multiple Fluid Samples From Soil Using a Cone Penetrometer	10/25/94
5,361,550	Moveable Hardened Air Form Dome-Shaped Structure for Containing Hazardous, Toxic, or Radioactive Airborne Releases.	11/08/94
5,361,642	Column-Based Stress Gauge	11/08/94
5,366,547	Settling Control for Alkali-Activated Silicate Binders	11/22/94

ADDRESSES: Humphreys Engineer Center Support Activity, Office of Counsel, 7701 Telegraph Road, Alexandria, VA 22315–3860.

DATES: Proposals for an exclusive or partially exclusive license must be submitted on or before May 10, 1995

FOR FURTHER INFORMATION CONTACT: Patricia L. Howland or Alease J. Berry, (703) 355–2160.

SUPPLEMENTARY INFORMATION: UPS 5,316,412 is an apparatus which can inspect underwater structures such as dams, spillways, stilling basins, and other hydraulic structures, utilizing an underwater light and television camera, locate leaking cracks and joints, clean the work location, and inject a sealant to close the crack or joint.

USP 5,317,914 is a self contained autonomous data recording device which can record and store shock level data in high blast level situations in the neighborhood of 100,000 g's.

USP 5,319,959 is an apparatus which uses air to lubricate a cone penetrometer push rod allowing for deeper penetration of the penetrometer into the soil without adversely affecting instrument readings.

USP 5,323,681 is an apparatus for shaping an explosive charge to be used with an Explosively Formed Penetrator. The apparatus can be hand packed with explosive material without the necessity of pre-weighing; thereafter the molded explosive charge can be easily extracted.

USP 5,327,734 is a thermosyphon which can operate in a passive mode when the ambient air temperature is below that of the soil, or in an active mode with mechanical refrigeration assistance, but without the need for buried refrigeration circulation lines.

USP 5,328,150 is an apparatus for controlling a damper in an air duct of an HVAC system by directly utilizing the digital output of the HVAC microprocessor controller to energize/de-energize magnetic coils.

USP 5,335,298 is a systematic procedure comprising a number of image processing steps which allow automated extraction of airport runway data from an original radar image of an airfield. In general, the invention is directed towards a method of extracting terrain features from an image formed by an array of pixels.

USP 5,339,893 is a hybrid thermosyphon which may be rapidly deployed to create a frozen soil barrier for containing toxic spills. The thermosyphon operates in the passive mode without the assistance of mechanical refrigeration or in the active mode with such assistance and provides a means for sensing the ambient air and soil temperatures for selectively operating the active refrigeration stage.

USP 5,346,547 is a method, apparatus, and article of manufacture for making

electrically conductive concrete articles used for electromagnetic shielding.

USP 5,351,529 is an apparatus for testing an electronic engine speed control governor separate from an engine and a connected load.

USP 5,358,057 an improved cone penetrometer for taking multiple samples of soil gas and ground water in such a way that the samples can not be contaminated with fluids, gasses, or soils carried by the penetrometer as it penetrates the soil.

USP 5,361,550 is an apparatus and method which provides a safe and secure environment for workers at a hazardous, toxic, or radioactive work site, provides for continuous operations at such a site regardless of weather conditions, and also, can act as a secondary containment structure preventing airborne release of hazardous, toxic, or radioactive particles.

USP 5,361,642 is a field-free stress gauge capable of dynamic or static response measurements in geological rock and soil formations, concrete, asphalt, or other materials. The gauge can also be incorporated and measure static stresses in building, bridges, and roads.

USP 5,366,547 provides a means for extending and controlling the settling time for alkali-activated silicate glass cements.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 95–478 Filed 1–9–95; 8:45 am]

BILLING CODE 3710–92–M

Department of the Navy

Record of Decision for Realignment of Naval Air Station Lemoore, California

Pursuant to section 102(2) of the National Environmental Policy Act (NEPA) of 1969 and the Council on Environmental Quality regulations for implementing NEPA procedures (40 CFR 1500–1508), the Department of the Navy announces its decision to implement the realignment of Naval Air Station (NAS) Lemoore, California.

In accordance with the legislative requirements of the Base Closure and Realignment Act of 1990 (Public Law 101–510), as implemented by the 1993 Defense Base Closure and Realignment process (BRAC–93), the Navy has been directed to relocate mission and operations from NAS Miramar to NAS Lemoore, California. The majority of naval training at NAS Miramar will be relocated to NAS Lemoore.

A Draft Environmental Impact Statement was prepared for the action and distributed to Federal, State, and local agencies and to interested individuals and groups. Public comments and Navy responses to those comments were incorporated into a Final Environmental Impact Statement (FEIS) which was distributed to the public for a review period that ended on January 3, 1995. Two letters of comment were received and both expressed concern about lack of schoolroom capacity.

The realignment will relocate 56 F–14 and 16 E–2 aircraft from NAS Miramar to NAS Lemoore, resulting in an increase of 72 aircraft at NAS Lemoore. The number of permanent-party personnel necessary to support, service, and maintain new aircraft and flight operations and apprentice school training will increase by approximately 3,990 and the number of civilian personnel will increase by 484 over the period from 1995 through 1998. The number of school age students in grades kindergarten through 12 is expected to increase by approximately 2,300 by 1998. About 98 military construction (MILCON) projects are required to accommodate the realignment at NAS Lemoore. The projects include upgrades of existing facilities, construction of new facilities to support new aircraft operations and maintenance functions, and new housing and temporary quarters for the increased number of students and permanent-party personnel. Approximately 1,936 of the personnel relocating to NAS Lemoore will live off-station and reside primarily in the nearby Lemoore and Hanford communities. In addition to the construction and renovation projects, future establishment of a Lemoore Military Operations Area (MOA) and two Air Traffic Control Assigned Spaces (ATCAAs) were addressed in the EIS. The Lemoore MOA would extend approximately 23 miles northwest of NAS Lemoore and 37 miles southeast to include approximately 2,055 square miles of airspace. The ATCAAs would be implemented within the geographic boundaries of the MOA. The Lemoore MOA and the ATCAAs would designate airspace for military training activities. The Navy will apply to the Federal Aviation Administration (FAA) for formal designation of the MOA and ATCAAs.

The Defense Base Closure and Realignment Act waived certain aspects of NEPA such that the environmental analysis need not consider the no-action alternative (no realignment), nor other realignment locations. Alternative means of accommodating the mandated BRAC–93 realignment at NAS Lemoore that were considered, but eliminated from detailed analysis, include retrofitting and remodeling existing structures and the use of rental units outside NAS Lemoore. Sites considered at NAS Lemoore for the new facilities/renovations avoided environmentally sensitive areas, and were selected based on the following functional considerations: adequacy of existing structures for the proposed uses, availability of utilities, and proximity of the structure/site to existing and related facilities, such as hangars, warehouses, classrooms, administrative offices, housing and recreational facilities.

There will be no significant impacts to air traffic either in the existing operating areas used for training or from the implementation of the MOA and the two ATCAAs. Rerouting of non-participating aircraft around the MOA boundaries, however, may be necessary during time of MOA use. The NAS Lemoore air traffic facility will be responsible for routing military and civilian general aviation aircraft around the MOA. The FAA will be responsible for rerouting commercial flights when the MOA or ATCAAs are activated. The number of aircraft requiring rerouting is projected to be small and no impacts to public health and safety will result from the implementation of the MOA or ATCAAs.

There will be no significant impacts to surface water or wetlands. There will be no significant impacts to groundwater or potable water resources as a result of the realignment.

The action will increase total flight operations at NAS Lemoore, but will not produce a significant change in ambient noise levels on-station or in surrounding communities. Appropriate noise level reduction measures will be incorporated into Bachelor Enlisted Quarter (BEQ) and Bachelor Officer Quarter (BOQ) facilities to ensure appropriate interior noise levels. Construction activity near residential areas will be limited to normal daytime working hours to minimize temporary construction noise impacts.

The BRAC action will result in significant mitigatable air quality impacts related to construction activities, added stationary emission sources, added aircraft flight operations, added motor vehicle traffic, and added area sources (building and landscape maintenance, space heating, etc.). No new violations of national ambient air quality standards are anticipated as a result of the BRAC action. Mitigation measures will be implemented to reduce the potential for localized dust conditions at construction sites to ensure compliance with the San Joaquin Valley Unified Air Pollution Control

District (SJVUAPCD) rules and regulations, and to implement SJVUAPCD mobile and area source emission reduction programs. Added stationary source emissions will be offset through existing SJVUAPCD permit procedures. Most other emission increases associated with the BRAC action will be offset by emission reductions at Castle Air Force Base (also located within the SJVUAPCD), thus avoiding significant impacts to regional air quality conditions.

NAS Lemoore is located in an area that is classified as a serious nonattainment area for ozone and particulate matter (PM_{10}). The direct and indirect emissions of ozone precursors and PM_{10} associated with the action exceed the de minimis levels of 50 tons per year for ozone precursors and 70 tons per year for PM_{10} and PM_{10} precursors. Consequently, a Clean Air Act conformity determination is required by 40 CFR Part 93 to demonstrate that the proposed action will not interfere with attainment of national ambient air quality standards. Volume 2 (Appendix A) of the FEIS presented a Clean Air Act conformity determination analysis of the proposed actions in accordance with rules promulgated by the U.S. Environmental Protection Agency and set forth at 40 CFR Part 93.

BRAC-related direct and indirect emissions at NAS Lemoore will be at a maximum during the facility construction period, with somewhat lower emissions during subsequent base operations. Maximum direct and indirect emissions from the BRAC action are estimated to be 96 tons per year of organic compounds, 367 tons per year of nitrogen oxides, and 187 tons per year of PM_{10}. These maximum emissions result only in those years when both construction activities and increased aircraft operations occur concurrently. Steady-state emissions are projected to be less, paricularly for PM_{10}.

Emission increases at NAS Lemoore will be offset from a combination of three sources: eliminated aircraft, motor vehicle, and area source emissions resulting from the closure of Castle Air Force Base (which also is located in the San Joaquin Valley); on-station PM_{10} emission reductions achieved by replacing existing fire fighter training facilities with new facilities; and the purchase of privately held PM_{10} Emission Reduction Credits.

On behalf of the Department of the Navy, I have reviewed the FEIS and conformity determination analysis for the realignment of NAS Lemoore. It is my determination that the proposed Navy actions are in compliance with 40 CFR Part 93 (Determining Conformity of General Federal Actions to State or Federal Implementation Plans) and satisfy the requirements of Section 176(c) of the Clean Air Act (42 USC 7506).

Consequently, the proposed actions at NAS Lemoore conform to the state implementation plan's purpose of eliminating or reducing the severity and number of violations of the federal ambient air quality standards and achieving expeditious attainment of those standards. The proposed actions are consistent with the programs and milestones contained in the State Implementation Plan for the San Joaquin Valley Air Basin. The proposed actions will not increase the frequency or severity of existing violations of the federal ozone and PM_{10} standards, and will not delay the timely attainment of the ozone or PM_{10} standards.

In making the above determinations I have relied on the air quality analyses and conclusions contained in the conformity determination analysis appendix to the FEIS for Base Realignment of NAS Lemoore, California.

The action at NAS Lemoore will not significantly impact any Department of Defense Installation Restoration Program (IRP) sites. Construction projects located adjacent to IRP sites will be designed to avoid the sites. The action will not violate any conditions of the NAS Lemoore Waste Management Plan or the Spill Prevention Control and Countermeasures Plan. There will be no significant impacts to hazardous materials, as long as all applicable laws, regulations, and standard operating procedures are followed.

Pursuant to Executive Order 12898, Environmental Justice, potential environmental and economic impacts on minority and low-income persons and communities were assessed. These persons and communities will not be disproportionately adversely affected by the NAS Lemoore BRAC action. The increase in population from the action will not result in significant impacts to housing, facilities, or services on-base or in the region. The additional economic activity from the action will result in a net positive effect on the local economy The action will not significantly impact existing land uses at NAS Lemoore.

The additional vehicular traffic generated by the action will result in significant mitigable impacts to transportation, traffic, and circulation. The Navy will continue to coordinate selection of mitigation for six intersections on or near NAS Lemoore which appear to warrant the installation of signals or an equivalent improvement to accommodate the increase in traffic resulting from the action. Traffic engineering solutions will be reviewed, local authorities will be consulted, and appropriate mitigation selected from among identified feasible options.

The BRAC action will increase the number of school-aged children by an estimated 2,300 students. Between 975 to 1,240 of these students who are of elementary school age (K–8) are expected to attend on-station schools. The increase in students will exceed the physical capacity of the two on-station elementary schools as well as the maximum allowable student/teacher ratio. The physical capacity of Lemoore Union High School will also be exceeded. Therefore, the BRAC action will result in a significant, but mitigable, impact to the school system. Identified mitigation measures include construction of a new on-base school, expanding the physical capacity of existing schools by leased or leased-to-own portable classroom units, and/or by constructing additional classrooms. The Navy recognizes the significance of these impacts and will identify feasible mitigation to assure a high quality education environment for dependent children. On-station elementary schools can also obtain acceptable student/teacher ratios by hiring additional teachers. Local schools that serve military dependent children will continue to receive federal impact aid, in accordance with the Education Appropriation Act for 1995, which provides annual federal funding to school districts for each student whose parents live and work on federal property. Federal impact aid funds to school districts will be comparable to local property tax revenue generated by off-base residents.

The existing utility infrastructure will be upgraded as part of the BRAC action to accommodate the demands of the BRAC relocation. Therefore, utilities at NAS Lemoore will have adequate capacity to serve the additional personnel. NAS Lemoore personnel residing off-station will not have a significant impact on the regional water supply. Police and fire protection services are adequate to serve the needs of the new facilities, as are solid waste disposal facilities. No significant impacts will result to recreational facilities, either on- or off-station.

The action will result in no significant impacts to plant or animal species listed as threatened or endangered by either federal or state agencies, or to sensitive habitats. No impact will result to cultural resources or properties of traditional cultural significance. No

impacts will result to visual resources due to the action.

Questions regarding the Draft and Final Environmental Impact Statement prepared for this action may be directed to: Mr. John Kennedy, Head Environmental Planning Branch, Engineering Field Activity West, Naval Facilities Engineering Command, San Bruno, CA, 94066–5006; phone: (415) 244–3713; fax: (415) 244–3737.

Dated: January 5, 1995.

Elsie L. Munsell,

Deputy Assistant Secretary of the Navy (Environment and Safety).

[FR Doc. 95–563 Filed 1–9–95; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Advisory Committee on Human Radiation Experiments

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Under the provisions of the Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770), notice is hereby given of the following meeting.

DATE AND TIME: January 30, 1995, 9:00 a.m.-5:30 p.m.

PLACE: Santa Fe Convention Center (Sweeney Center), 201 West Marcy Street, Santa Fe, New Mexico.

FOR FURTHER INFORMATION CONTACT: Steve Klaidman, The Advisory Committee on Human Radiation Experiments, 1726 M Street, NW, Suite 600, Washington, DC 20036. Telephone: (202) 254–9795; Fax: (202) 254–9828.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee

The Advisory Committee on Human Radiation Experiments was established by the President, Executive Order No. 12891, January 15, 1994, to provide advice and recommendations on the ethical and scientific standards applicable to human radiation experiments carried out or sponsored by the United States Government. The Advisory Committee on Human Radiation Experiments reports to the Human Radiation Interagency Working Group, the members of which include the Secretary of Energy, the Secretary of Defense, the Secretary of Health and Human Services, the Secretary of Veterans Affairs, the Attorney General, the Administrator of the National Aeronautics and Space Administration, the Director of Central Intelligence, and the Director of the Office of Management and Budget.

Tentative Agenda

Monday, January 30, 1995

9:00 a.m. Call to Order and Opening Remarks
9:15 a.m. Public Comment
12:30 p.m. Lunch
1:30 p.m. Public Comment (continues)
5:30 p.m. Meeting Adjourned

A final agenda will be available at the meeting.

Public Participation

The meeting is open to the public. The chairperson is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Advisory Committee will be permitted to do so, either before or after the meeting. Members of the public who wish to make an oral statement should contact Kristin Crotty of the Advisory Committee at the address or telephone number listed above. Requests must be received at least five business days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Transcript

Available for public review and copying at the office of the Advisory Committee at the address listed above between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Dated: January 5, 1995.

Rachel Murphy Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 95–557 Filed 1–9–95; 8:45 am]

BILLING CODE 6450–01–P

Notice of Inventions Available for License

AGENCY: Department of Energy, Office of General Counsel.

ACTION: Notice.

SUMMARY: The U.S. Department of Energy announces that two patents entitled "Fiber Optic Mounted Laser Driven Flyer Plates" and "Laser Driven Flyer Plates" are available for license. Exclusive licensing of Government-owned inventions is authorized under certain circumstances, if proper notice of the invention's availability for license is given.

FOR FURTHER INFORMATION CONTACT: Robert J. Marchick, Office of the Assistant General Counsel for Technology Transfer and Intellectual Property, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585; Telephone (202) 586–2802.

SUPPLEMENTARY INFORMATION: 35 U.S.C. 207 authorizes licensing of Government-owned inventions. Implementing regulations are contained in 37 CFR Part 404. 37 CFR 404.7(a)(1) authorizes exclusive licensing of Government-owned inventions under certain circumstances, provided that notice of the invention's availability for license has been announced in the **Federal Register.**

U.S. Patent No. 5,029,528, entitled "Fiber Optic Mounted Laser Driven Flyer Plates" and U.S. Patent No. 5,046,423, entitled "Laser Driven Flyer Plates" are available for license, in accordance with 35 U.S.C. 207–209. A copy of the patents may be obtained, for a modest fee, from the U.S. Patent and Trademark Office, Washington, D.C. 20231.

Issued in Washington, D.C., on January 4, 1995.

Robert R. Nordhaus,

General Counsel.

[FR Doc. 95–556 Filed 1–9–95; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. QF90–154–004]

Indeck-Olean Limited Partnership; Notice of Supplement to Filing

January 4, 1995.

On December 13, 1994, Indeck-Olean Limited Partnership (Applicant), tendered for filing a supplement to its filing in this docket. No determination has been made that the submittal constitutes a complete filing.

The supplement provides additional information pertaining primarily to the technical data of the cogeneration facility.

Any person desiring to be heard or objecting to the granting of the petition for temporary waiver of qualifying cogeneration facility operating and efficiency standards should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed by January 20, 1995, and must be served on the applicant. 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 petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–496 Filed 1–9–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT95–16–000]

Algonquin Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

January 4, 1995.

Take notice that on December 30, 1994, Algonquin Gas Transmission Company (Algonquin), tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheets, with a proposed effective date of February 1, 1995:

Fourth Revised Sheet No. 1100
Fourth Revised Sheet No. 1101
Fourth Revised Sheet No. 1102
Fourth Revised Sheet No. 1103
Fourth Revised Sheet No. 1104
Fourth Revised Sheet No. 1105
Fourth Revised Sheet No. 1106
Fourth Revised Sheet No. 1107
Fourth Revised Sheet No. 1108
Third Revised Sheet No. 1109

Algonquin states that the purpose of this filing is to revise Algonquin's index of purchasers.

Algonquin states that copies of this filing were served upon each affected party and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before January 11, 1995. 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 in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–497 Filed 1–9–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–106–000]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

January 4, 1995.

Take notice that on December 30, 1994 ANR Pipeline Company (ANR), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the tariff sheets as listed in Attachment A.

ANR states that the referenced tariff sheets are being submitted as part of ANR's Sixth Annual Reconciliation of buyout buydown costs being recovered by means of Volumetric Buyout Buydown Surcharges and Fixed Monthly Charges contained in Docket Nos. RP91–33, et al., RP91–192, RP92–4, RP92–199, RP93–29 and RP93–149. ANR has requested that the Commission accept the tendered tariff sheets to become effective February 1, 1995.

ANR states that a copy of this filing, or such applicable parts, has been mailed to all of its Volumes No. 1 and No. 2 customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 11, 1995. 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 application are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

ANR Pipeline Company

Attachment A

Second Revised Volume No. 1
- Sixth Revised Sheet No. 17
- Third Revised Sheet No. 200
- Third Revised Sheet No. 204
- Third Revised Sheet No. 205
- Second Revised Sheet No. 206
- Second Revised Sheet No. 207
- Second Revised Sheet No. 208
- Second Revised Sheet No. 209

Original Volume No. 2
Original Sheet Nos. 13, 14 and 15

[FR Doc. 95–502 Filed 1–9–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–158–006]

Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

January 4, 1995.

Take notice that on December 27, 1994, Columbia Gas Transmission Corporation (Columbia), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to be effective October 1, 1994.

Substitute First Revised Sheet No. 96
Substitute First Revised Sheet No. 97

Columbia states that the instant filing is being made to revise Columbia's October 6, 1994, filing in Docket No. RP94–158–002, which sets forth the monthly amount allocated to the Account No. 191 direct bill of each customer for the elected amortization periods at the current FERC interest rates.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before January 11, 1995. 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. Copies of Columbia's filings are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–495 Filed 1–9–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–103–000]

Florida Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

January 4, 1995.

Take notice that on December 30, 1994, Florida Gas Transmission Company (FGT), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, and Original Volume No. 1, revised tariff sheets set forth in Appendix A (Primary Tariff Sheets) to effectuate changes in the rates and terms applicable to FGT's jurisdictional services. FGT states that the proposed rates will generate approximately $9.7 million more in revenues as compared to the level of revenues generated under the currently-

effective rates, utilizing test period volumes.

FGT also is submitting several proposals to enhance service flexibility and operational and economic efficiency on the FGT system in two stages. The changes reflected in the Primary Tariff Sheets are required to effectuate a rate increase and to make certain changes to FGT's Order No. 636 tariff, which was implemented by FGT on November 1, 1993, based on FGT's operating experience since that time. The second stage of enhancing the service flexibility and operational and economic efficiencies of FGT's system consists of changes proposed by FGT to continue the integration of market forces into FGT's service offerings in a manner consistent with the Commission's responsibilities under the NGA.

FGT states that these changes are reflected in the Pro Forma Tariff Sheets that would become effective prospectively from the effective date of a settlement or a Commission order on the merits in this proceeding.

FGT states that this filing does not proposed changes in the rates applicable to FGT's Rate Schedule FTS–2 for the Phase III expansion, which rates were approved in Docket Nos. CP92–182, et al. However, FGT does propose that FTS–2 shippers will have the option of electing to use FGT's proposed Market Matching Program, whereby a shipper may negotiate variations in rates and terms of its FTS–2 service. Further, to the extent applicable, certain changes proposed to FGT's General Terms and Conditions will be applicable to service under all rate schedules, including FTS–2.

FGT proposes an effective date of February 1, 1995 for the Primary Tariff Sheets.

FGT states that copies of the filing have been served upon its customers, state commissions, and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protest should be filed on or before January 11, 1995. 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 he Commission and are available for pubic inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

Appendix A

Third Revised Volume No. 1

Substitute Ninth Revised Sheet No. 8A
First Revised Sheet No. 8A.02
Eighth Revised Sheet No. 8B
First Revised Sheet No. 8B.01
Second Revised Sheet No. 32
First Revised Sheet No. 51
First Revised Sheet No. 52
First Revised Sheet No. 53
First Revised Sheet No. 54
Second Revised Sheet No. 116
Second Revised Sheet No. 117
First Revised Sheet No. 117A
Third Revised Sheet No. 119
Second Revised Sheet No. 120
First Revised Sheet No. 121
Second Revised Sheet No. 123
First Revised Sheet No. 124
First Revised Sheet No. 125
Second Revised Sheet No. 126
First Revised Sheet No. 128
Second Revised Sheet No. 129
First Revised Sheet No. 129A
Original Sheet No. 129C
Original Sheet No. 129D
Original Sheet No. 129E
Second Revised Sheet No. 130
First Revised Sheet No. 133
Second Revised Sheet No. 133A
First Revised Sheet No. 160
First Revised Sheet No. 161
Second Revised Sheet No. 162
First Revised Sheet No. 163
Third Revised Sheet No. 176
First Revised Sheet No. 177
Second Revised Sheet No. 177A
Fourth Revised Sheet No. 178
Third Revised Sheet No. 179
Fourth Revised Sheet No. 180
Second Revised Sheet No. 181
Original Sheet No. 181A
Original Sheet No. 181B
Third Revised Sheet No. 182
Fourth Revised Sheet No. 183
Second Revised Sheet No. 184
First Revised Sheet No. 522
First Revised Sheet No. 523
First Revised Sheet No. 524
First Revised Sheet No. 525
Second Revised Sheet No. 526
Second Revised Sheet No. 527
Second Revised Sheet No. 165
Second Revised Sheet No. 167
Second Revised Sheet No. 168
Second Revised Sheet No. 169
First Revised Sheet No. 171
Second Revised Sheet No. 172
Third Revised Sheet No. 173
Second Revised Sheet No. 174
Second Revised Sheet No. 174A
Second Revised Sheet No. 175

Original Volume No. 3

Tenth Revised Sheet No. 181
First Revised Sheet No. 182
Tenth Revised Sheet No. 265
Tenth Revised Sheet No. 395
Second Revised Sheet No. 452
Tenth Revised Sheet No. 453
Seventh Revised Sheet No. 486
Seventh Revised Sheet No. 549
Seventh Revised Sheet No. 584
Sixth Revised Sheet No. 640
Third Revised Sheet No. 811
Second Revised Sheet No. 827
Second Revised Sheet No. 862
First Revised Sheet No. 879
Second Revised Sheet No. 894
First Revised Sheet No. 913
Second Revised Sheet No. 927
First Revised Sheet No. 983
Second Revised Sheet No. 997
First Revised Sheet No. 1016
Second Revised Sheet No. 1032

[FR Doc. 95–491 Filed 1–9–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–105–000]

Florida Gas Transmission Company; Notice of Compliance Filing

January 4, 1995.

Take notice that on December 30, 1994 Florida Gas Transmission Company (FGT) tendered for filing schedules detailing certain information related to the Cash-Out mechanism provided for in Section 14 of the General Terms and Conditions (GTC) of its FERC Gas Tariff, Third Revised Volume No. 1. No tariff changes are proposed therein.

FGT states that on November 1, 1993 FGT implemented services under its FERC Gas Tariff, Third Revised Volume No. 1 pursuant to Order No. 636 and the Settlements entered into by FGT and its customers in resolution of FGT's restructuring proceedings in Docket Nos. RS92–16–000, et al. Section 14 provides for the resolution of differences between quantities of gas scheduled and physically received and/or delivered each month. Section 14 provides that the elimination of any monthly imbalances not resolved through the Book-Out provisions will be by cash settlement (Cash-Out).

FGT states that the Cash-Out provisions of Section 14 provide that different imbalance factors and price index will be used to value imbalances due FGT than the imbalance factors and price index used to value imbalances due the imbalance parties. FGT states that the purpose of the weighted valuation method was to encourage shipper adherence to scheduled quantities to maintain the integrity of FGT's system, which has no storage facilities to accommodate imbalances.

The Commission in the September 17, 1993 Order required FGT to file a report with its next rate case reflecting its experience with the Cash-Out program and to credit to its shippers all revenues derived from Cash-Outs which exceed the actual cost to FGT to maintain a

reasonable system balance. FGT states that these provisions were included to ensure that any potential benefit resulting from the price differential in the St. Helena index used to value imbalances due FGT and the Tivoli index used to value imbalances due imbalance parties was properly accounted for. These requirements are also reflected in Sections 14.B.7. and 8. of the GTC of FGT's Tariff.

FGT states that the instant filing is made in compliance with the Commission's September 17 Order and the provisions of FGT's Section 14 of the GTC of FGT's Tariff.

Any person desiring to be heard or to protest said filing should file a Motion to Intervene or Protest with the Federal Energy Regulatory Commission, 825 North Capital 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 should be filed on or before January 11, 1995. Protests will be considered by the Commission in determining the appropriate actions 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 inspections.

Linwood A. Watson, Jr.,

Acting Secretary

[FR Doc. 95–501 Filed 1–9–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–109–000]

Kern River Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

January 4, 1995.

Take notice that on December 30, 1994, Kern River Gas Transmission Company (Kern River), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective on January 29, 1995:

First Revised Sheet No. 93
First Revised Sheet No. 106
First Revised Sheet No. 114
First Revised Sheet No. 818
First Revised Sheet No. 825
First Revised Sheet No. 858

Kern River states that the revised tariff sheets are being filed in order to permit shippers under all of Kern River's Part 284 open-access firm and interruptible transportation service rate schedules to submit monthly nominations for service no later than two business days prior to the beginning of the month, instead of three business days in advance as required by Kern River's current tariff. Kern River states that this revised nominations requirement will provide Kern River's shippers with added flexibility in arranging their monthly business transactions.

In addition, Kern River states that the two business day nominations requirement will allow Kern River's shippers to compete more fairly with shippers on competing pipelines serving the Nevada and California markets which already have a two business day nominations requirement, including El Paso Natural Gas Company, Transwestern Pipeline Company, and Mojave Pipeline Company. Kern River states that the two business day requirement is also consistent with nominations requirements on pipelines which interconnect with Kern River, such as Northwest Pipeline Corporation. In addition to the nominations deadline revisions, Kern River has also revised §§ 13.1(a) and 13.1(b) of the General Terms and Conditions of its tariff to indicate that nominations should be directed to the attention of Kern River's Transportation Operations department instead of the Volume Coordination department. Kern River states that this revision is necessary to conform the tariff with a recent change in Kern River's organizational structure.

Kern River states that copies of the filing were served upon Kern River Gas Transmission Company's jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before January 11, 1995. 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 in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–505 Filed 1–9–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–101–000]

K N Interstate Gas Transmission Co., Notice of Request for Waiver of Tariff Provisions

January 4, 1995

Take notice that on December 23, 1994, K N Interstate Gas Transmission Co. (KNI), tendered filing a request for temporary waiver of Sections 27 and 28 of KNI's FERC Gas Tariff, Second Revised Volume No. 1–B, and Section 31 of the KNI's First Revised Volume No. 1–D.

KNI is requesting waiver to allow KNI to defer making the reconciliation filings and refunds required thereunder until such time as the fixed cost allocated to the interruptible transportation (IT) rate is established and the methodology for crediting revenues from the storage service has been established.

KNI requests that the Commission grant a temporary waiver of the compliance with Sections 27, 28, and 31 of its FERC Gas Tariff concerning crediting of excess storage and IT revenue until such time as the Commission has ruled on the proposed S&A filed by KNI in Docket No. RP94–93–000. KNI proposes to file a reconciliation pursuant to Sections 27, 28, and 31 within 30 days after the Commission has issued a final order on the S&A.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before January 11, 1995. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–493 Filed 1–9–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–104–000]

Mississippi River Transmission Corporation; Notice of Proposed Changes in FERC Tariff

January 4, 1995.

Take notice that on December 30, 1994, Mississippi River Transmission Corporation (MRT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, with an effective date of January 1, 1995:

Ninth Revised Sheet No. 5
Ninth Revised Sheet No. 6
Ninth Revised Sheet No. 7

MRT states that the purpose of this filing is to adjust its rates to reflect additional Gas Supply Realignment Costs (GSRC) of $647,308, plus applicable interest, pursuant to Section 16.3 of the General Terms and Conditions of MRT's Tariff. MRT states that its filing includes the "Price Differential" cost of continuing to perform under certain gas supply contracts during the months of July through September 1994 and GSRC Buyout/Buydown costs incurred during the period May, 1994 through November, 1994.

MRT states that copies of its filing are available for inspection at its business offices, located in St. Louis, Missouri, and have been mailed to all of its affected customers and the State Commissions of Arkansas, Missouri and Illinois.

Any person desiring to be heard or protest the subject filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before January 11, 1995. 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 available for public inspection.

[FR Doc. 95–500 Filed 1–9–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–111–000]

Northwest Pipeline Corporation; Notice of Proposed Change in FERC Gas Tariff

January 4, 1995.

Take notice that on December 29, 1994, Northwest Pipeline Corporation (Northwest), tendered for filing and acceptance as part of its FERC Gas Tariff, First Revised Volume No. 1, Second Revised Sheet No. 292, with a proposed effective date of January 29, 1995. Northwest also submitted to the Commission an October 31, 1994 Account No. 191 report (October Report).

Northwest states that the purposes of this filing are (1) to propose direct billing the Account No. 191 amounts applicable to the Converting Customers shown on Second Revised Sheet No. 292 and (2) to file an October Report with the Commission detailing Northwest's October 31, 1994, Account No. 191 subaccount balances that pertain to the Converting Customers as described in Section 28.3 of the General Terms and Conditions of Northwest's FERC Gas Tariff, Third Revised Volume No. 1. The October Report reflects additional gas costs pertaining to the Converting Customers recorded in Northwest's Account No. 191 subsequent to the period covered by Northwest's December 30, 1993, filing in Docket No. RP94–107–000. Northwest proposes to direct bill the Converting Customers listed on the proposed Second Revised Sheet No. 292, including interest through the billing date, within sixty days after Commission acceptance.

Northwest states that a copy of this filing has been served upon each of Northwest's affected former jurisdictional sales customers, upon all intervenors in Docket Nos. RP94–107 and RP94–410, and upon relevant state regulatory commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before January 11, 1995. 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 in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–507 Filed 1–9–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–107–000]

Sea Robin Pipeline Company; Notice of Flowthrough Crediting Report

January 4, 1995.

Take notice that on December 30, 1994, Sea Robin Pipeline Company (Sea Robin) tendered for filing a report setting forth amounts due shippers through its Annual Flowthrough Crediting Mechanism. This report is filed pursuant to Section 27 of the General Terms and Conditions of Sea Robin's FERC Gas Tariff which requires the crediting of certain amounts received as a result of resolving monthly imbalances between its gas and liquefiable shippers and under its operational balancing agreements, and imposing scheduling penalties during the 12 months ended October 31, 1994 period.

Sea Robin states that copies of Sea Robin's filing will be served upon all of Sea Robin's customers, interested commissions and interested parties.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (Section 385.214 and 385.211). All such petitions or protests should be filed on or before January 11, 1995. 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 petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–503 Filed 1–9–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–108–000]

Southern Natural Gas Company; Notice of GSR Revised Tariff Sheets

January 4, 1995.

Take notice that on December 30, 1994, Southern Natural Gas Company (Southern) submitted for filing as part of

its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets to reflect a change in its FT/FT–NN GSR Surcharge and its Interruptible Transportation Rates due to an increase in the FERC interest rate effective January 1, 1995:

First Sub. First Alt. Fifteenth Revised Sheet No. 15
First Sub. First Alt. Fifteenth Revised Sheet No. 17
First Sub. First Alt. Ninth Revised Sheet No. 18

Southern states that copies of the filing were served upon Southern's intervening customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before January 11, 1995. 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 Southern's filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary

[FR Doc. 95–504 Filed 1–9–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. SA95–2–000]

Southern California Gas Company; Notice of Petition for Adjustment

January 4, 1995.

Take notice that on December 21, 1994, Southern California Gas Company (SoCal), filed pursuant to Section 502(c) of the Natural Gas Policy Act of 1978 (NGPA), a petition for adjustment from Section 284.123(b)(1)(ii) of the Commission's Regulations to permit SoCal to use its tariff on file with the Public Utilities Commission of the State of California (CPUC), for hub (parking, loaning, and wheeling) services performed pursuant to NGPA Section 311.

In support of its petition, SoCal states that it is a local distribution company operating in the State of California, and is a gas utility subject to the jurisdiction of the CPUC. SoCal's transportation and storage rates are subject to regulation by the CPUC. SoCal anticipates providing Section 311 hub services on behalf of interstate pipeline companies or local distribution companies served by interstate pipeline companies for a charge not to exceed the rates on file with the TRC, as follows:

Hub Loaning: $0.6922 per Dth per transaction
Hub Parking: $0.6922 per Dth per transaction
Hub Wheeling: $0.7414 per Dth per transaction

The regulations applicable to this proceeding are found in Subpart K of the Commission's Rules of Practice and Procedure. Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All motions must be filed with the Secretary of the Commission within 15 days after publication of this notice in the **Federal Register**. The petition for adjustment is on file with the Commission and is available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary

[FR Doc. 95–511 Filed 1–9–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–187–004]

Tennessee Gas Pipeline Company; Notice of Compliance Filing

January 4, 1995.

Take notice that on December 29, 1994, Tennessee Gas Pipeline Company (Tennessee), filed Third Sub Original Sheet No. 22A for a proposed effective date of August 22, 1994, and Sub First Revised Sheet No. 22A and Second Sub First Revised Sheet No. 22A for a proposed effective date of November 1, 1994.

Tennessee states that the revised tariff sheets are in compliance with a December 8, 1994 Letter Order, issued pursuant to § 375.307(b)(1) and (b)(3) by OPR—Rate Analysis Branch I in Docket No. RP94–187–003. The Letter Order directed Tennessee to file revised tariff sheets to effect a correction to the language in footnote 1 of the tariff sheets.

Tennessee states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to protest with reference to said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Section 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211. All such protests should be filed on or before January 11, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Copies of this filing are on file and available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–494 Filed 1–9–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–125–000]

Tennessee Gas Pipeline Company; Notice of Request Under Blanket Authorization

January 4, 1995.

Take notice that on December 21, 1994, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP95–125–000, a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to establish a delivery point by reversing an existing receipt meter for its existing customer, Mississippi Valley Gas Company (Mississippi Valley), under Tennessee's blanket certificate issued to Tennessee in Docket No. CP82–413–000 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.

Tennessee proposes to reverse its check valve located in Lowndes County, Mississippi and install electronic gas measurement (E.G.M.). Mississippi Valley proposes to reverse its existing Meter No. 1–1758 into a delivery facility. Tennessee will install, own, operate and maintain the E.G.M. and will operate the measurement facilities. Mississippi Valley will own and maintain the measurement facilities. The estimated cost for the project is $20,100, 100% reimbursible to Tennessee.

Tennessee states that the total quantities to be delivered for Mississippi Valley will not exceed the total quantities authorized. Tennessee asserts that the establishment of the proposed delivery meter is not prohibited by Tennessee's tariff and that it has sufficient capacity to accomplish the deliveries at the proposed new delivery meter without detriment or disadvantage to any of Tennessee's other customers.

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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–499 Filed 1–9–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–112–000]

Tennessee Gas Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

January 4, 1995.

Take notice that on December 30, 1994, Tennessee Gas Pipeline Company (Tennessee), tendered for filing changes in its FERC Gas Tariff to modify its existing rates, effective February 1, 1995.

Tennessee states that a copy of its filing was served on each of its customers and affected state commissions pursuant to Section 154.16(b) of the Commission's Regulations.

Tennessee states that the changes will increase Tennessee's cost of service by $117.9 million. Tennessee states that this rate increase is necessitated by, among other things, an increase in gas plant and related expenses and an increase in costs to operate and maintain its pipeline. Tennessee states that the proposed rates reflect Tennessee's ongoing costs of providing restructured services.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before January 11, 1995. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–508 Filed 1–9–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–102–000]

Texas Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

January 4, 1995.

Take notice that on December 29, 1994, Texas Gas Transmission Corporation (Texas Gas), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, with a proposed effective date of February 1, 1995:

Fifth Revised Seventh Revised Sheet No. 10
Fifth Revised Fourth Revised Sheet No. 11
Third Revised First Revised Sheet No. 11.1
First Revised First Revised Sheet No. 15
First Revised First Revised Sheet No. 16;

and

a statement in compliance with the provisions in Docket No. RP93–106 as approved in the "Order Approving Settlement" issued September 21, 1994 (68 FERC 61,348), and in Docket Nos. RS92–24 and RP94–119, et al., as respects Section 33.3(f) and 33.3(g) of the General Terms and Conditions of Texas Gas's FERC Gas Tariff, First Revised Volume No. 1.

Texas Gas states that the filing contains a statement reflecting:

(1) The aggregate amount of Gas Supply Realignment Costs incurred and allocated to be collected during the twelve-month period November 1, 1993, through October 31, 1994, from Rate Schedule IT, and

(2) The aggregate amount of Gas Supply Realignment Costs deemed collected during the same year by Texas Gas under Rate Schedule IT as determined pursuant to Section 33.3(g) of the General Terms and Conditions of Texas Gas's FERC Gas Tariff, First Revised Volume No. 1.

Texas Gas also states that additionally, the filing reflects an Interruptible Revenue Credit Adjustment which proposes to reduce base rates under Rate Schedules FT, NNS, and SGT, effective February 1, 1995.

Texas Gas states that copies of the instant filing are being mailed to Texas Gas's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before January 11, 1995. 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 in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–492 Filed 1–9–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM95–3–17–000]

Texas Eastern Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

January 4, 1995.

Take notice that on December 30, 1994, Texas Eastern Transmission Corporation (Texas Eastern), tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1 and Original Volume No. 2, the revised tariff sheets listed on Appendix A to the filing.

The proposed effective date of these revised tariff sheets is February 1, 1995.

Texas Eastern states that these revised tariff sheets, which reflect a rate reduction on a 100% load factor basis, are filed pursuant to Section 15.1, Electric Power Cost (EPC) Adjustment, of the General Terms and Conditions of Texas Eastern's FERC Gas Tariff, Sixth Revised Volume No. 1. Texas Eastern states that Section 15.1 provides that Texas Eastern shall file to be effective each February 1 revised rates for each applicable zone and rate schedule based upon the projected annual electric power costs required for the operation of transmission compressor stations with electric motor prime movers and to also reflect the EPC Surcharge which is designed to clear the balance in the Deferred EPC Account as of October 31, 1994.

Texas Eastern states that these revised tariff sheets are being filed to reflect changes in Texas Eastern's projected expenditures for electric power for the twelve month period beginning February 1, 1995 based upon the latest available actual expenditures for the twelve month period ending October 31, 1994.

Texas Eastern states that copies of its filing have been served on all firm customers of Texas Eastern and current interruptible shippers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before January 11, 1995. 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 a file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–513 Filed 1–9–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–113–000]

Transcontinental Gas Pipe Line Corporation; Notice of Tariff Filing

January 4, 1995.

Take notice that on December 30, 1994, Transcontinental Gas Pipe Line Corporation (TGPL), herewith submits for filing certain revised tariff sheets to its FERC Gas Tariff, Third Revised Volume No. 1, which tariff sheets are enumerated in the appendices attached to the filing. Such tariff sheets are proposed to be effective February 1, 1995.

TGPL states that the purpose of the instant filing is to revise certain tariff sheets in TGPL's Volume No. 1 Tariff to (i) clean up various spelling, punctuation, wording and reference errors (ii) eliminate expired producer settlement payment recovery provisions and (iii) update the index of purchasers.

TGPL states that copies of the instant filing are being mailed to customers, State Commissions and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before January 11, 1995. 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 in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–509 Filed 1–9–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. SA95–1–000]

Western Gas Resources Storage, Inc.; Notice of Petition for Adjustment

January 4, 1995.

Take notice that on December 2, 1994, Western Gas Resources Storage, Inc. (WGRS), filed pursuant to Section 502(c) of the Natural Gas Policy Act of 1978 (NGPA), a petition for adjustment from Section 284.123(b)(1)(ii) of the Commission's Regulations to permit WGRS to use its tariff on file with the Railroad Commission of Texas (TRC), for suspendable firm storage and storage-related transportation services performed pursuant to NGPA Section 311.

In support of its petition, WGRS states that it is an intrastate pipeline operating in the State of Texas, and is a gas utility subject to the jurisdiction of the TRC. WGRS owns and operates the Katy Gas Storage Facility, which consists of a storage cavern and associated pipeline facilities as well as a header system. WGRS's transportation and storage rates are subject to regulation by the TRC. WGRS anticipates providing suspendable firm Section 311 storage service on behalf of interstate pipeline companies or local distribution companies served by interstate pipeline companies for negotiated rates not to exceed the rates for suspendable intrastate service on file with the TRC under Tariff No. TN–3199–TT–7.

The regulations applicable to this proceeding are found in Subpart K of the Commission's Rules of Practice and Procedure. Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All motions must be filed with the Secretary of the Commission within 15 days after publication of this notice in the **Federal Register.** The petition for adjustment is on file with the Commission and is available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–510 Filed 1–9–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT95–15–000]

Williston Basin Interstate Pipeline Company; Notice of Filing

January 4, 1995.

Take notice that on December 30, 1994, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, revised tariff sheets, with an effective date of December 30, 1994.

Williston Basin states that the revised tariff sheets are being filed to update its Master Receipt/Delivery Point List.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before January 11, 1995. 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 to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–498 Filed 1–9–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–110–000]

Williston Basin Interstate Pipeline Company; Notice of Tariff Filing

January 4, 1995.

Take notice that on December 30, 1994, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, certain revised tariff sheets, with an effective date of February 1, 1995.

Williston Basin states that the revised tariff sheets are being filed pursuant to Order Nos. 636, et seq., and Section 39.3.3 of Williston Basin's FERC Gas Tariff, Second Revised Volume No. 1, to implement the recovery of $925,000 of Gas Supply Realignment Transition

costs. Under the filing, Williston Basin is proposing to recover ninety percent of the costs through an increase in the existing reservation charge surcharge of 12.552¢ per equivalent dkt of Maximum Daily Delivery Quantity applicable to Rate Schedule FT–1 and an increase in the existing volumetric reservation charge surcharge of 2.510¢ per dkt applicable to Rate Schedule ST–1. Williston Basin proposes to recover the remaining ten percent of the costs through an increase in the existing base rate unit cost of 0.587¢ per dkt applicable to Rate Schedule IT–1.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before January 11, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–506 Filed 1–9–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM95–2–49–000]

Williston Basin Interstate Pipeline Company; Notice of Fuel Reimbursement Charge Filing

January 4, 1995.

Take notice that on December 30, 1994, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff the following revised tariff sheets:

Second Revised Volume No. 1

Ninth Revised Sheet No. 15
Fourth Revised Sheet No. 15A
Ninth Revised Sheet No. 16
Fourth Revised Sheet No. 16A
Ninth Revised Sheet No. 18
Fourth Revised Sheet No. 18A
Fourth Revised Sheet No. 19
Fourth Revised Sheet No. 20
Ninth Revised Sheet No. 21

Original Volume No. 2

Fifty-fifth Revised Sheet No. 10
Fifty-fifth Revised Sheet No. 11B

The proposed effective date of the tariff sheets is February 1, 1995.

Williston Basin states that the revised tariff sheets reflect revisions to the fuel reimbursement charge and percentage components of the Company's relevant gathering, transportation and storage rates, pursuant to Williston Basin's Fuel Reimbursement Adjustment Provision, contained in Section 38 of the General Terms and Conditions of Second Revised Volume No. 1 of Williston Basin's FERC Gas Tariff.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before January 11, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–512 Filed 1–9–95; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

[Docket No. FE–R–79–43B]

Electric and Gas Utilities Covered in 1995 by Titles I and III of the Public Utility Regulatory Policies Act of 1978 and Requirements for State Regulatory Authorities to Notify the Department of Energy

AGENCY: Office of Fossil Energy Department of Energy.

ACTION: Notice.

SUMMARY: Sections 102(c) and 301(d) of the Public Utility Regulatory Policies Act of 1978 (PURPA) require the Secretary of Energy to publish a list, before the beginning of each calendar year, identifying each electric utility and gas utility to which Titles I and III of PURPA apply during such calendar year. The 1995 list is published here as two separate tabulations. Appendix A lists the covered utilities by State, and Appendix B lists them alphabetically.

Each State regulatory authority is required, pursuant to sections 102(c) and 301(d) of PURPA, to notify the Secretary of Energy of each electric utility and gas utility on the list for which such State regulatory authority has ratemaking authority. In addition, written comments are requested on the accuracy of the list of electric utilities and gas utilities.

DATES: Notifications by State regulatory authorities and written comments must be received by no later than 4:30 p.m. on February 15, 1995.

ADDRESSES: Notifications and written comments should be forwarded to: Department of Energy, Office of Coal and Electricity, FE–52, 1000 Independence Avenue, SW., room 3F–070, Docket No. FE–R–79–43B, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Steven Mintz, Office of Coal and Electricity, Fossil Energy, Department of Energy, 1000 Independence Avenue, SW., room 3F–070, FE–52, Washington, D.C. 20585, Telephone 202/586–9506.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to sections 102(c) and 301(d) of PURPA, Pub. L. 95–617, 92 Stat. 3117 *et seq.* (16 U.S.C. 2601 *et seq.*, hereinafter referred to as the Act) the Department of Energy (DOE) is required to publish a list of utilities to which Titles I and III of PURPA apply in 1995.

State regulatory authorities are required by the Act to notify the Secretary of Energy as to their ratemaking authority over the listed utilities. The inclusion or exclusion of any utility on or from the list does not affect the legal obligations of such utility or the responsible authority under the Act.

The term "State regulatory authority" means any State, including the District of Columbia and Puerto Rico, or a political subdivision thereof, and any agency or instrumentality, which has authority to fix, modify, approve, or disapprove rates with respect to the sale of electric energy or natural gas by any utility (other than such State agency). In the case of a utility for which the Tennessee Valley Authority (TVA) has ratemaking authority, the term "State regulatory authority" means the TVA.

Title I of PURPA sets forth ratemaking and regulatory policy standards with respect to electric utilities. Section 102(c) of Title I requires the Secretary of Energy to publish a list, before the beginning of each calendar year, identifying each electric utility to which Title I applies during such calendar year. An electric utility is defined as any person, State agency, or Federal agency that sells electric energy. An electric utility is covered by Title I for any calendar year if it had total sales of electric energy, for purposes other than resale, in excess of 500 million kilowatt-

hours during any calendar year beginning after December 31, 1975, and before the immediately preceding calendar year. An electric utility is covered in 1995 if it exceeded the threshold in any year from 1976 through 1993.

