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Rules and Regulations

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

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 955

[Docket No. FV98–955–1 IFR]

Vidalia Onions Grown in Georgia; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule decreases the assessment rate from $0.10 to $0.07 per 50-pound bag or equivalent of Vidalia onions established for the Vidalia Onion Committee (Committee) under Marketing Order No. 955 for the 1998–99 and subsequent fiscal periods. The Committee is responsible for local administration of the marketing order which regulates the handling of Vidalia onions grown in Georgia. Authorization to assess Vidalia onion handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period began September 16 and ends September 15. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective: September 28, 1998. Comments received by November 24, 1998, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 205–6632; or E-mail: moabdocket__clerk@usda.gov. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Doris Jamieson, Southeast Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 2276, Winter Haven, FL 33883–2276; telephone: (941) 299–4770, Fax: (941) 299–5169; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 955, both as amended (7 CFR part 955), regulating the handling of Vidalia onions grown in Georgia, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Vidalia onion handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable Vidalia onions beginning September 16, 1998, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

This rule deceases the assessment rate established for the Committee for the 1998–99 and subsequent fiscal periods from $0.10 to $0.07 per 50-pound bag or equivalent of Vidalia onions.

The Vidalia onion marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of Vidalia onions. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1996–97 and subsequent fiscal periods, the Committee recommended, and the Department approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

The Committee met on July 28, 1998, and unanimously recommended 1998–99 expenditures of $373,577 and an assessment rate of $0.07 per 50-pound bag or equivalent of Vidalia onions. In comparison, last year's budgeted expenditures were $429,800. The assessment rate of $0.07 is $0.03 lower than the rate currently in effect. For the past two seasons, the Committee has elected to refund excess funds to the handlers to reduce their costs. The Committee unanimously elected to reduce the assessment rate rather than

continue the practice of refunding excess funds.

The major expenditures recommended by the Committee for the 1998–99 fiscal period include $131,600 for marketing and promotion, $75,000 for research, $135,127 for program administration, and $31,850 for compliance. Budgeted expenses for these items in 1997–98 were $158,000, $108,300, $137,500, and $26,000, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Vidalia onions. Vidalia onion shipments for 1998–99 are estimated at 3,300,000 50-pound bags or equivalents for the year, 15,000 50-pound bags or equivalents of green Vidalias, 1,385,000 50-pound bags or equivalents of storage Vidalias, and 100,000 50-pound bags or equivalents of storage onions from the previous season, which should provide $336,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve (currently $174,073) will be kept within the maximum permitted by the order (approximately three fiscal periods' budgeted expenses; § 955.44).

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 1998–99 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by the Department.

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

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

There are currently approximately 136 producers of Vidalia onions in the production area and approximately 101 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

During the 1996–97 fiscal year, as a percentage, approximately 14 percent of the handlers shipped approximately 2,771,000 50-pound bags or equivalents of Vidalia onions and approximately 86 percent of the handlers shipped approximately 1,262,940 50-pound bags or equivalents. Using an average f.o.b. price of $12.80 per 50-pound bag or equivalent, the majority of handlers could be considered small businesses under SBA's definition. The majority of handlers and producers of Vidalia onions may be classified as small entities.

This rule decreases the assessment rate established for the Committee and collected from handlers for the 1998–99 and subsequent fiscal periods from $0.10 to $0.07 per 50-pound bag or equivalent of Vidalia onions. The Committee unanimously recommended 1998–99 expenditures of $373,577 and an assessment rate of $0.07 per 50-pound bag or equivalent. The assessment rate of $0.07 is $0.03 lower than the 1997–98 rate. The quantity of assessable Vidalia onions for the 1998–99 season is estimated at 4,800,000 50-pound bags or equivalents. Thus, the $0.07 rate should provide $336,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve (currently $174,073) will be kept within the maximum permitted by the order (approximately three fiscal periods' budgeted expenses; § 955.44).

The major expenditures recommended by the Committee for the 1998–99 year include $131,600 for marketing and promotion, $75,000 for research, $135,127 for program administration, and $31,850 for compliance. Budgeted expenses for these items in 1997–98 were $158,000, $108,300, $137,500, and $26,000, respectively.

For the past two seasons, the Committee has refunded excess funds to the handlers to reduce their costs. The Committee unanimously elected to reduce the assessment rate rather than continue the practice of refunding excess funds.

The Committee reviewed and unanimously recommended 1998–99 expenditures of $373,577 which included decreases in marketing and promotion and research. Prior to arriving at this budget, the Committee considered information from various sources, such as the Committee's Budget Subcommittee. Alternative expenditure levels were discussed by these groups, based upon the relative value of various research projects to the Vidalia onion industry. The assessment rate of $0.07 per 50-pound bag or equivalent of assessable Vidalia onions was then determined by dividing the total recommended budget by the quantity of assessable Vidalia onions, estimated at 4,800,000 50-pound bags or equivalents for the 1998–99 season. This is approximately $37,577 below the anticipated expenses, which the Committee determined to be acceptable. The difference between assessment income and budgeted expenses will be covered by income from interest and the Committee's authorized reserve.

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the f.o.b. price for the 1998–99 season could range between $12.80 and $15.25 per 50-pound bag or equivalent of Vidalia onions. Therefore, the estimated assessment revenue for the 1998–99 fiscal period as a percentage of total handler revenue could range between .46 and .55 percent.

This action decreases the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers. In addition, the Committee's meeting was widely publicized throughout the Vidalia onion industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee

meetings, the July 28, 1998, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This action imposes no additional reporting or recordkeeping requirements on either small or large Vidalia onion handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 1998–99 fiscal period begins on September 16, 1998, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable Vidalia onions handled during such fiscal period; (2) this action decreases the assessment rate for assessable Vidalia onions beginning with the 1998–99 and subsequent fiscal periods; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) this interim final rule provides a 60-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 955

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 955 is amended as follows:

PART 955—VIDALIA ONIONS GROWN IN GEORGIA

1. The authority citation for 7 CFR part 955 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 955.209 is revised to read as follows:

§ 955.209 Assessment rate.

On and after September 16, 1998, an assessment rate of $0.07 per 50-pound bag or equivalent is established for Vidalia onions.

Dated: September 21, 1998.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98–25719 Filed 9–24–98; 8:45 am]

BILLING CODE 3410–02–U

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 286

[INS No. 1923–98]

RIN 1115–AF26

Technical Change for Submission for Immigration User Fee Requirements

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule amends the Immigration and Naturalization Service (Service) regulations by making technical changes to the addressee where periodic summary statements of user fees collected are to be sent, and revising the name of the payee to whose attention remittances shall be forwarded. These technical changes are administrative in nature and are necessary to conform to the current organizational and supervisory structure of the Service's Office of Management.

DATES: This final rule is effective October 26, 1998.

FOR FURTHER INFORMATION CONTACT: Michael Ditkoff, Fee Policy and Rate-Setting Branch, Office of Budget, Immigration and Naturalization Service (INS), 425 I St., NW, Room 6240, Washington, DC 20536, telephone number (202) 305–8620.

SUPPLEMENTARY INFORMATION: This final rule amends 8 CFR part 286 to reflect the change in nomenclature, whereas the summary statements due on the last business day of the following month be forwarded to the Service's Chief, Analysis and Formulation Branch, in place of Fee Setting and Analysis Branch. In addition, this final rule amends the name of the payee to whom the remittance shall be made from the Service's Associate Commissioner Finance, to Assistant Commissioner, Office of Financial Management.

The Service's implementation of this rule is based on the ''good cause'' exception found at 5 U.S.C. 553(d)(3). The amendments contained herein relate to agency management in that the amendments correct nomenclature changes published in previous rules. The reason and necessity for prompt implementation is to further ensure timely receipt of the periodic summary reports, remittances, and correspondence from the public. It would be contrary to the public interest to issue the rule as proposed rule in that it would further delay executing the nomenclature changes.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will have a significant economic impact on a substantial number of small entities because of the following factors: The technical changes addressed in this final rule are administrative in nature and are necessary to conform to the current organizational and supervisory structure of the Service's Office of Management. As such, the technical changes have no significant economic impact.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in a annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 12612

The regulations proposed 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 rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12988 Civil Justice Reform

This final rule meets the applicable standards set forth in sections 3(a) and 3(b) of E.O. 12988.

List of Subjects in 8 CFR Part 286

Immigration, Reporting and record keeping requirements.

Accordingly, part 286 of chapter 1 of title 8 of the Code of Federal Regulations is amended as follows:

PART 286—IMMIGRATION USER FEE

1. The authority citation for part 286 continues to read as follows:

Authority: 8 U.S.C. 1103, 1356; 8 CFR part 2.

§ 286.1 [Amended]

2. Section 286.1(e) is amended by revising the term ''*Associate Commissioner, Finance*'' to read ''*Assistant Commissioner, Office of Financial Management*'' and by revising the term ''Office of the Associate Commissioner, Finance,'' to read ''Office of the Assistant Commissioner, Financial Management,''.

§ 286.2 [Amended]

3. Section 286.2(b) is amended in the third sentence by revising the phrase ''Fee Analysis and Operations Branch'' to read ''Analysis and Formulation Branch''.

§ 286.5 [Amended]

4. In § 286.5, paragraph (d) is amended by revising the term ''Associate Commissioner, Finance, INS'' to read ''Assistant Commissioner, Office of Financial Management, INS''.

§ 286.5 [Amended]

5. In § 286.5, paragraph (e) is amended by revising the term ''Associate Commissioner, Finance'' to read ''Assistant Commissioner, Financial Management'' wherever it appears in this paragraph.

§ 286.6 [Amended]

6. Section 286.6 is amended by revising the term ''Associate Commissioner, Finance'' to read ''Assistant Commissioner, Office of Financial Management'' wherever it appears in this section.

Dated: September 21, 1998.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 98–25712 Filed 9–24–98; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 563, 563f and 574

[No. 98–96]

RIN 1550–AB10

Agency Disapproval of Directors and Senior Executive Officers of Savings Associations and Savings and Loan Holding Companies

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision (OTS) is issuing a final rule to amend its regulations implementing section 32 of the Federal Deposit Insurance Act (FDIA). This statute requires certain savings associations and savings and loan holding companies to provide prior notice of the appointment or employment of directors and senior executive officers. The final rule will eliminate unnecessary regulatory burden, implement changes enacted in the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA), and more closely conform OTS regulations to those of the other banking agencies as required under section 303 of the Community Development and Regulatory Improvement Act of 1994 (CDRIA).

EFFECTIVE DATE: September 25, 1998.

FOR FURTHER INFORMATION CONTACT: Frances C. Augello, Senior Counsel, Business Transactions Division, Chief Counsel's Office (202) 906–6151; Scott Ciardi, Financial Analyst, Corporate Activities Division, (202) 906–6960; or Mary Jo Johnson, Project Manager, Supervision Policy (202) 906–5739, Office of Thrift Supervision, 1700 G Street, NW., Washington D.C. 20552.

SUPPLEMENTARY INFORMATION:

I. Background

Section 32 of FDIA [1] requires certain savings associations and savings and loan holding companies to notify the OTS at least 30 days before adding any individual to the board of directors or employing an individual as a senior executive officer. Section 2209 of the EGRPRA [2] amended section 32 of the FDIA by changing the circumstances under which a notice must be filed. Section 2209 also provided that the OTS may have as long as 90 days to issue a notice of disapproval of the proposed addition of a director or employment of a senior executive officer.

On March 27, 1998 (63 FR 14844), the OTS published a notice of proposed rulemaking to: (1) amend its regulations implementing section 32 of FDIA to reflect the EGRPRA amendments, (2) eliminate unnecessary burden, and (3) in accordance with section 303 of the CDRIA,[3] conform the proposed OTS rule generally to regulations that have been promulgated by the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (FRB), and the Federal Deposit Insurance Corporation (FDIC).[4]

In addition, the OTS rewrote the proposed rule using plain language drafting techniques promoted by the Vice President's National Performance Review Initiative and new guidance in the **Federal Register** *Document Drafting Handbook* (January 1997 edition).

II. Summary of Comments and Description of the Final Rule

The public comment period on the proposed rule closed on May 26, 1998. The OTS received two comments on its proposal. Commenters included one savings association and one trade association. One commenter expressed general support for the proposed rule, including the use of plain language, which it noted reduces regulatory burden and makes compliance easier. The other commenter also supported the rule, and suggested that the rule be clarified to specifically state that an individual seeking election to the board of directors of a savings association or savings and loan holding company, not

[1] 12 U.S.C. 1831i.

[2] Pub.L. 104–208, 110 Stat. 3009 (Sept. 30, 1996).

[3] Pub. L. 103–325, 108 Stat. 2215 (Sept. 23, 1994).

[4] (OCC) 61 FR 60341 (November 27, 1996); (FRB) 62 FR 9290 (February 28, 1997); (FDIC) 63 FR 44686 (August 20, 1998).

nominated by management, is not required to provide prior notice or obtain a waiver, unless the savings association or savings and loan holding company is itself subject to the rule, e.g., it is in troubled condition. The OTS has clarified the rule as suggested by the commenter, in new § 563.560(b).[5]

The OTS has a regulatory project underway that would reorganize, revise and streamline OTS regulations addressing directors, officers and employees. These regulations will eventually be consolidated into new subparts of part 563. Today's final rule implementing section 32 of the FDIA will be included in new subpart H of part 563. Accordingly, OTS has re-numbered the proposed provision §§ 574.10 through 574.18 to new subpart H provision §§ 563.550 through 563.590. The final rule also includes technical changes to citations to part 574 contained in part 563f of OTS regulations. Other than the re-numbering, today's final rule is substantially identical to the March proposal.

III. Disposition of Existing Regulations

The following chart gives an overview of the changes made to former § 574.9.

Revised provision	Former provision	Comments
§ 563.550		Added.
§ 563.555	§ 574.9(a)	Modified.
§ 563.560	§ 574.9(b), (c)(3) and (d)(1)(ii)	Significantly modified.
	§ 574.9(c)(1) and (2)	Deleted.
§ 563.565	§ 574.9(d)(1)	Modified.
§ 563.570	§ 574.9(d)(1) and (2)	Modified and added.
§ 563.575	§ 574.9(d)(3) and (4)	Significantly modified.
	§ 574.9(d)(5)	Deleted.
§ 563.580	§ 574.9(d)(6)	Modified.
§ 563.585	§ 574.9(b)(2), (d)(7) and (d)(9)	Significantly modified.
§ 563.590	§ 574.9(d)(8)	Modified.

IV. Executive Order 12866

The Director of the OTS has determined that this final rule does not constitute a ''significant regulatory action'' for purposes of Executive Order 12866.

V. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, the OTS certifies that the final rule does not have a significant economic impact on a substantial number of small entities. The final rule does not impose any additional burdens or requirements upon small entities and reduces several paperwork and other burdens on all savings associations and savings and loan holding companies.

VI. Paperwork Reduction Act

There are no new information collection requirements contained in this final rule. The information collection requirements contained in this final rule are the same as those required in the form Interagency Notice of Change in Director and Senior Executive Officer,[6] which has been previously submitted to and approved by the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under OMB Control No. 1550–0047.

VII. Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in expenditures by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OTS has determined that the final rule will not result in expenditures by state, local, and tribal governments, or by the private sector, of $100 million or more. Accordingly, this rulemaking is not subject to section 202 of the Unfunded Mandates Act.

VIII. Effective Date

Section 302 of the CDRIA requires that regulations that impose additional reporting, disclosure, or other new requirements take effect on the first day of the calendar quarter following publication of the rule unless, among other things, the agency determines, for good cause, that the regulations should become effective before that date. The OTS believes that an immediate effective date is appropriate since the final rule relieves existing regulatory burdens on savings associations and savings and loan holding companies. Further, the OTS believes that CDRIA does not apply because this final rule imposes no new burdens immediately on existing savings associations or savings and loan holding companies. For these reasons, the OTS believes that an immediate effective date is appropriate for this final rule.

Section 553(d) of the Administrative Procedure Act (APA) requires an agency to publish a substantive rule at least 30 days before its effective date. Section 553(d) of the APA permits waiver of the 30-day delayed effective date requirement for, *inter alia*, good cause or where a rule relieves a regulatory restriction. The OTS further finds that the 30-day delayed effective date requirement may be waived because this final rule relieves regulatory restrictions on savings associations and savings and loan holding companies.

List of Subjects

12 CFR Part 563

Accounting, Advertising, Conflict of interests, Crime, Currency, Holding companies, Investments, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bonds.

12 CFR Part 563f

Antitrust, Holding companies, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 574

Administrative practice and procedure, Holding companies, Reporting and recordkeeping requirements, Savings associations, Securities.

[5] *See* proposed § 574.12(b).

[6] OTS Form 1624.

Accordingly, the Office of Thrift Supervision hereby amends chapter V, title 12, Code of Federal Regulations, as set forth below:

PART 563—OPERATIONS

1. The authority citation for part 563 is revised to read as follows:

Authority: 12 U.S.C. 375b, 1462, 1462a, 1463, 1464, 1467a, 1468, 1817, 1820, 1828, 1831i, 3806; 42 U.S.C. 4106.

2. Subpart H, consisting of §§ 563.550 through 563.590, is added to part 563 to read as follows:

Subpart H—Notice of Change of Director or Senior Executive Officer

Sec.

Subpart H—Notice of Change of Director or Senior Executive Officer

§ 563.550 What does this subpart do?

This subpart implements 12 U.S.C. 1831i, which requires certain savings associations and savings and loan holding companies to notify the OTS before appointing or employing directors and senior executive officers.

§ 563.555 What definitions apply to this subpart?

The following definitions apply to this subpart:

Director means an individual who serves on the board of directors of a savings association or savings and loan holding company. This term does not include an advisory director who:

(1) Is not elected by the shareholders;

(2) Is not authorized to vote on any matters before the board of directors or any committee of the board of directors;

(3) Provides only general policy advice to the board of directors or any committee of the board of directors; and

(4) Has not been identified by the OTS in writing as an individual who performs the functions of a director, or who exercises significant influence over, or participates in, major policymaking decisions of the board of directors.

Senior executive officer means an individual who holds the title or performs the function of one or more of the following positions (without regard to title, salary, or compensation): president, chief executive officer, chief operating officer, chief financial officer, chief lending officer, or chief investment officer. *Senior executive officer* also includes any other person identified by the OTS in writing as an individual who exercises significant influence over, or participates in, major policymaking decisions, whether or not hired as an employee.

Troubled condition means:

(1) A savings association that has a composite rating of 4 or 5, as defined in § 516.3(c) of this chapter;

(2) A savings and loan holding company that has an unsatisfactory rating under the OTS's holding company rating system, or that is informed in writing by the OTS that it has an adverse effect on its subsidiary savings association;

(3) A savings association or savings and loan holding company that is subject to a capital directive, a cease-and-desist order, a consent order, a formal written agreement, or a prompt corrective action directive relating to the safety and soundness or financial viability of the savings association, unless otherwise informed in writing by the OTS; or

(4) A savings association or savings and loan holding company that is informed in writing by the OTS that it is in troubled condition based on information available to the OTS.

§ 563.560 Who must give prior notice?

(a) *Savings association or savings and loan holding company.* Except as provided under § 563.590, you must notify the OTS at least 30 days before adding or replacing any member of your board of directors, employing any person as a senior executive officer, or changing the responsibilities of any senior executive officer so that the person would assume a different senior executive position if:

(1) You are a savings association and at least one of the following circumstances apply:

(i) You do not comply with all minimum capital requirements under part 567 of this chapter;

(ii) You are in troubled condition; or

(iii) The OTS has notified you, in connection with its review of a capital restoration plan required under section 38 of the Federal Deposit Insurance Act or part 565 of this chapter or otherwise, that a notice is required under this subpart; or

(2) You are a savings and loan holding company and you are in troubled condition.

(b) *Notice by individual.* If you are an individual seeking election to the board of directors of a savings association or savings and loan holding company described in paragraph (a) of this section, and have not been nominated by management, you must either provide the prior notice required under paragraph (a) of this section or follow the process under § 563.590(b).

§ 563.565 What procedures govern the filing of my notice?

The procedures found in § 516.1 of this chapter govern the filing of your notice under § 563.560.

§ 563.570 What information must I include in my notice?

(a) *Content requirements.* Your notice must include:

(1) The information required under 12 U.S.C. 1817(j)(6)(A), and the information prescribed in the Interagency Notice of Change in Director or Senior Executive Officer and the Interagency Biographical and Financial Report which are available from OTS headquarters at the address in part 516 of this chapter; or from any OTS regional office;

(2) Legible fingerprints of the proposed director or senior executive officer. You are not required to file fingerprints if, within three years prior to the date of submission of the notice, the proposed director or senior executive officer provided legible fingerprints as part of a notice filed with the OTS under 12 U.S.C. 1831i; and

(3) Such other information required by the OTS.

(b) *Modification of content requirements.* The OTS may require or accept other information in place of the content requirements in paragraph (a) of this section.

§ 563.575 What procedures govern OTS review of my notice for completeness?

The OTS will first review your notice to determine whether it is complete.

(a) If your notice is complete, the OTS will notify you in writing of the date that the OTS received the complete notice.

(b) If your notice is not complete, the OTS will notify you in writing what additional information you need to submit, why we need the information, and when you must submit it. You must, within the specified time period, provide additional information or request that the OTS suspend processing of the notice. If you fail to act within the specified time period, the OTS may treat the notice as withdrawn

or may review the application based on the information provided.

§ 563.580 What standards and procedures will govern OTS review of the substance of my notice?

The OTS will disapprove a notice if, pursuant to the standard set forth in 12 U.S.C. 1831i(e), the OTS finds that the competence, experience, character, or integrity of the proposed director or senior executive officer indicates that it would not be in the best interests of the depositors of the savings association or of the public to permit the individual to be employed by, or associated with, the savings association or savings and loan holding company. If the OTS disapproves a notice, it will issue a written notice that explains why the OTS disapproved the notice. The OTS will send the notice to the savings association or savings and loan holding company and the individual.

§ 563.585 When may a proposed director or senior executive officer begin service?

(a) A proposed director or senior executive officer may begin service 30 days after the date the OTS receives all required information, unless:

(1) The OTS notifies you that it has disapproved the notice; or

(2) The OTS extends the 30-day period for an additional period not to exceed 60 days. If the OTS extends the 30-day period, it will notify you in writing that the period has been extended, and will state the reason for the extension. The proposed director or senior executive officer may begin service upon expiration of the extended period, unless the OTS notifies you that it has disapproved the notice during the extended period.

(b) Notwithstanding paragraph (a) of this section, a proposed director or senior executive officer may begin service after the OTS notifies you, in writing, of its intention not to disapprove the notice.

§ 563.590 When will the OTS waive the prior notice requirement?

(a) *Waiver request.* (1) An individual may serve as a director or senior executive officer before filing a notice under this subpart if the OTS issues a written finding that:

(i) Delay would threaten the safety or soundness of the savings association;

(ii) Delay would not be in the public interest; or

(iii) Other extraordinary circumstances exist that justify waiver of prior notice.

(2) If the OTS grants a waiver, you must file a notice under this subpart within the time period specified by the OTS.

(b) *Automatic waiver.* An individual may serve as a director before filing a notice under this subpart, if the individual was not nominated by management and the individual submits a notice under this subpart within seven days after election as a director.

(c) *Subsequent OTS action.* The OTS may disapprove a notice within 30 days after the OTS issues a waiver under paragraph (a) of this section or within 30 days after the election of an individual who has filed a notice and is serving pursuant to an automatic waiver under paragraph (b) of this section.

PART 563f—MANAGEMENT OFFICIAL INTERLOCKS

3. The authority citation for part 563f continues to read as follows:

Authority: 12 U.S.C. 3201–3208.

4. Section 563f.2 is amended by revising paragraph (l)(1)(iii) to read as follows:

§ 563f.2 Definitions.

* * * * *

(l) *Management official.* (1) * * *

(iii) A senior executive officer as that term is defined in § 563.555 of this chapter;

* * * * *

5. Section 563f.5 is amended by revising paragraphs (b)(2)(i) and (b)(2)(ii) to read as follows:

§ 563f.5 Regulatory Standards exemption.

* * * * *

(b) * * *

(2) * * *

(i) That official is permitted by OTS to serve as a director or senior executive officer of that institution pursuant to § 563.585 of this chapter; and

(ii) The institution had operated for less than two years, was not in compliance with minimum capital requirements, or otherwise was in ''troubled condition'' as defined in § 563.555 of this chapter at the time the service under § 563.585 of this chapter was permitted.

* * * * *

6. Section 563f.6 is amended by revising paragraphs (b)(1) and (b)(2) to read as follows:

§ 563f.6 Management Consignment exemption.

* * * * *

(b) * * *

(1) A proposed management official is capable of strengthening the management of a depository institution described in paragraph (a)(3) of this section if that official is permitted by the OTS to serve as a director or senior executive officer of that institution pursuant to § 563.585 of this chapter and the institution had operated for less than two years at the time the service under § 563.585 of this chapter was permitted; and

(2) A proposed management official is capable of strengthening the management of a depository institution described in paragraph (a)(4) of this section if that official is permitted by the OTS to serve as a director or senior executive officer of that institution pursuant to § 563.585 of this chapter and the institution was not in compliance with minimum capital requirements or otherwise was in ''troubled condition'' as defined under § 563.555 of this chapter at the time service under § 563.585 of this chapter was permitted.

* * * * *

PART 574—ACQUISITION OF CONTROL OF SAVINGS ASSOCIATIONS

7. The authority citation for part 574 is revised to read as follows:

Authority: 12 U.S.C. 1467a, 1817.

§ 574.9 [Removed]

8. Section 574.9 is removed.

Dated: September 18, 1998.

By the Office of Thrift Supervision.

Ellen Seidman,

Director.

[FR Doc. 98–25633 Filed 9–24–98; 8:45 am]

BILLING CODE 6720–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–42–AD; Amendment 39–10796; AD 98–20–29]

RIN 2120–AA64

Airworthiness Directives; Airbus Industrie Model A320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all Airbus Industrie Model A320 series airplanes, that currently requires a revision to the Airplane Flight Manual (AFM) to prohibit automatic landings in configuration 3 (CONF 3). This amendment limits the applicability of the existing AD, and adds a new revision to the AFM to indicate that automatic landings in CONF 3 are prohibited and to specify an

increased minimum runway visual range for airplanes on which certain modifications have not been accomplished. This amendment also requires eventual replacement of the existing spoiler elevator computers with improved parts, and insertion of new pages into the AFM that correct landing distances required for automatic landings in CONF 3. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent pitch-up of the airplane due to activation of the spoilers during an automatic landing, which, if not corrected, could result in tail strikes and structural damage to the airplane.

DATES: Effective October 30, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 30, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 92–19–13, amendment 39–8371 (57 FR 40601, September 4, 1992), which is applicable to all Airbus Industrie Model A320 series airplanes, was published in the **Federal Register** on July 23, 1998 (63 FR 39540). The action proposed to continue to require a revision to the Airplane Flight Manual (AFM) to prohibit automatic landings in configuration 3 (CONF 3). The action also proposed to limit the applicability of the existing AD, and add a new revision to the AFM to indicate that automatic landings in CONF 3 are prohibited and to specify an increased minimum runway visual range for airplanes on which certain modifications have not been accomplished. The action also proposed to require eventual replacement of the existing spoiler elevator computers with improved parts, and insertion of new pages into the AFM that correct landing distances required for automatic landings in CONF 3.

Comments

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

The commenters support the proposed rule.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 93 airplanes of U.S. registry that will be affected by this AD.

The incorporation of the temporary revision into the AFM that is currently required by AD 92–19–13, and retained in this AD, takes approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this requirement of this AD on U.S. operators is estimated to be $5,580, or $60 per airplane.

The incorporation of the new temporary revision into the AFM that is required in this AD will take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this requirement of this AD on U.S. operators is estimated to be $5,580, or $60 per airplane.

The replacement of the spoiler elevator computers (SEC's) that is required in this AD action will take approximately 3 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of this requirement of this AD on U.S. operators is estimated to be $16,740, or $180 per airplane.

The incorporation of AFM Section 5.06.00, pages 06 and 6A, into the AFM that is required in this AD action will take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this requirement of this AD on U.S. operators is estimated to be $5,580, or $60 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8371 (57 FR 40601, September 4, 1992), and by adding a new airworthiness directive (AD), amendment 39–10796, to read as follows:

98–20–29 Airbus Industrie: Amendment 39–10796. Docket 97–NM–42–AD. Supersedes AD 92–19–13, Amendment 39–8371.

Applicability: Model A320 series airplanes on which Airbus Industrie Modification

23132, 24348, or 24511 has not been accomplished; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent pitch-up of the airplane due to activation of the spoilers during an automatic landing, which, if not corrected, could result in tail strikes and structural damage to the airplane, accomplish the following:

(a) Within 60 days after October 9, 1992 (the effective date of AD 92–19–13, amendment 39–8371), revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following statement. This may be accomplished by inserting a copy of this AD into the AFM.

''Use of automatic landing in configuration 3 (CONF 3) is prohibited.''

(b) Within 30 days after the effective date of this AD, revise the FAA-approved Airbus A320 AFM by inserting Airbus A319/320/321 AFM Temporary Revision 9.99.99/02, Issue 02, dated April 8, 1997, into the AFM. After revising the AFM, the AFM revision required by paragraph (a) of this AD may be removed from the AFM.

(c) Within 18 months after the effective date of this AD, accomplish the actions specified in paragraphs (c)(1) and (c)(2) of this AD. After the actions specified by paragraph (c) of this AD have been accomplished, the AFM revision required by paragraph (b) of this AD (Airbus A320 AFM Temporary Revision 9.99.99/02, Issue 02, dated April 8, 1997) may be removed from the AFM.

(1) Replace the existing spoiler elevator computers (SEC's) in the aft and forward electronics racks with new, improved SEC's, in accordance with Airbus Industrie Service Bulletin A320–27–1081, Revision 2, dated September 6, 1995; or A320–27–1073, dated January 20, 1995; as applicable.

(2) After the accomplishment of the actions specified by paragraph (c)(1) of this AD, prior to further flight, revise Section 5.06.00 of the Airbus A320 AFM by inserting Section 5.06.00, page 06, dated February 10, 1996, and page 6A, dated January 20, 1997.

Note 2: Operators should ensure that the units in which the distance measurements are listed in AFM Section 5.06.00, pages 06 and 6A, are consistent with the units of measurement that the operators use in their operations.

(d)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

(d)(2) Alternative methods of compliance, approved previously in accordance with AD 92–19–13, amendment 39–8371, are approved as alternative methods of compliance with this AD.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

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

(f) Except as provided by paragraphs (a) and (c)(2) of this AD, the actions shall be done in accordance with Airbus A319/320/321 AFM Temporary Revision (TR) 9.99.99/02, Issue 02, dated April 8, 1997; Airbus Service Bulletin A320–27–1081, Revision 2, dated September 6, 1995; and Airbus Service Bulletin A320–27–1073, dated January 20, 1995; as applicable. Airbus Service Bulletin A320–27–1081, Revision 2, dated September 6, 1995, contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
1, 3, 4, 6–10, 13–15.	2	Sept. 6, 1995.
2, 5, 11, 12.	Original	Jan. 16, 1995.

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 Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in French airworthiness directive 93–203–049(B)R3, dated July 2, 1997.

(g) This amendment becomes effective on October 30, 1998.

Issued in Renton, Washington, on September 17, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–25472 Filed 9–24–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–77–AD; Amendment 39–10798; AD 98–20–31]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A320 series airplanes, that requires repetitive inspections to detect cracking in the pressurized floor pick-up angles on the rear spar of the wing, and replacement of any cracked pick-up angle and its associated diaphragms with improved parts. Such replacement terminates the repetitive inspections for that angle. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to detect and correct cracking in the pressurized floor pick-up angles at the rear spar of the wing, which could result in reduced structural integrity of the airframe.

DATES: Effective October 30, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 30, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A320 series airplanes was

published in the **Federal Register** on April 27, 1998 (63 FR 20546). That action proposed to require repetitive inspections to detect cracking in the pressurized floor pick-up angles on the rear spar of the wing, and replacement of any cracked pick-up angle and its associated diaphragms with improved parts. Such replacement would terminate the repetitive inspections for that angle.

Comments

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

Request To Accept Additional Versions of Service Bulletins

The commenter (the manufacturer) generally supports the proposed rule. However, the commenter states that an inspection performed in accordance with instructions defined in Airbus Service Bulletin A320–57–1090, dated April 19, 1996, complies with the requirements of paragraph (a) of the proposed AD. (The proposed AD cited only Revision 1 of that service bulletin as the appropriate means of compliance.)

The commenter adds that accomplishment of the modification, in accordance with Airbus Service Bulletin A320–57–1025, Revision 2, dated November 25, 1994; Revision 3, dated May 22, 1995; or Revision 4, dated December 8, 1995; should be considered acceptable as terminating action for the proposed AD. (The proposed AD cited only Revision 5, dated June 26, 1997, of that service bulletin as the appropriate means of compliance.)

The FAA concurs that accomplishment of those earlier versions of the service bulletins, in lieu of the revision levels cited in the proposed rule, is acceptable for compliance with the requirements of this AD. The inspection procedures described in Airbus Service Bulletin A320–57–1090, dated April 19, 1996, are essentially the same as those described in Revision 1, dated June 10, 1997. Likewise, the modification procedures described in Airbus Service Bulletin A320–57–1025, Revision 2, dated November 25, 1994; Revision 3, dated May 22, 1995; and Revision 4, dated December 8, 1995; are essentially the same as those described in Revision 5, dated June 26, 1997. Therefore, the final rule has been revised to include Note 2 and Note 3, which credit operators for inspections and modifications accomplished prior to the effective date of the final rule in accordance with the referenced additional revision levels.

Conclusion

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

Cost Impact

The FAA estimates that 120 airplanes of U.S. registry will be affected by this AD, that it will take approximately 8 work hours per airplane (including access and close) to accomplish the required inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators is estimated to be $57,600, or $480 per airplane, per inspection cycle.

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

Should an operator elect to accomplish the optional terminating action that is provided by this AD, it would take approximately 140 work hours to accomplish, at an average labor rate of $60 per work hour. The cost of required parts would be approximately $10,103 per airplane. Based on these figures, the cost impact of that optional terminating action would be $18,503 per airplane.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–20–31 Airbus Industrie: Amendment 39–10798. Docket 98–NM–77–AD.

Applicability: Model A320 series airplanes, as listed in Airbus Service Bulletin A320–57–1090, Revision 01, dated June 10, 1997; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct cracking in the pressurized floor pick-up angles at the rear spar of the wing, which could result in reduced structural integrity of the airframe, accomplish the following:

(a) Prior to the accumulation of 20,000 total flight cycles, or within 60 days after the effective date of this AD, whichever occurs later: Perform an eddy current inspection to detect cracking in the pressurized floor pick-up angles on the rear spar of the wing, in accordance with Airbus Service Bulletin A320–57–1090, Revision 01, dated June 10, 1997.

Note 2: Accomplishment of the inspection prior to the effective date of this AD in accordance with Airbus Service Bulletin A320–57–1090, dated April 19, 1996, is also considered acceptable for compliance with paragraph (a) of this AD.

(1) If no cracking is found, repeat the inspection thereafter at intervals not to exceed 10,000 flight cycles.

(2) If any cracking is found during any inspection required by this AD, prior to further flight, replace each cracked pick-up angle and its associated diaphragms with improved parts, in accordance with Airbus Service Bulletin A320–57–1025, Revision 05, dated June 26, 1997. For all pick-up angles not replaced with improved angles, repeat the inspection thereafter at intervals not to exceed 10,000 flight cycles.

(b) Replacement of a pick-up angle and its associated diaphragms with improved parts, in accordance with Airbus Service Bulletin A320–57–1025, Revision 05, dated June 26, 1997, constitutes terminating action for the repetitive inspection requirements for that pick-up angle.

Note 3: Accomplishment of the replacement prior to the effective date of this AD in accordance with Airbus Service Bulletin A320–57–1025, Revision 2, dated November 25, 1994; Revision 3, dated May 22, 1995; or Revision 4, dated December 8, 1995; is also considered acceptable for compliance with paragraphs (a)(2) and (b) of this AD.

(c) If any crack is detected during any inspection required by this AD, and the applicable service bulletin specifies to contact Airbus for appropriate action: Prior to further flight, repair in accordance with a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Direction Générale de l'Aviation Civile (or its delegated agent).

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(e) 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.

(f) The inspections shall be done in accordance with Airbus Service Bulletin A320–57–1090, Revision 01, dated June 10, 1997. Except as provided by paragraph (c) of this AD, the replacement, if accomplished, shall be done in accordance with Airbus Service Bulletin A320–57–1025, Revision 05, dated June 26, 1997, which contains the following effective pages:

Page number shown on page	Revision level shown on page	Date shown on page
1, 13, 30–32, 101, 102	05	June 26, 1997.
2–5	4	December 8, 1995.
10, 15, 19, 24, 28, 29	3	May 22, 1995.
6–9, 11, 12, 14, 16–18, 20–23 25–27, 33–100, 103–106	2	November 25, 1994.

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 Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 5: The subject of this AD is addressed in French airworthiness directive CN 97–084–097 (B), dated March 12, 1997.

(g) This amendment becomes effective on October 30, 1998.

Issued in Renton, Washington, on September 17, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–25474 Filed 9–24–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–192–AD; Amendment 39–10797; AD 98–20–30]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A320 Series Airplanes Equipped With a Bulk Cargo Door

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Airbus Model A320 series airplanes equipped with a bulk cargo door, that requires repetitive inspections to detect fatigue cracking of the upper frame flanges; and repair, if necessary. This amendment also requires modification of the upper frame flanges of the bulk cargo door, which constitutes terminating action for the repetitive inspections. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent fatigue cracking of the upper frame flanges, which could result in reduced structural integrity of the airplane.

DATES: Effective October 30, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 30, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Airbus Model A320 series airplanes equipped with a bulk cargo door was published in the **Federal Register** on August 7, 1998 (63

FR 42286). That action proposed to require repetitive inspections to detect fatigue cracking of the upper frame flanges; and repair, if necessary. That action also proposed to require modification of the upper frame flanges of the bulk cargo door, which constitutes terminating action for the repetitive inspections.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 8 airplanes of U.S. registry will be affected by this AD.

It will take approximately 1 work hour per airplane to accomplish the required inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators is estimated to be $480, or $60 per airplane, per inspection cycle.

It will take approximately 4 work hours per airplane to accomplish the required modification, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the modification required by this AD on U.S. operators is estimated to be $1,920, or $240 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–20–30 Airbus Industrie: Amendment 39–10797. Docket 97–NM–192–AD.

Applicability: Model A320 series airplanes, equipped with a bulk cargo door (Airbus Modification 20029), certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking of the upper frame flanges, which could result in reduced structural integrity of the airplane, accomplish the following:

(a) Prior to the accumulation of 20,000 total flight cycles, or within 1,200 flight cycles after the effective date of this AD, whichever occurs later: Perform a high frequency eddy current inspection to detect fatigue cracking of the upper frame flanges, in accordance with Airbus Service Bulletin A320–53–1022, Revision 1, dated June 18, 1992.

(1) If no cracking is detected, accomplish either paragraph (a)(1)(i) or (a)(1)(ii) of this AD.

(i) Repeat the eddy current inspection thereafter at intervals not to exceed 1,200 flight cycles until accomplishment of the requirements of paragraph (b) of this AD. Or

(ii) Prior to further flight, modify the upper frame flanges, in accordance with Airbus Service Bulletin A320–53–1021, Revision 1, dated April 13, 1992. This modification constitutes terminating action for the requirements of this AD.

(2) If any cracking is detected, prior to further flight, repair in accordance with Airbus Service Bulletin A320–53–1021, Revision 1, dated April 13, 1992.

Accomplishment of the repair constitutes terminating action for the requirements of this AD.

(b) Prior to the accumulation of 26,000 total flight cycles, or within 6,000 flight cycles after the effective date of this AD, whichever occurs later: Perform a high frequency eddy current inspection to detect fatigue cracking of the upper frame flanges, in accordance with Airbus Service Bulletin A320–53–1021, Revision 1, dated April 13, 1992.

(1) If no cracking is detected, prior to further flight, modify the upper frame flanges, in accordance with the service bulletin. Accomplishment of this modification constitutes terminating action for the requirements of this AD.

(2) If any cracking is detected, prior to further flight, repair in accordance with the service bulletin. Accomplishment of the repair constitutes terminating action for the requirements of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(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) The inspections, repairs, and modification shall be done in accordance with the following Airbus service bulletins, which contain the specified effective pages:

Service bulletin referenced and date	Page number shown on page	Revision level shown on page	Date shown on page
A320–53–1022, Revision 1, June 18, 1992	1–6 7, 8	1 Original	June 18, 1992. October 17, 1991.
A320–53–1021, Revision 1, April 13, 1992	1, 4–24 2, 3	1 Original	April 13, 1992 October 17, 1991

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 Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in French airworthiness directive 96–238–091(B), dated October 23, 1996.

(f) This amendment becomes effective on October 30, 1998.

Issued in Renton, Washington, on September 17, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–25473 Filed 9–24–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–138–AD; Amendment 39–10799; AD 98–20–32]

RIN 2120–AA64

Airworthiness Directives; Short Brothers Model SD3–60 SHERPA Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Short Brothers Model SD3–60 SHERPA series airplanes, that requires an initial cleaning and visual inspection of the distance piece and adjacent side plates of the fuselage wing strut pick-up of the left- and right-stub wings to detect corrosion; rework or replacement of damaged components; and, for certain conditions, follow-on repetitive cleaning and visual inspections of reworked components. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to detect and correct corrosion of the distance piece and adjacent side plates, which could result in reduced strength of the wing strut attachment to the stub wing on the fuselage, and consequent reduced structural integrity of the main wing.

DATES: Effective October 30, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 30, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Short Brothers, Airworthiness & Engineering Quality, P.O. Box 241, Airport Road, Belfast BT3 9DZ, Northern Ireland. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Short Brothers Model SD3–60 SHERPA series airplanes was published in the **Federal Register** on August 7, 1998 (63 FR 42288). That action proposed to require an initial cleaning and visual inspection of the distance piece and adjacent side plates of the fuselage wing strut pick-up of the left-and right-stub wings to detect corrosion; rework or replacement of damaged components; and, for certain conditions, follow-on repetitive cleaning and visual inspections of reworked components.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 28 airplanes of U.S. registry will be affected by this AD, that it will take approximately 5 work hours per airplane to accomplish the required inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators is estimated to be $8,400, or $300 per airplane, per inspection cycle.

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

Regulatory Impact

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

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

Docket at the location provided under the caption ''**ADDRESSES.**''

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–20–32 Short Brothers PLC: Amendment 39–10799. Docket 98–NM–138–AD.

Applicability: All Model SD3–60 SHERPA series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct corrosion of the distance piece and adjacent side plates of the fuselage wing strut pick-up of the left- and right-stub wings, which could result in reduced strength of the wing strut attachment to the stub wing on the fuselage, and consequent reduced structural integrity of the main wing, accomplish the following:

(a) Within 90 days after the effective date of this AD, clean the pockets in the horizontal and vertical legs of the distance piece and adjacent faces of the side plates at the wing strut pick-up area on the stub wing, and perform a visual inspection to detect corrosion; in accordance with Shorts Service Bulletin SD3–60 SHERPA–53–2, dated November 4, 1997.

(b) If no corrosion is detected during the inspection required by paragraph (a) of this AD, prior to further flight, apply additional corrosion protection treatment in accordance with Shorts Service Bulletin SD3–60 SHERPA–53–2, dated November 4, 1997.

(c) If any corrosion is detected, prior to further flight, after cleaning and removing the corrosion from the distance piece and side plates in accordance with Shorts Service Bulletin SD3–60 SHERPA–53–2, dated November 4, 1997, accomplish paragraph (c)(1) or (c)(2) of this AD, as applicable.

(1) If the depth of corrosion is within the limits specified in the service bulletin, apply additional corrosion protection treatment in accordance with the service bulletin.

(2) If the depth of corrosion is outside the limits specified in the service bulletin, accomplish either paragraph (c)(2)(i) or (c)(2)(ii) of this AD. Thereafter, repeat the detailed visual inspection required by paragraph (a) of this AD at intervals not to exceed 600 hours time-in-service or 90 days, whichever occurs first.

(i) Rework the damaged components in accordance with a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Civil Aviation Authority of the United Kingdom (or its delegated agent). Thereafter, repeat the detailed visual inspection required by paragraph (a) of this AD at intervals not to exceed 600 hours time-in-service or 90 days, whichever occurs first.

(ii) Replace the damaged components with new components in accordance with Shorts SD3–60 Sherpa Maintenance Programme Manual, Section 5–26–57, page 9, dated July 17, 1995.

(d) Within 10 days after accomplishing the initial cleaning and inspection required by paragraph (a) of this AD, submit a report of the inspection results (both positive and negative findings) to Short Brothers, PLC. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

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

(g) Except as provided by paragraphs (c)(2)(i), (c)(2)(ii), and (d) of this AD, the actions shall be done in accordance with Shorts Service Bulletin SD3–60 SHERPA–53–2, dated November 4, 1997. 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 Short Brothers, Airworthiness & Engineering Quality, P.O. Box 241, Airport Road, Belfast BT3 9DZ, Northern Ireland. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700,Washington, DC.

Note 3: The subject of this AD is addressed in British airworthiness directive 004–11–97.

(h) This amendment becomes effective on October 30, 1998.

Issued in Renton, Washington, on September 17, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–25475 Filed 9–24–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ACE–21]

Establish Class E Airspace; Davenport, IA; Correction

AGENCY: Federal Aviation Administration [FAA], DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects an error in the airspace docket identification of a final rule that was published in the **Federal Register** on August 18, 1998 (63 FR 44128), Airspace Docket No. 97–ACE–21. The final rule established Class E airspace surface area at the Davenport Municipal Airport, Davenport, IA.

EFFECTIVE DATE: 0901 UTC October 8, 1998.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 E. 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 98–22170, Airspace Docket No. 97–ACE–21, published on August 18, 1998 (63 FR 44128), established Class E airspace area at Davenport, IA. An error was discovered in the airspace docket identification for Davenport, IA. This action corrects that error.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the airspace docket identification for Davenport, IA, as published in the **Federal Register** on August 18, 1998 (63 FR 44128), **Federal**

Register Document 98–22170) is corrected as follows:

On page 44128, in column 2, in the fourth line of the heading, by correcting ''Airspace Docket No. 97–ACE–21'' to read ''Airspace Docket No. 98–ACE–21''.

Issued in Kansas City, MO on September 2, 1998.

Christopher R. Blum,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 98–25745 Filed 9–24–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 4, 18, 122, 123, 127, 148, 178 and 192

[T.D. 98–74]

RIN 1515–AB99

Lay Order Period; General Order; Penalties

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

ACTION: Final rule.

SUMMARY: This document adopts as a final rule, with some changes, proposed amendments to the Customs Regulations regarding the obligation of the owner, master, pilot, operator, or agent of an arriving carrier to provide notice to Customs and to a bonded warehouse of the presence of merchandise or baggage that has remained at the place of arrival or unlading beyond the time period provided by regulation without entry having been completed. The document requires one of the arriving carrier's obligated parties, or any subsequent in-bond carrier or party who accepts custody under a Customs-authorized permit to transfer, to provide notice of the unentered merchandise or baggage to a bonded warehouse. The notice to the bonded warehouse proprietor initiates his obligation to arrange for transportation and storage of the unentered merchandise or baggage at the risk and expense of the consignee. The document also amends the Customs Regulations to provide for penalties or liquidated damages against the owner or master of any conveyance, or agent thereof, for failure to provide the required notice to Customs or to a bonded warehouse proprietor. The document also provides for the assessment of liquidated damages against any subsequent in-bond carrier or other party who accepts custody of the merchandise or baggage under a Customs-authorized permit to transfer and who fails to notify Customs and a bonded warehouse of the presence of such unentered merchandise or baggage and also against the warehouse operator who fails to take required possession of the merchandise or baggage. These regulatory changes reflect amendments to the underlying statutory authority enacted as part of the Customs Modernization provisions of the North American Free Trade Agreement Implementation Act. In addition, this document makes certain conforming changes to the Customs Regulations in order to reflect a number of other statutory amendments and repeals enacted by the Customs Modernization provisions and in order to reflect the recent recodification and reenactment of title 49, United States Code.

EFFECTIVE DATE: October 26, 1998.

FOR FURTHER INFORMATION CONTACT: For legal matters: Jeremy Baskin, Penalties Branch, Office of Regulations and Rulings (202) 927–2344. For operational matters: Steven T. Soggin, Office of Field Operations, (202) 927–0765.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1993, amendments to certain Customs and navigation laws became effective as the result of enactment of the North American Free Trade Agreement Implementation Act, Public Law 103–182, 107 Stat. 2057. Title VI of that Act sets forth Customs Modernization provisions that are popularly referred to as the Mod Act.

Section 656 of the Mod Act amended section 448(a) of the Tariff Act of 1930 (19 U.S.C. 1448(a)) to provide, *inter alia*, that: (1) the owner or master of any vessel or vehicle, or the agent thereof, shall notify Customs of any merchandise or baggage unladen for which entry is not made within the time prescribed by law or regulation; (2) the Secretary of the Treasury shall by regulation prescribe administrative penalties not to exceed $1,000 for each bill of lading for which notice is not given; (3) any such administrative penalty shall be subject to mitigation and remission under section 618 of the Tariff Act of 1930, as amended (19 U.S.C. 1618); and (4) such unentered merchandise or baggage shall be the responsibility of the master or person in charge of the importing vessel or vehicle, or agent thereof, until it is removed from the carrier's control in accordance with section 490 of the Tariff Act of 1930, as amended (19 U.S.C. 1490). On July 31, 1997, Customs published a notice of proposed rulemaking in the **Federal Register** (62 FR 40992) proposing to revise paragraph (a) of § 4.37 of the Customs Regulations (19 CFR 4.37) and add new § 122.50 and § 123.10 (19 CFR 122.50 and 19 CFR 123.10) to implement these Mod Act statutory changes for air, land and sea carriers. Under the proposed regulatory text, importing carriers were to be afforded a five-working-day lay order period after the conclusion of an initial five-working-day period after unlading or arrival of merchandise to notify Customs, in writing or by any Customs-authorized electronic data interchange system, of the presence of the unentered merchandise or baggage. Penalties could be imposed if, after the five-day lay order period, Customs had not been notified of the presence of the unentered merchandise.

Section 658 of the Mod Act amended section 490 of the Tariff Act of 1930 (19 U.S.C. 1490) to provide that: (1) except in the case of U.S. government importations, the carrier shall notify the bonded warehouse of any imported merchandise for which entry is not made within the time prescribed by law or regulation, or for which entry is incomplete because of failure to pay estimated duties, fees or interest, or for which entry cannot be made for want of proper documents or other cause, or which Customs believes is not correctly and legally invoiced; and (2) after such notification from the carrier, the bonded warehouse shall arrange for the transportation and storage of the merchandise at the risk and expense of the consignee. The July 31, 1997, notice of proposed rulemaking also proposed to revise paragraph (b) of § 4.37 of the Customs Regulations (19 CFR 4.37) and to include in new §§ 122.50 and 123.10 provisions to implement these Mod Act statutory changes. The proposed regulatory text would have required the carrier to provide the appropriate notification, in writing or by any Customs-authorized electronic data interchange system, and also would have required that the bonded warehouse operator take possession of the merchandise within five working days after receipt of such notification or else be liable for liquidated damages under the terms and conditions of his custodial bond. The proposed regulatory changes also included a cross-reference to § 113.63(a)(1) of the Customs Regulations (19 CFR 113.63(a)(1)) so as to reflect the existing basis for such custodial bond liability. In addition, the document proposed to amend paragraph (d) of § 4.37 by replacing the word ''owner'' with ''consignee'' to align on the corresponding statutory language.

Section 611 of the Mod Act amended section 436 of the Tariff Act of 1930 (19 U.S.C. 1436), *inter alia*, by including

therein a reference to 46 U.S.C. App. 91, with the result that penalties for violations of outbound vessel manifest filing requirements would be incurred under the provisions of 19 U.S.C. 1436 rather than under 46 U.S.C. App. 91. The July 31, 1997, document also proposed to amend § 192.4 of the Customs Regulations (19 CFR 192.4) to reflect this change.

Section 690 of the Mod Act provided for the repeal of a number of statutory provisions, some of which are still referred to in Parts 4 and 122 of the Customs Regulations (19 CFR Parts 4 and 122). The July 31, 1997, document also proposed to correct those outdated references by removing them or replacing them with references to their successor statutory provisions.

Finally, Public Law 103–272, 108 Stat. 745, dated July 5, 1994, reenacted and recodified the provisions of title 49, United States Code. Section 2(b) thereof reenacted as a new section (19 U.S.C. 1644a) certain title 49 provisions dealing with the application, to civil aircraft, of the laws and regulations regarding the entry and clearance of vessels. The July 31, 1997, document proposed to amend Parts 122, 123 and 148 of the Customs Regulations (19 CFR Parts 122, 123 and 148) by updating the ''49 U.S.C. App.'' statutory references therein to reflect the changes made by section 2(b) or other provisions of Public Law 103–272.

The July 31, 1997, notice of proposed rulemaking made provision for the submission of public comments on the proposed regulatory changes for consideration before adoption of those changes as a final rule, and the prescribed public comment period closed on September 29, 1997. A total of 56 responses to this solicitation of comments were received by Customs. The comments submitted are summarized and responded to below.

Discussion of Comments

Comment: Forty-one commenters suggested that the proposed five-day period after landing of merchandise, during which the carrier was required to notify Customs of unentered merchandise, was too short and did not reflect current commercial reality. One of the 41 commenters opposed to the five-day time period indicated that, under current procedures, approximately 3 percent of arriving merchandise remains unentered and qualifies for general order. That same commenter indicated that, under the proposed rule, some 60 percent of cargo would qualify for general order. If that were to be the case, general order space would be overtaxed, unnecessary extra paperwork would ensue, and damage to cargo moving unnecessarily to general order would occur.

One commenter suggested that while 5 working days was too short, 10 working days recognized commercial realities and would be sufficient time to allow for unentered merchandise to remain in the custody of the arriving carrier.

Customs response: Customs notes that many of the comments opposed to the proposed five-day period indicated that the current regulations provide for a 30-day lay order period, and those commenters objected that the proposed rule involved a drastic reduction in that regulation-mandated lay order period. However, these commenters are operating under a misconception that the current regulations provide for a 30-day lay order period. They do not. The current regulation addressing lay order (19 CFR 4.37) requires that merchandise remaining on the wharf or pier after the fifth working day after unlading shall be deposited in the public stores or a general order warehouse, except that, at the written request of the owner, agent, or master of the vessel, the port director may issue a lay order allowing such merchandise or baggage to remain on the wharf or pier properly protected for a further period which shall be specified in the order. As a matter of practice, many port directors allow for a lay order period of 30 days, but such practice is discretionary with the port director and is not required by regulation.

After review of these comments, Customs agrees that there should be an increase in the proposed time period during which unentered merchandise may remain at the place of unlading before notification to Customs of the presence of such merchandise so that it can be moved into general order. In order to establish uniformity and in consideration of these comments, the final regulatory texts set forth below provide for 15 calendar days, rather than the proposed five working days, during which unentered merchandise may remain at the place of unlading without notification to Customs. Accordingly, Customs must be notified of the presence of merchandise that remains unentered at the wharf, pier, or place of unlading after the fifteenth calendar day after unlading. In addition, the headings of § 4.37 and of proposed new §§ 122.50 and 123.10 have been changed to read ''[g]eneral order'' as there will no longer be a lay order period for unentered merchandise beyond the original 15-calendar-day time period after its unlading. The final regulatory texts refer to calendar days for ease of use of current electronic systems. Additionally, port directors will not have discretion to extend the time period during which unentered merchandise may remain on the wharf, pier or place of unlading.

Comment: Three commenters stated that the proposed regulatory provision for penalties for the carrier's failure to notify Customs of landed cargo not covered by a permit for its release is unnecessary and should be removed.

Customs response: Customs does not agree. As previously noted, section 656 of the Mod Act amended section 448(a) of the Tariff Act of 1930 (19 U.S.C. 1448(a)) to provide that the owner or master of any vessel or vehicle, or the agent thereof, shall notify Customs of any merchandise or baggage unladen for which entry is not made within the time prescribed by law or regulation. Section 656 also provides that the Secretary of the Treasury shall by regulation prescribe administrative penalties not to exceed $1,000 for each bill of lading for which notice is not given. The language of the statute is clear. The proposed regulatory texts merely reflected that which is required by statute.

Comment: Two commenters objected to the wording of the proposed regulations that stated that Customs ''may'' issue penalties for failure to notify. The commenters argued that the language of the statute was mandatory.

Customs response: Customs disagrees. The language of the statute is mandatory in that the Secretary ''shall'' promulgate regulations. Assessment of the monetary penalties remains a matter of enforcement discretion, and the proposed regulatory language therefore should not be changed from the discretionary ''may'' to the mandatory ''shall.''

As noted above, in addition to the notification to Customs by the master, owner, or agent thereof of the presence of unentered cargo pursuant to 19 U.S.C. 1448(a), the carrier, pursuant to 19 U.S.C. 1490, except in the case of U.S. government importations, is required to notify the bonded warehouse of any imported merchandise for which entry is not made within the time prescribed by law or regulation, or for which entry is incomplete because of failure to pay estimated duties, fees, or interest, or for which entry cannot be made for want of proper documents or other cause, or which Customs believes is not correctly and legally invoiced; and after such notification from the importing carrier, the bonded warehouse shall arrange for the transportation and storage of the merchandise at the risk and expense of the consignee. Thus, the regulatory proposals in the July 31, 1997, document placed an obligation on the

carrier to notify Customs of the presence of unentered merchandise within five working days after the initial five-day period; they also placed an additional obligation on the carrier to notify the bonded warehouse within a third consecutive five-day period. However, the proposed regulations were confusing as to the time periods in which the carrier or its master or owner or agent was required to act. Accordingly, the final regulatory texts as set forth below have been simplified to require the owner or master of any vessel or agent thereof, the owner or pilot of any aircraft or agent thereof, or the owner or operator of a vehicle or agent thereof to notify Customs and a bonded warehouse of all merchandise that remains unentered after a 15-calendar-day period after its landing. This notification must be provided within 20 calendar days after landing of the merchandise. Although not specifically stated in the regulatory texts, it should be understood that if the 20th calendar day is a Saturday, Sunday, or holiday, the deadline for notice automatically will be extended to the next working day after that 20th calendar day. As provided in the statute and in the proposed regulatory texts, the final texts set forth below state that a failure to provide timely notification to Customs may result in the assessment of monetary penalties of up to $1,000 per bill of lading; however, the final regulatory texts have been modified to allow for penalties equal to the value of the merchandise on the bill of lading when that value is less than $1,000.

Comment: One commenter raised a question as to the obligation to notify Customs of unentered merchandise or baggage that travels under an immediate transportation (IT) entry to a port of destination or moves within a port under a permit to transfer to a bonded facility such as a container station and remains unreleased or unentered after arrival at the port of destination or bonded facility.

Customs response: Customs agrees that the proposed regulations did not specifically reflect the obligation of a party to notify Customs and a Customs-authorized bonded warehouse of such merchandise or baggage when it remained unreleased and unentered, even though there was nothing in the statute or proposed texts to distinguish the merchandise or baggage described by the commenter from any other merchandise or baggage that was landed from the arriving carrier and remained unreleased and unentered. In order to clarify this point, a new paragraph (b) text has been included in § 4.37 and in new §§ 122.50 and 123.10 to specify the obligation to notify Customs and a bonded warehouse of the party who initiates a bonded movement or who receipts for merchandise or baggage under a permit to transfer when the merchandise or baggage remains unentered and becomes eligible for general order. If the party fails to notify Customs or a bonded warehouse of the unentered or unreleased merchandise or baggage within the applicable 20-day period, he may be liable for liquidated damages under the terms and conditions of his custodial bond. See 19 CFR 113.63(c)(4). It should be noted that a claim for liquidated damages arising from the failure to provide this notification is not considered to constitute a claim involving merchandise and therefore the liquidated damages must be assessed at $1,000 per violation.

Comment: Several commenters averred that while the proposed paragraph (b) text of § 4.37 and of new §§ 122.50 and 123.10 indicated that Customs may impose a penalty against the owner, master, or agent for the failure to notify Customs of the presence of the unentered merchandise, no comparable penalty or liquidated damages action are stated with regard to the failure to provide notification to the bonded warehouse. The commenters suggested that penalties or liquidated damages against the carrier for the failure to notify the bonded warehouse should be stated.

Customs response: Customs agrees that the carrier should be subject to claims for liquidated damages for failure to provide notification to the bonded warehouse. The underlying statute (19 U.S.C. 1490) states that a carrier ''shall notify'' the bonded warehouse of such merchandise or baggage. Inasmuch as the carrier retains such obligation, it is the view of Customs that claims for liquidated damages in such circumstances are consistent with the basic intent and requirement of the statute. In this regard, it should be noted that the carrier remains responsible for the loss or theft of any such unentered merchandise or baggage until it is properly transferred from the carrier's control. Moreover, Customs notes that, as in the case of the proposed paragraph (a) texts discussed above, the proposed paragraph (b) texts did not address the obligation of a custodian of unentered merchandise or baggage to provide notification when the merchandise or baggage travels under an IT entry or moves under a permit to transfer. Accordingly, the proposed paragraph (b) texts (redesignated below as paragraph (c) in the texts of §§ 4.37, 122.50 and 123.10 as a consequence of the addition of new paragraph (b)) have been modified to place the obligation to notify the bonded warehouse on the carrier or any other party to whom custody of the unentered merchandise has been transferred by a Customs authorized permit to transfer or in-bond entry. For purposes of clarification, those texts have also been modified to indicate that the claim for liquidated damages arising for failure to notify the bonded warehouse shall be assessed at $1,000 per bill of lading for which notification is not given.

Comment: Several commenters indicated that no provision exists to allow for the warehouse proprietor to refuse cargo. One of these commenters pointed out that there may be instances where local ordinances would prohibit a warehouse proprietor from taking possession of certain classes of merchandise, such as hazardous merchandise. That same commenter indicated that there must be a provision in the regulations to allow the proprietor to have a say over what cargo may be accepted.

Customs response: Customs agrees that there may be situations where the general order warehouse may be incapable of storing certain types of merchandise that require specialized storage facilities. Customs also acknowledges that no general order warehouse facilities exist at certain ports. Accordingly, new paragraph (e) texts have been added to § 4.37 and have been included in new §§ 122.50 and 123.10 as set forth below to allow the port director, in ports where there is no bonded warehouse to accept general order merchandise or if merchandise requires specialized storage facilities which are unavailable in a bonded facility, to direct the storage of merchandise by the carrier or by any other appropriate means. However, Customs does not agree with the suggestion that the regulations be amended to allow the bonded warehouse operator to decline to accept merchandise he is capable of storing. The underlying general order statute does not allow for such discretion on the part of the general order warehouse operator.

Comment: Two commenters inquired as to whether carriers can delay delivery of freight to bonded warehouses if freight charges have not been satisfied.

Customs response: Customs notes that the regulations do not authorize such delay. The current applicable regulation (19 CFR 127.31) provides for the payment of liens for freight from the proceeds of sale of the unentered merchandise.

Comment: One commenter indicated that a bonded warehouse operator should not be subject to liquidated damages for untimely taking possession of such merchandise unless he has given consent to handle the merchandise.

Customs response: Customs disagrees. The underlying statutory authority does not mention that bonded warehouse operators must consent to the acceptance of any merchandise. Customs is unwilling to impose such a condition by regulation.

Additional Changes to the Regulations

In addition to, or as a consequence of, the changes mentioned above in the discussion of the public comments, the final regulatory text amendments set forth below reflect the following changes that were not included in the July 31, 1997, proposals.

1. Section 4.37 is set forth as an entirely revised section in order to accommodate the changes discussed above as well as the following further changes:

a. The texts of present paragraphs (e) and (f) have been omitted from the revised section because they are not consistent with the current statutory responsibilities as reflected elsewhere in the section text;

b. The text of the last sentence of proposed paragraph (b) is set forth separately as a new paragraph (d) in the revised section text;

c. The text of present paragraph (c) is designated as paragraph (f) in the revised section and the text of the paragraph has been modified to be more consistent with the language of the underlying statutory authority (19 U.S.C. 1457); and

d. The text of present paragraph (d) is designated as paragraph (g) in the revised section and the text of the paragraph has been modified by removing the reference to the public stores.

2. The organizational and other changes described above in the case of revised § 4.37 are also reflected in new §§ 122.50 and 123.10 except that the two new sections have no counterpart to paragraph (f) of revised § 4.37. Thus, paragraphs (a) through (f) of new §§ 122.50 and 123.10 correspond to paragraphs (a) through (e) and (g) of revised § 4.37.

3. In Part 18 of the regulations (19 CFR Part 18): the reference to a lay order period has been removed from the first sentence of paragraph (a)(1) of § 18.2; paragraph (d) of § 18.12 is revised in order to conform to the new requirements relating to the arrival of IT entry merchandise at the port of destination; paragraph (e) of § 18.12 is removed because it is superseded by the new general order regulatory provisions; and, in § 18.25, the cross-reference to the regulatory provision covering the import bond is corrected to refer to the custodial bond provision.

4. Section 659 of the Mod Act amended section 491 of the Tariff Act of 1930 (19 U.S.C. 1491) to provide that any entered or unentered merchandise which shall remain in a bonded warehouse pursuant to 19 U.S.C. 1490 for 6 months (rather than 1 year) from the date of importation thereof, without all estimated duties having been paid, shall be considered unclaimed and abandoned to the Government and shall be appraised and sold by Customs at public auction or retained for official use by a government agency. This document modifies the provisions of 19 CFR 18.11(a), 18.12(a), 127.2, 127.4, 127.11 and 127.28(d) to reflect the 6-month period set forth in the statute.

5. Finally, in §§ 122.117(b)(1) and 122.120(d)(1), the references to lay order are replaced by references to general order in order to reflect the change in terminology discussed above in connection with the comments on § 4.37 and new §§ 122.50 and 123.10.

Conclusion

Accordingly, based on the comments received and the analysis of those comments as set forth above, and after further review of this matter, Customs believes that the proposed regulatory amendments should be adopted as a final rule with certain changes thereto as discussed above and as set forth below. This document also includes an appropriate update of the list of information collection approvals contained in § 178.2 of the Customs Regulations (19 CFR 178.2).

The Regulatory Flexibility Act and Executive Order 12866

For the reasons set forth above and because the amendments conform the Customs Regulations to statutory requirements that are already in effect, pursuant to the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, it is certified that the amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, the amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604. Further, this document does not meet the criteria for a ''significant regulatory action'' as specified in E.O. 12866.

Paperwork Reduction Act

The collection of information contained in this final rule was not proposed in the preceding notice of proposed rulemaking. The collection of information has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3507(j) and assigned control number 1515–0220. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

Comments concerning the collection of information should be directed to OMB, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, D.C. 20503, with a copy to the U.S. Customs Service, Information Services Group, Office of Finance, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Any such comments should be submitted not later than 60 days after the date of publication of this document in the **Federal Register**. Comments are specifically requested concerning: (a) whether the collection of information is necessary for the proper performance of the functions of the U.S. Customs Service, including whether the information will have practical utility; (b) the accuracy of the estimated burden associated with the collection of information (see below); (c) how to enhance the quality, utility, and clarity of the information to be collected; (d) how to minimize the burden of complying with the collection of information, including the application of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information in this regulation is in §§ 4.37, 122.50 and 123.10. This information is required to ensure that merchandise and baggage imported into the United States is properly entered or otherwise accounted for in accordance with statutory requirements. This information will be used by Customs to determine whether private parties have carried out their statutory responsibilities, and to assess monetary penalties or liquidated damage claims for failure to meet those responsibilities, and this information also will be used by private parties in order to enable them to carry out their statutory responsibilities and thus avoid a liability for monetary penalties or

liquidated damages for failing to do so. The collection of information is mandatory. The likely respondents and/or recordkeepers are individuals and business organizations, including importers and carriers.

Estimated total annual reporting and/or recordkeeping burden: 7,500 hours.

Estimated average annual burden per respondent/ recordkeeper: .25 hours.

Estimated number of respondents and/or recordkeepers: 30,000.

Estimated annual frequency of responses: 1.

List of Subjects

19 CFR Part 4

Cargo vessels, Common carriers, Customs duties and inspection, Entry, Exports, Fishing vessels, Imports, Maritime carriers, Passenger Vessels, Penalties, Reporting and recordkeeping requirements, Shipping, Vessels, Yachts.

19 CFR Part 18

Bonded transportation, Bonds, Common carriers, Customs duties and inspection, Exports, Imports, Reporting and recordkeeping requirements.

19 CFR Part 122

Air carriers, Aircraft, Airports, Air transportation, Baggage, Bonds, Customs duties and inspection, Foreign commerce and trade statistics, Freight, Imports, Penalties, Reporting and recordkeeping requirements.

19 CFR Part 123

Aircraft, Canada, Customs duties and inspection, Imports, International boundaries, International traffic, Mexico, Motor carriers, Railroads, Reporting and recordkeeping requirements, Trade agreements, Vehicles, Vessels.

19 CFR Part 127

Customs duties and inspection, Exports, Reporting and recordkeeping requirements.

19 CFR Part 148

Aliens, Baggage, Crewmembers, Customs duties and inspection, Declarations, Foreign officials, Government employees, International organizations, Privileges and Immunities, Reporting and recordkeeping requirements.

19 CFR Part 178

Administrative practice and procedure, Reporting and recordkeeping requirements.

19 CFR Part 192

Aircraft, Customs duties and inspection, Export Control, Penalties, Reporting and recordkeeping requirements, Seizures and forfeiture, Vehicles, Vessels.

Amendments to the Regulations

Accordingly, for the reasons stated in the preamble, Parts 4, 18, 122, 123, 127, 148, 178 and 192 of the Customs Regulations (19 CFR Parts 4, 18, 122, 123, 127, 148, 178 and 192) are amended as set forth below:

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The general authority citation for Part 4 and the specific authority citations for §§ 4.7a, 4.36 and 4.37 continue to read, and the specific authority citations for §§ 4.9 and 4.68 are revised to read, as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1431, 1433, 1434, 1624; 46 U.S.C. App. 3, 91.

* * * * *

Section 4.7a also issued under 19 U.S.C. 1498, 1584;

* * * * *

Section 4.9 also issued under 42 U.S.C. 269;

* * * * *

Section 4.36 also issued under 19 U.S.C. 1431, 1457, 1458, 46 U.S.C. App. 100;

Section 4.37 also issued under 19 U.S.C. 1448, 1457, 1490;

* * * * *

Section 4.68 also issued under 46 U.S.C. App. 817d, 817e;

* * * * *

2. Part 4 is amended by removing and reserving footnotes 17, 24, 71, and 74 in §§ 4.7a(a), 4.12(a)(3), 4.36(c) and 4.37(d).

§ 4.6 [Amended]

3. In § 4.6, paragraph (c) is amended by removing the reference ''19 U.S.C. 1585'' and adding, in its place, the reference ''19 U.S.C. 1436''.

§ 4.7a [Amended]

4. In § 4.7a, the first sentence of paragraph (a) is amended by removing the words '', required by section 432, Tariff Act of 1930, to be separately specified''.

§ 4.36 [Amended]

5. In § 4.36, paragraph (c) is amended by removing the words ''a cargo within the purview of the proviso to the first subdivision of section 431, Tariff Act of 1930'' and adding, in their place, the word ''cargo''.

6. The heading and text of § 4.37 are revised to read as follows:

§ 4.37 General order.

(a) Any merchandise or baggage regularly landed but not covered by a permit for its release shall be allowed to remain at the place of unlading until the fifteenth calendar day after landing. No later than 20 calendar days after landing, the master or owner of the vessel or the agent thereof shall notify Customs of any such merchandise or baggage for which entry has not been made. Such notification shall be provided in writing or by any appropriate Customs-authorized electronic data interchange system. Failure to provide such notification may result in assessment of a monetary penalty of up to $1,000 per bill of lading against the master or owner of the vessel or the agent thereof. If the value of the merchandise on the bill is less than $1,000, the penalty shall be equal to the value of such merchandise.

(b) Any merchandise or baggage that is taken into custody from an arriving carrier by any party under a Customs-authorized permit to transfer or in-bond entry may remain in the custody of that party for 15 calendar days after receipt under such permit to transfer or 15 calendar days after arrival at the port of destination. No later than 20 calendar days after receipt under the permit to transfer or 20 calendar days after arrival under bond at the port of destination, the party shall notify Customs of any such merchandise or baggage for which entry has not been made. Such notification shall be provided in writing or by any appropriate Customs-authorized electronic data interchange system. If the party fails to notify Customs of the unentered merchandise or baggage in the allotted time, he may be liable for the payment of liquidated damages under the terms and conditions of his custodial bond (see § 113.63(c)(4) of this chapter).

(c) In addition to the notification to Customs required under paragraphs (a) and (b) of this section, the carrier (or any other party to whom custody of the unentered merchandise has been transferred by a Customs authorized permit to transfer or in-bond entry) shall provide notification of the presence of such unreleased and unentered merchandise or baggage to a bonded warehouse certified by the port director as qualified to receive general order merchandise. Such notification shall be provided in writing or by any appropriate Customs-authorized electronic data interchange system and shall be provided within the applicable 20-day period specified in paragraph (a) or (b) of this section. It shall then be the responsibility of the bonded warehouse proprietor to arrange for the transportation and storage of the merchandise or baggage at the risk and expense of the consignee. Any unentered merchandise or baggage shall remain the responsibility of the carrier,

master, or person in charge of the importing vessel or the agent thereof or party to whom the merchandise has been transferred under a Customs authorized permit to transfer or in-bond entry, until it is properly transferred from his control in accordance with this paragraph. If the party to whom custody of the unentered merchandise or baggage has been transferred by a Customs-authorized permit to transfer or in-bond entry fails to notify a Customs-approved bonded warehouse of such merchandise or baggage within the applicable 20-calendar-day period, he may be liable for the payment of liquidated damages of $1,000 per bill of lading under the terms and conditions of his international carrier or custodial bond (see §§ 113.63(b), 113.63(c) and 113.64(b) of this chapter).

(d) If the bonded warehouse operator fails to take possession of unentered and unreleased merchandise or baggage within five calendar days after receipt of notification of the presence of such merchandise or baggage under this section, he may be liable for the payment of liquidated damages under the terms and conditions of his custodial bond (see § 113.63(a)(1) of this chapter).

(e) In ports where there is no bonded warehouse authorized to accept general order merchandise or if merchandise requires specialized storage facilities which are unavailable in a bonded facility, the port director, after having received notice of the presence of unentered merchandise or baggage in accordance with the provisions of this section, shall direct the storage of the merchandise by the carrier or by any other appropriate means.

(f) Whenever merchandise remains on board any vessel from a foreign port more than 25 days after the date on which report of arrival of such vessel was made, the port director, as prescribed in section 457, Tariff Act of 1930, as amended (19 U.S.C. 1457), may take possession of such merchandise and cause it to be unladen at the expense and risk of the owners of the merchandise. Any merchandise so unladen shall be sent forthwith by the port director to a general order warehouse and stored at the risk and expense of the owners of the merchandise.

(g) Merchandise taken into the custody of the port director pursuant to section 490(b), Tariff Act of 1930, as amended (19 U.S.C. 1490(b)), shall be sent to a general order warehouse after 1 day after the day the vessel was entered, to be held there at the risk and expense of the consignee.

PART 18—TRANSPORTATION IN BOND AND MERCHANDISE IN TRANSIT

1. The general authority citation for Part 18 and the specific authority citation for §§ 18.11 and 18.12 are revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1551, 1552, 1553, 1623.

* * * * *

Section 18.11 also issued under 19 U.S.C. 1484;

Section 18.12 also issued under 19 U.S.C. 1448, 1484, 1490;

* * * * *

§ 18.2 [Amended]

2. In § 18.2(a)(1), the first sentence is amended by removing the words ''any lay order period and extension thereof have expired and''.

§ 18.11 [Amended]

3. Section 18.11(a) is amended by removing the words ''1 year'' and adding, in their place, the words ''6 months''.

4. In § 18.12(a), the first and second sentences are amended by removing the words ''1 year has'' and adding, in their place, the words ''6 months have''.

5. Section 18.12(d) is revised to read as follows:

§ 18.12 Entry at port of destination.

* * * * *

(d) All merchandise included in an immediate transportation without appraisement entry (including carnets) not entered within 15 calendar days after delivery at the port of destination shall be disposed of in accordance with the applicable procedures in § 4.37 or § 122.50 or § 123.10 of this chapter.

* * * * *

6. Section 18.12(e) is removed.

§ 18.25 [Amended]

7. Section 18.25(b) is amended by removing the reference ''§ 113.62'' and adding, in its place, the reference ''§ 113.63''.

PART 122—AIR COMMERCE REGULATIONS

1. The authority citation for Part 122 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1433, 1436, 1448, 1459, 1590, 1594, 1623, 1624, 1644, 1644a.

§ 122.2 [Amended]

2. Section 122.2 is amended by removing the reference ''49 U.S.C. App. 1509(c)'' and adding, in its place, the reference ''19 U.S.C. 1644 and 1644a''.

§ 122.49 [Amended]

3. Section 122.49(f) is amended by removing the words ''sections 440 (concerning post entry) and 584 (concerning manifest violations), Tariff Act of 1930, as amended (19 U.S.C. 1440, 1584), apply'' and adding, in their place, the words ''section 584 (concerning manifest violations), Tariff Act of 1930, as amended (19 U.S.C. 1584), applies''.

4. In Subpart E, § 122.50 is added to read as follows:

§ 122.50 General order.

(a) Any merchandise or baggage regularly landed but not covered by a permit for its release shall be allowed to remain at the place of unlading until the fifteenth calendar day after landing. No later than 20 calendar days after landing, the pilot or owner of the aircraft or the agent thereof shall notify Customs of any such merchandise or baggage for which entry has not been made. Such notification shall be provided in writing or by any appropriate Customs-authorized electronic data interchange system. Failure to provide such notification may result in assessment of a monetary penalty of up to $1,000 per bill of lading against the pilot or owner of the aircraft or the agent thereof. If the value of the merchandise on the bill is less than $1,000, the penalty shall be equal to the value of such merchandise.

(b) Any merchandise or baggage that is taken into custody from an arriving carrier by any party under a Customs-authorized permit to transfer or in-bond entry may remain in the custody of that party for 15 calendar days after receipt under such permit to transfer or 15 calendar days after arrival at the port of destination. No later than 20 calendar days after receipt under the permit to transfer or 20 calendar days after arrival under bond at the port of destination, the party shall notify Customs of any such merchandise or baggage for which entry has not been made. Such notification shall be provided in writing or by any appropriate Customs-authorized electronic data interchange system. If the party fails to notify Customs of the unentered merchandise or baggage in the allotted time, he may be liable for the payment of liquidated damages under the terms and conditions of his custodial bond (see § 113.63(c)(4) of this chapter).

(c) In addition to the notification to Customs required under paragraphs (a) and (b) of this section, the carrier (or any other party to whom custody of the unentered merchandise has been transferred by a Customs authorized permit to transfer or in-bond entry) shall

provide notification of the presence of such unreleased and unentered merchandise or baggage to a bonded warehouse certified by the port director as qualified to receive general order merchandise. Such notification shall be provided in writing or by any appropriate Customs-authorized electronic data interchange system and shall be provided within the applicable 20-day period specified in paragraph (a) or (b) of this section. It shall then be the responsibility of the bonded warehouse proprietor to arrange for the transportation and storage of the merchandise or baggage at the risk and expense of the consignee. Any unentered merchandise or baggage shall remain the responsibility of the carrier, pilot, or person in charge of the importing aircraft, or the agent thereof, or party to whom the merchandise has been transferred under a Customs authorized permit to transfer or in-bond entry, until it is properly transferred from his control in accordance with this paragraph. If the party to whom custody of the unentered merchandise or baggage has been transferred by a Customs-authorized permit to transfer or in-bond entry fails to notify a Customs-approved bonded warehouse of such merchandise or baggage within the applicable 20-calendar-day period, he may be liable for the payment of liquidated damages of $1,000 per bill of lading under the terms and conditions of his international carrier or custodial bond (see §§ 113.63(b), 113.63(c) and 113.64(b) of this chapter).

(d) If the bonded warehouse operator fails to take possession of unentered and unreleased merchandise or baggage within five calendar days after receipt of notification of the presence of such merchandise or baggage under this section, he may be liable for the payment of liquidated damages under the terms and conditions of his custodial bond (see § 113.63(a)(1) of this chapter).

(e) In ports where there is no bonded warehouse authorized to accept general order merchandise, or if merchandise requires specialized storage facilities that are unavailable in a bonded facility, the port director, after having received notice of the presence of unentered merchandise or baggage in accordance with the provisions of this section, shall direct the storage of the merchandise by the carrier or by any other appropriate means.

(f) Merchandise taken into the custody of the port director pursuant to section 490(b), Tariff Act of 1930, as amended (19 U.S.C. 1490(b)), shall be sent to a general order warehouse after 1 day after the day the aircraft arrived, to be held there at the risk and expense of the consignee.

§ 122.117 [Amended]

5. In § 122.117(b)(1), the second sentence is amended by removing the words ''lay order period, or an authorized extension period (see § 4.37 of this chapter)'' and adding, in their place, the words ''general order period (see § 122.50)''.

§ 122.120 [Amended]

6. In § 122.120(d)(1), the third sentence is amended by removing the words ''lay order'' and adding, in their place, the words ''general order''.

§ 122.161 [Amended]

7. In § 122.161, the first sentence is amended by removing the reference ''§ 122.14'' and adding, in its place, the words ''subpart S of this part'' and by removing the reference ''49 U.S.C. App. 1474'' and adding, in its place, the reference ''19 U.S.C. 1644 and 1644a''.

§ 122.165 [Amended]

8. In § 122.165, the first sentence of paragraph (a) is amended by removing the parenthetical reference ''(49 U.S.C. App. 1508(b))'' and adding, in its place, the parenthetical reference ''(49 U.S.C. 41703)'', and the second sentence of paragraph (b) is amended by removing the reference ''49 U.S.C. App. 1471'' and adding, in its place, the reference ''49 U.S.C. Chapter 463''.

PART 123—CUSTOMS RELATIONS WITH CANADA AND MEXICO

1. The general authority citation for Part 123 and the specific authority citation for § 123.8 are revised to read, and the specific authority citation for § 123.1 continues to read, as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1431, 1433, 1436, 1448, 1624.

Section 123.1 also issued under 19 U.S.C. 1459;

* * * * *

Section 123.8 also issued under 19 U.S.C. 1450–1454, 1459;

* * * * *

§ 123.11 [Amended]

2. The specific authority citation for § 123.11 is removed.

§ 123.1 [Amended]

3. In § 123.1, paragraph (a)(2) is amended by removing the words ''sections 1433 or 1644 of title 19, United States Code (19 U.S.C. 1433, 1644), or section 1509 of title 49, United States Code App. (49 U.S.C. App. 1509),'' and adding, in their place, the words ''section 1433, 1644 or 1644a of title 19, United States Code (19 U.S.C. 1433, 1644, 1644a),''.

4. In Subpart A, § 123.10 is added to read as follows:

§ 123.10 General order.

(a) Any merchandise or baggage regularly landed but not covered by a permit for its release shall be allowed to remain at the place of unlading until the fifteenth calendar day after landing. No later than 20 calendar days after landing, the owner or operator of the vehicle or the agent thereof shall notify Customs of any such merchandise or baggage for which entry has not been made. Such notification shall be provided in writing or by any appropriate Customs-authorized electronic data interchange system. Failure to provide such notification may result in assessment of a monetary penalty of up to $1,000 per bill of lading against the owner or operator of the vehicle or the agent thereof. If the value of the merchandise on the bill is less than $1,000, the penalty shall be equal to the value of such merchandise.

(b) Any merchandise or baggage that is taken into custody from an arriving carrier by any party under a Customs-authorized permit to transfer or in-bond entry may remain in the custody of that party for 15 calendar days after receipt under such permit to transfer or 15 calendar days after arrival at the port of destination. No later than 20 calendar days after receipt under the permit to transfer or 20 calendar days after arrival under bond at the port of destination, the party shall notify Customs of any such merchandise or baggage for which entry has not been made. Such notification shall be provided in writing or by any appropriate Customs-authorized electronic data interchange system. If the party fails to notify Customs of the unentered merchandise or baggage in the allotted time, he may be liable for the payment of liquidated damages under the terms and conditions of his custodial bond (see § 113.63(c)(4) of this chapter).

(c) In addition to the notification to Customs required under paragraphs (a) and (b) of this section, the carrier (or any other party to whom custody of the unentered merchandise has been transferred by a Customs authorized permit to transfer or in-bond entry) shall provide notification of the presence of such unreleased and unentered merchandise or baggage to a bonded warehouse certified by the port director as qualified to receive general order merchandise. Such notification shall be provided in writing or by any appropriate Customs-authorized

electronic data interchange system and shall be provided within the applicable 20-day period specified in paragraph (a) or (b) of this section. It shall then be the responsibility of the bonded warehouse proprietor to arrange for the transportation and storage of the merchandise or baggage at the risk and expense of the consignee. Any unentered merchandise or baggage shall remain the responsibility of the carrier, master, or person in charge of the importing vehicle or the agent thereof or party to whom the merchandise has been transferred under a Customs authorized permit to transfer or in-bond entry until it is properly transferred from his control in accordance with this paragraph. If the party to whom custody of the unentered merchandise or baggage has been transferred by a Customs-authorized permit to transfer or in-bond entry fails to notify a Customs-approved bonded warehouse of such merchandise or baggage within the applicable 20-calendar-day period, he may be liable for the payment of liquidated damages of $1,000 per bill of lading under the terms and conditions of his international carrier or custodial bond (see §§ 113.63(b), 113.63(c) and 113.64(b) of this chapter).

(d) If the bonded warehouse operator fails to take possession of unentered and unreleased merchandise or baggage within five calendar days after receipt of notification of the presence of such merchandise or baggage under this section, he may be liable for the payment of liquidated damages under the terms and conditions of his custodial bond (see § 113.63(a)(1) of this chapter).

(e) In ports where there is no bonded warehouse authorized to accept general order merchandise, or if merchandise requires specialized storage facilities which are unavailable in a bonded facility, the port director, after having received notice of the presence of unentered merchandise or baggage in accordance with the provisions of this section, shall direct the storage of the merchandise by the carrier or by any other appropriate means.

(f) Merchandise taken into the custody of the port director pursuant to section 490(b), Tariff Act of 1930, as amended (19 U.S.C. 1490(b)), shall be sent to a general order warehouse after 1 day after the day the vehicle arrived, to be held there at the risk and expense of the consignee.

PART 127—GENERAL ORDER, UNCLAIMED, AND ABANDONED MERCHANDISE

1. The authority citation for part 127 continues to read as follows:

Authority: 19 U.S.C. 66, 1311, 1312, 1484, 1485, 1490, 1491, 1492, 1506, 1559, 1563, 1623, 1624, 1646a; 26 U.S.C. 7553.

§ 127.2 [Amended]

2. Section 127.2 is amended by removing the words ''1 year'' wherever they appear and adding, in their place, the words ''6 months'' and by removing the words ''1-year period'' in paragraph (b) and adding, in their place, the words ''6-month period''.

§ 127.4 [Amended]

3. In § 127.4, the second sentence is amended by removing the words ''1 year'' and adding, in their place, the words ''6 months''.

§ 127.11 [Amended]

4. Section 127.11 is amended by removing the words ''1 year'' and adding, in their place, the words ''6 months''.

§ 127.28 [Amended]

5. Section 127.28(d) is amended by removing the words ''1 year'' and adding, in their place, the words ''6 months''.

PART 148—PERSONAL DECLARATIONS AND EXEMPTIONS

1. The authority citation for part 148 continues to read in part as follows:

Authority: 19 U.S.C. 66, 1496, 1498, 1624. The provisions of this part, except for subpart C, are also issued under 19 U.S.C. 1202 (General Note 20, Harmonized Tariff Schedule of the United States).

* * * * *

§ 148.67 [Amended]

2. In § 148.67, paragraph (b) is amended by removing the words ''section 453, Tariff Act of 1930, as amended (19 U.S.C. 1453), or section 1474 of title 49, United States Code,'' and adding, in their place, the references ''19 U.S.C. 1453 or 19 U.S.C. 1644 and 1644a''.

PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for Part 178 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 1624; 44 U.S.C. 3501 *et seq.*

2. Section 178.2 is amended by adding new listings to the table in numerical order to read as follows:

§ 178.2 Listing of OMB control numbers.

19 CFR section	Description	OMB control No.
*	*	*
§ 4.37	Notification regarding imported merchandise or baggage for which entry has not been made	1515–0220
*	*	*
§ 122.50	Notification regarding imported merchandise or baggage for which entry has not been made	1515–0220
*	*	*
§ 123.10	Notification regarding imported merchandise or baggage for which entry has not been made	1515–0220
*	*	*

PART 192—EXPORT CONTROL

1. The authority citation for Part 192 continues to read as follows:

Authority: 19 U.S.C. 66, 1624, 1627a, 1646a.

§ 192.4 [Amended]

2. In § 192.4, the first sentence is amended by removing the reference ''46 U.S.C. App. 91'' and adding, in its place, the reference ''19 U.S.C. 1436'' and the second sentence is amended by removing the words ''a liability of not more than $1,000 nor less than $500 will be incurred'' and adding, in their

place, the words ''a liability for penalties may be incurred''.

Samuel H. Banks,

Acting Commissioner of Customs.

Approved: August 3, 1998.

Dennis M. O'Connell,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 98–25634 Filed 9–24–98; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 10 and 178

[T.D. 98–76]

RIN 1515–AB59

Andean Trade Preference

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule, without any changes, proposed amendments to the Customs Regulations to implement the duty preference provisions of the Andean Trade Preference Act (the Act). The final regulatory texts set forth the country of origin and related rules which apply for purposes of duty-free or reduced-duty treatment on imported goods under the Act and specify the documentary and other procedural requirements which apply to any claim for such preferential tariff treatment under the Act.