Title III of PURPA addresses ratemaking and other regulatory policy standards with respect to natural gas utilities. Section 301(d) of Title III requires the Secretary of Energy to publish a list, before the beginning of each calendar year, identifying each gas utility to which Title III applies during such calendar year. A gas utility is defined as any person, State agency, or Federal agency engaged in the local distribution of natural gas and the sale of natural gas to any ultimate consumer of natural gas. A gas utility is covered by Title III if it had total sales of natural gas, for purposes other than resale, in excess of 10 billion cubic feet during any calendar year beginning after December 31, 1975, and before the immediately preceding calendar year. A gas utility is covered in 1995 if it exceeded the threshold in any year from 1976 through 1993.

In compiling the list published today, the DOE revised the 1994 list (58 FR 65169, December 13, 1993) upon the assumption that all entities included on the 1994 list are properly included on the 1995 list unless the DOE has information to the contrary. In doing this, the DOE took into account information included in public documents regarding entities which exceeded the PURPA thresholds for the first time in 1993. The DOE believes that it will become aware of any errors or omissions in the list published today by means of the comment process called for by this Notice. The DOE will, after consideration of any comment and other information available to the DOE, provide written notice of any further additions or deletions to the list.

II. Notification and Comment Procedures

No later than 4:30 p.m. on February 15, 1995, each State regulatory authority must notify the DOE in writing of each utility on the list over which it has ratemaking authority. Two copies of such notification should be submitted to the address indicated in the **ADDRESSES** section of this Notice and should be identified on the outside of the envelope and on the document with the designation "Docket No. FE–R–79–43B." Such notification should include:

1. A complete list of electric utilities and gas utilities over which the State regulatory authority has ratemaking authority;

2. Legal citations pertaining to the ratemaking authority of the State regulatory authority; and

3. For any listed utility known to be subject to other ratemaking authorities within the State for portions of its service area, a precise description of the portion to which such notification applies.

All interested persons, including State regulatory authorities, are invited to comment in writing, no later than 4:30 p.m. on February 15, 1995, on any errors or omissions with respect to the list. Two copies of such comments should be sent to the address indicated in the **ADDRESSES** section of this Notice and should be identified on the outside of the envelope and on the document with the designation "Docket No. FE–R–79–43B." Written comments should include the commenter's name, address, and telephone number.

All notifications and comments received by the DOE will be made available, upon request, for public inspection and copying in the Freedom of Information Reading Room, Room 1E–190, 1000 Independence Avenue, S.W., Washington, D.C. 20585, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

III. List of Electric Utilities and Gas Utilities

Appendices A and B contain two different tabulations of the utilities that meet PURPA coverage requirements. As stated above, the inclusion or exclusion of any utility on or from the lists does not affect its legal obligations or those of the responsible State regulatory authority under PURPA.

Appendix A contains a list of utilities which are covered by PURPA. These utilities are grouped by State and by the regulatory authority within each State. Also included in this list are utilities which are covered by PURPA but which are not regulated by the State regulatory authority. This tabulation, including explanatory notes, is based on information provided to the DOE by State regulatory authorities in response to the December 13, 1993, **Federal Register** notice (58 FR 65169) requiring each State regulatory authority to notify the DOE of each utility on the list over which it has ratemaking authority, public comments received with respect to that notice, and information subsequently made available to the DOE.

The utilities classified in Appendix A as not regulated by the State regulatory authority in fact may be regulated by local municipal authorities. These municipal authorities would be State agencies as defined by PURPA and thus have responsibilities under PURPA identical to those of the State regulatory authority. Therefore, each such municipality is to notify the DOE of each utility on the list over which it has ratemaking authority.

In Appendix B, the utilities are listed alphabetically, subdivided into electric utilities and gas utilities, and further subdivided by type of ownership: investor-owned utilities, publicly-owned utilities, and rural cooperatives.

The changes to the 1994 list of electric and gas utilities are as follows:

Additions:

Florida Public Utilities Company (FL)
Michigan Gas Utilities, division of UtiliCorp United (MI)
Newport Electric Corporation (RI)
Oklahoma Electric Cooperative (OK)
Talquin Electric Cooperative (FL)
Westpac Utilities (NV)

(Public Utility Regulatory Policies Act of 1978, Pub. L. 95–617, 92 Stat. 3117 *et seq.* (16 U.S.C. 2601 *et seq.*)).

Issued in Washington, D.C. on January 4, 1995.

Anthony J. Como,

Director, Office of Coal and Electricity, Office of Fuels Programs, Office of Fossil Energy.

Appendix A

All gas utilities listed below had natural gas sales, for purposes other than resale, in excess of 10 billion cubic feet in any year from 1976–1993.

All electric utilities listed below had electric energy sales, for purposes other than resale, in excess of 500 million kilowatt-hours in any year from 1976–1993.

State: Alabama

Regulatory Authority: Alabama Public Service Commission.

Gas Utilities

Investor-Owned:
Alabama Gas Corporation
Mobile Gas Service Corporation

Electric Utilities

Investor-Owned: Alabama Power Company

The following covered utilities within the State of Alabama are not regulated by the Alabama Public Service Commission:

Electric Utilities

Publicly-Owned:
Athens Utilities
Decatur Electric Department
Dothan Electric Department
Florence Electric Department
Huntsville Utilities
Rural Electric Cooperatives:
Cullman Electric Cooperative
Joe Wheeler Electric Membership Corporation
Rural Electric System

State: Alaska

Regulatory Authority: Alaska Public Utilities Commission.

Gas Utilities

Investor-Owned: Enstar Natural Gas Company

Electric Utilities

Rural Electric Cooperatives: Chugach Electric Association
Publicly-Owned: Anchorage Municipal Light & Power Department

State: Arizona

Regulatory Authority: Arizona Corporation Commission.

Gas Utilities

Investor-Owned:
Citizens Utilities Company
Southwest Gas Corporation

Electric Utilities

Investor-Owned:
Arizona Public Service Company
Citizens Utilities Company
Tucson Electric Power Company
Rural Electric Cooperatives:
Duncan Valley Electric Cooperative, Inc.
Trico Electric Cooperative, Inc.

The following covered utility within the State of Arizona is not regulated by the Arizona Corporation Commission:

Electric Utilities

Publicly-Owned: Salt River Project Agricultural Improvement and Power District

State: Arkansas

Regulatory Authority: Arkansas Public Service Commission.

Gas Utilities

Investor-Owned:
Arkansas-Louisiana Gas Company
Arkansas-Oklahoma Gas Corporation
Arkansas Western Gas Company

Electric Utilities

Investor-Owned:
Arkansas Power and Light Company
Empire District Electric Company
Oklahoma Gas and Electric Company
Southwestern Electric Power Company
Rural Electric Cooperatives:
Arkansas Valley Electric Cooperative Corporation
Carroll Electric Cooperative Corporation
First Electric Cooperative Corporation
Mississippi County Electric Cooperative, Inc.
Ozarks Electric Cooperative Corporation

The following covered utilities within the State of Arkansas are not regulated by the Arkansas Public Service Commission:

Electric Utilities

Publicly-Owned:
Jonesboro Water & Light
North Little Rock Electric Department

State: California

Regulatory Authority: California Public Utilities Commission.

Gas Utilities

Investor-Owned:
Pacific Gas and Electric Company
San Diego Gas and Electric Company
Southern California Gas Company
Southwest Gas Corporation

Electric Utilities

Investor-Owned:
Pacific Gas and Electric Company
Pacific Power and Light Company
San Diego Gas and Electric Company
Sierra Pacific Power Company
Southern California Edison Company

The following covered utilities within the State of California are not regulated by the California Public Utilities Commission:

Gas Utilities

Publicly-Owned: Long Beach Gas Department

Electric Utilities

Publicly-Owned:
Anaheim Public Utilities Department
Burbank Public Service Department
Glendale Public Service Department
Imperial Irrigation District
Los Angeles Department of Water and Power
Modesto Irrigation District
Palo Alto Electric Utility
Pasadena Water and Power Department
Riverside Public Utilities
Sacramento Municipal Utility District
Santa Clara Electric Department
Turlock Irrigation District
Vernon Municipal Light Department

State: Colorado

Regulatory Authority: Colorado Public Utilities Commission.

Gas Utilities

Investor-Owned:
Citizens Utilities Company
Greeley Gas Company
K N Energy, Incorporated
Peoples Natural Gas Company
Public Service Company of Colorado
Rocky Mountain Natural Gas Division of K N Energy, Inc.
Publicly-Owned:
City of Colorado Springs Department of Public Utilities
City of Fort Morgan Gas Department
Town of Ignacio Municipal Utilities
Town of Rangley Gas Department

Electric Utilities

Investor-Owned:
Public Service Company of Colorado
West Plains Energy

The following covered utilities within the State of Colorado are not regulated by the Colorado Public Utilities Commission:

Gas Utilities

Publicly-Owned: Colorado Springs Department of Utilities (except sales to another gas utility)

Electric Utilities

Publicly-Owned: Colorado Springs Department of Public Utilities

Rural Electric Cooperatives:
Holy Cross Electric Association
Intermountain Rural Association
Moon Lakes Electric Association
Poudre Valley REA, Inc.

State: Connecticut

Regulatory Authority: Connecticut Department of Public Utility Control.

Gas Utilities

Investor-Owned:
Connecticut Natural Gas Corporation
Southern Connecticut Gas Company
Yankee Gas Service Company

Electric Utilities

Investor-Owned:
Connecticut Light and Power Company
United Illuminating Company
Publicly-Owned:
Groton Public Utilities
Wallingford DPU—Electric Division

State: Delaware

Regulatory Authority: Delaware Public Service Commission.

Gas Utilities

Investor-Owned: Delmarva Power and Light Company

Electric Utilities

Investor-Owned: Delmarva Power and Light Company

The following covered utility within the State of Delaware is not regulated by the Delaware Public Service Commission.

Electric Utilities

Rural Electric Cooperative: Delaware Electric Cooperative, Inc.

State: District of Columbia

Regulatory Authority: Public Service Commission of the District of Columbia.

Gas Utilities

Investor-Owned: Washington Gas Light Company

Electric Utilities

Investor-Owned: Potomac Electric Power Company

State: Florida

Regulatory Authority: Florida Public Service Commission.

Gas Utilities

Investor-Owned:
City Gas Company of Florida
Peoples Gas System

Electric Utilities

Investor-Owned:
Florida Power and Light Company
Florida Power Corporation
Florida Public Utilities Company
Gulf Power Company
Tampa Electric Company

The Florida Public Service Commission has rate structure jurisdiction over the following utilities:

Publicly-Owned:
Gainesville Regional Utilities
Jacksonville Electric Company
Kissimmee Utility Authority
Lakeland Department of Electric and Water
Ocala Electric Authority
Orlando Utilities Commission
Tallahassee, City of
Rural Electric Cooperatives:
Clay Electric Cooperative
Lee County Electric Cooperative
Sumter Electric Cooperative, Inc.
Talquin Electric Cooperative
Withlacoochee River Electric Cooperative

State Georgia

Regulatory Authority: Georgia Public Service Commission.

Gas Utilities

Investor-Owned:
Atlanta Gas Light Company
United Cities Gas Company

Electric Utilities

Investor-Owned:
Georgia Power Company
Savannah Electric and Power Company

The following utilities within the State of Georgia are not regulated by the Georgia Public Service Commission:

Electric Utilities

Publicly-Owned:
Albany Water, Gas & Light Commission
Dalton Water, Light & Sink

Rural Electric Cooperatives:
Cobb Electric Membership Corporation
Flint Electric Membership Corporation
GreyStone Power Electric Membership Corporation
Jackson Electric Membership Corporation
North Georgia Electric Membership Corporation
Sawnee Electric Membership Corporation
Walton Electric Membership Corporation

State. Hawaii

Regulatory Authority: Hawaii Public Utilities Commission.

Electric Utilities

Investor-Owned:
Hawaii Electric Light Company, Inc.
Hawaiian Electric Company, Inc.
Maui Electric Company, Ltd.

State: Idaho

Regulatory Authority: Idaho Public Utilities Commission.

Gas Utilities

Investor-Owned:
Intermountain Gas Company
Mountain Fuel Supply
Washington Water Power Company

Electric Utilities

Investor-Owned:
Idaho Power Company
Pacific Power and Light Company
Utah Power and Light Company
Washington Water Power Company

State: Illinois

Regulatory Authority: Illinois Commerce Commission.

Gas Utilities

Investor-Owned:
Central Illinois Light Company
Central Illinois Public Service Company
Illinois Power Company
Iowa-Illinois Gas and Electric Company
North Shore Gas Company
Northern Illinois Gas Company
Panhandle Eastern Pipeline Company
Peoples Gas, Light, and Coke Company

Electric Utilities

Investor-Owned:
Central Illinois Light Company
Central Illinois Public Service Company
Commonwealth Edison Company
Interstate Power Company
Iowa-Illinois Gas and Electric Company
Union Electric Company

The following covered utility within the State of Illinois is not regulated by the Illinois Commerce Commission:

Electric Utilities

Publicly-Owned: Springfield Water, Light and Power Department

State Indiana

Regulatory Authority: Indiana Utility Regulatory Commission.

Gas Utilities

Investor-Owned:
Indiana Gas Company
Northern Indiana Public Service Company
Southern Indiana Gas and Electric Company

Publicly-Owned: Citizens Gas and Coke Utility

Electric Utilities

Investor-Owned:
Indiana Michigan Power Company
Indianapolis Power and Light Company
Northern Indiana Public Service Company
PSI Energy
Southern Indiana Gas and Electric Company

Publicly-Owned: Richmond Power and Light

State. Iowa

Regulatory Authority: Iowa Utilities Board.

Gas Utilities

Investor-Owned:
IES Utilities Inc.
Interstate Power Company
Iowa-Illinois Gas and Electric Company
Midwest Gas, Division of Midwest Power Systems, Inc.
Peoples Natural Gas Company Division of Utilicorp United, Inc.
United Cities Gas Company, Great River Division

Electric Utilities

Investor-Owned:
IES Utilities Inc.
Interstate Power Company
Iowa-Illinois Gas and Electric Company
Midwest Power, Division of Midwest Power Systems, Inc.

Rural Electric Cooperatives: Linn County RECA

The Iowa Utilities Board has service and safety regulation over the following utilities:

Electric Utilities

Publicly-Owned
Muscatine Power and Water
Omaha Public Power District

State: Kansas

Regulatory Authority: Kansas State Corporation Commission.

Gas Utilities

Investor-Owned:
Anadarko Production Company
Arkansas-Louisiana Gas Company
Getty Gas Gathering Inc.
Greeley Gas Company
KN Energy, Incorporated
KPL Gas Service Company
Panhandle Eastern Pipeline Company
Peoples Natural Gas Company, Division of UtiliCorp United
United Cities Gas Company

Electric Utilities

Investor-Owned:
Empire District Electric Company
Kansas City Power and Light Company
Kansas Gas and Electric Company
KPL Gas Service Company
Southwestern Public Service Company
West Plains Energy. Division of UtiliCorp United

Rural Electric Cooperatives: Midwest Energy Incorporated

The following covered utility within the State of Kansas is not regulated by the Kansas State Corporation Commission:

Electric Utilities

Publicly-Owned: Kansas City Board of Public Utilities

State: Kentucky

Regulatory Authority: Kentucky Public Service Commission.

Gas Utilities

Investor-Owned:
Columbia Gas of Kentucky, Inc.
Louisville Gas and Electric Company
Union Light, Heat and Power Company
Western Kentucky Gas Company

Electric Utilities

Investor-Owned:
Kentucky Power Company
Kentucky Utilities Company
Louisville Gas and Electric Company
Union Light, Heat and Power Company

Rural Electric Cooperatives:
Green River Electric Corporation
Henderson-Union Rural Electric Cooperative Corporation
South Kentucky Rural Electric Cooperative

The following covered utilities within the State of Kentucky are not regulated by the Kentucky Public Service Commission:

Electric Utilities

Bowling Green Municipal Utilities
Owensboro Municipal Utilities
Paducah Power System
Pennyrile Rural Electric Cooperative Corporation
Warren Rural Electric Cooperative Corporation
West Kentucky Rural Electric Cooperative Corporation

State: Louisiana

Regulatory Authority: Louisiana Public Service Commission.

Gas Utilities

Investor-Owned:
Arkansas-Louisiana Gas Company
Entex, Inc.
Gulf States Utilities Company
Louisiana Gas Service Company
Trans Louisiana Gas Company

Publicly-Owned: New Orleans Public Service, Inc.

Electric Utilities

Investor-Owned:

Central Louisiana Electric Company
Gulf States Utilities Company
Louisiana Power and Light Company (West Bank)
Southwestern Electric Power Company

Rural Electric Cooperatives:
Dixie Electric Membership Corporation
Southwest Louisiana Electric Membership Corporation

The following covered utilities within the State of Louisiana are not regulated by the Louisiana Public Service Commission:

Electric Utilities

Publicly-Owned:
Lafayette Utilities System
New Orleans Public Service, Inc.

State: Maine

Regulatory Authority: Maine Public Utilities Commission.

Electric Utilities

Investor-Owned:
Bangor Hydro-Electric Company
Central Maine Power Company

State: Maryland

Regulatory Authority: Maryland Public Service Commission.

Gas Utilities

Investor-Owned:
Baltimore Gas and Electric Company
Washington Gas Light Company

Electric Utilities

Investor-Owned:
Baltimore Gas and Electric Company
Conowingo Power Company
Delmarva Power and Light—Company of Maryland
Potomac Edison Company
Potomac Electric Power Company

Rural Electric Cooperatives:
Choptank Electric Cooperative, Inc.
Southern Maryland Electric Cooperative, Inc.

State: Massachusetts

Regulatory Authority: Massachusetts Department of Public Utilities.

Gas Utilities

Investor-Owned:
Bay State Gas Company
Boston Gas Company
Colonial Gas Company
Commonwealth Gas Company

Electric Utilities

Investor-Owned:
Boston Edison Company
Cambridge Electric Light Company
Commonwealth Electric Company
Eastern Edison Company
Western Massachusetts Electric Company

State: Michigan

Regulatory Authority: Michigan Public Service Commission.

Gas Utilities

Investor-Owned:
Consumers Power Company
Michigan Consolidated Gas Company
Michigan Gas Company
Michigan Gas Utilities, Division of UtiliCorp United, Inc.
Southeastern Michigan Gas Company
Wisconsin Public Service Corporation

Electric Utilities

Investor-Owned:
Consumers Power Company
Detroit Edison Company
Indiana and Michigan Electric Company
Michigan Power Company
Northern States Power
Upper Peninsula Power Company
Wisconsin Electric Power Company
Wisconsin Public Service Corporation

The following covered utilities within the State of Michigan are not regulated by the Michigan Public Service Commission:

Gas Utilities

Investor-Owned: Battle Creek Gas Company

Electric Utilities

Publicly-Owned: Lansing Board of Water and Light

State: Minnesota

Regulatory Authority: Minnesota Public Utility Commission.

Gas Utilities

Investor-Owned:
Interstate Power Company
Minnegasco—Division of Arkla, Inc.
Northern Minnesota Utilities—Division of UtiliCorp United, Inc.
Northern States Power Company
Peoples Natural Gas Company—Division of UtiliCorp United, Inc.

Electric Utilities

Investor-Owned:
Interstate Power Company
Minnesota Power and Light Company
Northern States Power Company
Otter Tail Power Company

Rural Electric Cooperatives: Dakota Electric Association

The following covered utilities within the State of Minnesota are not regulated by the Minnesota Public Utility Commission:

Electric Utilities

Publicly-Owned: Rochester Department of Public Utilities

Rural Electric Cooperatives: Anoka Electric Cooperative

State: Mississippi

Regulatory Authority: Mississippi Public Service Commission.

Gas Utilities

Investor-Owned:
Entex, Inc.
Mississippi Valley Gas Company

Electric Utilities

Investor-Owned:
Mississippi Power and Light Company
Mississippi Power Company

The following covered utilities within the State of Mississippi are not regulated by the Mississippi Public Service Commission:

Electric Utilities

Publicly-Owned: Tupelo Water & Light Department

Rural Electric Cooperatives:
Alcorn County Electric Power Association
Coast Electric Power Association
4-County Electric Power Association
Singing River Electric Power Association
Southern Pine Electric Power Association
Tombigbee Electric Power Association

State: Missouri

Regulatory Authority: Missouri Public Service Commission.

Gas Utilities

Investor-Owned:
Associated Natural Gas Company
Gas Service, A Western Resources Company
Laclede Gas Company
Missouri Public Service Company
Union Electic Company

Electric Utilities

Investor-Owned:
Citizens Electric Corporation
Empire District Electric Company
Kansas City Power and Light Company
Missouri Public Service, a division of UtiliCorp United Inc.
St. Joseph Light and Power Company
Union Electric Company

The following covered utilities within the State of Missouri are not regulated by the Missouri Public Service Commission:

Gas Utilities

Investor-Owned: Williams Natural Gas Company

Publicly-Owned: Springfield City Utilities

Electric Utilities

Publicly-Owned:
Independence Power and Light Department
Springfield City Utilities

State: Montana

Regulatory Authority: Montana Public Service Commission.

Gas Utilities

Investor-Owned:
Montana-Dakota Utilities Company
Montana Power Company

Electric Utilities

Investor-Owned:
Black Hills Power and Light Company
Montana-Dakota Utilities Company
Montana Power Company
Pacific Power and Light Company
Washington Water Power Company

State: Nebraska

Regulatory Authority: Nebraska Public Service Commission.

The Commission does not regulate the rates and service of the gas and electric utilities of the State of Nebraska.

The following covered utilities within the State of Nebraska are not regulated by the Nebraska Public Service Commission:

Gas Utilities

Investor-Owned:
Gas Service Company
Midwest Gas, Division of Midwest Power Systems, Inc.
Minnegasco—Division of Arkla, Inc.
Northwestern Public Service Company
Peoples Natural Gas Company, Division of Utilicorp United, Inc.

The governing body of each Nebraska municipality exercises ratemaking

jurisdiction over gas utility rates, operations, and services provided by a gas utility within its city or town limits. These municipal authorities would be State agencies as defined by PURPA and, thus, have responsibilities under PURPA identical to those of the State regulatory authority.

Electric Utilities

Publicly-Owned:
Lincoln Electric System
Nebraska Public Power District
Omaha Public Power District

The governing body of each Nebraska municipality or public power district exercises ratemaking jurisdiction over electric utility rates, operations, and services provided by each utility within its specified service territory. Service territories are set by the Nebraska Power Review Board. These municipal and public power district authorities would be State agencies as defined by PURPA and, thus, have responsibilities under PURPA identical to those of the State regulatory authority.

Publicly-Owned: Metropolitan Utilities District of Omaha

State: Nevada

Regulatory Authority: Nevada Public Service Commission.

Gas Utilities

Investor-Owned:
Southwest Gas Corporation
Westpac Utilities

Electric Utilities

Investor-Owned:
Idaho Power Company
Nevada Power Company
Sierra Pacific Power Company

State. New Hampshire

Regulatory Authority: New Hampshire Public Utilities Commission.

Gas Utilities

Investor-Owned: EnergyNorth Natural Gas, Inc.

Electric Utilities

Investor-Owned:
Granite State Electric Company
Public Service Company of New Hampshire

Rural Electric Cooperatives: New Hampshire Electric Cooperative, Inc.

State New Jersey

Regulatory Authority: New Jersey Board of Public Utilities.

Gas Utilities

Investor-Owned:
Elizabethtown Gas Company
New Jersey Natural Gas Company
Public Service Electric and Gas Company
South Jersey Gas Company

Electric Utilities

Investor-Owned:
Atlantic City Electric Company
Jersey Central Power and Light Company
Public Service Electric and Gas Company
Rockland Electric Company

State: New Mexico

Regulatory Authority: New Mexico Public Service Commission.

Gas Utilities

Investor-Owned: Gas Company of New Mexico

Electric Utilities

Investor-Owned:
El Paso Electric Company
Public Service Company of New Mexico
Southwestern Public Service Company
Texas-New Mexico Power Company

Rural Electric Cooperatives:
Duncan Valley Electric Cooperative, Inc.
Lea County Electric Cooperative, Inc.

State: New York

Regulatory Authority: New York Public Service Commission.

Gas Utilities

Investor-Owned:
Brooklyn Union Gas Company
Central Hudson Gas and Electric Corporation
Consolidated Edison Company of New York
Long Island Lighting Company
National Fuel Gas Distribution Corporation
New York State Electric and Gas Corporation
Niagara Mohawk Power Corporation
Orange and Rockland Utilities
Rochester Gas and Electric Corporation

Electric Utilities

Investor-Owned:
Central Hudson Gas and Electric Corporation
Consolidated Edison Company of New York
Long Island Lighting Company
New York State Electric and Gas Corporation
Niagara Mohawk Power Corporation
Orange and Rockland Utilities
Rochester Gas and Electric Corporation

The following covered utility within the State of New York is not regulated by the New York Public Service Commission:

Electric Utilities

Publicly-Owned: Power Authority of New York

State. North Carolina

Regulatory Authority: North Carolina Utilities Commission.

Gas Utilities

Investor-Owned:
North Carolina Natural Gas Corporation
Piedmont Natural Gas Company
Public Service Company of North Carolina, Inc.

Electric Utilities

Investor-Owned:
Carolina Power and Light Company
Duke Power Company
Nantahala Power & Light Company
Virginia Electric and Power Company

The following covered utilities within the State of North Carolina are not regulated by the North Carolina Utilities Commission:

Electric Utilities

Publicly-Owned:
Fayetteville Public Works Commission
Greenville Utilities Commission
High Point Electric Utility Department
Rocky Mount Public Utilities
Wilson Utilities Department

Rural Electric Cooperatives:
Blue Ridge Electric Membership Corporation
Rutherford Electric Membership Corporation

State: North Dakota

Regulatory Authority: North Dakota Public Service Commission.

Gas Utilities

Investor-Owned:
Montana Dakota Utilities Company
Northern States Power Company

Electric Utilities

Investor-Owned:
Montana Dakota Utilities Company
Northern States Power Company
Otter Tail Power Company

State: Ohio

Regulatory Authority: Ohio Public Utilities Commission.

Gas Utilities

Investor-Owned:
Cincinnati Gas and Electric Company
Columbia Gas of Ohio, Inc.
Dayton Power and Light Company
East Ohio Gas Company
National Gas and Oil Company
West Ohio Gas Company

Electric Utilities

Investor-Owned:
Cincinnati Gas and Electric Company
Cleveland Electric Illuminating Company
Columbus and Southern Ohio Electric Company
Dayton Power and Light Company
Monongahela Power Company
Ohio Edison Company
Ohio Power Company
Toledo Edison Company

The following covered utilities within the State of Ohio are not regulated by the Ohio Public Utilities Commission:

Electric Utilities

Publicly-Owned: Cleveland Division of Light and Power

Rural Electric Cooperatives: South Central Power Company

State: Oklahoma

Regulatory Authority: Oklahoma Corporation Commission.

Gas Utilities

Investor-Owned:
Arkansas-Louisiana Gas Company
Arkansas-Oklahoma Gas Corporation
Oklahoma Natural Gas Company
Southern Union Gas Company
Western Resources Gas Company

Electric Utilities

Investor-Owned:
Empire District Electric Company
Oklahoma Gas and Electric Company

Public Service Company of Oklahoma
Southwestern Public Service Company

Rural Electric Cooperatives:
Cotton Electric Cooperative
Oklahoma Electric Cooperative

State: Oregon

Regulatory Authority: Public Utility Commission of Oregon.

Gas Utilities

Investor-Owned:
Cascade Natural Gas Corporation
Northwest Natural Gas Company
Washington Water Power Company

Electric Utilities

Investor-Owned:
Idaho Power Company
Pacific Power and Light Company
Portland General Electric Company

The following covered utilities within the State of Oregon are not regulated by the Public Utility Commission of Oregon:

Electric Utilities

Publicly-Owned:
Central Lincoln People's Utility District
Clatskanie People's Utility District
Eugene Water and Electric Board
Springfield Utility Board

Rural Electric Cooperatives:
Oregon Trail Electric
Umatilla Electric Cooperative Association

State: Pennsylvania

Regulatory Authority: Pennsylvania Public Utility Commission.

Gas Utilities

Investor-Owned:
Carnegie Natural Gas Company
Columbia Gas of Pennsylvania, Inc.
Equitable Gas Company
National Fuel Gas Distribution Corporation
North Penn Gas Company
Pennsylvania Gas and Water Company
Peoples Natural Gas Company
Philadelphia Electric Company
T.W. Phillips Gas and Oil Company
UGI Corporation

Electric Utilities

Investor-Owned:
Duquesne Light Company
Metropolitan Edison Company
Pennsylvania Electric Company
Pennsylvania Power Company
Pennsylvania Power and Light Company
Philadelphia Electric Company
UGI—Luzerne Electric Company
West Penn Power Company

The following covered utility within the State of Pennsylvania is not regulated by the Pennsylvania Public Utility Commission:

Gas Utilities

Publicly-Owned: Philadelphia Gas Works

State: Puerto Rico

Regulatory Authority: Puerto Rico Public Service Commission.

The following covered utility within Puerto Rico is not regulated by the Puerto Rico Public Service Commission:

Electric Utilities

Publicly-Owned: Puerto Rico Electric Power Authority

State: Rhode Island

Regulatory Authority: Rhode Island Public Utilities Commission.

Gas Utilities

Investor-Owned: Providence Gas Company

Electric Utilities

Investor-Owned:
Blackstone Valley Electric Company
Narragansett Electric Company
Newport Electric Corporation

State: South Carolina

Regulatory Authority: South Carolina Public Service Commission.

Gas Utilities

Investor-Owned:
Piedmont Natural Gas Company
South Carolina Electric and Gas Company
South Carolina Pipeline Corporation

Electric Utilities

Investor-Owned:
Carolina Power and Light Company
Duke Power Company
South Carolina Electric and Gas Company

The following covered utilities within the State of South Carolina are not regulated by the South Carolina Public Service Commission:

Electric Utilities

Publicly-Owned: South Carolina Public Service Authority

Rural Electric Cooperatives:
Berkeley Electric Cooperatives, Inc.
Palmetto Electric Cooperatives, Inc.

State: South Dakota

Regulatory Authority: South Dakota Public Utilities Commission.

Gas Utilities

Investor-Owned:
Midwest Gas, Division of Midwest Power Systems, Inc.
Montana-Dakota Utilities Company
Northwestern Public Service Company

Electric Utilities

Investor-Owned:
Black Hills Power and Light Company
Midwest Power, Division of Midwest Power Systems, Inc.
Montana-Dakota Utilities Company
Northern States Power Company
Northwestern Public Service Company
Otter Tail Power Company

The following covered utility within the State of South Dakota is not regulated by the South Dakota Public Utilities Commission:

Electric Utilities

Publicly-Owned: Nebraska Public Power District

State: Tennessee

Regulatory Authority: Tennessee Public Service Commission.

Gas Utilities

Investor-Owned:
Chattanooga Gas Company
Nashville Gas Company

Electric Utilities

Investor-Owned: Kingsport Power Company

The following covered utilities within the State of Tennessee are not regulated by the Tennessee Public Service Commission.

Gas Utilities

Publicly-Owned: Memphis Light, Gas and Water Division

Electric Utilities

Publicly-Owned:
Bristol Tennessee Electric System
Chattanooga Electric Power Board
Clarksville Department of Electricity
Cleveland Utilities
Clinton Utilities Board
Dyersburg Electric System
Greeneville Light and Power System
Jackson Utility Division—Electric Department
Johnson City Power Board
Knoxville Utilities Board
Lenoir City Utilities Board
Memphis Light, Gas and Water Division
Morristown Power System
Murfreesboro Electric Department
Nashville Electric Service
Sevier County Electric System

Rural Electric Cooperatives:
Appalachian Electric Cooperative
Cumberland Electric Membership Corporation
Duck River Electric Membership Cooperative
Gibson County Electric Membership Corporation
Holston Electric Cooperative
Meriwether Lewis Electric Cooperative
Middle Tennessee Electric Membership Corporation
Sequachee Valley Electric Cooperative
Southwest Tennessee Electric Membership Corporation
Tri-County Electric Membership Corporation
Upper Cumberland Electric Membership Corporation
Volunteer Electric Cooperative

State: Tennessee

Regulatory Authority: Tennessee Valley Authority

Electric Utilities

Publicly-Owned:
Athens Utilities
Bowling Green Municipal Utilities
Bristol Tennessee Electric System
Chattanooga Electric Power Board
Clarksville Department of Electricity
Cleveland Utilities
Clinton Utilities Board
Decatur Electric Department
Dickson Electric Department
Dyersburg Electric System
Florence Electric Department
Greeneville Light and Power System
Huntsville Utilities
Jackson Utility Division—Electric Department
Johnson City Power Board
Knoxville Utilities Board
Lenoir City Utilities Board
Memphis Light, Gas and Water Division
Morristown Power System
Murfreesboro Electric Department
Nashville Electric Service
Paducah Power System

Sevier County Electric System
Tupelo Water and Light Department

Rural Electric Cooperatives:
Alcorn County Electric Company Association
Appalachian Electric Cooperative
Cullman Electric Cooperative
Cumberland Electric Membership Corporation
Duck River Electric Membership Corporation
4-County Electric Power Association
Gibson County Electric Membership Corporation
Holston Electric Cooperative
Joe Wheeler Electric Membership Corporation
Meriwether Lewis Electric Cooperative
Middle Tennessee Electric Membership Corporation
North Georgia Electric Membership Corporation
Pennyrile Rural Electric Cooperative Corporation
Sequachee Valley Electric Cooperative
Southwest Tennessee Electric Membership Corporation
Tombigbee Electric Power Association
Tri-County Electric Membership Corporation
Upper Cumberland Electric Membership Corporation
Volunteer Electric Cooperative
Warren Rural Electric Cooperative Corporation
West Kentucky Rural Electric Cooperative Corporation

State: Texas

Regulatory Authority: Texas Public Utility Commission.

Electric Utilities

Investor-Owned:
Central Power and Light Company
El Paso Electric Company
Gulf States Utilities Company
Houston Lighting and Power Company
Southwestern Electric Power Company
Southwestern Electric Service Company
Southwestern Public Service Company
Texas-New Mexico Power Company
TU Electric
West Texas Utilities Company

Publicly-Owned: Lower Colorado River Authority

Rural Electric Cooperatives:
Bluebonnet Electric Cooperative, Inc.
Cap Rock Electric Cooperative, Inc.
Guadalupe Valley Electric Cooperative, Inc.
Pedernales Electric Cooperative, Inc.
Sam Houston Electric Cooperative, Inc.
Tri-County Electric Cooperative, Inc.

The governing body of each Texas municipality exercises exclusive original jurisdiction over electric utility rates, operations, and services provided by an electric utility (whether privately owned or publicly owned) within its city or town limits, unless the municipality has surrendered this jurisdiction to the Texas Public Utility Commission. The Commission hears *de novo* appeals from the decision of such municipalities. These municipal authorities would be State agencies as defined by PURPA and, thus, have responsibilities under PURPA identical to those of a State regulatory authority.

The municipally owned utilities listed below are not under the commission's original ratemaking jurisdiction:

Electric Utilities

Publicly-Owned:
Austin Electric Department
Brownsville PUB
Bryan, City of
Garland Electric Department
Lubbock Power and Light
San Antonio City Public Service Board

State: Texas

Regulatory Authority: Railroad Commission of Texas.

Gas Utilities

Investor-Owned:
Atmos Energy Corporation
Entex, Inc.
Lone Star Gas Company, a division of ENSERCH Corporation
Southern Union Company

The governing body of each Texas municipality exercises exclusive original ratemaking jurisdiction over gas utility rates, operations, and services provided by a gas utility within its city or town limits subject to appellate review by the Railroad Commission of Texas. These municipal authorities would be State agencies as defined by PURPA and, thus, have responsibilities under PURPA identical to those of a State regulatory authority.

The following covered utilities within the State of Texas are not regulated by the Railroad Commission of Texas. (The Railroad Commission's appellate authority does not extend to municipally owned gas utilities.)

Gas Utilities

Publicly-Owned: City Public Service Board (San Antonio)

State: Utah

Regulatory Authority: Utah Public Service Commission.

Gas Utilities

Investor-Owned: Mountain Fuel Supply Company

Electric Utilities

Investor-Owned: Utah Power and Light Company

Rural Electric Cooperatives: Moon Lake Electric Association

State: Vermont

Regulatory Authority: Vermont Public Service Board.

Electric Utilities

Investor-Owned:
Central Vermont Public Service Corporation
Green Mountain Power Corporation
Public Service Company of New Hampshire

State: Virginia

Regulatory Authority: Virginia State Corporation Commission.

Gas Utilities

Investor-Owned:
Commonwealth Gas Services, Inc.
Virginia Natural Gas
Washington Gas Light Company

Electric Utilities

Investor-Owned:
Appalachian Power Company
Delmarva Power and Light Company
Kentucky Utilities Company
Potomac Edison Company
Virginia Electric and Power Company

Rural Electric Cooperatives:
Northern Virginia Electric Cooperative
Rappahannock Electric Cooperative

The following covered utilities within the State of Virginia are not regulated by the Virginia State Corporation Commission:

Gas Utilities

Publicly-Owned: City of Richmond, Virginia Department of Public Utilities

Electric Utilities

Publicly-Owned: Danville Water, Gas & Electric

State: Washington

Regulatory Authority: Washington Utilities and Transportation Commission.

Gas Utilities

Investor-Owned:
Cascade Natural Gas Corporation
Northwest Natural Gas Company
Washington Natural Gas Company
Washington Water Power Company

Electric Utilities

Investor-Owned:
Pacific Power & Light Company
Puget Sound Power & Light Company
Washington Water Power Company

The following covered utilities within the State of Washington are not regulated by the Washington Utilities and Transportation Commission:

Electric Utilities

Publicly-Owned:
Port Angeles Light and Water Department
Public Utility District No. 1 of Benton County
Public Utility District No. 1 of Chelan County
Public Utility District No. 1 of Clark County
Public Utility District No. 1 of Cowlitz County
Public Utility District No. 1 of Douglas County
Public Utility District No. 1 of Franklin County
Public Utility District No. 1 of Grays County
Public Utility District No. 1 of Lewis County
Public Utility District No. 1 of Snohomish County
Public Utility District No. 2 of Grant County
Richland Energy Service Department
Seattle City Light Department
Tacoma Public Utilities—Light Division

State: West Virginia

Regulatory Authority: West Virginia Public Service Commission.

Gas Utilities

Investor-Owned:
Equitable Gas Company
Hope Gas Incorporated
Mountaineer Gas Company

Electric Utilities

Investor-Owned:
Appalachian Power Company
Monongahela Power Company
Potomac Edison Company
Wheeling Electric Company

State: Wisconsin

Regulatory Authority: Wisconsin Public Service Commission.

Gas Utilities

Investor-Owned:
Madison Gas and Electric Company
Northern States Power Company
Wisconsin Fuel and Light Company
Wisconsin Gas Company
Wisconsin Natural Gas Company
Wisconsin Power and Light Company
Wisconsin Public Service Corporation

Electric Utilities

Investor-Owned:
Madison Gas and Electric Company
Northern States Power Company
Wisconsin Electric Power Company
Wisconsin Power and Light Company
Wisconsin Public Service Corporation

Publicly-Owned:
City of Kaukauna Electric and Water Department
City of Menasha Electric and Water Utilities

State: Wyoming

Regulatory Authority: Wyoming Public Service Commission.

Gas Utilities

Investor-Owned:
Cheyenne Light, Fuel and Power Company
Kansas-Nebraska Natural Gas Company
Montana-Dakota Utilities Company
Mountain Fuel Supply Company

Electric Utilities

Investor-Owned:
Black Hills Power and Light Company
Cheyenne Light, Fuel and Power Company
Montana-Dakota Utilities Company
Pacific Power and Light Company

Rural Electric Cooperatives: Tri-County Electric Association, Inc.

Appendix B

Electric Utilities

All utilities listed below had electric energy sales, for purposes other than resale, in excess of 500 million kilowatt hours in any year from 1976–1993. The utilities listed more than once have sales in more than one State, and those States are indicated by abbreviations in parentheses.

Investor-Owned:
Alabama Power Company
Appalachian Power Company (VA)
Appalachian Power Company (WV)
Arizona Public Service Company
Arkansas Power & Light Company
Atlantic City Electric Company
Baltimore Gas & Electric Company
Bangor Hydro-Electric Company
Black Hills Power & Light Company (MT)
Black Hills Power & Light Company (SD)
Black Hills Power & Light Company (WY)
Blackstone Valley Electric Company
Boston Edison Company
Cambridge Electric Light Company
Carolina Power & Light Company (NC)
Carolina Power & Light Company (SC)
Central Hudson Gas & Electric Corporation
Central Illinois Light Company
Central Illinois Public Service Company
Central Louisiana Electric Company
Central Maine Power Company
Central Power & Light Company
Central Vermont Public Service Corporation
Cheyenne Light, Fuel and Power Company
Cincinnati Gas & Electric Company
Citizens Electric Corporation
Citizens Utilities Company (AZ)
Cleveland Electric Illuminating Company
Columbus and Southern Ohio Electric Company
Commonwealth Edison Company
Commonwealth Electric Company
Connecticut Light & Power Company
Conowingo Power Company
Consolidated Edison Company of New York
Consumers Power Company
Dayton Power & Light Company
Delmarva Power & Light Company (DE)
Delmarva Power & Light Company (VA)
Delmarva Power & Light Company of Maryland
Detroit Edison Company
Duke Power Company (NC)
Duke Power Company (SC)
Duquesne Light Company
Eastern Edison Company (MA)
El Paso Electric Company (NM)
El Paso Electric Company (TX)
Empire District Electric Company (AR)
Empire District Electric Company (KS)
Empire District Electric Company (MO)
Empire District Electric Company (OK)
Florida Power Corporation
Florida Power & Light Company
Florida Public Utilities Company
Georgia Power Company
Granite State Electric Company
Green Mountain Power Corporation
Gulf Power Company
Gulf States Utilities Company (LA)
Gulf States Utilities Company (TX)
Hawaii Electric Light Company, Inc.
Hawaiian Electric Company, Inc.
Houston Lighting and Power Company
Idaho Power Company (ID)
Idaho Power Company (NV)
Idaho Power Company (OR)
IES Utilities Inc. (IA)
Illinois Power Company
Indiana Michigan Power Company (IN)
Indiana Michigan Power Company (MI)
Indianapolis Power & Light Company
Interstate Power Company (IA)
Interstate Power Company (IL)
Interstate Power Company (MN)
Iowa-Illinois Gas & Electric Company (IA)
Iowa-Illinois Gas & Electric Company (IL)
Jersey Central Power & Light Company
Kansas City Power & Light Company (KS)
Kansas City Power & Light Company (MO)
Kansas Gas & Electric Company
Kentucky Power Company
Kentucky Utilities Company (KY)
Kentucky Utilities Company (VA)
Kingsport Power Company
KPL Gas Service (KS)
Long Island Lighting Company
Louisiana Power & Light Company
Louisville Gas & Electric Company
Madison Gas & Electric Company
Massachusetts Electric Company
Maui Electric Company, Ltd.
Metropolitan Edison Company
Michigan Power Company
Midwest Power, Division of Midwest Power Systems, Inc. (IA)
Midwest Power, Division of Midwest Power Systems, Inc. (SD)
Minnesota Power & Light Company
Mississippi Power Company
Mississippi Power & Light Company
Missouri Public Service, a division of UtiliCorp United Inc.
Monongahela Power Company (OH)
Monongahela Power Company (WV)
Montana-Dakota Utilities Company (MT)
Montana-Dakota Utilities Company (ND)
Montana-Dakota Utilities Company (SD)
Montana-Dakota Utilities Company (WY)
Montana Power Company
Nantahala Power & Light Company
Narragansett Electric Company
Nevada Power Company
New Orleans Public Service, Inc.
Newport Electric Corporation (RI)
New York State Electric & Gas Corporation
Niagara Mohawk Power Company
Northern Indiana Public Service Company
Northern States Power Company (MI)
Northern States Power Company (MN)
Northern States Power Company (ND)
Northern States Power Company (SD)
Northern States Power Company (WI)
Northwestern Public Service Company
Ohio Edison Company
Ohio Power Company
Oklahoma Gas & Electric Company (AR)
Oklahoma Gas & Electric Company (OK)
Orange & Rockland Utilities
Otter Tail Power Company (MN)
Otter Tail Power Company (ND)
Otter Tail Power Company (SD)
Pacific Gas & Electric Company
Pacific Power & Light Company (CA)
Pacific Power & Light Company (ID)
Pacific Power & Light Company (MT)
Pacific Power & Light Company (OR)
Pacific Power & Light Company (WA)
Pacific Power & Light Company (WY)
Pennsylvania Electric Company
Pennsylvania Power & Light Company
Pennsylvania Power Company
Philadelphia Electric Company
Portland General Electric Company
Potomac Edison Company (MD)
Potomac Edison Company (VA)
Potomac Edison Company (WV)
Potomac Electric Power Company (DC)
Potomac Electric Power Company (MD)
PSI Energy (IN)
Public Service Company of Colorado
Public Service Company of New Hampshire (NH)

Public Service Company of New Hampshire (VT)
Public Service Company of New Mexico
Public Service Company of Oklahoma
Public Service Electric and Gas Company
Puget Sound Power & Light Company
Rochester Gas & Electric Corporation
Rockland Electric Company
St. Joseph Light & Power Company
San Diego Gas & Electric Company
Savannah Electric & Power Company
Sierra Pacific Power Company (CA)
Sierra Pacific Power Company (NV)
South Carolina Electric & Gas Company
Southern California Edison Company
Southern Indiana Gas & Electric Company
Southwestern Electric Power Company (AR)
Southwestern Electric Power Company (LA)
Southwestern Electric Power Company (TX)
Southwestern Electric Service Company
Southwestern Public Service Company (KS)
Southwestern Public Service Company (NM)
Southwestern Public Service Company (OK)
Southwestern Public Service Company (TX)
Tampa Electric Company
Texas-New Mexico Power Company
Toledo Edison Company
TU Electric
Tucson Electric Power Company
UGI-Luzerne Electric Division
Union Electric Company (IL)
Union Electric Company (MO)
Union Light, Heat & Power Company
United Illuminating Company
Upper Peninsula Power Company
Utah Power & Light Company (ID)
Utah Power & Light Company (UT)
Virginia Electric & Power Company (NC)
Virginia Electric & Power Company (VA)
Washington Water Power Company (ID)
Washington Water Power Company (MT)
Washington Water Power Company (WA)
West Penn Power Company
West Plains Energy (CO)
West Texas Utilities Company
Western Massachusetts Electric Company
West Plains Energy, Division of UtiliCorp United (KS)
Wheeling Electric Company
Wisconsin Electric Power Company (MI)
Wisconsin Electric Power Company (WI)
Wisconsin Power & Light Company
Wisconsin Public Service Corporation (MI)
Wisconsin Public Service Corporation (WI)

Publicly-Owned:
Albany Water, Gas & Light Commission (GA)
Anaheim Public Utilities Department (CA)
Anchorage Municipal Light & Power Department (AK)
Athens Utilities (AL)
Austin Electric Department (TX)
Bowling Green Municipal Utilities (KY)
Bristol Tennessee Electric System (TN)
Brownsville Public Utility Board (TX)
Bryan, City of (TX)
Burbank Public Service Department (CA)
Central Lincoln People's Utility District (OR)
Chattanooga Electric Power Board (TN)
City of Kaukauna Electric and Water Department (WI)
City of Menasha Electric and Water Utilities (WI)
Clarksville Department of Electricity (TN)
Clatskanie People's Utility District (OR)
Cleveland Division of Light & Power (OH)
Cleveland Utilities (TN)
Clinton Utilities Board (TN)
Colorado Springs Department of Public Utilities (CO)
Dalton Water, Light & Sink (CA)
Danville Water, Gas & Electric (VA)
Decatur Electric Department (AL)
Dickson Electric Department (TN)
Dothan Electric Department (AL)
Dyersburg Electric System (TN)
Eugene Water & Electric Board (OR)
Fayetteville Public Works Commission (NC)
Florence Electric Department (AL)
Gainesville Regional Utilities (FL)
Garland Electric Department (TX)
Glendale Public Service Department (CA)
Greeneville Light & Power System (TN)
Greenville Utilities Commission (NC)
Groton Public Utilities (CT)
High Point Electric Utility Dept. (NC)
Huntsville Utilities (AL)
Imperial Irrigation District (CA)
Independence Power & Light Department (MO)
Jackson Utility Division-Electric Department (TN)
Jacksonville Electric Authority (FL)
Johnson City Power Board (TN)
Jonesboro Water & Light (AR)
Kansas City Board of Public Utilities (KS)
Kissimmee Utility Authority (FL)
Knoxville Utilities Board (TN)
Lafayette Utilities System (LA)
Lakeland Department of Electric and Water (FL)
Lansing Board of Water & Light (MI)
Lenoir City Utilities Board (TN)
Lincoln Electric System (NE)
Los Angeles Department of Water and Power (CA)
Lower Colorado River Authority (TX)
Lubbock Power & Light (TX)
Memphis Light, Gas & Water Division (TN)
Modesto Irrigation District (CA)
Morristown Power System (TN)
Murfreesboro Electric Dept. (TN)
Muscatine Power & Water (IA)
Nashville Electric Service (TN)
Nebraska Public Power District (NE)
Nebraska Public Power District (SD)
North Little Rock Electric Department (AR)
Ocala Electric Authority (FL)
Omaha Public Power District (IA)
Omaha Public Power District (NE)
Orlando Utilities Commission (FL)
Owensboro Municipal Utilities (KY)
Paducah Power System (KY)
Palo Alto Electric Utility (CA)
Pasadena Water & Power Department (CA)
Port Angeles Light & Water Department (WA)
Power Authority of New York (NY)
Public Utility District No. 1 of Benton County (WA)
Public Utility District No. 1 of Chelan County (WA)
Public Utility District No. 1 of Clark County (WA)
Public Utility District No. 1 of Cowlitz County (WA)
Public Utility District No. 1 of Douglas County (WA)
Public Utility District No. 1 of Franklin County (WA)
Public Utility District No. 1 of Grays Harbor County (WA)
Public Utility District No. 1 of Lewis County (WA)
Public Utility District No. 1 of Snohomish County (WA)
Public Utility District No. 2 of Grant County (WA)
Puerto Rico Electric Power Authority
Richland Energy Services Department (WA)
Richmond Power & Light (IN)
Riverside Public Utilities (CA)
Rochester Department of Public Utilities (MN)
Rocky Mount Public Utilities (NC)
Sacramento Municipal Utility District (CA)
Salt River Project Agricultural Improvement and Power District (AZ)
San Antonio City Public Service Board (TX)
Santa Clara Electric Department (CA)
Seattle City Light Department (WA)
Sevier County Electric System (TN)
South Carolina Public Service Authority
Springfield City Utilities (MO)
Springfield Utility Board (OR)
Springfield Water, Light & Power Department (IL)
Tacoma Public Utilities-Light Division (WA)
Tallahassee, City of (FL)
Tupelo Water & Light Department (MS)
Turlock Irrigation District (CA)
Vernon Municipal Light Department (CA)
Wallingford DPU—Electric Division (CT)
Wilson Utilities Department (NC)

Rural Electric Cooperatives:
Alcorn County Electric Power Association (MS)
Anoka Electric Cooperative (MN)
Appalachian Electric Cooperative (TN)
Arkansas Valley Electric Cooperative Corporation (AR)
Berkeley Electric Cooperative (SC)
Bluebonnet Electric Cooperatives, Inc., (TX)
Blue Ridge Electric Membership Corporation (NC)
Cap Rock Electric Cooperative, Inc. (TX)
Carroll Electric Cooperative Corporation (AR)
Choptank Electric Cooperative, Inc. (MD)
Chugach Electric Cooperative (AK)
Clay Electric Cooperative (FL)
Coast Electric Power Association (MS)
Cobb Electric Membership Corporation (GA)
Cotton Electric Cooperative (OK)
Cullman Electric Cooperative (AL)
Cumberland Electric Membership Corporation (TN)
Dakota Electric Association (MN)
Delaware Electric Cooperative, Inc. (DL)
Dixie Electric Membership Corporation (LA)
Duck River Electric Membership Corporation (TN)
Duncan Valley Electric Cooperative, Inc. (AZ, NM)

First Electric Cooperative Corporation (AR)
Flint Electric Membership Corporation (GA)
4–County Electric Power Association (MS)
Gibson County Electric Membership (TN)
Green River Electric Corporation (KY)
GreyStone Power Corporation (GA)
Guadalupe Valley Electric Cooperative, Inc. (TX)
Henderson-Union Rural Electric Cooperative Corporation
Holston Electric Cooperative (TN)
Holy Cross Electric Association (CO)
Intermountain Rural Electric (CO)
Jackson Electric Membership Corporation (GA)
Joe Wheeler Electric Membership Corporation (AL)
Lea County Electric Cooperative, Inc. (NM)
Lee County Electric Cooperative (FL)
Linn County Rural Electric Cooperative Association (IA)
Meriwether Lewis Electric Cooperative (TN)
Middle Tennessee Electric Membership Corporation (TN)
Midwest Energy Incorporated (KS)
Mississippi County ECC (AR)
Moon Lake Electric Association (CO)
New Hampshire Electric Cooperative, Inc. (NH)
Northern Virginia Electric Cooperative (VA)
North Georgia Electric Membership Corporation (GA)
Oklahoma Electric Cooperative
Oregon Trail Electric
Ozarks Electric Cooperative Corporation (AR)
Palmetto Electric Cooperative, Inc. (SC)
Pedernales Electric Cooperative Corporation, Inc. (TX)
Pennyrile Rural Electric Cooperative Corporation (KY)
Poudre Valley REA, Inc. (CO)
Rappahannock Electric Cooperative (VA)
Rural Electric System (AL)
Rutherford Electric Membership Corporation (NC)
Sam Houston Electric Cooperative, Inc. (TX)
Sawnee Electric Membership Corporation (GA)
Sequachee Valley Electric Cooperative (TN)
Singing River Electric Power Association (MS)
South Central Power Company (OH)
Southern Maryland Electric Cooperative, Inc. (MD)
Southern Pine Electric Power Association (MS)
South Kentucky Rural Electric Cooperative (KY)
Southwest Louisiana Electric Membership Corporation (LA)
Southwest Tennessee Electric Membership Corporation (TN)
Sumter Electric Cooperative (FL)
Talquin Electric Cooperative (FL)
Tombigbee Electric Power Association (MS)
Tri-County Electric Association, Inc. (WY)
Tri-County Electric Cooperative, Inc. (TX)
Tri-County Electric Membership Corporation (TN)
Trico Electric Cooperative, Inc. (AZ)
Umatilla Electric Cooperative Association (OR)
Upper Cumberland Electric Membership Corporation (TN)
Volunteer Electric Cooperative (TN)
Walton Electric Membership Corporation (GA)
Warren Rural Electric Cooperative Corporation (KY)
West Kentucky Rural Electric Cooperative Corporation (KY)
Withlacoochee River Electric Cooperative (FL)

Federal Agencies:
Bonneville Power Administration (OR)
Tennessee Valley Authority (TN)
Western Area Power Administration (CO)

Gas Utilities

All gas utilities listed below had natural gas sales, for purposes other than resale, in excess of 10 billion cubic feet in any year from 1976–1993. The utilities listed more than once have sales in more than one State and those States are indicated by abbreviations in parentheses.

Investor-Owned:
Alabama Gas Corporation
Anadarko Production Company
Arkansas-Louisiana Gas Company (AR)
Arkansas-Louisiana Gas Company (KS)
Arkansas-Louisiana Gas Company (LA)
Arkansas-Oklahoma Gas Corporation (OK)
Arkansas-Oklahoma Gas Corporation (AR)
Arkansas Western Gas Company
Associated Natural Gas Company (MO)
Atlanta Gas Light Company
Baltimore Gas & Electric Company
Battle Creek Gas Company
Bay State Gas Company
Boston Gas Company
Brooklyn Union Gas Company
Carnegie Natural Gas Company
Cascade Natural Gas Corporation (OR)
Cascade Natural Gas Corporation (WA)
Central Hudson Gas and Electric Corporation (NY)
Central Illincis Light Company
Central Illinois Public Service Company
Chattanooga Gas Company (TN)
Cheyenne Light, Fuel and Power Company
Cincinnati Gas and Electric Company
Citizens Utilities Company (AZ)
Citizens Utilities Company (CO)
City Gas Company of Florida
Colonial Gas Company
Columbia Gas of Kentucky, Inc.
Columbia Gas of Ohio, Inc.
Columbia Gas of Pennsylvania, Inc.
Commonwealth Gas Company
Commonwealth Gas Service Incorporated
Commonwealth Gas Services, Incorporated (VA)
Connecticut Natural Gas Corporation
Consolidated Edison Company of New York, Inc.
Consumers Power Company
Dayton Power & Light Company
Delmarva Power & Light Company (DE)
East Ohio Gas Company
Elizabethtown Gas Company
EnergyNorth Natural Gas, Inc. (NH)
Enstar Natural Gas Company
Entex Inc. (LA)
Entex Inc. (MS)
Entex Inc. (TX)
Equitable Gas Company (PA)
Equitable Gas Company (WV)
Gas Company of New Mexico
Gas Service, A Western Resources Company (MO)
Gas Service Company (NE)
Getty Gas Gathering, Inc. (KS)
Greeley Gas Company (CO)
Greeley Gas Company (KS)
Gulf States Utilities Company
Hope Gas, Incorporated
IES Utilities Inc. (IA)
Illinois Power Company
Indiana Gas Company
Intermountain Gas Company
Interstate Power Company (IA)
Interstate Power Company (MN)
Iowa-Illinois Gas & Electric Company (IA)
Iowa-Illinois Gas & Electric Company (IL)
Kansas-Nebraska Natural Gas Company (WY)
K N Energy, Inc. (CO)
K N Energy, Inc. (KS)
KPL Gas Service Company (KS)
Laclede Gas Company Consolidated
Lone Star Gas Company, a division of ENSERCH Corp. (TX)
Long Island Lighting Company
Louisiana Gas Service Company
Louisville Gas & Electric Company
Madison Gas & Electric Company
Michigan Consolidated Gas Company
Michigan Gas Company
Michigan Gas Utilities, division of UtiliCorp United, Inc.
Midwest Gas, Division of Midwest Power Systems, Inc. (IA)
Midwest Gas, Division of Midwest Power Systems, Inc. (NE)
Midwest Gas, Division of Midwest Power Systems, Inc. (SD)
Minnegasco—Division of Arkla, Inc. (MN)
Minnegasco—Division af Arkla, Inc. (NE)
Mississippi Valley Gas Company
Missouri Public Service Company
Mobile Gas Service Corporation
Montana-Dakota Utilities Company (MT)
Montana-Dakota Utilities Company (ND)
Montana-Dakota Utilities Company (SD)
Montana-Dakota Utilities Company (WY)
Montana Power Company
Mountaineer Gas Company
Mountain Fuel Supply Company (ID)
Mountain Fuel Supply Company (UT)
Mountain Fuel Supply Company (WY)
Nashville Gas Company
National Fuel Gas Distribution Corporation (NY)
National Fuel Gas Distribution Corporation (PA)
National Gas and Oil Company
New Jersey Natural Gas Company
New Orleans Public Service, Inc.
New York State Electric & Gas Corporation
Niagara Mohawk Power Company
North Carolina Natural Gas Corporation
North Shore Gas Company
Northern Illinois Gas Company
Northern Indiana Public Service Company
Northern Minnesota Utilities-Division of UtiliCorp United, Inc.
Northern Natural Gas Company (KS)
Northern Natural Gas Company (NE)
Northern States Power Company (MN)
Northern States Power Company (ND)

Northern States Power Company (WI)
North Penn Gas Company
Northwest Natural Gas Company (OR)
Northwest Natural Gas Company (WA)
Northwestern Public Service Company (NE)
Northwestern Public Service Company (SD)
Oklahoma Natural Gas Company
Orange & Rockland Utilities
Pacific Gas & Electric Company
Panhandle Eastern Pipeline Company (IL)
Panhandle Eastern Pipeline Company (KS)
Pennsylvania Gas & Water Company
Peoples Gas, Light and Coke Company
Peoples Gas System
Peoples Natural Gas Company
Peoples Natural Gas Company (CO)
Peoples Natural Gas Company, Division of UtiliCorp United, Inc. (IA)
Peoples Natural Gas Company, Division of UtiliCorp United, Inc. (KS)
Peoples Natural Gas Company, Division of UtiliCorp United, Inc. (MN)
Peoples Natural Gas Company, Division of UtiliCorp United, Inc. (NE)
Philadelphia Electric Company
Piedmont Natural Gas Company (NC)
Piedmont Natural Gas Company (SC)
Providence Gas Company
Public Service Company of Colorado
Public Service Company of North Carolina, Inc.
Public Service Electric and Gas Company
Rochester Gas & Electric Corporation
Rocky Mountain Natural Gas Division of K N Energy, Inc.
San Diego Gas & Electric Company
South Carolina Gas & Electric Company
South Carolina Pipeline Corporation
South Jersey Gas Company
Southwestern Michigan Gas Company
Southern California Gas Company
Southern Connecticut Gas Company
Southern Indiana Gas & Electric Company
Southern Union Company (TX)
Southern Union Gas Company (OK)
Southwest Gas Corporation (AZ)
Southwest Gas Corporation (CA)
Southwest Gas Corporation (NV)
Trans Louisiana Gas Company
T.W. Phillips Gas and Oil Company
UGI Corporation
Union Electric Company
Union Light, Heat & Power Company (KY)
United Cities Gas Company (KS)
United Cities Gas Company (GA)
United Cities Gas Company, Great River Division
Virginia Natural Gas
Washington Gas Light Company (DC)
Washington Gas Light Company (MD)
Washington Gas Light Company (VA)
Washington Natural Gas Company
Washington Water Power Company (ID)
Washington Water Power Company (OR)
Washington Water Power Company (WA)
West Ohio Gas Company
Western Kentucky Gas Company
Western Resources Gas Company (OK)
Westpac Utilities (NV)
Williams Natural Gas Company
Wisconsin Fuel & Light Company
Wisconsin Gas Company
Wisconsin Natural Gas Company
Wisconsin Power & Light Company
Wisconsin Public Service Corporation (MI)
Wisconsin Public Service Corporation (WI)
Yankee Gas Services Company (CT)

Publicly-Owned:
Citizens Gas & Coke Utility (IN)
City of Fort Morgan Gas Dept. (CO)
City of Richmond, Department of Public Utilities (VA)
City Public Services Board (San Antonio, TX)
Colorado Springs, Department of Public Utilities (CO)
Long Beach Gas Department (CA)
Memphis Light, Gas & Water Division (TN)
Metropolitan Utilities District of Omaha (NE)
Philadelphia Gas Works (PA)
Springfield City Utilities (MO)
Town of Ignacio Municipal Utilities (CO)
Town of Rangley Gas Department (CO)

[FR Doc. 95–558 Filed 1–9–95; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5137–1]

Agency Information Collection Activities Under OMB Review

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 the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before February 9, 1995.

FOR FURTHER INFORMATION OR A COPY OF THIS ICR CONTACT: Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Solid Waste and Emergency Response

Title: Facility Ground-Water Monitoring Requirements (EPA No. 0959.09). This ICR is a renewal of an approved collection (OMB No. 2050–0033).

Abstract: Pursuant to Subtitle C of the Resource Conservation and Recovery Act (RCRA) of 1976, 40 CFR Part 264 and 40 CFR Part 265 establish ground-water monitoring regulations for permitted and interim status facilities, respectively. These regulations establish programs for protecting ground-water from releases of hazardous wastes by land disposal facilities (LDFs). Ultimately, the EPA will use the information provided by LDFs to make decisions regarding the type and status of monitoring programs, and what corrective actions, if any, must be taken by the LDFs to protect ground-water.

Owners or operators of permitted LDFs must perform detection monitoring. In addition to monitoring, activities associated with detection monitoring include: (1) notifying EPA of statistically significant concentrations of hazardous leachate when detected; and (2) gathering and maintaining records on all data pertaining to ground-water collected during monitoring. If it has been determined by EPA that the concentrations of hazardous waste leachate pose sufficient risk to ground-water, then the LDF must conduct compliance monitoring of ground-water in addition to detection monitoring.

The information collection activities associated with compliance monitoring include: (1) Gathering and maintaining records on all ground-water data and analyses collected during monitoring; (2) notifying EPA of ground-water contamination, the presence of new constituents in the ground water, and instances where unacceptable concentrations of contaminants have been found. In the event that a leak is detected at an unacceptable concentration, the LDF must provide EPA with engineering feasibility plans and reports on corrective action, or provide EPA with all data necessary to establish an alternate concentration limit (ACL).

Owners or operators of interim status LDFs, must establish water-quality assessment programs. The information collection activities associated with the program include: (1) preparing a sampling and analysis plan for monitoring ground-water contamination; (2) notifying EPA of changes to indicator parameter concentrations; (3) submitting a ground-water quality assessment report; (4) gathering and maintaining records on analyses and evaluations conducted under the program; and (5) submitting annual quality assessment reports to the Regional Administrator.

Owners or operators of interim status LDFs seeking exemption or the use of alternative systems of ground water monitoring, must first demonstrate to EPA, in writing, that they pose little or no risk of contaminating ground-water. If low risk is demonstrated, owners or operators of these facilities must continue to: (1) Gather and maintain records of ground-water data; (2) report on the parameters of drinking water suitability during the first year; (3) report annually on parameters

indicative of water quality, sample variances from background concentrations, and ground-water surface information pertaining to groundwater analysis.

Burden Statement: Public reporting burden for this collection of information is estimated to average 302 hours per response for permitted land disposal facilities and 344 hours per response for land disposal facilities in interim status. These estimates include time for reviewing instructions, searching existing information sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The annual recordkeeping burden for this collection of information is estimated to average 4 hours for permitted land disposal facilities and 52 hours for land disposal facilities in interim status.

Respondents: Land Disposal Facilities.

Estimated Number of Respondents: 418 permitted and 1,323 interim status facilities.

Frequency of Collection: Annually, or when ground-water contamination is detected.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden: 181,179 hours.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC 20460 and

Jonathan Gledhill, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th St., NW., Washington, DC 20503.

Dated: December 29, 1994.

David Schwarz,

Acting Director, Regulatory Management Division.

[FR Doc. 95–590 Filed 1–9–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5137–3]

Clean Air Act Advisory Committee; Meetings

ACTION: Clean Air Act Advisory Committee notice of meeting.

SUMMARY: The Environmental Protection Agency (EPA) established the Clean Air Act Advisory Committee (CAAAC) on November 19, 1990 to provide independent advice and counsel to EPA on policy issues associated with the implementation of the Clean Air Act of 1990. The Advisory Committee shall be consulted on economic, environmental, technical, scientific, and enforcement policy issues.

OPEN MEETING NOTICE: Pursuant to 5 U.S.C. App. 2 10(a)(2), notice is hereby given that the Clean Air Act Advisory Committee will hold its next open meeting on Thursday, January 26, 1995 from 8:30 a.m. to 4:00 p.m., at the Dulles Hyatt, 2300 Dulles Corner Blvd. Herndon, VA. Seating will be available on a first come, first served basis. The three sub-committees of the CAAAC (Permits/NSR/Toxics Integration, Economic Incentives and Regulatory Innovation and Linking Energy, Transportation and Air Quality Concerns) will be conducting meetings at the Dulles Hyatt on Wednesday, January 25, beginning at 4:00 p.m.

The agenda will include a discussion of the progress of Clean Air Act implementation in 1995 and a follow-up on the OTC–LEV decision.

INSPECTION OF COMMITTEE DOCUMENTS: The committee agenda and any documents prepared for the meeting will be publicly available at the meeting. Thereafter, these documents, together with the CAAAC meeting minutes will be available for public inspection in EPA Air Docket Number A–94–34 in Room 1500 of EPA Headquarters 401 M street, S.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Concerning this meeting of the CAAAC please contact Karen Smith, Office of Air and Radiation, US EPA (202) 260–6379, FAX (202) 260–5155, or by mail at US EPA, Office of Air and Radiation (Mail Code 6101), Washington, D.C. 20460.

Dated: January 4, 1995.

Mary D. Nichols,

Assistant Administrator for Air and Radiation.

[FR Doc. 95–591 Filed 1–9–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5136–9]

Common Sense Initiative Auto Manufacturing Sector; Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Common Sense Initiative Auto Manufacturing Sector Subcommittee notice of meeting.

SUMMARY: The Environmental Protection Agency established the Common Sense Initiative—Auto Manufacturing Sector (CSI-AMS) Subcommittee on October 17, 1994, to provide independent advice and counsel to EPA on policy issues associated with the automotive manufacturing industry. The charter for the CSI-AMS Subcommittee was authorized through October 17, 1996, under regulations established by the Federal Advisory Committee Act (FACA).

OPEN MEETING NOTICE: Notice is hereby given that the CSI-AMS Subcommittee will hold an open meeting on Tuesday, January 31, 1995, from 8:30 a.m. to 4:30 p.m., at the Peachtree Summit Building, Room 10A, 401 West Peachtree Street, NE, Atlanta, GA 30308. Seating will be available on a first come, first served basis.

The meeting will include a description of the charge to the subcommittee, orientation to the FACA process, review and approval of operating principles, review and discussion of proposed work plan items and formation of work groups for accepted work plan items.

INSPECTION OF COMMITTEE DOCUMENTS: Documents relating to the above noted topics will be publicly available at the meeting. Thereafter, these documents, together with the CSI-AMS meeting minutes will be available for public inspection in room 2417M of EPA Headquarters, 401 M Street, SW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning this meeting of the CSI-AMS please contact Carol L. Kemker, Region 4, US EPA (404) 347–3555 extension 4222, FAX (404) 347–0283, or by mail at US EPA, Region 4, 345 Courtland Street, NE, Atlanta, GA 30365; Keith Mason, Office of Air and Radiation, US EPA (202) 260–1360, or Leila Yim Surratt, Office of Air and Radiation, US EPA (202) 260–0628. Mr. Mason and Ms. Surratt can be contacted by mail at US EPA, Office of Air and Radiation, 401 M Street, SW, Washington, DC 20460.

Dated: December 29, 1994.

Carol L. Kemker,

Designated Federal Official.

[FR Doc. 95–589 Filed 1–9–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5135–1]

Committee Meetings of the Grand Canyon Visibility Transport Commission

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: The United States Environmental Protection Agency (U.S.

EPA) is announcing a meeting of the Alternatives Assessment Committee of the Grand Canyon Visibility Transport Commission (Commission).

The Alternatives Assessment Committee will meet from 8:30 am on Tuesday, January 17, 1995 to 5:00 pm on Wednesday, January 18, 1995, at the Sheraton Mesa Hotel, 200 North Centennial Way, Mesa, Arizona. The purpose of the meeting will be to finalize emission management scenarios for detailed analysis by contractors on behalf of the Commission.

The Commission was established by U.S. EPA on November 13, 1991 (see 56 FR 57522, November 12, 1991). All meetings are open to the public. These meetings are not subject to the provisions of the Federal Advisory Committee Act, Public Law 92–463, as amended.

FOR FURTHER INFORMATION CONTACT: Mr. John Leary, Project Manager for the Grand Canyon Visibility Transport Commission, Western Governors' Association, 600 17th Street, Suite 1705, South Tower, Denver, Colorado 80202; telephone number (303) 623–9378; facsimile machine number (303) 534–7309.

Dated: December 22, 1994.

Felicia Marcus,

Regional Administrator, U.S. Environmental Protection Agency, Region 9.

[FR Doc. 95–463 Filed 1–9–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5137–3]

Invitation for Submittal to the Vendor Information System for Innovative Treatment Technologies

AGENCY: Environmental Protection Agency.

ACTION: Notice of invitation.

SUMMARY: EPA's Technology Innovation Office (TIO), of the Office of Solid Waste and Emergency Response, is announcing an invitation for submittal of new or updated information on innovative treatment technologies for participation in the VISITT database Version 4.0. This invitation is extended to technology vendors, developers, manufacturers, suppliers of innovative treatment technology equipment and services. VISITT is a database developed by EPA to disseminate information on innovative treatment technologies for remediation of soil and groundwater contaminated by hazardous wastes; it also provides a means for treatment technology vendors to make their products and capabilities known. VISITT 3.0, which was released in June, 1994, contains information on 277 technologies offered by 171 vendors and is expected to reach more than 10,000 users in over 60 countries. Vendors can be included in this database by meeting the below mentioned requirements and completing the Vendor Information Form.

DATES: Completed Vendor Information Form submitted by January 31, 1994 will be considered for inclusion in the VISITT 4.0 scheduled for release in the summer of 1995.

ADDRESSES: To obtain the VISITT 4.0 Vendor Information Form (EPA–542–R–94–004), call the EPA's National Center for Environmental Publications and Information at (513) 891–6561 or fax your request at (513) 891–6685. Submit completed forms to: VISITT System Operator, PRC Environmental Management Inc., Suite 220, 1505 PRC Drive, McLean, VA 22102.

FOR FURTHER INFORMATION CONTACT: The VISITT Hotline at 1–800–245–4505.

SUPPLEMENTARY INFORMATION: EPA anticipates that VISITT will continue to be used by professionals responsible for the cleanup of Superfund sites, RCRA corrective action sites, state-led cleanups, federal facility restoration programs, and remedial actions at leaking underground storage tank (UST) sites in the United States, as well as remediation projects abroad. The database will allow users to screen technologies for consideration in engineering feasibility studies, and to identify vendors who provide treatability studies and cleanup services.

The database will contain information on vendors of innovative technologies that treat ground water in-situ, as well as soils, sludge, and sediments. Examples of technologies included are soil washing, thermal desorption, bioremediation, solvent extraction, and in-situ vitrification. VISITT will not include more established technologies such as incineration, solidification/stabilization, and traditional pump-and-treat ground water remediation. Also not included are technologies applicable to industrial waste streams, such as waste minimizing methods. Technologies may be at bench, pilot, or full scale. VISITT will contain the following minimum vendor information, as submitted in full by vendors: company information (name, address, contacts, and phone number); technology description; technology highlights and limitations; and applicable media, wastes and contaminants.

Vendors must verify or update the information at least once a year to remain in the database. The information contained in this invitation for Submittal is approved by the Office of Management and Budget under OMB Control Number 2050–0114.

Walter W. Kovalick, Jr.,

Director, Technology Innovation Office, Office of Solid Waste and Emergency Response (5102W).

[FR Doc. 95–593 Filed 1–9–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of November 15, 1994

In accordance with § 271.5 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on November 15, 1994.[1] The directive was issued to the Federal Reserve Bank of New York as follows:

The information reviewed at this meeting suggests that the growth of the economy has remained substantial. Nonfarm payroll employment advanced appreciably further in October, and the civilian unemployment rate edged down to 5.8 percent. Industrial production registered a large increase in October after posting sizable gains on average over other recent months, and capacity utilization moved up further from already high levels. Retail sales have continued to rise rapidly. Housing starts rose appreciably in September. Orders for nondefense capital goods point to a continued strong expansion in spending on business equipment; permits for nonresidential construction have been trending higher. Inventory accumulation appears to have continued at a brisk pace in the third quarter. For July and August combined, the nominal deficit on U.S. trade in goods and services widened from its second-quarter average. Prices of many materials have continued to move up rapidly, but broad indexes of prices for consumer goods and services have increased moderately on average over recent months.

Most market interest rates have risen appreciably since the September meeting. The trade-weighted value of the dollar in terms of the other G-10

[1] Copies of the Minutes of the Federal Open Market Committee meeting of November 15, 1994, which include the domestic policy directive issued at that meeting, are available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's annual report.

currencies was essentially unchanged on balance over the intermeeting period, though it was weaker through much of the period.

M2 contracted further in October while M3 expanded at a moderate pace, buoyed by continued rapid growth in large-denomination time deposits. For the year through October, M2 grew at a rate at the bottom of the Committee's range for 1994 and M3 at a rate in the lower half of its range for the year. Total domestic nonfinancial debt has continued to expand at a moderate rate in recent months.

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. In furtherance of these objectives, the Committee at its meeting in July reaffirmed the ranges it had established in February for growth of M2 and M3 of 1 to 5 percent and 0 to 4 percent respectively, measured from the fourth quarter of 1993 to the fourth quarter of 1994. The Committee anticipated that developments contributing to unusual velocity increases could persist during the year and that money growth within these ranges would be consistent with its broad policy objectives. The monitoring range for growth of total domestic nonfinancial debt was maintained at 4 to 8 percent for the year. For 1995, the Committee agreed on tentative ranges for monetary growth, measured from the fourth quarter of 1994 to the fourth quarter of 1995, of 1 to 5 percent for M2 and 0 to 4 percent for M3. The Committee provisionally set the associated monitoring range for growth of domestic nonfinancial debt at 3 to 7 percent for 1995. The behavior of the monetary aggregates will continue to be evaluated in the light of progress toward price level stability, movements in their velocities, and developments in the economy and financial markets.

In the implementation of policy for the immediate future, the Committee seeks to increase significantly the existing degree of pressure on reserve positions, taking account of a possible increase in the discount rate. In the context of the Committee's long-run objectives for price stability and sustainable economic growth, and giving careful consideration to economic, financial, and monetary developments, somewhat greater reserve restraint or somewhat lesser reserve restraint would be acceptable in the intermeeting period. The contemplated reserve conditions are expected to be consistent with modest growth in M2 and M3 over coming months.

By order of the Federal Open Market Committee, January 4, 1995.

Donald L. Kohn,

Secretary, Federal Open Market Committee.

[FR Doc. 95–531 Filed 1–9–95; 8:45 am]

BILLING CODE 6210–01–F

Banque Nationale de Paris, Paris, France; Change In Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 95-25273) published on page 51977 of the issue for Thursday, October 13, 1994.

The entry for Banque Nationale de Paris, Paris, France (BNP), is revised to include acting, through BNP/Cooper Neff, Inc., Radnor, Pennsylvania (Company), as a specialist on the Philadelphia Stock Exchange with respect to options on the Deutsche mark. BNP maintains that the Board previously has determined by order that the proposed activity, when conducted within the limitations established by the Board in previous orders, is closely related to banking. *See Societe Generale*, 75 Federal Reserve Bulletin 580 (1989)(acting as a specialist on Deutsche mark options traded on the Philadelphia Stock Exchange). BNP states that Company would conduct this previously approved activity in conformance with the conditions and limitations previously established by the Board.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than January 26, 1995. Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of San Francisco.

Board of Governors of the Federal Reserve System, January 4, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–524 Filed 1–9–95; 8:45 am]

BILLING CODE 6210–01–F

Gillmor Financial Services, Inc.; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 24, 1995.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Gillmor Financial Services, Inc., Old Fort, Ohio; to engage *de novo* through its subsidiary The Old Fort Real Estate Company, Old Fort, Ohio, in

community development activities, pursuant to § 225.25(b)(6) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 4, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–525 Filed 1–9–95; 8:45 am]

BILLING CODE 6210–01–F

Norwest Corporation, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than January 24, 1995.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Norwest Corporation, Minneapolis, Minnesota; to acquire through its subsidiary Norwest Mortgage, Inc., Des Moines, Iowa, the mortgage servicing rights of Montana Bank, N.A, Billings, Montana, and Bank of Montana, N.A., Great Falls, Montana, and thereby engage in mortgage servicing, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

2. Otto Bremer Foundation, St. Paul, Minnesota, and Bremer Financial Corporation, St. Paul, Minnesota; to acquire Morris State Agency, Morris, Minnesota, and thereby engage through its subsidiary, First American Insurance Agencies, Inc. St. Paul, Minnesota, in insurance agency activities through the purchase of assets and the assumption of liabilites, pursuant to § 225.25(b)(8)(vii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 4, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–527 Filed 1–9–5; 8:45 am]

BILLING CODE 6210–01–F

Union Bank of Switzerland, Zurich, Switzerland; Application to engage in Investment Advisory Activities

Union Bank of Switzerland, Zurich, Switzerland ("Applicant"), has applied pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) ("BHC Act") and § 225.23(a)(3) of the Board's Regulation Y (12 C.F.R. 225.23(a)(3)), through UBS Asset Management (New York) Inc., New York, New York ("Company"), to acquire Timberland Resources, Inc., West Lebanon, New Hampshire, and to engage in providing investment advisory services with respect to timberland investments, including:

(1) Identifying and evaluating investment opportunities relating to timber, forest resources and forest products, including reviewing and evaluating economic factors affecting demand and prices for forest products, the quality of timberland and forest product companies available for investment, the inventory of trees, and prospects for productive growth;

(2) Monitoring timber markets, including economic analysis of various timber species and growing areas, analysis of pricing trends, and identification of developing markets for timber and other forestry products;

(3) Advising on the structuring of particular investment transactions and the manner in which investment vehicles should be organized and capitalized;

(4) Providing advice with respect to the acquisition and disposition of particular investment properties, the financing of such properties, and the terms of particular acquisitions, dispositions and financings;

(5) Identifying and recommending third-party providers of services, such as foresters, tract managers, consultants, appraisers and independent auditors;

(6) Evaluating strategic, capital and operating plans for particular investments, including plans for planting, growing, cultivating, cutting, insuring and harvesting of particular properties in light of relevant economic projections, and advising with respect to such matters;

(7) Monitoring the performance of individual properties, including overseeing periodic valuations and appraisals of particular properties; and

(8) Providing investment reports to investors.Company's customers would include investment partnerships that exclusively invest in timber and forest resources. The proposed services would be provided throughout the world.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity which the Board, after due notice and opportunity for hearing, has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto. This statutory test requires that two separate tests be met for an activity to be permissible for a bank holding company. First, the Board must determine that the activity is, as a general matter, closely related to banking. Second, the Board must find in a particular case that the performance of the activity by the applicant bank holding company may reasonably be expected to produce public benefits that outweigh possible adverse effects.

Applicant maintains that the Board previously has determined that the proposed investment advisory services are closely related to banking. *See* 12 CFR 225.25 (b)(4)(iii) & (iv); *Southeast Banking Corporation*, 69 Federal Reserve Bulletin 564 (1983); *Standard and Chartered Bank PLC*, 71 Federal Reserve Bulletin 470 (1985). Applicant also maintains that consummation of this proposal would provide added convenience to Applicant's customers, and would not decrease competition or result in any other possible adverse effects.

In publishing the proposal for comment, the Board does not take a

position on issues raised by the proposal. Notice of the proposal is published solely to seek the views of interested persons on the issues presented by the application and does not represent a determination by the Board that the proposal meets, or is likely to meet, the standards of the BHC Act.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than January 24, 1995. Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, January 4, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–526 Filed 1–9–95; 8:45 am]

BILLING CODE 6210–01–F

United Valley Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than February 3, 1995.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. United Valley Bancorp, Inc., Philadelphia, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of United Valley Bank, Philadelphia, Pennsylvania. UVB Interim Bank, will be formed to facilitate the transaction.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. First Mutual Bancorp, Inc., Decatur, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of First Mutual Bank, S.B., Decatur, Illinois.

C. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Elgin Bancshares, Inc., Elgin, North Dakota; to become a bank holding company by acquiring 100 percent of the voting shares of Farmers State Bank, Elgin, North Dakota.

D. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Wells Fargo & Company, San Francisco, California; to acquire 100 percent of the voting shares of Wells Fargo Bank (Arizona), National Association, Phoenix, Arizona, a *de novo* bank.

Board of Governors of the Federal Reserve System, January 4, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–528 Filed 1–9–95; 8:45 am]

BILLING CODE 6210–01–F

GENERAL SERVICES ADMINISTRATION

Public Buildings Service; Record of Decision; New United States Courthouse-Federal Building in Santa Ana, California

The United States General Services Administration (GSA) announces its decision, in accordance with the National Environmental Policy Act (NEPA) (40 CFR parts 1500–1508) and the Regulations issued by the Council on Environmental Quality, November 29, 1978, to construct a new Federal Building-United States Courthouse (FB–CT) in Santa Ana, California. The site is bordered by 5th Street to the north, 4th Street to the south, Ross Street to the west, and Broadway to the east.

The purposes for the new FB–CT are to consolidate courts and court related agencies space in one location, to relieve substandard and overcrowded conditions at the existing federal court facilities in the City of Santa Ana, and to provide space for anticipated future growth. The proposed project is anticipated to be ready for occupancy in 1997.

The existing court activities are currently dispersed between three separate buildings. The three locations are the Federal Building at 34 Civic Center Drive, leased office space at 600 West Santa Ana Boulevard, and a leased modular structure in the Civic Center Plaza. The courts and related agencies need to be consolidated in one location for the efficiency of their operations.

In use since 1987, the modular building is a prefabricated temporary structure which is approaching the end of its useful life. Its conditions are substandard for high-volume Federal Court activities. Problems associated with the leased modular facility such as inadequate parking, lack of loading dock or delivery facilities, poor building circulation, and poor acoustics currently hinder courts day to day activities. Additionally, the modular building is located on a site leased by the Government from the County of Orange. The ground lease will expire in 1997 and is nonrenewable.

The existing Federal Building, as well as the modular building, do not meet guidelines for court facilities set forth in the "U.S. Courts Design Guide" (February 1993). Structural restrictions such as obstructing columns and inadequate ceiling heights are prevalent in these facilities.

In addition to the substandard facilities, overcrowding hinders courts day to day activities. The Central District Court of California, of which Santa Ana is a division, is the largest district in the Ninth Circuit. Between 1986 and 1991, the entire Central District Court of California experienced an average increase in case load filings of approximately 9.6 percent per year. During 1991 and 1992, the Santa Ana Divisional Office experienced an approximately 24.6 percent increase in case load filings. The federal court system located in Santa Ana currently requires approximately 25,000 additional occupiable square feet for its

operations due to the existing number of appointed judges and substantial increases in caseloads.

Not only are the courts currently operating at a deficit of approximately 25,000 occupiable square feet, additional square footage will be required to satisfy the projected courts' expansion. This increased need is attributed to the appointment of additional judges and continued burgeoning case loads. The courts growth will also increase the need for administrative support spaces and space for court related agencies such as the U.S. Attorney, U.S. Trustee, and U.S. Marshal. The courts are expected to need approximately 185,000 additional occupiable square feet by 1997, and approximately 260,000 additional occupiable square feet by 2005.

I. Alternatives Considered

In accordance with the NEPA, GSA has considered a range of alternatives to the proposed action that could satisfy the basic objectives of the planned project. The three other alternatives: construction at another location, leasing, and no action have been analyzed within the EIS and are representative of a reasonable range of alternatives. Although the leasing alternative is environmentally preferable, other considerations, which will be discussed later in this document, have led to our selection of the proposed construction alternative.

A. Proposed Alternative

The proposed alternative site, which has been donated by the City of Santa Ana to the Government, encompasses approximately four acres. The site is bounded by 5th Street to the north, 4th Street to the south, Ross Street to the west and Broadway to the east, within the Central Business Area (CBA) and adjacent to the Civic Center of the city of Santa Ana. The site is large enough to provide the space required to meet both current and projected court facility needs through the year 2021.

The proposed site is also located within the boundaries of the Santa Ana's Downtown Redevelopment Area. This alternative is consistent with the City's redevelopment plans and will provide a catalyst for downtown revitalization. The site's proximity to the Orange County Transit terminal will promote use of transportation means that are environmentally superior to single occupancy vehicles. Its close proximity to the existing Federal Building and other County and City facilities in the Civic Center area accentuates the architectural expression of "civic" area as originally planned by the City and presents the potential for operational efficiencies.

Proximity of the proposed location to the Civic Center serves two functions. First, its proximity to the City Library, Law Library, the City Hall, and other "civic" and business activities offers citizens convenient access to government services. Secondly, proximity of the courthouse to the Men's and Women's jail, County Courthouse, and Police Headquarters will result in more effective and safe prisoners' transportation. The site is also located close to retail and business amenities which add to the attraction of the proposed alternative.

Additionally, the selection of the proposed location complies with Executive Order 12072 which mandates that federal facilities and federal use of space in urban areas shall encourage the development and redevelopment of cities. Procedures for meeting space needs in urban areas shall give first consideration to the central business area. Consistent with Executive Order 12072, the location of the proposed project is compatible with local development and redevelopment objectives. It will have a positive impact on economic development and employment opportunities in the City. Adequate public transportation and parking make it accessible to the public.

B. The Lease Alternative

Under this alternative, the federal government would lease, on a long-term basis, approximately 333,000 square feet of occupiable building space within the City of Santa Ana's CBA. According to real estate and property management sources in the City, the amount of space required to fulfill the project need is currently unavailable within the CBA. However, the Main Street Concourse project, located at the northeast corner of Main Street and Owens Drive, which is currently under construction was chosen for specific analysis as the lease alternative because it would be completed prior to the expiration of the court's current lease on the modular facility in 1997. Although this alternative is the environmentally preferred alternative, it was found to be practically infeasible for several reasons.

First, it does not have the capacity to accommodate long-term growth of the federal courts and related agencies beyond the projections for the year 2005. Any expansion would have to be housed in separate leased locations, which would only repeat the existing problems in the court's current locations. Second, the Main Street Concourse project includes a mix of commercial and residential land uses to be developed in two or more phases. Court use and residential use are not compatible. The security requirements for the courts are very strict and unsuited for a relaxed residential setting. Noise generated by everyday massive public use of the Federal Courthouse would be disturbing to adjacent residences. The heavy vehicular and pedestrian traffic demand of a courthouse would be annoying to the residential neighborhood. Third, although located at the fringe of the CBA, the lease alternative does not have the same convenient access to the City's Civic Center, public transportation, federal, County, and City's facilities.

Finally, Public Buildings Act of 1959, as amended (Pub. L. 100–678, 40 U.S.C. 601) discourages GSA from leasing space to accommodate permanent courtrooms, judicial chambers or administrative offices for any United States Court where the average rental cost exceeds $1,500,000. Clearly, this Act reflects strong congressional interest to house the courts in permanent, rather than leased, space. The average annual rental for the lease alternative in Santa Ana exceeds greatly the $1,500,000 threshold. Thus, GSA is prohibited from adopting this alternative.

C. The Alternative Site Location

The alternative site is currently owned by the federal government. It encompasses approximately 1.5 acres and is bound by Santa Ana Boulevard to the north, Parton Avenue to the east, 3rd Street to the south, and Flower Street to the west. Currently, this site is undeveloped and is used as a paved parking area for the Federal Building in Santa Ana. Because of the limited size of the site, the proposed structure on this site would require architecturally a single tower without adequate set backs necessary to mitigate the mass of such structure. The building of a courthouse structure would also eliminate the existing 164 at-grade parking spaces on the site necessary for the existing Federal Building.

Additional underground parking would be required to provide both for the existing Federal Building and the new courthouse. The substantial excavation necessary to accommodate the required underground parking would be quite costly. In addition the future growth of the courts would have to be accommodated at another location off-site. The project goal of consolidating the space requirements of the courts and their related agencies would not be satisfied.

D. No Action Alternative

Under the no action alternative, the title of the proposed site would return to the City of Santa Ana, and no federal courthouse building would be constructed there, or any other location. The U.S. Court for the Central District of California would either reduce its space needs in the Santa Ana area, or accommodate its future growth by some other means. The projected increase in the federal presence in Santa Ana is not contingent upon the construction of a Federal Building-Courthouse. The rate of growth in all categories of federal employees (including judicial and executive branch agencies) is projected to be the same, regardless of whether the proposed building is constructed.

II. Criteria for Evaluating EIS Alternatives

Selection of an alternative site involves the weighing and balancing of many complex, interrelated and often competing policy factors. An alternative superior to others in one environmental respect may be inferior in another. Several factors were key in evaluating each of the alternatives. These are identified below:

1. The first project criterion is to provide for the expansion of the federal courts and related agencies and consolidate their functions in one location in Santa Ana. Current facilities housed in the leased modular building and the Federal Building in Santa Ana are insufficient. Leasing additional space piecemeal to make up for the shortfall at these facilities would not be an efficient means of providing court space. Alternative project site and lease consolidation possibilities were therefore examined for their ability to meet existing court needs as well as their suitability for future expansion.

2. The second project criterion is to promote local government redevelopment goals, which can often be greatly assisted by the implementation of large projects such as the high-profile federal courthouse building.

3. The third project criterion is to minimize adverse environmental effects.

4. The fourth project criterion is to provide an appropriate location for the facilities which are readily accessible to the general public. Some sites are more suitable due to their proximity to public transportation and amenities, the City's Central Business District, retail areas, and existing Federal, State, and local facilities.

III. Environmental Impact

Implemetnation of the proposed action or alternatives would result in a variety of short-term and long-term impacts. During the construction period, surrounding land use would be temporarily impacted by dust, construction equipment emissions and noise, and adverse visual impact. Short-term erosion may occur until project landscaping is established. These impacts are considered temporary and would be mitigated to less than significant levels through measures recommended in Section 4.1 of the Final Environmental Impact Statement, dated June 1994 (FEIS). The long-term effect of the proposed action or alternatives would be the introduction of an urban structure, associated parking areas, and other amenities to a currently undeveloped sites. Construction of the project would constitute a change in land use for any of the development sites, and. in general, would serve as appropriate in fill. The characteristics of the physical, aesthetic and human environment would be impacted, as with any form of land use intensification. Consequences of this urbanization would include increased traffic volumes, incremental degradation of local and regional air quality, additional noise, alteration of the visual character of the sites, and incremental increases in demand for public services and utilities. Nonetheless, the proposed project would benefit the local community and federal government by providing much needed additional courtroom facilities. Implementation of mitigation measures, as proposed in the FEIS, would reduce impacts to the maximum extent feasible.

IV. Mitigation Measures

All practicable means to avoid or minimize impacts to the area are being considered in the development of the project. GSA received a number of comments and mitigation suggestions from concerned citizens, and interested and responsible local, State, and Federal agencies. Mitigation measures were set forth in the FEIS and those that can be implemented were adopted by GSA.

A. Geology and Landform

Due to its location within a seismically active region of Southern California, the proposed project site would be subject to potential long-term geologic hazards associated with seismic activity. Mitigation measures are adopted as specified in Section 4.1.1.2 of the FEIS to reduce those impacts to less than significant.

B. Natural Hazards

The proposed project site is not located within the 100-year or 500-year flood plain. Project implementation at the proposed site would not result in any significant impacts associated with flooding hazards.

The proposed project site does not receive drainage from the surrounding areas. Project implementation would result in changes to existing flow paths and would increase storm runoff volumes, peak flows and velocities due to placement of structures and the increase of impervious surface areas. Surface runoff would be controlled by drainage facilities incorporated into project design. Mitigation measures are adopted as specified in Section 4.1.3.2 of the FEIS to reduce the impacts to a less than significant level.

C. Air Quality

Air quality impacts would occur from site preparation and building erection activities associated with construction of the project. The emissions of construction equipment and vehicles would be short-term and consist of fugitive dust and exhaust emissions. Those impacts are mitigated to a less than significant level by GSA adopting all mitigation measures as identified in the FEIS section 4.1.4.2 except for:

- Restriction of construction activities that affect traffic flow to off-peak hours form 7 p.m. to 6 a.m. and 10 a.m. to 3 p.m. This cannot be adopted because it is not economically feasible for construction of a project this size. The hours of construction operation will be limited to 6:30 a.m. to 4 p.m. Weekend construction activities will occur only under special circumstances if required.
- Trucks shall not idle for more than 2 minutes. This measure will not be adopted in full because it is not practical to measure and oversee. However, trucks arriving at the jobsite, and not being utilized will be shut down until required. GSA's general contractor will monitor to ensure that they do idle for an excessive period of time.
- Excavation and grading shall be suspended when the wind speed (as instantaneous gusts) exceeds 25 miles per hour. This measure will not be adopted because occurrence of wind at 25 miles per hour speed is often encountered in the area. If adopted, this measure would impede severely construction activities. Instead, the excavation contractor will be responsible for determining if the wind conditions are acceptable for construction activities. If the winds create conditions which are deemed to be unsafe for the construction or adjacent buildings and neighbors, then all work will be suspended. Also, the Government representatives on site have the authority to stop construction work

if they feel that the work is preceding unsafely.

Long-term emissions from the proposed action would exceed the South coast Air Quality Management District (SCAQMD) operation thresholds for Reactive Organic Gases (ROG), Carbon Monoxide (CO), and Nitrogen Oxide (Nox). Therefore, these emissions are considered a significant impact to regional air quality.

The long-term impacts will be alleviated by mitigation measures as indicated in the FEIS section 4.1.4.2 except for:

- Providing carpool matching services and mailing mass transit information and schedules with each juror's information packet. These measures should be established by building tenants, court and related agencies, and they are not under GSA control.
- Preferential parking spaces for carpool vehicles will not be assigned because all parking spaces are being provided for official government vehicles and building tenants.
- Bus turnouts and passenger benches on or adjacent to the project site are not required because the site is located across the street from Orange County Transit Center.

In compliance with section 176 of the Clean Air Act, GSA has conducted a conformity analysis based on the Environmental Protection Agency's Final Rule entitled Determining Conformity of General Federal Actions to State or Federal Implementation Plans, 58 FR 63214 (1993) (to be codified at 40 CFR parts 6, 51 and 93). The result of the analysis indicates that total project emissions (direct and indirect) are less than the de minimis thresholds. Therefore, the proposed project is exempt from the final conformity rule, and a conformity determination need not be prepared.

D. Noise

Implementation of the proposed action would expose surrounding land uses to short-term construction noise levels in excess of City threshold levels. This impact is considered significant and unavoidable. Mitigation measures will be implemented as specified in the FEIS section 4.1.5.2 except that:

- Restriction of construction activities due to noise problems cannot be adopted because it is not economically feasible for construction of a project this size. The hours of construction operation will be limited to 6:30 a.m. to 4 p.m. Weekend construction activities will occur only under special circumstances if required.
- Construction activities will not stop during the noon-hour period because with the number of contractors working on multi-shift basis on the job site, it is not practical to stop completely construction activities every day during the noon hour.

No significant long-term noise impact have been identified with this project.

E. Archaeological and Historic Resources

The implementation of the proposed alternative will have an impact on archaeological and historic resources. The proposed alternative site is located within the Santa Ana's Downtown Historic District which is listed on the National Register of Historic Places. The scale of the proposed courthouse will not be compatible with the surrounding historically significant structures. This is considered a significant unavoidable impact. GSA has consulted with the State Historic Preservation Officer (SHPO) to seek ways to avoid or reduce the effect on historic properties. Mitigation measures were developed in consultation with the SHPO in a Memorandum of Agreement (MOA) between the GSA and the SHPO, with concurrence of the City of Santa Ana. According to the MOA, GSA shall develop and implement a Data Recovery Plan, consistent with the Secretary of Interior's Standards and Guidelines for Archaeological Documentation (48 FR 44734–37), for the recovery of data from the project site, in consultation with the SHPO.