EFFECTIVE DATE: October 26, 1998.

FOR FURTHER INFORMATION CONTACT: Operational Aspects: Tony Mazzoccoli, Office of Field Operations (202–927–0564). Legal Aspects: Craig Walker, Office of Regulations and Rulings (202–927–1116).

SUPPLEMENTARY INFORMATION:

Background

On December 4, 1991, President Bush signed into law the Andean Trade Preference Act (Pub. L. 102–182, Title II, Sections 201–206, 105 Stat. 1236–1244) (''the Act'', commonly referred to as the ATPA), the provisions of which are codified at 19 U.S.C. 3201 through 3206. Sections 202 and 204(c) of the Act (19 U.S.C. 3201 and 3203(c)) authorize the President to proclaim duty-free treatment for all eligible articles, and duty reductions for certain other goods, from any country designated by the President as a beneficiary country pursuant to section 203 of the Act (19 U.S.C. 3202). On July 2, 1992, President Bush signed Proclamation 6455 (57 FR 30069) which (1) proclaimed the duty treatment authorized by the Act, (2) designated Colombia as a beneficiary country for purposes of the Act, and (3) modified the Harmonized Tariff Schedule of the United States (HTSUS) to incorporate the substance of the relevant provisions of the Act; under the terms of the proclamation, the proclaimed duty treatment was effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after July 22, 1992. On the same date President Bush signed Proclamation 6456 (57 FR 30097) designating Bolivia as a beneficiary country for purposes of the Act, similarly effective July 22, 1992. On April 13, 1993, President Clinton signed Proclamation 6544 (58 FR 19547) which, among other things, designated Ecuador as a beneficiary country for purposes of the Act, effective April 30, 1993. On August 11, 1993, President Clinton signed Proclamation 6585 (58 FR 43239) designating Peru as a beneficiary country for purposes of the Act, effective August 26, 1993. The modifications to the HTSUS contained in Proclamation 6455 setting forth the substance of the relevant provisions of the Act are now contained in General Note 11, HTSUS, and eligible articles and other goods to which preferential duty treatment under the Act applies are identified within the HTSUS by the designation ''J'' appearing with or without an asterisk in the ''Special'' rate of duty subcolumn.

Sections 204(a)–(c) of the Act (19 U.S.C. 3203(a)–(c)) set forth the standards which govern the eligibility of articles for duty-free or reduced-duty treatment under the Act. Section 204(a), which contains the basic origin and related rules for purposes of duty-free treatment, was based on section 213(a) of the Caribbean Basin Economic Recovery Act, as amended (19 U.S.C. 2703(a)), which sets forth the origin and related rules governing duty-free treatment under the Caribbean Basin Initiative (CBI). Thus, in order to be eligible for duty-free treatment under the Act, an article imported from a designated beneficiary country must meet three basic requirements: (1) it must be imported directly from a beneficiary country into the customs territory of the United States; (2) it must have its origin in a beneficiary country, that is, it either must be wholly the growth, product, or manufacture of a beneficiary country or must be a new or different article of commerce that has been grown, produced, or manufactured in a beneficiary country; and (3) it must have a minimum domestic value content, that is, at least 35 percent of its appraised value must be attributed to the sum of the cost or value of materials produced in one or more beneficiary countries plus the direct costs of processing operations performed in one or more beneficiary countries. The provisions of section 204(a) of the Act further parallel the provisions of section 213(a) of the CBI statute in the following regards: (1) simple combining or packaging operations or mere dilution with water or another substance does not confer beneficiary country origin on an imported article or on a constituent material of an imported article; (2) the term ''beneficiary country'' is defined as including the Commonwealth of Puerto Rico and the U.S. Virgin Islands for purposes of determining compliance with the 35 percent value content requirement; (3) the cost or value of materials produced in the customs territory of the United States (other than in Puerto Rico) may be counted toward the 35 percent value content requirement to a maximum of 15 percent of the appraised value of the imported article; and (4) the expression ''direct costs of processing operations'' is defined in the same manner. However, the origin and related rules of section 204(a) of the Act differ from the corresponding provisions in section 213(a) of the CBI statute in two principal respects: (1) section 204(a) of the Act specifically allows input attributable to one or more CBI beneficiary countries for purposes of the 35 percent value content requirement (the corresponding CBI statutory provision makes no mention of input attributable to beneficiary countries under the Act); and (2) section 204(a) of the Act has no provision corresponding to section 213(a)(4) of the CBI statute which was added to facilitate the addition of value to an article in Puerto Rico and the granting of duty-free treatment after final exportation of an article from a CBI beneficiary country. Section 204(b) of the Act lists eight categories of goods excluded from the duty-free treatment provided for in section 204(a), one of which refers to articles to which reduced rates of duty apply under section 204(c) of the Act. Section 204(c) directs the President to proclaim reductions in the rates of duty on handbags, luggage, flat goods, work gloves and leather wearing apparel that: (1) are the product of any beneficiary country; and (2) were not designated on August 5, 1983, as eligible articles for purposes of the Generalized System of Preferences (GSP) under Title V of the Trade Act of 1974 (19 U.S.C. 2461–2466). These reduced duty rates, which

were generally implemented in equal annual stages over a 5-year period (commencing in 1992 and ending in 1996), appear in the HTSUS in the ''Special'' rate of duty subcolumn followed by the symbol ''J'' within parentheses.

Section 204(a)(2) of the Act directed the Secretary of the Treasury to promulgate such regulations as may be necessary to carry out the duty-free treatment provisions of the Act. Accordingly, on January 30, 1998, Customs published in the **Federal Register** (63 FR 4601) a proposal to add §§ 10.201 through 10.208 within part 10 of the Customs Regulations (19 CFR Part 10) to implement the duty preference provisions of the Act. In view of the similarity between the origin and related rules under the Act and those under the CBI, the texts set forth in the January 30, 1998, notice of proposed rulemaking closely followed the CBI regulations contained in §§ 10.191–10.198 of the Customs Regulations (19 CFR 10.191–10.198) except where statutory differences or editorial considerations warranted a variance from the CBI approach.

The January 30, 1998, notice included a detailed, section-by-section explanation of the proposed new regulatory texts and made provision for the submission of public comments on the proposed texts for consideration before adoption of those texts as a final rule. The prescribed public comment period closed on March 31, 1998, and no comments on the proposed new regulatory texts were received by Customs during that comment period. Accordingly, Customs believes that the proposed texts should be adopted as a final rule without change. The final regulatory amendments set forth in this document also include an appropriate update of the list of information collection approvals contained in § 178.2 of the Customs Regulations (19 CFR 178.2).

Executive Order 12866

This document does not meet the criteria for a ''significant regulatory action'' as specified in Executive Order 12866.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the amendments will not have a significant economic impact on a substantial number of small entities. The amendments reflect statutory requirements that are already in effect and follow existing regulatory provisions that implement similar statutory programs. Accordingly, the amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Paperwork Reduction Act

The collection of information contained in this final rule has been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1515–0219. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

The collection of information in this final rule is in § 10.207. This information conforms to requirements in 19 U.S.C. 3203(a) and is used by Customs to determine whether goods imported from designated beneficiary countries are entitled to duty-free entry under that statutory provision. The likely respondents are business organizations including importers, exporters, and manufacturers.

The estimated average annual burden associated with the collection of information in this final rule is 2 minutes per respondent or recordkeeper. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the U.S. Customs Service, Information Services Group, Office of Finance, 1300 Pennsylvania Avenue, NW, Washington, DC. 20229, and to OMB, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Drafting Information

The principal author of this document was Francis W. Foote, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 10

Andean trade preference, Customs duties and inspection, Entry procedures, Imports.

19 CFR Part 178

Administrative practice and procedure, Recordkeeping and reporting requirements.

Amendments to the Regulations

For the reasons stated in the preamble, Parts 10 and 178, Customs Regulations (19 CFR Parts 10 and 178), are amended as set forth below.

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The general authority citation for part 10 continues to read, and a specific authority citation for §§ 10.201 through 10.207 is added to read, as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314;

* * * * *

§§ 10.201 through 10.207 also issued under 19 U.S.C. 3203.

2. Part 10 is amended by adding a new center heading followed by new §§ 10.201 through 10.208 to read as follows:

Andean Trade Preference

Sec.

Andean Trade Preference

§ 10.201 Applicability.

Title II of Pub. L. 102–182 (105 Stat. 1233), entitled the Andean Trade Preference Act (ATPA) and codified at 19 U.S.C. 3201–3206, authorizes the President to proclaim duty-free treatment for all eligible articles from any beneficiary country, to designate countries as beneficiary countries, and to proclaim duty reductions for certain goods not eligible for duty-free treatment. The provisions of §§ 10.202–10.208 of this part set forth the legal requirements and procedures that apply for purposes of obtaining such duty-free or reduced-duty treatment for articles from a beneficiary country which are identified for purposes of such treatment in General Note 11, Harmonized Tariff Schedule of the United States (HTSUS), and in the ''Special'' rate of duty column of the HTSUS.

§ 10.202 Definitions.

The following definitions apply for purposes of §§ 10.201 through 10.208:

(a) *Beneficiary country.* Except as otherwise provided in § 10.206(b), the term ''beneficiary country'' refers to any country or successor political entity with respect to which there is in effect a proclamation by the President designating such country or successor political entity as a beneficiary country

in accordance with section 203 of the ATPA (19 U.S.C. 3202).

(b) *Eligible articles.* The term ''eligible'' when used with reference to an article means merchandise which is imported directly from a beneficiary country as provided in § 10.204, which meets the country of origin criteria set forth in § 10.205 and the value-content requirement set forth in § 10.206, and which, if the requirements of § 10.207 are met, is therefore entitled to duty-free treatment under the ATPA. However, the following merchandise shall not be considered eligible articles entitled to duty-free treatment under the ATPA:

(1) Textile and apparel articles which are subject to textile agreements;

(2) Footwear not designated on December 4, 1991, as eligible for the purpose of the Generalized System of Preferences under Title V, Trade Act of 1974, as amended (19 U.S.C. 2461–2466);

(3) Tuna, prepared or preserved in any manner, in airtight containers;

(4) Petroleum, or any product derived from petroleum, provided for in headings 2709 and 2710, Harmonized Tariff Schedule of the United States (HTSUS);

(5) Watches and watch parts (including cases, bracelets, and straps), of whatever type including, but not limited to, mechanical, quartz digital or quartz analog, if such watches or watch parts contain any material which is the product of any country with respect to which HTSUS column 2 rates of duty apply;

(6) Sugars, syrups, and molasses classified in subheadings 1701.11.03, 1701.12.02, 1701.99.02, 1702.90.32, 1806.10.42, and 2106.90.12, HTSUS;

(7) Rum and tafia classified in subheading 2208.40.00, HTSUS; or

(8) Articles to which reduced rates of duty apply under section 204(c) of the ATPA (19 U.S.C. 3203(c)) (see § 10.208).

(c) *Entered.* The term ''entered'' means entered, or withdrawn from warehouse for consumption, in the customs territory of the United States.

(d) *Wholly the growth, product, or manufacture of a beneficiary country.* The expression ''wholly the growth, product, or manufacture of a beneficiary country'' has the same meaning as that set forth in § 10.191(b)(3) of this part.

§ 10.203 Eligibility criteria in general.

An article classifiable under a subheading of the Harmonized Tariff Schedule of the United States for which a rate of duty of ''Free'' appears in the ''Special'' subcolumn followed by the symbol ''J'' or ''J*'' in parentheses is eligible for duty-free treatment, and will be accorded such treatment, if each of the following requirements is met:

(a) *Imported directly.* The article is imported directly from a beneficiary country as provided in § 10.204.

(b) *Country of origin criteria.* The article complies with the country of origin criteria set forth in § 10.205.

(c) *Value content requirement.* The article complies with the value content requirement set forth in § 10.206.

(d) *Filing of claim and submission of supporting documentation.* The claim for duty-free treatment is filed, and any required documentation in support of the claim is submitted, in accordance with the procedures set forth in § 10.207.

§ 10.204 Imported directly.

In order to be eligible for duty-free treatment under the ATPA, an article shall be imported directly from a beneficiary country into the customs territory of the United States. For purposes of this requirement, the words ''imported directly'' mean:

(a) Direct shipment from any beneficiary country to the United States without passing through the territory of any non-beneficiary country; or

(b) If shipment from any beneficiary country to the United States was through the territory of a non-beneficiary country, the articles in the shipment did not enter into the commerce of the non-beneficiary country while en route to the United States, and the invoices, bills of lading, and other shipping documents show the United States as the final destination; or

(c) If shipment from any beneficiary country to the United States was through the territory of a non-beneficiary country and the invoices and other documents do not show the United States as the final destination, then the articles in the shipment, upon arrival in the United States, are imported directly only if they:

(1) Remained under the control of the customs authority in the intermediate country;

(2) Did not enter into the commerce of the intermediate country except for the purpose of sale other than at retail, and the articles are imported into the United States as a result of the original commercial transaction between the importer and the producer or the latter's sales agent; and

(3) Were not subjected to operations in the intermediate country other than loading and unloading, and other activities necessary to preserve the articles in good condition.

§ 10.205 Country of origin criteria.

(a) *General.* Except as otherwise provided in paragraph (b) of this section, an article may be eligible for duty-free treatment under the ATPA if the article is either:

(1) Wholly the growth, product, or manufacture of a beneficiary country; or

(2) A new or different article of commerce which has been grown, produced, or manufactured in a beneficiary country.

(b) *Exceptions.* No article shall be eligible for duty-free treatment under the ATPA by virtue of having merely undergone simple (as opposed to complex or meaningful) combining or packaging operations, or mere dilution with water or mere dilution with another substance that does not materially alter the characteristics of the article. The principles and examples set forth in § 10.195(a)(2) of this part shall apply equally for purposes of this paragraph.

§ 10.206 Value content requirement.

(a) *General.* An article may be eligible for duty-free treatment under the ATPA only if the sum of the cost or value of the materials produced in a beneficiary country or countries, plus the direct costs of processing operations performed in a beneficiary country or countries, is not less than 35 percent of the appraised value of the article at the time it is entered.

(b) *Commonwealth of Puerto Rico, U.S. Virgin Islands and CBI beneficiary countries.* For purposes of determining the percentage referred to in paragraph (a) of this section, the term ''beneficiary country'' includes the Commonwealth of Puerto Rico, the U.S. Virgin Islands, and any CBI beneficiary country as defined in § 10.191(b)(1) of this part. Any cost or value of materials or direct costs of processing operations attributable to the Virgin Islands or any CBI beneficiary country must be included in the article prior to its final exportation to the United States from a beneficiary country as defined in § 10.202(a).

(c) *Materials produced in the United States.* For purposes of determining the percentage referred to in paragraph (a) of this section, an amount not to exceed 15 percent of the appraised value of the article at the time it is entered may be attributed to the cost or value of materials produced in the customs territory of the United States (other than the Commonwealth of Puerto Rico). The principles set forth in paragraph (d)(1) of this section shall apply in determining whether a material is ''produced in the customs territory of the United States'' for purposes of this paragraph.

(d) *Cost or value of materials.*—(1) *''Materials produced in a beneficiary*

country or countries'' defined. For purposes of paragraph (a) of this section, the words *materials produced in a beneficiary country or countries* refer to those materials incorporated in an article which are either:

(i) Wholly the growth, product, or manufacture of a beneficiary country or two or more beneficiary countries; or

(ii) Substantially transformed in any beneficiary country or two or more beneficiary countries into a new or different article of commerce which is then used in any beneficiary country as defined in § 10.202(a) in the production or manufacture of a new or different article which is imported directly into the United States. For purposes of this paragraph (d)(1)(ii), no material shall be considered to be substantially transformed into a new or different article of commerce by virtue of having merely undergone simple (as opposed to complex or meaningful) combining or packaging operations, or mere dilution with water or mere dilution with another substance that does not materially alter the characteristics of the article. The examples set forth in § 10.196(a) of this part, and the principles and examples set forth in § 10.195(a)(2) of this part, shall apply for purposes of the corresponding context under paragraph (d)(1) of this section.

(2) *Questionable origin.* When the origin of a material either is not ascertainable or is not satisfactorily demonstrated to the appropriate port director, the material shall not be considered to have been grown, produced, or manufactured in a beneficiary country or in the customs territory of the United States.

(3) *Determination of cost or value of materials.* (i) The cost or value of materials produced in a beneficiary country or countries or in the customs territory of the United States includes:

(A) The manufacturer's actual cost for the materials;

(B) When not included in the manufacturer's actual cost for the materials, the freight, insurance, packing, and all other costs incurred in transporting the materials to the manufacturer's plant;

(C) The actual cost of waste or spoilage, less the value of recoverable scrap; and

(D) Taxes and/or duties imposed on the materials by any beneficiary country or by the United States, provided they are not remitted upon exportation.

(ii) Where a material is provided to the manufacturer without charge, or at less than fair market value, its cost or value shall be determined by computing the sum of:

(A) All expenses incurred in the growth, production, or manufacture of the material, including general expenses;

(B) An amount for profit; and

(C) Freight, insurance, packing, and all other costs incurred in transporting the material to the manufacturer's plant.

(iii) If the pertinent information needed to compute the cost or value of a material is not available, the appraising officer may ascertain or estimate the value thereof using all reasonable ways and means at his disposal.

(e) *Direct costs of processing operations.*—(1) *Items included.* For purposes of paragraph (a) of this section, the words *direct costs of processing operations* mean those costs either directly incurred in, or which can be reasonably allocated to, the growth, production, manufacture, or assembly of the specific merchandise under consideration. Such costs include, but are not limited to the following, to the extent that they are includable in the appraised value of the imported merchandise:

(i) All actual labor costs involved in the growth, production, manufacture, or assembly of the specific merchandise, including fringe benefits, on-the-job training, and the cost of engineering, supervisory, quality control, and similar personnel;

(ii) Dies, molds, tooling, and depreciation on machinery and equipment which are allocable to the specific merchandise;

(iii) Research, development, design, engineering, and blueprint costs insofar as they are allocable to the specific merchandise; and

(iv) Costs of inspecting and testing the specific merchandise.

(2) *Items not included.* For purposes of paragraph (a) of this section, the words ''direct costs of processing operations'' do not include items which are not directly attributable to the merchandise under consideration or are not costs of manufacturing the product. These include, but are not limited to:

(i) Profit; and

(ii) General expenses of doing business which either are not allocable to the specific merchandise or are not related to the growth, production, manufacture, or assembly of the merchandise, such as administrative salaries, casualty and liability insurance, advertising, and salesmen's salaries, commissions, or expenses.

(f) *Articles wholly the growth, product, or manufacture of a beneficiary country.* Any article which is wholly the growth, product, or manufacture of a beneficiary country as defined in § 10.202(a), and any article produced or manufactured in a beneficiary country as defined in § 10.202(a) exclusively from materials which are wholly the growth, product, or manufacture of a beneficiary country or countries, shall normally be presumed to meet the requirement set forth in paragraph (a) of this section.

§ 10.207 Procedures for filing duty-free treatment claim and submitting supporting documentation.

(a) *Filing claim for duty-free treatment.* Except as provided in paragraph (c) of this section, a claim for duty-free treatment under the ATPA may be made at the time of filing the entry summary by placing the symbol ''J'' as a prefix to the Harmonized Tariff Schedule of the United States subheading number applicable to each article for which duty-free treatment is claimed on that document.

(b) *Shipments covered by a formal entry.*—(1) *Articles not wholly the growth, product, or manufacture of a beneficiary country.*—(i) *Declaration.* In a case involving an article covered by a formal entry for which duty-free treatment is claimed under the ATPA and which is not wholly the growth, product, or manufacture of a single beneficiary country as defined in § 10.202(a), the exporter or other appropriate party having knowledge of the relevant facts in the beneficiary country as defined in § 10.202(a) where the article was produced or last processed shall be prepared to submit directly to the port director, upon request, a declaration setting forth all pertinent detailed information concerning the production or manufacture of the article. When requested by the port director, the declaration shall be prepared in substantially the following form:

ATPA DECLARATION

I, _____(name), hereby declare that the articles described below (a) were produced or manufactured in _____ (country) by means of processing operations performed in that country as set forth below and were also subjected to processing operations in the other beneficiary country or countries (including the Commonwealth of Puerto Rico, the U.S. Virgin Islands, and any CBI beneficiary country) as set forth below and (b) incorporate materials produced in the country named above or in any other beneficiary country or countries (including the Commonwealth of Puerto Rico, the U.S. Virgin Islands, and any CBI beneficiary country) or in the customs territory of the United States (other than the Commonwealth of Puerto Rico) as set forth below: _____

Number and date of invoices	Description of articles and quantity	Processing operations performed on articles		Material produced in a beneficiary country or in the U.S.	
		Description of processing operations and country of processing	Direct costs of processing operations	Description of material, production process, and country of production	Cost or value of material

Date _____
Address _____
Signature _____
Title _____

(ii) *Retention of records and submission of declaration.* The information necessary for the preparation of the declaration shall be retained in the files of the party responsible for its preparation and submission for a period of 5 years. In the event that the port director requests submission of the declaration during the 5-year period, it shall be submitted by the appropriate party directly to the port director within 60 days of the date of the request or such additional period as the port director may allow for good cause shown. Failure to submit the declaration in a timely fashion will result in a denial of duty-free treatment.

(iii) *Value added after final exportation.* In a case in which value is added to an article in the Commonwealth of Puerto Rico or in the United States after final exportation of the article from a beneficiary country as defined in § 10.202(a), in order to ensure compliance with the value requirement under § 10.206(a), the declaration provided for in paragraph (b)(1)(i) of this section shall be filed by the importer or consignee with the entry summary. The declaration shall be completed by the party responsible for the addition of such value.

(2) *Articles wholly the growth, product, or manufacture of a beneficiary country.* In a case involving an article covered by a formal entry for which duty-free treatment is claimed under the ATPA and which is wholly the growth, product, or manufacture of a single beneficiary country as defined in § 10.202(a), a statement to that effect shall be included on the commercial invoice provided to Customs.

(c) *Shipments covered by an informal entry.* The normal procedure for filing a claim for duty-free treatment as set forth in paragraph (a) of this section need not be followed, and the filing of the declaration provided for in paragraph (b)(1)(i) of this section will not be required, in a case involving a shipment covered by an informal entry. However, the port director may require submission of such other evidence of entitlement to duty-free treatment as deemed necessary.

(d) *Evidence of direct importation.*—(1) *Submission.* The port director may require that appropriate shipping papers, invoices, or other documents be submitted within 60 days of the date of entry as evidence that the articles were ''imported directly'', as that term is defined in § 10.204.

(2) *Waiver.* The port director may waive the submission of evidence of direct importation when otherwise satisfied, taking into consideration the kind and value of the merchandise, that the merchandise was, in fact, imported directly and that it otherwise clearly qualifies for duty-free treatment under the ATPA.

(e) *Verification of documentation.* The documentation submitted under this section to demonstrate compliance with the requirements for duty-free treatment under the ATPA shall be subject to such verification as the port director deems necessary. In the event that the port director is prevented from obtaining the necessary verification, the port director may treat the entry as fully dutiable.

§ 10.208 Duty reductions for certain products.

(a) *General.* Handbags, luggage, flat goods, work gloves, and leather wearing apparel that were not designated on August 5, 1983, as eligible articles for purposes of the Generalized System of Preferences under Title V, Trade Act of 1974, as amended (19 U.S.C. 2461–2466), are not eligible for duty-free treatment under the ATPA. However, any such article from a beneficiary country may be subject to a reduced rate of duty set forth in the Harmonized Tariff Schedule of the United States in the applicable ''Special'' subcolumn followed by the symbol ''J'' in parenthesis, provided the article is a product of any beneficiary country. For purposes of this section, an article is a ''product of'' a beneficiary country if the article is either:

(1) Wholly the growth, product, or manufacture of a beneficiary country; or

(2) A new or different article of commerce which has been grown, produced, or manufactured in a beneficiary country.

(b) *Filing reduced-duty claim.* A claim for reduced-duty treatment under the ATPA may be made at the time of filing the entry summary or other entry document by placing thereon the symbol ''J'' as a prefix to the Harmonized Tariff Schedule of the United States subheading number applicable to each article for which reduced-duty treatment is claimed and by placing thereon the reduced duty rate applicable to each such article.

(c) *Verification of reduced-duty claim.* Any claim for reduced-duty treatment under this section shall be subject to such verification as the port director deems necessary. In the event that the port director is prevented from obtaining the necessary verification, the port director may treat the entry as dutiable at the applicable non-ATPA rate.

PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for part 178 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 1624; 44 U.S.C. 3501 *et seq.*

2. Section 178.2 is amended by adding a new listing to the table in numerical order to read as follows:

§ 178.2 Listing of OMB control numbers.

19 CFR Section	Description	OMB control no.
* * * * * * *		
§ 10.207	Claim for duty-free entry of eligible articles under the Andean Trade Preference Act.	1515–0219
* * * * * * *		

Douglas M. Browning,

Acting Commissioner of Customs.

Approved: August 31, 1998.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 98–25722 Filed 9–24–98; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 133

[T.D. 98–75]

RIN 1515–AC10

Anticounterfeiting Consumer Protection Act: Disposition of Merchandise Bearing Counterfeit American Trademarks; Civil Penalties

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by adopting final rules to implement two statutory changes contained in the Anticounterfeiting Consumer Protection Act of 1996 (ACPA) enacted by Congress to protect consumers and American businesses from counterfeit copyrighted and trademarked products. This document addresses the public comments submitted in response to the interim regulations which initially implemented these counterfeiting provisions, and makes certain changes to those interim regulations in response to the public comments and in order to add clarity and improve the readability of the final regulations.

EFFECTIVE DATE: October 26, 1998.

FOR FURTHER INFORMATION CONTACT:

For Entry Questions—Jerry Laderberg, Entry and Carrier Rulings Branch, (202) 927–2320, Office of Regulations and Rulings;

For Penalties and other legal Questions—Charles Ressin, Penalties Branch, (202) 927–2344, or John Atwood, Intellectual Property Rights Branch, (202) 927–2330, Office of Regulations and Rulings.

SUPPLEMENTARY INFORMATION:

Background

Finding that counterfeit products cost American businesses an estimated $200 billion each year worldwide, Congress enacted the Anticounterfeiting Consumer Protection Act of 1996 (ACPA) to make sure that Federal law adequately addresses the scope and sophistication of modern counterfeiting. *See,* S.Rpt.No. 177, 104th Cong., 1st Sess. (1995), *reprinted in* (1996) 4 U.S.C.C.&A.N. 1074. On July 2, 1996, the President signed the ACPA into law (Pub.L. 104–153, 110 Stat. 1386). The ACPA was designed to provide important weapons against counterfeiters in four principal areas. First, it increases criminal penalties for counterfeiting and allows law enforcement to fight counterfeiters at the organizational level by making trafficking in counterfeit goods or services an offense under the Racketeer Influenced and Corrupt Organizations (RICO) Act, by providing increased imprisonment terms, criminal fines, and asset forfeiture against those involved in criminal counterfeiting enterprises. Second, the legislation enhances law enforcement's ability to fight counterfeiting more effectively by increasing the involvement of all levels of law enforcement and expanding their power to seize counterfeit goods and the tools of the counterfeit trade. Third, the legislation helps stem the flow of counterfeit goods by making it easier to find imported counterfeit goods and making it more difficult for seized goods to reenter the stream of commerce. Lastly, the ACPA, in part, strengthens the hand of businesses harmed by counterfeiters by updating existing statutes and providing additional civil penalties and remedies against counterfeiters.

Section 14 of the ACPA directs the Secretary of the Treasury to prescribe such regulations or amendments to existing regulations as may be necessary to implement and enforce particular provisions of the ACPA. This document concerns sections 9 and 10 of the ACPA.

Section 9 of the ACPA pertains to government disposition of merchandise bearing American trademark information and amends section 526(e) of the Tariff Act of 1930, as amended, (19 U.S.C. 1526(e)) to ensure that counterfeits of American products are routinely destroyed, unless there is no public safety risk and the trademark owner agrees to some other disposition of the merchandise. The provisions of section 526(e) are provided for, in part, at § 133.52(c) of the Customs Regulations (19 CFR 133.52(c)).

Section 10 of the ACPA pertains to civil penalties and further amends section 526 of the Tariff Act of 1930 (19 U.S.C. 1526) by adding a new subsection (f) that provides for civil fines on persons involved in the importation of merchandise bearing a counterfeit American trademark and are in addition to any other civil or criminal penalty or other remedy authorized by law. Since this provision is new, there were no Customs Regulations that addressed civil fines for those involved in the importation of counterfeit trademark goods.

To implement these statutory provisions as soon as possible to afford the protection legislated to trademark owners and the public from imported merchandise bearing a counterfeit trademark, on November 17, 1997, Customs published interim regulations in the **Federal Register** (62 FR 61231). These interim regulations amended the Customs Regulations at § 133.52(c) to implement the provisions of section 9 of the ACPA, and created a new § 133.25 to implement the provisions of section 10 of the ACPA. The document also solicited comments concerning these changes.

The comment period closed on January 16, 1998. Two comments were received. The comments and Customs responses to them follow.

Discussion of Comments

The comments received were from a professional association and a law firm representing a foreign trade association. Both commenters supported the interim regulations, with one commenter suggesting modifications. The suggested modification is discussed below.

Comment: One commenter urged Customs to modify the text of § 133.25 concerning use of the phrase ''American trademark.'' This commenter states that the phrase is arguably ambiguous, as it is not defined anywhere, and could lead to misunderstandings concerning the scope of the protection afforded. The commenter cites the legislative history of the ACPA (the Act) to show that Congress intended to extend coverage of the Act to all entities, foreign as well as domestic, holding a trademark properly registered with the Patent and Trademark Office and recorded with Customs. Accordingly, the commenter recommends that Customs modify the text of this regulatory provision to provide for ''counterfeit mark or name (within the meaning of § 133.21 of this part)'' in lieu of the present ''counterfeit American trademark.''

Customs response: Customs agrees in part with this recommendation to modify the text of § 133.25. Use of the term ''American'' could cause confusion regarding the scope of the protection afforded, since Congress did intend to confer protection to trademarks (whether or not owned by foreign interests) registered with the U.S. Patent Office. However, Customs does not feel that adding the additional term ''name'' is appropriate; it might also cause confusion, since one cannot register a trade name with the U.S. Patent Office. Accordingly, the text of § 133.25 is modified to read ''counterfeit mark

(within the meaning of § 133.21 of this part)'' in lieu of the present ''counterfeit American trademark'' text.

Conclusion

After analysis of the comments received and further consideration of the matter, Customs has decided to adopt the interim amendments to Part 133 of the Customs Regulations with the modification discussed above in the analysis of comments. Further, to make the text of paragraphs (a) and (b) of § 133.25 read more clearly, the phrase ''as determined by'' in paragraph (b) is replaced with the phrase ''based on'' used in paragraph (a), and the term ''domestic value'' used in paragraph (a) is inserted in paragraph (b). Lastly, the authority citation of part 133 is revised to add a specific authority citation for new § 133.25.

Inapplicability of the Regulatory Flexibility Act and Executive Order 12866

Because these regulatory amendments reflect existing statutory requirements or merely implement interpretations and policies that are already in effect under interim regulations to protect trademark owners and the public from imported merchandise bearing a counterfeit trademark, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, the regulations are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604. Further, this document does not meet the criteria for a ''significant regulatory action'' as specified in Executive Order 12866.

List of Subjects in 19 CFR Part 133

Copyrights, Counterfeit goods, Customs duties and inspection, Imports, Penalties, Prohibited merchandise, Reporting and recordkeeping requirements, Restricted merchandise, Seizures and forfeitures, Trademarks, Trade names, Unfair competition.

Amendments to the Regulations

For the reasons stated above, part 133 of the Customs Regulations (19 CFR part 133), is amended as set forth below:

PART 133—TRADEMARKS, TRADE NAMES, AND COPYRIGHTS

1. The general authority citation for part 133 continues, and the specific authority for § 133.52 is revised, to read as follows:

Authority: 17 U.S.C. 101, 601, 602, 603; 19 U.S.C. 66, 1624; 31 U.S.C. 9701;

* * * * *

Sections 133.25 and 133.52 also issued under 19 U.S.C. 1526;

* * * * *

2. Section 133.25 is revised to read as follows:

§ 133.25 Civil fines for those involved in the importation of counterfeit trademark goods.

In addition to any other penalty or remedy authorized by law, Customs may impose a civil fine on any person who directs, assists financially or otherwise, or aids and abets the importation of merchandise bearing a counterfeit mark (within the meaning of § 133.21 of this part) as follows:

(a) *First violation.* For the first seizure of such merchandise, the fine imposed shall not be more than the domestic value of the merchandise (*see*, § 162.43(a) of this chapter) as if it had been genuine, based on the manufacturer's suggested retail price of the merchandise at the time of seizure.

(b) *Second and subsequent violations.* For the second and each subsequent seizure of such merchandise, the fine imposed shall not be more than twice the domestic value of the merchandise as if it had been genuine, based on the manufacturer's suggested retail price of the merchandise at the time of seizure.

3. Section 133.52(c) is republished to read as follows:

§ 133.52 Disposition of forfeited merchandise.

* * * * *

(c) *Articles bearing a counterfeit trademark.* Merchandise forfeited for violation of 19 U.S.C. 1526 shall be destroyed, unless it is determined that the merchandise is not unsafe or a hazard to health and the Commissioner of Customs or his designee has the written consent of the U.S. trademark owner, in which case the Commissioner of Customs or his designee may dispose of the merchandise, after obliteration of the trademark where feasible, by:

(1) Delivery to any Federal, State, or local government agency that, in the opinion of the Commissioner or his designee, has established a need for the merchandise; or

(2) Gift to any charitable institution that, in the opinion of the Commissioner or his designee, has established a need for the merchandise; or

(3) Sale at public auction, if more than 90 days has passed since the forfeiture and Customs has determined that no need for the merchandise has been established under paragraph (c)(1) or (c)(2) of this section.

Approved: August 3, 1998.

Samuel H. Banks,

Acting Commissioner of Customs.

Dennis M. O'Connell,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 98–25723 Filed 9–24–98; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 2

[Docket No. 98N–0417]

Amendment to Examination and Investigation Sample Requirements

AGENCY: Food and Drug Administration, HHS.

ACTION: Direct final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations regarding the collection of twice the quantity of food, drug, or cosmetic estimated to be sufficient for analysis. This action increases the dollar amount that FDA will consider to determine whether to routinely collect a reserve sample of a food, drug, or cosmetic product in addition to the quantity sufficient for analysis. Experience has demonstrated that the current dollar amount does not adequately cover the cost of most quantities sufficient for analysis plus reserve samples. This direct final rule is part of FDA's continuing effort to achieve the objectives of the President's ''Reinventing Government'' initiative, and is intended to reduce the burden of unnecessary regulations on food, drugs, and cosmetics without diminishing the protection of the public health. Elsewhere in this issue of the **Federal Register,** FDA is publishing a companion proposed rule under FDA's usual procedures for notice and comment to provide a procedural framework to finalize the rule in the event the agency receives any significant adverse comment and withdraws this direct final rule.

DATES: This rule is effective February 8, 1999. Comments must be received on or before December 9, 1998. If FDA receives no significant adverse comments during the specified comment period, the agency intends to publish a confirmation document within 30 days after the comment period ends confirming that the direct final rule will go into effect on February 8, 1999. If the agency receives any

significant adverse comment, FDA intends to withdraw this direct final rule action by publication in the **Federal Register** within 30 days after the comment period ends.

ADDRESSES: Submit written comments on the direct final rule to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Sharon M. Sheehan, Office of Regulatory Affairs (HFC–230), Food and Drug Administration, 12720 Twinbrook Pkwy., Rockville, MD 20855, 301–827–0412.

SUPPLEMENTARY INFORMATION:

I. Background

Examination and investigation samples (§ 2.10 (21 CFR 2.10)), sets out provisions related to the collection of an official sample for FDA's analysis. Routinely, the FDA investigator collects the sample and pays the owner of the regulated food, drug, or cosmetic product either the regular selling price, or, if acceptable to the owner, the dealer's invoice cost plus a nominal charge (usually 10 to 15 percent) (see Investigations Operations Manual, January 1998, ch. 4, section 416.2, at 129). The regulations require the investigator to collect an extra amount of the product beyond what is needed for analysis, known as a reserve sample, to allow for additional analysis (see section 702(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 372(b) and § 2.10(c)). Under most circumstances the investigator is to collect at least ''twice the quantity estimated by him to be sufficient for analysis * * *.''

One of the few narrow exceptions to the requirement to collect at least twice the quantity estimated to be sufficient for analysis is when the cost of the quantity sufficient for analysis and the reserve sample together exceeds $50. The decision whether to collect twice the quantity sufficient for analysis if the cost of that amount exceeds the regulatory amount (currently $50) is made on a case-by-case basis.

The current regulatory amount as set forth in section 2.10(b)(2) was established in 1955 as § 1.700(b)(2) (21 CFR 1.700(b)(2)) published in the **Federal Register** of December 20, 1955 (20 FR 9539). Section 1.700 was reorganized and republished as section 2.10, and the regulatory amount was increased from $10 to $50 in 1977 (see 42 FR 15559, March 22, 1977).

A regulatory amount of $150 more accurately reflects an amount that would cover the cost of most quantities sufficient for analysis plus reserve samples. The amount of $150 is based, in part, on the Consumer Price Index (CPI) from the Bureau of Labor and Statistics, Department of Commerce. In August 1977, the CPI was 61.2; in August 1996, the CPI was 157.3. This change represents an increase of approximately 157 percent. Therefore, $50 in 1977 is equivalent to approximately $128 today. Considering that the regulatory amount has changed every 20 years, setting the amount at $150 contemplates that another increase likely will not occur for several years.

II. Rulemaking Action

In the **Federal Register** of November 21, 1997 (62 FR 62466), FDA described its procedures on when and how FDA will employ direct final rulemaking. FDA believes that this rule is appropriate for direct final rulemaking because FDA views this rule as a noncontroversial amendment and anticipates no significant adverse comments. Consistent with FDA's procedures on direct final rulemaking, FDA is publishing elsewhere in this issue of the **Federal Register** a companion proposed rule to amend the existing § 2.10(b)(2). The companion proposed rule provides a procedural framework within which the rule may be finalized in the event the direct final rule is withdrawn because of any significant adverse comment.

The FDA has provided a comment period on the direct final rule of 75 days after September 25, 1998. If the agency receives any significant adverse comment, FDA intends to withdraw this direct final rule action by publication in the **Federal Register** within 30 days after the comment period ends. A significant adverse comment is defined as a comment that explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. In determining whether a comment is sufficient to terminate a direct final rulemaking, FDA will consider whether the comment raises an issue serious enough to warrant a substantive response in a notice-and-comment process. Comments that are frivolous, insubstantial, or outside the scope of the rule will not be considered significant or adverse under this procedure. A comment recommending a rule change in addition to the rule would not be considered a significant adverse comment, unless the comment states why the rule would be ineffective without additional change. In addition, if a significant adverse comment applies to part of a rule and that part can be severed from the remainder of the rule, FDA may adopt as final those parts of the rule that are not the subject of a significant adverse comment.

If any significant adverse comment is received during the comment period, FDA will publish, within 30 days after the comment period ends, a document withdrawing the direct final rule. If FDA withdraws the direct final rule, all comments received will be considered under the proposed rule in developing a final rule under the usual Administrative Procedure Act notice-and-comment procedures.

If FDA receives no significant adverse comments during the specified comment period. FDA intends to publish a confirmation document within 30 days after the comment period ends, confirming that the direct final rule will go into effect on February 8, 1999.

III. Analysis of Impacts

FDA has examined the impacts of the direct final rule under Executive Order 12866, under the Regulatory Flexibility Act (5 U.S.C. 601–612), and under the Unfunded Mandates Reform Act (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this direct final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. This direct final rule increases the dollar limit FDA uses to determine whether a quantity estimated as twice that which is sufficient for analysis will routinely be collected. The rule does not adversely affect the owners of foods, drugs, or cosmetics from which samples are collected. This direct final rule is not a significant regulatory action as defined by the Executive Order and is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. The agency certifies that this direct final rule will not have a significant economic impact on a

substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further regulatory flexibility analysis is required.

The Unfunded Mandates Reform Act requires that agencies prepare an assessment of anticipated costs and benefits before proposing any rule that may result in an annual expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation). This direct final rule does not impose any mandates on State, local, or tribal governments, nor is it a significant regulatory action under the Unfunded Mandates Reform Act. Industry will incur no net costs as a result of this direct final rule.

IV. Paperwork Reduction Act of 1995

This direct final rule contains no collections of information. Therefore, clearance by the office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

V. Environmental Impact

FDA has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Request for Comments

Interested persons may, on or before December 9, 1998, submit to the Dockets Management Branch (address above) written comments regarding this direct final rule. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 2

Administrative practice and procedure, Cosmetics, Drugs, Foods.

Therefore under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 24 CFR part 2 is amended as follows:

PART 2—GENERAL ADMINISTRATIVE RULINGS AND DECISIONS

1. The authority citation for 21 CFR part 2 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 335, 342, 346a, 348, 351, 352, 355, 357, 360b, 361, 371, 372, 374; 15 U.S.C. 402, 409.

2. Section 2.10 is amended by revising paragraph (b)(2) to read as follows:

§ 2.10 Examination and investigation samples.

* * * * *

(b) * * *

(2) The cost of twice the quantity so estimated exceeds $150.

* * * * *

Dated: September 11, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination

[FR Doc. 98–25358 Filed 9–24–98; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 5

Delegations of authority and Organization

CFR Correction

In Title 21 of the Code of Federal Regulations, parts 1 to 99, revised as of Apr. 1, 1998, page 42, § 5.33(c) was inadvertently removed and is reinstated to read as follows:

5.33 Premarket approval of a product that is or contains a biologic, a device, or a drug.

* * * * *

(c) The Director, Deputy Center Director for Review Management, and Deputy Center Director for Pharmaceutical Science, Center for Drug Evaluation and Research (CDER); and the Directors of the Offices of Drug Evaluation I, II, III, IV, and V, Office of Review Management, CDER.

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 73

[Docket No. 93C–0248]

Listing of Color Additives Exempt from Certification; Canthaxanthin; Confirmation of Effective Date; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; confirmation of effective date; correction.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date of April 28, 1998, for the final rule that appeared in the **Federal Register** of March 27, 1998 (63 FR 14814), and amended the color additive regulations to provide for the safe use of canthaxanthin as a color additive in the feed of salmonid fish to enhance the color of their flesh. FDA also is correcting an inadvertent error in the final rule.

DATES: Effective date confirmed: April 28, 1998.

FOR FURTHER INFORMATION CONTACT: James C. Wallwork, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204–0001, 202–418–3078.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 27, 1998 (63 FR 14814), FDA amended 21 CFR part 73 to provide for the safe use of canthaxanthin as a color additive in the feed of salmonid fish to enhance the color of their flesh.

FDA gave interested persons until April 27, 1998, to file objections and requests for a hearing. The agency received no objections or requests for a hearing on the final rule. Therefore, FDA finds that the final rule published in the **Federal Register** of March 27, 1998, should be confirmed.

In addition, in the final rule appearing on page 14814 in the **Federal Register** of Friday, March 27, 1998, the following correction is made:

On page 14815, in the first column, in the first complete paragraph, in line 17, the number ''264'' is corrected to read ''26.4''.

List of Subjects in 21 CFR Part 73

Color additives, Cosmetics, Drugs, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 379e) and under authority delegated to the Commissioner of Food and Drugs, notice is given that no objections or requests for a hearing were filed in response to the March 27, 1998, final rule. Accordingly, the amendments promulgated thereby became effective April 28, 1998.

Dated: September 17, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–25640 Filed 9–24–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Etodolac Tablets

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Fort Dodge Animal Health. The NADA provides for oral veterinary prescription use of etodolac tablets for the management of pain and inflammation associated with osteoarthritis in dogs.

EFFECTIVE DATE: September 25, 1998.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1618.

SUPPLEMENTARY INFORMATION: Fort Dodge Animal Health, A Division of American Cyanamid Co., P.O. Box 1339, Fort Dodge, IA 50501, filed NADA 141–108 that provides for oral veterinary prescription use of Etogesic™ (etodolac) tablets for the management of pain and inflammation associated with osteoarthritis in dogs. The NADA is approved as of July 22, 1998, and the regulations are amended by adding 21 CFR 520.870 to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under 21 U.S.C. 360b(c)(2)(F)(i), this approval qualifies for 5 years of marketing exclusivity beginning July 22, 1998, because no active ingredient of the drug, including any ester or salt of the active ingredient, has been previously approved in any other application filed under section 512(b)(1) of the act.

The agency has determined under 21 CFR 25.33(d)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

2. Section 520.870 is added to read as follows:

§ 520.870 Etodolac.

(a) *Specifications.* Each tablet contains 150 or 300 milligrams (mg) of etodolac.

(b) *Sponsor.* See 053501 in § 510.600(c) of this chapter.

(c) [Reserved]

(d) *Conditions of use*—(1) *Dogs*—(i) *Amount.* 10 to 15 mg per kilogram (4.5 to 6.8 mg/pound) of body weight per day.

(ii) *Indications for use.* For the management of pain and inflammation associated with osteoarthritis in dogs.

(iii) *Limitations.* Use once-a-day. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(2) [Reserved]

Dated: August 27, 1998.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 98–25639 Filed 9–24–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF JUSTICE

28 CFR Part 16

Production or Disclosure of Material or Information

CFR Correction

In Title 28 of the Code of Federal Regulations, parts 0 to 42, revised as of July 1, 1998, page 217, § 16.3 paragraph (a), and page 234, § 16.41 paragraphs (a) and (c) the Government Printing Office's World Wide Web site is corrected to read ''http://www.access.gpo.gov/su__docs.''

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–98–062 and CGD 08–98–052]

RIN 2115–AE47

Drawbridge Operations Regulation; Lafourche Bayou, LA

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule; withdrawal of temporary rule.

SUMMARY: The Coast Guard is temporarily changing the operation of the draw of the SR1 vertical lift bridge across Lafourche Bayou, mile 13.3, in Leeville, Lafourche Parish, Louisiana. From October 5, 1998, until November 5, 1998, the draw need not open for navigation from 8 a.m. until noon and from 1 p.m. until 6 p.m. on Mondays and from 7 a.m. until 7 p.m. on Tuesdays, Wednesdays, and Thursdays. Additionally, the draw may remain closed to navigation for two 48-hour periods on the weekends of October 10–12, 1998, and October 17–19, 1998. This temporary rule is issued to allow for the replacement of the electrical and mechanical components of the bridge. The previous temporary rule published on September 8, 1998, is withdrawn.

DATES: This temporary rule is effective from 8 a.m. on October 5, 1998 through 7 p.m. on November 5, 1998. The temporary rule published on September 8, 1998, (63 FR 47427) is withdrawn.

ADDRESSES: All documents referred to in this notice will be available for inspection and copying at room 1313 in the Hale Boggs Federal Building at Commander (ob), Eighth Coast Guard District, Hale Boggs Federal Building, room 1313, 501 Magazine Street, New Orleans, Louisiana 70130–3396 between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The Bridge Administration Branch of the Eighth Coast Guard District maintains the public docket for this temporary rule.

FOR FURTHER INFORMATION CONTACT: David Frank, Bridge Administration Branch, Commander (ob), Eighth Coast Guard District, 501 Magazine Street, New Orleans, Louisiana, 70130–3396, telephone number 504–589–2965.

SUPPLEMENTARY INFORMATION: On September 8, 1998, a temporary rule was published in the **Federal Register** (63 FR 47427) requiring the draw of the SR 1 bridge, mile 13.3, at Leeville, to open on signal, except that; from noon on October 5, 1998, through noon on November 6, 1998, the draw may remain

closed to navigation continuously from noon on Mondays through noon on Fridays.

Following re-publication of the temporary rule in the Local Notice to Mariners, several shrimpers and shipyard owners expressed concerns that the proposed bridge closure would have an adverse economic hardship on them. A meeting was held with the Lafourche Parish Port Authority, the Louisiana Department of Transportation and Development (LDOTD), the contractor, shrimpers, shipyard owners, and the Coast Guard to attempt to modify the repair/maintenance work schedule and to make bridge operations more responsive to the needs of navigation.

At this meeting, a new schedule of work that could accomplish the needed maintenance and also would be less burdensome on navigation interests was agreed upon. The new schedule of work requires that from October 5, 1998, until November 5, 1998, the bridge shall open on signal except the bridge need not open for the passage of vessels from 8 a.m. until noon, and from 1 p.m. until 6 p.m. on Mondays and from 7 a.m. until 7 p.m. on Tuesdays, Wednesdays, and Thursdays. Additionally, the bridge need not open for the passage of vessels from 7 a.m. on Saturday, October 10, 1998, until 7 a.m. on Monday, October 12, 1998, and from 7 a.m. on Saturday, October 17, 1998, until 7 a.m. on Monday, October 19, 1998.

All parties agreed that one or two continuous 48-hour closures would be less burdensome on mariners if they occurred on the weekends. While the contractor expects to only need one 48-hour closure, a second 48-hour closure is scheduled in case of inclement weather or other unforeseen situations which may keep the contractor from working during the weekend of October 10–12. If the work necessitating the 48-hour closure is accomplished during the weekend of October 10–12, 1998, the bridge will be able to open on signal on the weekend of October 17–19, 1998. Local Notice to Mariners and Broadcast Notice to Mariners will provide information on work progress and bridge openings for the weekends of October 10–12, 1998 and October 17–19, 1998.

In the event of an approaching tropical storm or hurricane, work on the bridge will be discontinued and the draw will return to normal operation.

The Coast Guard is, therefore, withdrawing the temporary rule published on September 8, 1998, [CGD08–98–052] and replacing it with this new temporary operating schedule which is less burdensome to navigation.

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking for this rule has not been published, and good cause exists for making it effective in less than 30 days from the date of publication. Following normal rule making procedures would have been impracticable. There was not sufficient time to publish proposed rules in advance of implementing the change to the bridge operating procedures or to provide for a delayed effective date.

Background and Purpose

The bridge has a vertical clearance of 40 feet above mean high water in the closed-to-navigation position. Mean high water elevation is 3 feet above Mean Sea Level (MSL). Navigation on the waterway consists primarily of fishing vessels, some tugs with tows and occasional recreational craft. Presently, the draw opens on signal for the passage of vessels. The contractor has requested the closure of the bridge to allow for the replacement of the electrical and mechanical components of the bridge and for the pulling of electric conduit wiring on the bridge. During portions of this repair work, scaffolding may be placed below the bridge over the navigation channel reducing the approved vertical clearance to less than 40 feet above mean high water. The reduction in the vertical clearance will be approximately 4 feet. Additionally, if a tropical storm or hurricane develops in the Gulf of Mexico, work will be discontinued and the bridge returned to normal operation for the passage of vessel traffic. Alternate routes are available to vessel operators wishing to enter the area. This work is essential for the continued safe operation of the vertical lift span.

Regulatory Evaluation

This temporary rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential cost and benefits under section 6(a)(3) of that order. The Office of Management and Budget has not reviewed it 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 of this temporary rule to be so minimal that a full Regulatory Evaluation paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This is because vessels using the waterway will be allowed to transit the waterway outside of the closure times. In a meeting with representatives of those mariners affected by the closure, it was determined that this schedule will allow the contractor to complete the required repairs to the bridge while minimizing the effects on navigation interests.

Small Entities

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the Coast Guard must consider whether this temporary rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000. The majority of commercial vessels and fishing vessels that normally transit the bridge will still be able to do so beneath the bridge in the closed-to-navigation position. Thus, the Coast Guard expects there to be no significant economic impact on these vessels. The Coast Guard is not aware of any other waterway users who would suffer economic hardship from being unable to transit the waterway during these closure periods. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this temporary rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This temporary 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 under the principles and criteria contained in Executive Order 12612, and it has been determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this temporary rule and concluded that this action is categorically excluded from further environmental documentation under current Coast Guard CE #32(e), in accordance with Section 2.B.2 and Figure 2–1 of the National Environmental Protection Act Implementing Procedures, COMDTINST M16475.1C. 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.

Temporary Regulations

For the reasons set out in the preamble, the Coast Guard is temporarily amending part 117 Title 33 Code of Federal Regulations 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; and 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Effective 8 a.m. on October 5, 1998, through 7 p.m. on November 5, 1998, § 117.465 is amended by adding paragraph (g) to read as follows:

§ 117.465 Lafourche Bayou.

* * * * *

(g) The draw of the SR 1 bridge, mile 13.3, at Leeville, shall open on signal, except as follows:

(1) From October 5, 1998, until November 5, 1998, the draw need not open for the passage of vessels from 8 a.m. until noon and from 1 p.m. until 6 p.m. on Mondays and from 7 a.m. until 7 p.m. on Tuesdays, Wednesdays, and Thursdays.

(2) The draw need not open for the passage of vessels from 7 a.m. on Saturday, October 10, 1998, until 7 a.m. on Monday, October 12, 1998, and from 7 a.m. on Saturday, October 17, 1998, until 7 a.m. on Monday, October 19, 1998.

(3) In the event of an approaching tropical storm or hurricane, work on the bridge will be discontinued and the draw will return to normal operation.

Dated: September 17, 1998.

A.L. Gerfin, Jr.,

Captain, U.S. Coast Guard, Commander, 8th Coast Guard Dist. Acting.

[FR Doc. 98–25669 Filed 9–24–98; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300598A; FRL–6029–1]

RIN 2070–AB78

Glutamic Acid; Technical Amendment and Correction of Pesticide Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical amendment and correction.

SUMMARY: EPA is issuing a technical amendment to a final rule and is correcting the preamble to the final rule that established an exemption from the requirement of a tolerance for residues of the biochemical glutamic acid in or on all food commodities, when applied as a plant growth and crop yield enhancer in accordance with good agricultural practices. This exemption was requested by Auxein Corporation.

DATES: This technical amendment is effective September 25, 1998.

FOR FURTHER INFORMATION CONTACT: By mail: Edward Allen, Regulatory Action Leader, Biopesticides and Pollution Prevention Division (7511W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Office location, telephone number, and e-mail: 5th Floor CS #1, 2800 Crystal Drive, Arlington, VA 22202, Telephone No. (703) 308–8699, e-mail: allen.edward@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the January 7, 1998 issue of the **Federal Register** (63 FR 679)(FRL–5764–4) the Office of Pesticide Programs issued a final rule exempting the biochemical glutamic acid from the requirement of a tolerance on all raw agricultural commodities when used as a plant growth enhancer in accordance with good agricultural practices. This tolerance was requested by Auxein Corporation, P.O. Box 27519, 3125 Sovereign Drive, Suite B, Lansing, MI 48911. Throughout the preamble to the final rule and in the codified text (40 CFR 180.1187), reference was made to ''glutamic acid.'' Auxien Corporation has brought to the Agency's attention that the requested tolerance was for residues of ''*L*-glutamic acid'' rather than ''glutamic acid.'' This technical amendment corrects the preamble and the codified text in the January 7, 1998 final rule. Therefore, in the preamble to FR Doc. 98-359, published at 63 FR 679, January 7, 1998, reference to ''glutamic acid'' should be changed to refer to ''L-glutamic acid.'' The amendment to 40 CFR 180.1187 is set forth below.

I. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes an exemption from the tolerance requirement under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

B. Executive Order 12875

Under Executive Order 12875, entitled Enhancing Intergovernmental Partnerships (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget (OMB) a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule does not create an unfunded Federal mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled Consultation and Coordination with Indian Tribal Governments (63 FR 27655, May 19,1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes

substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

In addition, since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.) do not apply. Nevertheless, the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

II. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 14, 1998.

Marcia E. Mulkey,

Director, Office of Pesticide Programs.

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

§ 180.1187 [Amended]

2. Section 180.1187 is amended by revising the term ''glutamic acid'' to read ''*L*-glutamic acid'' wherever it appears in § 180.1187.

[FR Doc. 98–25632 Filed 9–24–98; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2560

Alaska Occupancy and Use

CFR Correction

In Title 43 of the Code of Federal Regulations, parts 1000 to End, revised as of Oct. 1, 1997, Subpart 2567 is removed from pages 180 through 185.

BILLING CODE 1505–01–D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[I.D. 082798A]

Fisheries of the Exclusive Economic Zone Off Alaska; Community Development Quota Program; Correction

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

ACTION: Correction of partial approval of the Community Development Plans for Multispecies Groundfish and Prohibited Species for the years 1998 through 2000.

SUMMARY: This document contains a correction to a partial approval of Community Development Plans (CDPs) (I.D. 082798A) that was published on Wednesday, September 16, 1998 (63 FR 49501).

DATES: Partial approval of the (CDPs) is effective September 16, 1998.

FOR FURTHER INFORMATION CONTACT: Sally Bibb, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

The notice that is the subject of this correction partially approved the recommendations made by the State of Alaska for the 1998 through 2000 multispecies groundfish and prohibited species CDPs under the Western Alaska Community Development Quota Program.

Need for Correction

As published, the partial approval contained an incorrect date.

Correction of Publication

Accordingly, the publication on September 16, 1998, of the partial approval (I.D. 082798A), which was the subject of FR Doc. 98–24725, is corrected as follows:

On page 49501, in the second column, ''**DATES**'' is corrected to read as follows;

DATES: Partial approval of the CDPs is effective September 16, 1998.

Dated: September 22, 1998.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries,National Marine Fisheries Service.

[FR Doc. 98–25728 Filed 9–24–98; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 63, No. 186
Friday, September 25, 1998

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

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Docket Number EE–98]

10 CFR Part 430

Workshop Regarding Water Heater Energy Efficiency Standards, Preliminary Analysis

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of public workshop.

SUMMARY: The Department of Energy (the Department or DOE) will hold an informal public workshop to discuss the preliminary results from the engineering and life-cycle cost analyses for the proposed water heater energy efficiency standards. DOE will also present and discuss its methods for analyzing the impacts of energy efficiency standards on manufacturers, the national energy savings, environmental and consumer sub-group analyses, and the impacts of energy efficiency standards on utilities.

DATES: The public workshop will be held on Monday, November 9, 1998, from 9:00 a.m. until 4:30 p.m., and Tuesday, November 10, 1998, from 8:30 a.m. until 12:15 p.m.

ADDRESSES: The workshop will be held at the U.S. Department of Energy, Forrestal Building, Room 1E–245, 1000 Independence Avenue, SW, Washington, DC 20585.

Written comments are welcome. Please submit 10 copies (no faxes) and, if possible, a computer diskette (WordPerfect 6.1) to: Ms. Brenda Edwards-Jones, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, ''Energy Conservation Program for Consumer Products: Water Heater Efficiency Standards, Docket No. EE–98–'', EE–43, 1000 Independence Avenue, SW, Washington, DC 20585–0121. Telephone: (202) 586–2945.

Copies of the transcript of the public workshop, public comments received, and this notice may be read (or copied) at the Freedom of Information Reading Room, U.S. Department of Energy, Forrestal Building, Room 1E–190, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–3142, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Terry Logee EE–43, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0121, (202) 586–9138, e-mail: terry.logee@ee.doe.gov; or Eugene Margolis, Esq., GC–72, U.S. Department of Energy, Office of General Counsel, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–9507, e-mail: eugene.margolis@hq.doe.gov.

SUPPLEMENTARY INFORMATION: The Department of Energy is preparing engineering and economic analyses to support a revised Notice of Proposed Rulemaking for Water Heater Energy Efficiency Standards under the authority of the Energy Policy and Conservation Act (EPCA), 42 U.S.C. 6295(e). Previously, the Department issued a Notice of Proposed Rulemaking on March 4, 1994, 59 FR 10465.

This workshop will provide opportunities for interested parties to discuss the results of the revised engineering and life-cycle cost analyses to support water heater energy efficiency standards. These revised analyses use commercially available spreadsheet software and can be customized so that stakeholders may run ''what if'' scenarios with their own data and assumptions. The revised analyses also incorporate current manufacturing cost and price data for each design option, information on household demographics from the 1992 Residential Energy Consumption Survey and special cost data from expert consultants hired by the Department's contractors.

The Department will also be presenting and discussing its proposed method for analyzing the impacts of energy efficiency standards on manufacturers. This is a revised analysis using the Government Regulatory Impact Model (GRIM) also implemented on a commercially available spreadsheet software program. The GRIM is a cash flow model that assesses the changes in industry cash flow resulting from proposed changes in energy efficiency standards. In order to complete the analysis, manufacturer interviews will need to be conducted.

DOE is particularly interested in determining whether its proposal for confidential interviews with individual manufacturers will be acceptable. During these interviews the DOE contractor, a representative from Arthur D. Little, will present the spreadsheet results of a strawman GRIM analysis. The company being interviewed will be asked qualitative and quantitative questions regarding the strawman analysis that will indicate the extent and nature of any impacts on the individual manufacturer. These questions will be coordinated with and approved by the Department of Justice.

DOE will also present and discuss its proposed methods for analyzing the national energy savings, including fuel switching scenarios, environmental, utility, and consumer sub-group impacts. DOE's contractor, Lawrence Berkeley National Laboratory, has convened a fuel switching working group to evaluate forecast algorithms, fuel switching scenarios, and data sources. This working group is made up of invited individuals from gas and electric utilities, utility associations, State energy offices, environmental advocates, research organizations, etc. DOE plans to analyze the impacts on consumer sub-groups by income levels. Environmental and utility impacts will be analyzed using the National Energy Modeling System (NEMS) from the Energy Information Administration (EIA). NEMS will be modified to extend its forecast capability to 30 years and to allow the use of the EIA's Residential Energy Consumption Survey demographic data with respect to water heaters.

At the workshop, the Department is particularly interested in receiving comments and views of interested parties concerning: (1) the analysis methodologies, (2) the results from the engineering and life-cycle cost analyses, and (3) DOE's assumptions regarding the costs of designs that will prevent ignition of flammable vapors and costs of venting for gas water heaters. The Department encourages those who wish to participate in the workshop to obtain the preliminary Technical Support Document from the internet (see the address above) and to make presentations that address its contents.

Workshop participants need not limit their statements to those topics, however. The Department is interested in receiving views concerning other issues that participants believe would affect the Proposed Rule for Energy Efficiency Standards for Residential Water Heaters.

The workshop will be conducted in an informal, conference style. A court reporter will be present to record the minutes of the meeting. There shall be no discussion of proprietary information, costs or prices, market shares, or other commercial matters regulated under antitrust law. The Department may use a professional facilitator to conduct the workshop.

After the manufacturer interviews are completed and the draft manufacturing impacts analysis is finished, the Department will issue a final technical support document to present the results. The national energy savings, consumer sub-group, environmental, and utility analyses will also be presented in the final technical support document. The Department will invite comments on the final technical support document and the analyses used. If you would like to receive the technical support document, or be added to the DOE mailing list to receive future notices and information regarding the water heater energy efficiency standards rulemaking, please contact Ms. Brenda Edwards-Jones, (202) 586–2945.

Issued in Washington, DC, on September 21, 1998.

Dan W. Reicher,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 98–25687 Filed 9–24–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 561

[No. 98–95]

RIN 1550–AB28

Consumer Credit Classified as a Loss, Slow Consumer Credit and Slow Loans

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Thrift Supervision (OTS) is proposing to delete its regulatory definitions of ''consumer credit classified as a loss,'' ''slow consumer credit,'' and ''slow loans.'' These definitions are not necessary for the interpretation of any OTS regulation and may conflict with proposed guidance recently issued by the Federal Financial Institutions Examination Council (FFIEC).

DATES: Comments must be received on or before October 26, 1998.

ADDRESSES: Send comments to Manager, Dissemination Branch, Records Management and Information Policy, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention Docket No. 98–95. Hand deliver comments to 1700 G Street, NW. from 9:00 A.M. to 5:00 P.M. on business days. Send facsimile transmissions to FAX Number (202) 906–7755 or (202) 906–6956 (if the comment is over 25 pages). Send e-mails to public.info@ots.treas.gov and include your name and telephone number. Interested persons may inspect comments at 1700 G Street, NW., from 9:00 A.M. until 4:00 P.M. on business days.

FOR FURTHER INFORMATION CONTACT: William Magrini, Senior Project Manager, Supervision Policy, (202/906–5744) or Vern McKinley, Senior Attorney (202/906–6241), Regulations and Legislation Division, Office of the Chief Counsel, Office of Thrift Supervision, 1700 G Street, N.W., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

Introduction

The OTS is proposing to delete its regulatory definitions of ''consumer credit classified as a loss,'' ''slow consumer credit,'' and ''slow loans.'' These definitions are not necessary for the interpretation of any OTS regulation and may conflict with proposed guidance recently issued by the Federal Financial Institutions Examination Council (FFIEC).

Consumer Credit Classified as a Loss—§ 561.13

Slow Consumer Credit—§ 561.47

Consumer credit is credit extended to individuals for personal, family or household purposes. *See* 12 CFR 561.12. Currently, ''consumer credit classified as a loss'' is defined as closed-end consumer credit that is delinquent 120 days or more (five monthly payments or more) and open-end consumer credit that is delinquent 180 days or more (seven zero billing cycles or more). *See* 12 CFR 561.13. OTS regulations define ''slow consumer credit'' as closed-end consumer credit that is delinquent for 90 to 119 days (four monthly payments) and open-end consumer credit that is delinquent for 90 to 179 days (four to six zero billing cycles). *See* 12 CFR 561.47. Both definitions provide that a payment of 90 percent or more of the contractual payment is considered to be a full payment, and state that a loan is not considered to be slow or a loss if an association can clearly demonstrate that repayment will occur regardless of delinquency status.

Neither of these terms is used in any other OTS regulation. The OTS, however, has issued guidance instructing examiners to follow these provisions when classifying closed-end and open-end consumer credit. Slow credits are presumed Substandard and consumer credit classified as a loss is presumed a Loss, subject to management providing documentation that such an adverse classification is not warranted.[1]

Recently, the FFIEC sought public comment on its proposed Uniform Retail Credit Classification Policy (''Uniform Classification Policy''), a supervisory policy used by the federal banking agencies for the uniform classification of retail credit loans of financial institutions.[2] The banking agencies are considering two possible options for the classification of open-end and closed-end retail loans. Under both options, open-end and closed-end retail loans that are past due 90 days from the contractual due date would be classified as Substandard. Under the first option, open-end and closed-end retail loans would be charged off when they are past due 150 days or more. Under the second option, open-end retail loans would be charged off at 180 days, and closed-end retail loans would be charged off at 120 days. The proposed Uniform Classification Policy also addresses the treatment of partial payments. Like the OTS definition, the proposed Uniform Classification Policy would consider a payment of 90 percent or more of the contract to be a full payment. However, the proposed policy also permits an institution to aggregate payments and give credit for any partial payments received.[3]

As noted above, the terms ''consumer credit classified as a loss'' and ''slow consumer credit'' are not used anywhere else in OTS regulations. Moreover, if the first option of the Uniform Classification Policy is adopted as proposed, the OTS definitions of consumer credit classified as a loss and slow consumer credit would conflict with the uniform interagency guidance. Accordingly, OTS is proposing to delete §§ 561.13 and 561.47. The OTS, however, solicits comment on whether these terms should be retained but revised to

[1] Thrift Activities Handbook, Section 260, Classification of Assets.

[2] 63 FR 36403 (July 6, 1998).

[3] The policy also addresses charge off policies for bankruptcies, fraud or deceased accounts, and other issues.

conform to the final FFIEC Uniform Classification Policy.

Slow Loans—§ 561.48

Existing § 561.48 defines slow loans with respect to loans that are issued on the security of a home.[4] The classification of a loan as a slow loan is based on a variety of factors, including how long the loan is contractually delinquent, how seasoned the loan is, whether taxes are due and unpaid, and whether its terms have been modified or the loan has been refinanced due to delinquency.

The term slow loan is not used elsewhere in the OTS regulations. However, the OTS has issued guidance to its examiners indicating that all slow mortgage loans are presumed to be Substandard.[5] The OTS is proposing to delete this definition from the Code of Federal Regulations because it is not necessary to the interpretation of any other regulation.

Executive Order 12866

OTS has determined that this proposed rule does not constitute a ''significant regulatory action'' for the purposes of Executive Order 12866.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, OTS has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities. The proposed rule would merely delete unnecessary definitions from OTS regulations. This change should, therefore, reduce the burden of complying with regulations for all institutions, including small institutions.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (Unfunded Mandates Act) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. As discussed above, this proposed rule would reduce regulatory burden by eliminating unnecessary regulations. OTS has, therefore, determined that the effect of the proposed rule will not result in expenditures by State, local, or tribal governments or by the private sector of $100 million or more. Accordingly, OTS has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

List of Subjects in 12 CFR Part 561

Savings associations.

Accordingly, the Office of Thrift Supervision proposes to amend part 561, chapter V, title 12, Code of Federal Regulations as set forth below:

PART 561—DEFINITIONS

1. The authority citation for part 561 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a.

§§ 561.13, 561.47, 561.48 [Removed]

2. Sections 561.13, 561.47 and 561.48 are removed.

Dated: September 21, 1998.

By the Office of Thrift Supervision.

Ellen Seidman,

Director.

[FR Doc. 98–25663 Filed 9–24–98; 8:45 am]

BILLING CODE 6720–01–P

[4] 12 CFR 541.14 (''Home'' means real estate comprising a single-family dwelling or dwelling unit for four or fewer families in the aggregate.)

[5] Thrift Activities Handbook, Section 260, Classification of Assets.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ASW–31]

Revision of Class D Airspace; Dallas NAS, Dallas, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking; withdrawal.

SUMMARY: This action withdraws the notice of proposed rulemaking (NPRM) published in the **Federal Register** on June 9, 1998, which proposed to revise Class D airspace at Dallas Naval Air Station (NAS), Dallas, TX. The NPRM proposed to provide Class D airspace, controlled airspace extending upward from the surface to and including 3,000 feet mean sea level (MSL), in the vicinity of Grand Prairie Municipal Airport, Grand Prairie, TX. Upon reevaluation, the FAA has determined that the proposed airspace revision would adversely affect the traffic flow at Dallas/Fort Worth International (DFW), Dallas Love, and Arlington airports, causing unnecessary delays. Accordingly, the NPRM is withdrawn.

DATES: The notice of proposed rulemaking published at 63 FR 31384 is withdrawn on September 25, 1998.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0530; telephone 817–222–5593.

SUPPLEMENTARY INFORMATION: On June 9, 1998 (63 FR 31384), an NPRM was published in the **Federal Register** proposing to revise Class D airspace at Dallas NAS, Dallas, TX. The intended effect of the NPRM was to provide Class D airspace, controlled airspace extending upward from the surface to and including 3,000 feet MSL, at Grand Prairie Municipal Airport, Grand Prairie, TX. Upon reevaluation, the FAA has determined that the proposed airspace revision would adversely affect the traffic flow at DFW, Dallas Love, and Arlington airports, causing unnecessary delays. Accordingly, the NPRM published in the **Federal Register** on June 9, 1998, is withdrawn. Since this action only withdraws an NPRM, it is neither a proposed nor a final rule and therefore is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

Withdrawal of Notice of Proposed Rulemaking

Accordingly, pursuant to the authority delegated to me, Airspace Docket No. 98–ASW–31, as published in the **Federal Register** on June 9, 1998 (63 FR 31384), is withdrawn.

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

Issued in Fort Worth, TX, September 14, 1998.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 98–25747 Filed 9–24–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

15 CFR Part 295

[Docket No. 980717184–8184–01]

RIN 0693–AB48

Advance Technology Program

AGENCY: National Institute of Standards and Technology, Technology Administration, Commerce.

ACTION: Notice of proposed rulemaking; Request for comments.

SUMMARY: The National Institute of Standards and Technology requests comments on proposed revisions to the regulations which implement the Advanced Technology Program (ATP). Changes proposed today include modification of the ATP evaluation criteria and weights for project selection and clarify other sections of the rule. These changes strengthen the fundamental mission of the ATP: For Government to work in partnership with industry to foster the development and board dissemination of challenging, high-risk technologies that offer the potential for significant, broad-based economic benefits for the nation.

DATES: Comments on the proposed program must be received no later than October 26, 1998.

ADDRESSES: Comments on the proposed rulemaking must be submitted in writing to: Advanced Technology Program Rule Comments, National Institute of Standards and Technology, Room A333, Administration Building, Gaitherburg, MD 20899–0001.

FOR FURTHER INFORMATION CONTACT: To receive additional program information, contact Barbara Lambis at 301–975–4447.

SUPPLEMENTARY INFORMATION: The National Institute of Standards and Technology is today proposing changes to the operating procedures of the Advance Technology Program found at part 295 of Title 15 of the Code of Federal Regulations. These changes strengthen the fundamental mission of the ATP: For Government to work in partnership with industry to foster the development and broad dissemination of challenging, high-risk technologies that offer the potential for significant, board-based economic benefits for the nation Such a unique government-industry research partnership fosters dramatic gains in existing industries, accelerates the development of emerging or enabling technologies leading to revolutionary new products, industrial processes and services for the world's markets, and helps spawn new industries of the 21st century. The proposed changes protect the fundamental strengths of the ATP, especially the requirement that the ATP continue to be a wholly merit-driven program based on peer review. These changes are reflected in proposed amendments to the regulation contained in this Notice:

- Section 295.2, Definitions, is proposed to be modified to add a definition of ''company'' for clarity; to revise the definition of ''industry-led joint research and development venture'' for clarity; and to remove the definition of ''joint research and development venture'' or ''joint venture'' which is already included in the ATP status.
- Section 295.4, The selection process, is proposed to be modified to eliminate funding to assist proposers in overcoming any organizational deficiencies because the adequacy of the organizational structure is one of the ATP selection criteria.
- Section 295.6 Criteria for selection, is proposed to be modified to place equal emphasis on the technical and economic merits of a proposal in accordance with the purpose of the Program.
- Redesignated § 295.11, NIST technical and educational services for ATP recipients, is proposed to be modified to add educational services to be provided to APT recipients.
- Section 295.21, qualifications of proposers, is proposed to be modified to state that for joint ventures, costs will only be allowed after the execution of the joint venture agreement and approval by NIST.
- Also, a number of administrative and clerical changes are proposed to be implemented to part 295 Sections 5, 7, 8, and 24 for consistency and clarity and removal of Sections 10 and 11 which are operational procedures unnecessary for inclusion in a regulation.

Request for Comments

The National Institute of Standards and Technology requests comments on the draft revisions to regulations found at 15 CFR part 295, implementing the Advanced Technology Program, which are included in this notice. Persons interest in commenting on the proposed program should submit their comments in writing to the above address. All comments received in response to this notice will become part of the public record and will be available for inspection and copying in the Commerce Department's Central Reference and Records Inspection Facility, Herbert Hoover Building, Room 6020, 14th Street between E Street and Constitution Avenue, NW, Washington, DC 20230.

Additional Information

Executive Order 12866

This rule has been determined to be significant under section3(f) of Executive 12866.

Exectuvie Order 12612

this rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

Regualtory Flexibility Act

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy, Small Business Administration, that this rule, if promulgated, will not have a significant economic effect on a substantial number of small entities. (5 U.S.C. 605(b)). This is because there are only a small number of awardees and thus only a small number of awards will be given to small businesses. Specifically, based on past experience and currently foreseen budgets, the ATP would expect to receive only a few hundred proposals annually from small businesses, and from these, to make under 100 awards. Seeking ATP funding is entirely voluntary.

Paperwork Reduction Act

Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection-of-information, subject to the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number.

This proposed rule contains collection of information requirements

subject to review and approval by the OMB under the Paperwork Reduction Act (PRA). The collection of information requirement applies to persons seeking financial assistance under the Advanced Technology Program as well as reporting requirements if financial assistance is granted. The collection of information requirements have been approved under OMB control Number 0693–0009 and 0651–0032. However, due to the proposed revisions to the criteria for selection of ATP proposals, the collection of information requirement contained in the proposed rule is being submitted to the Office of Management and Budget for review under section 3507 of the Paperwork Reduction Act. The public reporting burden per respondent for the collection of information contained in this rule is estimated to range between 20 and 30 hours per submission and 3 hours annually for recipients of financial assistance to provide monitoring reports. This estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) accuracy of NIST's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Comments must be received no later than October 26, 1998 and addressed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 (Attn: Desk Officer for NIST); and to Barbara Lambis, Room A333, Administration Building, National Institute of Standards and Technology, Gaithersburg, MD 20899.

National Environmental Policy Act

This rule will not significantly affect the quality of the human environment. Therefore, an environmental assessment or Environmental Impact Statement is not required to be prepared under the National Environmental Policy Act of 1969.

Executive Order 12372

Executive Order 12371 ''Intergovernmental Review of Federal Programs'' does not apply to this program.

List of Subjects in 15 CFR Part 295

Inventions and Patents, Laboratories, Research and Development, Science and Technology.

Dated: September 18, 1998.

Robert E. Hebner,

Acting Deputy Directory, National Institute of Standards and Technology.

For reasons set forth in the preamble, it is proposed that title 15, part 295 of the Code of Federal Regulations be amended as follows:

PART 295—ADVANCED TECHNOLOGY PROGRAM

1. The authority citation for part 295 continues to read as follows:

Authority: 15 U.S.C. 278n.

2. Section 295.2 is amended by removing paragraph (j), redesignating paragraphs (b) through (i) as paragraphs (c) through (j), and adding new paragraph (b) to read as follows:

* * * * *

(b) The term ''company'' means a for-profit organization, including sole proprietors, partnerships, or corporations.

* * * * *

3. The newly redesignated paragraph (i) is revised as follows:

* * * * *

(i) The term *industry-led joint research and development venture* or *joint venture* means a business arrangement that consists of two or more separately-owned, for-profit companies that perform research and development in the project; control the joint venture's membership, research directions, and funding priorities; and share total project costs with the Federal government. The joint venture may include additional companies, independent research organizations, universities, and/or governmental laboratories (other than NIST) which may or may not contribute funds (other than Federal funds) to the project and perform research and development. A for-profit company or an independent research organization may serve as an Administrator and perform administrative tasks on behalf of a joint venture, such as handling receipts and disbursements of funds and making antitrust filings. The following activities are not permissible for ATP funded joint ventures:

(1) Exchanging information among competitors relating to costs, sales, profitability, prices, marketing, or distribution of any product, process, or service that is not reasonable required to conduct the research and development that is the purpose of such venture;

(2) Entering into any agreement or engaging in any other conduct restricting, requiring, or otherwise involving the production or marketing by any person who is a party to such joint venture of any product, process, or service, other than the production or marketing of proprietary information developed through such venture, such as patents and trade secrets; and

(3) Entering into any agreement or engaging in any other conduct:

(i) To restrict or require the sale, licensing, or sharing of inventions or developments not developed through such venture, or

(ii) To restrict or require participation by such party in other research and development activities, that is not reasonably required to prevent misappropriation of proprietary information contributed by any person who is a party to such venture or of the results of such venture.

* * * * *

4. Section 295.4 is revised to read as follows:

§ 295.4 The selection process.

(a) The selection process for awards is a multi-step process based on the criteria listed in § 295.6. Source evaluation boards (SEB) are established to ensure that all proposals receive careful consideration. In the first step, called ''preliminary screening,'' proposals may be eliminated by the SEB that do not meet the requirements of this rule or the annual Federal Register Program announcement. Typical but not exclusive of the reasons for eliminating a proposal at this stage is that the proposal is deemed to have serious deficiencies in either the technical or business plan; involves product development rather than high risk R&D; is not industry-led; is significantly overprices or underpriced given the scope of the work; does not meet the requirements set out in the notice of availability of funds issued pursuant to § 295.7; or does not meet the cost sharing requirement. NIST will also examine proposals that have been submitted to a previous competition to determine whether substantive revisions have been made to the earlier proposal, and, if not, may reject the proposal.

(b) In the second step, referred to as the ''technical and business review,'' proposals are evaluated under the criteria found in § 295.6. Proposals judged by the SEB after considering the technical and business evaluations to have the highest merit based on the selection criteria receive further

consideration and are referred to as ''semifinalists.''

(c) In the third step, referred to as ''selection of finalists,'' the SEB prepares a final ranking of semifinalist proposals by a majority vote, based on the evaluation criteria in § 295.6. During this step, the semifinalist proposers will be invited to an oral review of their proposals with NIST, and in some cases site visits may be required. Subject to the provisions of § 295.6, a list of ranked finalists is submitted to the Selecting Official.

(d) In the final step, referred to as ''selection of recipients,'' the Selecting Official selects funding recipients from among the finalists, based upon the SEB rank order of the proposals on the basis of all selection criteria (§ 295.6); assuring an appropriate distribution of funds among technologies and their applications; the availability of funds; and adherence to the Program selection criteria. The Program reserves the right to deny awards in any case where a search of Federal records discloses information that raises a reasonable doubt as to the responsibility of the proposer. The decision of the Selecting Official is final.

(e) NIST reserves the right to negotiate the cost and scope of the proposed work with the proposers that have been selected to receive awards. For example, NIST may request that the proposer delete from the scope of work a particular task that is deemed by NIST to be product development or otherwise inappropriate for ATP support.

5. Section 295.5 is revised to read as follows:

§ 295.5 Use of pre-proposals in the selection process.

To reduce proposal preparation costs incurred by proposers and to make the selection process more efficient, NIST may use mandatory or optional preliminary qualification processes based on pre-proposals. In such cases, announcements requesting pre-proposals will be published as indicated in § 295.7, and will seek abbreviated proposals (pre-proposals) that address both of the selection criteria, but in considerably less detail than full proposals. The Program will review the pre-proposals in accordance with the selection criteria and provide written feedback to the proposers. When the full proposals are received, the review and selection process will continue as described in § 295.4.

6. Section 295.6 is revised to read as follows:

§ 295.6 Criteria for selection.

The evaluation criteria to be used in selecting any proposals for funding under this program, and their respective weights, are listed below. No proposal will be funded unless the Program determines that it has scientific and technological merit and that the proposed technology has strong potential for broad-based economic benefits to the nation. Additionally, no proposal will be funded that does not require Federal support, is product development rather than high risk R&D, does not display an appropriate level of commitment on the part of the proposer, or does not have an adequate technical and commercialization plan.

(a) *Scientific and Technological Merit (50%).* The proposed technology must be highly innovative. The research must be challenging, with high technical risk. It must be aimed at overcoming an important problem(s) or exploiting a promising opportunity. The enabling nature of the technology must be explained. The research must have a strong potential for advancing the state of the art and contributing significantly to the U.S. scientific and technical knowledge base. The technical plan must be clear and concise, and must clearly identify the core innovation, the technical approach, major technical hurdles, the attendant risks, and clearly establish feasibility through adequately detailed plans linked to major technical barriers. The plan must address the questions of ''what, how, where, when, why, and by whom'' in substantial detail, and be credibly linked to the pathway for achieving potential broad-based economic benefits. The Program will assess the proposing team's relevant experience for pursuing the technical plan. The team carrying out the work must demonstrate a high level of scientific/technical expertise to conduct the R&D and have access to the necessary research facilities.

(b) *Potential broad-based economic benefits (50%).* The proposed technology must have a strong potential to generate substantial benefits to the nation that extend significantly beyond the direct returns to the proposing organization(s). It must be explained why ATP support is needed and what difference ATP funding is expected to make in terms of what will be accomplished with the ATP funding versus without it. The pathways to economic benefit must be described, including the proposer's plan for getting the technology into commercial use, as well as additional routes that might be taken to achieve broader diffusion of the technology. The proposal should identify the expected returns that the proposer expects to gain, as well as returns that are expected to accrue to others, i.e., spillover effects. The Program will assess the proposer's relevant experience and level of commitment to the project and project's organizational structure and management plan, including the extent to which participation by small businesses is encouraged and is a key component in a joint venture proposal, and for large company single proposers, the extent to which subcontractor/subrecipient teaming arrangements are featured and are a key component of the proposal.

7. Section 295.7 is revised to read as follows:

§ 295.7 Notice of availability of funds.

The Program shall publish at least annually a **Federal Register** notice inviting interested parties to submit proposals, and may more frequently published invitations for proposals in the *Commerce Business Daily*, based upon the annual notice. Proposals must be submitted in accordance with the guidelines in the ATP Proposal Kit as identified in the published notice. Proposals will only be considered for funding when submitted in response to an invitation published in the **Federal Register**, or a related announcement in the *Commerce Business Daily*.

8. Section 295.8(a) is revised to read as follows;

§ 295.8 Intellectual property rights; Publication of research results.

(a)(1) *Patent Rights:* Title to inventions arising from assistance provided by the Program must vest in a company or companies incorporated in the United States. Joint ventures shall provide to NIST a copy of their written agreement which defines the disposition of ownership rights among the members of the joint venture, and their contractors and subcontractors as appropriate, that complies with the first sentence of this paragraph. The United States will reserve a non-exclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States any such intellectual property, but shall not, in the exercise of such license, publicly disclose proprietary information related to the license. Title to any such intellectual property shall not be transferred or passed, except to a company incorporated in the United States, until the expiration of the first patent obtained in connection with such intellectual property. Nothing in this paragraph shall be construed to prohibit the licensing to any company of

intellectual property rights arising from assistance provided under this section.

(2) *Patent Procedures:* Each award by the Program shall include provisions assuring the retention of a governmental use license in each disclosed invention, and the government's retention of march-in rights. In addition, each award by the Program will contain procedures regarding reporting of subject inventions by finding Recipient to the Program, including the subject inventions of members of the joint venture (if applicable) in which the funding Recipient is a participant, contractors and subcontractors of the funding Recipient. The funding Recipient shall disclose such subject inventions to the Program within two months after the inventor discloses it in writing to the Recipient's designated representative responsible for patent matters. This disclosure shall consist of a detailed, written report which provides the Program with the following: the title of the present invention; the names of all inventors; the name and address of the assignee (if any); an acknowledgment that the United States has rights in the subject invention; the filing date of the present invention, or, in the alternative, a statement identifying that the Recipient determined that filing was not feasible; an abstract of the disclosure; a description or summary of the present invention; the background of the present invention or the prior art; a description of the preferred embodiments; and what matter is claimed. Upon issuance of the patent, the funding Recipient or Recipients must notify the Program accordingly, providing it with the Serial Number of the patent as issued, the date of issuance, a copy of the disclosure as issued, and if appropriate, the name, address, and telephone number(s) of an assignee.

* * * * *

§§ 295.10 and 295.11 [Removed]

§§ 295.12 and 295.13 [Redesignated as §§ 295.10 and 295.11]

9. Sections 295.10 and 295.11 are removed and §§ 295.12 and 295.13 are redesignated as §§ 295.10 and 295.11.

10. The newly redesignated § 295.11 is amended by revising the heading and by adding a new paragraph (c) to read as follows:

§ 295.11 Technical and Educational Services for ATP Recipients.

* * * * *

(c) From time to time, ATP may conduct public workshops and undertake other educational activities to foster the collaboration of funding recipients with other funding resources for purposes of further development and commercialization of ATP-related technologies. In no event will ATP provide recommendations, endorsements, or approvals of any ATP funding recipients to any outside party.

11. Section 295.21 revised to read as follows:

§ 295.21 Qualfications of proposers.

Subject to the limitations set out in § 295.3, assistance under this Subpart is available only to industry-led joint research and development ventures. These joint ventures may include universities, independent research organizations, and governmental entities. Proposals for funding under this Subpart may be submitted on behalf of a joint venture by a for-profit company or an independent research organization that is a member of the joint venture. Proposals should include letters of commitment or excerpts of such letters from all proposed members of the joint venture, verifying the availability of cost-sharing funds, and authorizing the part submitting the proposal to act on behalf of the venture with the Program on all matters pertaining to the proposal. No costs shall be incurred under an ATP project by the joint venture members until such time as a joint venture agreement has been executed by all of the joint venture members and approved by NIST. NIST will withhold approval until it determines that a sufficient number of members have signed the joint venture agreement. Costs will only be allowed after the execution of the joint venture agreement and approval by NIST.

12. Section 295.24 is revised to read as follows:

§ 295.24 Registration.

Joint ventures selected for funding under the Program must notify the Department of Justice and the Federal Trade Commission under the National Cooperative Research Act of 1984. No funds will be released prior to receipt by the Program of copies of such notification.

[FR Doc. 98–25564 Filed 9–24–98; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 292

[Docket No. RM88–6–000]

Administrative Determination of Full Avoided Costs, Sales of Power To Qualifying Facilities, and Interconnection Facilities; Order Terminating Proceeding

Issued September 21, 1998.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Order Terminating Proceeding.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is terminating this proceeding because the matters at issue in this proceeding have since been overtaken by events.

DATES: This order is withdrawn September 25, 1998.

FOR FURTHER INFORMATION CONTACT: Kimberly D. Bose, Federal Energy Regulatory Commission, Office of the General Counsel, 888 First Street, N.E., Washington, D.C. 20426, (202) 208–2284.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in the Public Reference Room at 888 First Street, N.E., Room 2A, Washington, D.C. 20426.

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This document is also available through the Commission's Records and

Information Management System (RIMS), an electronic storage and retrieval system of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed. RIMS is available in the Public Reference Room or remotely via Internet through FERC's Homepage using the RIMS link or the Energy Information Online icon. User assistance is available at 202–208–2222, or by E-mail to RimsMaster@FERC.fed.us.

Finally, the complete text on diskette in WordPerfect format may be purchased from the Commission's copy contractor, RVJ International, Inc. RVJ International, Inc., is located in the Public Reference Room at 888 First Street, N.E., Washington, D.C. 20426.

Before Commissioners: James J. Hoecker, Chairman; Vicky A. Bailey, William L. Massey, Linda Breathitt, and Curt Hébert, Jr.

In 1988, the Commission issued a Notice of Proposed Rulemaking in this proceeding.[1] For the reasons given below, we are exercising our discretion to terminate this proceeding.