During construction excavation, archaeological monitoring will be performed under the supervision of an Archaeologist. If, during construction excavation, a "major archaeological discovery" (as defined in the MOA) has been made, the data will be recovered immediately. All materials and records resulting from data recovery will be curated in accordance with 36 CFR part 79 at the San Bernardino County Museum.

Recognizing that the proposed project will have an adverse effect on the Downtown Santa Ana Historic District, the GSA, nevertheless, will ensure that the project design, to the extent feasible, is compatible with historic and architectural qualities of the Downtown Santa Ana Historic District in terms of scale, massing, color, and materials, and is responsive to the recommended approaches for new construction set forth in the Secretary of the Interior's Standards for Rehabilitation.

F. Transportation and parking

Development of the proposed project would significantly impact the intersection of Main Street/Civic Center Drive, Main Street/First Street, Flower Street/First Street, and Broadway/Civic Center Drive. The impact analysis assumed minimal use of public transit. Given that the site is well-situated vis a vis the Orange County Transit Center, it is likely that employees would use transit at a similar rate as the existing employees in the downtown area. However, this would not reduce intersection impacts to a less than significant level. Mitigation measures as identified in section 4.6.1 of the FEIS will not be adopted by GSA. Transit improvements, bicycle facility improvements and increased carpooling and vanpooling are not with GSA's authority and control.

The General Services Administration believes that there are no outstanding issues to be resolved with respect to the proposed project. Questions associated with the environmental impacts of the new Federal Building-U.S. Courthouse may be directed to Ms. Mitra K. Nejad, Planning Staff (9PL), U.S. General Services Administration, 525 Market Street, San Francisco, CA 94105, (415) 744–5252.

Dated: December 30, 1994.

Kenn N. Kojima,

Regional Administrator (9A).

[FR Doc. 95–480 Filed 1–9–95; 8:45 am]

BILLING CODE 6820–23–M

GOVERNMENT PRINTING OFFICE

[Public Law 103–40]

Public Meeting for Federal, State, and Local Government Agencies, and Others Interested in the Implementation of The GPO Electronic Information Enhancement Act of 1993

The Superintendent of Documents will hold a public meeting for Federal, State, and local government agencies and others interested in the implementation of the Government Printing Office (GPO) Electronic Information Access Enhancement Act of 1993 (Pub. L. 103–40). The meeting will be held on Monday, February 6, 1995, from 10 a.m. to 11:30 a.m., in the First Floor Conference Room at Van Pelt-Dietrich Library Center, 3420 Walnut Street, University of Pennsylvania, Philadelphia, Pennsylvania (Walk-in: Blanche P. Levy Park, north side).

Under Pub. L. 103–40, the Superintendent of Documents is required to provide a system of online access to the Congressional Record, the **Federal Register**, and other appropriate information. The purpose of this meeting is to demonstrate the online

services made available under the initial phase of the implementation of the Act, and to consult with Federal agencies and other potential users in order to assess the quality and value of these interim services.

The initial online services include access to a WAIS Server at GPO offering the following databases: the **Federal Register,** Volume 59 (1994); the Congressional Record, Volume 140 (1994); the Congressional Record Index, Volumes 138 to 140 (1992–1994); and Congressional Bills from the 103d Congress (1993–1994). The **Federal Register,** Congressional Record and Congressional Bills databases provide ASCII text files with all graphics included as individual files in TIFF format. Brief ASCII text summaries of each **Federal Register** entry are also available. The Congressional Record Index provides ASCII text files with all graphics included as individual files in TIFF format. The Congressional Bills are available as ASCII text files and as Adobe Acrobat Portable Document Format (PDF) files. Users with Acrobat viewers can display and print typeset page facsimiles of enrolled bills.

Seating is limited to 75 people per session. Individuals interested in attending should contact the GPO's Office of Electronic Information Dissemination Services on 202–512–1530 or (FAX) 202–512–1262. Reservations can also be made by Internet e-mail at john@eids06.eids.gpo.gov.

Michael F. DiMario,

Public Printer.

[FR Doc. 95–566 Filed 1–9–95; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Ryan White Title IV; Grants for Coordinated HIV Services and Access to Research for Children, Youth, Women, and Families

AGENCY: Health Resources and Services Administration (HRSA), PHS.

ACTION: Notice of availability of funds.

SUMMARY: The Maternal and Child Health Bureau (MCHB), HRSA, announces that fiscal year (FY) 1995 funds are available for grants for projects that develop and support the provision of coordinated comprehensive services and enhance access to clinical research trials and other research activities for children, youth, women and families infected/affected by the Human Immunodeficiency Virus (HIV). Projects will be funded to implement innovative models of family-centered, community-based coordinated care and research for children, youth, women, and families infected/affected by HIV, or those at risk for developing infection. Funds were appropriated for this purpose under Section 2671 of the Public Health Service Act [as enacted by Title IV of the Ryan White Comprehensive AIDS Resource Emergency (CARE) Act of 1990, Public Law 101–381 (42 U.S.C. 300ff–11 *et seq.*)].

The PHS is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS national activity for setting priority areas. Title IV directly addresses the Healthy People 2000 objectives related to the priority area of HIV infection. Potential applicants may obtain a copy of *Healthy People 2000* (Full Report; Stock Number 017–001–00474–0) or *Healthy People 2000* (Summary Report: Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402–9325 (telephone 202 783–3238).

The PHS strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

ADDRESSES: Grant applications for the HIV Program for Children, Youth, Women, and Families (PHS form #5161–1, approved under OMB #0937–0189) must be obtained from and submitted to: Chief, Grants Management Branch, Office of Program Support, Maternal and Child Health Bureau, Health Resources and Services Administration, Room 18–12, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–1440.

DATES: The application deadline date is April 7, 1995. Competing applications will be considered to be on time if they are:

(1) Received on or before the deadline date, or

(2) Postmarked on or before the deadline date and received in time for orderly processing.

As proof of timely mailing, applicants should obtain a legibly dated receipt from the commercial carrier or the U.S. Postal Service; private metered postmarks will not be accepted as proof of timely mailing.

Late applications not accepted for processing or those sent to an address other than specified in the **ADDRESSES** section will be returned to the applicant.

Applicants will be notified of grant awards in July 1995. The starting dates for projects will be specified in the program guidance.

FOR FURTHER INFORMATION CONTACT: Additional information regarding technical and program issues may be obtained from: Beth D. Roy, Division of Services for Children with Special Health Needs, Maternal and Child Health Bureau, Health Resources and Services Administration, Room 18A–19 Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443–9051. Requests for information concerning business management issues should be directed to: Dorothy Kelley, Acting Grants Management Officer (GMO), Maternal and Child Health Bureau, at the address specified in the **ADDRESSES** section.

SUPPLEMENTARY INFORMATION

Program Background and Objectives

The Pediatric AIDS Program was initiated in 1988. The program grew from 13 projects funded at $4.4 million to a total of 48 projects funded at $22 million in 1994. Since 1988, the program has evolved from a primary focus on the coordination of services for the management and care of infected children and their families to also address the broader prevention and care needs of youth and women infected/affected by HIV. In FY 1994, Congress funded the Pediatric AIDS Program under section 2671 of the Public Health Service Act (Title IV of the Ryan White Comprehensive AIDS Resource Emergency (CARE) Act of 1990, Public Law 101–381). As a result of authorization under Title IV, the focus of the program was expanded to include the development of innovative models linking systems of comprehensive primary/community-based medical and social services with the National Institutes of Health (NIH) and other clinical research trials. Funds authorized under Title IV may be used to develop and support the provision of coordinated comprehensive services and enhance access to clinical research trials and other research activities, for children, youth, women, and families infected/affected by HIV.

Last year, published results from a NIH clinical trial (ACTG 076) demonstrated the potential for reducing perinatal transmission by two-thirds when pregnant HIV-infected women were given AZT during pregnancy and at delivery, and the infants received AZT in the first weeks of life. In FY

1995 in response to these findings, the program will further emphasize prevention and early intervention for women and the integration of HIV prevention and treatment into broader systems of primary care, including care systems supported under the Maternal and Child Health (MCH) Services Block Grant.

Purpose

The purpose of Title IV funding is to improve and expand the coordination of a system of comprehensive care for children, youth, women, and families who are infected/affected by HIV and to link comprehensive care systems with clinical research and other research activities. Funds will be used to demonstrate potentially replicable models that: (1) cross established systems of care to coordinate service delivery, HIV prevention efforts, and clinical research and other research activities; and (2) address the barriers to comprehensive care experienced by children, youth, women, and families infected/affected by HIV.

While children, youth, and women represent the most recently impacted and rapidly growing population groups affected by HIV, they also represent the groups facing the greatest barriers in accessing care and research. These groups are disproportionately members of communities of color with limited economic resources. Given these realities, children, youth, and women affected by HIV are confronted with a complex array of economic and social issues that increase their need for comprehensive services and increase the cost and intensity of care. Existing systems of care are often not prepared to respond to these needs and require targeted resources and interventions in order to develop infrastructures and provider capacities that would allow them to provide quality care to these populations.

Given these unmet needs, activities under these grants should address the following goals:

—Foster the development and support of comprehensive care infrastructures, including primary care, that increase access to culturally competent, family-centered, community-based, coordinated care.

—Emphasize prevention within the comprehensive care system in order to reduce the spread of the HIV infection to vulnerable populations.

—Link comprehensive systems of care with HIV/AIDS clinical research trials and other research activities, resulting in increased access for children, youth, women, and their families.

Funding Category

Applications which do not fall within this category will not be considered for funding.

The HIV Program for Children, Youth, Women, and Families develops and supports innovative models that coordinate systems of comprehensive HIV care and that foster collaboration between clinical research institutions and family-centered primary/community-based medical and social service programs for children, youth, women and their families. Projects will focus on local capacity-building, making maximum use of all available public and private resources for reaching and providing health care and supportive services to the target population. Projects should strengthen existing comprehensive care infrastructures by: (1) broadening the coalition of agencies, providers, community organizations and families which participate in the identification of needs, services planning, the coordination and delivery of services, and the financing of services for HIV affected populations; and (2) identifying and addressing systemic issues that affect provider collaboration and impact the provision of coordinated high quality comprehensive care.

Preference for funding in this category will be given to projects which demonstrate an established model of a comprehensive and coordinated system of care that is culturally competent, family-centered, and community-based. This means that these projects will be funded ahead of new groups of applications in this category.

Availability of Funds

Approximately $4.8 million will be available for competitive grants. It is anticipated that a total of 13 grants will be awarded. Award amounts may range from $225,000 to $1 million, depending on need and scope of the project. Project periods for these grants will be three years.

Special Concerns

The HIV Program for Children, Youth, Women, and Families grantees supported by HRSA should coordinate their projects with other Federal, State, and local programs concerned with HIV and/or serving the target population of children, youth, women and families affected by or at risk for HIV, particularly: Title V Maternal and Child Health programs; Ryan White Titles I, II and III programs; providers funded by the Substance Abuse and Mental Health Services Administration; the Health Resources and Services Administration, the Centers for Disease Control prevention efforts; and clinical trials funded by NIH or other sources.

Recognizing the growing impact of HIV on women and communities of color, MCHB places special emphasis on improving service delivery to women, children and youth from communities with limited access to comprehensive care. Furthermore, in order to assure access and cultural competence, it is expected that projects will involve individuals from the populations to be served in the planning and implementation of the project. The Bureau's intent is to ensure that project interventions are responsive to the cultural and linguistic needs of special populations, that services are accessible to consumers, and that the broadest possible representation of culturally distinct and historically underrepresented groups is supported through programs and projects sponsored by the MCHB.

Applications will be reviewed with particular attention to inclusion of women and persons from culturally distinct populations. Funding will be provided to those which, in the Department's view, best meet the statutory purposes of the HIV Program for Children, Youth, Women, and Families and address achievement of the Healthy People 2000 objectives related to HIV infection.

Review Criteria

Applications for grants will be reviewed and rated by objective review panels according to the following criteria:

—Adequacy of needs assessment documenting:

(1) The impact of HIV on children, youth, women, and families in the service area;

(2) Key socio-demographic factors of the Title IV targeted populations;

(3) Barriers to care experienced by the targeted populations;

(4) Strengths and weaknesses of the existing care systems (MCH, primary care, and HIV care), and the impact of these weaknesses on the provision of comprehensive HIV care;

(5) The capacity of local HIV programs to provide comprehensive care to the targeted populations; and

(6) Collaboration with existing local, State, or Federal efforts to document the HIV needs of the service area.

—Adequacy of efforts to incorporate within governing bodies, policy, and program committees the substantive involvement of persons receiving services; adequacy of efforts to obtain input and involve consumers in program needs assessments, and the definition of program policy.

—Ability to demonstrate the capacity to coordinate and support a comprehensive system of family-centered, community-based, coordinated care by documenting:

(1) service linkages to agencies/organizations providing primary care, HIV care, MCH programs, and tertiary care;

(2) the ability to establish linkages with planning bodies and community coalitions involved in the provision of HIV services and women's health care services within the proposed catchment area (e.g., State Title V agencies, other Ryan White Programs, and Healthy Start agencies);

(3) expertise in providing family centered, coordinated care and the ability to support other providers in the provision of such care; and

(4) the organizational structure and staffing necessary to implement proposed goals and objectives.

—Adequacy of efforts to identify and address the needs unique to the racial/ethnic minority populations infected/affected with HIV within the proposed project area, by documenting:

(1) the social and cultural issues unique to the racial/ethnic minority populations infected/affected with HIV within the proposed project area, that impact outreach, prevention, and the receipt of care;

(2) the existing provider capacity for conducting outreach and prevention activities, and to provide services in a manner that acknowledges the social and cultural issues that impact the provision and receipt of care to these populations;

(3) a plan to conduct outreach and prevention and provide HIV services that: enhances racial/ethnic minority access to care; acknowledges the social and cultural issues that impact the provision of care; and supports the receipt of ongoing care.

—Adequacy of efforts to develop linkages which facilitate access to clinical trials and other research activities.

—Consistency of the plan with the goals of the Title IV program and the extent to which the plan addresses issues identified in the needs assessment; clearly defined, time framed goals and objectives for the grant period.

—Adequacy of the strategy and proposed steps to utilize and report data and evaluation for program planning and management, as well as for measuring the efficacy and effectiveness of the program.

—Adequacy of the proposed budget; budget justification based on project methodology and required resources.

—The extent to which the application is responsive to the special concerns and program priorities specified in this notice.

—Demonstration of an organized, comprehensive system of care, and for competing renewal applicants, progress in meeting the goals of the current project period will be assessed.

Eligible Applicants

Grants may be awarded to public or nonprofit private entities that provide or arrange for primary health care. Eligible entities may include, but are not limited to, State or local health departments, university medical centers, public or nonprofit private hospitals, community health centers (as defined in section 330(a) of the Act), hemophilia treatment centers, drug abuse treatment agencies, tribal health programs, school based clinics and institutions of higher education.

Allowable Costs

The MCHB may support reasonable and necessary costs of HIV Project grants within the scope of approved projects. Allowable costs may include salaries, equipment and supplies, travel, contractual, consultants, and others, as well as indirect costs. The MCHB adheres to administrative standards reflected in the Code of Federal Regulation 45 CFR Part 92 and 45 CFR Part 74. All other sources of funding to support this project must be accurately reflected in the applicant's budget.

Reporting Requirements

A successful applicant under this notice will submit reports in accordance with the provisions of the general regulations which apply under 45 CFR Part 74, Subpart J, Monitoring and Reporting of Program Performance, with the exception of State and local governments to which 45 CFR Part 92, Subpart C reporting requirements will apply. Financial reporting will be required in accordance with 45 CFR Part 74, Subpart H, with the exception of State and local governments, to which 45 CFR Part 92.20 will apply.

Public Health System Reporting Requirements

This program is subject to the Public Health System Reporting Requirements (approved under OMB No. 0937–0195). Under these requirements, the community-based nongovernmental applicant must prepare and submit a Public Health System Impact Statement (PHSIS). The PHSIS is intended to provide information to State and local health officials to keep them apprised of proposed health services grant applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental applicants are required to submit the following information to the head of the appropriate State and local health agencies in the area(s) to be impacted no later than the Federal application receipt due date:

(a) A copy of the face page of the application (SF 5161).

(b) A summary of the project (PHSIS), not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State and local health agencies.

Executive Order 12372

The HIV Program for Children, Youth, Women, and Families has been determined to be a program which is subject to the provisions of Executive Order 12372 concerning intergovernmental review of Federal programs by appropriate health planning agencies, as implemented by 45 CFR part 100. Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application packages to be made available under this notice (Form PHS 5161–1 with revised face sheet HHS Form 424 and with Program Narrative and Checklist approved under OMB 0937–0189) will contain a listing of States which have chosen to set up such a review system and will provide a single point of contact (SPOC) in the States for review. Applicants (other than federally-recognized Indian tribal governments) should contact their State SPOCs as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. The due date for State process recommendations is 60 days after the application deadline for new and competing awards. The granting agency does not guarantee to "accommodate or explain" State process recommendations it receives after that date. (See Part 148, Intergovernmental Review of PHS Programs under Executive Order 12372 and 45 CFR Part

100 for a description of the review process and requirements.)

(The OMB Catalog of Federal Domestic Assistance number for the HIV Program for Children, Youth, Women, and Families is 93.153.)

Dated: January 5, 1995.

Ciro V. Sumaya,

Administrator.

[FR Doc. 95–570 Filed 1–9–95; 8:45 am]

BILLING CODE 4160–15–P

National Institutes of Health

National Center for Human Genome Research; Amended Notice of Meeting

Notice is hereby given of a change in the time of open portion of the meeting January 30 and 31, 1995, of the National Advisory Council for Human Genome Research, National Center for Human Genome Research, which was published in the Federal Register on December 22, 1994, 59 FR 66034.

The open portion of the meeting was to have been from 8:30 to 11:30 a.m. on Monday, January 30, 1995. The open portion will now be held at 1:00 to 5:00 p.m.

(Catalog of Federal Domestic Assistance Program No. 93.172, Human Genome Research.)

Dated: January 4, 1995.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 95–537 Filed 1–9–95; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Community Planning and Development

[Docket No. N–95–3759; FR–3662–N–02]

Announcement of Funding Awards for the John Heinz Neighborhood Development Program FY 1994

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the NOFA for the John Heinz Neighborhood Development Program (NDP). The announcement contains the names and addresses of the competition winners and the amount of the awards.

FOR FURTHER INFORMATION CONTACT: Gene Hix, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7218, Washington, DC 20410. Telephone Number (202) 708–2186; TDD Number: (202) 708–2565. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The John Heinz Neighborhood Development Program is authorized by section 123 of the Housing and Urban-Rural Recovery Act of 1983 (42 U.S.C. 5318 note). For Fiscal Year 1994, a total of $5 million was appropriated for this program under the Department of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act of 1994 (Pub. L. 103–124, approved October 18, 1993).

On May 13, 1994 (59 FR 25274), HUD published a NOFA for the John Heinz Neighborhood Development Program. The May 13, 1994 NOFA announced the availability of $4.75 million in funding for eligible neighborhood development organizations. The NOFA stated that the purpose of the program is to support eligible neighborhood development activities using cooperative efforts and monetary contributions from local sources. The Federal funds are incentive funds to promote the development of this concept and encourage neighborhood organizations to become more self-sufficient in their development activities. Funds would be used to plan and carry out specific projects which create permanent jobs in the neighborhood; establish or expand businesses; develop new housing, rehabilitate existing housing or manage housing stock; develop essential services; or provide neighborhood improvement efforts.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, the Department is publishing the names and addresses of the nonprofit organizations which received funding under this NOFA, and the amount of funds awarded to each. This information is provided in Appendix A to this document.

Dated: December 12, 1994.

Andrew Cuomo,

Assistant Secretary for Community Planning and Development.

Appendix A

The following community-based organizations were awarded NDP grants:

JOHN HEINZ NEIGHBORHOOD DEVELOPMENT PROGRAM (NDP), NOVEMBER 22, 1994

Organization	Amount
Center City Coalition Inc., Hartford, CT	$75,000
Washington Park Assn., Bridgeport, CT	75,000
Neighborhood Development Corp. Of Jam, Jamaica Plain, MA	75,000
Urban Edge Housing Corp., Jamaica Plain, MA	75,000
B.C.H. of Trenton, Inc., Trenton, NJ	75,000
Mt. Holly 2000, Inc., Mount Holly, NJ	75,000
Asian Americans For Equality, New York, NY	75,000
Carroll Gardens Assn. Inc., Brooklyn, NY	75,000
Community Assn. Progressive Dominican, New York, NY	75,000
Cypress Hill Local Development Corp., Brooklyn, NY	37,400
Good Old Lower East Side Inc., New York, NY	56,667
Harlem Restoration Project, New York, NY	75,000
Manhattan Neighborhood Renaissance Ld, New York, NY	75,000
Mount Hope Housing Co., Bronx, NY	50,000
Parkside Community Assn., Buffalo, NY	38,930
Marble Hill Community Development Cor, Baltimore, MD	75,000
Frankford Group Ministries CDC, Philadelphia, PA	75,000
Garfield Jubilee Assn., Pittsburgh, PA	75,000
Ludlow Community Association, Philadelphia, PA	75,000
Monessen Community Development Corp., Monessen, PA	75,000
Peoples Emergency Center CDC, Philadelphia, PA	75,000
All Citizens Taking Initiatives On Need, Suffolk, VA	75,000
Highland Park Restoration & Preservat, Richmond, VA	75,000
Inner City Community Task Force, Lynchburg, VA	75,000
Northwest Neighborhood Enviro, Roanoke, VA	75,000
Your Neighbors, Richmond, VA	60,000
Vine City Housing Ministry, Inc., Atlanta, GA	50,000
Belmont Community Development Corp., Charlotte, NC	75,000
Grier Heights Economics Foundation, Charlotte, NC	75,000
Gower Neighborhood Assn. Inc., Greenville, SC	75,000
Greenville Urban League Community Dev, Greenville, SC	75,000
Memphis Area Neighborhood Development, Memphis, TN	75,000
Bethel New Life Inc., Chicago, IL	70,000
Bickerdike Redevelopment Corp., Chicago, IL	74,967

JOHN HEINZ NEIGHBORHOOD DEVELOPMENT PROGRAM (NDP), NOVEMBER 22, 1994—Continued

Organization	Amount
Covenant Development Corp., Chicago, IL	75,000
Forum, Chicago, IL	66,000
New Cities Community Development Corp, Harvey, IL	75,000
Rockford Neighborhood Redeve't, Rockford, IL	75,000
The Neighborhood Institute, Chicago, IL	75,000
Voice of The People of Uptown, Chicago, IL	20,000
Winstanley/Industry Park Neighborhood, E. Saint Louis, IL	67,320
Eastside Community Investment Corp., Indianapolis, IN	75,000
Creston Neighborhood Assn., Grand Rapids, MI	50,000
Phillips CDC, Minneapolis, MN	60,000
Spirit Valley Citizens Neighborhood, Duluth, MN	75,000
West 7th/Fort Rd Federation, Saint Paul, MN	75,000
West Bank CDC Inc., Minneapolis, MN	75,000
Hough Area Partners In Progress, Cleveland, OH	75,000
Lagrange Development Corp., Toledo, OH	75,000
Near West Housing Corp., Cleveland, OH	75,000
Near West Side Multi-Service/ May Duga, Cleveland, OH	64,000
Common Wealth Development Inc., Madison, WI	12,000
College Station CDC, College Station, AR	60,000
Ozan Inghram Iron Mountain CDC, Texarkana, AR	75,000
Twin Groves Economic Development Corp, Damascus, AR	75,000
Highland Area Partnership Inc., Shreveport, LA	75,000
Avenidas Guadalupe Assn. CDC, San Antonio, TX	60,000
Azteca Economic Development, Laredo, TX	75,000
Centro Del Obrero Fronterizo, El Paso, TX	75,000
Our Casas Resident Council Inc., San Antonio, TX	75,000
Central West End Assn., Saint Louis, MO	50,000
Cooperative Workshops Inc., Sedalia, MO	75,000
Newsed Community Development, Denver, CO	75,000
Northeast Denver Housing Ctr., Denver, CO	41,460
Phoenix Revitalization Corp., Phoenix, AZ	75,000
Charity Cultural Services Ctr., San Francisco, CA	75,000
Citizens Committee For Homeless Jobs, Santa Cruz, CA	75,000
East Palo Alto Community, Palo Alto, CA	75,000
Esperanza Youth And Family Center Inc, Coachella, CA	75,000
Total	4,738,744

[FR Doc. 95–554 Filed 1–9–95; 8:45 am]

BILLING CODE 4210–29–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–068–05–1430–00]

Grand Resource Area, Utah; Resource Management Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: The Bureau of Land Management (BLM) proposes to amend the Grand Resource Management Plan (RMP). Six parcels of public land would be managed for disposal by sale under FLPMA Section 203, exchange under FLPMA Section 206, or R&PP patent under the 1988 Recreation and Public Purposes Amendment Act. The lands described below have been identified for community expansion, sanitary landfill or tailings disposal, for disposal of lands under short-term authorizations, and to resolve long-standing trespass:

Salt Lake Meridian, Utah

Parcel 1. Fish Ford

T. 21 S., R. 24 E., (30 acres)
Sec. 27, E½W½SE¼; Sec. 34, NE¼NE¼NE¼;
Sec. 35, NW¼NW¼.

Parcel 2. Klondike Area

T. 23 S., R. 19 E., (2560 acres)
Sections 14, 15, 22, 23.

Parcel 3. Dewey

T. 23 S., R. 24 E., (29 acres)
Sec. 8, lands south of State Route 128 in the N½SW¼.

Parcel 4. Stateline (Dolores River)

T. 23 S., R. 26 E., (5 acres)
Sec. 32, N½NE¼SW¼SE¼.

Parcel 5. Professor Valley Ranch

T. 24 S., R. 23 E., (13.07 acres)
Sec. 21, within SE¼SE¼ (3.25 acres);
Sec. 27, within NE¼NW¼NW¼ (2.39 acres),
NE¼NW¼SW¼NE¼,
N½NE¼SW¼NE¼ (7.43 acres).

Parcel 6. North Moab

T. 25 S., R. 21 E., (5.625 acres)
Sec. 26, SW¼SE¼SW¼NW¼SE¼ (0.625 acres),
NW¼SW¼SE¼SE¼ (2.5 acres),
SE¼SW¼SE¼SE¼ (2.5 acres).

DATES: The protest period for this proposed plan amendment will commence with publication of this notice. Comments must be submitted on or before February 9, 1995.

FOR FURTHER INFORMATION CONTACT: Brad D. Palmer, Grand Resource Area Manager, Bureau of Land Management, 82 East Dogwood Drive, Suite G, Moab, Utah 84532, telephone (801) 259–8193. Copies of the Environmental Assessment and Proposed Amendment are available for review at the Grand Resource Area Office.

SUPPLEMENTARY INFORMATION: This action is announced pursuant to section 202(a) and 202(e) of the Federal Land Policy and Management Act of 1976 and 43 CFR part 1610. The proposed plan amendment is subject to protest from any adversely affected party who participated in the planning process. Protests must be made in accordance with the provisions of 43 CFR 1610.5–2. Protests *MUST BE SPECIFIC TO PARGEL NUMBER* and must contain at a minimum the following information:

- The name, mailing address, telephone number, and interest of the person filing the protest.
- A statement of the issue or issues being protested.
- A statement of the part or parts being protested and a citing of pages, paragraphs, maps, etc., of the proposed plan amendment, where practical.
- A copy of all documents addressing the issue(s) submitted by the protester during the planning process or a reference to the date when the protester discussed the issue(s) for the record.
- A concise statement as to why the protester believes the BLM State Director's decision is incorrect.

Protests must be received by the Director of the Bureau of Land Management (WO–760), MS 406 L St., 1849 C Street NW, Washington, DC 20240, within 30 days after the date of publication of this Notice of Availability for the proposed plan amendment.

Douglas M. Koza,

Acting State Director.

[FR Doc. 95–481 Filed 1–9–95; 8:45 am]

BILLING CODE 4310–DQ–P

National Park Service

Subsistence Resource Commission Meeting

SUMMARY: The Superintendent of Gates of the Arctic National Park and the

Chairperson of the Subsistence Resource Commission for Gates of the Arctic National Park announce a forthcoming meeting of the Gates of the Arctic National Park Subsistence Resource Commission.

The following agenda items will be discussed:

(1) Call to order.

(2) Roll call.

(3) Approval of summary of minutes.

(4) Review agenda.

(5) Superintendent's introductions and review of SRC function and purpose.

(6) Superintendent's management/research reports.

(7) Public and other agency comments.

(8) Old business:

a. Secretarial response on Recommendations 9 & 10.

b. Federal Subsistence Program update.

c. C&T determinations process for Upper Tanana.

d. Dalton Highway issues.

e. Federal Subsistence Regions 6 and 10 boundary adjustment.

(9) New business:

—Election of officers.

(10) Set time and place of next SRC meeting.

(11) Adjournment.

DATES: The meeting will be held Wednesday through Friday morning, January 18–20, 1995. The meeting will begin at 9:00 a.m. and conclude around 5 p.m. on the first two days and end at noon on Friday.

LOCATION: The meeting will be held at the Sophie Station Hotel in Fairbanks, Alaska.

FOR FURTHER INFORMATION CONTACT: David Mills, Acting Superintendent, PO Box 74680, Fairbanks, Alaska 99707. Phone (907) 456–0281.

SUPPLEMENTARY INFORMATION: The Subsistence Resource Commissions are authorized under Title VIII, Section 808, of the Alaska National Interest Lands Conservation Act, Pub. L. 96–487, and operate in accordance with the provisions of the Federal Advisory Committees Act.

Paul R. Anderson,

Acting Regional Director.

[FR Doc. 95–534 Filed 1–9–95; 8:45 am]

BILLING CODE 4310–70–M

Agenda for the January 19, 1995 Meeting of the Advisory Commission for the San Francisco Maritime National Historical Park; Public Meeting

Fort Mason, Building F (Firehouse)

9:00 AM–12:30 PM

9:00 am
Welcome—William G. Thomas, Superintendent
Opening Remarks—Neil Chaitin, Chairman
Old Business
Approval of Minutes
9:15 am
Orientation to Park Departments
Library, David Hull, Principal Librarian
Historic Documents, Mary Jo Pugh, Supervisory Archivist
9:35 am
Update—Museum Accreditation, San Francisco Maritime National Historical Park, Marc Hayman—Chief, Interpretation and Resource Management
9:50 am
Update—General Management Plan, William G. Thomas, Superintendent
10:10 am
Discussion—Organization Chart, San Francisco Maritime National Historical Park, William G. Thomas, Superintendent
10:25 am
Report—JEREMIAH O'BRIEN Normandy trip and plans for the future
10:45 am
BREAK
11:00 am
Update—National Maritime Museum Association—Strategic Plan, Kathy Lohan, Executive Director, NMMA
11:15 am
Discussion—Establish Advisory Commission Committees, Neil Chaitin, Chairman
11:35 pm
Public Questions and Comments
11:50 pm
Agenda Items/Date for next meeting
Noon Adjournment

Dated: December 29, 1994.

Phil H. Ward,

Acting Regional Director, Western Region.

[FR Doc. 95–533 Filed 1–9–95; 8:45 am]

BILLING CODE 4310–70–P

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects from the State of Maine in the Possession of the Robert S. Peabody Museum of Archaeology, Andover, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003(d), of completion of the inventory of human remains and associated funerary objects, presently in the possession of the Robert S. Peabody Museum of Archaeology, Phillips Academy, Andover, MA, from eleven sites in the state of Maine.

A detailed inventory and assessment of these human remains has been made by the Robert S. Peabody Museum of Archaeology and representatives of the Penobscot Indian Nation, the Passamaquoddy Tribe, the Houlton Band of Maliseet Indians, and the Aroostook Band of Micmac Indians, known collectively as the Wabanaki Confederacy.

The human remains of two individuals—a seven to eight year old male and the partial human remains of an infant whose sex could not be determined—were recovered in 1912 from the Grindel Site in Brooksville, ME. The human remains were recovered with copper and shell beads, animal skins, and other organic materials. The Grindel Site is believed to have been occupied between 1580 and 1620. The human remains of twelve individuals—a two to three year old child whose sex could not be determined, fragmentary human remains of a three to five year old child whose sex could not be determined, the partial human remains of one adult male and the fragmentary human remains of another adult male, the fragmentary human remains of two juvenile females, the fragmentary human remains of an adult female, the partial human remains of an infant whose sex could not be determined, the fragmentary human remains of a juvenile whose sex could not be determined, the partial human remains of a five to six year old child who was probably female, the partial human remains of a four to five year old child who was probably male, and the isolated human remains of an individual whose age and sex could not be determined—were recovered in 1914 from the Sandy Point Site in Stockton Springs, ME. The human remains were recovered with copper and shell beads, animal skins, lithic tools, an iron ax, a copper headband, birch bark, an iron kettle bail and lugs, fragments of a brass kettle, a large fragment of brass, and organic materials. The Sandy Point Site is believed to have been occupied between 1580 and 1620. Inventory of the human remains and associated funerary objects from the Grindel and Sandy Point Sites, and review of the

accompanying documentation indicates that no known individuals were identifiable. Both the Grindel and Sandy Point Sites are located within the aboriginal territory of the Penobscot Indian Nation.

Based on the available archaeological and ethnohistorical evidence, as well as the geographical and oral tradition evidence provided by the Tribes of the Wabanaki Confederacy during consultation, officials of the Robert S. Peabody Museum of Archaeology have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these human remains and associated funerary objects from the Grindel and Sandy Point Sites and the Penobscot Indian Nation.

The fragmentary human remains of two individuals—a ten to twelve year old female and a sub-adult to adult male—were recovered in 1914 from a site opposite the village at the Head of the Grand Lake Stream. The human remains were recovered with some wood fragments that are believed to have been remnants of a decayed coffin, a seal top spoon, a moose tooth, charcoal, pebbles and organic materials. This site is believed to have been occupied between 1600 and 1650. Inventory of the human remains and associated funerary objects from this site and review of the accompanying documentation indicates that no known individuals were identifiable. This site is located within the aboriginal territory of the Passamaquoddy Tribe.

Based on the available archaeological and ethnohistorical evidence, as well as the geographical and oral tradition evidence provided by the Tribes of the Wabanaki Confederacy during consultation, officials of the Robert S. Peabody Museum of Archaeology have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these human remains and associated funerary objects from the site opposite the village at the Head of the Grand Lake Stream in Grand Lake, ME, and the Passamaquoddy Tribe.

The fragmentary human remains of two individuals—a twenty five year old male and a fifty-five to sixty year old male—were recovered in 1933 from the Harbor Island Shellheap in Brooklin, ME. The Harbor Island Shellheap is believed to have been occupied between 900 and 1500. The human remains of two individuals—the fragmentary human remains of a two to three year old child whose sex could not be determined and the partial human remains of a thirty-five to forty year old female—were recovered in 1935 from the High Point Site in Brooklin, ME. The High Point Site is believed to have been occupied between 900 and 1500. The fragmentary human remains of a sixteen to seventeen year old male, were recovered in 1913 from the Hodgkins' Point Shellheap in Lamoine, ME. Hodgkins' Point Shellheap is believed to have been occupied between 900 and 1500. The partial human remains of a thirty-five to forty year old male were recovered in 1915 from the Holbrook Island site in Castine, ME. The Holbrook Island Site is believed to have been occupied between 900 and 1500. The fragmentary human remains of a fifty to sixty year old male were recovered in 1915 from Hooper's Shellheap in Penobscot, ME. A moose incisor and several lithic flakes may have been associated funerary objects. Hooper's Shellheap is believed to have been occupied between 900 and 1500. The human remains of two individuals—a twenty-five to thirty year old adult male and the fragmentary human remains of an adult who was probably female—were recovered in 1915 from Richard's Shellheap. A bone tool, a potsherd, a beaver tooth, and a lithic projectile point fragment may have been associated funerary objects. Richard's Shellheap is believed to have been occupied between 900 and 1500. The human remains of a forty-five to fifty-five year old male were recovered in 1915 from Wheeler's Shellheap in Blue Hill, ME. Wheeler's Shellheap is believed to have been occupied between 900 and 1500. The fragmentary human remains of a fourteen to fifteen year old female, were recovered in 1912 from an unidentified site in Passadumkeag, ME. A lithic flake, two pebbles, and a lithic projectile point may have been associated funerary objects. The individual from this site is believed to have been interred between 900 and 1500. The Harbor Island Shellheap, High Point Site, Hodgkins' Point Shellheap, Holbrook Island site, Hooper's Shellheap, Richard's Shellheap, Wheeler's Shellheap, and the unidentified site in Passadumkeag, ME, are located within the aboriginal territory of the people known historically as the Etchemin. Inventory of the human remains and associated funerary objects from sites occupied between 900 and 1500 that are located within the aboriginal territory of the people known historically as the Etchemin and review of the accompanying documentation indicates that no known individuals were identifiable. The Etchemin are considered ancestral to the Penobscot Indian Nation and the Passamaquoddy Tribe.

Based on the available archaeological and ethnohistorical evidence, as well as the geographical and oral tradition evidence provided by the Tribes of the Wabanaki Confederacy during consultation, officials of the Robert S. Peabody Museum of Archaeology have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these human remains and possibly associated funerary objects from Harbor Island Shellheap, High Point Site, Hodgkins' Point Shellheap, Holbrook Island site, Hooper's Shellheap, Richard's Shellheap, Wheeler's Shellheap, and the unidentified site in Passadumkeag, ME, and the Penobscot Indian Nation and the Passamaquoddy Tribe.

This notice has been sent to officials of the Penobscot Indian Nation, the Passamaquoddy Tribe, the Aroostook Band of Micmac Indians, and the Houlton Band of Maliseet Indians. Representatives of any other Indian tribe which believes itself to be culturally affiliated with these human remains and associated funerary objects should contact James W. Bradley, Director of the Robert S. Peabody Museum of Archaeology, Phillips Academy, Andover, MA 01810; telephone: (508) 749–4490, before February 9, 1995. Repatriation of these human remains and associated funerary objects to the Tribes of the Wabanaki Confederacy may begin after that date if no additional claimants come forward.

Dated: January 5, 1995.

Francis P. McManamon,

Departmental Consulting Archeologist, Chief, Archeological Assistance Division.

[FR Doc. 95–561 Filed 1–9–95; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 USC Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) How often the form must be filled out or the information is collected;

(4) Who will be asked or required to respond, as well as a brief abstract;

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) An estimate of the total public burden (in hours) associated with the collection; and,

(7) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/ Information Resources Management/ Justice Management Division Suite 850, WCTR, Washington, DC 20530.

Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

(1) Annual Survey of Jails.

(2) CJ–5. Bureau of Justice Statistics.

(3) Annually.

(4) State and local governments. This is an annual sample survey that provides national estimates on inmates in local adult correctional facilities, which is used by Federal, State, and local correctional administrators, legislators, researchers, and planners.

(5) 825 annual respondents at .75 hours per response.

(6) 619 annual burden hours.

(7) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: January 4, 1995.

Kathy Albert,

Acting Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–529 Filed 1–9–95; 8:45 am]

BILLING CODE 4410–18–M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 USC Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) How often the form must be filled out or the information is collected;

(4) Who will be asked or required to respond, as well as a brief abstract;

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) An estimate of the total public burden (in hours) associated with the collection; and,

(7) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 *AND* to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/ Information Resources Management/ Justice Management Division Suite 850, WCTR, Washington, DC 20530.

Reinstatement of a previously approved collection for which approval has expired.

(1) Survey of Inmates of Local Jails Pretest.

(2) a. CAPI Instrument, Form SIJ–43 (X).

b. Sampling Questionnaire, Form SIJ–50 (X). Bureau of Justice Statistics.

(3) Approximately every 5 years.

(4) Individuals or households and State and local governments. This is a pretest for a survey that will profile jail inmates nationwide to determine trends in inmate composition, criminal histories and drug abuse, gun use and crime, and to report on victims of crime. The data will be used by BJS, Congress, researchers, practitioners and others in the criminal justice community. No other collection series provides this data.

(5) 153 annual respondents at 1 hour per response.

(6) 153 annual burden hours.

(7) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: January 4, 1995.

Kathy Albert,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 95–530 Filed 1–9–95; 8:45 am]

BILLING CODE 4410–18–M

Notice of Lodging of Consent Decrees In United States v. Nalco Chemical Company, et al., Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that two proposed Consent Decrees in *United States* v. *Nalco Chemical Company, et al.*, Case No. 91–C–4482 (N.D. Ill.), entered into by the United States on behalf of U.S. EPA and fifteen settling parties were lodged on December 22, 1994 with the United States District Court for the Northern District of Illinois. The proposed Consent Decrees resolve certain claims of the United States against the settling parties under the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. §§ 9601 *et seq.* relating to the Byron Superfund Site in Ogle County, Illinois, Under the First *de minimis* Consent Decree, nine settling parties among the "drum" parties in the case will pay the United States $94,405.86. Under the second *de minimis* Consent Decree, six settling parties among the "IPC customer" parties in the case will pay the United States $429,045.17.

The Department of Justice will receive comments relating to the proposed Consent Decrees for 30 days following the publication of this Notice. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Nalco Chemical Company, et al.*, D.J. Ref. No. 90–11–3–687. The proposed Consent Decrees may

be examined at the Office of the United States Attorney for the Northern District of Illinois, 219 S. Dearborn St., Chicago, Illinois 60604; the Region v Office of the United States Environmental Protection Agency, 77 West Jackson Street, Chicago, Illinois 60604; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005 (202–624–0892). A copy of the proposed Consent Decrees may be obtained in person or by mail from the consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy of the first Consent Decree (the "Drum" Decree), please enclose a check in the amount of $7.00 (25 cents per page for reproduction costs), payable to the Consent Decree Library. In requesting a copy of the second Consent Decree (the "IPC Customer" Decree), please enclose a check in the amount of $6.25 (25 cents per page for reproduction costs), payable to the Consent Decree Library. In requesting a copy of both Consent Decrees, please enclose a check in the amount of $13.25 (25 cents per page for reproduction costs), payable to the Consent Decree Library.

Bruce S. Gelber,

Acting Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–479 Filed 1–9–95; 8:45 am]

BILLING CODE 4410–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8968]

Hydro Resources, Inc.

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of extension of public comment period.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC), in cooperation with the U.S. Bureau of Land Management (BLM) and U.S. Bureau of Indian Affairs (BIA), has published a Draft Environmental Impact Statement (DEIS) regarding the proposed construction and operation of an in-situ leach (ISL) project in McKinley County, New Mexico. The DEIS describes and evaluates the potential environmental impacts of granting Hydro Resources, Inc. combined source and byproduct material license and minerals operating leases for Federal and Indian lands for the ISL project. The public comment period for this DEIS is being extended from January 7, 1995 to February 28, 1995.

DATES: Written comments should be received on or before February 28, 1995, at the address listed below. Public meetings on this DEIS will be held at times and locations to be announced in a future notice.

ADDRESSES: A free single copy of this DEIS (NUREG–1508) may be requested by those considering public comment by writing to the NRC Publications Section, ATTN: Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082. A copy is also available for inspection and/or copying in the NRC Public Document Room, 2120 L St. NW., Washington, DC.

Any interested party may submit comments on this document for consideration by the staff. To be certain of consideration, comments on this report must be received by February 28, 1995. Comments received after the due date will be considered to the extent practical. Comments on the DEIS should be sent to Chief, High-Level Waste and Uranium Recovery Projects Branch, Mail Stop TWFN 7–J9, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Mr. Michael C. Layton, High-Level Waste and Uranium Recovery Projects Branch, Mail Stop TWFN 7–J9, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone 301/415–6676.

SUPPLEMENTARY INFORMATION: The NRC, in cooperation with the BLM and the BIA, has prepared a DEIS regarding the administrative action of authorizing Hydro Resources, Inc. (HRI), to conduct in-situ leach (ISL) uranium mining, also known as solution mining, in compliance with a combined source and byproduct material license issued by the NRC, and minerals operating leases issued for Federal and Indian lands by the BLM and BIA. The license and leases would provide programmatic and regulatory oversight in administrative matters; impose operating restrictions; and specify monitoring, recordkeeping, and reporting requirements. The DEIS describes the evaluation conducted by the interagency review group concerning (1) the purpose of and need for the proposed action, evaluated under NEPA and the agencies' implementing regulations, (2) alternatives considered, (3) existing environmental conditions, and (4) environmental consequences of the proposed action and proposed mitigating measures. This DEIS concludes, after weighing the environmental, technical, and other benefits of the proposed project against the environmental and other costs, that the appropriate action is to issue the requested license and leases authorizing the applicant to proceed with the project as discussed in this DEIS.

A Notice of Availability and Notice of Opportunity for Hearing were published previously (59 FR 56557, November 14, 1994). Public comment on the DEIS was solicited at that time. Several requests have been received by the NRC to extend the 60-day public comment period. The NRC accedes to these requests. This notice is to inform the public that comments on this report must be received by February 28, 1995. Comments received after this date will be considered to the extent practical. Any interested party may submit comments on this document for consideration by the staff.

Dated at Rockville, Maryland, this 3rd day of January 1995.

For the Nuclear Regulatory Commission.

Joseph J. Holonich,

Chief, High-Level Waste and Uranium Recovery Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 95–541 Filed 1–9–95; 8:45 am]

BILLING CODE 7590–01–M

Nuclear Safety Research Review Committee; Meeting

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

The Nuclear Safety Research Review Committee (NSRRC) will hold its next meeting on February 6–7, 1995. The location of the meeting will be Room T–2B3. Two White Flint North (TWFN) Building. 11545 Rockville Pike, Rockville, MD.

The meeting will be held in accordance with the requirements of the Federal Advisory Committee Act (FACA) and will be open to public attendance. The NSRRC provides advice to the Director of the Office of Nuclear Regulatory Research (RES) on matters of overall management importance in the direction of the NRC's program of nuclear safety research. The main purpose of this meeting is to deliberate on the reports of the Accident Analysis Subcommittee, Instrumentation and Control and Human Factors Subcommittee, Subcommittee on Research Supporting Risk-Based Regulation ("PRA" Subcommittee), and Materials and Engineering Subcommittee; to be briefed on recent

site visits by the Waste Subcommittee; and to receive an NRC staff status update briefing on plans for confirmatory research in support of certification review of the CANDU–3 nuclear power plant design. NRC staff representatives will participate as required.

The planned schedule is as follows:

Monday, February 6

8:30–8:45 Opening remarks by the NSRRC Chairman and the Director of RES.

8:45–11:45 Report of the Accident Analysis Subcommittee on its meeting of November 9–10, 1994.

1:00–3:00 Report of the Instrumentation and Control and Human Factors Subcommittee on its meeting of January 12, 1995.

3:15–5:15 Report of the PRA Subcommittee on its meeting of January 13, 1995.

Tuesday, February 7

8:00–10:00 Report of the Materials and Engineering Subcommittee on its meeting of January 24, 1995.

10:15–11:00 CANDU–3 confirmatory research plans update (NFC staff.)

11:00–11:45 Report of the Waste Subcommittee on its Yucca Mountain and Apache Leap site visits.

1:00–2:00 RES Director's review.

2:00–4:00 Committee discussion.

Members of the public may file written statements regarding any matter to be discussed at the meeting. Members of the public may also make requests to speak at the meeting, but permission to speak will be determined by the Committee chairperson in accordance with procedures established by the Committee. A verbatim transcription will be made of the NSRRC meeting and a copy of the transcript will be placed in the NRC's Public Document Room in Washington, DC.

Any inquiries regarding this notice, any subsequent changes in the status and schedule of the meeting, the filing of written statements, requests to speak at the meeting, or for the transcript, may be made to the Designated Federal Officer, Mr. George Sege (telephone: 301/415–6593), between 8:15 a.m. and 5:00 p.m.

Dated at Rockville, Maryland, this 4th day of January 1995.

For the Nuclear Regulatory Commission.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 95–538 Filed 1–9–95; 8:45 am]

BILLING CODE 7590–01–M

Meeting on the Standard Technical Specifications, Revision 1 with Technical Specifications Branch Management and Staff, Representatives of the Nuclear Energy Institute and the Nuclear Steam Supply System Owners Groups

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

Management and Staff from the Technical Specifications Branch (OTSB) and representatives from the Nuclear Energy Institute (NEI) and Nuclear Steam Supply System (NSSS) Owners Groups (OG) will hold a meeting January 30 and possibly January 31, 1995, at the Nuclear Regulatory Commission, On White Flint North (OWFN), Room 4B–11, 11555 Rockville Pike, Rockville MD.

The entire meeting will be open to public attendance.

The review, to be conducted by the Chief, OTSB, will be a review of NEI and OG comments and issues on the draft Standard Technical Specifications (STS), Revision (Rev.) 1, prior to publication of the STS, Rev. 1 scheduled for February 1995. The agenda will be as follows:

January 30, 1995

9:00–9:30 Introductory remarks and overview of the draft STS, Rev. 1 (Christopher I. Grimes, Chief, OTSB).

9:30–10:30 Presentation of NEI and OG comments and issues.

10:30–12:00 Discussion.

1:00–5:00 Discussion (if needed).

January 31, 1995

9:00–5:00 Discussion (if needed).

Oral statements may be presented by members of the public with the concurrence of the Chief, OTSB; written statements will be accepted and made available at the meeting to attendees. Questions may be asked only by members of NRC, NEI, and the OG. Persons desiring to make oral statements should notify the Nuclear Regulatory Commission staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, OTSB management and representatives from NEI and the OG may exchange preliminary views regarding matters to be considered during the balance of the meeting. The Chief, OTSB will then hear presentations by and hold discussions with representatives of the NEI, and the OG, and the NRC staff regarding this review.