Background

In 1980, the Commission implemented rules regarding, among other things, rates for purchases from qualifying cogeneration and small power production facilities (QF) pursuant to sections 201[2] and 210[3] of the Public Utility Regulatory Policies Act of 1978 (PURPA).[4]

In 1987, the Commission held a series of regional conferences and solicited written comments concerning the Commission's QF program. The Commission sought input concerning, *inter alia*, the so-called avoided cost rule and the implementation of that rule by state commissions and others.[5] After reviewing the information received in the regional conferences and in the written comments, the Commission issued the ADFAC NOPR.[6]

The ADFAC NOPR

The Commission's regulations define avoided cost as the incremental cost to an electric utility of electric capacity or energy, or both, which but for the purchase from the QF the utility would generate itself or purchase from another source.[7] The regulations also provide that, if the rate paid by an electric utility to a QF for power and energy is equal to avoided cost, the rate is considered just and reasonable, non-discriminatory, and in the public interest.[8] Finally, the regulations further provide a list of factors that, to the extent practicable, must be taken into account in determining avoided cost.[9]

The ADFAC NOPR, among other things, proposed amending the Commission's regulations to more precisely define the guidelines and criteria to be used by state commissions and others in administratively determining avoided cost.[10] The ADFAC NOPR also acknowledged the difficulty of administratively determining avoided cost and setting avoided cost rates, and noted particularly that bidding was an alternative that promised greater efficiency in setting avoided cost rates.[11]

Comments were filed in May 1988, reply comments were filed in July 1988, and a public hearing was held on July 21–22, 1988. A number of commenters supported the proposed rules, but often with qualifications and proposed changes. Many commenters, however, including public utilities and state commissions, opposed the proposed rules. Some urged the issuance of a policy statement rather than a rulemaking. Many state commissions, in particular, deemed the proposed rules an intrusion on state authority, unnecessary or impractical. Representatives of the QF industry urged major revisions of various particular proposals. Various parties representing consumer and utility interests also opposed the proposed rules.

Discussion

Over a decade has passed since the ADFAC NOPR was issued. During those ten years, conditions which directly or indirectly affect QFs have changed significantly. One significant development was the passage of the Energy Policy Act of 1992, Pub L. No. 102–486, 106 Stat. 2776 (1992) (codified in, among other places, 16 U.S.C.), which, among other things, created a new category of non-traditional power producers, exempt wholesale generators (EWGs), that, like most QFs, are exempt from the requirements of the Public Utility Holding Company Act of 1935 (PUHCA).[12] In fact, many of the entities that could qualify as QFs can also meet the criteria for EWG status and so need not be QFs in order to obtain exemption from PUHCA. Likewise, other non-traditional power producers that may be competitors of QFs, but may themselves not be QFs, can also qualify as EWGs.

The Energy Policy Act also expanded the Commission's authority to order transmission for, among others, QFs as well as certain EWGs.[13] Additionally in this regard, the Commission in 1996 issued Order No. 888,[14] in which the Commission directed that all public utilities that own, control or operate facilities used for the transmission of electric energy in interstate commerce file open access, non-discriminatory transmission tariffs with minimum terms and conditions of non-

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[1] Administrative Determination of Full Avoided Costs, Sales to Qualifying Facilities, and Interconnection Facilities, 53 FR 9331 (1988), FERC Stats. & Regs. ¶ 32,457 (1988) (ADFAC NOPR).

[2] *See* 16 U.S.C. § 796.

[3] *See* 16 U.S.C. § 824a-3.

[4] *See* Small Power Production and Cogeneration Facilities; Regulations Implementing Section 210 of the Public Utility Regulatory Policies Act of 1978, Order No. 69, 45 FR 12214 (1980), FERC Stats. & Regs., Regulations Preambles 1977–1981 ¶ 30,128 (1980) *and* Small Power Production and Cogeneration Facilities—Qualifying Status, Order No. 70, 45 FR 17,959 (1980), FERC Stats. & Regs., Regulations Preambles 1977–1981 ¶ 30,134 (1980), *order on reh'g*, Order Nos. 69–A and 70–A, 45 FR 33958 (1980), FERC Stat. & Regs., Regulations Preambles 1977–1981 ¶ 30,160 (1980), *aff'd in part and vacated in part*, American Electric Power Service Corporation v. FERC, 675 F.2d 1226 (D.C. Cir. 1982), *rev'd in part*, American Paper Institute, Inc. v. American Electric Power Service Corporation, 461 U.S. 402 (1983).

[5] *See* FERC Stats. & Regs. at 32,158; *accord*, Cogeneration; Small Power Production—Notice of Pubic Conference and Request for Comments, 64 FERC ¶ 61,364 at 63,489–90 n.2 (1993).

[6] The Commission also issued three other notices of proposed rulemakings. Regulations Governing Independent Power Producers, 53 FR 9327 (1988), FERC Stats. & Regs. ¶ 32,456 (1988); Regulations Governing Bidding Program, 53 FR 9324 (1988), FERC Stats. & Regs. ¶ 32,455 (1988); Regulations Governing the Public Utility Regulatory Policies Act of 1978, 53 FR 31021 (1988), FERC Stats. & Reg. ¶ 32,465 (1988). On September 29, 1993, these proceedings were terminated because the matters at issue had been overtaken by events. 64 FERC at 63,491–92.

All four of the proceedings, including the ADFAC NOPR, arose out of concerns expressed to the Commission that the Commission's QF regulations required revision and also that the Commission draft regulations to deal with newly-developing independent power producers. *See generally id.* at 63,490.

[7] 18 CFR 292.101(b)(6).

[8] 18 CFR 292.304(a)(1), 292.304(b)(2).

[9] 18 CFR 292.304(e).

[10] FERC Stats. & Regs. at 32,157, 32,162–74.

[11] FERC Stats. & Regs. at 32,164, 32,167.

[12] 15 U.S.C. §§ 79a *et seq.*; *compare* 15 U.S.C. § 79z–5a(e) *with* 18 CFR 292.601–02.

[13] *See* 16 U.S.C. §§ 824j, 824k.

[14] Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, 61 FR 21540 (1996), FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888–A, 62 FR 12274 (1997), FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888–B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888–C, 82 FERC ¶ 61,046 (1998), *accord*, Public Service Company of New Hampshire v. New Hampshire Electric Cooperative, Inc., 83 FERC ¶ 61,224 at 61,999 (1998)(''The regulatory context is now quite different from that which existed'' when the QF regulations first were promulgated, with the requirement that public utilities now provide open access transmission service to, among other entities, QFs), *reh'g pending* (*PSNH*).

discriminatory service.[15] The sellers eligible for such service expressly include QFs.[16]

In addition, as stated above, the ADFAC NOPR acknowledged the difficulty of administratively setting avoided cost rates, and particularly recognized that competitive bidding was a viable alternative to determining avoided cost. Since 1988, in fact, substantial experience has been gained by state commissions, electric utilities and QFs themselves regarding competitive bidding. While few states allowed competitive bidding at the time of the ADFAC NOPR, well over half the states now use competitive bidding to one degree or another in setting avoided cost rates.[17] Indeed, in a number of cases, the Commission itself has considered rates resulting from competitive bidding and negotiation in which QFs were active participants.[18] Accordingly, the industry itself appears to have made substantial progress regarding the determination of avoided cost and the setting of avoided cost rates.

Given these facts, as well as the continuing development of competitive power markets generally,[19] the Commission does not believe it appropriate to adopt revisions proposed a decade ago.

Additionally, we note that certain of the issues addressed in the ADFAC NOPR were the subject of other proceedings: for example, allowing QFs to construct and own transmission lines and interconnection equipment.[20] Likewise, the issue of whether states can require that rates for QF sales at wholesale be set above avoided cost, which was added to the ADFAC NOPR proceeding after the ADFAC NOPR was originally issued,[21] has since been addressed in another proceeding.[22]

Accordingly, because the revisions to the Commission's regulations proposed in the ADFAC NOPR have been overtaken by subsequent events, the Commission will exercise its discretion to terminate this proceeding.[23]

Administrative Findings and Effective Date

The Administrative Procedure Act (APA)[24] requires a notice of proposed rulemaking to be published in the **Federal Register**. The APA also mandates that an opportunity for comments be provided when an agency proposes to promulgate regulations. The Commission finds that notice and comment are unnecessary when terminating this proceeding. The express language of the APA requires such notice and comment only when promulgating new regulations and not when the agency is, as in this case, terminating a proceeding that proposed amending pre-existing regulations.[25] Moreover, notice and comment are not required under the APA when the agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.[26] As explained above, this order merely removes from consideration proposed regulations that were never adopted and have since been overtaken by events, and thus are no longer necessary.

The Commission will make the termination of this proceeding effective on September 25, 1998.

List of Subjects in 18 CFR Part 292

Electric power plants, electric utilities, natural gas, reporting and recordkeeping requirements.

The Commission Orders

Docket No. RM88–6–000 is hereby terminated.

By the Commission.

David P. Boergers,

Secretary.

[FR Doc. 98–25676 Filed 9–24–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 385

[Docket No. RM98–1–000]

Regulations Governing Off-the-Record Communications

September 16, 1998.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is proposing to revise its rules concerning communications between persons outside the Commission and the Commission and its employees. The proposed regulations are designed to clarify ambiguities in the existing *ex parte* rules and to provide better guidance on what communications to and from the Commission are permissible and what communications are prohibited.

DATES: Written comments are due on or before December 24, 1998.

ADDRESSES: File comments with the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: David R. Dickey, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, (202) 208–2140.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or -1a -copy the contents of this document during normal business hours in the Public Reference Room at 888 First Street, N.E., Room 2A, Washington, DC 20426.

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[15] *E.g.,* Order No. 888, FERC Stats. & Regs. at 31,635–36.

[16] *E.g., id.* at 31,688.

[17] 64 FERC at 63,491; *accord,* Order No. 888, FERC Stats. & Regs. at 31,651; National Independent Energy Producers, Competing for Power: A Survey on Competitive Procurement Systems and Blueprint for the Future 5–6 (July 1991).

[18] *E.g., PSNH,* 83 FERC at 62,000–01 (''parties to QF purchases are free to negotiate purchase rates'' and a ''more competitive environment is expected to foster such outcomes''); *accord, id.* at 61,995–96, 62,001 n.20 (noting the use of competitive bidding by the applicant to establish an avoided cost rate); Enron Power Enterprise Corporation, 52 FERC ¶ 61,193 (1990) (involving multi-source, including QF, competitive bidding); Doswell Limited Partnership, 50 FERC ¶ 61,251 (1990) (involving QF competitive bidding); *see also* Southern California Edison Company, 70 FERC ¶ 61,215 at 61,675–76, 61,677, *order on reconsid.* 71 FERC ¶ 61,269 at 62,078–80 (1995); *cf.* Jersey Central Power & Light Company, 73 FERC ¶ 61,092 at 61,297 & n.5, *reh'g denied,* 73 FERC ¶ 61,333 (1995); Metropolitan Edison Company, 72 FERC ¶ 61,015 at 61,049 & n.6, *reh'g denied, 7*2 FERC ¶ 61,269 at 62,184 (1995).

[19] *See* Order No. 888, FERC Stats. & Regs. at 31,639–52; *accord,* Order No. 888–A, FERC Stats. & Regs. at 30,183–85; *see also* 70 FERC at 61,675–76.

[20] *See* Streamlining of Regulations Pertaining to Parts II and III of the Federal Power Act and the Public Utility Regulatory Policies Act of 1978, Notice of Proposed Rulemaking, 57 FR 55176 (1992), FERC Stats. & Regs. ¶ 32,489 at 32,643–44, 32,647 (1992), *regulation adopted,* Order No. 575, 60 FR 4831 (1995), FERC Stats. & Regs. ¶ 30,014 at 31,279–81 (1995), *order on reh'g,* 71 FERC ¶ 61,121 (1995).

[21] *See* Administrative Determination of Full Avoided Costs, 53 FR 24099 (1988), FERC Stats. & Regs. ¶ 32,462 (1988); *cf.* Orange and Rockland Utilities, Inc., 70 FERC ¶ 61,014, *reconsideration denied,* 71 FERC ¶ 61,034 (1995).

[22] *See* Connecticut Light & Power Company, 70 FERC ¶ 61,012, *reconsideration denied,* 71 FERC ¶ 61,035 (1995).

[23] *See, e.g.,* Professional Drivers Council v. Bureau of Motor Safety, 706 F.2d 1216, 1220–21 (D.C. Cir. 1983) (discussing agency's decision not to promulgate new rules in an area already subject to agency regulation).

[24] 5 U.S.C. 553(b), (c).

[25] *See, e.g., Kennecott Utah Copper Corporation* v. *United States Department of Interior,* 88 F.3d 1191, 1207–09 (D.C. Cir. 1996) (discussing challenges to withdrawal of draft final regulations without notice and comment); *accord,* ICORE, *Inc.* V. *FCC,* 985 F.2d 1075, 1082 (D.C. Cir. 1993) (not modifying a rule is not same as rulemaking).

[26] 5 U.S.C. 553(b).

Commission. CIPS can be accessed via Internet through FERC's Homepage (http://www.ferc.fed.us) using the CIPS Link or the Energy Information Online icon. The full text of this document will be available on CIPS in ASCII and WordPerfect 6.1 format. CIPS is also available through the Commission's electronic bulletin board service at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397, if dialing locally, or 1–800–856–3920, if dialing long distance. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400, or 1200 bps, full duplex, no parity, 8 data bits and 1 stop bit. User assistance is available at (202) 208–2474 or by E-Mail to CipsMaster@FERC.fed.us.

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Finally, the complete text in WordPerfect format may be purchased from the Commission's copy contractor, RVJ International, Inc. RVJ International, Inc. is located in the Public Reference Room at 888 First Street, N.E., Washington D.C. 20426.

I. Introduction

The Federal Energy Regulatory Commission (Commission or FERC) proposes to revise its rules governing communications with Commissioners and Commission employees. The proposed revisions are designed to permit fully informed decision making while at the same time ensuring the integrity of the Commission's decision making process. The proposed revisions are intended specifically to provide clearer direction both to the Commission and its staff and persons outside the Commission on the ground rules for communication. In keeping with the Commission's outreach goals, specific changes are proposed to enhance the ability of the Commission to interact with other regulatory agencies and the public.

II. Background

The amendments added to the Administrative Procedure Act (APA) in 1976 by the Government in the Sunshine Act provided a general statement as to the limitations and procedures governing ex parte communications in matters that statutorily require an on the record hearing.[1] Except as otherwise authorized by law, the APA prohibits ex parte communications relevant to the merits of a proceeding between employees involved in the decisional process of a proceeding and interested persons outside the agency.[2] The prohibitions on *ex parte* communications have two primary underlying premises: (1) a hearing is not fair when one party has private access to the decision maker and can present evidence or argument that other parties have no opportunity to rebut; [3] and (2) reliance on ''secret'' evidence may foreclose meaningful judicial review.[4] The 1976 Act instructed agencies to issue regulations necessary to implement the APA's requirements.[5] Shortly thereafter, the Federal Power Commission implemented *ex parte* regulations based on the APA's guidance.[6] This rule, Rule 2201, applies to all covered proceedings before the Commission except those involving oil pipelines.[7] The Commission has a second *ex parte* rule, Rule 1415, which was originally developed by the Interstate Commerce Commission (ICC) and which applies only to oil pipeline proceedings.[8]/ Although directed to the same end—both prohibit certain ex parte communications and both describe methods for public disclosure of such communications—they differ in significant details.

III. Discussion

The problems with the existing regulations were recognized by the participants in the Commission's 1992 Public Conference on *ex parte* issues, where a general consensus developed favoring a revised rule that would provide the Commission, the industry, and the public with a clearer statement of what communications are prohibited and when the prohibitions apply.[9] In sum, the current regulations have been viewed as needlessly complex and confusing, and therefore provide inadequate guidance to Commission officials and the public. For example, as noted above, the Commission currently has two *ex parte* rules while it clearly has need for only one. Accordingly, the proposed rule would eliminate Rule 1415 in its entirety and provide that revised Rule 2201 will apply to oil pipeline cases in addition to other proceedings.

Moreover, the current regulations fail to reflect adequately the APA *ex parte* prohibitions. For example, current Rule 2201 covers communications from someone outside the Commission *to* a Commissioner, Administrative Law Judge, or advisory staff, while the APA prohibitions cover communications in both directions.

Finally, the Commission staff recently undertook an initiative, known as ''FERC First,'' to study the Commission's current and anticipated future missions and functions, identify the internal and external obstacles to carrying out those missions and functions efficiently and effectively, and, to the extent practicable, design processes enhancing the effectiveness of the Commission's operations. The FERC First team recognized the need to strengthen the Commission's relationships with Congress, federal and state agencies and other interested persons. Discussions undertaken as part of Commission staff's reengineering effort, indicated that many people feel that changes to the current *ex parte* rule could enhance the Commission's operations.

For all of the above reasons, we believe that the existing *ex parte* rule should be revised to help achieve our goals of improving communications while at the same time ensuring the integrity of the Commission's decision making.

The significant proposed revisions are discussed below. The proposed text for Rule 2201 is set out in full at the end of this notice.

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[1] 5 U.S.C. 551–557. Section 557 applies ''according to the provisions thereof, when a hearing is required to be conducted in accordance with section 556 of this title.'' Section 556 applies to hearings required by sections 553 and 554.

[2] *See* 5 U.S.C. 557(d)(1).

[3] *WKAT, Inc.* v. *FCC,* 296 F.2d 375 (D.C. Cir.), *cert. denied,* 360 U.S. 841 (1961).

[4] *Home Box Office, Inc.* v. *FCC,* 567 F.2d 9, 54 (D.C. Cir.), *cert. denied,* 434 U.S. 829 (1977); *U.S. Lines* v. *Federal Maritime Commission,* 584 F.2d 519, 541–542 (D.C. Cir. 1978).

[5] 5 USC 559.

[6] FPC Order No. 562, 42 FR 14701, (March 16, 1977).

[7] Proposed 18 CFR 385.2201.

[8] 18 CFR 385.1415.

[9] *See, e.g.,* the comments filed by Interstate Natural Gas Association, the Industrial Groups, Pacific Gas Transmission Company, and Environmental Action in Docket No. RM91–10–000. Notice of Public Conference, 57 FR 10622 (Mar. 27, 1992); 58 FERC ¶ 61,320 (Mar. 20, 1992).

A. Prohibitions on Communications Relevant to the Merits of a Contested Proceeding.

Under the proposed regulations, the prohibitions would apply to ''proceedings involving a party or parties'',[10] defined as all docketed [11] Commission matters except investigations under Part 1b of the Commission's regulations. Non-covered proceedings would include informal (i.e., notice and comment) rulemaking proceedings, and any other proceeding not having a party or parties, and public technical, policy, and other conferences intended to inform the public or solicit their comments on issues of interest to the Commission and the industry.

The proposed regulations would continue to prohibit ''off-the-record communications relevant to the merits of a Commission proceeding'' in covered proceedings. The term ''relevant to the merits'' is taken directly from the APA provisions and its definition is drawn in substantial part from the legislative history of those provisions.[12] The proposed regulations would define ''relevant to the merits'' to mean capable of affecting the outcome of a proceeding, or of influencing, or providing an opportunity to influence, a decision on any substantive issue. Purely procedural inquiries or status requests generally will not have an effect on the outcome of a case or on the decision on any substantive issue. Under the proposed rule, communications would not be characterized as status requests, however, where the request states or implies a preference for a particular party or position, advocates expedited action or action by a certain date, or ''is otherwise intended, directly or indirectly, to address the merits or influence the outcome of a proceeding.'' [13]

Communications relating to purely procedural inquiries, such as how to intervene in a proceeding, the number of days before a responsive filing is due, or the number of copies that must be provided for a required filing are permitted. However, even some communications that appear to be procedural, in that they relate to how a proceeding is conducted, also may be capable of influencing the result on the substantive issues. These include communications about whether to hold a hearing and, if so, what type of hearing, and communications regarding the admissibility of evidence or the timing of a decision, since when the Commission acts can be highly relevant to the merits of the proceeding.[14] Requests and advocacy of positions concerning such matters, especially by parties in a proceeding, should be presented on the record and in compliance with the Commission's procedural rules governing the format and service of pleadings.

The proposed regulations are intended to apply to communications between decisional employees and persons outside the Commission without regard to who initiated the communication. Thus, for example, if a decisional Commission employee initiates a covered communication with a person outside the Commission, the employee may thereby be providing that person the opportunity to influence a decision on any substantive issue. The prohibitions apply both to oral and to written communications. The term ''written communications'' as used in the proposed rule extends to electronic communications (e.g., e-mail).

Additionally, the APA *ex parte* prohibitions apply essentially to adjudications and similar cases required by statute to be decided on the record after an opportunity for hearing. Courts generally have treated rules barring private communications as a basic element of a fair hearing—whether an APA-type oral evidentiary hearing or one involving ''paper'' exhibits and pleadings—in any case involving competing private claims to a valuable privilege or benefit.[15] The Commission's existing Rule 2201, and the proposed rule, extends the prohibitions to ''contested on-the-record'' proceedings required to be decided on the record of a Commission hearing, regardless of whether the hearing is required by statute, the Constitution, a Commission regulation, or an order in a particular case. Rule 1415 (applicable to oil pipeline cases) specifies that the rule covers both oral hearings and the ''taking of evidence by modified procedure,'' a reference to a ''paper hearing'' procedure, and this clarification is made in the proposed revisions to Rule 2201.[16]

The existing rule further defines a proceeding as contested if a petition or notice to intervene in opposition has been filed. The explicit requirement that the proceeding be ''contested'' before *ex parte* rules attach reflects the notion that procedural requirements and constraints originally developed to preserve the rights of parties in an adjudication have no place in an administrative proceeding in which there is no ''contest'' comparable to the controversy in a judicial case. Accordingly, as discussed below, the proposed rule retains the triggering date of the existing rule, and off-the-record communications will not be prohibited until such time as a protest or intervention in opposition to an application has been filed.

B. When Communications Are Prohibited

The proposed regulations would provide a clear-cut time frame for beginning and ending the prohibitions. The restrictions on communications would be inapplicable to off-the-record communications before the commencement of a proceeding. When there is no pending proceeding, there can be no barred communications pertaining to a proceeding. Accordingly, the prohibitions would take effect at the time of the filing with the Commission of a complaint, or a protest or intervention in opposition to a proceeding initiated by a person outside the Commission. (The prohibitions on off-the-record communications would not be triggered by a premature filing.)

We note that the Commission often receives filings that do not specify whether a filed intervention is actually protesting or opposing a requested Commission action, or was filed merely to support the applicant or to allow the filer to be placed on a service list. The

[10] The definition of ''party'' may be found at 18 CFR 385.102.

[11] ''Docketed'' matters include those bearing a ''docket'' number and those bearing a ''project'' number.

[12] *See* H.R. Rep. No. 880 (Part I), 94th Cong., 2d Sess. at 20, *reprinted in* 1976 U.S.C.C.A.N. at 2202: The [statute] prohibits an ex parte communication only when it is ''relative to the merits of the proceeding.'' This phrase is intended to be construed broadly and to include more than the phrase ''fact in issue'' currently used in the Administrative Procedure Act. The phrase excludes procedural inquiries, such as requests for status reports, which will not have an effect on the way the case is decided. It excludes general background discussions about an entire industry which do not directly relate to specific agency adjudication involving a member of that industry, or to formal rulemaking involving the industry as a whole. It is not the intent of this provision to cut an agency off from general information about an industry that an agency needs to exercise its regulatory responsibilities. So long as the communication containing such data does not discuss the specific merits of a pending adjudication it is not affected by this section.

[13] *See* Proposed 18 CFR 2201((c)(6).

[14] *But c.f., Gulf Oil Corp.* v. *Federal Power Commission*, 563 F.2d 588, 611 (3rd Cir. 1977) cert. denied, 434 U.S. 1062 (1978) (where Congressional communications are directed not at the agency's decision on the merits but at accelerating the disposition and enforcement of pertinent regulations, such legislative conduct does not affect the fairness of the agency's proceedings).

[15] *Sangamon Valley Television Corp.* v. *United States*, 269 F.2d 221 (D.C. Cir. 1959); and *Sierra Club* v. *Costle*, 657 F.2d 298, 400 (D.C. Cir. 1981).

[16] *See* proposed Rule 18 CFR 385.2201(c)(4).

Commission will consider interventions as opposing an application, and triggering the proposed rule's prohibitions, when they are expressly styled as such. Additionally, based on arguments or issues raised in the document, the Commission may consider a filing not styled as an intervention in opposition as nonetheless opposing the application, thus triggering the prohibitions contained in this proposed rule. However, the Commission will not treat as opposing an application those interventions that appear to have been filed solely to request that the filer be placed on the service list, or to preserve the opportunity to present oral argument should the Commission order a hearing to be held.

The prohibitions would remain in force until final disposition of the proceeding by the Commission, or until the opposition, complaint or protest is withdrawn. Final disposition refers to the final Commission decision and the rehearing of that decision, where applicable. This means the prohibitions would continue until the Commission has acted on petitions for rehearing, rehearing has been denied by operation of law, the time for petitions for rehearing has passed and none has been filed, an application is withdrawn, or, in matters where there is no right to rehearing (e.g., DOE remedial order cases), when the Commission issues its final decision. Where an administrative law judge's initial decision becomes final by operation of law because no party has filed exceptions, and the Commission has taken no action to stay the effectiveness of an initial decision under section 375.712 of our regulations,[17] final disposition of the case will be assumed to have occurred at that point. If a rehearing petition is filed, notwithstanding a party's failure to file exceptions, the prohibitions would apply to the rehearing process.[18]

After final Commission disposition, the constraints on communication would cease to apply even if judicial review of the case has been sought. If a court remands the proceeding to the Commission following judicial review, the prohibitions would attach once more at the time the Court issues its mandate.

[17] 18 CFR 375.712.

[18] *See* 18 CFR 385.709(d). Where a document initiating a proceeding is filed but subsequently rejected (see 18 CFR 4.32 and 385.2001), the document is deemed not to have been filed with the Commission. Accordingly, until the document has been resubmitted, no proceeding is pending before the Commission and the proposed Rule 2201 prohibitions would not apply.

C. Who Is Covered

The proposed regulations would prohibit off-the-record communications between a person outside the Commission and a ''decisional employee.'' The definition of ''person'' as presently defined in Rule 102(d) arguably includes Commission staff.[19] Accordingly, for the purposes of this proposed Rule 2201, ''person'' would be defined as any person, other than an employee of the Commission. ''Decisional employee'' would be defined, as under existing Rule 2201, to mean a Commissioner, a member of his or her personal staff, an administrative law judge, or any other employee of the Commission who is or may be reasonably expected to be involved in the decisional process of a particular Commission proceeding. The revised definition is intended to clarify that the term does not include: (1) members of the Commission's trial staff, (2) a settlement judge appointed under existing Rule 603 (who is not also the presiding judge in the proceeding) [20], (3) a neutral (other than an arbitrator) in an alternative dispute resolution proceeding, and (4) an employee designated as non-decisional for a particular case. The revised definition, however, has been expanded to clarify that the term includes contractors involved in the Commission's decisional process.[21]

Members of the trial staff (or their supervisors in the conduct of the trial) are not decisional employees because they are barred by the separation of functions requirements from serving as advisors to the Commission in the same proceeding.[22] For the same reason, any employee designated by the Commission to be non-decisional for a particular case is subject to similar separation of functions requirements and would not be involved in the Commission's decisional process. The prohibitions also would be inapplicable to communications with a settlement judge because settlement judges are not decisional employees and communications relating solely to settlement are not viewed as relating to the merits for purposes of restrictions on off-the-record communications.[23]

[19] 18 CFR 385.102(d).

[20] 18 CFR 385.603.

[21] For purposes of the proposed rule, ''contractor'' means a direct Commission contractor or a third-party contractor subject to Commission supervision and control.

[22] *See* 18 CFR 385.2202.

[23] *Louisiana Ass'n of Independent Producers and Royalty Owners* v. *FERC*, 958 F.2d 1101, 1113 (D.C. Cir. 1992) (In a settlement or in a purely procedural proceeding there are no issues to be decided upon an open record and, therefore, in communicating with a settlement judge, the parties do not engage in ''surreptitious efforts'' to influence an official charged with the duty of deciding contested issues).

D. Non-Covered Proceedings

1. Enforcement Investigations Not Covered

Under the terms of part 1b of the Commission's regulations, enforcement investigations do not adjudicate any person's rights and have no parties.[24] Moreover, section 385.101(b)(1) of the Commission's regulations provides that the Commission's Rules of Practice and Procedure, including existing Rule 2201, do not apply to part 1b investigations. The proposed regulations would clarify that the prohibitions will continue to be inapplicable to such investigations.[25] The Commission recently proposed amendments to part 1b and to its Rule 206 complaints procedures [26] that added provisions allowing, *inter alia*, non-public, anonymous communications between the Commission's Enforcement Hotline Staff. We note that these communications are permitted because there are no parties to such investigations. However, once a matter being investigated is set for hearing, the prohibitions against off-the-record communications would apply to that proceeding.

2. Rulemaking Proceedings Not Covered

Similarly, neither the APA *ex parte* prohibitions nor the Commission's existing *ex parte* regulations apply to informal, notice and comment, rulemaking proceedings. Communications with outside sources of information are proper and often necessary to the full development of a rulemaking.[27]

E. Exempt Communications

The proposed rule sets out ten exemptions from the general prohibitions against off-the-record communications. These exemptions are intended to be independent of one another. Accordingly, if any individual exemption applies to the circumstances of a particular proceeding, off-the-record communications will be permitted subject to any disclosure requirements. For example, under proposed exemption 18 CFR 385.2201(d)(8), a Federal agency with concurrent jurisdiction that is a party to a

[24] 18 CFR Part 385.101(b)(1).

[25] 18 CFR Part 1(b).

[26] *See* Complaint Procedures, 63 FR 41,982 (Aug. 6, 1998), (Notice of Proposed Rulemaking).

[27] We note, however, that the information available to support a final rule upon judicial review is generally limited to that found in the final rule itself and material that has been placed in the associated rulemaking record.

proceeding may not participate in off-the-record communications relating to that proceeding. Yet, that party agency may freely participate in the development of an environmental assessment or environmental impact statement in accordance with proposed exemption 18 CFR 385.2201(d)(9).

We note that while the proposed rule seeks to establish clear boundaries between prohibited and permitted communications, the Commission and Commission staff would, of course, retain the discretion not to engage in permitted discussions if in their judgment such communications would create the appearance of an impropriety or otherwise seem inconsistent with the best interests of the Commission.[28]

1. Communications Expressly Permitted by Rule or Order

As a general principle the APA recognizes that its prohibitions against off-the-record communications do not include those ''required for the disposition of ex parte matters as authorized by law.'' [29] Existing 18 CFR 385.2201(b)(1) also allows the Commission, by rule or order, to modify any of the provisions of Rule 2201, or Rule 1415, as they apply to all or part of a proceeding, to the extent permitted by law. The proposed rule contains a similar provision without the reference to Rule 1415.

The proposed regulations track the legislative history in permitting general background or broad policy discussions about an industry or a segment of an industry where these discussions do not relate to the specific merits of a particular pending case. General discussions about industry conditions or broad policies provide useful information important to effective regulation. Restrictions on off-the-record communications were not intended to cut an agency off from the general information it needs to carry out its regulatory responsibilities.[30] Such general discussions are permitted even where they may touch on an issue that also happens to be before the Commission in the specific factual context of an individual case.

However, where the discussion is carried on in the context of a particular case, the prohibitions extend to policy and legal issues as well as to issues of fact. Moreover, where a general discussion relates to the specific merits of a pending case (where, for example, the discussion turns on the specific facts of the case), the prohibitions would apply even if the case is not mentioned by name during the discussion.

2. Communications Related to Emergencies

Subject to a disclosure requirement, the proposed rule would allow the Commission to engage in off-the-record communications with regard to emergencies. This provision would allow the Commission to respond to emergencies such as earthquakes, floods, severe weather conditions, fires, or explosions that damage or threaten to damage FERC-regulated facilities, or significant market anomalies that undermine the ability of FERC-regulated entities to deliver energy. Written communications, or summaries of oral communications, taking place during an emergency would be delivered to the Secretary to be noticed and placed in the public file of the proceeding(s) most readily identifiable with facilities affected by the emergency. The Commission invites comments on this proposal. The Commission is particularly interested in comments on whether, for example, a significant but temporary economic impact on regional markets may properly constitute an emergency that, subject to the disclosure requirements described above, would appropriately permit the Commission to conduct off-the-record communications to address those issues expeditiously.

3. Communications Concerning Published or Widely Disseminated Public Information Permitted

The Commission is free to take official notice of its own decisions as well as the published decisions of judicial and other administrative tribunals. In addition, since the basic concern of the prohibitions is with private communications and ''secret'' evidence, Commissioners and Commission staff may freely consult legal, economic, engineering and other technical or scholarly journals. Material appearing in the trade press, the general news media, and on publicly available Internet sites is also not subject to the prohibitions.[31] Similarly, speeches and statements made to a large audience at a public forum will rarely raise the types of concerns that the proposed rule is intended to address.

Communications relating to such published or other widely disseminated public information would be permitted to the extent that they do not seek to determine how precedent might apply to fact-specific issues in a pending proceeding. Thus, the Commission and the staff would be permitted to explain events such as actions that courts or the Commission have already taken, and to describe objectively issues before the Commission or the positions of the parties regarding those issues.

4. Pre-filing Consultations Permitted

Pre-filing communications would be permitted under the proposed rule. Pre-filing consultations are often useful in educating applicants as to the appropriate format, content, and form that an application or other filing should take. Such consultations can therefore improve the chances that filings, once made, will be ready for evaluation on the merits. The value of pre-filing consultations is explicitly recognized in Commission regulations, which permit such informal consultations in connection with pipeline certificate applications [32] as well as public utility and natural gas rate schedules and tariff filings.[33] Other specific examples of permitted pre-filing communications would include consultations under sections 4.34(i), 4.38, and 16.8 of our regulations taking place before the filing with the Commission of an application for certain hydropower licenses, exemptions or license amendments.[34]

Our alternative hydropower licensing procedures permit establishing pre-filing communications protocols.[35] Under these procedures, an applicant must demonstrate that it has made an effort to contact all resource agencies, citizens groups and others that may be affected by the project, and that a consensus exists for the participants to communicate off-the-record under a communications protocol. The alternative procedures may be used only upon Commission approval and must include a disclosure requirement providing that information specified in the protocol will be placed in the public record. The Commission invites comments on whether off-the-record communications, occurring under

[28] Proposed Rule 18 CFR 385.2201(i)(2).

[29] 5 U.S.C. 557(d)(1). The legislative history of this section indicates that it was envisioned as allowing ex parte requests for subpoenas and other matters that might be resolved by the decisional authority on an *ex parte* basis. *See* 1977 U.S.C.C.A.N. at 2201.

[30] H.R. Rep. No. 880 (Part 1), 94th Cong., 2d Sess. at 20, *reprinted in* 1976 U.S.C.C.A.N. at 2202.

[31] While materials in scholarly journals, the news media, and on the Internet are not communications prohibited by the proposed rule, this does not necessarily mean that they are accurate, valid or persuasive in all circumstances. Under Commission regulations, even officially noticeable facts are subject to rebuttal at the request of any participant. 18 CFR 385.508(d).

[32] 18 CFR 157.14(a).

[33] 18 CFR 35.6 and 154.25.

[34] *See* 18 CFR 4.34, 4.38 and 16.8.

[35] *See* Docket No. RM95–16, Order No. 596, Regulations for the Licensing of Hydroelectric Projects, 62 FR 59802 (Nov. 5, 1997), 81 FERC ¶ 61,103 (October 29, 1997).

protocols entered into under the alternative procedures during the pre-filing stages, should be permitted to continue after the application is formally filed with the Secretary. Is there a need to renew the consensus in order for the communications protocol to survive? Should the protocol remain in effect following an application absent formal opposition by a party (whether an existing or new participant)?

5. Communications Agreed to by the Parties Permitted

Proposed 18 CFR 385.2201(b)(5) would retain the existing provision in 18 CFR 385.2201(b)(6) permitting communications which all the parties agree may be made without regard to communications constraints. The proposed regulations would retain the current policy of imposing no prohibition on communications during a meeting or conference noticed and open to all parties in a proceeding. The fundamental concern posed by off-the-record communications is with private or secret communications. The right to a fair hearing is denied when one party or interest has private access to the decision maker and can present evidence or argument that other parties have no opportunity to rebut.[36] This concern is not present in meetings which all parties have an opportunity to attend.

6. Written Communications with Non-party Elected Officials Permitted

Proposed 18 CFR 385.2201(d)(6) would permit written communications from non-party elected officials acting in their official representative capacities. The Commission receives numerous letters from Federal and state elected officials requesting expedition or forwarding correspondence from constituents.[37] This proposal would treat such letters as permitted communications, subject to a disclosure requirement under which the communications would be placed in the public record and noticed, providing an opportunity for review and comment, thus mitigating any potential due process concerns.

7. Certain Staff Communications Concerning Compliance Matters Permitted

We are concerned with the fact that Commission staff frequently is restrained from being able to communicate with regulated entities and others regarding compliance with the requirements of Commission orders pending on rehearing. Such situations can lead to regulatory delay in compliance.

Most post-licensing compliance takes place after all the underlying issues have been resolved. Therefore, the proposed restrictions would not apply to conversations or exchanges of information during Commission staff safety inspections, post-licensing or post-certification environmental monitoring or compliance, or routine staff audits of company books or records when the inspections, monitoring, or audits are not undertaken in connection with an ongoing licensing or certificate case or other specific pending proceeding. Proposed 18 CFR 385.2201(d)(7) would make clear that limited off-the-record communications also would be permitted where, for example, a licensee is undertaking a good faith compliance effort, while pursuing rehearing on the underlying order. Only discussions concerning the mechanics of compliance, as opposed to the merits of the underlying order, would be permitted.

For example, in a hydropower licensing context, we do not believe that post-licensing communications on compliance with dam safety matters should be encumbered by the fact that a party has sought rehearing on the underlying licensing order.

8. Communications with Other Federal, State and Local Agencies

Existing 18 CFR 385.2201(b)(1) does not prohibit communications from interceders who are Federal, state or local agencies that have no official interest in and whose official duties are not affected by the outcome of a covered proceeding to which the communication relates. Because many of the outside agencies with which the Commission works do have an official interest in the proceeding to which interagency communications relate, the proposed rule would permit some communications with Federal, state, or local agencies that are not parties in the relevant Commission proceeding. This exemption would apply to communications involving: (1) a request for information by the Commission or Commission staff; or (2) a matter over which the other Federal, state, or local agency and the Commission share regulatory jurisdiction, including authority to impose or recommend licensing conditions.

The partial exemption recognizes that, except where the other Federal, state, or local agency is directly involved in a Commission case as a party, the public interest favors a free flow of information between government agencies with shared jurisdiction. Where agencies are charged with shared jurisdiction and regulatory responsibilities, a cohesive government policy can best be developed and implemented through communication, cooperation and collaboration between agencies and their staff that sometimes can take place most effectively off-the-record.[38] To ensure that such communications do not compromise the procedural rights of the parties or the integrity of the Commission's decisional record, proposed 18 CFR 385.2201(g)(1)(ii) would require that actual information obtained through off-the-record communications with Federal, state or local agencies, and relied upon by the Commission in reaching its decision, be placed in the public record to allow the public to discern the basis of the Commission's decision.

9. Communications Relating to Environmental Documentation

The Commission is interested in establishing rules that will permit more effective cooperation with other agencies, applicants, and the public in developing documentation, consistent with the National Environmental Policy Act of 1969 (NEPA),[39] that supports decisions made by the Commission. Accordingly, the Commission proposes to exclude from the coverage of the rule all off-the-record communications required to comply with the NEPA and implementing regulations issued by the Council on Environmental Quality (CEQ)[40] and the Commission.[41]

The CEQ's regulations describe an open and public NEPA process leading up to the issuance of an environmental document that includes opportunity for public comment and participation, and record development akin to the procedures used in informal rulemaking. For example, in cases necessitating the preparation of an Environmental Impact Statement (EIS), CEQ rules describe a public scoping requirement that may include noticed,

[36] *WKAT, Inc.* v. *FCC,* 296 F.2d at 383.

[37] The legislative history of the APA makes clear that members of Congress are ''interested persons'' subject to the APA restrictions on communications. It also indicates, however, that this prohibition is not intended to prohibit routine inquiries or referrals of constituent correspondence. *See* H.R. Rep. No. 880 (Part 1), 94th Cong., 2d Sess at 21–22, *reprinted in* 1976 U.S.C.C.A.N. at 2203.

[38] Similar exclusions appear in the Federal Communications Commission's *ex parte* regulations. *See* 47 CFR 1.1204(b)(5), (7) and (8).

[39] National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321 *et seq.*

[40] 40 CFR 1500–1508.

[41] 18 CFR Part 380.

public, on-the-record meetings,[42] and requirements that all substantive comments (whether written or oral) received on the draft statement (or summaries thereof where the response has been especially voluminous) should be addressed in the final statement whether or not they are relied upon by the agency.[43] Comments or communications received after issuance of the final EIS should be made on-the-record or else they will be considered as prohibited communications, unless they are exempt under another provision of this rule.

Just as with the development of an EIS, CEQ regulations provide that, to the extent practicable, environmental agencies, the applicant, environmental interest groups, and the public should be involved in the process of crafting an environmental assessment (EA).[44] However, the CEQ's regulations for preparation of an EA do not require the same procedures to further public participation as those related solely to EIS preparation.

Based on our experience, a substantial majority of applications requiring preparation of an EA are uncontested. Because the rule does not apply to uncontested proceedings, communications undertaken in the environmental review process for these proceedings may take place off-the-record. However, this rule must address how off-the-record communications should be handled in those cases where an application requiring preparation of an EA is contested.

Accordingly, the Commission proposes, in cases that are contested, to exempt from the coverage of the proposed rule those communications relating to the preparation of an EA in cases where the Commission has determined to solicit and address public comment. In this manner, we believe that the Commission will have access to the information it needs to make an informed decision, and the public will have the requisite opportunity to participate in the process leading up to issuance of an environmental assessment. We note that the ''final'' environmental assessment may in fact be incorporated in the Commission's final order on the underlying action.

CEQ regulations require, to the fullest extent possible, that Federal agencies integrate related surveys, required by other relevant environmental review laws, into an EIS. Therefore, communications necessary to assure compliance with all relevant statutes protecting environmental, cultural and historic preservation concerns[45] also would be considered as excluded from the rule, if they occur prior to the issuance of a completed EA or EIS. Thus, to the extent that an applicant's compliance with these statutes is addressed in a final EA or EIS associated with a particular proceeding, the integrity of decisions arising under these statutes is protected by the EIS process. Any communications taking place after the Commission's issuance of the final environmental document would have to take place on-the-record.[46]

The Commission is mindful that other Federal and state resource agencies with which we share jurisdiction may choose to intervene in the same Commission proceeding in which they have been serving as a cooperating agency [47] in the preparation of NEPA documentation, and thus may have been made privy to non-public predecisional information. The Commission invites comments on whether cooperating agencies who are also parties should have access to materials to which other parties lack access.

10. Communications With Individual, Non-Party Landowners Permitted

Communications involving individual, non-party landowners, whose property may be directly affected by a pending proceeding, would be permitted, subject to a disclosure requirement. This exemption would apply even after the issuance of a completed NEPA document. Consistent with fundamental fairness, such individual landowners should be permitted to comment without the need to incur the expense of formally intervening in a proceeding. Any possible bias to the parties would be mitigated by a requirement that communications with affected landowners be placed in the record of the proceeding. This exception would not apply, however, in the case of communications with a landowner organization, or if an individual landowner is a party to the proceeding.

F. Handling of Off-the-Record Communications

1. Prohibited Off-the-Record Communications

The proposed regulations differentiate between two types of off-the-record communications: those prohibited by the regulations and those permitted by the regulations. Commission decisional employees who make or receive a prohibited communication would remain obligated to deliver a copy of the communication, if written, or a summary of the substance of any oral communication to the Secretary for submission into the public record associated with, but separated from, the decisional record in the proceeding. The Secretary will acknowledge receipt of the prohibited communication by periodically issuing a public notice that the agency has received a prohibited communication. Such notice will list the author of the communication, date of receipt by the Commission, and the docket number to which the communication relates. Parties may seek an opportunity to respond on the record to any facts or contentions made in a communication placed in the non-decisional associated file. The Commission will grant such requests only where it determines that the dictates of fairness so require. When the request is granted, a copy of the off-the-record communication and the permitted response will be made a part of the decisional record.

The proposed regulations depart from existing Rule 2201 (but not the APA) in dropping the requirement that submissions in the public file revealing barred communications must also be routinely served on the parties to the relevant proceeding. The substitution of ''public'' notice is modeled on the approach used in the FCC's *ex parte* rule with regard to permitted off-the-record communications.[48] Given that these prohibited communications are not part of the Commission's decisional record, we believe there is no justification for imposing on the Commission a burdensome requirement of service on the parties. We note that the FCC's requirement is that its

[42] Scoping meetings convened by the Commission are frequently transcribed by a court reporter. In the absence of a stenographic report, the substance of significant communications taking place in such meetings is memorialized, in writing, by Commission staff. These documents are made available to the parties and placed in the public record of the proceeding.

[43] 40 CFR 1503.4(b).

[44] 40 CFR 1501.4.

[45] Such statutes include, but are not limited to, the Coastal Zone Management Act of 1972, 16 U.S.C. 1451 *et seq.*; National Historic Preservation Act of 1966, 16 U.S.C. 470 *et seq.*; Endangered Species Act, 16 U.S.C. 1532 *et seq.*; and section 401 the Clean Water Act, 33 U.S.C. 1341.

[46] The Commission believes that it is not required to disclose the specific details of communications with some cultural, historical, and environmental protection agencies. Rather, in order to protect the location or specific nature of an endangered resource, a general description of the problem encountered and proposed mitigative action, should be sufficient disclosure. This rationale would apply whether the communication is addressed in an environmental document, or as a separate part of the decisional record.

[47] The term ''cooperating agency'' is defined in the CEQ regulations as an agency invited by the lead agency to participate in the preparation of an environmental document. *See* 40 CFR 1501.6.

[48] 47 CFR 1.1206(b).

Secretary publicly notice receipt of the off-the-record contact. Such notice apparently is accomplished by a regular posting on the public bulletin board, without resort to more formal **Federal Register** notice. Considering that the communications in question are prohibited, we believe the FCC's approach is valid and therefore propose that the Commission adopt it.

The Commission specifically invites comments on the use of public notice in lieu of service.[49] We also invite comments on whether the Secretary should retain the prohibited communication and response thereto in a file separate from the decisional file (*i.e.*, the associated file) or whether the incoming communication should be immediately placed in the decisional file and noticed (in the **Federal Register**) by the Secretary for public comment, and whether the latter approach would provide adequate incentive to comply with the *ex parte* rules.

The proposed regulations also would drop the requirement that appears in existing Rule 2201, but not in Rule 1415 or the APA, for ''sworn'' statements summarizing oral communications. While sworn statements may be appropriate in certain specific circumstances, the proposed regulations follow the practice of most Federal agencies in not imposing a general requirement of sworn statements.

2. Permitted Off-the-Record Communications

The due process principles underlying *ex parte* relate to preserving the actual and apparent integrity of administrative processes and creation of an agency decision-making record capable of judicial review. Consistent with these principles, the Commission proposes to permit certain off-the-record communications, but require that documentation of such communications be placed in the decisional record with public notice that the communication has been placed in the record. This disclosure requirement may, however, create some incremental burden on FERC staff relating to drafting memoranda or notes on oral communications, and may chill communications that outside parties would prefer not to disclose. The Commission invites comments on whether the proposed rule attains an appropriate balance of these interests.[50]/

The proposed rule would require the Secretary periodically to notice receipt of these permitted communications, thereby notifying the parties, in lieu of direct service, that the communications are in the decisional record (or environmental record), and that they have the right to file a response.

We propose that notice be accomplished through publicly posting receipt of these communications. In addition, the notice might be accessible through the Commission's Internet homepage. We request comments on the sufficiency of this type of notice for publicizing permitted off-the-record communications.

G. Sanctions

The proposed regulations expand the sanctions provision in existing Rule 2201 in one respect. Added as a possible sanction for violations of the proposed regulations is disqualification or suspension from practice or appearance before the Commission. This sanction is already available under Rule 2102 to deal with misconduct by those appearing before the Commission.[51]/ It is included in the proposed regulations to clarify that persons who engage in barred communications are among those who may be subject to disqualification or suspension in the appropriate circumstances. One purpose of the proposed rule is to assure that the Commission's decisions are based only on information available to all parties. Accordingly, this sanctions portion of the rule would apply notwithstanding that the prohibited off-the-record communication would be made publicly available under proposed 18 CFR 385.2201(f). As under existing Commission regulations, the proposed sanctions provision would apply only to persons outside the Commission. Commission employees who violate the proposed Rule 2201 prohibitions would be subject to administrative disciplinary measures applicable to Federal employees.

IV. Regulatory Flexibility Certification Statement

The Regulatory Flexibility Act[52]/ requires rulemakings either to contain a description and analysis of the impact the rule would have on small entities, or to certify that the rule will not have a significant economic impact on a substantial number of small entities. An analysis is not required if a proposed rule will not have such an impact.[53]/

The regulations proposed in this rulemaking would revise the Commission's Rules of Practice and Procedure dealing with certain off-the-record communications. The Commission certifies that this proposed rule will not have a significant economic impact on small entities.

V. Environmental Statement

Commission regulations require that an environmental assessment or an environmental impact statement be prepared for any Commission action that may have a significant adverse effect on the human environment.[54]/ The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Among these are proposals for rules that are clarifying, corrective, or procedural, or that do not substantively change the effect of the regulations being amended.[55]/ The proposed rule falls under this exception; consequently, no environmental consideration is necessary.

VI. Information Collection Statement

The Office of Management and Budget's (OMB's) regulations require that OMB approve certain information collection requirements imposed by agency rules.[56]/ However, this proposed rule contains no information collection requirements and therefore is not subject to OMB approval.

VII. Public Comment Procedures.

The Commission invites interested persons to submit written comments on

[49] The Commission may also notice prohibited communications on its Homepage (http://www.ferc.fed.us) and/or its official bulletin board.

[50] For communications under five exceptions we propose a disclosure and notice requirement. These five exceptions—relating to emergencies, communications by non-party public officials, agency communications, the NEPA process, and landowner interests—might otherwise be viewed as violative of the *ex parte* principles designed to ensure the integrity of the Commission's proceedings if they were not accompanied by alternative procedural assurances that the Commission's records will be complete and that others will have a fair opportunity to respond. Thus, we propose to require that communications under these five areas be placed in the public record.

In total, the Commission proposes to exempt ten categories of communications from coverage under the proposed rule. The other proposed exemptions relate to communications that may be viewed as falling outside the penumbra of *ex parte* communications recognized by the APA. Therefore, we do not require notice and a record of their occurrences. These include communications permitted by law, prefiling communications, communications that all parties agree may take place off the record, procedural inquiries, communications taking place in public fora, and communications relating to compliance with Commission orders.

[51] 18 CFR 385.2102.

[52] 5 U.S.C. 601–612.

[53] 5 U.S.C. 605(b).

[54] Order No. 486, Regulations Implementing National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1997), FERC Stats. & Regs., Regulations Preambles 1986–90 ¶ 30,783 (1997).

[55] 18 CFR 380.4(a)(2)ii).

[56] 5 CFR Part 1320.

this Notice of Proposed Rulemaking. An original and 14 copies of the comments must be filed with the Commission no later than December 24, 1998.

Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 1st Street, N.E., Washington, DC 20426 and should refer to Docket No. RM98–1–000.

All written comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference Room at 888 1st Street, N.E., Washington, DC 20426, during regular business hours.

List of Subjects in 18 CFR Part 385

Administrative practice and procedure, Electric power, Penalties, Pipelines, and Reporting and recordkeeping requirements.

By direction of the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

In consideration of the foregoing, the Commission proposes to amend Part 385, Chapter I, Title 18, *Code of Federal Regulations,* as set forth below.

PART 385—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for Part 385 continues to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101-7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85.

2. Section 385.101(b)(4) is revised to read as follows:

§ 385.101 Applicability (Rule 101).

* * * * *

* * *

(4) With respect to any oil pipeline filing or proceeding, the modified procedures set forth in Rules 1404 and 1414 will apply.

* * * * *

3. Section 385.915 is revised to read as follows:

§ 385.915 Off-the-record communications (Rule 915).

The provisions of Rule 2201 (prohibited communications and other communications requiring disclosure) apply to proceedings pursuant to this subpart, commencing at the time the Secretary issues a proposed remedial order under 10 CFR 205.192, an interim remedial order for immediate compliance under 10 CFR 205.199D, or a proposed order of disallowance under 10 CFR 205.199E.

4. Section 385.1012 is revised to read as follows:

§ 385.1012 Off-the-record communications (Rule 1012).

The provisions of Rule 2201 (prohibited communications and other communications requiring disclosure) apply to proceedings pursuant to this subpart, commencing at the time a petitioner files a petition for review under Rule 1004 (commencement of proceedings).

§ 385.1415 [Removed]

5. Section 385.1415 is removed.

6. The Subpart V heading and § 385.2201 are revised to read as follows:

Subpart V—Prohibited Communications and Other Communications Requiring Disclosure; Separation of Functions

§ 385.2201 Prohibited communications and other communications requiring disclosure (Rule 2201).

(a) *Purpose and scope.* The purpose of this section is to govern communications with the Commission in a manner that permits fully informed decision making by the Commission while ensuring the integrity and fairness of the Commission's decisional process. This rule shall apply to all contested on-the-record proceedings except that the Commission may, by rule or order, modify any provision of this subpart, as it applies to all or part of a proceeding, to the extent permitted by law.

(b) *Prohibited off-the-record communications in proceedings involving a party or parties.* (1) Except as permitted in paragraph (d) of this section, no person shall make or knowingly cause to be made to any decisional employee an off-the-record communication relevant to the merits of a contested on-the-record proceeding involving a party or parties; and

(2) Except as permitted in paragraph (d) of this section, no decisional employee shall make or knowingly cause to be made to any person an off-the-record communication relevant to the merits of a contested on-the-record proceeding involving a party or parties.

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

(1) *Off-the-record communication* means a communication which, if written, is not served on the parties to the proceeding, and if oral, is made without reasonable prior notice to the parties to a proceeding.

Note: Written communications includes a communication transmitted by electronic means such as ''e-mail.''

(2) *Contested on-the-record proceeding* means any complaint, action initiated by the Commission, or other proceeding involving a party or parties in which an intervenor opposes a proposed action.

Note: The Commission will consider an intervention as contesting the proposed action, and triggering the prohibitions on off-the-record communications, when the intervenor expressly styles its petition as being in opposition. Additionally, the Commission will consider an intervention as being in opposition, even when not so styled, if the arguments contained therein reasonably establish the filer's opposition to the application. However, the Commission will not treat an intervention as being in opposition to the applicant when it appears to have been made solely for the purpose of being placed on the service list or to seek permission to participate in a hearing, should the Commission order that a hearing be held.

(3) *Decisional employee* means a Commissioner or member of his or her personal staff, an administrative law judge, or any other employee or contractor of the Commission who is or may reasonably be expected to be involved in the decisional process of a particular proceeding, but does not include an employee designated as part of the Commission's trial staff in a proceeding, a settlement judge appointed under Rule 603 (settlement of negotiations before a settlement judge), a neutral (other than an arbitrator) in an alternative dispute resolution proceeding, or an employee designated as non-decisional in a particular proceeding subject to the separation of functions requirements applicable to trial staff under Rule 2202 (separation of functions of staff).

Note: For purposes of this paragraph, ''contractor'' means a direct Commission contractor or a third-party contractor subject to Commission supervision and control.

(4) *Person* means any person outside the Commission.

(5) *Proceeding involving a party or parties* means any docketed Commission proceeding other than an investigation under part 1b of this chapter, an informal rulemaking under the procedures of 5 U.S.C. 553 or exempted from those procedures under 5 U.S.C. 553(a)(1) and (a)(2), or any other proceeding not having a party or parties.

Note: An on-the-record proceeding includes both proceedings set for oral hearings and those hearings disposed of on evidence taken by modified procedures, that is a ''paper hearing.''

(6) *Relevant to the merits* means capable of affecting the outcome of a proceeding, or influencing a decision, or providing an opportunity to influence a decision, on any substantive issue in the proceeding, but does not include:

(i) A request for information relating solely to the status of a proceeding, unless the request states or implies a preference for a particular party or position, advocates expedited action or action by a certain date or time, or is otherwise intended, directly or indirectly, to address the merits or influence the outcome of a proceeding; or

(ii) A general background or broad policy discussion involving an industry or a substantial segment of an industry, where the discussion occurs outside the context of any particular proceeding involving a party or parties and does not address the specific merits of the proceeding.

Note: Although the Administrative Procedure Act permits off-the-record communications concerning general background or policy discussions about an industry or segment of an industry, discussions of how such background or policy information might apply to the specific merits of a pending proceeding are not permitted.

(d) *Exempt communications.* The general prohibitions in paragraph (b) of this section do not apply to the following:

(1) A communication specifically authorized by law, or permitted by Commission rule or order in a particular proceeding;

(2) Subject to the disclosure requirements of paragraph (g) of this section, a communication related to an emergency;

(3) Communications of published or broadly disseminated public information;

Note: Communications taking place in public fora, and material appearing in the public domain, are not subject to the general prohibitions on off-the-record communications.

(4) Pre-filing communications, including communications under §§ 4.34(i), 4.38, and 16.8 of this chapter, to take place before the filing with the Commission of an application for an original, new, nonpower, or subsequent hydropower license or exemption or a license amendment;

Note: Application of this section is not limited to the above listed hydropower regulations. Other examples of permitted pre-filing communications would include, but are not limited to, submitting draft rate schedules for the purpose of receiving staff suggestions under § 35.6 of this chapter, and certain informal pipeline certificate consultations pursuant to § 157.14(a) of this chapter.

(5) A communication that all parties to a proceeding agree may be made without regard to the prohibitions in paragraph (b) of this section;

Note: Absent formal opposition by a party, this exemption allows pre-filing communications protocols to remain in effect after an application is filed with the Commission.

(6) Subject to the disclosure requirements of paragraph (g) of this section, a written communication from a non-party elected official;

Note: This exemption covers written communications requesting expedition or forwarding constituent correspondence; oral communications would be subject to the prohibitions of this subpart.

(7) Where an order is pending rehearing, communications on issues relating to compliance with order conditions;

Note: Communications related to the basis for, or seeking changes in, the underlying order for which rehearing is being sought would not be permitted.

(8) Subject to the requirements of paragraph (g) of this section, a communication to or from another Federal, state or local agency that is not a party in the Commission proceeding where the communication involves:

(i) A verbal or written request for information made by the Commission or Commission staff; or

(ii) A matter over which the other Federal, state, or local agency and the Commission share jurisdiction, including authority to impose or recommend conditions in connection with a Commission license, certificate, or exemption;

(9) Subject to the disclosure requirements of paragraph (g) of this section, and without regard to party status, any communication that relates to:

(i) The preparation of an environmental impact statement, if such communications occur prior to the issuance of the final environmental document; or

(ii) The preparation of an environmental assessment in those cases where the Commission has determined to solicit public comment in the preparation of an environmental assessment, if such communications occur prior to the issuance of the final environmental document.

Note: This exemption applies to discussions with Federal, state, or local agencies, applicants, landowners, and non-governmental entities engaged in preparation of an environmental document. Once the final environmental document is issued, further communications with parties would be subject to the general prohibitions described in this section unless another exemption applies.

(10) Subject to the disclosure requirements of paragraph (g) of this section, any communications involving individual, non-party landowners whose property may be affected by a pending proceeding.

Note: This exemption applies even after the National Environmental Policy Act process has been completed, but is inapplicable to landowner organizations and individual landowners who are parties to the underlying proceeding.

(e) *When the prohibitions apply.* (1) The prohibitions in paragraph (b) of this section will apply:

(i) For proceedings initiated by the Commission—from the time an order initiating the proceeding is issued;

(ii) For proceedings returned to the Commission on judicial remand—from the date the Court issues its mandate;

(iii) For complaints initiated pursuant to Rule 206 (complaints)—from the date of the filing of the complaint with the Commission, or the date the Commission initiates an investigation on its own motion; and

(iv) For all other matters—from the time of the filing, in accordance with § 385.2001(a)(2), of any protest or intervention in opposition to an application, petition, tariff or rate filing, or other matter that is, or will be, the subject of the proceeding, including a petition for rehearing of an administrative law judge's decision that becomes a final decision under Rule 708(d).

Note: Prematurely filed interventions would not trigger the prohibitions on off-the-record communications.

(2) The prohibitions will remain in force until final disposition of the proceeding by the Commission, including a decision on rehearing where applicable. The prohibitions will also remain in effect until the time period for seeking rehearing has expired. In the case of an initial decision by an administrative law judge, the prohibitions will remain in force until it becomes final pursuant to Rule 708(d).

(f) *Handling of prohibited off-the-record communications.* A prohibited communication in violation of paragraph (b) of this section will not be considered part of the record for decision in the applicable Commission proceeding except to the extent that the Commission by order determines otherwise.

(1) *Disclosure requirement.* Any decisional employee who makes or receives a communication prohibited by paragraph (b) of this section will submit to the Secretary the communication, if written, or a summary of the substance of any oral communication. The Secretary will place the communication or summary in the public file associated

with, but not part of, the decisional record of the proceeding.

(2) *Public notice requirement.* The Secretary shall periodically issue a public notice listing any prohibited off-the-record communications or summaries thereof received by his or her office relating to a proceeding. Such notice shall identify the author of the communication, the date the communication was received, and the docket number to which it relates.

(3) *Responses to prohibited off-the-record communications.* Any party may file a response to a communication placed in the non-decisional public record under paragraph (f)(1) of this section. A party may also file a written request for an opportunity to respond, on-the-record, to any facts or contentions made in an off-the-record communication placed in the non-decisional public file. The Commission will grant such request only where it determines that the dictates of fairness so require. When the request is granted, a copy of both the off-the-record communication, and the permitted response, will be made a part of the decisional record.

(g) *Handling of permitted off-the-record communications.*—(1) *Disclosure requirement.* (i) Any written information, and a summary of the substance of any significant oral information, not already in the record, obtained through a permitted communication in response to an emergency covered by paragraph (d)(2) of this section, will be submitted to the Secretary and placed in the decisional record of the underlying Commission proceeding.

(ii) Any permitted written information obtained through a permitted communication with a non-party elected public official under paragraph (d)(6) of this section will be submitted to the Secretary and placed in the decisional record of the proceeding.

(iii) Except for information of which official notice may be taken, any written information, and a summary of the substance of any significant oral information, not already in the record, obtained through a permitted communication with a Federal, state, or local agency under paragraph (d)(8) of this section, will be submitted to the Secretary and placed in the decisional record of the Commission proceeding.

(iv) Any written information, and a summary of the substance of any significant oral information, not already in the environmental documentation of a proceeding, obtained through a permitted communication to or from any person under paragraph (d)(9) of this section, will be submitted to the Secretary, placed in the public record of the proceeding, and addressed in the final environmental document issued by the Commission.

(v) Any written information, and a summary of the substance of any significant oral information, not already in the record, obtained through a permitted communication involving an individual non-party landowner under paragraph (d)(10) of this section will be submitted to the Secretary, and placed in the decisional record of the Commission proceeding.

(2) *Public notice requirement and response.* For each communication required to be disclosed under paragraph (g)(1) of this section, the Secretary shall periodically issue a public notice listing any permitted off-the-record communications or summaries thereof received by his or her office relating to a proceeding. Any party may file a response on the record.

(h) *Sanctions.* (1) If a person knowingly makes or causes to be made a communication in violation of paragraph (b) of this section, the Commission may disqualify and deny the person, temporarily or permanently, the privilege of practicing or appearing before it, in accordance with Rule 2101 (appearances); and

(2) If a party or its agent or representative knowingly makes or causes to be made a communication in violation of paragraph (b) of this section, the Commission may require the party, agent, or representative to show cause why the party's claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected because of the prohibited off-the-record communication.

(i) *Section not exclusive.* (1) The Commission may, by rule or order, modify any provision of this section as it applies to all or part of a proceeding, to the extent permitted by law.

(2) The provisions of this section are not intended to limit the authority of a decisional employee to decline to engage in permitted off-the-record communication, or where not required by the rule, to make a public disclosure of a permitted off-the-record communication, in circumstances where the employee determines that such action is appropriate.

7. The heading of § 385.2202 is revised to read as follows:

§ 385.2202 Separaton of functions (Rule 2202).

[FR Doc. 98–25373 Filed 9–24–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 2

[Docket No. 98N–0417]

General Administrative Rulings and Decisions; Amendment to the Examination and Investigation Sample Requirements; Companion Document to Direct Final Rule

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its regulations regarding the collection of twice the quantity of food, drug, or cosmetic estimated to be sufficient for analysis. This action increases the dollar amount that FDA will consider to determine whether to routinely collect a reserve sample of a food, drug, or cosmetic product in addition to the quantity sufficient for analysis. Experience has demonstrated that the current dollar amount does not adequately cover the cost of most quantities sufficient for analysis plus reserve samples. This proposed rule is a companion to the direct final rule published elsewhere in this issue of the **Federal Register**. This action is part of FDA's continuing effort to achieve the objectives of the President's ''Reinventing Government'' initiative, and it is intended to reduce the burden of unnecessary regulations on food, drugs, and cosmetics without diminishing the protection of the public health.

DATES: Comments must be received on or before December 9, 1998.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Sharon M. Sheehan, Office of Regulatory Affairs (HFC–230), Food and Drug Administration, 12720 Twinbrook Pkwy., Rockville, MD 20855, 301–827–0412.

SUPPLEMENTARY INFORMATION:

I. Background

This proposed rule is a companion to the direct final rule published in the final rules section of this issue of the **Federal Register**. This companion proposed rule will provide the procedural framework to finalize the rule in the event that the direct final

rule receives any significant adverse comment and is withdrawn. The comment period for this companion proposed rule runs concurrently with the comment period for the direct final rule. Any comments received under this companion proposed rule will also be considered as comments regarding the direct final rule. FDA is publishing the direct final rule because the rule contains a noncontroversial change, and FDA anticipates that it will receive no significant adverse comment.

A detailed rationale for the rule is set forth in the preamble to the direct final rule and in section II of this document. If no significant adverse comment is received in response to the direct final rule, no further action will be taken related to this proposed rule. Instead, FDA will publish a confirmation document within 30 days after the comment period ends, confirming that the direct final rule will go into effect on February 8, 1998. Additional information about FDA's direct final rulemaking procedures is set forth in a guidance published in the **Federal Register** of November 21, 1997 (62 FR 62466).

If timely significant adverse comments regarding the rule are received, FDA will publish a document withdrawing the direct final rule within 30 days after the comment period ends. FDA then will proceed to respond to all of the comments received regarding the rule and, if appropriate, the rule will be finalized under this proposed rule using usual notice-and-comment procedures.

This action is part of FDA's continuing effort to achieve the objectives of the President's ''Reinventing Government'' initiative, and it is intended to reduce the burden of unnecessary regulations on food, drugs, and cosmetics without diminishing the protection of the public health.

II. Examination and Investigation Samples

Section 2.10 (21 CFR 2.10) regulates the examination and investigation samples and sets out provisions related to the collection of an official sample for FDA's analysis. FDA investigators routinely collect the samples and pay the owner of the regulated food, drug, or cosmetic product either the regular selling price, or if acceptable to the owner, the dealer's invoice cost plus a nominal charge (usually 10 to 15 percent) (see Investigations Operations Manual, January 1998, ch. 4, section 416.2, at 129). The regulations require the investigator to collect an extra amount of the product beyond what is needed for analysis, known as a reserve sample, to allow for additional analysis (see section 702(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 372(b)) and § 2.10(c)). Under most circumstances the investigator is to collect at least ''twice the quantity estimated by him to be sufficient for analysis * * *.''

One of the few narrow exceptions to the requirement to collect at least twice the quantity estimated to be sufficient for analysis is when the cost of the quantity sufficient for analysis and the reserve sample together exceeds $50. The decision whether to collect twice the quantity sufficient for analysis if the cost of that amount exceeds the regulatory amount (currently $50) is made on a case-by-case basis.

The current regulatory amount as set forth in § 2.10(b)(2) was established in 1955 as § 1.700(b)(2) (21 CFR 1.700(b)(2)) and published in the **Federal Register** of December 20, 1955 (20 FR 9525 at 9539). Section 1.700 was reorganized and republished as § 2.10, and the regulatory amount was increased from $10 to $50 in 1977 (see 42 FR 15559, March 22, 1977).

A regulatory amount of $150 more accurately reflects an amount that would cover the cost of most quantities sufficient for analysis plus reserve samples. The amount of $150 is based, in part, on the Consumer Price Index (CPI) from the Bureau of Labor and Statistics, Department of Commerce. In August 1977, the CPI was 61.2; in August 1996, the CPI was 157.3. This change represents an increase of approximately 157 percent. Therefore, $50 in 1977 is equivalent to approximately $128 today. Considering that the regulatory amount has changed every 20 years, setting the amount at $150 contemplates that another increase likely will not occur for several years.

III. Environmental Impact

FDA has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Analysis of Economic Impacts

A. Benefit-Cost Analysis

FDA has examined the impacts of the proposed rule under Executive Order 12866, under the Regulatory Flexibility Act (5 U.S.C. 601–612), and under the Unfunded Mandates Reform Act (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). FDA believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. This proposed rule increases the dollar limit FDA uses to determine whether a quantity estimated as twice that which is sufficient for analysis will routinely be collected. The rule does not adversely affect the owners of foods, drugs, or cosmetics from which samples are collected. This proposed rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

B. Regulatory Flexibility Analysis

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. The agency certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

C. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act requires that agencies prepare an assessment of anticipated costs and benefits before proposing any rule that may result in an annual expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation). This proposed rule does not impose any mandates on State, local, or tribal governments, nor is it a significant regulatory action under the Unfunded Mandates Reform Act. Industry will incur no net costs as a result of this proposed rule.

V. Paperwork Reduction Act of 1995

FDA tentatively concludes that this proposed rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VI. Request for Comments

Interested persons may, on or before December 9, 1998, submit to the Dockets Management Branch (address above) written comments regarding this proposed rule. Two copies of any comments are to be submitted, except that individuals may submit one copy.

Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. All comments received will be considered as comments regarding the direct final rule. In the event the direct final rule is withdrawn, all comments received regarding the direct final rule and this companion proposed rule will be considered under this proposed rule.

List of Subjects in 21 CFR Part 2

Administrative practice and procedure, Cosmetics, Drugs, Foods.

Therefore under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 2 is proposed to be amended as follows:

PART 2—GENERAL ADMINISTRATIVE RULINGS AND DECISIONS

1. The authority citation for 21 CFR part 2 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 335, 342, 346a, 348, 351, 352, 355, 357, 360b, 361, 371, 372, 374; 15 U.S.C. 402, 409.

2. Section 2.10 is amended by revising paragraph (b)(2) to read as follows:

§ 2.10 Examination and investigation samples.

* * * * *

(b) * * *

(2) The cost of twice the quantity so estimated exceeds $150.

* * * * *

Dated: September 11, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–25359 Filed 9–24–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

[PA–122–FOR]

Pennsylvania Regulatory Program

AGENCY: OSM, Interior.

ACTION: Proposed rule; notice of hearing and extension of comment period.

SUMMARY: In a letter dated July 29, 1998 (Administrative Record No. PA–841.07), the Pennsylvania Department of Environmental Protection submitted to OSM proposed regulatory amendments to the Pennsylvania regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment proposes changes to the Pennsylvania program with regard to the mine subsidence control, subsidence damage repair or replacement, and water supply replacement provisions of SMCRA. The amendment submission included Act 54 and implementing regulations. OSM announced receipt of the amendment in the August 25, 1998, **Federal Register** (63 FR 45199) and solicited public comments on the proposed regulatory changes. The August 25, 1998, notice stated that the public comment period would end on September 24, 1998, and if a hearing on the amendment is requested, that the hearing would be held on September 21, 1998.

Several individuals requested that a public hearing be held in Washington, Pennsylvania. These individuals also requested additional time to prepare for the hearing. OSM is honoring this request in order to give interested parties ample notification of the hearing location, and ample time to prepare their comments for the hearing. As a result, the deadline for submitting public comments has been extended.

This notice sets forth the times and location of the pending public hearing, and the extended deadline that public comments can be submitted to OSM regarding the adequacy of the proposed amendment.

DATES: Written comments must be received on or before 4:00 p.m. on October 19, 1998, to ensure consideration in the rulemaking process. The public hearing will be held at 6:30 p.m. on October 13, 1998.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand-delivered to Mr. Robert J. Biggi, Director, Harrisburg Field Office at the first address listed below.

Copies of the Pennsylvania program, the proposed amendment, a listing of any scheduled public meetings or hearing, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays:

Office of Surface Mining Reclamation and Enforcement, Harrisburg Field Office, Third Floor, Suite 3C, Harrisburg Transportation Center, 415 Market Street, Harrisburg, Pennsylvania 17101, Telephone: (717) 782–4036.

Pennsylvania Department of Environmental Protection, Bureau of Mining and Reclamation, Rachel Carson State Office Building, P.O. Box 8461, Harrisburg, Pennsylvania 17105–8461, Telephone: (717) 787–5103.

Each requester may receive, free of charge, one copy of the proposed amendment by contacting the OSM Harrisburg Field Office.

The public hearing will be held at the Ramada Inn, 1170 West Chestnut Street, Washington, Pennsylvania 15301–4631.

FOR FURTHER INFORMATION CONTACT: Robert J. Biggi, Director, Harrisburg Field Office, Telephone (717) 782–4036.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

In accordance with the provisions of 30 CFR 884.15, OSM is seeking comment on whether the amendment proposed by Pennsylvania satisfies the applicable requirements for the approval of State program amendments. If the amendment is deemed adequate, it will become part of the Pennsylvania program.

Written Comments

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

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by close of business on October 6, 1998. Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons who desire to comment have been heard.

II. Procedural Determinations

Executive Order 12866

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

Executive Order 12988

The Department of the Interior has conducted the reviews required by

section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

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

Paperwork Reduction Act

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

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The State submittal which is the subject of this rule is based upon corresponding 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 in the analyses for the corresponding Federal regulations.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 18, 1998.

Ronald C. Recker,

Acting Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 98–25673 Filed 9–24–98; 8:45 am]

BILLING CODE 4310–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA172–0103; FRL–6169–1]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the California State Implementation Plan (SIP) that concerns the control of criteria pollutants.

The intended effect of proposing approval of this rule is to regulate emissions of criteria pollutants in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA has evaluated this rule and is proposing to approve it 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 October 26, 1998.

ADDRESSES: Comments may be mailed to: Erica Ruhl, Permits Office,(AIR–3), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

A copy of the rule and EPA's evaluation report of the rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule are also available for inspection at the following locations:

California Air Resources Board, 2020 L Street, Sacramento, CA 95812

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765.

FOR FURTHER INFORMATION CONTACT: Erica Ruhl, Permits Office (AIR–3), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, (415) 744–1171.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rule being proposed for approval into the California SIP is South Coast Air Quality Management District (''SCAQMD'' or ''the District''), Rule 518.2, Federal Alternative Operating Conditions. This rule was adopted on January 12, 1996 and was submitted by the California Air Resources Board to EPA on May 10, 1996. This rule was found to be complete on July 19, 1996 pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, appendix V [1] and is being proposed for approval into the SIP.

II. Background

California state law includes provisions for the granting of variances from air pollution control requirements. When granted, a variance protects a source from enforcement under California law. Historically, EPA has not recognized variances issued pursuant to state law and has taken the position that such variances do not shield sources from enforcement under federal law. If, however, a variance is submitted to EPA and is found to meet the substantive requirements of the Clean Air Act (CAA) governing SIP revisions, it can be approved as a revision to the SIP, thereby receiving federal recognition. State and federal law have coexisted in this manner for many years.

The Clean Air Act allows EPA 18 months to act on submitted SIP revisions [2] and often, because of a large backlog, the Agency takes that long to process them. Members of the regulated community have complained that this method for recognizing variances federally is too time consuming and complex. With this rule, The South Coast Air Quality Management District (''South Coast'' or ''the District'') is proposing to make federal recognition of variances more expeditious by using the title V permitting process.

South Coast Rule 518.2 is designed to allow federal recognition of variances through a process that meets the procedural requirements pertaining to SIP revisions as well as the substantive requirements of the Clean Air Act. In a

[1] 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).

[2] 42 U.S.C. 7410(k), CAA section 110(k).

nutshell, the rule temporarily modifies the applicable requirement through the title V permit revision process rather than through the source-specific SIP revision process. The rule accomplishes this by establishing a mechanism for the creation of alternative operating conditions (AOCs), a means by which to offset any emissions in excess of the otherwise applicable requirements that would result, and provisions for EPA and public review and EPA veto of proposed AOCs.

The rule restricts the issuance of AOCs to circumstances where the following conditions exist/have been met:

- due to conditions beyond the reasonable control of the petitioner, requiring compliance would result in either an arbitrary or unreasonable taking of property or the practical closing and elimination of a lawful business;
- the closing or taking would be without a corresponding benefit in reducing air contaminants;
- the petitioner for the Alternative Operating Condition has given consideration to curtailing operations of the source in lieu of obtaining an Alternative Operating Condition;
- during the period the Alternative Operating Condition is in effect, the petitioner will reduce excess emissions to the maximum extent feasible;
- during the period the Alternative Operating Condition is in effect, the petitioner will monitor or otherwise quantify emission levels from the source and report these emission levels to the District pursuant to a schedule established by the District;
- the Alternative Operating Condition will not result in noncompliance with the requirements of any NSPS, NESHAP or other standard promulgated by the U.S. EPA under Sections 111 or 112 of the Clean Air Act, or any standard or requirement promulgated by the U.S. EPA under Titles IV or VI of the Clean Air Act, or any requirement contained in a permit issued by the U.S. EPA; and
- any emissions resulting from the Alternative Operating Condition will not, in conjunction with emissions resulting from all other Alternative Operating Conditions established by the Hearing Board and in effect at the time, cause an exceedance of the monthly or annual SIP allowance established in the rule.

In addition, the rule requires that the Alternative Operating Condition include enforceable alternative emission limits, operational requirements that result in the source being operated in a manner that reduces emissions to the maximum extent feasible, and/or monitoring, record keeping, and reporting provisions that, to the extent feasible, meet or are as stringent as the otherwise applicable requirement.

If EPA believes that the proposed AOC does not meet applicable requirements, including the requirements of Rule 518.2, it may object. Any AOC will be ineffective if it is not revised to meet EPA's objection unless EPA issues a written rescission of its objection. If EPA does not object, or if EPA's objections are resolved, the AOC constitutes a revision to the source's title V permit and a temporary modification to the applicable requirement.

III. EPA Evaluation and Proposed Action

In determining the approvability of this rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in sections 110, 182, and 193 of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans).

A. CAA Requirements Governing Approval of 518.2

The Clean Air Act includes several provisions that apply to the approval of rules, such as Rule 518.2, that would revise the SIP by relaxing existing requirements. These provisions are discussed below.

1. States' revisions to SIPs require reasonable notice and public hearing

Congress adopted section 110(l) as part of the 1990 CAA Amendments. Entitled ''Plan Revisions,'' it provides that States may adopt revisions to an implementation plan after reasonable notice and public hearing.

2. Revisions to State Implementation Plans must be submitted to EPA for review

CAA section 110(a)(3)(C) states that when a State or the Administrator grants an exemption under certain limited circumstances,[3] neither the State nor the Administrator need revise a SIP if the plan would have met the requirements of the Act absent such exemptions. This section suggests that when a State or the Administrator grants an exemption that does not fall under one of the specified categories, the applicable implementation plan may require revision. Since a variance would almost never fall under one of the listed categories, the State must submit a plan revision for the Administrator's approval in order for it to be effective as a matter of federal law.

Section 110(i) confirms the above interpretation of section 110(a)(3)(C). It states that with certain exceptions, including a plan revision under subsection (a)(3), neither the State nor the EPA Administrator may take any action, such as an order, suspension, or plan revision, that modifies any requirement of the applicable implementation plan with respect to any stationary source.

A number of courts, including the Supreme Court, have held that both the State and the Agency must approve plan revisions in order for them to be held valid under the Act.[4] The Supreme Court has also said that the Agency needs to review proposed SIP revisions to assure that variances granted are consistent with the Act's requirement that the national standards be attained as expeditiously as practicable and maintained thereafter.[5]

3. EPA cannot approve proposed revisions if they would cause the SIP to fail to ensure attainment or maintenance of the NAAQS or any other requirement included in the Act

Under section 110(l), the Administrator is not to approve a revision of a plan ''if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of [the Act].'' Thus this provision serves to assure that the State, in seeking a revision to its SIP, does not impair its compliance with the statutory mandates applicable to the SIP.

a. Attainment and Maintenance of the NAAQS. In General: Under section 110(l) EPA must conform with the overarching general requirement that it may not approve a revision to the SIP

[3] These circumstances include:

- 42 U.S.C. 7418: Control of pollution from Federal facilities. This provision permits the President to exempt any emission source of any department, agency, or instrumentality in the executive branch if he determines it to be in the paramount interest of the U.S. to do so.
- 42 U.S.C. 7413(d): Administrative assessment of civil penalties. This exemption provides that when the Administrator has made a finding that a person violated a SIP, EPA need not concurrently insist on a SIP revision.
- 42 U.S.C. 7410(f), (g): National or regional energy emergencies. Both of these subsections create limited authority to exempt sources from compliance with SIPs for limited time-periods, provided they meet specified requirements (e.g. severe national or regional energy emergency).
- 42 U.S.C. 7419: Primary nonferrous smelter orders. This section applies only to primary nonferrous smelters in existence on August 7, 1977.

[4] *See, e.g., Train* v. *NRDC*, 421 U.S. 60 (1975); *Illinois* v. *Commonwealth Edison Co.*, 490 F. Supp. 1145 (1980); *California Tahoe Regional Planning Agency* v. *Sahara Tahoe Corp.*, 504 F. Supp. 753, 768 (1980).

[5] *Train* at 91.

that would cause the SIP to fail to ensure attainment or maintenance of the NAAQS.

Post 1990 Non-RACT Rules: For non-RACT, post-1990 rules, section 110(l), in conjunction with section 110(a)(3)(C), requires EPA to assure that the emissions resulting from the relaxation of rule requirements will not interfere with attainment or reasonable further progress before it can approve this type of revision.

b. Other Requirements Included in the Act—Post 1990 RACT Rules. Section 172, which provides general rules for all nonattainment areas, requires nonattainment areas to adopt a number of measures, including rules requiring sources to apply reasonably available control technology (RACT).[6] Sections 182(a)(2)(A) and (b)(2) amplify this requirement for ozone nonattainment areas. The former section requires areas designated as nonattainment just prior to the 1990 Amendments to submit rules imposing RACT on certain existing sources of volatile organic compounds (VOC). The latter section requires all moderate and above nonattainment areas to impose similar control measures. The purpose of these requirements was essentially to insure that major sources of VOC and NO_x use control measures that amount to RACT.

RACT requirements are especially relevant because they represent a significant class of requirements that nonattainment areas must adopt regardless of the other measures they have enacted as part of their plans to achieve attainment. Accordingly, section 110(l) appears to limit a State's ability to adopt revisions that would ''interfere'' with the mandate created by these provisions.

For a variance to a RACT rule put into effect after November 15, 1990, section 110(l) dictates that in the aggregate, the overall level of reductions that were to be achieved through the imposition of RACT may not be diminished.

[6]Congress has not defined RACT in the CAA, but has apparently adopted EPA's definition of RACT as articulated in a memorandum from Roger Strelow, Assistant Administrator for Air and Waste Management, to Regional Administrators, Regions I–X, on ''Guidance for Determining Acceptability of SIP Regulations in Non-attainment Areas,'' section 1.a (December 9, 1976). EPA defined RACT as: ''the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility.'' RACT for a particular source is to be determined on a case-by-case basis, considering the technological and economic circumstances of the individual source.'' 44 FR 53762 (1979).

4. The modification of any control requirement in effect before November 15, 1990 in an area which is a nonattainment area for any air pollutant is prohibited, unless the modification insures equivalent or greater emission reductions of such air pollutants

CAA section 193, also known as the General Savings Clause, preserves the validity of regulations, standards, rules, notices, orders, and guidance in effect before November 15, 1990. Moreover, it prohibits the modification of any control requirement in effect before November 15, 1990 in an area which is a nonattainment area for any air pollutant, unless the modification insures equivalent or greater emission reductions of such air pollutants. In nonattainment areas, section 193 provides that EPA may not approve a variance submitted as a revision to a control requirement in effect prior to November 1990 unless the submitted revision ensures equivalent or greater emission reductions.

5. EPA may permit a relaxation of standards or a limited exemption from compliance with regulations where the effects of the relaxation or exemption are insignificant and may be deemed *de minimis*

The D.C. Circuit held that the granting of certain exemptions may be a permissible exercise of agency power to overlook circumstances that in context may be considered *de minimis.* This ability constitutes not a right to depart from the statute, but rather a tool to be used in implementing the legislative design. *Alabama Power Co.* v. *Costle,* 636 F. 2d 323, 360 (1979). Further, the Court held that:

> Unless Congress has been extraordinarily rigid, there is likely a basis or an implication of *de minimis* authority to provide exemption when the burdens of regulation yield a gain of trivial or no value. That implied authority is not available for a situation where the regulatory function does provide benefits, in the sense of furthering the regulatory objectives, but the agency concludes that the acknowledged benefits are exceeded by the costs. For such a situation any implied authority to make cost-benefit decisions must be based on a fair reading of the specific statute, its aims and legislative history'' *Alabama Power Co.* v. *Costle,* 636 F. 2d at 360–61 (D.C. Cir 1979).

Thus, according to the *de minimis* rule laid out in *Alabama Power,* the EPA may excuse unavoidable excess emissions where these are insignificant in light of total permissible emissions and where the applicable statutory provisions are not extraordinarily rigid.

B. EPA Evaluation of Rule 518.2

Given the CAA provisions described above, federal recognition of state-issued variances can be problematic. First, procedurally, a variance cannot be federally recognized unless it is submitted as a revision. Section 110(a)(3)(C), 110(i), Train, and the other cases discussed above impose this requirement in order to obligate the Agency to enforce its mandate of ensuring that States are attaining or maintaining the NAAQS. Second, the Act's substantive requirements limit EPA's ability to approve variances.

In determining the approvability of this rule, EPA has evaluated the rule for consistency with the requirements of the CAA and EPA regulations, as found in sections 110, 172, 182, and 193 of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans).

1. States' revisions to SIPs require reasonable notice and public hearing.

The District's rule adoption procedures and EPA's process for SIP action on rules provide opportunity for public comment on Rule 518.2, which sets out the process and criteria for establishing AOCs. In addition, Rule 518.2 meets the CAA section 110(l) requirements for reasonable notice and public hearing by subjecting each alternative operating condition to EPA and public review for 45 days.

2. Revisions to State Implementation Plans must be submitted to EPA for review

To meet the requirements of section 110(i), Rule 518.2 substitutes the Title V permit modification process for the source-specific SIP revision process. In effect, Rule 518.2 would be a SIP rule that allows the local district board to set temporary alternative requirements in accordance with the criteria spelled out in the rule. The State then submits the alternative limit to EPA as a proposed Title V permit modification, which by statute EPA has 45 days to review with the option of vetoing it if the modification does not meet applicable requirements. Using this procedural tool, EPA is able to meet the requirements of section 110(i) because all of the changes occur within the context of a rule that has already been approved into the SIP and each alternative operating condition will be submitted to EPA for review.

3. EPA cannot approve proposed revisions if they would cause the SIP to fail to ensure attainment or maintenance of the NAAQS

Rule 518.2 was also designed to meet the requirements of sections 110(l) and 110(a)(3)(C) through the development of an emissions bank. South Coast demonstrated to EPA that when it created its base-year inventory, it used actual emission estimates from its sources, some of which were excess. Further, South Coast showed that its plan to achieve attainment, required under sections 110 and 182 of the Act, took these emissions into account. South Coast then argued that as long as the emissions from variances do not exceed the amount of ''excess emissions'' already included in the inventory, the requirements of section 110(l) should be satisfied. Accordingly, South Coast went on to quantify the amount of emissions included in the base-year inventory from excess emissions, and then created annual and monthly caps within Rule 518.2 equivalent to that inventory quantification. This approach satisfies section 110(a)(3)(C) because as long as the cap is not exceeded, no variance (or ''alternative operating condition or AOC,'' as denominated in Rule 518.2) would cause a deviation from South Coast's plan for attainment.

4. EPA cannot approve proposed revisions if they would cause the SIP to fail to ensure attainment or maintenance of * * * any other requirement included in the Act

For variances sought from post-1990 RACT standards, EPA must ensure that the AOC meets the non-interference requirement of section 110(l). That is, in the aggregate, the overall level of reductions that were to be achieved through the imposition of RACT may not be diminished. This indicates that in ordinary circumstances, if RACT standards are to be relaxed, the equivalent emissions reductions must be obtained from other sources subject to RACT rules.

As stated above, unless Congress has been extraordinarily rigid, EPA has an implied *de minimis* authority to provide exemption when the burdens of regulation yield but a trivial gain. *Alabama Power,* 636 F. 2d at 360. While Congress intended EPA to ensure that nonattainment plans provide for the implementation of RACT, it left the definition of RACT to EPA's discretion. The legislative history for the 1990 Clean Air Act Amendments associated with section 172 reveals that while Congress discussed adding a stringent definition of RACT to the Act,[7] the version it ultimately adopted did not define RACT. Accordingly, EPA concludes that Congress has given it considerable flexibility in implementing the RACT program. Therefore, as long as Rule 518.2 does not significantly affect the reductions to be obtained from the aggregation of all RACT rules, Rule 518.2 passes, with respect to RACT, the non-interference requirement of Section 110(l). Turning to the rule, for all pollutants under 518.2, both the annual and monthly caps established by 518.2 equal less than one-tenth of one percent of the total stationary source emissions inventory. Since EPA anticipates that excess emissions from RACT rules will be a subset of the total excess emissions covered by the program, EPA believes that ''RACT'' excess emissions are essentially *de minimis* and do not significantly impact the reductions expected from RACT in the aggregate.