Further information regarding topics to be discussed, scheduling, whether the meeting has been canceled or rescheduled, and the Chief of OTSB's ruling on requests for the opportunity to present oral statements and the time allotted; can be obtained by a prepaid telephone call to Ms. Nanette V. Gilles (telephone 301/504–1180) between 8:30 a.m. and 5:00 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual, one or two days before the scheduled meeting, to be advised of any changes in schedule, etc., that may have occurred.

Dated: December 29, 1994.

Christopher I. Grimes,

Technical Specifications Branch, Division of Project Support, Office of Nuclear Reactor Regulation.

[FR Doc. 95–539 Filed 1–9–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–254 and 50–265]

Iowa-Illinois Gas and Electric Company; Notice of Transfer of Control of License

Notice is hereby given that the United States Nuclear Regulatory Commission (Commission) is considering approval under 10 CFR 50.80 of the transfer of control of 25 percent of Quad Cities Nuclear Power Station, Units 1 and 2, facility operating licenses from Iowa-Illinois Gas and Electric Company (Iowa-Illinois) to MidAmerican Energy Company (MidAmerican). Iowa-Illinois will transfer all of its interest in the licenses to MidAmerican which will become the surviving corporation and public utility upon consummation of the merger of Iowa-Illinois, Midwest Resources Inc. (Midwest Resources), Midwest Power Systems Inc. (Midwest Power), and MidAmerican. Midwest Resources, and Iowa corporation and an exempt holding company owns all outstanding common stock of Midwest Power. Midwest Power, an Iowa corporation, principally generates, transmits and distributes electric energy in Iowa and South Dakota. MidAmerican, an Iowa corporation which would be the surviving holder of 25 percent of Facility Operating Licenses DPR–29 and DPR–30, was formed by Iowa-Illinois and Midwest Resources to effectuate this merger and it presently owns no assets and is not engaged in any business. By letter dated November 21, 1994, Iowa-Illinois informed the Commission that the current holders of shares of Iowa-Illinois common stock and holders of shares of Midwest Resources common stock will

exchange their shares for shares of MidAmerican.

Pursuant to 10 CFR 50.80 the Commission may approve the transfer of control of a license, after notice to interested persons, upon the Commission's determination that the holder of the license following the transfer of control is qualified to have the control of the license and the transfer of the control is otherwise consistent with applicable provisions of law, regulations and orders of the Commission. Iowa-Illinois has requested consent under 10 CFR 50.80 for transfer of the licenses to reflect the effective change in control of such ownership interest in the Quad Cities Nuclear Power Station, Units 1 and 2.

For further details with respect to this action, see the November 21, 1994, letter, 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 Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Dated at Rockville, Maryland this 4th day of January 1995.

For the Nuclear Regulatory Commission.

Robert A. Capra,

Director, Project Directorate III–2, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–540 Filed 1–9–95; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–35184; International Series Release No. 766; File No. SR–CBOE–94–32]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Listing and Trading of Warrants on the Nikkei Stock Index 300

December 30, 1994.

I. Introduction

On September 2, 1994, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade warrants on the Nikkei Stock Index 300 ("Nikkei 300 Index" or "Index"). On December 12, 1994, the Exchange Filed Amendment No. 1 to the proposed rule change.[3]

Notice of the proposed rule change appeared in the **Federal Register** on October 25, 1994.[4] No comments were received on the proposed rule change. This order approves the proposed rule change, including Amendment No. 1 on an accelerated basis.

II. Description of the Proposal

The CBOE proposes to list index warrants based on the Nikkei 300 Index, an index comprised of 300 representative stocks of the first section[5] of the Tokyo Stock Exchange ("TSE"). On July 15, 1994, the Commission approved a proposal by the Exchange to list and trade options and full-value and reduced-value long-term options on the Index.[6]

A. Composition and Maintenance of the Index

The Nikkei 300 Index was designed by Nihon Keizai Shimbun, Inc. ("NKS"). The CBOE represents that Index component stocks were selected by NKS for their high market capitalizations, and their high degree of liquidity, and are representative of the relative distribution of industries within the broader Japanese equity market.

As of December 8, 1994, the total capitalization of the Index was approximately US$2.24 trillion.[7] Market capitalizations of the individual stocks in the Index ranged from a high of US$76.99 billion to a low of US$0.69 billion, with a median of US$3.36 billion and a mean of US$7.46 billion. In addition, the average daily trading volume of the stocks in the Index, for the six-month period ending June 30, 1994, ranged from a high of 4,740,000 shares to a low of 6,000 shares, with a mean and median of approximately 676,000 and 417,000 shares, respectively. As of December 8, 1994, the highest weighted component stock in the Index accounted for 3.438 percent of the Index. The five largest Index components accounted for approximately 14.495 percent of the Index's value. The lowest weighted component stock comprised 0.013 percent of the Index, and the five smallest Index components accounted for approximately 0.203 percent of the Index's value.

The Index is maintained by NKS. To maintain the continuity of the Index, NKS will adjust the Index divisor to reflect certain events relating to the component stocks. These events include, but are not limited to, changes in the number of shares outstanding, spin-offs, certain rights issuances, and mergers and acquisitions. The CBOE represents that NKS reviews the composition of the Index periodically

B. Calculation of the Index

The Nikkei 300 Index is capitalization-weighted and reflects changes in the prices of the Index component securities relative to the base date of the Index (October 1, 1982). The value of the Index is calculated by multiplying the price of each component security by the number of shares outstanding of each such security, adding the products, and dividing by the current Index divisor. The Index divisor is adjusted to reflect certain events relating to the component stocks.[8] The Index had a closing value of 280.5 on December 8, 1994.

Because trading does not occur on the TSE during the CBOE's trading hours, the daily dissemination of the Index value is calculated by the CBOE once each day based on the most recent official closing price of each Index component security as reported by the TSE. This closing value is disseminated throughout the trading day on the CBOE.

C. Warrant Listing Standards and Customer Safeguards

The Exchange proposes to trade Nikkei 300 Index warrants pursuant to CBOE Rule 31.5(E).[9] Under that rule, the

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1993).

[3] See letter from James R. McDaniel, Schiff, Hardin & Waite, to Michael Walinskas, Branch Chief, Division of Market Regulation, SEC, dated December 8, 1994 ("Amendment No. 1"). In amendment No. 1, the CBOE represents that (1) it will require that Nikkei 300 Index warrants be sold only to customers whose accounts have been approved for options trading pursuant to Exchange Rule 9.7; (2) customers with positions in Index warrants will be subject to the margin requirements applicable to options; (3) the CBOE will employ the same surveillance procedures that it currently has in place for index warrants listed and traded on the Exchange to surveil trading in warrants on the Index; (4) the Exchange will continue its efforts to enter into a comprehensive surveillance sharing agreement with the Tokyo Stock Exchange covering Nikkei 300 Index warrants; and (5) the CBOE, prior to the commencement of trading, will distribute to its membership a circular calling attention to certain compliance responsibilities when handling orders in Index warrants.

[4] See Securities Exchange Act Release No. 34854 (October 18, 1994), 59 FR 53691 (October 25, 1994).

[5] First section stocks are distinguished from second section stocks by more stringent listing standards.

[6] See Securities Exchange Act Release No. 34388 (July 15, 1994), 59 FR 37789 (July 25, 1994) (File No. SR–CBOE–94–14).

[7] Based on the December 8, 1994 exchange rate of ¥100.46 per US$1.00.

[8] See *supra* Section II.A The Index divisor was set to give the Index a value of 100 on its base date.

[9] In File No. SR–CBOE–94–34, the CBOE has proposed to adopt new listing criteria and customer

CBOE may approve for listing warrants on established foreign and domestic market indexes. The Commission previously has approved the listing and trading on the CBOE of certain foreign index warrants based on the FT–SE 100 Index,[10] the FT–SE Eurotrack 200 Index,[11] and the CAC–40 Index,[12] all listed in accordance with Rule 31.5(E).

The CBOE represents that the Index warrant issues will conform to the index warrant listing guidelines contained in Rule 31.5(E). Specifically, the listing guidelines of the CBOE will require that (1) the issuer thereof shall have assets in excess of $100,000,000 and otherwise substantially exceed the size and earnings requirements of CBOE Rule 31.5(A); [13] (2) the term of warrants shall be for a period ranging from one to five years from the date of issuance; and (3) the minimum public distribution of such issues shall be 1,000,000 warrants, together with a minimum of 400 public holders, and a minimum aggregate market value of $4,000,000. The CBOE has proposed applying the same margin treatment as it requires for CBOE-listed options to the purchase of Index warrants.[14]

The CBOE also proposes that Nikkei 300 Index warrants will be direct obligations of their issuer, subject to cash settlement in U.S. dollars, and either exercisable throughout their life (*i.e.*, American style) or exercisable only on their expiration date (*i.e.*, European style). Upon exercise, or at the warrant expiration date (if not exercisable prior to such date), the holder of a warrant structured as a "put" would receive payment in U.S. dollars to the extent that the Index has declined below a pre-stated cash settlement value. Conversely, holders of a warrant structured as a "call" would, upon exercise or at expiration, receive payment in U.S. dollars to the extent that the Index has increased above the pre-stated cash settlement value. If "out-of-the-money" at the time of expiration, the warrants would expire worthless.

Because warrants are derivative in nature and closely resemble index options, the CBOE has proposed safeguards that are designed to meet the investor protection concerns raised by the trading of index options. First, the Exchange represents that it will require that Index warrants only be sold to investors whose accounts have been approved for options trading pursuant to CBOE Rule 9.7.[15] Second, pursuant to CBOE Rule 30.50, Interpretation .02, the Exchange's options suitability standards contained in Rule 9.9 shall apply to recommendations in Index warrants. Third, pursuant to Rule 30.50, Interpretation .04 and Rule 9.10(a), discretionary orders in Index warrants must be approved and initialled on the day entered by a Senior Registered Options Principal or a Registered Options Principal. Finally, the CBOE, prior to commencement of trading in Index warrants, will distribute a circular to its membership to call attention to certain compliance responsibilities when handling transactions in Index warrants.[16]

D. Surveillance

The Exchange will use the same surveillance procedures currently utilized for each of the Exchange's other index warrants to monitor trading in Index warrants.

III. Commission Findings and Conclusions

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5) of the Act.[17] Specifically, the Commission finds that the trading of warrants based on the Nikkei 300 Index will serve to protect investors, promote the public interest, and help to remove impediments to a free and open securities market by providing investors with a means to hedge exposure to market risk associated with the Japanese equity market and provide a surrogate instrument for trading in the Japanese securities market.[18] The trading of warrants based on the Nikkei 300 Index should provide investors with a valuable hedging vehicle that should reflect accurately the overall movement of the Japanese equity market.

In addition, the Commission believes, for the reasons discussed below, that the CBOE has adequately addressed issues related to customer protection, index design, surveillance, and market impact of Nikkei 300 Index warrants.

A. Customer Protection

Due to the derivative nature of index warrants, the Commission believes that Nikkei 300 Index warrants should only be sold to investors capable of evaluating and bearing the risks associated with trading in such instruments and that adequate risk disclosure be made to investors. In this regard, the Commission notes that the rules and procedures of the Exchange that address the special concerns attendant to the secondary market trading of index warrants will be applicable to the Nikkei 300 Index warrants. In particular, by imposing the special suitability, account approval, disclosure, and compliance requirements noted above, the CBOE has adequately addressed potential public customer problems that could arise from the derivative nature of Nikkei 300 Index warrants. Moreover the CBOE will distribute a circular to its members identifying the specific risks associated with warrants on the Nikkei 300 Index.[19] Pursuant to the CBOE's listing guidelines, only substantial companies capable of meeting their warrant obligations will be eligible to issue Nikkei 300 Index warrants.

B. Index Design and Structure

The Commission finds, as it did in approving Nikkei 300 Index options, that it is appropriate and consistent with the Act to classify the Index as a broad-based index. Specifically, the Commission believes the Index is broad-based because it reflects a substantial segment of the Japanese equity market, and, among other things, contains a large number of stocks that trade in that market. First, the Index consists of 300 actively-traded stocks traded on the first section of the TSE, representing 36 different industry groups in Japan. Second, the market capitalizations of the stocks comprising the Index are very

protection and margin requirements for stock index warrants, currency index warrants and currency warrants. As proposed, these standards will apply only to warrants issued after the new framework goes into effect.

[10] See Securities Exchange Act Release No. 28627 (November 19, 1990), 55 FR 49357 (November 27 1990) (File No. SR–CBOE–90–17).

[11] See Securities Exchange Act Release No. 30462 (March 11, 1992), 57 FR 9290 (March 17 1992) (File No. SR–CBOE–91–13).

[12] See Securities Exchange Act Release No. 28587 (October 30, 1990), 55 FR 46595 (November 5, 1990) (File No. SR–CBOE–90–16).

[13] Rule 31.5(A) requires the issuer to have net worth of at least $4,000,000 and pre-tax income of at least $750,000 in its last fiscal year, or in two of its last three fiscal years and net income of $400,000.

[14] See Amendment No. 1, *supra*, note 3.

[15] See Amendment No. 1 *supra*, note 3.

[16] See Amendment No. 1 *supra*, note 3.

[17] 15 U.S.C. 78f(b)(5) (1988).

[18] Pursuant to Section 6(b)(5) of the Act, the Commission must predicate approval of any new securities product upon a finding that the introduction of such product is in the public interest. Such a finding would be difficult with respect to a warrant that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

[19] The CBOE has agreed to submit a draft of the circular to the Commission staff for approval prior to distribution. See Amendment No. 1 *supra*, note 3.

large. Specifically, the total capitalization of the Index, as of December 8, 1994, was US$2.24 trillion, with the market capitalizations of the individual stocks in the Index ranging from a high of US$76.99 billion to a low of US$0.69 billion, with a median value of US$3.36 billion and a mean of US$7.46 billion. Third, no one particular stock or group of stocks dominates the Index. Specifically, no single stock comprises more than 3.438 percent of the Index's total value, and the percentage weighting of the five largest issues in the Index accounts for 14.495 percent of the Index's value. Accordingly, the Commission believes it is appropriate to classify the Index as broad-based.

C. Surveillance

As a general matter, the Commission believes that comprehensive surveillance sharing agreements between the relevant foreign and domestic exchanges are important where an index product comprised of foreign securities is to be traded in the United States. In most cases, in the absence of such a comprehensive surveillance sharing agreement, the Commission believes that it would not be possible to conclude that a derivative product, such as a Nikkei 300 Index warrant, was not readily susceptible to manipulation.

Although the CBOE and the TSE do not yet have a written comprehensive surveillance sharing agreement that covers the trading of Nikkei 300 Index warrants, a number of factors support approval of the proposal at this time. First, while the size of an underlying market is not determinative of whether a particular derivative product based on that market is readily susceptible to manipulation, the size of the market for the securities underlying the Nikkei 300 Index makes it less likely that the proposed Index warrants are readily susceptible to manipulation.[20] In addition, the Commission notes that the TSE is under the regulatory oversight of the Japanese Ministry of Finance ("MOF"). The MOF has responsibility for both the Japanese securities and derivatives markets. Accordingly, the Commission believes that the ongoing oversight of the trading activities on the TSE by the MOF will help to ensure that the trading of Nikkei 300 Index warrants will be carefully monitored with a view toward preventing unnecessary market disruptions.

Finally, the Commission and the MOF have concluded a Memorandum of Understanding ("MOU") that provides a framework for mutual assistance in investigatory and regulatory matters.[21] Moreover, the Commission also has a longstanding working relationship with the MOF on these matters. Based on the longstanding relationship between the Commission and the MOF and the existence of the MOU, the Commission is confident that it and the MOF could acquire information from one another similar to that which would be available in the event that a comprehensive surveillance sharing agreement were executed between the CBOE and the TSE with respect to transactions in TSE-traded stocks related to Nikkei 300 Index warrant transactions on the CBOE.[22]

Nevertheless, the Commission continues to believe strongly that a comprehensive surveillance sharing agreement between the TSE and the CBOE covering Nikkei 300 Index warrants would be an important measure to deter and detect potential manipulations or other improper or illegal trading involving Nikkei 300 Index warrants. Accordingly, the Commission believes it is critical that the TSE and the CBOE continue to work together to consummate a formal comprehensive surveillance sharing agreement to cover Nikkei 300 Index warrants and the component securities as soon as practicable.

D. Market Impact

The Commission believes that the listing and trading of Nikkei 300 Index warrants on the CBOE will not adversely impact the securities markets in the United States or in Japan. First, the existing index warrant surveillance procedures of the CBOE will apply to warrants on the Index. In addition, the Commission notes that the Index is broad-based and diversified and includes highly capitalized securities that are actively traded on the TSE.

IV. Accelerated Approval of Amendments No. 1

The Commission finds good cause for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication on notice of filing thereof in the **Federal Register**. Amendment No. 1 is consistent with Section 6(b)(5), in that it contains representations by the Exchange, concerning margin, options approved accounts, and surveillance, which serve to protect investors and the public interest, promote just and equitable principles of trade, and prevent fraudulent and manipulative acts and practices. Therefore, the Commission finds that no new regulatory issues are raised by Amendment No. 1. Accordingly, the Commission believes it is consistent with Sections 19(b(2) and 6(b)(5) of the Act to approve Amendment No. 1 on an accelerated basis.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1 to the proposed rule change. 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 foregoing that are filed with Commission, and all written communications relating to the foregoing between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W. Washington, D.C. Copies of such filings also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR–CBOE–94–32, and should be submitted by January 31, 1995.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[23] that the proposed rule change (SR–CBOE–94–32), as amended, is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[24]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–484 Filed 1–9–95; 8:45 am]

BILLING CODE 8010–01–M

[20] In evaluating the manipulative potential of a proposed index derivative product, as it relates to the securities that comprise the index and the index product itself, the Commission has considered several factors, including (1) the number of securities comprising the index or group; (2) the capitalizations of those securities; (3) the depth and liquidity of the group or index; (4) the diversification of the group or index; (5) the manner in which the index or group is weighted; and (6) the ability to conduct surveillance on the product. See Securities Exchange Act Release No. 31016 (August 11, 1992), 57 FR 37012 (August 17, 1992).

[21] See Memorandum of United States Securities and Exchange Commission and the Securities Bureau of the Japanese Ministry of Finance on the Sharing of Information, dated May 23, 1986.

[22] It is the Commission's expectation that this information would include transaction, clearing, and customer information necessary to conduct an investigation.

[23] 15 U.S.C. 78s(b)(2) (1988).

[24] 17 CFR 200.30–3(a)(12) (1993).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2756; amendment #2]

Florida; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended, effective December 28, 1994, to include Brevard County in the State of Florida as a primary disaster area as a result of damages caused by Tropical Storm Gordon beginning on November 14, 1994 and continuing through November 28, 1994.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Indian River, Orange, and Osceola in the State of Florida may be filed until the specified date at the previously designated location.

All other information remains the same, i.e., the termination date for filing applications for physical damage is January 26, 1995 and for economic injury the deadline is August 28, 1995.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: December 29, 1994.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 95–470 Filed 1–9–95; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2758]

South Carolina; Declaration of Disaster Loan Area

Florence County and the contiguous counties of Clarendon, Darlington, Dillon, Lee, Marion, Marlboro, Sumter, and Williamsburg in the State of South Carolina constitute a disaster area as a result of damages caused by heavy rains and flooding which occurred on December 21–23, 1994. Applications for loans for physical damage may be filed until the close of business on March 3, 1995 and for economic injury until the close of business on October 2, 1995 at the address listed below:

U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308 or other locally announced locations.

The interest rates are:

For Physical Damage

Homeowners with credit available elsewhere—8.000%.

Homeowners without credit available elsewhere—4.000%.

Businesses with credit available elsewhere—8.000%.

Businesses and non-profit organizations without credit available elsewhere—4.000%.

Others (including non-profit organizations) with credit available elsewhere—7.125%.

For Economic Injury

Businesses and small agricultural cooperatives without credit available elsewhere—4.000%.

The number assigned to this disaster for physical damage is 275806 and for economic injury the number is 84220000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: December 30, 1994.

Philip Lader,

Administrator

[FR Doc. 95–490 Filed 1–9–95; 8:45 am]

BILLING CODE 8025–01–M

Interest Rates

The interest rate on Section 7(a) Small Business Administration direct loans (as amended by PL 97–35) and the SBA share of immediate participation loans is 9 percent for the fiscal quarter beginning January 1, 1995.

On a quarterly basis, the Small Business Administration also publishes an interest rate called the optional "peg" rate (13 CFR 122.8–4(d)). This rate is a weighted average cost of money to the government for maturities similar to the average SBA loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. For the January–March quarter of FY95, this rate will be 7⅞ percent.

Jane Palsgrove Butler,

Deputy Associate Administrator for Financial Assistance.

[FR Doc. 95–471 Filed 1–9–95; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

[Public Notice 2146]

United States International Telecommunications Advisory Committee Radiocommunication Sector Study Group 9; Meeting

The Department of State announces that the United States International Telecommunications Advisory Committee (ITAC), Radiocommunication Sector Study Group 9, will meet on January 26, 1995 at 9:30 a.m. in Room 535 at the Federal Communication Commission, 1919 M Street, N.W., Washington, D.C. 20554.

This meeting is being convened for the purpose of updating the members on the status of the current activities of other groups (i.e., TG 2/2, TG4/5, CPM and WRC–95) that may affect the interests of the Fixed Service; and, to start preparations for the upcoming International meeting of Study Group 9 in May 1995.

Members of the General Public may attend the meetings and join in the discussions, subject to the instructions of the Chairman. Those planning to attend the meeting should contact Mr. Alex Latker by phone at (202) 418–1488 or by fax at (202) 418–2824.

Dated: December 28, 1994.

Warren G. Richards,

Chairman, U.S. ITAC for ITU—Radiocommunication Sector

[FR Doc. 95–475 Filed 1–9–95; 8:45 am]

BILLING CODE 4710–45–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 95–001]

Chemical Transportation Advisory Committee (CTAC) Subcommittee on Marine Occupational Safety and Health (MOSH) Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The MOSH Subcommittee will meet to determine how to protect the marine worker from exposure to hazardous cargo vapors. This may include the development of additional comprehensive exposure standards for marine workers. The meeting will be open to the public.

DATES: The meeting will be held February 2–3, 1995, from 9 am to 4 pm daily. Written material should be submitted no later than January 25, 1995.

ADDRESSES: The meeting will be held at the offices of Chevron Shipping, 555 Market Street, San Francisco, CA 94105, telephone (415) 894–2489. Written material should be submitted to Mr. Guy R. Colonna, National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269.

FOR FURTHER INFORMATION CONTACT: Mr. Guy R. Colonna, National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269, telephone (617) 984–7435, or Dr. Alan L. Schneider, Commandant (G–MTH–1), U.S. Coast Guard, 2100 Second Street, SW, Washington, DC 20593–0001, telephone (202) 267–1217

SUPPLEMENTARY INFORMATION: Notice of this meeting is given pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2 section 1 et seq. The agenda will include the discussion of the following topics:

(1) Methods that would protect the marine worker from exposure to hazardous cargo vapors; and

(2) The need for additional comprehensive exposure standards for marine workers.

This meeting will continue the Subcommittee's work in this area. Attendance is open to the public. With advance notice, and at the Chairman's discretion, members of the public may make oral presentations during the meeting. Persons wishing to make oral presentations should notify Mr. Colonna, listed above under **ADDRESSES**, no later than the day before the meeting. Written material may be submitted at any time for presentation to the Subcommittee. However, to ensure advance distribution to each Subcommittee member, persons submitting written material are asked to provide 30 copies to Mr. Colonna no later than January 25, 1995.

Dated: January 4, 1995.

J.C. Card,

Rear Admiral, Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 95–544 Filed 1–9–95; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

[Summary Notice No. PE–95–1]

Petition for Waiver; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for waiver received.

SUMMARY: This notice contains summaries of certain petitions requesting a waiver from the interim compliance date requirement in 14 CFR part 91, § 91.865. Requesting a waiver is allowed through § 91.871. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received January 24, 1995.

Petitions for Waiver

Docket No. 28012
Petitioner: Aviateca S.A.
Regulations Affected: 14 CFR 91.865
Description of Waiver Sought: To allow Aviateca S.A. to operate its aircraft after December 31, 1994, without meeting the interim compliance date for fleet transition to Stage 3 aircraft.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Ave., SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Ms. Jeanne Trapani, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7624.

Issued in Washington, DC on January 4, 1995.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

[FR Doc. 95–572 Filed 1–9–95; 8:45 am]

BILLING CODE 4910–13–M

Research, Engineering and Development Advisory Committee; Human Factors Subcommittee

Pursuant to section 10(A) (2) of the Federal Advisory Committee Act (Public Law 92–362; 5 U.S.C. App. I), notice is hereby given of a meeting of the Human Factors Subcommittee of the Federal Aviation Administration (FAA) Research, Engineering and Development (R, E&D) Advisory Committee to be held Friday, January 27, 9 a.m. to 3:30 p.m. The meeting will take place at the Federal Aviation Administration, 800 Independence Avenue, S.W., Washington, D.C., in Conference Rooms 9ABC.

The agenda for this meeting will include: a review of preliminary subcommittee organizational issues; discussion between the subcommittee members and the manager of the FAA Human Factors program; work on recommendations; and plan for future activities and preparation of final report.

Attendance is open to the interested public, but limited to space available. With the approval of the subcommittee chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements, obtain information, or access the building to attend the meeting should contact Dr. Mark Hofmann, AXD–4, at (202) 267–7125, who will serve as the FAA Designated Federal Official to the Subcommittee.

Members of the public may present a written statement to the subcommittee at any time.

Issued in Washington, D.C., on January 4, 1995

Ronald E. Morgan,

Acting Associate Administrator for System Engineering and Development.

[FR Doc. 95–575 Filed 1–9–95; 8:45 am]

BILLING CODE 4910–13–M

Research, Engineering and Development Advisory Committee

Pursuant to Section 10(A)(2) of the Federal Advisory Committee Act (Public Law 92–362; 5 U.S.C. App. I), notice is hereby given of a meeting of the Research, Engineering and Development Advisory Committee. The meeting will take place on January 25 and 26, 1995. The meeting will take place at the Radisson Plaza Hotel, 5000 Seminary Road, Alexandria, VA 22311.

On Wednesday, January 25, the meeting will begin at 1 p.m. and end at 5 p.m. The agenda will include: a brief overview of the FAA Research and Acquisitions organizational structure; a review of innovative R&D collaborative activities under the Federal procurement system; a review of the FAA Airport Surface Program, including the Mode S Squitter activity at Boston Logan Airport; and a discussion of system capacity issues.

On Thursday, January 26, the meeting will begin at 8:30 a.m. and end at 5 p.m. The agenda will include: an update on the FAA reorganization; brief updates on subcommittee activities in the areas of security R&D and weather; a briefing of the FAA Human Factors Program with input from DoD and NASA on their activities, as well as an update of other human factors efforts.

Attendance is open to the interested public, but limited to space available. With the approval of the committee chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements, obtain information, or access the building to attend the meeting should contact Ms. Jan Peters, ASD–3, 800 Independence Avenue, S.W., Washington, D.C. 20591, at 202–287–8543.

Members of the public may present a written statement to the committee at any time.

Issued in Washington, D C. on January 4, 1995.

Ronald E. Morgan,

Acting Associate Administrator for System Engineering and Development.

[FR Doc. 95–574 Filed 1–9–95; 8:45 am]

BILLING CODE 4910–13–M

Research, Engineering and Development Advisory Committee; Aviation Weather Subcommittee

Pursuant to section 10(A)(2) of the Federal Advisory Committee Act (Public Law 92–362; 5 U.S.C. App. I), notice is hereby given of a meeting of the Aviation Weather Subcommittee of the Federal Aviation Administration (FAA) Research, Engineering and Development (R, E&D) Advisory Committee to be held Wednesday, January 25, 1995, 10 a.m. to 12 noon. The meeting will take place at the Radisson Plaza Hotel, 5000 Seminary Road, Alexandria, VA 22311.

The agenda for this meeting will include: a review and discussion of the proposed task statement; organization of the effort and schedule to develop a report and recommendations; and a discussion of possible activities and support required for this effort.

Attendance is open to the interested public, but limited to space available. With the approval of the subcommittee chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements, obtain information, or access the building to attend the meeting should contact Mr. Carl McCullough, ASE–10, 800 Independence Avenue, Washington, D.C. at (202) 267–8595, who will serve as the FAA Designated Federal Official to the Subcommittee.

Members of the public may present a written statement to the subcommittee at any time.

Issued in Washington, DC, on January 4, 1995.

Ronald E. Morgan,

Acting Associate Administrator for System Engineering and Development.

[FR Doc. 95–576 Filed 1–9–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Fiscal Service

[Dept. Circ. 570, 1994 Rev., Supp. No. 7]

Surety Companies Acceptable on Federal Bonds; Ranger Insurance Co.

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, 1994 Revision, on page 34173 to reflect this addition:

Ranger Insurance Company. BUSINESS ADDRESS: P.O. Box 2807, Houston, TX 77252. PHONE: (713) 954–8100. UNDERWRITING LIMITATION/ *b/*: $6,839,000. SURETY LICENSES/ *c/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

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.

Copies of the Circular may be obtained from the Surety Bond Branch, Funds Management Division, Financial Management Service, Department of the Treasury, Washington, DC 20227, telephone (202) 874–7102.

Dated: December 28, 1994.

Charles F. Schwan III,

Director, Funds Management Division, Financial Management Service.

[FR Doc. 95–468 Filed 1–9–95; 8:45 am]

BILLING CODE 4810–35–M

UNITED STATES INFORMATION AGENCY

Meeting of the Presidential Advisory Board for Cuba Broadcasting

The Advisory Board for Cuba Broadcasting will conduct a meeting on January 12, 1995 in San Juan, Puerto Rico. The intended agenda is listed below.

Thursday, January 12, 1995

Agenda

I. Approval of Minutes
II. Technical Operations
A. Contingency Planning for Radio and Martí Update
III. Status Report on Radio and Television Martí
IV Summit of the Americas
A. Directorate's Planning Strategy for Coverage by the Martís
B. Coverage of the Summit
1. Radio Martí (News and Programs)
2. T.V Martí
V. External Review Panel and Focus Group Reports
VI. Old Business
VII. New Business
VIII. Presidential Advisory Board Requests: Update
IX. Public Testimony
Carlos Santana Ojeda—The Impact of Radio Martí in Cuba

Members of the public interested in attending the meeting should contact Ms. Angela R. Washington, at the Advisory Board Office. Ms. Washington can be reached at (202) 401–2178.

Dated: January 4, 1995.

Yvonne F. Soler,

Executive Director, Presidential Advisory Board for Cuba Broadcasting.

[FR Doc. 95–542 Filed 1–9–95; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on the Readjustment of Vietnam and Other War Veterans; Meeting

The Department of Veterans Affairs (VA) gives notice under Pub. L. 92–463 that a meeting of the Advisory Committee on the Readjustment of Vietnam and Other War Veterans will be held January 26 and 27, 1995. This is a regularly scheduled meeting for the purpose of reviewing VA and other relevant services for Vietnam and other war veterans, to review Committee work in progress and to formulate Committee recommendations and objectives. The meeting on both days will be held at the American Legion, Washington Office, 1608 K Street, NW, Washington, DC. The meeting on both days will commence at 8:30 a.m. and adjourn at 4:30 p.m.

The agenda for January 26 will begin with a review of Committee special projects and reports. The first day's agenda will also cover a review of the Readjustment Counseling Service Vet Centers, a review of VA services to homeless veterans and an update on war-related post-traumatic stress disorder in Persian Gulf veterans.

On January 27 the Committee will review VA compensation issues related to post-traumatic stress disorder claims. The second day's agenda will also

include a briefing on the status, activities and plans of VA's Women Veterans Program Office of the Office of Policy and Planning.

Both day's meeting will be open to the public up to the meeting capacity of the room. Due to limited seating capacity of the room, those who plan to attend or who have questions concerning the meeting should contact Alfonso R. Batres, Ph.D, M.S.S.W., Director, Readjustment Counseling Service, Department of Veterans Affairs (phone number: 202–535–7554).

Dated: December 22, 1994.

By direction of the Secretary

Heyward Bannister,

Committee Management Officer

[FR Doc. 95–467 Filed 1–9–95; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register

Vol. 60, No. 6

Tuesday, January 10, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ENERGY REGULATORY COMMISSION

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552b:

DATE AND TIME: January 11, 1995, 10:00 a.m.

PLACE: 825 North Capitol Street, N.E., Room 9306, Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 208–0400. For a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

Consent Agenda—Hydro, 622nd Meeting—January 11, 1995, Regular Meeting (10:00 a.m.)

CAH–1
Project No. 6310–014, Gull Industries, Inc.
CAH–2
Project No. 7888–007, Comtu Falls Corporation
CAH–3.
Project Nos. 77–062 and 066, Pacific Gas and Electric Company
CAH–4.
Project No. 10567–004, Barrish and Sorenson Hydroelectric Company
CAH–5.
Omitted

Consent Agenda—Electric

CAE–1
Docket No. ER95–203–000, UtiliCorp United, Inc
Docket No. ER95–216–000, Aquila Power Corporation
CAE–2
Docket No. ER94–1612–000, Destec Power Services, Inc
CAE–3
Docket No ER95–39–000, Potomac Edison Company
CAE–4
Docket Nos. QF83–333–002 and 003, Cal Ban Corporation
CAE–5.
Docket Nos. ER89–106–000 and ER92–199–000, Duke Power Company
CAE–6.
Docket Nos. EL95–1–000 and QF87–552–003, Thermo Cogeneration Partnership, L.P
CAE–7
Docket No. EL94–81–001, Oglethorpe Power Corporation v Georgia Power Company and Municipal Electric Authority of Georgia v Georgia Power Company
CAE–8.
Docket No. ER94–1698–001, Kentucky Utilities Company
CAE–9.
Docket No. FA89–28–004, System Energy Resources, Inc.
CAE–10.
Docket Nos. ER93–465–006, ER93–922–004, ER93–507–003, EL93–40–002, EL94–12–002 and EL93–28–002, Florida Power & Light Company
CAE–11
Docket No. EG95–13–000, Comangen, Limited
CAE–12
Docket No. AC94–97–000, Eastern Edison Company

Consent Agenda—Gas and Oil

CAG–1
Docket No. GT95–8–000, Texas Eastern Transmission Corporation
CAG–2
Omitted
CAG–3.
Docket No. TM95–4–25–000, Mississippi River Transmission Corporation
CAG–4.
Docket No. PR94–20–000, Transok Gas Transmission Company
CAG–5.
Omitted
CAG–6.
Docket No. PR94–6–000, Red River Pipeline, L.P
CAG–7
Docket No. PR94–15–000, Aquila Gas Systems Corporation
CAG–8.
Omitted
CAG–9.
Docket Nos. RP94–101–001, 000, RP93–185–000, 001, RP93–184–000, 001, RP94–171–000, 001 and RP94–188–000, Carnegie Natural Gas Company
CAG–10.
Docket No. RP91–47–011, National Fuel Gas Supply Corporation
CAG–11
Docket No. RP93–6–011, Paiute Pipeline Company
CAG–12.
Docket No. RP94–93–004, K N Interstate Gas Transmission Company
CAG–13.
Docket No. RP94–365–002, Williams Natural Gas Company
CAG–14.
Docket No. RP95–5–001, Northwest Pipeline Corporation
CAG–15.
Docket No. RP95–6–001, Northwest Pipeline Corporation
CAG–16.
Omitted
CAG–17.
Docket No. TM95–3–30–000, Trunkline Gas Company
CAG–18.
Docket Nos. RP93–147–008, RP94–201–002, RP94–175–002, CP94–153–001, RP91–203–052 and RP92–132–043 (Phase III), Tennessee Gas Pipeline Company
CAG–19.
Docket No. RP95–17–001, Algonquin Gas Transmission Company
CAG–20.
Docket Nos. RP94–309–007, RP94–39–009, RP94–197–006 and RP93–151–019, Tennessee Gas Pipeline Company
CAG–21.
Docket No. RP91–203–051, Tennessee Gas Pipeline Company
CAG–22.
Docket No. RP94–203–001, Tennessee Gas Pipeline Company
CAG–23.
Docket No. RP95–30–001, Koch Gateway Pipeline Company
CAG–24.
Docket No. RP93–148–005, Tennessee Gas Pipeline Company
CAG–25.
Docket Nos. RP94–197–004 and RP93–151–018, Tennessee Gas Pipeline Company
CAG–26.
Docket No. RP94–404–002, Northern Border Pipeline Company
CAG–27
Docket No. RP95–7–002, Mississippi River Transmission Corporation
CAG–28.
Docket No. RP94–350–001, Colorado Interstate Gas Company
CAG–29.
Docket No. RP94–325–002, Panhandle Eastern Pipe Line Company
CAG–30.
Docket No. OR94–7–000, Hunt Refining Company and East Mississippi Pipeline Company
CAG–31
Docket Nos. RS92–16–008, 009, RP91–138–002, RP91–187–013 and CP91–2448–006, Florida Gas Transmission Company
CAG–32.
Docket No MG88–11–002, Questar Pipeline Company
Docket No. MG91–5–001, Overthrust Pipeline Company
CAG–33.
Docket No. MG88–14–005, Black Marlin Pipeline Company

Docket No. MG88–3–010, Florida Gas Transmission Company
Docket No. MG88–9–009, Transwestern Pipeline Company
CAG–34.
Docket Nos. MG91–1–006 and 007, National Fuel Gas Supply Corporation
CAG–35.
Docket No. CP93–258–004, Mojave Pipeline Company
CAG–36.
Docket No. CP93–281–002, Paiute Pipeline Company
CAG–37.
Docket No. CP94–219–001, Tennessee Gas Pipeline Company
CAG–38.
Docket Nos. CP87–479–014, CP87–480–013 and CP90–41–002, Wyoming-California Pipeline Company
CAG–39.
Omitted
CAG–40.
Docket No. CP91–2069–001, NorAm Gas Transmission Company
CAG–41.
Omitted
CAG–42.
Docket No. CP93–500–001, Natural Gas Pipeline Company of America
CAG–43.
Omitted
CAG–44.
Docket No. CP94–287–001, Northern Natural Gas Company
CAG–45.
Docket No. CP94–289–000, Equitrans, Inc.
CAG–46.
Docket No. CP94–717–000, Panhandle Eastern Pipe Line Company
CAG–47
Docket No. CP94–290–000, ANR Pipeline Company
CAG–48.
Docket No. CP91–2315–003, Boston Gas Company
CAG–49.
Docket No. MT95–2–000, Iroquois Gas Transmission System, L.P
CAG–50.
Docket Nos. CP93–618–000, 001 and 002, Pacific GasTransmission Company
CAG–51.
Docket Nos. RP95–94–001 and 000, NorAm Gas Transmission Company
Docket No. CP94–36–005, Arkla Gathering Service Company

Hydro Agenda

H–1.
Reserved

Electric Agenda

E–1.
Docket No. RM92–12–000, Streamlining of Regulations Pertaining to Parts II and III of the Federal Power Act and the Public Utility Regulatory Policies Act of 1978. Final Rule.
E–2.
(A) Docket No. EL93–55–000, Connecticut Light & Power Company Request for declaratory order.
(B) Docket No. EL87–33–003, Orange and Rockland Utilities, Inc., Rockland Electric Company and Pike County Light & Power Company. Request for declaratory order.

Oil and Gas Agenda

I. Pipeline Rate Matters

PR–1.
Docket No. RM95–5–000, Release of Firm Capacity on Interstate Natural Gas Pipelines. Notice of Proposed Rulemaking.

II. Restructuring Matters

RS–1.
Reserved

III. Pipeline Certificate Matters

PC–1
Reserved

Lois D. Cashell,

Secretary.

[FR Doc. 95–719 Filed 1–6–95; 3:52 pm]

BILLING CODE 6717–01–P

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given of the following meeting of the Board:

TIME AND DATE: 8:00 a.m., January 17, 1995.

PLACE: Board Conference Room, Suite 700, 625 Indiana Avenue, N.W. Washington, D.C. 20004.

STATUS: Closed. Exemption 9. Portions of the meeting may also be closed under Exemption 1 and Exemption 3.

MATTERS TO BE CONSIDERED: The Board will deliberate on issues related to its Fifth Annual Report to Congress and possible recommendations to the Congress and the Secretary of Energy.

FOR FURTHER INFORMATION CONTACT: Robert M. Andersen, General Counsel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW, Suite 700, Washington, DC 20004, (202) 208–6387.

SUPPLEMENTARY INFORMATION: This meeting will continue daily at the discretion of the Chairman until the report is finalized. The Board specifically reserves its right to further schedule and otherwise regulate the course of the meeting, to recess, reconvene, postpone or adjourn the meeting, conduct further reviews, and otherwise exercise its power under the Atomic Energy Act of 1954, as amended.

Dated: January 5, 1995.

John T. Conway,

Chairman.

[FR Doc. 95–613 Filed 1–6–95; 8:45 am]

BILLING CODE 6820–KD–M

FEDERAL COMMUNICATIONS COMMISSION

FCC To Hold Open Commission Meeting Thursday, January 12, 1995

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, January 12, 1995, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, N.W., Washington, D.C.

Item No., Bureau, and Subject

1—Office of Engineering and Technology—Title: Amendment of Section 2.106 of the Commission's Rules with Regard to the Establishment and Regulation of New Digital Audio Radio Service (GEN Docket No. 90–357). Summary: The Commission will consider allocating spectrum for a satellite digital audio radio service (DARS)
2—Common Carrier—Title: Revisions to Price Cap Rules for AT&T (CC Docket No. 93–197). Summary: The Commission will consider a number of proposed changes to the regulation of AT&T under price caps. Proposed changes include whether to remove a number of services from price caps and a review of AT&T's reports concerning its quality of service under price caps.
3—Common Carrier—Title: Proposed 708 Relief Plan and 630 Numbering Plan Area Code buy Ameritech—Illinois (IAD File No. 94–102). Summary: Ameritech, in its role as central code administrator, has proposed a plan to resolve number exhaust in Chicago that has been characterized by petitioners as discriminatory.
4—Common Carrier and Cable Services—Title: Telephone Company-Cable Television Cross-Ownership Rules, Sections 63.54–63.58. Summary: The Commission will consider what if any safeguards or rules changes may be necessary or appropriate when a telephone company wishes to provide video programming directly to subscribers.
5—Cable Services—Title: Implementation of Sections 11 and 13 of the Cable Television Consumer Protection and Competiton Act of 1992—Horizontal and Vertical Ownership Limits, Cross-Ownership Limitations and Anti-Trafficking Provisions (MM Docket No. 92–264). Summary: The Commission will consider petitions for reconsideration concerning SMATV/cable television cross-ownership and anti-trafficking rules.
6—Wireless Tele-Communications and Mass Media—Title: Streamlining the Commission's Antenna Structure Clearance Procedure and Revision of part 17 of the Commission's Rules Concerning Construction, Marking, and Lighting of Antenna Structures. Summary: The Commission will consider whether to replace the current antenna structure clearance process, which affects all licensees on such structures, with a simplified registration procedure affecting only structure owners. Further, the Commission will consider whether to amend its rules to reflect revised FAA painting and lighting recommendations.

Additional information concerning this meeting may be obtained from Audrey Spivack on Susan Lewis Sallet, Office of Public Affairs, telephone number (202) 418–0500.

Federal Communications Commission

William F. Caton,

Acting Secretary

[FR Doc. 95–644 Filed 1–6–95, 11 15 am]

BILLING CODE 6712–01–M

AGENCY HOLDING THE MEETING:

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 59 FR 67006, December 28, 1994.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:00 P.M. (Eastern Time) January 10, 1995.

CHANGE IN THE MEETING:

Closed Session

The closed session of the meeting has been cancelled.

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer on (202) 663–4070.

Dated January 5, 1995.

Frances M. Hart,

Executive Officer, Executive Secretariat.

[FR Doc. 95–642 Filed 1–6–95; 11:14 am]

BILLING CODE 6750–06–M

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on January 12, 1995, from 2:00 p.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Floyd Fithian, Acting Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be open to the public (limited space available). In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

B. Reports

1. *COO's First Quarter FY 1995 Report*
   a. Derivatives Workgroup Report
   b. Capital Workgroup Report
   c. Cash Management Policy

Dated: January 5, 1995.

Floyd Fithian,

Acting Secretary, Farm Credit Administration Board.

[FR Doc. 95–675 Filed 1–6–95; 2:25 pm]

BILLING CODE 6705–01–P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Tuesday, January 17, 1995.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: January 6, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–713 Filed 1–6–95; 3:23 pm]

BILLING CODE 6210–01–P

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of January 9, 16, 23, and 30, 1995.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of January 9

Thursday, January 12

10:00 a.m.
Briefing on Status of Activities with the Center for Nuclear Waste Regulatory Analysis (CNWRA) (Public Meeting) (Contact: Shirley Fortuna, 301–415–7804)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

2:00 p.m.
Briefing by ICRP/NCRP on the Principles of Radiological Protection and Their Application in Setting Limits and Constraints for the Public from Radiation Sources (Public Meeting)

Week of January 16—Tentative

Tuesday, January 17

10:00 a.m.
Briefing by Executive Branch (Closed—Ex 1)

Week of January 23—Tentative

Wednesday January 25

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of January 30—Tentative

Wednesday February 1

10:00 a.m.
Briefing by Organization of Agreement States (Public Meeting)

2:00 p.m.
Briefing on Core Shroud Issues (Public Meeting)

Thursday February 2

2:00 p.m.
Briefing On NRC's Initiatives On Responsiveness To The Public (Public Meeting)

3:30 p.m.
Affirmation/Discussion And Vote (Public Meeting) (if needed)

Friday February 3

10:00 a.m.
Periodic Briefing On Operating Reactors And Fuel Facilities (Public Meeting)

2:00 p.m.
Briefing On Advanced Reactor Technical Issues (Public Meeting)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

The schedule for Commission meetings is subject to change on short notice.

TO VERIFY THIS STATUS OF MEETINGS CALL: (Recording)—(301) 415–1292.

CONTACT PERSON FOR MORE INFORMATION: Dr. Andrew Bates (301) 415–1963

Dated: January 5, 1995.

Andrew L. Bates,

Chief, Operations Branch, Office of the Secretary

[FR Doc. 95–638 Filed 1–6–95; 10:15 am]

BILLING CODE 7590–01–M

POSTAL RATE COMMISSION

TIME AND DATE: 2:00 p.m., January 12, 1995.

PLACE: Conference Room, 1333 H Street, NW, Suite 300, Washington, DC 20268.

STATUS: Closed.

MATTERS TO BE CONSIDERED: (1) Docket No. R94–1—Request for Reconsideration. (2) Docket No. C93–2—Pending Parcel Post Rate Complaint.

CONTACT PERSON FOR MORE INFORMATION: Charles L. Clapp, Secretary, Postal Rate Commission, Suite 300, 1333 H Street, NW, Washington, DC 20268–0001 Telephone (202) 789–6840

Charles L. Clapp

Secretary.

[FR Doc. 95–663 Filed 1–6–95; 2:24 pm]

BILLING CODE 7710–FW–P

Corrections

Federal Register
Vol. 60, No. 6
Tuesday, January 10, 1995

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. TM95–1–55–001 and RP94–331–004]

Questar Pipeline Co.; Notice of Compliance Tariff Filing

Correction

In notice document 94–31277 appearing on page 65766, in the issue of Wednesday, December 21, 1994, in the third column, in the first line, the docket number should read as set forth above.

BILLING CODE 1505–01–D

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 1615E–94]
RIN 1115–AC30

Expiration of Deferred Enforced Departure for Nationals of El Salvador

Correction

In notice document 94–30088 beginning on page 62751, in the issue of Tuesday, December 6, 1994, make the following correction:

On page 62752, in the second column, in the fourth line, after "asylum" insert "application until the date of the decision by the asylum"

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–34947; File No. SR–CBOE–94–38]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Short Sale of Securities in the Nasdaq National Market

Correction

In notice document 94–28262 beginning on page 59262, in the issue of Wednesday, November 16, 1994, in the first column, in the first line, the docket number should read as set forth above.

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 94–099]

National Offshore Safety Advisory Committee

Correction

In notice document 94–28579 appearing on page 59816, in the issue of Friday, November 18, 1994, in the second column, in the twenty-fourth line, the word "their" should read "other"

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Privacy Act of 1974: Altered System of Records

Correction

In notice document 94–28673 beginning on page 60045, in the issue of Monday, November 21, 1994, make the following correction:

On page 60047, in the third column, under **SYSTEM MANAGER(S) AND ADDRESSES:**, in the fifth line from the bottom, after "Financial Management" insert "Records: Director, Division of Financial Management,"

BILLING CODE 1505–01–D

federal register

Tuesday
January 10, 1995

Part II

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 33 et al.
Federal Acquisition Regulation; Protests, Disputes, and Appeals; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 33, 39, 42, 50, and 52

[FAR Case 94–730]

RIN 9000–AG38

Federal Acquisition Regulation; Protests, Disputes, and Appeals

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: This proposed rule is issued pursuant to the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103–355) dated October 13, 1994, to implement the requirements for protests and disputes in Government procurement. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

DATES: Comments should be submitted on or before March 13, 1995 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW., room 4037, Washington, DC 20405. Please cite FAR case 94–730 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. Craig Hodge, Protests/Disputes Team Leader at (703) 274–8176 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAR case 94–730, Protests, Disputes, and Appeals.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Acquisition Streamlining Act of 1994, Pub. L. 103–355, provides authorities that streamline the acquisition process and minimize burdensome Government-unique requirements. Major changes that can be expected in the acquisition process as a result of Federal Acquisition Streamlining Act implementation include changes in the areas of Commercial Item Acquisition, Simplified Acquisition Procedures, the Truth in Negotiations Act, and Introduction of the Federal Acquisition Network.