5. The modification of any control requirement in effect before November 15, 1990 in an area which is a nonattainment area for any air pollutant is prohibited, unless the modification ensures equivalent or greater emission reductions of such air pollutants

For variances sought from standards adopted prior to 1990, EPA must ensure that the AOC meets the CAA section 193 requirement that the modification of any control requirement in effect before November 15, 1990 in an area which is a nonattainment area for any air pollutant, must ensure equivalent or greater emission reductions of such air pollutants. In other words, in nonattainment areas, section 193 provides that EPA may not approve a variance submitted as a revision to a control requirement in effect prior to November 1990 unless the submitted revision ensures equivalent or greater emission reductions. Offsetting excess emissions from variances with the Rule 518.2 bank does not insure equivalent emission reductions because that bank is ''funded'' with excess emissions included in the inventory rather than from real reductions.

Under the *de minimis* rule that the D.C. Circuit established in Alabama Power, unless Congress has been extraordinarily rigid, EPA may provide an exemption for minimal increases in emissions. Congress adopted rigid language when it enacted section 193. It stated: ''No control requirement in effect * * * before November 15, 1990 in any area which is a nonattainment area for any air pollutant may be modified after November 15, 1990, in any manner unless the modification insures equivalent or greater emission reductions of such air pollutant.'' 42 U.S.C. 193 (emphasis added). Thus, Congress appears to have left EPA with little or no discretion to permit the modification of any pre-1990 control requirement, unless the modification ensures at least equivalent, if not greater, reductions of such air pollutant.

A review of the legislative history associated with Section 193 supports the interpretation that Congress was being quite rigid when it enacted this provision. In spite of all the other requirements designed to bring the South Coast into attainment, Congress still enacted section 193. The Report on the House Energy and Commerce Committee on the 1990 Amendments noted that the ''anti-backsliding language'' in section 193:

> [P]rohibits the relaxation of control requirements currently in effect, or required to be adopted. * * * Although many nonattainment areas are allotted additional years before they must attain ambient air quality standards under these amendments, all areas must continue to use pollution control measures already in place or scheduled to be put in place, as well as those additional measures required under this Act, in order to assure attainment as expeditiously as practical.

Because of Congress's evident intent not to allow relaxation of section 193 rules, it is possible that 518.2 would violate the requirements of section 193. However, EPA believes that the inclusion of pre-1990 rules in Rule 518.2 is justified because the variance bank in the rule is so small that any excused excess emissions would essentially be insignificant such that in effect, no relaxation has occurred. However, given the *de minimis* rule of Alabama Power, and that the language of 193 appears to be ''rigid,'' EPA is soliciting comment on this issue.

EPA has evaluated the submitted rule and has determined that it is consistent with the CAA, EPA regulations, and EPA policy. Therefore, South Coast Rule 518.2, Federal Alternative Operating Conditions is 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

[7] See Report No. 100–231, Committee on Environment and Public Works (100th. Cong., 1st. Sess., 1987).

relation to relevant statutory and regulatory requirements.

IV. Administrative Requirements

A. Executive Orders 12866 and 13045

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

The proposed rule is not subject to E.O. 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks,'' because it is not an ''economically significant'' action under E.O. 12866.

B. Regulatory Flexibility Act

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.

SIP approvals under section 110 and subchapter I, part D of the Clean Air 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, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compound.

Authority: 42 U.S.C. 7401–7671q.

Dated: September 17, 1998.

David P. Howekamp,

Regional Administrator, Region 9.

[FR Doc. 98–25760 Filed 9–24–98; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part l7

RIN 1018–AC2l

Endangered and Threatened Wildlife and Plants; Withdrawal of Proposed Rule To List the Plant Puccinellia parishii (Parish's alkali grass) as Endangered

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Proposed rule; withdrawal.

SUMMARY: The Fish and Wildlife Service (Service) withdraws a proposal to list the plant *Puccinellia parishii* (Parish's alkali grass) as an endangered species under the Endangered Species Act of 1973, as amended. This small annual grass occurs near desert springs, seeps, and seasonally wet areas in Apache, Coconino, and Yavapai counties, Arizona; San Bernardino County, California; San Miguel County, Colorado, and Catron, Cibola, Grant, Hidalgo, McKinley, Sandoval, and San Juan counties, New Mexico. The sites in Apache and Coconino counties, Arizona, are on the Navajo and Hopi Indian reservations. This determination is based on the recent discovery of additional populations and on new information concerning the species' habitat requirements and apparent tolerance to habitat impacts.

ADDRESSES: The complete file for this notice is available for public inspection, by appointment, during normal business hours at the Service's New Mexico Ecological Services Field Office, 2105 Osuna Road, NE., Albuquerque, New Mexico 87113.

FOR FURTHER INFORMATION CONTACT: Charlie McDonald at the above address, or telephone 505/346–2525.

SUPPLEMENTARY INFORMATION:

Background

Parish's alkali grass was first collected by Samuel Bonsal Parish at Rabbit Springs in the Mojave Desert of California in 1915. A.S. Hitchcock described it as a new species in 1928. The genus *Puccinellia* contains about 100 species of mostly north-temperate grasses (Willis and Shaw 1973); there are 10 species in the United States (Hitchcock and Chase 1951). Most species of *Puccinellia* have polyploid chromosome numbers with only two diploid species in the United States, *P. parishii* and *P. lemonii* (Church 1949). Studies by Davis and Goldman (1993) indicate that *P. parishii* and *P. lemonii* are each genetically and morphologically distinct.

Parish's alkali grass is a dwarf, ephemeral (winter-to-spring), tufted annual. The leaves are 1–3 centimeters (cm) (0.4–1.2 inches (in)) long, firm, upright, and very narrow. Flowering stems are 2–20 cm (0.8–8.0 in) long, number 1–25 per plant, and appear from April to May. Plants grow from about March through June, but can only be positively identified during the flowering period. Plants die during the typically dry southwestern spring. By mid-July, there is usually no sign of plants at occupied sites.

Parish's alkali grass occupies alkaline springs, seeps, and seasonally wet areas that occur at the heads of drainages or on gentle slopes at elevations of 800–2200 meters (m) (2600–7200 feet (ft)). The amount of available habitat depends on the size of the wet area and can vary from a few square meters to 16 hectares (ha) (40 acres (ac)). The species requires continuously damp soils during its late winter to spring growing period. The number of plants in a population can fluctuate widely from year to year in response to growing conditions. Parish's alkali grass often grows in association with *Distichlis spicata* (salt grass), *Sporobolus airoides* (alkali sacaton), *Carex* spp. (sedge), *Scirpus* spp. (bulrush), *Juncus* spp. (rush),

Eleocharis spp. (spike rush), and *Anemopsis californica* (yerba mansa).

The geographic range of Parish's alkali grass extends about 1,000 kilometers (km) (600 miles (mi)) east to west from Sandoval County, New Mexico, to San Bernardino County, California, and about 600 km (370 mi) north to south from San Miguel County, Colorado, to Hidalgo County, New Mexico.

Parish's alkali grass is currently known from 30 sites. There are 17 sites in New Mexico, 11 in Arizona, 1 in California, and 1 in Colorado. In the proposed rule to list the species (59 FR 14378; March 28, 1994), it was reported from 10 sites, although 1 of these sites was later determined to be a misidentified specimen.

The known sites in New Mexico have increased to 17 from the 1 reported in the proposed rule. Personnel of the New Mexico Forestry Division discovered 12 new sites in Catron (1), Cibola (1), Hidalgo (1), McKinley (6), and Sandoval (3) counties (Sivinski 1995). Two new sites are in San Juan County (K. Heil, San Juan College, Farmington, New Mexico, pers. comm. 1995), and the Bureau of Land Management reported two new sites in Sandoval County (*in litt.* 1996). The one site reported in the proposed rule is in Grant County.

The known sites in Arizona have increased to 11 from the 7 reported in the proposed rule. The grass is described as common at one new site in Yavapai County about 240 km (150 mi) southwest of the nearest other Arizona site (P. Warren, The Nature Conservancy, Tucson, Arizona, pers. comm. 1996). Three new sites are in Apache County, one on the Apache-Sitgreaves National Forest (T. Myers, U.S. Forest Service, Springerville, Arizona, *in litt.* 1997), and two on the Navajo Indian Reservation (D. Roth, Navajo Natural Heritage Program, Window Rock, Arizona, pers. comm. 1997). The seven sites reported in the proposed rule are in Coconino County on the Navajo and Hopi Indian reservations.

The known sites in California have decreased to one from the two reported in the proposed rule. Dr. Andrew Sanders of the University of California, Riverside, has identified the plants from Edwards Air Force Base in Kern County as *Puccinellia* simplex rather than *P. parishii* (C. Rutherford, U.S. Fish and Wildlife Service, *in litt.* 1995).

The most recently discovered site occurs near Miramonte Reservoir in San Miguel County, Colorado (J. Ferguson, Bureau of Land Management, Montrose, Colorado, pers. comm. 1998). Arnold Clifford, a botanist with Ecosphere Inc., discovered this site, the first recorded for Parish's alkali grass in Colorado, in the summer of 1998 during environmental surveys for a proposed gas transmission line. The site has 2,200–2,700 plants. Additional suitable habitat is present in the area, but has not been surveyed.

Previous Federal Action

Federal action on this species began as a result of section 12 of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct in the United States. The Smithsonian Institution presented this report, designated as House Document No. 94–51, to Congress on January 9, 1975. On July 1, 1975, we published a notice in the **Federal Register** (40 FR 27823) accepting the Smithsonian report as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act, and giving notice of our intention to review the status of the plants named therein. On December 15, 1980 (45 FR 82479), we published an updated notice reviewing the native plants being considered for classification as endangered or threatened. We placed Parish's alkali grass in Category 1 in that notice. Category 1 included those plants for which we had sufficient information to support proposing to list them as threatened or endangered. We placed Parish's alkali grass in Category 2 in the November 23, 1983, supplement to the plant notice (48 FR 53640). Category 2 included those taxa for which available information indicated listing may be warranted, but for which information on status and threats sufficient to support listing proposals was lacking. We included Parish's alkali grass in Category 2 in the 1985 and 1990 plant notices (50 FR 39525, September 27, 1985; 55 FR 6183, February 21, 1990), and in Category 1 in the 1993 notice (58 FR 51144; September 30, 1993).

Section 4(b)(3)(B) of the Act requires the Secretary to make findings on certain pending petitions within 1 year of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. Because Parish's alkali grass was included in the 1975 Smithsonian report, which was accepted as a petition, we treated the petition to list this species as being newly submitted on October 13, 1982. In each year from 1983 to 1993, we made a finding that listing Parish's alkali grass was warranted, but precluded by other listing actions of higher priority, in accordance with section 4(b)(3)(B)(iii) of the Act.

On March 28, 1994, we published a proposal in the **Federal Register** (59 FR 14378) to list Parish's alkali grass as endangered. We received one request for a public hearing. We published a notice announcing the public hearing and reopening the comment period in the **Federal Register** on August 30, 1994 (59 FR 44700). We held the public hearing on September 15, 1994, in Tuba City, Arizona.

In consideration of the length of time since the initial proposal and the acquisition of new information about Parish's alkali grass, we published a notice in the **Federal Register** on July 20, 1998 (63 FR 38803), that summarized the new information and reopened the comment period for 30 days.

Processing of this proposed rule conforms with our Listing Priority Guidance for Fiscal Years 1998 and 1999, published on May 8, 1998 (63 FR 25502). The guidance clarifies the order in which we will process rulemakings giving highest priority (Tier 1) to processing emergency rules to add species to the Lists of Endangered and Threatened Wildlife and Plants (Lists); second priority (Tier 2) to processing final determinations on proposals to add species to the Lists, processing new proposals to add species to the Lists, processing administrative findings on petitions (to add species to the Lists, delist species, or reclassify listed species), and processing a limited number of proposed or final rules to delist or reclassify species; and third priority (Tier 3) to processing proposed or final rules designating critical habitat. Processing of this proposed rule is a Tier 2 action.

Summary of Comments and Recommendations

In the March 28, 1994, proposed rule, and the August 30, 1994, and July 20, 1998, notices reopening the comment period, we requested all interested parties to submit factual reports or information that might contribute to the development of a final rule. We contacted appropriate Federal and State agencies, Tribal and county governments, scientific organizations, and other interested parties and requested them to comment. We published notices of the proposed listing in mid-April, 1994, in three newspapers in New Mexico, two in Arizona, and four in California. We published notices announcing the public hearing and reopening of the

comment period in two newspapers in Arizona on September 10, 1994.

Three people attended the public hearing. One individual made oral comments opposing the listing. Fourteen comment letters were received, one from a Federal agency, three from State agencies, four from Tribal governments, two from private organizations, and four from individuals. Two commenters supported the listing, eight opposed the listing, and four offered comments or information without taking a position on the listing. Below we discuss specific comments or issues, which are contrary to our decision to withdraw the proposed listing. Comments of a similar nature or point are grouped into general issues for purposes of response.

Issue 1: Parish's alkali grass merits protection because of its small and isolated populations that are limited to a very specific habitat.

Response: Recent discoveries indicate that Parish's alkali grass, although still rare, is more common than previously supposed. Some of the newly discovered populations indicate Parish's alkali grass occupies a somewhat broader range of habitats than previously known. Several new populations were discovered at sites that are wet only during the winter and spring. These ephemeral seeps are not marked on maps and were discovered when searching springs in the same general area. The number of these seeps is unknown, but they greatly increase the available suitable habitat for Parish's alkali grass.

Issue 2: Parish's alkali grass is threatened by livestock grazing and other impacts that have modified desert springs in the southwest.

Response: We agree that a large number of desert springs in the southwest have been modified for various uses. Some of the newly discovered populations, however, cast doubt on the negative effects of livestock on Parish's alkali grass. Heavy grazing and trampling have occurred for decades at several springs where Parish's alkali grass is present. Disturbance around springs may reduce competition and create open microsites that benefit this small annual grass. The relationship between livestock impacts at springs and Parish's alkali grass requires further study.

Issue 3: Parish's alkali grass is threatened by the potential loss of entire ecosystems where it is found.

Response: We are aware that various factors have caused some springs in the Southwest to go permanently dry. Sivinski (1995) used topographic maps to determine the locations of 58 springs in New Mexico that could be habitat for Parish's alkali grass. In surveys of these springs, he found five dry and the flow from six others completely captured for livestock or domestic use. Most of the remaining springs had been modified at some time, but still flowed. Nevertheless, as discussed under factor A of the following ''Summary of Factors Affecting the Species'' section, Parish's alkali grass has been discovered at sites other than springs, which greatly increases the likelihood of finding more populations of this plant.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists and for withdrawing a proposed rule when warranted. We may determine a species to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors as they apply to the withdrawal of the proposed rule for *Puccinellia parishii* Hitchcock (Parish's alkali grass) are as follows:

A. *The present or threatened destruction. modification. or curtailment of its habitat or range.* Parish's alkali grass is vulnerable to alteration of the hydrology of the habitats upon which it depends. Sivinski (1995) observed that 11 of the 58 springs that he surveyed for Parish's alkali grass in New Mexico were either dry or completely captured for livestock or domestic use. In addition to natural drought, other factors causing springs to go dry in the Southwest include groundwater pumping, erosion and stream entrenchment, and salt cedar (*Tamarix* spp.) invasion. However, Parish's alkali grass is apparently able to withstand some types of human disturbance. For example, the grass occurs where there is farming, where springs have been modified into earthen impoundments, and where there is light to heavy livestock grazing and trampling. In one instance, a highway right-of-way fence protects part of a site from grazing. The protected area has a dense stand of sweet clover (*Melilotus* sp.) and no Parish's alkali grass, but the grass is abundant in the grazed area only a few meters away. Further study is needed to determine what types of disturbances are detrimental to Parish's alkali grass, and what types may benefit the species through reduced competition with other vegetation and the creation of favorable microsites for seedling establishment.

Parish's alkali grass is now known from 30 sites as opposed to 10 sites reported in the proposed rule. Some of the new discoveries have extended the overall range of the species. In particular, the site in southwestern Colorado extends the species' range about 330 km (205 mi) northeastward from previously known sites in Arizona, and the discovery in west-central Arizona extends the species' range about 240 km (150 mi) southwestward in that State. Many of the new sites fill gaps in the known distribution making populations much less disjunct from one another than previously supposed.

Characteristics of some recently discovered Parish's alkali grass sites indicate that the species occupies a somewhat broader range of habitats than previously supposed. Several sites were discovered where the soils are subirrigated and wet only during the winter and spring months. These sites are generally not identified as springs on maps and are only noticeable because their greener vegetation contrasts with the surrounding brown vegetation during the dry spring months. One newly discovered site occurs at 2,240 m (7,350 ft) in elevation, which is 410 m (1,350 ft) higher than any of the sites identified in the proposed rule. These discoveries greatly increase the number of potential sites where Parish's alkali grass might be found.

B. *Overutilization for commercial. recreational. scientific. or educational purposes.* We do not know of any commercial or recreational uses for Parish's alkali grass. Although we identified scientific collecting as a potential threat in the proposed rule, the newly discovered populations reduce this concern. In addition, this annual grass is abundant in favorable years within its limited habitat and should be unharmed by limited collecting for taxonomic or ecological research. We do not know of any trade of Parish's alkali grass and do not expect any to develop.

C. *Disease or predation.* Cattle generally do not graze Parish's alkali grass due to its small size. Jackrabbits (*Lepus californicus*) have been documented grazing the San Bernardino County, California, site during midsummer with unknown effects (T. Thomas, pers. comm. 1993). No significant disease has been observed in this species.

D. *The inadequacv of existing regulatory mechanisms.* Parish's alkali grass is included as a Highly Safeguarded species on the list of plants protected under the Arizona Native Plant Law ARS3–901, administered by the Arizona Department of Agriculture.

A Highly Safeguarded species is one ''* * * whose prospects for survival in this State are in jeopardy * * *'' The protections afforded a Highly Safeguarded species include restrictions on collecting and a requirement for salvage permits.

The Navajo Fish and Wildlife Department has developed the Navajo Nation Endangered Species List for Tribal lands under Title 17 Section 507(a) of the Navajo Tribal Code and Navajo Nation Council Resources Committee Resolution RCF–014–91. Parish's alkali grass is identified as a Group 2 species on this list, meaning that it is considered in danger of being eliminated from all or a significant portion of its range on the Navajo Nation. This designation became effective February 14, 1994 (L. Benallie, Navajo Fish and Wildlife Department, *in litt.* 1993).

Although the State of California does not list Parish's alkali grass as endangered, it is on List lB of the Native Plant Society's Inventory of Rare and Endangered Vascular Plants of California (California Native Plant Society 1992). List lB plants are considered ''* * * rare, threatened, or endangered in California and elsewhere.'' Under the guidelines of the California Environmental Quality Act, the State considers List lB species equivalent to State-listed species for the purposes of disclosing project impacts to sensitive resources in environmental assessments. However, such disclosures do not necessarily protect List lB species from project impacts.

Parish's alkali grass is listed as endangered under the New Mexico Endangered Plant Species Act (9–10–10 NMSA) and attendant regulation (19 NMAC 21.2). Species so listed are protected from unauthorized collection or take in New Mexico (Sivinski and Lightfoot 1995).

Parish's alkali grass was first discovered in Colorado in the summer of 1998. It is not yet protected under any Colorado endangered species laws.

The above designations provide conservation measures for Parish's alkali grass equivalent to many of the measures available through listing under the Act. State and Tribal listing provides recognition for the species that results in conservation actions by Federal, State, and local agencies, private groups, and individuals. Section 7(a) of the Act, which requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a threatened or endangered species, will not apply without Federal listing. However, it is the policy of most Federal agencies to protect State- and Tribal-listed species to a similar degree as federally listed species.

E. *Other natural or manmade factors affecting its continued existence.* The discovery of Parish's alkali grass at 20 more sites than reported in the proposed rule, and the fact that many new sites are at locations several hundred kilometers from the sites previously known reduces the concern for extinction through random environmental events such as drought.

Finding and Withdrawal

Data collected since Parish's alkali grass was proposed for listing indicate the species is more abundant and has a greater geographic range than previously supposed. Parish's alkali grass was formerly thought to occur only at springs, but some of the recently discovered sites show that suitable habitat exists where soils are subirrigated (irrigated below the surface) and wet only during the winter and spring months thus greatly expanding the amount of suitable habitat. Conditions at some recently discovered sites indicate the species may tolerate, or even benefit from, certain disturbances that were previously identified as threats.

Parish's alkali grass is designated as ''endangered'' under State and Tribal statutes in Arizona, New Mexico, and the Navajo Nation. In California, it is on List lB of the Native Plant Society's Inventory of Rare and Endangered Vascular Plants of California. These designations provide recognition to the species and promote its conservation in many ways that are similar to listing under the Act.

Based on recent discoveries of additional sites and new information on suitable habitats and threats to the species, we have concluded that listing Parish's alkali grass as endangered or threatened under the Act is not warranted. Therefore, we withdraw our March 28, 1994, proposed rule (59 FR 14378) to list Parish's alkali grass as endangered.

References Cited

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Sivinski, R. and K. Lightfoot, editors. 1995. Inventory of the rare and endangered plants of New Mexico, third edition. New Mexico Forestry and Resources Conservation Division, Energy, Minerals and Natural Resources Department Miscellaneous Publication Number 4.

Willis, J.C. and H.K.A. Shaw. 1973. A dictionary of the flowering plants and ferns, eighth edition. Cambridge University Press, Cambridge, England.

Author

The primary author of this notice is Charlie McDonald (See **ADDRESSES** section).

Authority

The authority for this action is section 4(b)(6)(B)(ii) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: September 17, 1998.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 98–25717 Filed 9–24–98; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 63, No. 186

Friday, September 25, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Notice of Request for Revision of a Currently Approved Information Collection; Common Crop Insurance Regulations; Basic Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), this notice announces Federal Crop Insurance Corporation's (FCIC) intent to request a revision to a currently approved information collection for its Common Crop Insurance Policy; Basic Provisions (Basic Provisions) (7 CFR part 457) effective for the 1999 and succeeding crop years for all crops with contract change dates after the effective date of the final rule, and for the 2000 or 2001 and succeeding crop years for all crops with contract change dates prior to the effective date of the final rule.

DATES: Written comments and opinions on this notice must be received by November 24, 1998.

FOR FURTHER INFORMATION CONTACT: Nancy Conway, Insurance Management Specialist, Research and Development, Product Development Division, Federal Crop Insurance Corporation, at the Kansas City, MO, address listed above, telephone (816) 927–7730).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act of 1995

This notice announces FCIC's intent to revise the information collection requirements previously approved by OMB under OMB control number 0563–0053 through October 31, 2000. The program changes provide a prevented planting payment if at least 20 acres or 20 percent of the acreage in the unit is prevented from being timely planted, regardless of whether or not the acreage is contiguous, if all other criteria are met. Information will need to be collected with respect to the number of acres prevented from being planted in order to calculate a prevented planting payment. All of the forms cleared under OMB control number 0563–0053 represent the minimum information necessary to determine eligibility and losses qualifying for a payment due to prevented planting or loss of production.

Revised reporting estimates and requirements for usage of OMB control number 0563–0053 have been submitted to OMB for approval under the provisions of 44 U.S.C. chapter 35.

The FCIC is seeking comments on the following information collection request (ICR). *Title:* Multiple Peril Crop Insurance.

Respondents/Affected Entities; Parties affected by the information collection requirements included in this notice are all producers with multiple peril crop insurance coverage.

Abstract: The program changes improve the existing Common Crop Insurance Policy; Basic Provisions, by clarifying certain provisions, adding definitions and provisions to allow enterprise and whole farm units, allowing the use of a written agreement to insure acreage that has not been planted and harvested in one of the three previous crop years, and amending the prevented planting provisions that currently require that at least one contiguous block of prevented planting acreage must constitute at least 20 acres or 20 percent of the insurable crop acreage in the unit before a prevented planting payment may be made.

Estimate of Burden: The public reporting burden for the collection of information on all forms for multiple peril crop insurance is estimated at 49.6 minutes per participant because of the high degree of automaton associated with the data collection.

Respondents: Producers with multiple peril crop insurance coverage.

Estimated Number of Respondents: 1,322,903.

Estimated Number of Responses Per Respondent: 2.5.

Estimated Total Annual Burden on Respondents: 1,092,835 hours.

FCIC is requesting comments on the following: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information gathering technology.

Comments regarding paperwork reduction should be submitted to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

The Office of Management and Budget (OMB) is required to make a decision concerning the collections of information contained in this rule between 30 and 60 days after submission to OMB. Therefore, a comment to OMB is best assured of having full effect if OMB receives it within 30 days of publication.

Signed in Washington, D.C., on September 21, 1998.

John Zirschky,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 98–25720 Filed 9–24–98; 8:45 am]

BILLING CODE 3410–08–M

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Notice of Request for Revision of a Currently Approved Information Collection; Common Crop Insurance Regulations; Cotton and ELS Cotton Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C., chapter 35), this notice announces Federal Crop Insurance Corporation's (FCIC) intent to request a revision to a currently approved information collection for its Cotton Crop Insurance Provisions and the Extra Long Staple (ELS) Cotton Crop

Insurance Provisions for the 1999 and succeeding crop years.

DATES: Written comments and opinions on this notice must be received by October 26, 1998.

FOR FURTHER INFORMATION CONTACT: Nancy Conway, Insurance Management Specialist, Research and Development, Product Development Division, Federal Crop Insurance Corporation, at the Kansas City, MO, address listed above, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act of 1995

This notice announces FCIC's intent to revise the information collection requirements previously approved by OMB under OMB control number 0563–0053 through October 31, 2000. The program changes provide a replant payment if the insured crop is damaged by excess moisture, hail, or blowing sand or soil and is replanted. Information will need to be collected with respect to the number of acres replanted in order to calculate a replant payment. In addition, the program changes revise the provision used to determine the amount of production to count for cotton and ELS cotton that is eligible for quality adjustment, and proposed a prevented planting coverage of 50 percent for cotton and ELS cotton for 1999 and subsequent crop years. All of the forms cleared under OMB control number 0563–0053 present the minimum information necessary to a determine eligibility and losses qualifying for a payment due to cotton and ELS cotton coverage.

Revised reporting estimates and requirements for usage of OMB control number 0563–0053 have been submitted to OMB for approval under the provisions of 44 U.S.C., chapter 35. The comment period for information collections under the Paperwork Reduction Act of 1995 continues through November 24, 1998.

The FCIC is seeking comments on the following information collection request (ICR). *Title:* Multiple Peril Crop Insurance.

Respondents/Affected Entities: Parties affected by the information collection requirements included in this notice are cotton and ELS cotton producers.

Abstract: This program changes improve the existing cotton and ELS cotton policy by adding coverage for replanting of the insured crop if damaged by excess moisture, hail, or blowing sand or soil; increasing the price used to calculate quality adjustment from 75 percent of the price quotation for the applicable growth area, adjusted according to the specifications in the Special Provisions, for cotton or ELS cotton in the area to 100 percent of the price quotation for such cotton; and increasing the amount of prevented planting coverage for cotton and ELS cotton to 50 percent. FCIC believes the program changes will provide better crop insurance coverage to cotton and ELS cotton producers.

Estimate of Burden: Public reporting burden for the collection of information on all forms for the insurance of cotton and ELS cotton is estimated at 55.8 minutes per participant because of the high degree of automation associated with the data collection.

Respondents: Cotton and ELS cotton producers.

Estimated Number of Respondents: 60,795.

Estimated Number of Responses Per Respondent: 2.8.

Estimated Total Annual Burden on Respondents: 56,496 hours.

FCIC is requesting comments on the following: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information gathering technology.

Comments regarding paperwork reduction should be submitted to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

The Office of Management and Budget (OMB) is required to make a decision concerning the collections of information contained in this rule between 30 and 60 days after submission to OMB. Therefore, a comment to OMB is best assured of having full effect if OMB receives it within 30 days of publication.

Signed in Washington, D.C., on September 21, 1998.

John Zirschky,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 98–25721 Filed 9–24–98; 8:45 am]

BILLING CODE 3410–8–M

DEPARTMENT OF AGRICULTURE

Forest Service

Olympic Provincial Interagency Executive Committee (PIEC), Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of Meeting.

SUMMARY: The Olympic PIEC Advisory Committee will meet on October 9, 1998 at the Montesano City Hall, 112 N. Main Street, Montesano, Washington. The meeting will begin at 9:30 a.m. and continue until 3:00 p.m. Agenda items to be covered include: (1) Review of 1998 watershed restoration project accomplishments and 1999 Watershed Restoration program for the Olympic Forest; (2) Review of priority setting process for watershed restoration project selection; (3) Update from Effectiveness Monitoring sub-committee on Soleduck Pilot Project; (4) Review of PAC costs, rechartering and attendance; (5) Update on Quinault Range District projects and activities. Olympic Province Committee meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Kathy Snow, Province Liaison, USDA, Quilcene Ranger District, P.O. Box 280, Quilcene,WA 98376. (360)765–2211.

Dated: September 21, 1998.

Claire Lavendel,

Acting Forest Supervisor.

[FR Doc. 98–25671 Filed 9–24–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Associated Electric Cooperative, Inc.; Notice of Intent

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of Intent to Hold Scoping Meeting and Prepare an Environmental Assessment and/or Environmental Impact Statement.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS), pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality (CEQ) Regulations for Implementing NEPA (40 CFR parts 1500–1508), and RUS Environmental Policies and Procedures (7 CFR part 1794) proposes to prepare an Environmental Assessment and/or an Environmental Impact Statement (EIS)

for its Federal action related to a proposal by Associated Electric Cooperative, Inc., to construct a 500 megawatt two-on-one combined cycle gas-fired combustion turbine power plant in northeast Oklahoma.

MEETING INFORMATION: RUS will conduct a scoping meeting in an open house forum on Thursday, October 29, 1998, from 6 p.m. until 8 p.m at the Mid America Industrial Park Expo Center. The Center is located at the Mid America Industrial Park Airport, which is approximately 4.5 miles south of Pryor, Oklahoma, along highway 69.

FOR FURTHER INFORMATION CONTACT: Dennis Rankin, Engineering and Environmental Staff, Rural Utilities Service, Stop 1571, 1400 Independence Avenue, SW, Washington, DC 20250–1571, telephone (202) 720–1953. The E-mail address is drankin@rus.usda.gov.

SUPPLEMENTARY INFORMATION: Associated Electric Cooperative, Inc., proposes to construct the plant at one of two potential sites. These sites are in Mayes County and Rogers County, Oklahoma. The Mayes County site is approximately 4 miles northeast of Chouteau, Oklahoma, and located in the Mid America Industrial Park along highway 412B. The Rogers County site is located approximately one mile northwest of Catoosa, Oklahoma, on the west side of highway 167.

The proposed project will be a 500 MW two-on-one combined cycle gas-fired combustion turbine power plant. The plant will consist of two Seimens V84.3A combustion turbines/generators and two heat recovery steam generators, which will supply steam to a single steam turbine. The plant will be located on a site of about 20 to 40 acres and will require about 2500 to 3000 gallons per minute of makeup water at full load. The plant will be subject to Prevention of Significant Deterioration (PSD) review and National Pollutant Discharge Elimination System (NPDES) regulations.

Alternatives considered by RUS and Associated Electric Cooperative, Inc., to constructing the generation facility proposed include: (a) no action, (b) purchase of power, (c) load management, (d) construction of peaking capacity, and (e) renewable energy.

Associated Electric Cooperative, Inc., has developed a siting and alternative study which is available for public review at RUS at the address provided in this notice or at Associated Electric Cooperative, Inc., 2814 South Golden, Springfield, Missouri, 65801–0754, phone (417) 881–1204. This document will also be available at the Pryor Public Library, 505 East Graham Ave., Pryor, Oklahoma, telephone 918–825–0777 and the Catoosa Public Library, 572 South Cherokee, Catoosa, Oklahoma, telephone 918–266–1684.

Government agencies, private organizations, and the public are invited to participate in the planning and analysis of the proposed project. Representatives from RUS and Associated Electric Cooperative, Inc., will be available at the scoping meeting to discuss RUS's environmental review process, describe the project and alternatives under consideration, discuss the scope of environmental issues to be considered, answer questions, and accept oral and written comments. Written comments will be accepted for at least 30 days after the public scoping meeting. Written comments should be sent to RUS at the address provided in this notice.

From information provided in the siting and alternative study, input that may be provided by government agencies, private organizations, and the public, Associated Electric Cooperative, Inc., and Burns and McDonnell will prepare an environmental assessment to be submitted to RUS for review. Should RUS determine that the preparation of an EIS is not warranted, it will prepare a finding of no significant impact (FONSI). The FONSI will be made available for public review and comment for 30 days. Public notification of a FONSI would be published in the **Federal Register** and in newspapers with a circulation in the project area. RUS will not take its final action related to the project prior to the expiration of the 30-day period.

Any final action by RUS related to the proposed project will be subject to, and contingent upon, compliance with environmental review requirements as prescribed by CEQ and RUS environmental policies and procedures.

Dated: September 22, 1998.

Blaine D. Stockton, Jr.,

Assistant Administrator, Electric Program.

[FR Doc. 98–25731 Filed 9–24–98; 8:45 am]

BILLING CODE 3410–15–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from the Procurement List.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List commodities previously furnished by such agencies.

EFFECTIVE DATE: October 26, 1998.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On May 1, June 26, July 31, August 7 and 14, 1998, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (63 FR 24153, 34847, 40877, 42364 and 43660) of proposed additions to and deletions from the Procurement List:

Additions

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Body Fluids Barrier Kit, 6515–01–376–7247
Module, Medical System, 8465–00–NSH–0063
Ergonomic Kitchen Gadgets
M.R. 880—Nylon Square Turner
M.R. 882—Nylon Spoon
M.R. 884—Nylon Spaghetti Server
M.R. 887—Jar Opener
M.R. 881—Nylon Round Turner
M.R. 883—Nylon Slotted Spoon
M.R. 885—Nylon Ladle

Services

Administrative Services, Department of Veterans Affairs Medical Center, 4100 West Third Street, Buildings 315 and 330, Dayton, Ohio.
Grounds Maintenance, Naval Air Station, Key West, Florida.
Janitorial/Custodial, VA Outpatient Clinic, 1801 Westwind Drive, Bakersfield, California.
Janitorial/Custodial
Social Security Administration, 6400 Old Branch Avenue, Clinton, Maryland.
Janitorial/Custodial
Social Security Administration, 190 Stone Street, Watertown, New York.
Janitorial/Custodial
Veterans Affairs Outpatient Clinic, Sayre, Pennsylvania.
Operation of Postal Service Center
Shaw Air Force Base, South Carolina.
Recycling Service
Francis E. Warren Air Force Base, Wyoming.

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will not have a severe economic impact on future contractors for the commodities.

3. The action will result in authorizing small entities to furnish the commodities to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities deleted from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the commodities listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Accordingly, the following commodities are hereby deleted from the Procurement List:

Bulletin Board

7195–00–990–0615
7195–00–989–2370
7195–00–843–7938
7195–00–844–9038
7195–00–844–9037
7195–00–989–2372
7195–00–989–2371
7195–00–844–9036

Rinse Additive, Dishwashing

7930–00–619–9573

Paper, Kraft Wrapping

8135–00–160–7770

Beverly L. Milkman,

Executive Director.

[FR Doc. 98–25735 Filed 9–24–98; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from procurement list

SUMMARY: The Committee has received proposals to add to the Procurement List a commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete commodities previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: October 26, 1998.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodity and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and services to the Government.

2. The action will result in authorizing small entities to furnish the commodity and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity and services proposed for addition to the Procurement List. Comments on this certification are invited.

Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodity and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodity

Gloves, Patient Examining
6515–01–364–8554
NPA: Bosma Industries for the Blind, Inc., Indianapolis, Indiana

Services

Base Supply Center
Sheppard Air Force Base, Texas
NPA: Beacon Lighthouse, Inc., Wichita Falls, Texas
Janitorial/Custodial, Army Research Laboratory (ARL), Adelphi Laboratory Center (ALC), 2800 Powder Mill Road, Adelphi, Maryland
NPA: Melwood Horticultural Training Center, Upper Marlboro, Maryland

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will result in authorizing small entities to furnish the commodity and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46—48c) in connection with the commodity and services proposed for deletion from the Procurement List.

The following commodities have been proposed for deletion from the Procurement List:

Stool
P.S. #127-A
P.S. #127-B
P.S. #127-C
P.S. #127-D
Pad, Typewriter 7510–00–849–1137
7510–00–530–6412
7510–00–257–2576
Cleaner, Tobacco Pipe
M.R. 204

Beverly L. Milkman,

Executive Director.

[FR Doc. 98–25736 Filed 9–24–98; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

National Security Assessment of the U.S. Maritime Industry

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before November 24, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Stephen Baker, Trade & Industry Analyst, Bureau of Export Administration (BXA), Department of Commerce, Room 3876, 14th and Constitution Avenue, NW, Washington, DC 20230 (telephone no. (202) 482–2017 or 3795).

SUPPLEMENTARY INFORMATION:

I. Abstract

Commerce/BXA, in coordination with the Department of the Navy, Carderock Division, and the Department of Transportation, Maritime Administration is conducting a survey of the U.S. maritime industry in order to assess the health and competitiveness as well as the technology requirements of the forms that comprise this critical sector.

II. Method of Collection

The information will be collected using a non-recurring, mandatory survey. It will be collected in written form.

III. Data

The survey will collect information on the nature of the business performed by each firm; estimated sales and employment data; financial information; research and development expenditures and funding sources; capital expenditures and funding sources; competitiveness issues and technology requirements.

OMB Number: N/A.

Form Number: N/A.

Type of Review: Regular Submission.

Affected Public: The vendor, supplier and manufacturer base of the U.S. Maritime industry.

Estimated Number of Respondents: 2,000.

Estimated Time Per Response: 4.0 hours.

Estimated Total Annual Burden Hours: 8,000 hours.

Estimated Total Annual Cost: $210,080 for respondents—no equipment or other materials will need to be purchased to comply with the requirement.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: September 22, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–25674 Filed 9–24–98; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Materials Technical Advisory Committee; Notice of Partially Closed Meeting

A meeting of the Materials Technical Advisory Committee will be held October 15, 1998, 10:30 a.m., Herbert C. Hoover Building, Room 1617M–2, 14th Street Between Constitution & Pennsylvania Avenues, NW., Washington DC. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to materials and related technology.

Agenda

General Session

1. Opening remarks by the Chairman.
2. Discussion of issues related to the Biological Weapons Convention (BWC).
3. Status of BWC implementation protocol negotiations.
4. Presentation of papers and comments by the public.

Executive Session

5. Discussion of matters properly classified under Executive Order 12958, dealing with U.S. export control programs and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. Reservations are not required. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

However, to facilitate distribution of public presentation materials to the Committee members, the materials should be forwarded two weeks prior to the meeting to the address below:

Ms. Lee Ann Carpenter, Bureau of Export Administration, MS: 3886C, U.S. Department of Commerce, 15 St. & Pennsylvania Ave., NW., Washington, DC 20230

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on February 24, 1998, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittee thereof dealing with the classified materials listed in 5 U.S.C. 552(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3) of the Federal Advisory Committee Act. The remaining series of meetings or poritions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or poritions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, D.C. For further information or copies of the minutes call (202) 4822583.

Lee Ann Carpenter,

Director, Technical Advisory Committee Unit.

[FR Doc. 98–25724 Filed 9–24–98; 8:45 am]

BILLING CODE 3510–33–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 44–98]

Foreign-Trade Zone 137—Washington Dulles International Airport, Virginia Area; Application for Expansion

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by Washington Dulles Foreign Trade Zone, Inc., grantee of FTZ 137 (Fairfax/Loudoun Counties, Virginia), requesting authority to expand its zone to include sites in Virginia's Eastern Shore region, adjacent to the Cambridge, Maryland and Norfolk-Newport News, Virginia, Customs ports of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on September 15, 1998.

FTZ 137 was approved on April 17, 1987 (Board Order 350, 52 F.R. 13489, 4/23/87). The zone project currently consists of the following sites (250 acres): *Site 1*—within the Washington Dulles International Airport complex, Fairfax and Loudoun Counties; and, *Site 2*—warehouse facility, 110 Terminal Drive, Sterling. An application is currently pending with the Board for an additional site in Loudoun County, two miles west of the airport (Doc. 40–97).

This application is requesting authority to expand the general-purpose zone to include 3 new sites (6,788 acres) in the Eastern Shore region of Virginia (Proposed Sites 4–6): *Proposed Site 4* (6,187 acres, 2 parcels)—the Goddard Space Flight Center-Wallops Flight Facility (Accomack County), owned by NASA—*Parcel 1* (1,856 acres)—NASA Wallop Flight Facility-Main Base (a former U.S. naval air station), Accomack County; and, *Parcel 2* (4,331 acres)—NASA Wallop Flight Facility, Wallops Island, Chincoteague (Accomack County); *Proposed Site 5* (449 acres)—Accomack Airport Industrial Park, U.S. Highway 13 & Parkway Road, Melfa (Accomack County); and, *Proposed Site 6* (130 acres)—within the 579-acre Port of Cape Charles Sustainable Technologies Industrial Park, two miles from U.S. 13 on SR 1108, Bayshore Drive, Northampton County, Virginia. NASA has signed an agreement with the Virginia Commercial Space Flight Authority (VCSFA) that allows VCSFA to develop proposed Site 4 as a center for commercial space launch services. The Wallops Flight Facility includes orbital tracking stations, research facilities, and facilities for testing, assembly and preparation of rockets and payloads, as well as several launch platforms suitable for military and commercial rocket launches. Proposed Site 5 is owned by Accomack County, Virginia, and the Accomack Industrial Development Authority. Proposed Site 6 is owned by Northampton County, Virginia. No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is November 24, 1998. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to December 9, 1998.

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

Eastern Shore of Virginia Economic, Development Commission, 23372 Front Street, Accomac, VA 23301,

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW, Washington, DC 20230

Dated: September 17, 1998.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98–25725 Filed 9–24–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Southeast Region Dealer and Interview Family of Forms

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before November 24, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to John Poffenberger, Southeast Fisheries Science Center, 75 Virginia Beach Drive, Miami, FL 33149, (305) 361–4263.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Southeast Fisheries Science Center is proposing to change the procedures that will be used to monitor the commercial quota for red snapper in the Gulf of Mexico. Under the authority of 50 CFR 622.5, dealers that are selected to report will have to submit a form with the purchases that were made during each 7 day period the season is open. These forms will have to be submitted to the Center within two working days after each weekly reporting period. Under the existing procedures, NMFS port agents contact dealers to collect the weekly landings

data. This change is necessary to provide more complete documentation on the quantity of red snapper that are caught by fishermen with commercial red snapper endorsements. By submitting a signed form, dealers will provide verifiable data on the landings that are counted towards the commercial red snapper quota.

II. Method of Collection

Reporting will be by U.S. mail or rapidfax.

III. Data

OMB Number: 0648–0013.

Form Number: N/A.

Type of Review: Regular submission.

Affected Public: Business or other for-profit (seafood dealers).

Estimated Number of Respondents: 70.

Estimated Time Per Response: 15 minutes.

Estimated Total Annual Burden Hours: 210.

Estimated Total Annual Cost to Public: $270.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: September 22, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–25675 Filed 9–24–98; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 082698C]

Caribbean Fishery Management Council; Public Meeting; Cancellation

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

ACTION: Notice of cancellation of a public meeting.

SUMMARY: The 95th meeting of the Caribbean Fishery Management Council's which is scheduled for September 29, 1998 is cancelled.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, 268 Munoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918–2577; telephone: (787) 766–5926; fax: (787) 766–6239 or Andrew Kemmerer, Regional Administrator, Southeaast Region, NOAA/NMFS, 9721 Executive Center Drive, St. Petersburg, FL 33702; telephone: (727)570–5301.

SUPPLEMENTARY INFORMATION: The Caribbean Council meeting was published in the **Federal Register** on September 4, 1998 (63 FR 47268). Due to hurricane George, the meeting is being cancelled until further notice.

Dated: September 23, 1998.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–25884 Filed 9–23–98; 4:08 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 091798E]

New England Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Whiting Advisory Panel and Whiting Committee in October, 1998 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from these groups will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meetings will be held on October 9 and October 20, 1998, respectively. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held in Saugus, MA and Mansfield, MA, respectively. See **SUPPLEMENTARY INFORMATION** for specific locations.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; (781) 231–0422. Requests for special accommodations should be addressed to the New England Fishery Management Council, 5 Broadway, Saugus, MA 01906–1036; telephone: (781) 231–0422.

SUPPLEMENTARY INFORMATION:

Meeting Dates and Agendas

Friday, October 9, 1998, 10:00 a.m.—Whiting Advisory Panel Meeting.

Location: New England Fishery Management Council Office, 5 Broadway, Saugus, MA 01906–1036; telephone (781) 231–0422.

Preparation of formal Whiting Advisory Panel comments on the public hearing document for Amendment 11 to the Northeast Multispecies Fishery Management Plan (FMP), a program to manage whiting, red hake and offshore hake, and comments on the associated Draft Environmental Impact Statement.

Tuesday, October 20, 1998, 10:00 a.m.—Whiting Committee Meeting.

Location: Holiday Inn, 31 Hampshire Street, Mansfield, MA 02048; telephone: (508) 339–2200.

Development of recommendations on final management measures to be included in Amendment 11 to the Northeast Multispecies FMP, a program to manage whiting, red hake and offshore hake.

Although other issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: September 21, 1998.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–25729 Filed 9–24–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 091798A]

Endangered Species; Permits

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

ACTION: Receipt of an application for a scientific research permit (1083) and modifications to scientific research permits (994, 1025, 1058).