This notice announces proposed FAR revisions developed under FAR Case 94–730, Protests, Disputes, and Appeals. The Act changed the General Accounting Office (GAO) protest procedures, the General Services Board of Contract Appeals (GSBCA) protest procedures, and the alternative dispute resolution (ADR) procedures. This rule reflects those changes to GAO, GSBCA, and ADR procedures that require revisions to the FAR.

In view of expected benefits to Government and industry from the Act, FAR implementation was formulated under an expedited process. The FAR Council is interested in an exchange of ideas and opinions with respect to the regulatory implementation of the Act. For that reason, the FAR Council is conducting a series of public meetings. However, the FAR Council has not scheduled a public meeting on this rule (FAR case 94–730) because of the clarity and non-controversial nature of the rule. If the public believes such a meeting is needed with respect to this rule, a letter requesting a public meeting and outlining the nature of the requested meeting shall be submitted to and received by the FAR Secretariat (see **ADDRESSES** caption) on or before February 9, 1995. The FAR Council will consider such requests in determining whether a public meeting on this rule should be scheduled.

B. Regulatory Flexibility Act

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because among other things, it authorizes a higher reimbursement of attorney costs associated with a GAO or a GSBCA protest to small businesses than may be reimbursed to large businesses. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610 of the Act. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 94–730), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 33, 39, 42, 50 and 52

Government procurement.

Dated: December 29, 1994.

Edward C. Loeb,

Deputy Project Manager for the Implementation of the Federal Acquisition Streamlining Act of 1994.

Therefore, it is proposed that 48 CFR Parts 33, 39, 42, 50, and 52 be amended as set forth below:

1. The authority citation for 48 CFR Parts 33, 39, 42, 50, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 33—PROTESTS, DISPUTES, AND APPEALS

2. Section 33.101 is amended by adding in alphabetical order the definitions "Day" and "Filed"; and revising the definition "Protest" to read as follows:

33.101 Definitions.

Day, for the purpose of this subpart means a calendar day, unless otherwise specified. In the computation of any period—

(a) The day of the act, event, or default from which the designated period of time begins to run is not included; and

(b) The last day after such act, event, or default is included unless—

(1) Such last day is a Saturday, a Sunday, or a legal holiday; or

(2) In the case of a filing of a paper at any appropriate administrative forum, such last day is a day on which weather or other conditions causes the closing of the forum, in which event the next day that is not a Saturday, Sunday, or legal holiday is included.

Filed means the receipt of any document by an agency before its close of business. Documents received after close of business are considered filed as of the next day. Unless otherwise stated, the agency close of business is presumed to be 4:30 p.m. local time.

* * * * *

Protest, as used in this subpart, means a written objection by an interested party to any of the following:

(a) A solicitation or other request by an agency for offers for a contract for the procurement of property or services.

(b) The cancellation of such a solicitation or other request.

(c) An award or proposed award of such a contract.

(d) A termination or cancellation of an award of such a contract, if the written objection contains an allegation that the termination or cancellation is based in

whole or in part on improprieties concerning the award of the contract.

3. Section 33.102 is amended by revising paragraph (a); redesignating paragraphs (b) and (c) as (c) and (e), respectively, and adding new paragraphs (b) and (d); and revising newly designated paragraphs (e)(2) and (e)(3) to read as follows:

33.102 General.

(a) Contracting officers shall consider all protests and seek legal advice, whether protests are submitted before or after award and whether filed directly with the agency, the General Accounting Office (GAO), or for automatic data processing acquisitions under 40 U.S.C. 759 (ADP contracts), the General Services Board of Contract Appeals (GSBCA or the Board). (See 19.302 for protests of small business status and 22.608–3 for protests involving eligibility under the Walsh-Healey Public Contracts Act.)

(b) If in connection with a protest, the head of an agency determines that a solicitation, proposed award, or award does not comply with the requirements of law or regulation, the head of the agency may—

(1) Take any action that may have been taken by the Comptroller General in the event of a GAO protest; and

(2) Pay appropriate costs as stated in section 33.104(h).

* * * * *

(d) *Protest likely after award.* The contracting officer may stay performance of a contract within the time period contained in 33.104(c)(1) if the contracting officer makes a written determination that—

(1) A protest is likely to be filed; and

(2) Delay of performance is, under the circumstances, in the best interests of the United States.

(e) * * *

(2) May protest to the GAO in accordance with GAO regulations (4 CFR Part 21). An interested party who has filed a protest regarding an ADP procurement with the GAO may not file a protest with the GSBCA with respect to that procurement.

(3) May protest to the GSBCA regarding an award of an ADP contract in accordance with GSBCA Rules of Procedure (48 CFR Chapter 61). An interested party who has filed a protest regarding an ADP procurement with GSBCA (40 U.S.C. 759(f)) may not file a protest with the GAO with respect to that procurement.

4. Section 33.103 is amended in paragraph (b)(1) by removing "or" and inserting "and"; by revising the second and third sentences of (b)(2); by revising the second sentence in paragraph (b)(4); and by adding paragraph (b)(5) to read as follows:

33.103 Protests to the agency.

* * * * *

(b) * * *

(2) * * * In all other cases, protests shall be filed not later than 14 days after the basis of protest is known or should have been known, whichever is earlier. The agency for good cause shown, or where it determines that a protest raises issues significant to the agency's acquisition system, may consider the merits of any protest which is not filed timely.

* * * * *

(4) * * * Failure to substantially comply with any of the above requirements may be grounds for dismissal of the protest.

(5) The agency should furnish a copy of the written protest ruling to the protester by certified mail return receipt requested, or by any other method that provides evidence of receipt.

5. Section 33.104 is amended—

a. By revising the introductory text;

b. By adding a sentence to the end of paragraph (a)(2)(ii);

c. By revising the introductory text of paragraph (a)(3)(i);

d. In paragraph (a)(3)(ii)(H) by adding a "s" to "allegation";

e. By redesignating paragraphs (a)(5) through (a)(7) as (a)(6) through (a)(8), respectively and adding a new paragraph (a)(5);

f. By revising the introductory text of newly designated paragraph (a)(6);

g. In the third sentence of paragraph (a)(6)(iii) by adding a "s" to "request"; and

h. By revising paragraphs (c)(1), and (c)(5); and

i. By revising paragraphs (f), (g), and (h).

The revised text reads as follows:

33.104 Protests to GAO.

Procedures for protests at the GAO are found at 4 CFR Part 21 (GAO Bid Protest Regulations). In the event this section conflicts with 4 CFR Part 21, 4 CFR Part 21 governs.

(a) * * *

(2) (ii) * * * However, if the protestor has identified sensitive information and requests a protective order, then the contracting officer should obtain a redacted version from the protestor to furnish to other interested parties.

(3)(i) Upon notice that a protest has been filed with the GAO, the contracting officer shall immediately begin compiling the information necessary for a report to the GAO. The agency normally submits a complete report to the GAO within 35 days after the GAO notifies the agency by telephone that a protest has been filed, or within 20 days after receipt from the GAO of a determination to use the express option, unless the GAO—

* * * * *

(5) When a protest is filed with the GAO, and an actual or prospective offeror so requests, the procuring agency shall establish a protest file and, in accordance with any applicable protective orders, provide actual or prospective offerors reasonable access to the file. However, if the GAO dismisses the protest before the administrative report is submitted then no protest file need be established.

(i) The protest file shall consist of the agency administrative report.

(ii) Information exempt from disclosure under section 552 of title 5, United States Code, or under an applicable protective order, may be redacted from the protest file.

(iii) The protest file shall be made available within a reasonable time after submittal of the agency administrative report.

(6) The GAO may issue protective orders which establish terms, conditions, and restrictions for the provision of any document to an interested party. Protective orders prohibit or restrict the disclosure by the party of procurement sensitive information, trade secrets or other proprietary or confidential research, development or commercial information that is contained in such document. Protective orders do not authorize withholding any documents or information from the United States Congress or an executive agency.

* * * * *

(c) *Protests after award.* (1) When the agency receives notice of a protest from the GAO within 10 days after contract award or within 5 days after a debriefing date offered to the protestor for any debriefing that is required by 15.1003, whichever is later, the contracting officer shall immediately suspend performance or terminate the awarded contract, except as provided in paragraphs (c)(2) and (3) of this section.

* * * * *

(5) When the agency receives notice of a protest filed with the GAO after the dates contained in paragraph (c)(1), the contracting officer need not suspend contract performance or terminate the awarded contract unless the contracting officer believes that an award may be invalidated and a delay in receiving the supplies or services is not prejudicial to the Government's interest.

* * * * *

(f) *GAO decision time.* GAO issues its recommendation on a protest within 125 days from the date of filing of the protest with the GAO, or within 65 days under the express option, unless GAO establishes a longer period of time. The GAO attempts to issue its recommendation on an amended protest that adds a new ground of protest within the time limit of the initial protest. If an amended protest cannot be resolved within the initial time limit, the GAO may resolve the amended protest through an express option.

(g) *Notice to GAO.* If the agency has not fully implemented the GAO recommendations with respect to a solicitation for a contract or an award or a proposed award of a contract within 60 days of receiving the GAO recommendations, the head of the contracting activity responsible for that contract shall report such failure to the GAO not later than 5 days after the expiration of the 60 day period. The report shall explain the reasons why the GAO's recommendation exclusive of costs, has not been followed by the agency.

(h) *Award of costs.* (1) If the GAO determines that a solicitation for a contract or a proposed award or an award of a contract does not comply with a statute or regulation, the GAO may recommend that the agency conducting the procurement pay to an appropriate interested party the direct cost, exclusive of profit, of filing and pursuing the protest, including reasonable attorney's fees and consultant and expert witness fees, and bid and proposal preparation costs.

(2) If the GAO recommends the award of costs to an interested party, the agency, in accordance with agency procedures, shall attempt to reach an agreement on the amount of the cost to be paid. If the agency and the interested party are unable to agree on the amount to be paid, GAO may, upon request of the interested party, recommend to the agency the amount of cost that the agency should pay

(3) No agency shall pay a party, other than a small business concern within the meaning of section 3(a) of the Small Business Act (see 19.001, "Small business concern"), costs under paragraph (h)(2) of this section—

(i) For consultant and expert witness fees that exceed the highest rate of compensation for expert witnesses paid by the Government; or

(ii) For attorneys' fees that exceed $150 per hour unless the agency determines, based on the recommendation of the Comptroller General on a case by case basis, that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies a higher fee. The cap placed on attorneys' fees for businesses, other than small businesses, constitutes a benchmark as to what constitutes a "reasonable" level for attorneys' fees for small businesses.

(4) A recommended award of costs may be paid by the agency out of funds available to or for the use of the agency for the acquisition of supplies or services. Before paying a recommended award of costs, agency personnel should consult legal counsel. Section 33.104(h) applies to all recommended awards of costs which have not yet been paid.

(5) If the GAO recommends the agency pay costs (as defined under paragraph (h)(1) of this section) and the agency does not promptly pay the costs, the agency shall promptly report to GAO the reasons for the failure to follow the GAO recommendation.

(6) Any costs the contractor receives under this section shall be excluded from all proposals, billings, or claims against the Government and such exclusions should be reflected in the cost agreement.

6. Section 33.105 is amended—

(a) By adding an introductory paragraph;

(b) By revising paragraph (a)(1);

(c) In paragraph (a)(2)(ii) by removing "five" and inserting "three";

(d) By revising the introductory text of paragraph (d)(1);

(e) In paragraph (d)(1)(i) by removing "calendar";

(f) By adding paragraph (d)(4);

(g) In paragraph (e) by removing "45 work" and inserting "65";

(h) By redesignating paragraphs (f) and (g) as (g) and (h) and adding a new paragraph (f);

(i) By revising the new by designated paragraphs (g)(1)(i), and (g)(2);

(j) By adding paragraphs (g)(3) and (g)(4); and

(k) By revising paragraph (h).

The revised text reads as follows:

33.105 Protests to GSBCA.

Procedures for protests at the GSBCA, are found at 48 CFR chapter 61 (GSBCA Rules). In the event this subpart conflicts with 48 CFR Chapter 61, 48 CFR Chapter 61 governs.

(a)(1) Upon request of an interested party in connection with any procurement that is subject to this section (including any such procurement that is subject to delegation of procurement authority), the GSBCA shall review any decision by the contracting officer that is alleged to violate a statute, a regulation, or the conditions of a delegation of procurement authority. ADP acquisition protests not covered under the Federal Property and Administrative Services Act (40 U.S.C. 759) may not be heard by the GSBCA, but may be heard by the agency, the courts, or GAO. A protester shall furnish a copy of its complete protest to the official and location designated in the solicitation, or in the absence of such a designation to the contracting officer, on the same day the protest is filed with the GSBCA. Any request for a hearing on either a suspension of procurement authority or on the merits shall be in the protest.

* * * * *

(d)(1) If a protest contains a timely request for a suspension of procurement authority, the Board will hold a hearing. A timely request for suspension of procurement authority is one that is filed before award, within 10 days of award, or within five days of the offered debriefing, when the debriefing is required by 15.1003, whichever is later The Board suspends the procurement authority unless the agency establishes that—

* * * * *

(4) A suspension shall not preclude the agency concerned from continuing the procurement process up to but not including the award of the contract unless the Board determines such action is not in the best interests of the United States.

* * * * *

(f) Any agreement that provides for the dismissal of a protest and involves a direct or indirect expenditure of appropriated funds shall be made part of the public record (subject to any protective order considered appropriate by the Board) before dismissal of the protest. If an agency is party to a settlement agreement, the submission of the agreement to the Board shall include a memorandum, signed by the contracting officer concerned, that describes in detail the procurement, the grounds for protest, the Government's position regarding the grounds for protest, the terms of the settlement, and the agency's position regarding the propriety of the award or proposed award of the contract at issue in the protest.

(g) * * *

(1) * * *

(i) Filing and pursuing the protest, including reasonable attorney consultant, and expert witness fees, studies, analyses, tests; and

* * * * *

(2) Costs awarded under paragraph (g)(1) of this section or payments of amounts due under settlement agreements shall be paid out in

accordance with the procedures provided in 31 U.S.C. 1304 (the Permanent Indefinite Judgment Fund). The agency concerned shall reimburse that fund out of funds available for the procurement.

(3) No agency shall pay a party, other than a small business concern within the meaning of section 3(a) of the Small Business Act (see 19.001, "Small business concern"), costs under paragraph (g)(1) of this section—

(i) For consultant and expert witness fees that exceed the highest rate of compensation for expert witnesses paid by the Government; or

(ii) For attorneys' fees that exceed $150 per hour unless the Board determines, on a case by case basis, that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies a higher fee. The cap placed on attorneys' fees for businesses, other than small businesses, constitutes a benchmark as to what constitutes a "reasonable" level for attorneys' fees for small businesses.

(4) Within 30 days after receipt by the agency of an application for cost, the agency may file an answer.

(h) The GSBCA's final decision may be appealed by the agency or by any interested party, including any intervening interested parties, as set forth in the Contract Disputes Act.

7. Section 33.106 is amended by revising paragraph (a) to read as follows:

33.106 Solicitation provision and contract clause.

(a) The contracting officer shall insert the provision at 52.233–2, Service of Protest, in solicitations for other than simplified acquisitions.

* * * * *

8. Section 33.201 is amended by revising the definition "Alternate means of dispute resolution"; and in the definition "Claim" by removing the amount "$50,000" and inserting "$100,000".

33.201 Definitions.

Alternate dispute resolution (ADR) means any procedure or combination of procedures voluntarily used to resolve issues in controversy without the need to resort to litigation. These procedures include, but are not limited to, assisted settlement negotiations, conciliation, facilitation, mediation, fact-finding, minitrials, and arbitration.

* * * * *

9. Section 33.206 is revised to read as follows:

33.206 Initiation of a claim.

(a) Contractor claims shall be submitted, in writing, to the contracting officer for a decision within 6 years after the contractor knew or should have known the facts and circumstances giving rise to the issue in controversy unless a shorter time period has been agreed to. This 6 year time period does not apply to contracts in existence as of October 13, 1994, that contain a clause requiring submittal of a claim earlier than 6 years after accrual of the claim. The contracting officer shall document the contract file with evidence of the date of receipt of any submission from the contractor deemed to be a claim by the contracting officer.

(b) The contracting officer shall issue a written decision on any Government claim initiated against a contractor within 6 years after accrual of the claim. The 6 year period shall not apply to a Government claim against a contractor that is based on a claim by the contractor involving fraud.

33.207 [Amended]

10. Section 33.207 is amended in paragraph (a)(1) by removing "$50,000" and inserting "$100,000".

33.208 [Amended]

11. Section 33.208 is amended in paragraph (c) by removing "as defined in 33.201,".

12. Section 33.211 is amended in paragraph (a)(4)(v) by removing the amounts "$10,000" and "$50,000" and inserting "$50,000" and "$100,000", respectively; in paragraphs (c)(1), (c)(2) and (e) by removing the amounts "$50,000" and inserting "$100,000"; and by revising paragraph (f) to read as follows:

33.211 Contracting officer's decision.

* * * * *

(f) In the event of undue delay by the contracting officer in rendering a decision on a claim, the contractor may request the tribunal concerned to direct the contracting officer to issue a decision in a specified time period determined by the tribunal.

* * * * *

13. Section 33.214 is amended by redesignating paragraphs (b) through (d) as (c) through (e) and adding a new paragraph (b) to read as follows:

33.214 Alternative dispute resolution (ADR).

* * * * *

(b) If the contracting officer rejects a request for ADR from a small business contractor, the contracting officer shall provide the contractor written explanation citing one or more of the conditions in 5 U.S.C. 572(b) or such other specific reasons that ADR procedures are inappropriate for the resolution of the dispute. In any case where a contractor rejects a request of an agency for ADR proceedings, the contractor shall inform the agency in writing of the contractor's specific reasons for rejecting the request.

* * * * *

PART 39—ACQUISITION OF INFORMATION RESOURCES

14. Section 39.002 is amended by redesignating paragraph (b) as (c) and adding a new paragraph (b) to read as follows:

39.002 Delegations of procurement authority.

* * * * *

(b) The Administrator of the General Services Administration, or the appropriate official of any agency authorized to issue a redelegation of procurement authority, may issue a delegation of procurement authority (DPA) for any procurement initiated or contract award executed without the requisite DPA. If the Administrator or other appropriate agency official issues a DPA, the originally executed contract may be ratified by the contracting agency. Preaward procurement actions taken prior to obtaining a DPA do not need to be reaccomplished.

* * * * *

15. Subpart 42.15 is added to read as follows:

Subpart 42.15—Small Business Contract Administration

42.1501 General.

The contracting officer shall make every reasonable effort to respond in writing within 30 days to any written request to the contracting officer from a small business concern with respect to a contract administration matter. In the event the contracting officer cannot respond to the request within the 30 day period, the contracting officer shall, within such period, transmit to the contractor a written notification of the specific date the contracting officer expects to respond. This provision shall not apply to a request for a contracting officer decision under the Contract Disputes Act of 1978 (41 U.S.C. 601–613).

PART 50—EXTRAORDINARY CONTRACTUAL ACTIONS

50.303 [Redesignated as 50.303–1]

16. Section 50.303 is redesignated as 50.303–1 and a new 50.303 heading is added to read as follows:

50.303 Contract adjustment.

* * * * *

17. Section 50.303–2 is added to read as follows:

50.303–2 Contractor certification.

A contractor seeking a contract adjustment that exceeds the simplified acquisition threshold shall, at the time the request is submitted, submit a certification by a person authorized to certify the request on behalf of the contractor that (a) the request is made in good faith and (b) the supporting data are accurate and complete to the best of that person's knowledge and belief.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

18. Section 52.233–1 is amended by revising the date of the clause, the third sentence in paragraph (c), and paragraph (d)(1); in paragraph (d)(2)(i)(A) and (e) by removing "$50,000" each place it occurs and inserting "$100,000"; and by revising paragraph (g) to read as follows:

52.233–1 Disputes.

* * * * *

Disputes (Date)

* * * * *

(c) * * * However, a written demand or written assertion by the Contractor seeking the payment of money exceeding $100,000 is not a claim under the Act until certified as required by subparagraph (d)(2) of this clause. * * *

(d)(1) A claim by the Contractor shall be made in writing and, unless otherwise stated in this contract, submitted within 6 years after accrual of the claim to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.

* * * * *

(g) If the claim by the Contractor is submitted to the Contracting Officer or a claim by the Government is presented to the Contractor, the parties, by mutual consent, may agree to use ADR. If the Contractor refuses an offer for alternative disputes resolution, the Contractor shall inform the Contracting Officer, in writing, of the Contractor's specific reasons for rejecting the request. When using arbitration conducted pursuant to 5 U.S.C. 575–580, or when using any other ADR technique that the agency elects to handle in accordance with the ADRA, any claim, regardless of amount, shall be accompanied by the certification described in subparagraph (d)(2)(iii) of this clause, and executed in accordance with subparagraph (d)(3) of this clause.

* * * * *

19. Section 52.233–2 is amended by revising the date of the clause; and adding paragraph (c) to read as follows:

52.233–2 Service of Protest.

* * * * *

Service of Protest (Date)

* * * * *

(c) In this procurement, you may not protest to the GSBCA because of the nature of the supplies being procured. (Contracting Officer shall strike the word "not" where the GSBCA is a correct forum.)

(End of provision)

20. Section 52.233–3 is amended by revising the date of the clause; and in paragraph (a) by revising the first sentence to read as follows:

52.233–3 Protest after Award.

* * * * *

Protest After Award (Date)

* * * * *

(a) Upon receipt of a notice of protest (as defined in 33.101 of the FAR) or a determination that a protest is likely (see FAR 33.102(d)), the Contracting Officer may, by written order to the Contractor, direct the Contractor to stop performance of the work called for by this contract. * * *

* * * * *

[FR Doc. 95–482 Filed 1–9–95; 8:45 am]

BILLING CODE 6820–34–P

federal register

Tuesday
January 10, 1995

Part III

Department of Commerce

National Telecommunications and Information Administration

Advisory Council on the National Information Infrastucture; Open Meeting; Notice

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Advisory Council on the National Information Infrastructure; Open Meeting

AGENCY: National Telecommunications and Information Administration (NTIA), Commerce.

ACTION: Notice is hereby given of a meeting of the United States Advisory Council on the National Information Infrastructure, created pursuant to Executive Order 12864, as amended.

SUMMARY: The President established the Advisory Council on the National Information Infrastructure (NII) to advise the Secretary of Commerce on matters related to the development of the NII. In addition, the Council shall advise the Secretary on a national strategy for promoting the development of the NII. The NII will result from the integration of hardware, software, and skills that will make it easy and affordable to connect people, through the use of communication and information technology, with each other and with a vast array of services and information resources. Within the Department of Commerce, the National Telecommunications and Information Administration has been designated to provide secretariat services to the Council.

Authority: Executive Order 12864, signed by President Clinton on September 15, 1993, and amended on December 30, 1993 and June 13, 1994.

DATES: The NII Advisory Council meeting will be held on Thursday, January 26, 1995 from 8:45 a.m. until 4:30 p.m.

ADDRESSES: The NII Advisory Council meeting will take place at the SAS Institute, 501 SAS Campus Drive, Building V, Cary, North Carolina 27513.

FOR FURTHER INFORMATION CONTACT: Ms. Celia Nogales, Designated Federal Officer for the Advisory Council on the National Information Infrastructure, National Telecommunications and Information Administration (NTIA); U.S. Department of Commerce, Room 4892; 14th Street and Constitution Avenue, N.W.; Washington, D.C. 20230. Telephone: 202–482–1835; Fax: 202–482–0979; E-mail: nii@ntia.doc.gov.

SUPPLEMENTARY INFORMATION: A demonstration of the North Carolina Information Highway including live, interactive-video segments on current education, health care and economic development applications will take place prior to the Advisory Council meeting and will begin promptly at 8:00 a.m.

Agenda

1. *Opening Remarks by the Co-Chairs (Delano Lewis, Ed McCracken)*
2. *Guiding Principles*
3. *Privacy Principles*
4. *Universal Access Principles*
5. *Brief remarks by Assistant Secretary of Commerce Larry Irving*
6. *Public Discussion, Questions and Answers*
7. *Next Meeting Date and Agenda Items*

Public Participation

The meeting will be open to the public, with limited seating available on a first-come, first-served basis. Any member of the public requiring special services, such as sign language interpretation, should contact Celia Nogales at 202–482–1835.

Any member of the public may submit written comments concerning the Council's affairs at any time before or after the meetings. Comments should be submitted through electronic mail to nii@ntia.doc.gov or to the Designated Federal Officer at the mailing address listed above.

Within thirty (30) days following the meeting, copies of the minutes of the Advisory Council meeting may be obtained through Bulletin Board Services at 202–501–1920, 202–482–1199, over the Internet at iitf.doc.gov, or from the U.S. Department of Commerce, National Telecommunications and Information Administration, Room 4892, 14th Street and Constitution Avenue, N.W.; Washington, D.C. 20230, Telephone 202–482–1835.

Larry Irving,

Assistant Secretary for Communications and Information.

[FR Doc. 95–522 Filed 1–9–95; 8:45 am]

BILLING CODE 3510–60–P

federal register

Tuesday
January 10, 1995

Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 6-Month Extension and Reopening of Comment Period on the Proposed Rule to List the Sacramento Splittail as Threatened; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 6-Month Extension and Reopening of Comment Period on the Proposed Rule to List the Sacramento Splittail as Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 6-month extension and reopening of comment period on proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) extends for not more than 6 months the time to make a decision on its proposal to list the Sacramento splittail (*Pogonichthys macrolepidotus*). On January 6, 1994, the Service published a proposal to list the Sacramento splittail as a threatened species pursuant to the Endangered Species Act, as amended (Act). The Act requires the Service to make a final determination on such a proposal within 12 months, but provides for a 6-month extension if substantial disagreement exists regarding the sufficiency or accuracy of the available data relevant to that determination. The Service finds that there is substantial disagreement regarding sufficiency or accuracy of the available data and, therefore, extends the deadline with respect to the decision to list the species.

DATES: The deadline for final action on the proposal is now July 6, 1995. The public comment period is reopened for 45 days and comments must be received by February 24, 1995.

ADDRESSES: Comments and materials should be submitted to the U.S. Fish and Wildlife Service, Sacramento Field Office, 2800 Cottage Way, E–1803, Sacramento, California 95825–1846.

FOR FURTHER INFORMATION CONTACT: Dr. Lesa Meng at the address listed above (telephone (916) 979–2725 or facsimile (916) 979–2723).

SUPPLEMENTARY INFORMATION:

Background

Sacramento splittail (*Pogonichthys macrolepidotus*), the only extant species in its genus, is a large cyprinid that can exceed 40 centimeters (16 inches) in length (Moyle 1976). Adults are characterized by an elongated body, distinct nuchal hump, and small, blunt head, usually with barbels at the corners of the subterminal mouth. The enlarged dorsal lobe of the caudal fin distinguishes the splittail from other minnows in the Central Valley of California. Splittail are dull, silvery-gold on the sides and olive-gray dorsally. During spawning season, pectoral, pelvic, and caudal fins are tinged with an orange-red color. Males develop small white nuptial tubercles on the head.

Splittail are endemic to California's Central Valley, where they were once widely distributed (Moyle 1976). Historically, splittail were found as far north as Redding on the Sacramento River, as far south as the present-day site of Friant Dam on the San Joaquin River, and as far upstream as the current Oroville Dam site on the Feather River and Folsom Dam site on the American River (Rutter 1908). Recreational anglers in Sacramento reported catches of 50 or more splittail per day prior to damming of these rivers (Caywood 1974). The species was used as part of the Central Valley Native American diet (Caywood 1974).

In recent times, dams and diversions have increasingly prevented upstream access to large rivers, and the species is now apparently restricted to a small portion of its former range (Moyle and Yoshiyama 1992). Splittail enter the lower reaches of the Feather (Jones and Stokes 1993) and American Rivers (Charles Hanson, State Water Contractors, *in litt.*, 1993) on occasion; however, the species now is largely confined to the Delta, Suisun Bay, Suisun Marsh, and Napa Marsh. The "Delta" refers to all tidal waters contained within the legal definition of the San Francisco Bay-Sacramento-San Joaquin River Delta, as delineated by section 12220 of the State of California's Water Code of 1969. Generally, the Delta is contained within a triangular area that extends south from the City of Sacramento to the confluence of the Stanislaus and San Joaquin Rivers at the southeast corner and Chipps Island in Suisun Bay.

In recent years, splittail have been found most often in slow moving sections of rivers and sloughs and dead-end sloughs (Moyle *et al.* 1982, Daniels and Moyle 1983). Reports from the 1950s, however, mention Sacramento River spawning migrations and catches of splittail during fast tides in Suisun Bay (Caywood 1974). California Department of Fish and Game survey data from the last 15 years indicate that the highest catches occurred in shallow areas of Suisun and Grizzly Bays. Because they require flooded vegetation for spawning and rearing, splittail are frequently found in areas subject to flooding. Historically, major flood basins, distributed throughout the Sacramento and San Joaquin Valleys, provided spawning and rearing habitat. These flood basins have all be reclaimed or modified into flood control structures (bypasses). Although primarily a freshwater species, splittail can tolerate salinities as high as 10 to 18 parts per thousand (Moyle 1976, Moyle and Yoshiyama 1992).

Section 4(b)(6) of the Act requires the Service to take one of three alternative actions within 1 year of a listing proposal: (1) Publish a final regulation listing the species, (2) publish a notice that the listing proposal is being withdrawn, or (3) publish a notice that the 1-year time period is being extended under section 4(b)(6)(B)(i). That section as implemented by regulation at 50 CFR 424.17(a)(1)(iv), provides that the Service may extend the 1-year period for not more than 6 months because there is "substantial disagreement among scientists knowledgeable about the species concerned regarding the sufficiency or accuracy of the available data relevant to the determination."

On August 3 and 31, 1994, the State Water Contractors and Central Valley Project Water Association, respectively, wrote the Service requesting a 6-month extension alleging scientific disagreement with the listing proposal. Additionally, in a letter dated September 8, 1994, from the Secretary of the Resources Agency, the State requested more time for the Service to consider information developed for the Biological Assessment for the Central Valley Project/State Water Project operations and for the California Department of Fish and Game to complete a survey of splittail distribution and abundance. The survey was conducted to determine whether a resident splittail population occurred outside the Suisun Bay-Delta region. The State's letter stated that completed study results would be available to the Service in January 1995.

The Service finds that there is substantial disagreement regarding the possibility of a resident splittail population upstream of the Delta. Such a population would significantly expand the range of the splittail reported in the proposed rule. As a result, the Service extends until July 6, 1995, the period within which to make a final listing determination on this species. This extension will enable the Service to receive and analyze the State's final study results scheduled for release in January 1995. In addition, the Service solicits additional data regarding the status of the Sacramento splittail upstream of the Delta until February 24, 1995.

References

Caywood, M.L. 1974. Contributions to the life history of the splittail *Pogonichthys macrolepidotus* (Ayres). M.S. Thesis. California State University, Sacramento.

Daniels, R.A., and P.B. Moyle. 1983. Life history of the splittail (Cyprinidae: *Pogonichthys macrolepidotus*) in the Sacramento-San Joaquin estuary. Fish. Bull. 84:105–117.

Jones and Stokes Assoc., Inc. 1993. Sutter Bypass fisheries technical memorandum II: Potential entrapment of juvenile chinook salmon in the proposed gravel mining pond. May 27, 1993. (JSA 91–272). Sacramento, California. Prepared for Teichert Aggregates, Sacramento, California. 31 pp + Appendix.

Moyle, P.B. 1976. Inland Fishes of California. University of California Press, Berkeley, California. 405 pp.

Moyle, P.B., J.J. Smith, R.A. Daniels, and D.M. Baltz. 1982. Distribution and ecology of stream fishes of the Sacramento-San Joaquin Drainage System, California: A review. Univ. Calif. Publ. Zool. 115:225–256.

Moyle, P.B., and R.M. Yoshiyama. 1992. Fishes, aquatic diversity management areas, and endangered species: A plan to protect California's native aquatic biota. Draft report prepared for California Policy Seminar, Univ. of Calif., Berkeley, California. July 1992. 196 pp.

Rutter, C. 1908. The fishes of the Sacramento-San Joaquin basin, with a study of their distribution and variation. U.S. Bur. Fish. Bull. 27:103–152.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*)

Dated: January 3, 1995.

Mollie H. Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 95–523 Filed 1–9–95; 8:45 am]

BILLING CODE 4310–55–M

Federal Register

Tuesday
January 10, 1995

Part V

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Part 3500

Real Estate Settlement Procedures Act, Section 6 Transfer of Servicing of Mortgage Loans (Regulation X); Correction; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Part 3500

[Docket No. R-95-1538; FR-2942-C-06]

RIN 2502-AG27

Real Estate Settlement Procedures Act, Section 6 Transfer of Servicing of Mortgage Loans (Regulation X); Correction

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner (HUD).

ACTION: Correction to final rule.

SUMMARY: The final rule published on December 19, 1994 (59 FR 65442), contains an error in Appendix MS–1 to Part 3500, the Servicing Disclosure Statement. As published, page 65455 did not include the Acknowledgment of Mortgage Loan Applicant that was referenced in the rule text. Therefore, this correction replaces page 65455 and includes the missing Acknowledgment. In addition, a correction is made to a cross-reference in § 3500.21(e) of the rule.

DATES: This correction will take effect on the effective date of the final rule, June 19, 1995. However, the Department continues to encourage persons covered by the new rule to implement all of its provisions, including this correction to the Acknowledgment in the Servicing Disclosure Statement, earlier than the rule's effective date.

FOR FURTHER INFORMATION CONTACT: David R. Williamson, Director, RESPA Staff, Room 5239, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–4560. The TDD number for hearing-impaired persons is (202) 708–4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: Under the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 et seq.), the Secretary is to publish regulations implementing the requirements in Section 6 (12 U.S.C. 2605) concerning the servicing of mortgage loans. The final rule published on December 19, 1994, contained a wrong cross-reference and an error in the Servicing Disclosure Statement in one of the appendices.

Accordingly, FR Doc. 94–30413, the final rule on Real Estate Settlement Procedures Act, Section 6 Transfer of Servicing of Mortgage Loans (Regulation X); and Real Estate Settlement Procedures Act (Regulation X); Escrow Accounting Procedures: Technical Correction, published December 19, 1994 (59 FR 65442), is corrected as follows:

§ 3500.21 [Corrected]

1. On page 65450, in the third column, in the first sentence of § 3500.21(e)(2)(i), the cross-reference to "paragraph (f)" is corrected to read "paragraph (e)".

Appendix MS–1 to Part 3500 [Corrected]

2. The text on page 65455, in Appendix MS–1 to Part 3500, Servicing Disclosure Statement, is corrected by adding a second paragraph under the Instructions to Preparer, as the instructions begin on page 65454, and by adding the Acknowledgment of Mortgage Loan Applicant, including signature and date lines, to read as follows:

BILLING CODE 4210–27–P

The information in Item 3(B) is for the previous three calendar years. The information does not have to include the previous calendar year if the statement is prepared before March 31 of the next calendar year. If the percentage of servicing transferred is less than 12.5%, the word "nominal" or the actual percentage amount of servicing transfers may be used. If no servicing was transferred, "none" may be placed on the percentage line; if all servicing was transferred, "all" may be placed on the percentage line.]

ACKNOWLEDGMENT OF MORTGAGE LOAN APPLICANT

I/we have read this disclosure form, and understand its contents, as evidenced by my/our signature(s) below. I/we understand that this acknowledgment is a required part of the mortgage loan application.

_____

APPLICANT'S SIGNATURE

_____

CO-APPLICANT'S SIGNATURE

_____

_____

_____

DATE

BILLING CODE 4210-27-C

Dated: January 3, 1995.

Camille E. Acevedo,

Assistant General Counsel for Regulations.

[FR Doc. 95-553 Filed 1-9-95; 8:45 am]

BILLING CODE 4210-27-P

federal register

Tuesday
January 10, 1995

Part VI

Department of Housing and Urban Development

Office of the Assistant Secretary for Public and Indian Housing

Public and Indian Housing Youth Sports Program; Funding Availability; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N–95–3851; FR–3803–N–01]

Public and Indian Housing Youth Sports Program; Funding Availability

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of Funding Availability (NOFA).

SUMMARY: This NOFA announces HUD's FY 1995 funding of $13,925,000 for the Youth Sports Program (YSP) to be used for sports, cultural, educational, recreational, or other activities designed to appeal to youth as alternatives to the drug environment in public or Indian housing developments. In the body of this document is information concerning the purpose of the NOFA, applicant eligibility, available amounts, selection criteria, and application processing, including how to apply and how selections will be made.

DATES: Application is due March 13, 1995, at 3:00 PM local time, at the local HUD field office or, in the case of IHAs, in the local HUD Office of Native American Programs, with jurisdiction over the PHA or IHA.

FOR FURTHER INFORMATION ON THE PUBLIC AND INDIAN HOUSING YOUTH SPORTS PROGRAM, PUBLIC HOUSING CONTACT: Robin Prichard, Crime Prevention and Security Division (CPSD), Office of Community Relations and Involvement (OCRI), Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410, telephone (202) 708–1197. A telecommunications device (TDD) for speech and hearing impaired individuals is available at (202) 708–0850. (These are not toll-free telephone numbers.)

FOR FURTHER INFORMATION ON THE PUBLIC AND INDIAN HOUSING YOUTH SPORTS PROGRAM FOR NATIVE AMERICAN PROGRAMS CONTACT: Tracy Outlaw, Office of Native American Programs, Public and Indian Housing, Department of Housing and Urban Development, Room B–133, 451 Seventh Street, S.W., Washington, D.C. 20410, telephone (202) 708–0088. A telecommunications device (TDD) for speech and hearing impaired individuals is available at (202) 708–0850. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 and have been assigned OMB control number 2577–0140.

I. Purpose and Substantive Description

(a) Authority

(1) This program is authorized by Section 520 of the National Affordable Housing Act (NAHA) (approved November 28, 1990, Pub. L. 101–625), as amended by section 126 of the Housing and Community Development Act of 1992 (HCDA 1992) (Pub. L. 102–550, approved October 28, 1992).

(2) 24 CFR part 135. Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and the regulations at 24 CFR part 135 (see June 30, 1994 Interim Rule, 59 FR 33866) are applicable to funding awards made under this NOFA. One of the purposes of the assistance is to give to the greatest extent feasible, and consistent with existing Federal, State, and local laws and regulations, job training, employment, contracting and other economic opportunities to public housing residents and other low and very-low income persons (section 3 residents) and business concerns which provide economic opportunities to section 3 residents (section 3 business concerns).

(b) Allocation Amounts

Section 126(a) of HCDA (1992) provides that five percent of any amount made available in any fiscal year for the Drug Elimination Program shall be available for Youth Sports Program grants. The Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act 1995, (approved September 28, 1994, Pub. L. 103–327), (95 App. Act) appropriated $290 million for the Drug Elimination Program in FY 1995. After deductions for Technical Assistance ($10 million) and Clearinghouse ($1.5 million), this appropriation results in $13,925,000 as the amount set aside for the Youth Sports Program.

Program funds are to be used for sports, cultural, educational, recreational, or other activities designed to appeal to youth as alternatives to the drug environment in public or Indian housing developments. Because of the limited amount of funding appropriated for this program, and to ensure that the program is implemented on a broad, nationwide basis, each applicant may submit only one application. The maximum annual Youth Sports grant amount per applicant is $125,000. As more fully explained below, applicants must supplement grant funds with an amount of funds from non-Federal sources equal to or greater than 50 percent of the amount provided by the grant.

(c) Eligibility

(1) Eligible Applicants

Funding for this program in FY 1995 is limited to PHAs and IHAs. Although Section 520 of NAHA lists seven categories of entities qualified to receive grants (States; units of general local government; local park and recreation districts and agencies; public housing agencies (PHAs); nonprofit organizations providing youth sports services programs; Indian tribes; and Indian housing authorities (IHAs)), and HCDA 1992 section 126(b) added institutions of higher learning that have never participated in a Youth Sports program as eligible applicants, the 95 App. Act limited the funding for the Drug Elimination Program to PHAs and IHAs only. Since the funding of the Youth Sports Program is dependent on the appropriation for the Drug Elimination Program, the limitations that apply to Drug Elimination affect Youth Sports as well. Therefore, *for FY 1995 only PHAs and IHAs are eligible applicants for Youth Sports Program Funding.*

In designing an activity for funding, PHA and IHA applicants shall consult with RMCs/RCs where they exist, and with other entities that would be eligible for funding under this program, as listed above, with at least two years of experience in designing or operating sports, cultural, recreational, educational or other activities for youth. Eligible local entities that are affiliates of national organizations may rely on the experience of the national organization for this purpose. These consultations will provide applicants with valuable resident input and will involve entities with experience in designing and implementing the eligible types of activities under this program with PHA and IHA applicants that may not have this type of experience. These experienced entities may establish a sub-contracting relationship, in accordance with 24 CFR part 85, with the PHA/IHA if deemed appropriate by the grantee to further their public/private partnership. This consultation process will also provide entities that are not PHAs or IHAs with a greater appreciation and understanding of the

operations and problems of public and Indian housing developments. The end result will be more effective program activities that make more efficient use of program funds. This result is expected because it draws upon and combines the expertise of PHA and IHA applicants with respect to the operations and problems of public and Indian housing developments, and the expertise of other entities with respect to designing and implementing youth activities.

(2) Eligible Activities

Youth Sports Program funds may be used to assist in carrying out sports, cultural, recreational, educational or other activities for youth in any of the following manners:

(i) Acquisition, construction, or rehabilitation of community centers, parks, or playgrounds is an eligible activity under the Youth Sports Program.

(A) Acquisition, construction or rehabilitation costs shall not be approved unless the applicant demonstrates the need for the type of facilities to be assisted by the grant (Section III.(a)(3) of this NOFA).

(B) Facilities that receive Youth Sports funding must be used primarily for youth from the public or Indian housing developments in which the funded facility is operated (Section III.(a)(2)(ii) and III.(a)(10)(iii) of this NOFA).

(C) Facilities (community centers, parks, or playgrounds) acquired, constructed, or rehabilitated under this program must be on or adjacent to the premises of the public housing development identified in the application for assistance under this program. In the case of Indian Housing Authorities, the applicant must specify how youth from IHA developments will have access to the facility, since IHAs often cover large areas (Section III.(a)(9) of this NOFA).

(D) Facilities receiving Youth Sports funding must comply with any applicable local or tribal building requirements for recreational facilities (Section III.(a)(2)(iii) of this NOFA).

(E) Facilities receiving Youth Sports funding must be used for Youth Sports activities commensurate with the extent of the Youth Sports funding. For example, if a facility's operation is funded 60 percent by a Youth Sports grant, then it must be used at least 60 percent for Youth Sports activities.

(F) In accordance with the requirements of 24 CFR 8.21, facilities should be designed and constructed to be readily accessible to and usable by individuals with handicaps. Alterations to existing facilities shall, to the maximum extent feasible, make them readily accessible to and usable by individuals with handicaps.

(G) In accordance with the requirements of 24 CFR 8.20, no qualified applicant with handicaps shall, because a recipient's facilities are inaccessible to or unusable by individuals with handicaps, be denied the benefit of, be excluded from participation in, or otherwise be subjected to discrimination in the program.

(ii) Redesigning or modifying public spaces in public or Indian housing developments to provide increased utilization of the areas by Youth Sports activities is an eligible activity under this program.

(A) The construction of sports facilities on public or Indian housing property to implement Youth Sports activities is permitted under this program. These facilities may include, but not be limited to, baseball diamonds, basketball courts, football fields, tutoring centers, swimming pools, soccer fields, public or Indian housing community centers, and tennis courts.

(iii) Provision of public services, including salaries and expenses for staff of youth sports programs, cultural activities, transportation costs, educational programs relating to drug abuse, and sports and recreation equipment are eligible activities under this program.

(A) Educational programs for youth relating to illegal drug use are permitted under this section. The program must be formally organized and provide the knowledge and skills youth need to make informed decisions on the potential and immediate dangers of drug abuse and involvement with illegal drugs. Grantees may contract with drug education professionals to provide the appropriate training or workshops. These educational programs may be part of organized sports activities or other eligible youth activities.

(B) Activities providing an economic/educational orientation for Youth Sports Program participants are eligible for funding as public services. These activities must provide, for public or Indian housing youth, the opportunities for interaction with, or referral to, higher educational or vocational institutions, and develop the skills of program participants to pursue educational, vocational, and economic goals. These activities may also provide public or Indian housing youth the opportunity to interact with private sector businesses in their community with the purpose of promoting the development of educational, vocational, and economic goals in public or Indian housing youth.

(C) The cost of the initial purchase of sports and recreation equipment to be used by program participants is permitted under this program.

(D) Cultural and recreational activities, such as ethnic heritage classes, and art, dance, drama and music appreciation and instruction programs are eligible Youth Sports Program activities.

(E) Youth leadership skills training for program participants is permitted under this program. These activities must provide opportunities designed to involve public and Indian housing youth in peer leadership roles in the implementation of program activities, for example, as team or activity captains, counselors to younger program participants, assistant coaches, and equipment or supplies managers. Grantees may contract with youth trainers to provide services which may include training in peer pressure reversal, resistance or refusal skills, goal planning, parenting skills, and other relevant topics.

(F) Transportation costs directly related to Youth Sports activities (for example, leasing a vehicle to transport a Youth Sports team to a game) are eligible program expenses.

(G) The purchase of vehicles under this program is prohibited.

(H) Liability insurance costs directly related to Youth Sports activities are eligible program expenses.

(3) Threshold requirements for funding.

Every activity proposed for funding under the Youth Sports Program must satisfy each of the following requirements or it will not be considered for funding:

(i) The activity must be operated as, in conjunction with, or in furtherance of, an organized program or plan designed to eliminate drugs and drug-related problems in the public or Indian housing development or developments for which the activity is proposed. (See, Section III.(a)(7), below, of this NOFA.)

(ii) The activity for which funding is sought must be conducted with respect to public or Indian housing sites that HUD determines have a substantial problem regarding the use or sale of illegal drugs.

(A) The determination required in paragraph (ii) will be made on the basis of information submitted in the applicant's plan as described below in "Checklist of Application Submission Requirements," Section III.(a)(7).

(iii) The activities or facilities funded by Youth Sports grants must serve primarily youth from the public or

Indian housing developments for which the activities or facilities are operated. (See, Section III.(a)(10), below.)

(iv) Applicants must provide a workplan detailing a timeline for the implementation of activities and a budget for the activity or activities for which funding is sought, as required by Sections III.(a)(4) and (5), below.

(v) Applicants must be able to supplement the amount provided by a grant under the Youth Sports Program with an amount of funds from non-Federal sources equal to or greater than 50 percent of the amount provided by the grant. (*See* Section III.(a)(2)(ii), below.) Funds from non-Federal sources are funds the applicant receives for the Youth Sports activities identified in its application from the following:

(A) States;

(B) Units of general local government or agencies of such governments;

(C) Indian tribes;

(D) Private contributions;

(E) Any salary paid to staff to carry out the Youth Sports activities of the applicant, computed as follows:

(1) Only that portion of staff salaries representing time that will be spent on new and additional duties directly involved with Youth Sports activities may qualify as funds from non-Federal sources;

(2) Staff salaries that are paid with Youth Sports funds do not qualify as funds from non-Federal sources for the purpose of this program;

(F) The value of the time and services contributed by volunteers to carry out the program of the grant recipient to be determined as follows:

(1) Except as set out in paragraph (2), below, the value of time and services contributed by volunteers is to be computed on the basis of five dollars per hour;

(2) Where the volunteer is a professional or a person with special training performing a service directly related to the profession or special training, the value of the service is to be computed on the basis of the usual and customary hourly rate paid for the service in the community where the Youth Sports activity is located;

(G) The value of any donated material, equipment, or building, computed on the basis of the fair market value of the donated item(s) at the time of the donation;

(1) The applicant must document the fair market value of donated items by referencing bills of sale, advertised prices, or appraisals, not more than one year old and taken from the community where the item or the Youth Sports activity is located (whichever is more appropriate), of identical or comparable items;

(H) The value of any lease on a building, or part of a building, computed on the basis of the fair market value of a lease for similar property similarly situated.

(1) The applicant must document the fair market value of a lease by referencing an existing, or no more than one year old, lease from the building involved; or evidence, such as advertisements or appraisals, of the value of leases for comparable buildings.

(vi) Grant funds provided under this program and any State, tribal, or local funds used to supplement grant funds under this program may not be used to replace other public funds previously used, or designated for use, for the purpose of this program. (See, Section III.(a)(2)(vi).

(d) Selection Criteria

Each application for a grant award that is submitted in a timely manner to the local HUD field office or, in the case of IHAs, to the appropriate HUD Office of Native American Programs, and that otherwise meets the requirements of this NOFA, will be evaluated. *An application must receive a minimum score of 65 points out of the maximum of 100 points that may be awarded under this competition to be eligible for funding.* Grants will be awarded to the three highest-ranked, eligible PHA applications within each of the following 10 groupings of Area and State Offices:

New England
New York, New Jersey
Mid-Atlantic
Southeast
Midwest
Great Plains
Rocky Mountain
Southwest
Northwest/Alaska
Pacific/Hawaii

In addition, grants will be awarded to the three highest-ranked, eligible IHA applications on a nation-wide basis, subject to the following condition: of the total grants awarded to IHAs, the Director of ONAP retains the authority to insure that each Field Office of Native American programs receives a minimum of one eligible grant. This means that before an award is made to an IHA from the jurisdiction of a Field ONAP in which an IHA has already received an award, that award may be made to the next highest scoring IHA from the jurisdiction of a Field ONAP in which no IHA has yet received an award.

All of the remaining eligible applications, both PHAs and IHAs, will then be placed in overall nation-wide ranking order, with the remaining funds granted in order of rank, except as discussed above for IHAs, until all funds are awarded. The following criteria will be used to evaluate eligible applications:

(1) The extent to which the Youth Sports activities to be assisted with the grant address the particular needs of the area to be served by the activities and the applicant employs methods, approaches, or ideas in the design or implementation of the activities particularly suited to fulfilling the needs (whether such methods are conventional or unique and innovative). (Maximum points: 20). In assessing this criterion, HUD will consider the following factors:

(i) The appropriateness of the applicant's methods, approaches, or ideas in addressing the particular needs of the area to be served by the program, as reflected in the description of the services to be provided by the applicant's proposed Youth Sports Program (Section III.(a)(3) of this NOFA). (9 points)

(ii) The resources committed to each activity and service (Section III.(a)(5) of this NOFA) proposed for funding in the application. (4 points)

(iii) An estimate of the number of youth from public or Indian Housing developments that will be involved in the applicant's proposed activities, in accordance with Section III.(a)(8) of this NOFA. (4 points)

(iv) The applicant's explanation of the procedures that will be followed to ensure that the Youth Sports activities will serve primarily youth from the public or Indian housing development in which the program to be assisted by a grant is operated, as required by Section III.(a)(10)(iii). (3 points)

(2) The technical merit of the application of the qualified applicant. (Maximum points: 8). In assessing this criterion HUD will consider the following factor:

(i) The quality and thoroughness of the statement required in the application (Section III.(a)(6) of this NOFA) regarding the extent to which the applicant's proposed Youth Sports activities meet the selection criteria for this program. (8 points)

(3) The qualifications, capabilities, and experience of the personnel and staff of the sports program who are critical to achieving the objectives of the program as described in the application. (Maximum points: 10). In assessing this criterion HUD will consider the following factors:

(i) The position descriptions, or if the identity of persons who will fill

positions is known, the resumes, of staff critical to achieving the objectives of the applicant's program, required under Section III.(a)(10)(ii) of this NOFA. (6 points)

(ii) The nature of the duties volunteers will perform, required under Section III.(a)(10)(ii) of this NOFA. (4 points)

(4) The capabilities, related experience, facilities, and techniques of the applicant for carrying out its youth sports program and achieving the objectives of its program as described in the application, and the potential of the applicant for continuing the youth sports program. (Maximum points: 25) In assessing this criterion HUD will consider the following factors:

(i) The related experience of the applicant, as evidenced by its staff, and of the entity consulted by the applicant in preparing its application, in conducting the type of activities, in public or Indian housing, for which funding is requested (Section III.(a)(10)(i) and (ii) of this NOFA). (9 points)

(ii) The appropriateness, in terms of need, size, location, and suitability, of the facilities to be used for youth activities (Section III.(a)(9) of this NOFA). (3 points)

(iii) The applicant's workplan and implementation schedule for the Youth Sports activities for which funding is sought (Section III.(a)(4) of this NOFA). (9 points)

(iv) The extent of the resources committed to continue the operation of Youth Sports activities and facilities beyond the grant term included in the applicant's description of plans to continue the Youth Sports activities in the future, as required in Section III.(a)(12) of this NOFA. (4 points)

(5) The extent to which an applicant has demonstrated that it will meet its obligations under section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), and HUD's implementing regulations at 24 CFR part 135. (Maximum points: 3) In assessing this criterion, HUD will consider the following factor:

(i) The applicant's plan for training and employing section 3 residents and contracting with section 3 business concerns for economic opportunities generated in connection with the assisted project or activity. (3 points)

(6) The severity of the drug problem at the local public or Indian housing site for the youth sports program and the extent of any planned or actual efforts to rid the site of the problem. (Maximum points: 8) In assessing this criterion HUD will consider the following factors:

(i) The extent of the drug-related problems at the housing developments to be assisted, as established in the applicant's plan required by Section III.(a)(7) of this NOFA. (4 points)

(ii) The extent of any planned or actual efforts to rid the housing developments to be assisted of their drug-related problem, as described in the applicant's plan required by Section III.(a)(7) of this NOFA. (4 points)

(7) The extent to which local sports organizations or sports figures are involved. (Maximum points: 4 points) In assessing this criterion, HUD will consider the following factor:

(i) The documentation provided in the application of the level of on-site or other participation by local sports, cultural, recreational, educational, or other community organizations or figures that is focused on the specific youth activities for which the application is prepared (Section III.(a)(11) of this NOFA). (4 points)

(8) The extent of the coordination of proposed activities with local resident management groups or resident associations (where such groups exist) and coordination of proposed activities with ongoing programs of the applicant that further the purposes of the Youth Sports program. (Maximum points: 14) In assessing this criterion, HUD will consider the following factors:

(i) The applicant's description of its consultations with resident management groups or resident associations, where they exist, and residents, as required by Section III.(a)(7) of this NOFA. (9 points)

(ii) The extent to which the applicant demonstrates the relationship of the Youth Sports activities with other existing anti-drug activities, if any, in the housing developments to be assisted as reflected in the applicant's plan required by Section III.(a)(7) of this NOFA. (5 points)

(9) The extent of non-Federal contributions that exceed the fifty percent amount of such funds required. (Maximum points: 4) In assessing this criterion, HUD will consider the following factor:

(i) The applicant's budget describing the share of the costs of the applicant's Youth Sports Program provided by a grant under this program and the share of the costs provided from funds from non-federal sources and other resources, such as the number of volunteers and volunteer hours committed, submitted in accordance with Section III.(a)(5) of this NOFA. (4 points)

(10) The extent to which the applicant demonstrates local government or tribal support for the program. (Maximum points: 4) In assessing this criterion, HUD will consider the following factor:

(i) The applicant's description of local or tribal government support as evidenced by contributions from these entities listed under Section III.(a)(5) of this NOFA. (4 points)

(e) Environmental Review

Before making an award of grant funds under this part, HUD will perform an environmental review to the extent required under the provisions of NEPA, applicable related authorities at 24 CFR 50.4, and HUD's implementing regulations at 24 CFR part 50.

II. Application Process

(a) An application package may be obtained from the local HUD field office or by calling HUD's Drug Information and Strategy Clearinghouse at 1–800–578–3472. The application package contains information on all exhibits and certifications required under this NOFA.

(b) The deadline for the submission of grant applications under this NOFA is March 13, 1995. In order to be eligible, the original and two copies of the application must be physically received by 3:00 PM, local time, on the deadline date at the local HUD field office or, in the case of IHAs, in the local field Office of Native American Programs (FONAP), with jurisdiction over the PHA or IHA, Attention: Public Housing Division Director, or Office of Native American Programs Administrator. A list of these offices is included as Appendix A to this NOFA. This application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, the Department will treat as *ineligible for consideration* any application that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by any unanticipated or delivery-related problems. A *FAX* is not acceptable.

III. Checklist of Application Submission Requirements

(a) Each application for a grant under this program must include the following:

(1) Standard Grant Application Forms SF–424 and SF–424A with narrative showing breakdown by program and cost, to include all equipment.

(2) The following certifications, executed by the CEO of the applicant:

(i) A certification that the applicant will supplement the amount provided by a grant under this program with an amount of funds from non-federal sources equal to or greater than 50

percent of the amount provided by the grant;

(ii) A certification that the activities or facilities funded by the Youth Sports grant will serve primarily youth from the public or Indian housing developments in which the activities or facilities are operated;

(iii) A certification that facilities receiving Youth Sports funding comply with any applicable local or tribal building requirements for recreational facilities;

(iv) A certification that the applicant will maintain a drug-free workplace in accordance with the requirements of the Drug-Free Workplace Act of 1988, 24 CFR part 24, subpart F (Applicants may submit a copy of their most recent drug-free workplace certification, which must be dated within the past year.);

(v) A certification and disclosure in accordance with the requirements of Section 319 of the Department of the Interior Appropriations Act (Pub. L. 101–121, approved October 23, 1989), as implemented in 24 CFR part 87 (This statute generally prohibits recipients and subrecipients of Federal contracts, grants, cooperative agreements and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific, contract, grant, or loan.);

(vi) A certification that grant funds provided under this program and any State, tribal, or local funds used to supplement grant funds under this program will not be used to replace other public funds previously used, or designated for use, for the purpose of this program.

(vii) A certification that the applicant has assessed its potential liability arising out of Youth Sports activities, has considered any limitations on liability under State, local or tribal law, and that, upon being notified of a Youth Sports grant award, the applicant will obtain adequate insurance coverage to protect itself against any potential liability arising out of the eligible activities under this program.

(viii) *Civil Rights.* A certification from the applicant that:

(A) It will comply with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000(d)) and with HUD regulations at 24 CFR part 1, which state that no person in the United States shall, on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives financial assistance; and will immediately take any measures necessary to effectuate this agreement. With reference to the real property and structures which are provided or improved with the aid of federal financial assistance extended to the applicant, this assurance shall obligate the applicant, or in the case of any transfer, the transferee, for the period during which the real property and structures are used for a purpose for which the federal financial assistance is extended or for another purpose involving the provision of similar services or benefits;

(B) It will comply with the Fair Housing Act (42 U.S.C. 3601–3620) and with implementing regulations at 24 CFR part 100, which prohibit discrimination in housing on the basis of race, color, religion, sex, handicap, familial status or national origin, and will administer its programs and activities relating to housing in a manner affirmatively to further fair housing;

(C) It will comply with Executive order 11063 on *Equal Opportunity in Housing* and with implementing regulations at 24 CFR part 107, which prohibit discrimination because of race, color, creed, sex or national origin in housing and related facilities provided with federal financial assistance;

(D) It will comply with Executive order 11246 and its implementing regulations at 42 CFR chapter 60–1, which state that no person shall be discriminated against on the basis of race, color, religion, sex or national origin in any phase of employment during the performance of federal contracts, and that affected persons shall take affirmative action to ensure equal employment opportunity. The applicant will incorporate, or cause to be incorporated, into any contract for construction work as defined in 24 CFR 130.5, the equal opportunity clause required by § 130.15(b);

(E) It will comply with the requirements of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), and with the regulations at 24 CFR part 135. For IHAs this certification will be made to the maximum extent consistent with, but not in derogation of, compliance with section 7(b) of the Indian Self-determination and Education Assistance Act (25 U.S.C. 450e(b)).

(F) It will comply with section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and with implementing regulations at 24 CFR part 8, which prohibit discrimination based on handicap in federally assisted and conducted programs and activities;

(G) It will comply with the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) and implementing regulations at 24 CFR part 146, which prohibit discrimination against persons because of age in projects and activities receiving federal financial assistance;

(H) It will comply with Executive orders 11625, 12432, and 12138, which state that program participants shall take affirmative action to encourage participation by businesses owned and operated by members of minority groups and by women;

(I) It will comply with Title II of the Americans with Disabilities Act (42 U.S.C. 12131) and with implementing regulations at 28 CFR part 35, which prohibit discrimination on the basis of disability by public entities.

(3) A description of the nature of the services to be provided by the applicant's proposed Youth Sports Program, including an explanation of the way in which the activities or facilities proposed for funding address the particular needs of the area to be served by the program.

(4) A workplan with an 18 months maximum task timeline providing an implementation schedule for the Youth Sports activities.

(5) A budget describing the financial and other resources committed to each activity and service of the program. The budget must identify the share of the costs of the applicant's Youth Sports activities provided by a grant under this program and provide a narrative describing how the share of the costs provided from other sources of funds (e.g. local or tribal government, corporations, individuals), including funds from non-Federal sources, will be obtained.

(6) A statement regarding the extent to which the applicant's proposed Youth Sports activities meet the selection criteria in Section I. (d), above.

(7) A plan designed to eliminate drugs and drug-related problems on the premises of the housing developments proposed for funding. Applicants are given a choice to satisfy this requirement in one of two ways. First, an applicant may submit a current-year plan prepared for the housing developments in accordance with 24 CFR 961.15 as a part of a Drug Elimination Program grant. In this case, the applicant must indicate how its proposed Youth Sports activities will be operated as, in conjunction with, or in furtherance of the 961.15 plan. The other choice is that an applicant may submit an abbreviated plan prepared for this NOFA as follows:

(i) The plan must describe the drug-related problems in the developments that are proposed for funding under this program, using:

(A) Objective data, if available, from the local police precinct or the PHA's or IHA's records on the types, number and sources of drug-related crime in the developments proposed for assistance. If crime statistics are not available at the development or precinct level, the applicant may use other reliable, objective data including those derived from the records of Resident Management Corporations (RMCs), Resident Organizations (ROs), Resident Corporations (RCs), or other resident associations. The data should cover the past one-year period and, to the extent feasible, should indicate whether these data reflect a percentage increase or decrease in drug-related crime over the past several years.

(B) Information from other sources which has a direct bearing on drug-related problems in the developments proposed for assistance. Examples of these data are: resident/staff surveys on drug-related issues or on-site reviews to determine drug activity; vandalism costs and related vacancies attributable to drug-related crime; information from schools, health service providers, residents and police.

(ii) The plan must include a narrative discussion of the applicant's current activities, if any, to eliminate drug-related problems in the targeted developments. Any efforts being undertaken by community and governmental entities, residents of the development, Resident Management Corporations (RMCs), Resident Organizations (ROs), Resident Corporations (RCs), other resident associations, or any other entities to address the drug-related problems in the developments proposed for assistance must be described. The applicant must also indicate how its proposed Youth Sports activities will be operated as, in conjunction with, or in furtherance of the other activities described in the plan.

(8) An estimate of the number of youth involved.

(i) The applicant must provide the total estimated number of youth involved for each proposed activity and participating in youth leadership assignments (for example, team managers, assistant managers, team captains) computed on an annual and, if applicable, a session or seasonal basis (for example, classes or league sports may be organized in sessions or seasons that run for a certain number of weeks or months, or more activities may take place and more youth may be involved on weekends than on weekdays).

(ii) The total estimated number given for each activity must be further broken down by categories of age (e.g., 5–8 years old, 9–12 years old, etc.), sex (male, female, co-ed), and residency in public or Indian housing.

(9) A description of the facilities used.

(i) Facilities to be used for Youth Sports activities must be described in the application with regard to their dimensions, location, accessibility to the disabled, and the number of youth that can be accommodated at one time.

(A) In the case of an Indian housing development, if a facility to be acquired, constructed, or rehabilitated is not located on or adjacent to the premises of the development to be assisted, the application must specify how youth from the Indian housing development will have access to the facility (e.g., transportation will be provided, transportation service is readily available).

(ii) Where applicable, the application must provide a detailed explanation of all facility acquisition, construction, rehabilitation, operation, redesign or modification proposed for funding under this program.

(A) The application must specify what percent of the facility will be used for youth activities (as opposed to, for example, senior citizen or adult activities). This percentage may not be less than the percentage of Youth Sports funding provided for the facility.

(iii) The application must identify the entity that will be responsible for the operation of any facility funded by a Youth Sports grant.

(10) A description of the organization of the applicant's proposed Youth Sports program, which must detail:

(i) The consultations entered into by the applicant with RMCs/RCs, where they exist, and other entities experienced in the design and implementation of the type of proposed youth sports activities;

(ii) The position descriptions, or if the identity of persons who will fill positions is known, the resumes, of the staff that will be responsible for managing and operating the Youth Sports activities must be included in the application; if volunteers are involved, their number, job descriptions, and hours per week of involvement must be included;

(iii) The procedures that will be followed to ensure that the Youth Sports activities or facilities will serve primarily youth from the public or Indian housing development in which the program to be assisted by a grant is operated must be explained in the application.

(11) A description of the extent of involvement of local sports organizations or sports figures.

(i) The applicant must provide documentation of the level of on-site or other participation by local and nationally affiliated sports organizations, except as provided in Section (ii) below, with at least two years of organizational and operational experience. These may include, but are not limited to, strictly sports organizations, such as, Little Leagues, Midnight Basketball, or professional teams. Participation by cultural, recreational, or educational organizations is also permissible. The participation of these groups must be focused on the youth activities for which the application is prepared.

(ii) The applicant may demonstrate the involvement of local or national sports, cultural, recreational or educational figures, such as athletes, coaches, artists, entertainers and teachers in place of, or in addition to, the participation of organizations. The participation of these figures must be focused on the youth activities for which the application is prepared.

(12) A description of plans and resources to continue the Youth Sports activities beyond the grant term under this program, including the commitment of entities (e.g., local and tribal governments, corporations, community organizations) and individuals to continue their involvement in the applicant's Youth Sports activities and facilities.

(13) HUD Form 2880.

IV. Corrections to Deficient Applications

(a) HUD will notify an applicant, in writing, of any curable technical deficiencies in the application. The applicant must submit corrections in accordance with the information specified in HUD's letter within 14 calendar days from the date of receipt of HUD's letter notifying the applicant of any such deficiency.

(b) Curable technical deficiencies relate to items that:

(1) Are not necessary for HUD review under selection criteria/ranking factors; and

(2) Will not improve the substantive quality of the proposal. An example of a technical deficiency would be the failure of an applicant to submit a certification with its proposal.

V. Other Matters

(a) Environmental Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50 that implement section

102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The FONSI is available for public inspection and copying from 7:30 to 5:30 weekdays in the Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, DC 20401. HUD will review all applications and their proposed activities in accordance with the environmental requirements of 24 CFR part 50.

(b) Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the provisions of this NOFA do not have "federalism implications" within the meaning of the Order. The NOFA implements a program that provides positive sports, cultural, recreational, educational or other activities designed to appeal to youth as alternatives to the drug environment in public and Indian housing, and makes available grants to PHAs and IHAs to help them implement these activities. As such, the program helps PHAs and IHAs to combat serious drug-related crime problems in their developments, thereby strengthening their role as instrumentalities of the States. Further review under the Order is also unnecessary since the NOFA generally tracks the statute and involves little implementing discretion.

(c) Family Impact

The General Counsel, as the Designated Official for Executive Order 12606, *the Family*, has determined that the provisions of this NOFA have the potential for significant positive impact on family formation, maintenance and general well-being within the meaning of the Order. The NOFA implements a program that provides positive sports, cultural, recreational, educational or other activities designed to appeal to youth as alternatives to the drug environment in public and Indian housing, and makes available grants to PHAs and IHAs to help them implement these activities. As such, the program is intended to improve the quality of life of public and Indian housing development residents by reducing the incidence of drug-related crime and should have a strong positive effect on family formation, maintenance and general well-being for PHAs and IHAs selected for funding. Further review under the Order is also not necessary since the NOFA essentially tracks the authorizing legislation and involves little exercise of HUD discretion.

(d) Section 102 HUD Reform Act

Documentation and public access requirements. HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its quarterly **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these documentation and public access requirements.)

Disclosures

HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period of less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15, subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

(e) Section 103 HUD Reform Act

HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 was published May 13, 1991 (56 FR 22088) and became effective on June 12, 1991. That regulation, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants. HUD employees involved in the review of applications and in the making of funding decisions are limited by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815. (This is not a toll-free number.) The Office of Ethics can provide information of a general nature to HUD employees, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact his or her Regional or Field Office Counsel, or Headquarters counsel for the program to which the question pertains.

(f) Section 112 HUD Reform Act

Section 13 of the Department of Housing and Urban Development Act contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department *and* those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance. Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 22912).

Any questions regarding the rule should be directed to Director, Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410. Telephone: (202) 708–3815; TDD: (202) 708–1112. (These are not toll-free numbers.) Forms necessary for compliance with the rule may be obtained from the local HUD office.

Authority: Sec. 520, National Affordable Housing Act (approved November 28, 1990, Pub. L. 101–625); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: December 27, 1994.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

Appendix A: Listing of Addresses for HUD Field Offices Accepting Applications for the FY 1995 Public Housing Youth Sports Program

HUD—New England Area—Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont

Boston, Massachusetts HUD Field Office

Public Housing Division, Thomas P. O'Neill, Jr. Federal Building, 10 Causeway Street, Room 375, Boston, MA 02222–1092, (617) 565–5234, TDD Number: (617) 565–5453, Office hours: 8:30am–5:00pm local time

Hartford, Connecticut HUD Field Office

Public Housing Division, 330 Main Street, Hartford, Connecticut 06106–1860, (203) 240–4522, TDD Number: (203) 240–4665, Office hours: 8:00am–4:30pm local time

Manchester, New Hampshire HUD Field Office

Public Housing Division, Norris Cotton Federal Building, 275 Chestnut Street, Manchester, New Hampshire 03101–2487, (603) 666–7681, TDD Number: (603) 666–7518, Office hours: 8:00am–4:30pm local time

Providence, Rhode Island HUD Field Office

Public Housing Division, 10 Weybosset Street, Sixth Floor, Providence, Rhode Island 02903–2808, (401) 528–5351, TDD Number: (401) 528–5364, Office hours: 8:00am–4:30pm local time

HUD—New York, New Jersey Area—New York, New Jersey

New York HUD Field Office,

Public Housing Division, 26 Federal Plaza, New York, New York 10278–0068, (212) 264–6500, TDD Number: (212) 264–0927, Office hours: 8:30am–5:00pm local time

Buffalo, New York HUD Field Office

Public Housing Division, Lafayette Court, 5th Floor, 465 Main Street, Buffalo, New York 14203–1780, (716) 846–5755, TDD Number: Number not available, Office hours: 8:00am–4:30pm local time

Newark, New Jersey HUD Field Office

Public Housing Division, One Newark Center—12th Floor, Newark, New Jersey 07102–5260, (201) 622–7900, TDD Number: (201) 645–6649, Office hours: 8:30am–5:00pm local time

HUD—Midatlantic Area—Pennsylvania, Washington D.C., Maryland, Delaware, Virginia, West Virginia

Philadelphia, Pennsylvania HUD Field Office

Public Housing Division, Liberty Square Building, 105 South 7th Street, Philadelphia, Pennsylvania 19106–3392, (215) 597–2560, TDD Number: (215) 597–5564, Office hours: 8:00am–4:30pm local time

Washington, D.C. HUD Field Office

Public Housing Division, 820 First Street N.E., Washington, D.C. 20002–4502, (202) 275–9200, TDD Number: (202) 275–0967, Office hours: 8:00am–4:30pm local time

Baltimore, Maryland HUD Field Office,

Public Housing Division, 10 South Howard Street, 5th Floor, Baltimore, Maryland 21201–2505, (401) 962–2520, TDD Number: (410) 962–0106, Office hours: 8:00am–4:30pm local time

Pittsburgh, Pennsylvania HUD Field Office

Public Housing Division, Old Post Office Courthouse Building, 700 Grant Street, Pittsburgh, Pennsylvania 15219–1939, (412) 644–6428, TDD Number: (412) 644–5747, Office hours: 8:00am–4:30pm local time

Richmond, Virginia HUD Field Office

Public Housing Division, The 3600 Centre, 3600 West Broad Street, P.O. Box 90331, Richmond, Virginia 23230—0331, (804) 278–4507, TDD Number: (804) 278–4501, Office hours: 8:00am–4:30pm local time

Charleston, West Virginia HUD Field Office

Public Housing Division, 405 Capitol Street, Suite 708, Charleston, West Virginia 25301–1795, (304) 347–7000, TDD Number: (304) 347–5332, Office hours: 8:00am–4:30pm local time

HUD—Southeast Area—Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, Caribbean, Virgin Islands

Atlanta, Georgia HUD Field Office

Public Housing Division, Richard B. Russell Federal Building, 75 Spring Street, S.W., Atlanta, Georgia 30303–3388, (404) 331–5136, TDD Number: (404) 730–2654, Office hours: 8:00am–4:30pm local time

Birmingham, Alabama HUD Field Office

Public Housing Division, 600 Beacon Parkway West, Suite 300, Birmingham, Alabama 35209–3144, (205) 290–7601, TDD Number: (205) 290–7624, Office hours: 7:45am–4:30pm local time

Louisville, Kentucky HUD Field Office

Public Housing Division, 601 West Broadway, P.O. Box 1044, Louisville, Kentucky 40201–1044, (502) 582–6161, TDD Number: (502) 582–5139

Jackson, Mississippi HUD Field Office

Public Housing Division, Doctor A.H. McCoy Federal Building, 100 West Capitol Street, Room 910, Jackson, Mississippi 39269–1096, (601) 975–4746, TDD Number: (601) 975–4717, Office hours: 8:00am–4:45pm local time

Greensboro, North Carolina HUD Field Office

Public Housing Division, 2306 West Meadowview Road, Greensboro, North Carolina 27407, (919) 547–4000, TDD Number: 919–547–4055, Office hours: 8:00am–4:45pm local time

Caribbean HUD Field Office

Public Housing Division, New San Office Building, 159 Carlos East Chardon Avenue, San Juan, Puerto Rico 00918–1804, (809) 766–6121, TDD Number: Number not available, Office hours: 8:00am–4:30pm local time

Columbia, South Carolina HUD Field Office

Public Housing Division, Strom Thurmond Federal Building, 1835 Assembly Street, Columbia, South Carolina 29201–2480, (803) 765–5592, TDD Number: Number not available, Office hours: 8:00am–4:45pm local time

Knoxville, Tennessee HUD Field Office

Public Housing Division, John J. Duncan Federal Building, 710 Locust Street, S.W., Room 333, Knoxville, Tennessee 37902–2526, (615) 545–4384, TDD Number: (615) 545–4379, Office hours: 7:30am–4:15pm local time

Nashville, Tennessee HUD Field Office

Public Housing Division, 251 Cumberland Bend Drive, Suite 200, Nashville, Tennessee 37228–1803, (615) 736–5213, TDD Number: (615) 736–2886, Office hours: 7:45am–4:15pm local time

Jacksonville, Florida HUD Field Office

Public Housing Division, Southern Bell Towers, 301 West Bay Street, Suite 2200, Jacksonville, Florida 32202–5121, (904) 232–2626, TDD Number: (904) 232–2357, Office hours: 7:45am–4:30pm local time

HUD—Midwest Area Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin

Chicago, Illinois HUD Field Office

Public Housing Division, Ralph H. Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604, (312) 353–5680, TDD Number: (312) 353–7143, Office hours: 8:15am–4:45pm local time

Detroit, Michigan HUD Field Office

Public Housing Division, Patrick V. McNamara Federal Building, 477 Michigan Avenue, Room 1645, Detroit, Michigan 48226–2592, (313) 226–6880, TDD Number: (313) 226–7812, Office hours: 8:00am–4:30pm local time

Indianapolis, Indiana HUD Field Office

Public Housing Division, 151 North Delaware Street, Suite 1200, Indianapolis, Indiana 46204–2526, (317) 226–6303, TDD Number: (317) 226–7081, Office hours: 8:00am–4:45pm local time

Grand Rapids, Michigan HUD Field Office

Public Housing Division, 2922 Fuller Avenue, N.E., Grand Rapids, Michigan 49505–3499, (616) 456–2127, TDD Number: Number not available, Office hours: 8:00am–4:45pm local time

Minneapolis—St. Paul, Minnesota HUD Field Office

Public Housing Division, Bridge Place Building, 220 2nd Street South, Minneapolis, Minnesota 55401–2195, (612) 370–3000, TDD Number: (612) 370–3186, Office hours: 8:00am–4:30pm local time

Cincinnati, Ohio HUD Field Office

Public Housing Division, 525 Vine Street, Suite 700, Cincinnati, Ohio 45202–3188, (513) 684–2884, TDD Number: (513) 684–6180, Office hours: 8:00am–4:45pm local time

Cleveland, Ohio HUD Field Office

Public Housing Division, Renaissance Building, 1375 Euclid Avenue, Fifth Floor Cleveland, Ohio 44115–1815, (216) 522–4065, TDD Number: Number not available, Office hours: 8:00am–4:40pm local time

Columbus, Ohio HUD Field Office

Public Housing Division, 200 North High Street, Columbus, Ohio 43215–2499, (614) 469–5737, TDD Number: Number not available, Office hours: 8:30am–4:45pm local time

Milwaukee, Wisconsin HUD Field Office

Public Housing Division, Henry S. Reuss Federal Plaza, 310 West Wisconsin Avenue, Suite 1380, Milwaukee, Wisconsin 53203–2289, (414) 291–3214, TDD Number: Number not available, Office hours: 8:00am–4:30pm local time

HUD—Southwest Area—Arkansas, Louisiana, New Mexico, Oklahoma, Texas

Fort Worth, Texas HUD Field Office

Public Housing Division, 1600 Throckmorton Street, Room 304, P.O. Box 2905, Fort Worth, Texas 76113–2905, (817) 885–5934, TDD Number: (817) 885–5447, Office hours: 8:00am–4:30pm local time

Houston, Texas HUD Field Office

Public Housing Division, Norfolk Tower, 2211 Norfolk, Suite 300, Houston, Texas 77098–4096, (713) 834–3235, TDD Number: Number not available, Office hours: 7:45am–4:30pm local time

San Antonio, Texas HUD Field Office

Public Housing Division, Washington Square, 800 Dolorosa Street, Room 206, San Antonio, Texas 78207–4563, (512) 229–6783, TDD Number: (512) 229–6783, Office hours: 8:00am–4:30pm local time

Little Rock, Arkansas HUD Field Office

Public Housing Division, TCBY Tower, 425 West Capitol Avenue, Room 900, Little Rock, Arkansas 72201–3488, (501) 324–5935, TDD Number: (501) 324–5931, Office hours: 8:00am–4:30pm local time

New Orleans, Louisiana HUD Field Office

Public Housing Division, Fisk Federal Building, 1661 Canal Street, Suite 3100, New Orleans, Louisiana 70112–2887, (504) 589–7251, TDD Number: Number not available, Office hours: 8:00am–4:30pm local time

Oklahoma City, Oklahoma HUD Field Office

Public Housing Division, Alfred P Murrah Federal Building, 200 N.W. 5th Street, Room 803, Oklahoma City, Oklahoma 73102–3202, (405) 231–4857, TDD Number: (405) 231–4891, Office hours: 8:00am–4:30pm local time

Albuquerque, New Mexico HUD Field Office

Public Housing Division, 625 Truman Street N.E., Albuquerque, NM 87110–6472, (505) 262–6463, TDD Number: (505) 262–6463, Office hours: 7:45am–4:30pm local time

Great Plains—Iowa, Kansas, Missouri, Nebraska

Kansas City, Kansas HUD Field Office

Public Housing Division, Gateway Tower II, 400 State Avenue, Room 400, Kansas City, Kansas 66101–2406, (913) 551–5488, TDD Number: (913) 551–5815, Office hours: 8:00am–4:30pm local time

Omaha, Nebraska HUD Field Office

Public Housing Division, 10909 Mill Valley Road, Omaha, Nebraska 68154–3955, (402) 492–3100, TDD Number: (402) 492–3183, Office hours: 8:00am–4:30pm local time

St. Louis, Missouri HUD Field Office

Public Housing Division, 1222 Spruce Street, St. Louis, Missouri 63103–2836, (314) 539–6583, TDD Number: (314) 539–6331, Office hours: 8:00am–4:30pm local time

Des Moines, Iowa HUD Field Office

Public Housing Division, Federal Building, 210 Walnut Street, Room 239, Des Moines, Iowa 50309–2155, (515) 284–4512, TDD Number: (515) 284–4728, Office hours: 8:00am–4:30pm local time

HUD—Rocky Mountains Area—Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming

Denver, Colorado HUD Field Office

Public Housing Division, First Interstate Tower North, 633 17th Street, Denver, CO 80202–3607, (303) 672–5248, TDD Number: (303) 672–5248, Office hours: 8:00am–4:30pm local time

HUD—Pacific/Hawaii Area—Arizona, California, Hawaii, Nevada, Guam, American Samoa

San Francisco, California HUD Field Office

Public Housing Division, Philip Burton Federal Building and U.S. Courthouse, 450 Golden Gate Avenue, P.O. Box 36003, San Francisco, California 94102–3448, (415) 556–4752, TDD Number: (415) 556–8357, Office hours: 8:15am–4:45pm local time

Honolulu, Hawaii HUD Field Office

Public Housing Division, 7 Waterfront Plaza, 500 Ala Moana Boulevard, Room 500, Honolulu, Hawaii 96813–4918, (808) 541–1323, TDD Number: (808) 541–1356, Office hours: 8:00am–4:00pm local time

Los Angeles, California HUD Field Office

Public Housing Division, 1615 West Olympic Boulevard, Los Angeles, California 90015–3801, (213) 251–7122, TDD Number: (213) 251–7038, Office hours: 8:00am–4:30pm local time

Sacramento, California HUD Field Office

Public Housing Division, 777 12th Avenue, Suite 200, P.O. Box 1978, Sacramento, California 95814–1997, (916) 498–5270, TDD Number: (916) 498–5220, Office hours: 8:00am–4:30pm local time

Phoenix, Arizona HUD Field Office

Public Housing Division, Two Arizona Center, 400 North 5th Street, Suite 1600, Phoenix, Arizona 85004–2361, (602) 261–4434, TDD Number: (602) 379–4461, Office hours: 8:00am–4:30pm local time

HUD—Northwest/Alaska Area—Alaska, Idaho, Oregon, Washington

Seattle, Washington HUD Field Office

Public Housing Division, Seattle Federal Office Building, 909 First Avenue, Suite 200, Seattle, WA 98104–1000, (206) 220–5292, TDD Number: (206) 220–5185, Office hours: 8:00am–4:30pm local time

Portland, Oregon HUD Field Office

Public Housing Division, 520 S.W. 6th Avenue, Portland, Oregon 97203–1596, (503) 326–2561, TDD Number: (503) 326–3656, Office hours: 8:00am–4:30pm local time

Anchorage, Alaska HUD Field Office

Public Housing Division, University Plaza Building, 949 East 36th Avenue, Suite 401, Anchorage, Alaska 99508–4399, (907) 271–4170, TDD Number: (907) 271–4328

HUD Offices of Native American Programs

Eastern/Woodlands Area—Tribes and IHAs: East of the Mississippi River, Including All of Minnesota and Iowa

Eastern/Woodlands HUD Field Office of Native American Programs

Eastern/Woodlands Office of Native American Programs, Ralph H. Metcalfe Federal Building, 77 West Jackson Boulevard, Room 2400, Chicago, IL 60604, (312) 353–1282 or (800) 735–3239, TDD Number: (312) 886–3741 or (800) 927–9275, Office hours: 8:15am–4:45pm local time

Southern Plains Area—Tribes and IHAs: Louisiana, Missouri, Kansas, Oklahoma, and Texas, Except for Isleta Del Sur in Texas

Oklahoma City, Oklahoma HUD Field Office of Native American Programs

Southern Plains Office of Native American Programs, Alfred P Murrah Federal Building, 200 N.W. 5th Street, 8th Floor, Oklahoma City, OK 73102–3201, (405) 231–4101, TDD Number: (405) 231–4891 or (405) 231–4181, Office hours: 8:00am–4:30pm local time

Northern Plains Area—Tribes and IHAs: Colorado, Montana, Nebraska, North Dakota, South Dakota, and Wyoming

Denver, Colorado HUD Field Office of Native American Programs

Northern Plains Office of Native American Programs, First Interstate Tower North, 633 17th Street, 14th Floor, Denver, CO 80202–3607, (303) 672–5462, TDD Number: (303) 844–6158, Office hours: 8:00am–4:30pm local time

Southwest Area—Tribes and IHAs: Arizona, California, New Mexico, Nevada, and Isleta Del Sur in Texas

Phoenix, Arizona HUD Field Office of Native American Programs

Southwest Office of Native American Programs, Two Arizona Center, Suite 1650, Phoenix, Arizona 85004–2361, (602) 379–4156, TDD Number: (602) 379–4461, Office hours: 8:15am–4:45pm local time or

Albuquerque, HUD Division of Native American Programs

Albuquerque Division of Native American Programs, Albuquerque Plaza, 201 3rd Street, NW, Suite 1830, Albuquerque, New Mexico 87102–3368, (505) 766–1372, TDD Number: None available, Office hours: 7:45am–4:30pm local time or

Northern California Division of Native American Programs, 450 Golden Gate Avenue, 8th Floor, Box 36003, San Francisco, CA 94102–3448, (415) 556–9200, TDD Number: (415) 556–8357

Northwest Area—Tribes and IHAs: Idaho, Oregon, and Washington

Seattle, Washington HUD Field Office of Native American Programs

Northwest Office of Native American Programs, Seattle Federal Office Building, 909 First Avenue, Suite 300. Seattle, WA 98104–1000, (206) 220–5270, TDD Number: (206) 220–5185, Office hours: 8:00am–4:30pm local time

Alaska Area—Tribes and IHAs: Alaska

Anchorage, Alaska HUD Field Office of Native American Programs

Alaska Office of Native American Programs, University Plaza Building, 949 East 36th Avenue, Suite 401, Anchorage, Alaska 99508–4399, (907) 271–4633, TDD Number: (907) 271–4328

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Part VII

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 813 and 885
Management Rules for Existing Projects for the Elderly; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 813 and 885

[Docket No. R–94–1364; FR–1761–F–02]

RIN: 2502–AC03

Management Rules for Existing Projects for the Elderly

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

ACTION: Final rule.

SUMMARY: This final rule amends the provisions of 24 CFR part 885 which govern projects that received direct loans under section 202 of the Housing Act of 1959 and housing assistance under section 8 of the United States Housing Act of 1937. The rule adds regulatory provisions to govern the housing assistance payments contract, project operations and project management.

EFFECTIVE DATE: February 9, 1995.

FOR FURTHER INFORMATION CONTACT: With respect to Section 202 issues contact: Margaret Milner, Acting Director, Office of Elderly and Assisted Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 6130, Washington, DC 20410; telephone (202) 708–4542. With respect to Section 8 issues contact: Barbara Hunter, Acting Director, Planning and Procedures Division, Office of Multifamily Housing Management, Room 6182, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410; telephone (202) 426–3970. Hearing or speech impaired individuals may call HUD's TDD number (202) 708–4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

I. Paperwork Burden

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), and assigned OMB control number 2502–0371.

II. Background

HUD's regulations at 24 CFR part 885, subpart B govern projects that received direct loans under section 202 of the Housing Act of 1959 and housing assistance payments under section 8 of the United States Housing Act of 1937 (section 202/8 program). This subpart contains provisions governing the development of section 202/8 projects including the loan fund allocation process, application procedures, and loan financing procedures. There are no regulatory provisions governing the housing assistance payments contract (HAP contract) (except § 885.425 on HAP contract execution) or governing the management and operation of section 202/8 projects (except for preference rules published on July 18, 1994 at 59 FR 36616). On December 9, 1987 (52 FR 46614), HUD published a proposed rule adding such provisions. In response to the proposed rule, HUD received six comments. The comments and HUD's responses are discussed below.

On June 20, 1989 (54 FR 25960), HUD published a final rule adding a new subpart C to part 885. That subpart, which implemented amendments to the section 202 program contained in section 162 of the Housing and Community Development Act of 1987, governs section 202 housing for nonelderly handicapped families and individuals. Such housing does not receive assistance under section 8, but receives a new type of project assistance. On June 12, 1991, HUD published two interim rules (56 FR 27104, 56 FR 27070) providing for the continued applicability of part 885 to projects for which section 202 loan reservations were made in FY 1990 and prior years. These interim rules also added new parts 889 and 890 to establish the Supportive Housing for the Elderly Program and Supportive Housing for Persons with Disabilities Program and to enable FY 1991 funding of projects under those programs. Requirements relating to capital advances and project rental assistance contracts (these new projects do not receive section 8 rental assistance) were published August 12, 1992 at 57 FR 36338 and 57 FR 36330, and management rules for these new programs will be published shortly.

Public Comments

Part 813. A commenter requested that HUD provide further information regarding the relationship between part 813 and part 885. The commenter also requested clarification concerning which part will govern if there are inconsistencies between the parts.

Section 813.1, which was not proposed for amendment in the proposed rule, currently provides the definitions, policies, and procedures related to income limits, and the determination of eligibility, income and rent for applicants and tenants in housing assisted under section 8 *including section 8 projects for which loans are made under section 202 of the Housing Act of 1959.* HUD is unaware of any inconsistencies between part 813 and part 885, other than differences between the definitions of elderly and handicapped families. These differences reflect statutory definitions applicable to the section 8 and section 202 programs (see the definition of "families" and "elderly family" in section 3(b)(3) of the United States Housing Act of 1937, and the definition of "elderly or handicapped families" in section 202(d)(4)). To the extent of these or any other inconsistencies, the part that more specifically addresses the program (i.e., part 885) will govern. References have been added for part 889 (Supportive Housing for the Elderly) and part 890 (Supportive Housing for Persons with Disabilities).

Definitions (§ 885.5). A new definition of handicapped person or individual was added to part 885 in the final rule published June 20, 1989 implementing section 162 of the Housing and Community Development Act of 1987. In that rule, HUD proposed the same definition of handicapped person or individual that was contained in the proposed rule for the section 202/8 program. (Both proposed rules included a revised definition of handicapped person or individual that contained specific definitions of developmentally disabled and chronically mentally ill. Alcoholism and drug addiction were specifically excluded from the definition of chronically mentally ill unless the individual has a disabling condition required for eligibility.)

Commenters to both proposed rules made substantially the same comments on the proposed definition. Some commenters argued that the exclusion of alcoholism and drug addiction was contrary to section 504 of the Rehabilitation Act of 1973 which specifically extends coverage to alcoholics and drug addicts. Other commenters supported the exclusion of such persons.

In the June 20, 1989 final rule, HUD responded to these objections and substituted new language that provided that a person whose sole impairment is alcoholism or drug addiction (i.e., who does not have a developmental disability, chronic mental illness or physical disability which is the disabling condition required for eligibility in a particular project) will not be considered to be handicapped for the purposes of the section 202 program. The discussion of these changes can be found at that rule at 54 FR 25962, and is adopted without change for the

purposes of this rule. Because the definitions section of part 885 governs both the section 202 handicapped housing program and the section 202/8 program, the text of the final rule adopted today does not include a definition.

Term of HAP contract (§ 885.505). The proposed rule at § 885.505 provided that the term of the HAP contract for assisted units in section 202/8 projects is 20 years. If the project is completed in stages, the term of the HAP contract for all assisted units in all stages of a project may not exceed 22 years. One commenter recommended that HUD should provide short extensions of the HAP contract if the facility or the tenants would suffer an undue hardship without the extension. Section 885.535 already provides that HUD and the Borrower may agree to extend the term of the HAP contract or to renew the HAP contract upon the expiration of the term of the contract. This section has been clarified to state that any extension or renewal is subject to the availability of funding.

Fair Market rents. One commenter recommended that the Department develop additional language in part 885 specifying how fair market rents (FMRs) will be calculated for section 202/8 facilities. This commenter claimed that the Department's method of calculating FMRs was not economically feasible for many section 202 facilities. Under the section 202/8 program, the applicable published FMRs were used in development processing to determine the amount reserved for the section 8 funding and served as a limit on the amount of the section 202 loan that could be made. They served as the initial contract rents (although they could be adjusted based on the amount of the loan). Thereafter, the contract rents are adjusted based on the project's approved budget or by the annual (and special) adjustment factor as specified in the contract. HUD believes that the regulations are sufficiently specific. No additional provisions have been included in this rule, particularly since no new reservations are subject to section 8 FMRs.

Leasing to eligible families (§ 885.515). Proposed § 885.515 implemented section 325(1) of the Housing and Community Development Act of 1981 which requires that HAP contracts for new construction and substantial rehabilitation must provide that during the term of the HAP contract, the owner shall make available for occupancy by eligible families the number of units for which assistance is committed under the HAP contract. Under the proposed rule making units available for occupancy by eligible families required the Borrower: (1) to conduct marketing in accordance with § 885.600(a) (i.e., the Borrower must commence and continue diligent marketing activities not later than 90 days before the anticipated date of availability for occupancy of the first unit and marketing must be performed in accordance with a HUD-approved affirmative marketing plan and all fair housing and equal opportunity requirements); (2) lease or make good faith efforts to lease the units to eligible and otherwise acceptable families, including taking all feasible actions to fill vacancies by renting to such families; and (3) not reject any such applicant family except for reasons acceptable to HUD. The proposed rule stated that if the Borrower is temporarily unable to lease all assisted units to families that are eligible to occupy them, one or more units may, with the prior approval of HUD, be leased to "ineligible families" (i.e., families that meet the section 202 handicapped or elderly eligibility requirements, but cannot meet the income eligibility requirements).

A commenter argued that the proposed rules do not adequately ensure that effective outreach techniques will be used. The commenter argued that once the Borrower complies with HUD's general fair housing and equal opportunity requirements and continues this outreach strategy for 90 days, its marketing obligations would be fulfilled and the Borrower would be free to rent to ineligible tenants. The commenter argued that the final rule should require Borrowers to specifically target the elderly and handicapped populations in their outreach strategies. Further, the commenter suggested that HUD provide for the use of a centralized computer system for matching Borrowers and tenant applicants.

HUD believes that the regulations are adequate to ensure that the Borrower will market to eligible handicapped and elderly families. HUD notes that, in addition to the marketing requirements cited by the commenter, making units available to eligible families requires the Borrower to demonstrate that it has leased or *is making good faith efforts* to lease units to eligible and otherwise acceptable families. Without such a showing, HUD will not approve a Borrower's request for permission to lease to ineligible families. Moreover, the Affirmative Fair Housing Marketing Plan is in effect for the duration of the Federal financial assistance. While affirmative marketing efforts must commence at least 90 days prior to the initial rent-up, they also must continue throughout the life of the Federal financial assistance. In light of the expense involved in the establishment of a centralized computer system and questions concerning the necessity of a system, HUD has rejected the commenter suggestion regarding the provision of a computerized system for matching Borrowers and tenant-applicants.

One commenter argued that the provision permitting the Borrower to lease to ineligible families is unnecessary since sufficient numbers of income-eligible families can be located if Borrowers make an effort. The commenter feared that this exception would lead to other practices or exceptions that would undermine efforts to serve the poor and the homeless.

The proposed provision has been retained in the final rule. The failure to achieve necessary occupancy could impair project operations to the detriment of tenants and would ultimately create a danger of a default on the section 202 loan. Such a default and foreclosure could result in the project being entirely disassociated from its original purpose, if purchased by an outside bidder. Accordingly, HUD has concluded that the proposed provision may be essential in order to preserve certain projects for the benefit of present and future eligible tenants. HUD believes that the requirement for prior approval will ensure adequate supervision of the project and will prevent the abuses predicted by the commenter.

A commenter suggested that the final rule should be revised to permit Borrowers, without prior HUD authorization, to rent up to five percent of the units to low-income families where very low-income families are not available to fill a vacancy. Section 16 of the United States Housing Act of 1937 establishes limitations on the admission to the Section 8 and public housing programs of low-income families, but not very low income. HUD has implemented this national limitation by prohibiting the admission of families in this category, unless the owner has received prior HUD approval (see §§ 813.105 and 913.105). Section 103 of the Housing and Community Development Act of 1987 and section 1001 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 amended the United States Housing Act of 1937 to state that HUD may not totally prohibit admission of lower income families other than very low-income families, shall establish an appropriate specific percentage of lower income families other than very low-

income families that may be assisted in each assisted housing program, and shall prohibit project owners from selecting families for residence in an order different from the order on the waiting list for the purpose of selecting relatively higher income families for residence. A final rule implementing the 1987 amendment was published on September 6, 1988 (53 FR 34412).

Section 16(b) of the United States Housing Act of 1937 was amended by the Cranston-Gonzalez National Affordable Housing Act (CGNAHA) by striking 5% and inserting 15% and adding the following new paragraph: "Not more than 25 percent of the dwelling units in any project of any agency shall be available for occupancy by low-income families other than very low-income families. The limitation shall not apply in the case of any project in which, before the enactment of the CGNAHA, such low-income families occupy more than 25 percent of the dwelling units." The Department is pursuing rulemaking to implement these changes.

Notice upon HAP contract expiration (§ 885.530). Proposed § 885.530 implements section 8(c)(8) of the United States Housing Act of 1937 which governs the Borrower's notification of tenants upon the expiration of the HAP contract. A commenter recommended that the final rule also include a requirement that HUD notify the Borrower one year before the expiration of the contract term. Section 262 of the Housing and Community Development Act of 1987 added a new section 8(c)(9) to the United States Housing Act of 1937. This new provision imposed a requirement on the *owner* to give one year's notice prior to the termination. This new provision was self-implementing and HUD issued instructions on this provision to all Section 8 owners (including section 202/8 owners) in a memorandum dated July 6, 1988.

Responsibilities of Borrower (§ 885.600). Paragraph (d)(1) of § 885.600 (responsibilities of Borrower) provided that financial statements must be provided to HUD 60 days after the end of each fiscal year of operations. A commenter suggested that Borrowers be given an option in the HAP contract (with provisions for adjustment) to determine the dates to be used for the fiscal year. The HAP contract permits fiscal years ending on March 31, June 30, September 30, or December 31. While Borrowers may request a fiscal year ending on any of these dates, such requests are subject to approval by HUD.

Under § 885.600(d)(2), the Borrower must provide such other statements regarding project operation, financial condition, and occupancy as HUD may require to administer the HAP contract and to monitor project operations. A commenter requested HUD to explain or provide examples of such "other statements". Other statements will include: monthly accounting statements; tenant assistance payments requests and special claims requests (claims for unpaid rent, tenant damages and other charges and claims for vacancy loss); and quarterly and annual occupancy reports.

Proposed paragraph (e) required the maintenance of a project fund account. All funds remaining in the project fund account following the expiration of the project's fiscal year (i.e., the excess of project income over project operating expenses, required principal and interest payment and deposits to the replacement reserve) were required to be deposited in the replacement reserve account following the expiration of the fiscal year. The final rule has been revised to conform to the practices currently applied in the section 8 program. These practices provide that the remaining funds are deposited in a residual receipts account. Amounts in this account may be used to reduce housing assistance payments and for other project purposes with the approval of HUD. Upon termination of the contract any excess funds must be remitted to HUD.

Replacement reserve (§ 885.605). One commenter thought that proposed § 885.605, which governs the amount of the replacement reserve, required a contribution of .6 percent for the first year and .4 percent for the second year of operations. After the first two years, the commenter recommended the use of a sliding scale (based on the age of the building) to maintain an adequate reserve.

This commenter has misread the proposed rule. The proposed rule provided that the annual amount of the deposit is .6 percent of the cost of the total structure (for new construction projects) or .4 percent of the cost of the initial mortgage (for all other projects). This amount would have been required for deposit and adjusted yearly by the amount of the annual adjustment factor and may be reduced if HUD determines that the reserve has reached a level sufficient to meet project requirements (see § 885.605(b) and (c)). To provide flexibility, HUD has decided not to specify a percentage of cost amount in the final rule, instead HUD will determine the amount whenever appropriate.

Another commenter suggested that HUD permit Borrowers to use the replacement reserve for preventive and maintenance efforts, and for physical adjustments necessary to accommodate the needs of residents aging in place. The proposed change has not been made. The purpose of the replacement reserve is to ensure that sufficient funds will be available to provide for extraordinary maintenance, and repair and replacement of capital items (e.g., replacement of structural elements and mechanical equipment in the project.) Operating expenses such as day-to-day maintenance requirements and preventive maintenance expenses are to be paid from operating revenues. Currently, Borrowers may request HUD to approve the use of the replacement reserve for payments for some items to accommodate aging residents. If such requests are approved, however, HUD requires the Borrower to replenish the reserve.

Selection and admission of tenants (§ 885.610). Proposed § 885.610 stated that the Borrower is responsible for deciding whether an applicant is eligible for admission to the project. Applicants for admission must meet the eligibility requirements applicable to them under the section 202/8 program concerning age or handicap, and income. The preamble noted that in addition to these admission requirements, Borrowers would be permitted to develop and implement additional tenant selection criteria.

A commenter representing a disability group argued that the rule would give Borrowers too much discretion in the selection of tenants and would require Borrowers to make determinations beyond their areas of expertise. The commenter objected to the example cited in the preamble that stated that a Borrower could refuse to admit an otherwise eligible applicant, if the applicant is unable to *live independently* in the project without support services that he or she needs, but which are not available. The commenter predicted that such Borrower determinations could be arbitrary and constitute discrimination against the handicapped. The commenter suggested that these determinations should be left to the tenant-applicant.

Section 8 allows owners the discretion to establish which of the eligible applicants they want to admit as tenants. This allows an owner to establish "suitability" requirements, such as that tenants be able to live independently, and, concomitantly, to make decisions on whether a particular applicant meets those criteria. HUD, through this regulation, is creating a procedure to appeal an owner's initial

admission determination, if an applicant thinks it is wrong. Therefore, an applicant will have an opportunity to correct an owner's suitability decision to the extent it leads to an unlawful admission determination (such as one in violation of the civil rights laws, including section 504).

While the owner of section 202 "*elderly*" project may only consider applicants "suitable" if they can live independently—an applicant for a section 202 "*handicapped*" project must "have an impairment which * * * substantially impedes his ability to live independently" and that "could be improved by more suitable housing conditions." See section 202(d)(4).

The example in the preamble to the section 202 rule regarding ability to live independently reflected the proposed rule implementing section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). The proposed section 504 rule defined qualified handicapped person, in part, with regard to the person's capacity for independent living. In the final section 504 rule published June 2, 1988 (53 FR 20216), HUD dropped references to the ability to live independently from the definition of qualified individual with handicaps. Instead, the definition was revised to focus on the handicapped individual's capacity to comply with all obligations of occupancy whether without supportive services or with supportive services provided by persons other than the recipient. Thus, Borrowers must make a determination whether an applicant can fulfill all obligations of occupancy. In a project that does not provide supportive services, it is irrelevant whether the obligations of tenancy are met by the individual alone or with assistance that the individual with handicaps arranges. Further, in making eligibility determinations, a presumption in favor of the individual's own assessment of his or her capabilities is warranted in absence of evidence to the contrary.

Under the proposed rule, a tenant-applicant may request a review of the Borrower's determination of ineligibility. The review would be made by a member of the Borrower's staff who did not make the initial decision to reject. A commenter noted that many projects would be unable to comply with this requirement because their staffs are too small. As an alternative, the commenter suggested that HUD permit such Borrowers to convene a panel to review determinations.

The final rule has been revised to permit the Borrower (with prior HUD approval) to appoint a panel of individuals to review eligibility determinations, if the size of the Borrower's staff will not permit a review by a member of the staff that did not make the original decision. Under these circumstances, HUD will approve the panel if the Borrower demonstrates that the members of the panel are qualified to make eligibility determinations (e.g., members of the staff of a comparable section 8 project in the area).

Based on the broad discretion provided to Borrowers in the development and implementation of tenant selection procedures, one commenter suggested that HUD should provide a review of Borrower's selections through the provision of administrative hearings to applicants that are rejected for tenancy. HUD is mindful of its duty to assure that the policies implemented by Borrowers are enforced in a non-arbitrary and non-discriminatory manner. However, rather than establishing a burdensome administrative review process, HUD believes that its role should be limited to the provision of tenant selection guidance by regulations and through other issuances, and to the review of the Borrower's tenant selection plan and procedures during the management review of the project. HUD has limited authority in this area, i.e., to reject an owner's criteria for selecting among statutorily eligible applicants *only* when the criteria the owner uses to determine whether applicants would be suitable tenants would violate the civil rights laws, such as section 504 of the Rehabilitation Act.

(In addition to the regulatory guidance found in the final rule, HUD notes that Occupancy Requirements of Subsidized Multifamily Housing Programs (HUD handbook–4350.3 Chg–1, ¶ 2–15, ¶ 2–16 and ¶ 2–17) require Borrowers to develop a written tenant selection plan covering such matters as procedures for accepting applications and screening tenants, fair housing and equal opportunity requirements, preferences and priorities required by HUD or established by the Borrower, etc., and provide additional administrative guidance on permitted and prohibited screening criteria.)

Federal selection preferences. A final rule revising tenant selection preferences including preferences requirements for this program was published on July 18, 1994 at 59 FR 36616. Section 885.427 was revised to incorporate the preference provisions of §§ 880.613–880.617.

Overcrowded and underoccupied units (§ 885.620). Proposed § 885.620 governs unit transfers where the Borrower has determined that an assisted unit is overcrowded or underoccupied. A commenter was concerned that the proposed regulations would permit a Borrower to force a tenant to change apartments in order to comply with the unit size requirements. The commenter argued that this requirement may conflict with State and local laws that prohibit a landlord from moving an unwilling tenant. The commenter recommended that the final rule permit flexibility in complying with HUD requirements.

The Department is charged with the responsibility for assuring that housing assistance payments are used efficiently, including the appropriate assignment and reassignment of families to units of a proper size. Accordingly, the final rule provides that the Borrower will, as promptly as possible, offer the family an appropriate alternate unit. Contrary to the commenter's fears, the rule would not permit the Borrower to force an unwilling tenant to move. The existing HUD procedures permit the tenant to remain in the unit and pay the market rent, or move within 30 days of the notification that a unit of the required size is available within the project.

Lease requirements (§ 885.625). Under § 885.625, the lease must contain all required provisions and none of the prohibited provisions specified by HUD. One commenter argued that HUD should prepare a new model lease for section 202/8 projects. This commenter attached a copy of a proposed lease and encouraged HUD to adopt it in the Section 202 handbook. HUD has prepared a new model lease and it is available from HUD Field Offices and is contained in the 4350.3 Handbook Chg. 22, Appendix 19C, dated June 1992.

Security Deposits (§ 885.635). Under proposed § 885.635, the Borrower must require each family occupying an assisted unit to pay a security deposit in an amount equal to one month's total tenant payment or $50, whichever is greater. A commenter argued that the minimum security deposit should be increased to $100. The commenter argued that this amount represents a reasonable minimum tenant contribution, would safeguard the Borrower, and would reduce the cost of unpaid charge claims and tenant damage reimbursement requests.

The $50 limit is the minimum deposit that is currently required under the section 202/8 and related section 8 programs. It balances the ability of the targeted tenant population (*i.e.*, low and very low income persons) to pay a security deposit with the Borrower's need for an adequate resource to offset damages caused to the unit. (HUD notes that the family's security deposit

balance is not the only resource available to a Borrower to recover sums owed. Under the final rule (§ 885.635(c)), if the family's security deposit is insufficient to reimburse the Borrower for any unpaid rent, or other amount which the family owes under the lease for an assisted unit, the Borrower may claim reimbursement from HUD in an amount not to exceed the lesser of the amount owed to the Borrower or one month's contract rent, minus the amount of the family's security deposit.) The $50 minimum has been retained in the final rule.

Adjustment of Rents (§ 885.640). Section 885.640 governs the adjustment of contract rents. Adjustments are made by one of two methods. Generally, HAP contracts that were entered into prior to 1981 provide for adjustments using an automatic annual adjustment factor and special additional adjustments. Contracts executed or amended after 1981 provided for adjustment based on a HUD-approved budget.

One commenter encouraged HUD to allow, within the rent adjustment, an annual adjustment for utility costs based on the projected costs established by utility companies, rather than the past years' actual expenditures. Contrary to the commenter's assumption, rent adjustments based on the HUD-approved budget may not necessarily be performed as frequently as annually. However, when such adjustments are performed HUD does consider the actual utility rates that are in effect and approved utility rate increases that will be implemented during the year. HUD does not believe it is necessary to revise the rule to accommodate the commenter's suggestion.

Where the HAP contract provides that rent adjustments will be based on the application of an annual adjustment factor the procedures are different. The Department considers the average annual cost of utilities for the prior year in determining the section 8 annual adjustment factor. If the annual adjustment factor is insufficient to cover the cost of an approved increase, the Borrower may request HUD to approve a special adjustment under § 885.640(a)(2)(ii).

Other Matters

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the General Counsel, Rules Docket Clerk, Room 10276, 451 Seventh Street, S.W., Washington, D.C. 20410–0500.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned certifies that this rule does not have a significant economic impact on a substantial number of small entities. The contract and management provisions incorporated in this rulemaking generally reflect existing HUD policies already guiding operators of section 202/8 projects. This proceeding does not change the goals toward which program activities are directed. The rule's effect both on small and large entities should be minor.

The General Counsel, as the Designated Official under section 6(a) of Executive Order No. 12611—Federalism, has determined that the final rule does not involve the preemption of State law by Federal statute or regulation and does not have Federalism implications. The rule reflects existing HUD policies guiding non-profit organizations operating section 202/8 projects. The rule, to the maximum extent possible, defers to State and local policies (see e.g., §§ 885.635(b)(1), (3) and (5)).

This rule was listed as sequence number 1805 in the Department's Semiannual Agenda of Regulations published November 14, 1994 (59 FR 57632, 57657) under Executive Order 12866 and the Regulatory Flexibility Act.

List of Subjects

24 CFR Part 813

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements, Utilities.

24 CFR Part 885

Aged, Individuals with disabilities, Loan programs—housing and community development, Low and moderate income housing, Reporting and recordkeeping requirements.

Accordingly, in title 24 of the Code of Federal Regulations, parts 813 and 885, are amended as follows:

PART 813—DEFINITION OF INCOME, INCOME LIMITS, RENT AND REEXAMINATION OF FAMILY INCOME FOR THE SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAMS AND RELATED PROGRAMS

1. The authority citation for 24 CFR part 813 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 1437n and 3535(d).

2. In § 813.109, the section heading and paragraph (a), is revised to read as follows:

§ 813.109 Initial determination, verification, and reexamination of Family income and composition.

(a) *Responsibility for initial determination and reexamination.* The Owner or PHA shall be responsible for determination of eligibility for admission, for determination of Annual Income, Adjusted Income and Total Tenant Payment, and for reexamination of Family income and composition at least annually, as provided in pertinent program regulations and handbooks (see, e.g., 24 CFR part 880, subpart F; 24 CFR part 881, subpart F; 24 CFR part 882, subparts B and E; 24 CFR part 883, subpart G; 24 CFR part 884, subpart B; 24 CFR part 885, subparts B and C; 24 CFR part 886, subparts A and C; 24 CFR part 887, subpart H; and 24 CFR parts 889 and 890.). As used in this part, the "effective date" of an examination or reexamination refers to:

(1) In the case of an examination for admission, the effective date of initial occupancy; and

(2) In the case of a reexamination of an existing tenant, the effective date of the redetermined housing assistance payment with respect to the Housing Voucher program (part 887 of this chapter) and the effective date of the redetermined Total Tenant Payment in all other cases.

* * * * *

PART 885—LOANS FOR HOUSING FOR THE ELDERLY OR HANDICAPPED

3. The authority citation for 24 CFR part 885 continues to read as follows:

Authority: 12 U.S.C. 1701q; 42 U.S.C. 1437f and 3535(d).

4. In § 885.5, the definition of "Section 8 Program", is revised to read as follows:

§ 885.5 Definitions.

* * * * *

Section 8 Program means the housing assistance payments program which implements section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f note).

* * * * *

5. In subpart B, § 885.200 is redesignated as § 885.203, and a new § 885.200 is added, to read as follows:

§ 885.200 Definitions applicable to Subpart B.

As used in this subpart B:

Agreement to enter into housing assistance payments contract means the agreement between the Borrower and

HUD which provides that, upon satisfactory completion of the project in accordance with the HUD-approved final proposal, HUD will enter into the HAP contract with the Borrower.

Annual income is defined in part 813 of this chapter.

Assisted unit means a dwelling unit eligible for assistance under a HAP contract.

Contract rent means the total amount of rent specified in the HAP contract as payable by HUD and the tenant to the Borrower for an assisted unit.

Family (eligible family) means an elderly or handicapped family (as defined in this section) that meets the project occupancy requirements approved by HUD and, if the family occupies an assisted unit, meets the requirements described in part 813 of this chapter.

Gross rent is defined in part 813 of this chapter.

HAP contract (housing assistance payments contract) means the contract entered into by the Borrower and HUD setting forth the rights and duties of the parties with respect to the project and the payments under the HAP contract.

Housing assistance payment means the payment made by HUD to the Borrower for assisted units as provided in the HAP contract. The payment is the difference between the contract rent and the tenant rent. An additional payment is made to a family occupying an assisted unit when the utility allowance is greater than the total tenant payment. A housing assistance payment, known as a "vacancy payment", may be made to the Borrower when an assisted unit is vacant, in accordance with the terms of the HAP contract.

Project account means a specifically identified and segregated account for each project which is established in accordance with § 885.510(b) out of the amounts by which the maximum annual commitment exceeds the amount actually paid out under the HAP contract each year.

Project occupancy requirements means eligible populations to be served under the Section 202 program are qualified individuals or families whose head of household or spouse is elderly, physically handicapped, developmentally disabled or chronically mentally ill. Projects are designed to meet the special needs of the particular tenant population which the Borrower was selected to serve. Individuals from one eligible group may not be accepted for occupancy in a project designed for a different tenant group. However, a Sponsor can propose to house eligible tenant groups other than the one it was selected to serve, but must apply to the HUD Field Office for permission to do so, based on a plan which demonstrates that it can adequately serve the proposed tenant group. Upon review and recommendation by the Field Office, HUD Headquarters will approve or disapprove the request.

Rent, in the case of a unit in a cooperative project, means the carrying charges payable to the cooperative with respect to occupancy of the unit.

Tenant rent means the monthly amount defined in, and determined in accordance with part 813 of this chapter.

Total tenant payment means the monthly amount defined in, and determined in accordance with part 813 of this chapter.

Utility allowance is defined in part 813 of this chapter and is determined or approved by HUD.

Utility reimbursement is defined in part 813 of this chapter.

Vacancy payment means the housing assistance payment made to the Borrower by HUD for a vacant assisted unit if certain conditions are fulfilled, as provided in the HAP contract. The amount of the vacancy payment varies with the length of the vacancy period and is less after the first 60 days of any vacancy.

6. In § 885.210, paragraph (b)(5) is revised, to read as follows:

§ 885.210 Contents of applications.

* * * * *

(b) * * *

(5) A narrative description of the anticipated occupancy of the project. The Borrower must propose project occupancy requirements that limit occupancy to the elderly and/or handicapped.

* * * * *

7. In § 885.425, the section heading is revised; paragraph (b) is removed; paragraphs (c), (d), (e) and (f) are redesignated as paragraphs (b), (c), (d) and (e), respectively; to read as follows:

§ 885.425 Completion of project, cost certification and HUD approvals.

* * * * *

8. Sections 885.500 through 885.655 are added to subpart B, to read as follows:

§ 885.500 HAP contract.

(a) *HAP contract.* The housing assistance payments contract sets forth rights and duties of the Borrower and HUD with respect to the project and the housing assistance payments.

(b) *HAP contract execution.* (1) Upon satisfactory completion of the project, the Borrower and HUD shall execute the HAP contract on the form prescribed by HUD.

(2) The effective date of the HAP contract may be earlier than the date of execution, but no earlier than the date of HUD's issuance of the permission to occupy.

(3) If the project is completed in stages, the procedures of paragraph (b) of this section shall apply to each stage.

(c) *Housing assistance payments to owners under the HAP contract.* The housing assistance payments made under the HAP contract are:

(1) Payments to the Borrower to assist eligible families leasing assisted units. The amount of the housing assistance payment made to the Borrower for an assisted unit leased to an eligible family is equal to the difference between the contract rent for the unit and the tenant rent payable by the family.

(2) Payments to the Borrower for vacant assisted units ("vacancy payments"). The amount of and conditions for vacancy payments are described in § 885.650. The housing assistance payments are made monthly by HUD upon proper requisition by the Borrower, except payments for vacancies of more than 60 days, which are made semiannually by HUD upon requisition by the Borrower.

(d) *Payment of utility reimbursement.* Where applicable, a utility reimbursement will be paid to a family occupying an assisted unit as an additional housing assistance payment. The HAP contract will provide that the Borrower will make this payment on behalf of HUD. Funds will be paid to the Borrower in trust solely for the purpose of making the additional payment. The Borrower may pay the utility reimbursement jointly to the family and the utility company, or, if the family and utility company consent, directly to the utility company.

§ 885.505 Term of HAP contract.

The term of the HAP contract for assisted units shall be 20 years. If the project is completed in stages, the term of the HAP contract for assisted units in each stage shall be 20 years. The term of the HAP contract for all assisted units in all stages of a project shall not exceed 22 years.

§ 885.510 Maximum annual commitment and project account.

(a) *Maximum annual commitment.* The maximum annual amount that may be committed under the HAP contract is the total of the contract rents and utility allowances for all assisted units in the project.

(b) *Project account.* (1) HUD will establish and maintain a specifically identified and segregated project account for each project. The project

account will be established out of the amounts by which the maximum annual commitment exceeds the amount actually paid out under the HAP contract each year. HUD will make payments from this account for housing assistance payments as needed to cover increases in contract rents or decreases in tenant income and other payments for costs specifically approved by the Secretary.

(2) If the HUD-approved estimate of required annual payments under the HAP contract for a fiscal year exceeds the maximum annual commitment for that fiscal year plus the current balance in the project account, HUD will, within a reasonable time, take such steps authorized by section 8(c)(6) of the United States Housing Act of 1937 (42 U.S.C. 1437f note), as may be necessary, to assure that payments under the HAP contract will be adequate to cover increases in contract rents and decreases in tenant income.

§ 885.515 Leasing to eligible families.

(a) *Availability of assisted units for occupancy by eligible families.* (1) During the term of the HAP contract, a Borrower shall make available for occupancy by eligible families the total number of units for which assistance is committed under the HAP contract. For purposes of this section, making units available for occupancy by eligible families means that the Borrower:

(i) Is conducting marketing in accordance with § 885.600(a);

(ii) Has leased or is making good faith efforts to lease the units to eligible and otherwise acceptable families, including taking all feasible actions to fill vacancies by renting to such families:

(iii) Has not rejected any such applicant family except for reasons acceptable to HUD.

(2) If the Borrower is temporarily unable to lease all units for which assistance is committed under the HAP contract to eligible families, one or more units may, with the prior approval of HUD, be leased to otherwise eligible families that do not meet the income eligibility requirements of part 813. Failure on the part of the Borrower to comply with these requirements is a violation of the HAP contract and grounds for all available legal remedies, including an action for specific performance of the HAP contract, suspension or debarment from HUD programs, and reduction of the number of units under the HAP contract as set forth in paragraph (b) of this section.

(b) *Reduction of number of units covered by the HAP contract.* HUD may reduce the number of units covered by the HAP contract to the number of units available for occupancy by eligible families if:

(1) The Borrower fails to comply with the requirements of paragraph (a) of this section; or

(2) Notwithstanding any prior approval by HUD, HUD determines that the inability to lease units to eligible families is not a temporary problem.

(c) *Restoration.* HUD will agree to an amendment of the HAP contract to provide for subsequent restoration of any reduction made under paragraph (b) of this section if:

(1) HUD determines that the restoration is justified by demand;

(2) The Borrower otherwise has a record of compliance with the Borrower's obligations under the HAP contract; and

(3) Contract and budget authority is available.

(d) *Applicability.* In accordance with section 555 of the Cranston-Gonzalez National Affordable Housing Act of 1990, paragraphs (a) and (b) of this section apply to all contracts. An owner who had leased an assisted unit to an ineligible family consistent with the regulations in effect at the time will continue to lease the unit to that family. However, the owner must make the unit available for occupancy by an eligible family when the ineligible family vacates the unit.

(e) *Occupancy by families that are not elderly or handicapped.* HUD may permit units in the project to be leased to other than elderly or handicapped families if:

(1) The Borrower has made reasonable efforts to lease assisted and unassisted units to eligible families;

(2) The Borrower has been granted HUD approval under paragraph (a) of this section; and

(3) The Borrower is temporarily unable to achieve or maintain a level of occupancy sufficient to prevent financial default and foreclosure under the section 202 loan documents. HUD approval under paragraph (e)(3) of this section will be of limited duration. HUD may impose terms and conditions to this approval that are consistent with program objectives and necessary to protect its interest in the section 202 loan.

§ 885.520 HAP contract administration.

HUD is responsible for the administration of the HAP Contract.

§ 885.525 Default by Borrower.

(a) *HAP contract provisions.* The HAP contract will provide:

(1) That if HUD determines that the Borrower is in default under the HAP contract, HUD will notify the Borrower of the actions required to be taken to cure the default and of the remedies to be applied by HUD including an action for specific performance under the HAP contract, reduction or suspension of housing assistance payments and recovery of overpayments, where appropriate; and

(2) That if the Borrower fails to cure the default, HUD has the right to terminate the HAP contract or to take other corrective action.

(b) *Loan provisions.* Additional provisions governing default under the section 202 loan are included in the regulatory agreement and other loan documents described in § 885.415.

§ 885.530 Notice upon HAP contract expiration.

(a) *Notice required.* The HAP contract will provide that the Borrower will, at least one year before the end of the HAP contract term, notify each family leasing an assisted unit of any increase in the amount the family will be required to pay as rent as a result of the expiration.

(b) *Service requirements.* The notice under paragraph (a) of this section shall be accomplished by sending a letter by first class mail, properly stamped and addressed, to the family at its address at the project, with a proper return address; and serving a copy of the notice on any adult person answering the door at the leased dwelling unit, or if no adult responds, by placing the notice under or through the door, if possible, or else by affixing the notice to the door Service shall not be considered to be effective until both required notices have been accomplished. The date on which the notice shall be considered to be received by the family shall be the date on which the Borrower mails the first class letter provided for in paragraph (b) of this section, or the date on which the notice provided for in paragraph (b) of this section is properly given, whichever is later.

(c) *Contents of notice.* The notice shall advise each affected family that, after the expiration date of the HAP contract, the family will be required to bear the entire cost of the rent and that the Borrower may, subject to requirements and restrictions contained in the regulatory agreement, the lease, and State or local law, change the rent. The notice also shall state:

(1) The actual (if known) or the estimated rent that will be charged following the expiration of the HAP contract;

(2) The difference between the new rent and the total tenant payment toward rent under the HAP contract; and

(3) The date the HAP contract will expire.

(d) *Certification to HUD.* The Borrower shall give HUD a certification that families have been notified in accordance with this section and shall attach to the certification an example of the text of the notice.

(e) *Applicability.* This section applies to all HAP contracts entered into under an agreement to enter into a housing assistance payments contract executed on or after October 1, 1981, or entered into under such an agreement executed before October 1, 1981 but renewed or amended after February 9, 1995.

(Approved by the Office of Management and Budget under control number 2502–0371).

§ 885.535 HAP contract extension or renewal.

Upon expiration of the term of the HAP contract, HUD and the Borrower may agree (subject to available funds) to extend the term of the HAP contract or to renew the HAP contract. The number of assisted units under the extended or renewed HAP contract shall equal the number of assisted units under the original HAP contract, except that—

(a) HUD and the Borrower may agree to reduce the number of assisted units by the number of assisted units that are not occupied by eligible families at the time of the extension or renewal; and

(b) HUD and the Borrower may agree to permit reductions in the number of assisted units during the term of the extended or renewed HAP contract as assisted units are vacated by eligible families. Nothing in this section shall prohibit HUD from reducing the number of units covered under the extended or renewed HAP contract in accordance with § 885.515(b).

§ 885.600 Responsibilities of Borrower.

(a) *Marketing.* (1) The Borrower must commence and continue diligent marketing activities not later than 90 days before the anticipated date of availability for occupancy of the first unit of the project. Market activities shall include the provision of notices of availability of housing under the program to operators of temporary housing for the homeless in the same housing market.

(2) Marketing must be done in accordance with the HUD-approved affirmative fair housing marketing plan and all Federal, State or local fair housing and equal opportunity requirements. The purpose of the plan and requirements is to achieve a condition in which eligible families of similar income levels in the same housing market have a like range of housing choices available to them regardless of discriminatory considerations, such as their race, color, creed, religion, familial status, disability, sex or national origin. Marketing must also be done in accordance with the communication and notice requirements of Section 504 at 24 CFR 8.6 and 24 CFR 8.54, i.e., TDD requirements for all housing providers and methods to reach those with speech, visual and hearing impairments.

(3) At the time of HAP contract execution, the Borrower must submit to HUD a list of leased and unleased assisted units, with a justification for the unleased units, in order to qualify for vacancy payments for the unleased units.

(b) *Management and maintenance.* The Borrower is responsible for all management functions. These functions include selection and admission of tenants, required reexaminations of incomes for families occupying assisted units, collection of rents, termination of tenancy and eviction, and all repair and maintenance functions (including ordinary and extraordinary maintenance and replacement of capital items). All functions must be performed in compliance with equal opportunity requirements.

(c) *Contracting for services.* (1) With HUD approval, the Borrower may contract with a private or public entity for performance of the services or duties required in paragraphs (a) and (b) of this section. However, such an arrangement does not relieve the Borrower of responsibility for these services and duties. All such contracts are subject to the restrictions governing prohibited contractual relationships described in § 885.5. (These prohibitions do not extend to management contracts entered into by the Borrower with the sponsor or its non-profit affiliate).

(2) Consistent with the objectives of Executive Order 11625 (3 CFR, 1971–1975 Comp., p. 616, unless otherwise noted), Executive Order 12432 (3 CFR, 1983 Comp., p. 198, unless otherwise noted), and Executive Order 12138 (3 CFR, 1979 Comp., p. 393, unless otherwise noted), the Borrower will promote awareness and participation of minority and women's business enterprises in contracting and procurement activities.

(d) *Submission of financial and operating statements.* The Borrower must submit to HUD:

(1) Within 60 days after the end of each fiscal year of project operations, financial statements for the project audited by an independent public accountant and in the form required by HUD; and

(2) Other statements regarding project operation, financial conditions and occupancy as HUD may require to administer the HAP contract and to monitor project operations.

(e) *Use of project funds.* The Borrower shall maintain a separate project fund account in a depository or depositories which are members of the Federal Deposit Insurance Corporation or National Credit Union Share Insurance Fund and shall deposit all rents, charges, income and revenues arising from project operation or ownership to this account. All project funds are to be deposited in Federally-insured accounts. All balances shall be fully insured at all times, to the maximum extent possible. Project funds must be used for the operation of the project (including required insurance coverage), to make required principal and interest payments on the section 202 loan, and to make required deposits to the replacement reserve under § 885.605, in accordance with a HUD-approved budget. Any project funds in the project funds account (including earned interest) following the expiration of the fiscal year shall be deposited in a Federally-insured residual receipts account within 60 days following the end of the fiscal year. Withdrawals from this account may be made only for project purposes and with the approval of HUD. If there are funds remaining in the residual receipts account when the mortgage is satisfied, such funds shall be returned to HUD.

(f) *Reports.* The Borrower shall submit such reports as HUD may prescribe to demonstrate compliance with applicable civil rights and equal opportunity requirements.

(Approved by the Office of Management and Budget under control number 2502–0371).

§ 885.605 Replacement reserve.

(a) *Establishment of reserve.* The Borrower shall establish and maintain a replacement reserve to aid in funding extraordinary maintenance, and repair and replacement of capital items.

(b) *Deposits to reserve.* The Borrower shall make monthly deposits to the replacement reserve in an amount determined by HUD.

(c) *Level of reserve.* The reserve must be built up to and maintained at a level determined by HUD to be sufficient to meet projected requirements. Should the reserve reach that level, the amount of the deposit to the reserve may be reduced with the approval of HUD.

(d) *Administration of reserve.* Replacement reserve funds must be deposited with HUD or in a Federally-insured depository in an interest-bearing account (s) whose balances are

fully insured at all times. All earnings including interest on the reserve must be added to the reserve. Funds may be drawn from the reserve and used only in accordance with HUD guidelines and with the approval of, or as directed by, HUD.

§ 885.610 Selection and admission of tenants.

(a) *Written tenant selection procedures.* The Owner shall adopt written tenant selection procedures which ensure nondiscrimination in the selection of tenants and that are consistent with the purpose of improving housing opportunities for very low-income elderly or handicapped persons; and reasonably related to program eligibility and an applicant's ability to perform the obligations of the lease. The Owner must comply with the following nondiscrimination authorities: section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and the implementing regulations at 24 CFR part 8; the Fair Housing Act (42 U.S.C. 3600–3619) and the implementing regulations at 24 CFR parts 100, 108, 109, and 110; Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and the implementing regulations at 24 CFR part 1; section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and the implementing regulations at 24 CFR part 135; the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) and the implementing regulations at 24 CFR part 146; Executive Order 11246 (as amended), 3 CFR, 1964–1965 Comp., p. 339, and the implementing regulations at 41 CFR Chapter 60; Executive Order 11063 (Equal Opportunity in Housing), 3 CFR, 1959–1963 Comp., p. 652 and the implementing regulations at 24 CFR part 107; the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*) to the extent applicable; and other applicable Federal, State and local laws prohibiting discrimination and promoting equal opportunity. While local residency requirements are prohibited, local residency preferences may be applied in selecting tenants only to the extent that they are not inconsistent with affirmative fair housing marketing objectives and the Owner's HUD-approved affirmative fair housing marketing plan. Preferences may not be based on the length of time the applicant has resided in the jurisdiction. With respect to any residency preference, persons expected to reside in the community as a result of current or planned employment will be treated as residents. Owners shall promptly notify in writing any rejected applicant of the grounds for any rejection. Additionally, owners shall maintain a written, chronological waiting list showing the name, race, gender, ethnicity and date of each person applying for the program.

(b) *Application for admission.* The Borrower must accept applications for admission to the project in the form prescribed by HUD and is obligated to confirm all information provided by the applicant families on the application. Applicant families must be requested to complete a release of information consent for verification of information. Applicants applying for assisted units must complete a certification of eligibility as part of the application for admission. Applicant families must meet the disclosure and verification requirements for Social Security Numbers, as provided by 24 CFR part 750. Applicant families must sign and submit consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, as provided by 24 CFR part 760. Both the Borrower and the applicant must complete and sign the application for admission. On request, the Borrower must furnish copies of all applications for admission to HUD.

(c) *Determination of eligibility and selection of tenants.* The Borrower is responsible for determining whether applicants are eligible for admission and for the selection of families. To be eligible for admission, an applicant must be an elderly or handicapped family as defined in § 885.5, must meet any project occupancy requirements approved by HUD under § 885.225(a)(1), must meet the disclosure and verification requirements for Social Security Numbers, as provided by 24 CFR part 750), must sign and submit consent forms for obtaining of wage and claim information from State Wage Information Collection Agencies, as provided by 24 CFR part 760, and must, if applying for an assisted unit, be eligible for admission under part 813 of this chapter.

(d) *Unit assignment.* If the Borrower determines that the family is eligible and is otherwise acceptable and units are available, the Borrower will assign the family a unit. The Borrower will assign the family a unit of the appropriate size in accordance with HUD's general occupancy guidelines. If no suitable unit is available, the Borrower will place the family on a waiting list for the project and notify the family of when a suitable unit may become available. If the waiting list is so long that the applicant would not be likely to be admitted for the next 12 months, the Borrower may advise the applicant that no additional applications for admission are being considered for that reason, except that the Borrower may not refuse to place an applicant on the waiting list if the applicant is otherwise eligible for assistance and claims that he or she qualifies for a Federal preference as provided in § 885.427.

(e) *Ineligibility determination.* If the Borrower determines that an applicant is ineligible for admission or the Borrower is not selecting the applicant for other reasons, the Borrower will promptly notify the applicant in writing of the determination, the reasons for the determination, and that the applicant has a right to request a meeting with the Borrower or managing agent to review the rejection, in accordance with HUD requirements. The review, if requested, may not be conducted by a member of the Borrower's staff who made the initial decision to reject the applicant. The applicant may also exercise other rights (*e.g.*, rights granted under Federal, State or local civil rights laws) if the applicant believes he or she is being discriminated against on a prohibited basis. The informal review provisions for the denial of a Federal preference are provided at § 880.613(h) of this chapter

(f) *Records.* Records on applicants and approved eligible families, which provide racial, ethnic, gender, handicap status, and place of previous residency data required by HUD, must be retained for three years.

(g) *Reexamination of family income and composition*—(1) *Regular reexaminations.* The Borrower must reexamine the income and composition of the family at least every 12 months. Upon verification of the information, the Borrower shall make appropriate adjustments in the total tenant payment in accordance with part 813 of this chapter and determine whether the family's unit size is still appropriate. The Borrower must adjust tenant rent and the housing assistance payment and must carry out any unit transfer in accordance with the administrative instructions issued by HUD. At the time of reexamination under paragraph (g)(1) of this section, the Borrower must require the family to meet the disclosure and verification requirements for Social Security Numbers, as provided by 24 CFR part 750. For requirements regarding the signing and submitting of consent forms by families for obtaining of wage and claim information from State Wage Information Collection Agencies, see 24 CFR part 760.

(2) *Interim reexaminations.* The family must comply with the provisions in its lease regarding interim reporting of changes in income. If the Borrower receives information concerning a

change in the family's income or other circumstances between regularly scheduled reexaminations, the Borrower must consult with the family and make any adjustments determined to be appropriate. See 24 CFR 750.10(d)(2)(i) for the requirements for the disclosure and verification of Social Security Numbers at interim reexaminations involving new family members. For requirements regarding the signing and submitting of consent forms by families for the obtaining of wage and claim information from State wage information collection agencies, see 24 CFR part 760. Any change in the family's income or other circumstances that results in an adjustment in the total tenant payment, tenant rent and housing assistance payment must be verified.

(3) *Continuation of housing assistance payments.* (i) A family shall remain eligible for housing assistance payments until the total tenant payment equals or exceeds the gross rent. The termination of subsidy eligibility will not affect the family's other rights under its lease. Housing assistance payments may be resumed if, as a result of changes in income, rent or other relevant circumstances during the term of the HAP contract, the family meets the income eligibility requirements of part 813 of this chapter and housing assistance is available for the unit under the terms of the HAP contract. The family will not be required to establish its eligibility for admission to the project under the remaining requirements of paragraph (c) of this section.

(ii) A family's eligibility for housing assistance payments may be terminated in accordance with HUD requirements for such reasons as failure to submit requested verification information, including information related to disclosure and verification of Social Security Numbers (as provided by 24 CFR part 750) or failure to sign and submit consent forms for the obtaining of wage and claim information from State wage information collection agencies (as provided by 24 CFR part 760).

(Approved by the Office of Management and Budget under control number 2502–0371).

§ 885.615 Obligations of the family.

(a) *Requirements.* The family shall:

(1) Pay amounts due under the lease directly to the Borrower.

(2) Supply such certification, release of information, consent, complete forms or documentation as the Borrower or HUD determines necessary, including information and documentation relating to the disclosure and verification of Social Security Numbers, as provided by 24 CFR part 750, and the signing and submission of consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, as provided by 24 CFR part 760;

(3) Allow the Borrower to inspect the dwelling unit at reasonable times and after reasonable notice;

(4) Notify the Borrower before vacating the dwelling unit; and

(5) Use the dwelling unit solely for residence by the family, and as the family's principal place of residence.

(b) *Prohibitions.* The family shall not:

(1) Assign the lease or transfer the unit; or

(2) Occupy, or receive assistance for the occupancy of, a unit governed under this part while occupying, or receiving assistance for occupancy of, another unit assisted under any Federal housing assistance program, including any section 8 program.

(Approved by the Office of Management and Budget under control number 2502–0371).

§ 885.620 Overcrowded and underoccupied units.

If the Borrower determines that because of change in family size, a unit is smaller than appropriate for the eligible family to which it is leased, or that the unit is larger than appropriate, housing assistance payments with respect to the unit will not be reduced or terminated until the eligible family has been relocated to an appropriate alternate unit. If possible, the Borrower will, as promptly as possible, offer the family an appropriate alternate unit. The Borrower may receive vacancy payments for the vacated unit if the Borrower complies with the requirements of § 885.650.

§ 885.625 Lease requirements.

(a) *Term of lease.* The term of the lease may not be less than one year. Unless the lease has been terminated by appropriate action, upon expiration of the lease term, the family and Borrower may execute a new lease for a term not less than one year, or may take no action. If no action is taken, the lease will automatically be renewed for successive terms of one month.

(b) *Termination by the family.* All leases may contain a provision that permits the family to terminate the lease upon 30 days advance notice. A lease for a term that exceeds one year must contain such provision.

(c) *Form.* The Borrower shall use the lease form prescribed by HUD. In addition to required provisions in the lease form, the Borrower may include a provision in the lease permitting the Borrower to enter the leased premises, at any time, without advance notice where there is reasonable cause to believe that an emergency exists or that health or safety of a family member is endangered.

§ 885.630 Termination of tenancy and modification of lease.

The provisions of part 247 of this title apply to all decisions by a Borrower to terminate the tenancy or modify the lease of a family residing in a unit.

§ 885.635 Security deposits.

(a) *Collection of security deposit.* At the time of the initial execution of the lease, the Borrower:

(1) Will require each family occupying a unit to pay a security deposit in an amount equal to one month's total tenant payment or $50, whichever is greater; and

(2) May require each family occupying an unassisted unit to pay a security deposit equal to one month's rent payable by the family. The family is expected to pay the security deposit from its own resources and other available public or private resources. The Borrower may collect the security deposit on an installment basis.

(b) *Security deposit provisions applicable to assisted and unassisted units.*—(1) *Administration of security deposit.* The Borrower must place the security deposits in a segregated interest-bearing account. The Borrower shall maintain a record of the amount in this account that is attributable to each family in residence in the project. Annually for all families, and when computing the amount available for disbursement under paragraph (b)(3) of this section, the Borrower shall allocate to the family's balance, the interest accrued on the balance during the year Unless prohibited by State or local law, the Borrower may deduct for the family, from the accrued interest for the year, the administrative cost of computing the allocation to the family's balance. The amount of the administrative cost adjustment shall not exceed the accrued interest allocated to the family's balance for the year. The amount of the segregated, interest-bearing account maintained by the Borrower must at all times equal the total amount collected from the families then in occupancy plus any accrued interest and less allowable administrative cost adjustments. The Borrower must comply with any applicable State and local laws concerning interest payments on security deposits.

(2) *Family notification requirement.* In order to be considered for the refund of the security deposit, a family must

provide the Borrower with a forwarding address or arrange to pick up the refund.

(3) *Use of security deposit.* The Borrower, subject to State and local law and the requirements of paragraph (b)(3) of this section, may use the family's security deposit balance as reimbursement for any unpaid family contribution or other amount which the family owes under the lease. Within 30 days (or shorter time if required by State or local law) after receiving notification under paragraph (b)(2) of this section the Borrower must:

(i) Refund to a family which does not owe any amount under the lease the full amount of the family's security deposit balance;

(ii) Provide to a family owing under the lease a list itemizing each amount, along with a statement of the family's rights under State and local law. If the amount which the Borrower claims is owed by the family is less than the amount of the family's security deposit balance, the Borrower must refund the excess balance to the family. If the Borrower fails to provide the list, the family will be entitled to the refund of the full amount of the family's security deposit balance.

(4) *Disagreements.* If a disagreement arises concerning reimbursement of the security deposit, the family will have the right to present objections to the Borrower in an informal meeting. The Borrower must keep a record of any disagreements and meetings in a tenant file for inspection by HUD. The procedures of paragraph (b)(4) of this section do not preclude the family from exercising its rights under State or local law.

(5) *Decedent's interest in security deposit.* Upon the death of a member of a family, the decedent's interest, if any, in the security deposit will be governed by State or local law.

(c) *Reimbursement by HUD for assisted units.* If the family's security deposit balance is insufficient to reimburse the Borrower for any unpaid amount which the family owes under the lease for an assisted unit and the Borrower has provided the family with the list required by paragraph (b)(3)(ii) of this section, the Borrower may claim reimbursement from HUD for an amount not to exceed the lesser of:

(1) The amount owed the Borrower; or

(2) One month's contract rent, minus the amount of the family's security deposit balance. Any reimbursement under this section will be applied first toward any unpaid tenant rent due under the lease. No reimbursement may be claimed for unpaid rent for the period after termination of the tenancy. The Borrower may be eligible for vacancy payments following a vacancy in accordance with the requirements of § 885.650.

(Approved by the Office of Management and Budget under control number 2502–0371).

§ 885.640 Adjustment of rents.

(a) *Contract rents.*—(1) *Adjustment based on approved budget.* If the HAP contract provides, or has been amended to provide, that contract rents will be adjusted based upon a HUD-approved budget, HUD will calculate contract rent adjustments based on the sum of the project's operating costs and debt service (as calculated by HUD), with adjustments for vacancies, the project's non-rental income, and other factors that HUD deems appropriate. The calculation will be made on the basis of information provided by the Borrower on a form acceptable to the Secretary. The automatic adjustment factor described in part 888 of this chapter is not used to adjust contract rents under paragraph (a)(1) of this section, except to the extent that the amount of the replacement reserve deposit is adjusted under § 880.602 of this chapter.

(2) *Annual and special adjustments.* If the HAP contract provides that contract rents will be adjusted based on the application of an automatic adjustment factor and by special additional adjustments:

(i) Consistent with the HAP contact, contract rents may be adjusted in accordance with part 888 of this chapter;

(ii) Special additional adjustments will be granted, to the extent determined necessary by HUD, to reflect increases in the actual and necessary expenses of owning and maintaining the assisted units which have resulted from substantial general increases in real property taxes, assessments, utility rates or similar costs (i.e., assessments and utilities not covered by regulated rates), and which are not adequately compensated for by an annual adjustment. The Borrower must submit to HUD required supporting data, financial statements and certifications for the special additional adjustment.

(b) *Rent for unassisted units.* The rent payable by families occupying units that are not assisted under the HAP contract shall be equal to the contract rent computed under paragraph (a) of this section.

(Approved by the Office of Management and Budget under control number 2502–0371).

§ 885.645 Adjustment of utility allowances.

In connection with adjustments of contract rents as provided in § 885.640(a), the Borrower must submit an analysis of any project's utility allowances. Such data as changes in utility rates and other facts affecting utility consumption should be provided as part of this analysis to permit appropriate adjustments in the utility allowances for assisted units. In addition, when approval of a utility rate change would result in a cumulative increase of 10 percent or more in the most recently approved utility allowances, the Borrower must advise HUD and request approval of new utility allowances. Whenever a utility allowance for an assisted unit is adjusted, the Borrower will promptly notify affected families and make a corresponding adjustment of the tenant rent and the amount of the housing assistance payment.

(Approved by the Office of Management and Budget under control number 2502–0371).

§ 885.650 Conditions for receipt of vacancy payments for assisted units.

(a) *General.* Vacancy payments under the HAP contract will not be made unless the conditions for receipt of these housing assistance payments set forth in this section are fulfilled.

(b) *Vacancies during rent-up.* For each unit that is not leased as of the effective date of the HAP contract, the Borrower is entitled to vacancy payments in the amount of 80 percent of the contract rent for the first 60 days of vacancy, if the Borrower:

(1) Conducted marketing in accordance with § 885.600(a) and otherwise complied with § 885.600;

(2) Has taken and continues to take all feasible actions to fill the vacancy; and

(3) Has not rejected any eligible applicant except for good cause acceptable to HUD.

(c) *Vacancies after rent-up.* If an eligible family vacates a unit, the Borrower is entitled to vacancy payments in the amount of 80 percent of the contract rent for the first 60 days of vacancy if the Borrower:

(1) Certifies that it did not cause the vacancy by violating the lease, the HAP contract, or any applicable law;

(2) Notified HUD of the vacancy or prospective vacancy and the reasons for the vacancy immediately upon learning of the vacancy or prospective vacancy;

(3) Has fulfilled and continues to fulfill the requirements specified in § 885.600(a) (2) and (3) and § 885.650(b) (2) and (3); and

(4) For any vacancy resulting from the Borrower's eviction of an eligible family, certifies that it has complied with § 885.630.

(d) *Vacancies for longer than 60 days.* If a unit continues to be vacant after the 60-day period specified in paragraph (b) or (c) of this section, the Borrower may

apply to receive additional vacancy payments in an amount equal to the principal and interest payments required to amortize that portion of the debt service attributable to the vacant unit for up to 12 additional months for the unit if:

(1) The unit was in decent, safe and sanitary condition during the vacancy period for which payment is claimed;

(2) The Borrower has fulfilled and continues to fulfill the requirements specified in paragraph (b) or (c) of this section, as appropriate; and

(3) The Borrower has demonstrated to the satisfaction of HUD that:

(i) For the period of vacancy, the project is not providing the Borrower with revenues at least equal to project expenses (exclusive of depreciation) and the amount of payments requested is not more than the portion of the deficiency attributable to the vacant unit; and

(ii) The project can achieve financial soundness within a reasonable time.

(e) *Prohibition of double compensation for vacancies.* If the Borrower collects payments for vacancies from other sources (tenant rent, security deposits, payments under § 885.635(c), or governmental payments under other programs), the Borrower shall not be entitled to collect vacancy payments to the extent these collections from other sources plus the vacancy payment exceed contract rent.

(Approved by the Office of Management and Budget under control number 2502–0371).

Dated: December 22, 1994.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

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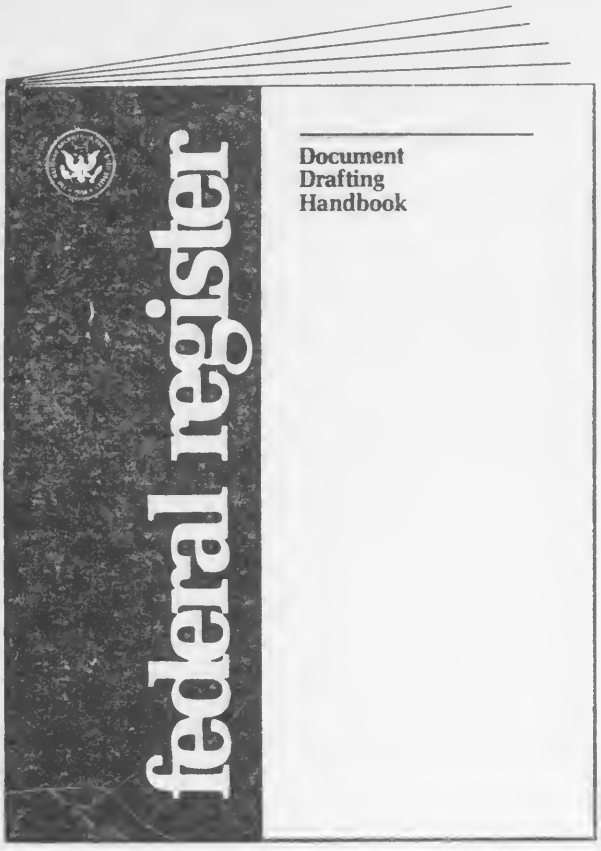

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