SUMMARY: Notice is hereby given of the following actions regarding permits for takes of endangered and threatened species for the purposes of scientific research and/or enhancement: NMFS has received permit applications from the Monterey Bay Salmon and Trout Project in Davenport, CA (MBSTP)(1083); NMFS has received applications for modifications to existing permits from: the Idaho Cooperative Fish and Wildlife Unit at Moscow, ID (994) (ICFWU), the California Department of Fish and Game, Inland Fisheries Division, Sacramento, CA (CDFG)(1025), and the U.S. Fish and Wildlife Service at Ahsahka, ID (FWS)(1058).

DATES: Written comments or requests for a public hearing on any of the applications must be received on or before October 26, 1998.

ADDRESSES: The applications and related documents are available for review in the following offices, by appointment:

For permits 1025 and 1083: Protected Species Division, NMFS, 777 Sonoma Avenue, Room 325, Santa Rosa, CA 95404–6528 (707–575–6066).

For permits 994 and 1058: Protected Resources Division, F/NWO3, 525 NE Oregon Street, Suite 500, Portland, OR 97232–4169 (503–230–5400).

All documents may also be reviewed by appointment in the Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401).

FOR FURTHER INFORMATION CONTACT: For permits 1025 and 1083: Tom Hablett, Santa Rosa, CA, (707–575–6066).

For permits 994 and 1058: Robert Koch, Portland, OR (503–230–5424).

SUPPLEMENTARY INFORMATION:

Authority

Permits are requested under the authority of section 10 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and the NMFS regulations governing ESA-listed fish and wildlife permits (50 CFR parts 217 through 227).

Those individuals requesting a hearing on these requests for permits should set out the specific reasons why a hearing would be appropriate (see **ADDRESSES**). The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the below application summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Species Covered in This Notice

The following species are covered in this notice: Chinook salmon (*Oncorhynchus tshawytscha*), Coho salmon (*O. kisutch*), and Steelhead trout (*O. mykiss*).

To date, protective regulations for threatened central California coast (CCC), south-central California coast (SCCC), and Snake River (SnR) steelhead under section 4(d) of the ESA have not been promulgated by NMFS. This notice of receipt of applications requesting takes of this species is issued as a precaution in the event that NMFS issues protective regulations that prohibit takes of threatened CCC, SCCC, and SnR steelhead. The initiation of a 30-day public comment period on these applications, including their proposed takes of threatened CCC, SCCC, and SnR steelhead, does not presuppose the contents of the eventual protective regulations.

New Application Received

MBSTP (1083) requests a 5-year permit for takes of adult and juvenile, threatened, CCC coho salmon, and adult and juvenile, threatened, CCC and SCCC steelhead, associated with population studies, obtaining broodstock for propagation purposes, and releasing artificially-reared juveniles into area watersheds. MBSTP will conduct a cooperative adult sampling program in Santa Cruz County. These studies are to determine: (1) population estimates; (2) hatchery to wild salmonid ratios; (3) stream utilization; and (4) genetic heritage. Adults will be trapped, measured, sampled for tissues and/or scales, marked and released (if not being retained for broodstock). Spawner surveys are also proposed, including the handling and sampling of carcasses. The propagation program conducted at the MBSTP's Big Creek Hatchery is to rebuild depleted populations of coho salmon and steelhead to naturally self-sustaining levels. Both wild and hatchery produced adults will be used for broodstock. The control of disease, maintenance of genetic viability, and the annual releases of juveniles are in accordance with the guidance of NMFS, CDFG, and (for coho salmon) the State of California's Coho Salmon Biological Recovery Team. The coho salmon element includes the taking of broodstock from Scott and Waddell Creeks, and outplanting of fry or pre-smolts into Scott, Waddell and Gazos Creeks. The steelhead element includes the taking of broodstock from the San Lorenzo River and Scott and Waddell Creeks, and outplanting of fry or pre-smolts into watersheds of Santa Cruz and Monterey Counties.

Modification Requests Received

ICFWU requests modification 5 to scientific research permit 994. Permit 994 authorizes takes of ESA-listed adult Snake River (SnR) spring and summer chinook salmon as well as SnR fall chinook salmon for migration research. For modification 5, ICFWU requests authorization for takes of threatened, adult SnR steelhead associated with a research study. Adult steelhead that were PIT tagged as smolts would be radio tagged at Lower Granite Dam and released to determine if PIT-tagged fish will return to the original point of release. Modification 5 is requested to be valid until December 31, 1998.

CDFG requests modification 3 to permit 1025 for authorization to include an additional study site location above Knights Landing, and increase take numbers of adult and juvenile, endangered, Sacramento River winter-run chinook salmon associated with extant fish population studies in the Sacramento River. 1997–98 carcass surveys indicate that juvenile salmon emigration numbers will be significantly higher than in previous study years. Requested limits would increase the take: (1) of juveniles from 2,500 to 3,500 for Study One; (2) of juveniles from 6,000 to 12,000 for Study Two, and (3) of adult carcasses from 100 to 4,000 for Study Two. ESA-listed juvenile fish are proposed to be observed or captured, anesthetized, handled, allowed to recover from the anesthetic, and released. ESA-listed juvenile salmon indirect mortalities are also requested. Modification 3 is requested to be valid for the duration of permit 1025, which expires on June 30, 2001.

FWS requests modification 1 to scientific research permit 1058. Permit

1058 authorizes takes of adult, threatened, SR fall chinook salmon associated with research designed to determine the proportions of wild and hatchery fish in the run. For modification 1, FWS requests an increase in the take to record length information and collect scale samples. Data from the larger sample would be used to estimate age composition of the run which would provide better information for regulating Columbia River harvest. Modification 1 is requested to be valid for the duration of the permit. Permit 1058 expires on December 31, 2002.

Dated: September 18, 1998.

Kevin Collins,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–25730 Filed 9–24–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF ENERGY

Supplemental Environmental Impact Statement for the Programmatic Environmental Impact Statement for Stockpile Stewardship and Management

AGENCY: Department of Energy (DOE).

ACTION: Notice of intent.

SUMMARY: The Department of Energy announces its intent to prepare and issue a Supplemental Environmental Impact Statement (SEIS) for the National Ignition Facility (NIF) portion (Volume III, Appendix I) of the Programmatic Environmental Impact Statement for Stockpile Stewardship and Management (DOE/EIS–0236; September, 1997). The SEIS is being prepared pursuant to a Joint Stipulation and Order approved and entered as an order of the Court on October 27, 1997, in partial settlement of the lawsuit *NRDC* v. *Peña*, Civ. No. 97–936 (SS) (D.D.C.). The scope of the SEIS was established by the Joint Stipulation and Order and will cover, ''the reasonably foreseeable significant adverse environmental impacts of continuing to construct and of operating NIF at LLNL with respect to any potential or confirmed contamination in the area by hazardous, toxic, and/or radioactive materials.''

FOR FURTHER INFORMATION CONTACT: For further information about this SEIS or to be placed on the document distribution list, please call, toll-free, (877) 388–4930 or call or write Charles A. Taylor as indicated below: Charles A. Taylor, Document Manager, U.S. Department of Energy, L–293, 7000 East Avenue, P.O. Box 808, Livermore, CA 94550, Phone (925) 423–3022, Facsimile (925) 424–3755.

For information about the DOE National Environmental Policy Act (NEPA) process, please contact: Carol Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy, 1000 Independence Ave, SW, Washington, DC 20585–0119, Phone: (202) 586–4600, Messages: (800) 472–2756, Facsimile: (202) 586–7031.

SUPPLEMENTARY INFORMATION:

I. Background

The Lawrence Livermore National Laboratory (LLNL) was established in 1952 as a multi-disciplinary research and development center, operated by the University of California for the Department of Energy. LLNL is located in Livermore, California, about 40 miles southeast of San Francisco, California. LLNL consists of two portions, the main site in Livermore and the 300 Area near Tracy, California. The NIF is being constructed at the LLNL main site.

The National Ignition Facility is a part of the DOE's development of science-based, rather than underground nuclear test-based, stewardship of the nuclear weapons stockpile. In NIF, nuclear fusion of very small amounts of hydrogen isotopes is expected to be achieved using the energy inherent in laser light. The environmental consequences of construction and operation of NIF were addressed in detail in Appendix I of the Stockpile Stewardship and Management Programmatic EIS (SSM PEIS). The SSM PEIS addressed alternative plans for DOE's defense program activities related to nuclear weapons stockpile issues at several DOE laboratories, including LLNL. The Record of Decision (ROD) for the SSM PEIS was published in the **Federal Register** on December 26, 1996 (61 FR 68014). In the ROD, DOE announced a decision to proceed with construction and operation of NIF at LLNL. Ground-breaking for NIF occurred on May 29, 1997. Construction of the NIF is on-going and is expected to be completed by October 2003.

During site excavation for NIF in September 1997, buried electrical capacitors containing polychlorinated biphenyls and other items (buried drums that on analysis contained no hazardous, toxic and/or radioactive material) were discovered at the site. Several of the capacitors had leaked, contaminating surrounding soil. The capacitors and surrounding soil were cleaned up in accordance with State and Federal regulations. The possibility of such an event was unforeseen and therefore not addressed in the SSM PEIS. On September 22, 1997, the plaintiffs in *NRDC* v. *Peña* filed a motion under Rule 60(b) of the Federal Rules of Civil Procedure, in which they alleged that DOE knew but did not adequately analyze and disclose the risk of building NIF in an area that may contain buried hazardous, toxic, and/or radioactive waste. DOE denied the allegations in the plaintiffs' motion. In the Joint Stipulation and Order, which settled all claims in the plaintiffs' Rule 60(b) motion, DOE agreed to conduct a full evaluation of any potential risks to the human environment resulting from continuing to construct and operating the NIF at LLNL. Subsequent characterization activities that DOE conducted pursuant to the Joint Stipulation and Order, in order to determine if hazardous, toxic, and/or radioactive materials were buried in the northeast corner of LLNL, are complete. The results of these activities will be analyzed in the SEIS. Progress of the characterization activities was documented to the Court in the form of Quarterly Reports. These Quarterly Reports, along with a copy of the Joint Stipulation and Order is available at the LLNL Public Reading Room, East Gate Visitors Center, Greenville Road, Livermore, CA, or by calling Charles Taylor at the phone number provided at the beginning of this notice.

II. SEIS Schedule

In light of the Court's direction for the scope of this Supplemental EIS, no scoping meeting will be held. However, comments are welcome; please send comments to Charles Taylor at the address above. DOE expects to publish a Notice of Availability for the Draft SEIS in the **Federal Register** in December 1998. Public comments on the Draft SEIS will be received during a comment period of at least 45 days following publication of the Notice of Availability. The Notice of Availability will provide dates for public meetings that will be held in Livermore, California and Washington, DC approximately 30 days after the Notice of Availability is published. The draft and final SEIS will not contain any classified data.

Issued in Washington, DC on September 21, 1998.

Peter N. Brush,

Acting Assistant Secretary, Environment, Safety and Health.

[FR Doc. 98–25718 Filed 9–24–98; 8:45 am]

BILLING CODE 6450–01–U

DEPARTMENT OF ENERGY

Grand Junction Office; Floodplain/Wetlands Statement of Findings for Site Characterization Activities at the Uranium Mill Tailings Site Located Near Shiprock, NM

AGENCY: Grand Junction Office, Department of Energy.

ACTION: Floodplain/wetlands statement of findings.

SUMMARY: This Floodplain/Wetlands Statement of Findings is prepared pursuant to Executive Orders 11990 and 11988 and 10 CFR Part 1022, Compliance with Floodplain/Wetlands Environmental Review Requirements. The U.S. Department of Energy (DOE) is proposing to conduct site characterization activities at the Uranium Mill Tailings Site near Shiprock, New Mexico. The purposes of the activities are to determine the extent of ground water contamination and to investigate flow patterns in the ground water system; this information will assist DOE in selecting a ground water remediation strategy for the site in accordance with 40 CFR 192, Health and Environmental Protection Standards for Uranium and Thorium Mill Tailings. Portions of the proposed field activities would occur on the 100-year floodplain of the San Juan River and in a nearby wetland. Approximately 18,000 square feet (0.4 acre) of the 100-year floodplain and approximately 120 square feet (0.003 acre) of the wetland area would be temporarily disturbed by these field activities. A floodplain/wetlands assessment was prepared that described the effects, alternatives, and measures designed to avoid or minimize potential harm to or within the affected floodplain/wetlands. The assessment found that the proposed action would have minimal temporary or long-term impacts on the floodplain and associated wetland.

DATES: Written comments are due to the address below no later than October 13, 1998.

ADDRESSES: Written comments should be addressed to Audrey Berry, U.S. Department of Energy-Grand Junction Office, 2597 B3/4 Road, Grand Junction, Colorado; or transmitted electronically by E-mail via Internet to Audrey.Berry@gjpomail.doegjpo.com; or by facsimile at (970) 248–6040.

FOR FURTHER INFORMATION ON THIS PROPOSED ACTION, CONTACT: Don Metzler, Project Manager, U.S. Department of Energy, Grand Junction Office, 2597 B3/4 Road, Grand Junction, Colorado 81503, Telephone 1–970–248–7612 or 1–800–399–5618, E-mail Don.Metzler@ gjpomail. doegjpomail.doegjpo.com.

FOR FURTHER INFORMATION ON GENERAL DOE FLOODPLAIN/WETLANDS ENVIRONMENTAL REVIEW REQUIREMENTS, CONTACT: Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION:

Background

The Notice of Floodplain/Wetlands Involvement for the Shiprock site characterization activities was published in the **Federal Register** on June 23, 1998 (63 FR 34153). The Floodplain/Wetlands Assessment was completed in August 1998.

Project Description

The Shiprock site is located on the Navajo Nation in northwestern New Mexico, approximately 1 mile (1.6 kilometers) south of Shiprock, New Mexico, and about 30 miles (48 kilometers) west of Farmington, New Mexico. The proposed action would involve (1) installing monitoring wells to characterize ground water quality and other hydrologic properties, and (2) constructing a surface water distribution system consisting of a 30-foot-long, 4-foot-high, concrete intake structure on Bob Lee Wash; a connecting 6-inch diameter, 2,000-foot-long pipeline along the upper limit of the 100-year floodplain; and a 1- to 2-foot deep, gravel-filled infiltration trench underneath the last half of the pipeline. Most of the pipeline would be outside the wetlands, in higher-elevation areas. The intake structure would divert a portion of the flow in Bob Lee Wash into the pipeline and infiltration trench and increase ground water flow in the floodplain alluvial aquifer. The purpose of the surface water distribution system would be to flush ground water contaminants towards the San Juan River and decrease contaminant concentrations within the aquifer. Features of the surface water distribution system would be in place for two to three years. Because contaminated ground water is present in the floodplain alluvial aquifer, the monitoring wells and surface water distribution system must be located on the floodplain.

Alternatives

No alternative sites or actions exist for the proposed characterization activities; the only other alternative would be no action. Under a no action alternative, no impact to the floodplain or wetland would occur. The ground water contamination, however, would remain in place, and no additional characterization would be performed.

Floodplain and Wetland Effects

Installation of the monitoring wells, pipeline, and infiltration trench would directly affect approximately 18,000 square feet (0.4 acre) of floodplain. Present vegetation consists primarily of inland saltgrass (Distichlis spicata) and salt cedar (Tamarix ramosissima). The areas disturbed by installation activities would be more susceptible to wind and water erosion until vegetation became reestablished. None of the proposed characterization activities would be expected to affect lives, property, or any natural and beneficial floodplain values. In addition, the construction of an intake structure across Bob Lee Wash would directly affect approximately 120 square feet (0.003 acre) of wetland. This construction within a wetland would require regulation under Section 404 of the Clean Water Act. The U.S. Army, Corps of Engineers has been consulted and a Nationwide Permit will be required before construction begins.

Diversion of water from Bob Lee Wash through the intake structure and into the pipeline could potentially affect the downstream emergent wetland over time by reducing the amount of water supplied by the wash. Temporary displacement of birds, small mammals, and other wildlife in adjacent areas may occur during installation of the intake structure and the associated pipeline and trench. Wildlife use of the wetland would be expected to return shortly after construction work is complete. No threatened or endangered species would be affected.

Floodplain and Wetland Mitigation Measures

Potential adverse effects within floodplain and wetland areas would be mitigated by (1) installing monitoring wells only in higher-elevation areas (2) reseeding floodplain areas where vegetation has been disturbed as a result of characterization activities (3) avoiding wetland areas whenever possible by constructing most of the pipeline and all of the infiltration trench outside wetlands (4) diverting a minimal amount of flow from Bob Lee Wash (5) using access routes that are well outside wetlands, and (6) monitoring emergent wetland boundaries annually for the duration of the proposed activities to ensure wetlands are not permanently reduced. With the implementation of these mitigation measures, the proposed action would be protective of the 100-

year floodplain and associated wetland at the Shiprock site and would conform to the Navajo Nation's floodplain protection standards.

Issued in Albuerque, N.M. on September 16, 1998.

Constance L. Soden,

Director, Environmental Protection Division, U.S. Department of Energy, Albuquerque Operations Office.

[FR Doc. 98–25688 Filed 9–24–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Golden Field Office; Notice of Solicitation for Financial Assistance Applications; Southeast Regional Biomass Energy Program Management Project

AGENCY: Department of Energy.

ACTION: Notice of solicitation for financial assistance applications number DE–PS36–98GO10359.

SUMMARY: The U.S. Department of Energy (DOE), pursuant to the DOE Financial Assistance Rules, 10 CFR 600.8, is announcing its intention to solicit applications for the Southeastern Regional Biomass Energy Program (SERBEP) Management Project. The selected applicant will receive financial assistance to manage SERBEP under a cooperative agreement with DOE.

DATES: The solicitation will be issued on or about October 13, 1998.

AVAILABILITY: To obtain a copy of the Solicitation once it is issued, submit a written request to the U.S. Department of Energy, Golden Field Office, 1617 Cole Boulevard, Golden, CO 80401, Attention: Mr. Matt Barron, Contract Specialist. For convenience, requests for the Solicitation may be sent via facsimile to Matt Barron at (303) 275–4788 or by E-mail to matt__barron@nrel.gov. Prospective applicants are encouraged to obtain the solicitation electronically through the Golden Field Office Home Page at http://www.eren.doe.gov/golden/solicit.htm. Only written requests for the solicitation will be considered.

SUPPLEMENTARY INFORMATION: The major goals of the DOE SERBEP are: to promote biomass energy by creating awareness, a positive image, and confidence in biomass energy technologies within the region; to develop a climate supportive of biomass energy among the general public and relevant government agencies; to assist both the public and private sectors in the responsible development, commercialization, and utilization of biomass energy technologies so that the region achieves full realization of associated energy, economic, and environmental benefits; and to select and perform activities that provide for responsible development of biomass energy within the region. The Southeastern Region includes the following states/areas: Alabama, Arkansas, District of Columbia, Florida, Georgia, Kentucky, Louisiana, Mississippi, Missouri, North Carolina, South Carolina, Tennessee, Virginia, West Virginia, Puerto Rico and the Virgin Islands.

Applications must address each of the following activities in order to be considered for award. The activities are (1) management and planning, (2) information and outreach, and (3) project oversight and evaluation.

1. Management and Planning includes a plan for the overall management of the project at the state level, including coordination with the DOE Atlanta Regional Support Office (ARSO) and SERBEP ad hoc steering committees. The responsibility also includes development of resource plans and the provision of technical input to DOE for development of annual operating plans for the SERBEP.

The SERBEP Annual Operating Plan (AOP) is a document which will be prepared each year by the ARSO, with appropriate committee input, which provides guidance and direction to the program for the following Fiscal Year.

The FY'98 AOP is available for interested parties. It is anticipated that the FY'99 AOP will not vary significantly from the current AOP and that it will be completed by September 1998—prior to the award resulting from this solicitation. It will be the responsibility of the recipient to guide the Program in meeting AOP objectives, recommend and implement changes to the AOP as necessary, and assist the ARSO in the preparation and completion of future AOP's.

2. Information and Outreach includes responding to inquiries about the program from interested parties, developing biotech briefs, collecting and contributing articles to support dialogue, and preparing regional biomass energy program reports. The recipient also will coordinate and publish a regional newsletter at least quarterly and will establish and maintain a SERBEP Internet site which provides relevant biomass program information and project summaries.

3. Project Oversight and Evaluation includes the award and administration of subgrants to organizations in the region. The recipient will solicit applications for projects in support of program objectives through a competitive solicitation. The ARSO will establish a review panel consisting of DOE and/or DOE laboratory staff, state officials, university staff, and other experts as needed. Documentation of the evaluation process and final recommendations will be collected and presented to the ARSO Project Officer for approval prior to execution of subawards.

Administration of the individual subgrants, including financial commitments, performance tracking, and the provision of periodic reports to DOE, will be the responsibility of the recipient with appropriate oversight from the ARSO.

In response to this solicitation, DOE expects to make a single award. Solicitation number DE–PS36–98GO10359 will include complete information on the program including technical aspects, funding, application preparation instructions, application evaluation criteria, and other factors that will be considered when selecting projects for funding. No pre-application conference is planned. Issuance of the solicitation is planned on or about October 13, 1998, with responses due on November 10, 1998.

Notice of Solicitation for Financial Assistance Applications

SOUTHEAST REGIONAL BIOMASS ENERGY PROGRAM MANAGEMENT PROJECT

Issued in Golden, Colorado, on September 17, 1998.

John W. Meeker,

Chief, Procurement, GO.

[FR Doc. 98–25689 Filed 9–24–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–168–000 and CP97–168–001; Docket No. CP97–169–000 and CP97–169–001]

Alliance Pipeline L.P.; Notice of Environmental Compliance Meeting for the Alliance Pipeline Project

September 21, 1998.

Take notice that on October 6, 1998, the staff of the Office of Pipeline Regulation will meet with representatives of Alliance Pipeline L.P., to discuss its compliance with the environmental conditions contained in the Commission's Order issued in the above dockets on September 17, 1998 (Order). However, because the Order is subject to petitions for rehearing at this time, the staff will not discuss the

merits of any pending issues in this case.

The meeting will begin at 8:30 a.m. at the Commission's offices located at 888 First Street, NE, Washington, DC. Parties interested in attending the meeting should contact Mr. Paul McKee in the Commission's Office of External Affairs at (202) 208–1088 for more details.

David P. Boergers,

Secretary.

[FR Doc. 98–25658 Filed 9–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–768–000]

El Paso Natural Gas Company; Notice of Request Under Blanket Authorization

September 21, 1998.

Take notice that on September 8, 1998, as supplemented on September 14, 1998, El Paso Natural Gas Company, (Applicant), P.O. Box 1492, El Paso, Texas, 79978, filed in Docket No. CP98–768–000, a request pursuant to Sections 157.205, and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 152.205, and 157.212) for approval to construct and operate a tap and valve assembly, with appurtenances, and acquire certain metering facilities and approximately one thousand feet of sixteen-inch pipeline, with appurtenances, comprising a new delivery point located in Yoakum County, under Applicant's blanket certificate issued in Docket No. CP82–435–000, pursuant to Section 7(c) of the Natural Gas Act (NGA), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Applicant proposes a new delivery point to permit the interruptible transportation and delivery of natural gas to Mustang Station, a gas-fired combined cycle power plant, also located in Yoakum County, Texas at the request of GS Electric Generating Cooperative, Inc., a Texas corporation, Golden Spread Electric Cooperative, a Texas corporation, and Denver City Energy Associates, L.P., (jointly referred to as Golden Spread). Applicant submits that it will construct a tap and valve assembly on its twenty-four-inch Dumas Line and that Golden Spread will construct a meter station and approximately one thousand feet of sixteen-inch O.D. pipeline, which Golden Spread will turn over to Applicant after construction is completed. Applicant asserts that it has sufficient capacity to accomplish the deliveries for Golden Spread without detriment or disadvantage to Applicant's other customers.

Any person or the Commission's Staff may, within 45 days of the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), a motion to intervene 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 activities 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 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.

David P. Boergers,

Secretary.

[FR Doc. 98–25660 Filed 9–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–778–000]

El Paso Natural Gas Company; Notice of Request Under Blanket Authorization

September 21, 1998.

Take notice that on September 14, 1998, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP98–778–000 a request pursuant to Sections 157,205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to certificate and to continue the operation of an existing delivery point, installed under Section 311(a) of the Natural Gas Policy Act, under El Paso's blanket certificate issued in Docket No. CP82–435–000 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.

El Paso states that the facility was installed under Section 311(a) and has exclusively used this delivery point for the transportation and delivery of natural gas under Part 284, Subpart B. El Paso states that the regulatory restriction placed on the operation of a facility installed under Section 311 (a) of the NGPA prohibits El Paso shippers from utilizing this delivery point under any transportation arrangement other than a Subpart B transportation arrangement. In view of this limited service flexibility, El Paso believes that certification of the Pinnacle Delivery Point, located in Hutchinson County, Texas, pursuant to Section 157.212 of the Commission's Regulations, is necessary and in the public interest. El Paso states that continued operation of the facility is not prohibited by El Paso's existing Volume No. 1–A FERC Gas Tariff. El Paso states that it has sufficient capacity to accomplish the deliveries without detriment or disadvantage to El Paso'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.

David P. Boergers,

Secretary.

[FR Doc. 98–25661 Filed 9–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–783–000]

National Fuel Gas Supply Corporation; Notice of Application

September 21, 1998.

Take notice that on September 15, 1998, National Fuel Gas Supply Corporation (Applicant), 10 Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP98–720–000 an abbreviated application pursuant to Section 7(b) of the Natural Gas Act, as amended, and Section 157.18 of the Federal Energy Regulatory Commission's (Commission) Regulations thereunder, for permission and approval to authorize Applicant to abandon by sale to Wyckoff Development Company (Wyckoff), as

non-jurisdictional facilities, Line Z–67(T) along with appurtenances, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant specifically proposes to abanson by sale to Wyckoff for $1, 15,376 feet of eight-inch pipeline, designated as Line Z–67(T) and applicable rights-of-way, easements, permits, and other property interests related thereto, located in Steuben County, New York. Applicant asserts that Line Z–67(T) was refunctionalized to transmission by Commission order dated July 6, 1994, in Docket No. CP94–82–000. Applicant further asserts that Line Z–67(T) is fully depreciated. Applicant states that the line and facilities will perform a gathering function for Wyckoff and requests that the Commission determine that such facilities will not be subject to the Commission's jurisdiction after the sale.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 13, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding.

Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, and if the Commission on its own review of the matter finds that the abandonment is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provide for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 98–25659 Filed 9–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing With the Commission

September 21, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of application:* Major Hydropower Project.

b. *Project No:* 2722–008.

c. *Date filed:* August 21, 1998.

d. *Applicant:* PacifiCorp.

e. *Name of Project:* Pioneer Hydroelectric Project.

f. *Location:* On the Ogden River, near the town of Ogden, Utah in Weber County. Most of this existing project is located within the Cache National Forest. Water is supplied from the U.S. Bureau of Reclamation's Pineview Reservoir.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Randy Landolt, Director, Hydro Resources, PacifiCorp, 920 SW Sixth Avenue, Portland, Oregon 97204, (503) 464–5339.

i. *FERC Contact:* Carl Keller at (202) 219–2831.

j. *Brief Description of the Project:* The existing project consists of: (1) a 206-foot-long and 10-foot-high diversion dam; (2) an 80-foot by 60-foot concrete intake structure; (3) an approximately 16,000-foot-long water conveyance system; (4) an 86-foot-wide by 51-foot-long concrete powerhouse; (5) one turbine generator unit with a rated capacity of 6.35 megawatts; (6) a 3,000-foot-long, tailrace canal; and (7) other appurtenances.

k. With this notice, we are initiating consultation with the UTAH STATE HISTORIC PRESERVATION OFFICER (SHPO), as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36, CFR, at 800.4.

l. Under Section 4.32 (b)(7) of the Commission's Regulations (18 CFR), if any resource agency, Indian Tribe, or person believes that the applicant should conduct an additional scientific study to form an adequate factual basis for a complete analysis of the application on its merits, they must file a request for the study with the Commission, not later than 60 days after the filed application date in paragraph c, and must serve a copy of the request on the applicant.

David P. Boergers,

Secretary.

[FR Doc. 98–25662 Filed 9–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

September 22, 1998.

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:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: September 29, 1998, 10:00 a.m.

PLACE: Room 2C, 888 First Street, N.E., 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: David P. Boergers, 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; 705th Meeting—September 29, 1998; Regular Meeting (10:00 a.m.)

CAH–1.
OMITTED
CAH–2.
OMITTED
CAH–3.
OMITTED
CAH–4.
OMITTED
CAH–5.
OMITTED
CAH–6.
DOCKET# P–460, 011, CITY OF TACOMA, WASHINGTON
CAH–7.
DOCKET# P–382, 015, SOUTHERN CALIFORNIA EDISON COMPANY
CAH–8.
DOCKET# P–7463, 001, GENTRY RESOURCES CORPORATION
OTHER#S P–7824, 001, GENTRY RESOURCES CORPORATION

P–7825, 001, GENTRY RESOURCES CORPORATION
P–7826, 001, GENTRY RESOURCES CORPORATION
CAH–9.
DOCKET# P–10615, 003, WOLVERINE POWER SUPPLY COOPERATIVE, INC.
OTHER#S P–10615, 008, WOLVERINE POWER SUPPLY COOPERATIVE, INC.
CAH–10.
DOCKET# P–2016, 034, CITY OF TACOMA, WASHINGTON

Consent Agenda—Electric

CAE–1.
DOCKET# ER98–4138, 000, POTOMAC ELECTRIC POWER COMPANY
CAE–2.
DOCKET# ER98–4105, 000, GLEN PARK ASSOCIATES LIMITED PARTNERSHIP
CAE–3.
DOCKET# ER98–4159, 000, DUQUESNE LIGHT COMPANY
CAE–4.
DOCKET# ER98–4095, 000, CARR STREET GENERATING STATION, L.P.
CAE–5.
DOCKET# ER98–4109, 000, EL DORADO ENERGY, LLC
CAE–6.
DOCKET# ER98–4190, 000, ENTERGY SERVICES, INC.
CAE–7.
DOCKET# ER98–4106, 000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
OTHER#S ER98–1057 ET AL., 000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
ER98–4107, 000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
CAE–8.
DOCKET# EL98–54, 000, STEEL DYNAMICS, INC. V. AMERICAN ELECTRIC POWER SERVICE CORPORATION AND AEP POWER MARKETING, INC., ET AL.
CAE–9.
DOCKET# ER98–556 005 PACIFIC GAS & ELECTRIC COMPANY
OTHER#S ER98–556 006 PACIFIC GAS & ELECTRIC COMPANY
ER98–557, 000, PACIFIC GAS & ELECTRIC COMPANY
CAE–10.
DOCKET# ER98–4222, 000, LAKE BENTON POWER PARTNERS II, LLC
CAE–11.
OMITTED
CAE–12.
DOCKET# EC98–47, 000, NIAGARA MOHAWK POWER CORPORATION
CAE–13.
OMITTED
CAE–14.
OMITTED
CAE–15.
DOCKET# EL95–71, 001, PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE V. NEW HAMPSHIRE ELECTRIC COOPERATIVE, INC.
CAE–16.
DOCKET# EL97–56, 001, BRAZOS ELECTRIC POWER COOPERATIVE V. TENASKA IV TEXAS PARTNERS, LTD.
OTHERS#S QF94–84, 004, BRAZOS ELECTRIC POWER COOPERATIVE V. TENASKA IV TEXAS PARTNERS, LTD.
CAE–17.
DOCKET# OA96–168, 001, SEMINOLE ELECTRIC COOPERATIVE, INC.
CAE–18.
DOCKET# EC97–12, 002, SAN DIEGO GAS & ELECTRIC COMPANY AND ENOVA ENERGY, INC.
OTHERS#S EL97–15, 003, ENOVA CORPORATION AND PACIFIC ENTERPRISES
EL97–21, 002, SOUTHERN CALIFORNIA EDISON COMPANY V. SAN DIEGO GAS AND ELECTRIC COMPANY, ENOVA ENERGY, INC., AND ENSOURCE CORPORATION
CAE–19.
DOCKET# ER97–2836, 002, OKLAHOMA GAS AND ELECTRIC COMPANY
OTHER#S ER97–3016, 002, OKLAHOMA GAS AND ELECTRIC COMPANY
CAE–20.
DOCKET# EL98–67, 000, KAWAIHAE COGENERATION PARTNERS
CAE–21.
DOCKET# EL98–65, 000, ALLEGHENY ELECTRIC COOPERATIVE, INC. V. PENNSYLVANIA ELECTRIC COMPANY
CAE–22.
DOCKET# RM95–9, 003, OPEN ACCESS SAME-TIME INFORMATION SYSTEM AND STANDARDS OF CONDUCT
CAE–23.
DOCKET# EL95–24, 000, GOLDEN SPREAD ELECTRIC COOPERATIVE, INC. V. SOUTHWESTERN PUBLIC SERVICE COMPANY
CAE–24.
OMITTED
CAE–25.
DOCKET# EL97–57, 000, CITIES OF ANAHEIM AND RIVERSIDE, CALIFORNIA V. DESERET GENERATION & TRANSMISSION COOPERATIVE
CAE–26.
DOCKET# EL97–4, 000, FLORIDA MUNICIPAL POWER AGENCY V. FLORIDA POWER & LIGHT COMPANY
OTHER #S EL97–6, 000, FLORIDA MUNICIPAL POWER AGENCY
CAE–27.
DOCKET# SC98–2, 000, VILLAGE OF LAKEWOOD, NEW YORK
CAE–28.
DOCKET# EL96–71, 000, GOLDEN SPREAD ELECTRIC COOPERATIVE, INC. V. SOUTHWESTERN PUBLIC SERVICE COMPANY
CAE–29.
DOCKET# EL98–34, 000, SOUTHERN CALIFORNIA EDISON COMPANY
CAE–30.
DOCKET# RM95–9, 007, OPEN ACCESS SAME-TIME INFORMATION SYSTEM (OASIS) AND STANDARDS OF CONDUCT
CAE–31.
DOCKET# OA97–466, 001, ARIZONA PUBLIC SERVICE COMPANY
OTHER#S OA97–196, 001, CENTRAL VERMONT PUBLIC SERVICE CORPORATION AND CONNECTICUT VALLEY ELECTRIC COMPANY, INC.
OA97–312, 001, WESTERN RESOURCES, INC.
OA97–399, 001, SAN DIEGO GAS & ELECTRIC COMPANY
OA97–402, 001, LOUISVILLE GAS & ELECTRIC COMPANY
OA97–406, 001, NORTHERN STATES POWER COMPANY (MINNESOTA) AND NORTHERN STATES POWER COMPANY (WISCONSIN)
OA97–418, 001, DAYTON POWER & LIGHT COMPANY
OA97–422, 001, CENTRAL MAINE POWER COMPANY
OA97–439, 002, VIRGINIA ELECTRIC AND POWER COMPANY
OA97–440, 001, PECO ENERGY COMPANY
OA97–452, 001, ROCHESTER GAS & ELECTRIC CORPORATION
OA97–452, 002, ROCHESTER GAS & ELECTRIC CORPORATION
OA97–460, 001, KENTUCKY UTILITIES COMPANY
OA97–462, 001, MAINE ELECTRIC POWER COMPANY
OA97–519, 001, BANGOR HYDRO-ELECTRIC COMPANY
OA97–597, 001, UNITED ILLUMINATING COMPANY
CAE–32.
DOCKET# OA97–117, 006, ALLEGHENY POWER SERVICE CORPORATION, MONONGAHELA POWER COMPANY, THE POTOMAC EDISON COMPANY AND WEST PENN POWER COMPANY
OTHER#S OA97–125, 005, CENTRAL HUDSON GAS & ELECTRIC CORPORATION
OA97–126, 005, ILLINOIS POWER COMPANY
OA97–158, 005, NIAGARA MOHAWK POWER CORPORATION
OA97–216, 005, WISCONSIN ELECTRIC POWER COMPANY
OA97–278, 005, NEW YORK STATE ELECTRIC & GAS CORPORATION
OA97–279, 005, CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.
OA97–284, 005, NORTHEAST UTILITIES SERVICE COMPANY, CONNECTICUT LIGHT & POWER COMPANY AND HOLYOKE WATER POWER COMPANY, ET AL.
OA97–313, 005, MIDAMERICAN ENERGY COMPANY
OA97–408, 005, AMERICAN ELECTRIC POWER SERVICE CORP0-RATION, APPALACHIAN POWER COMPANY AND COLUMBUS SOUTHERN POWER COMPANY, ET AL.
OA97–411, 005, PACIFICORP
OA97–429, 003, PUBLIC SERVICE ELECTRIC & GAS COMPANY
OA97–430, 005, EL PASO ELECTRIC COMPANY
OA97–431, 005, BOSTON EDISON COMPANY
OA97–434, 005, CONSUMERS ENERGY COMPANY
OA97–445, 005, SOUTHERN CALIFORNIA EDISON COMPANY
OA97–449, 005, PUGET SOUND ENERGY, INC.
OA97–459, 007, COMMONWEALTH EDISON COMPANY AND COMMON-

WEALTH EDISON COMPANY OF INDIANA, INC.
CAE–33.
DOCKET# OA97–520, 000, CITIZENS UTILITIES COMPANY
OTHER#S OA97–520, 001, CITIZENS UTILITIES COMPANY
OA97–610, 000, CITIZENS UTILITIES COMPANY
OA97–610, 001, CITIZENS UTILITIES COMPANY
CAE–34.
DOCKET# ER98–3672, 000, ONONDAGA COGENERATION LIMITED PARTNERSHIP
CAE–35.
OMITTED
CAE–36.
DOCKET# ER98–1163, 001, SOUTHWEST POWER POOL, INC.
CAE–37.
DOCKET# EG98–107, 000, SAFE HARBOR WATER POWER CORPORATION

Consent Agenda—Gas and Oil

CAG–1.
DOCKET# RP98–378, 000, TENNESSEE GAS PIPELINE COMPANY
CAG–2.
DOCKET# RP98–380, 000, EAST TENNESSEE NATURAL GAS COMPANY
CAG–3.
DOCKET# RP98–381, 000, TRANSCONTINENTAL GAS PIPE LINE CORPORATION
CAG–4.
DOCKET# RP98–384, 000, DESTIN PIPELINE COMPANY, L.L.C.
OTHER #S CP96–655, 003, DESTIN PIPELINE COMPANY, L.L.C.
CAG–5.
DOCKET# RP98–394, 000, TRANSCONTINENTAL GAS PIPE LINE CORPORATION
CAG–6.
DOCKET# GT98–91, 000, OZARK GAS TRANSMISSION SYSTEM
CAG–7.
DOCKET# RP98–113, 003, COLORADO INTERSTATE GAS COMPANY
CAG–8.
DOCKET# RP98–379, 000, NATURAL GAS PIPELINE COMPANY OF AMERICA
CAG–9.
DOCKET# RP98–385, 000, NORTHERN NATURAL GAS COMPANY
CAG–10.
DOCKET# RP98–386, 000, NORTHERN NATURAL GAS COMPANY
OTHER #S RP98–386, 001, NORTHERN NATURAL GAS COMPANY
CAG–11.
DOCKET# RP98–387, 000, WILLISTON BASIN INTERSTATE PIPELINE COMPANY
CAG–12.
DOCKET# RP98–390, 000, EL PASO NATURAL GAS COMPANY
CAG–13.
DOCKET# RP98–391, 000, COLORADO INTERSTATE GAS COMPANY
CAG–14.
DOCKET# RP98–392, 000, MISSISSIPPI RIVER TRANSMISSION CORPORATION
CAG–15.
DOCKET# RP98–395, 000, YOUNG GAS STORAGE COMPANY, LTD.
CAG–16.
DOCKET# RP98–398, 000, NORTHWEST PIPELINE CORPORATION
CAG–17.
DOCKET# PR98–13, 000, THE PEOPLES GAS LIGHT AND COKE COMPANY
CAG–18.
DOCKET# RP98–158, 002, NORAM GAS TRANSMISSION COMPANY
CAG–19.
DOCKET# RP97–184, 000, CROSSROADS PIPELINE COMPANY
CAG–20.
DOCKET# RP98–99, 003, TENNESSEE GAS PIPELINE COMPANY
CAG–21.
DOCKET# TM98–9–29, 001, TRANSCONTINENTAL GAS PIPE LINE CORPORATION
CAG–22.
DOCKET# RP98–38, 000, NATURAL GAS PIPELINE COMPANY OF AMERICA
CAG–23.
DOCKET# SA98–61, 000, BRUCE F. WELNER
CAG–24.
DOCKET# RP93–109, 013, WILLIAMS GAS PIPELINES CENTRAL, INC.
CAG–25.
DOCKET# RP98–38, 003, NATURAL GAS PIPELINE COMPANY OF AMERICA
CAG–26.
DOCKET# RP98–39, 005, NORTHERN NATURAL GAS COMPANY
CAG–27.
DOCKET# RP98–40, 004, PANHANDLE EASTERN PIPE LINE COMPANY
CAG–28.
DOCKET# RP98–52, 004, WILLIAMS GAS PIPELINES CENTRAL, INC.
CAG–29.
DOCKET# RP98–53, 004, K N INTERSTATE GAS TRANSMISSION COMPANY
CAG–30.
DOCKET# RP98–54, 005, COLORADO INTERSTATE GAS COMPANY
CAG–31.
DOCKET# RP98–356, 001, MISSISSIPPI RIVER TRANSMISSION CORPORATION
CAG–32.
DOCKET# RP98–397, 000, WILLISTON BASIN INTERSTATE PIPELINE COMPANY
CAG–33.
OMITTED
CAG–34.
OMITTED
CAG–35.
DOCKET# RP98–44, 000, EL PASO NATURAL GAS COMPANY
CAG–36.
DOCKET# RP98–206, 001, ATLANTA GAS LIGHT COMPANY
CAG–37.
OMITTED
CAG–38.
DOCKET# TM98–2–53, 004, K N INTERSTATE GAS TRANSMISSION COMPANY
OTHER#S RP98–117, 000, K N INTERSTATE GAS TRANSMISSION COMPANY
CAG–39.
DOCKET# RP96–190, 007, COLORADO INTERSTATE GAS COMPANY
OTHER#S RP96–190, 008, COLORADO INTERSTATE GAS COMPANY
CAG–40.
DOCKET# RP98–99, 004, TENNESSEE GAS PIPELINE COMPANY
CAG–41.
DOCKET# RP98–42, 003, ANR PIPELINE COMPANY
CAG–42.
DOCKET# RP98–216, 000, NORTHWEST PIPELINE COMPANY
CAG–43.
DOCKET# RP95–408, 023, COLUMBIA GAS TRANSMISSION CORPORATION
CAG–44.
DOCKET# RP97–406, 015, CNG TRANSMISSION CORPORATION
CAG–45.
DOCKET# RP98–235, 000, GAS RESEARCH INSTITUTE
CAG–46.
DOCKET# OR98–11, 000, SFPP, L.P.
CAG–47.
DOCKET# MG98–7, 001, MIDCOAST INTERSTATE TRANSMISSION, INC.
CAG–48.
DOCKET# CP98–74, 001, ANR PIPELINE COMPANY V. TRANSCONTINENTAL GAS PIPE LINE CORPORATION
CAG–49.
DOCKET# CP98–238, 001, DESTIN PIPELINE COMPANY, L.L.C.
CAG–50.
DOCKET# CP97–781, 000, NATIONAL FUEL GAS SUPPLY CORPORATION
OTHER#S CP97–781, 001, NATIONAL FUEL GAS SUPPLY CORPORATION
CAG–51.
DOCKET# CP98–218, 000, NORTHERN NATURAL GAS COMPANY
OTHER#S CP98–277, 000, TRANSOK, L.L.C.
CAG–52.
DOCKET# CP98–20, 000, NATURAL GAS PIPELINE COMPANY OF AMERICA
CAG–53.
DOCKET# CP98–250, 000, PUGET SOUND ENERGY, INC.
OTHER#S CP98–285, 000, NORTHWEST PIPELINE CORPORATION
CAG–54.
DOCKET# RP95–362, 000, KOCH GATEWAY PIPELINE COMPANY
CAG–55.
DOCKET# CP98–755, 000, TRANSCONTINENTAL GAS PIPE LINE CORPORATION

Hydro Agenda

H–1.
RESERVED

Electric Agenda

E–1.
OMITTED

Oil and Gas Agenda

I. PIPELINE RATE MATTERS

PR–1.
DOCKET# RM96–1, 009, STANDARDS FOR BUSINESS PRACTICES OF INTERSTATE NATURAL GAS PIPELINES, ORDER NO. 587-I, ORDER ON REHEARING.

II. PIPELINE CERTIFICATE MATTERS

PC–1.
DOCKET# RM98–9, 000, REVISION OF EXISTING REGULATIONS UNDER PART 157 AND RELATED SECTIONS OF THE COMMISSION'S REGULATIONS UNDER THE NATURAL GAS ACT, NOTICE OF PROPOSED RULEMAKING TO REVISE EXISTING REGULATIONS.

PC–2.
DOCKET# RM98–16, 000, COLLABORATIVE PROCEDURES FOR ENERGY FACILITY APPLICATIONS, NOTICE OF PROPOSED RULEMAKING ON ALTERNATIVE PRE-FILING COLLABORATIVE PROCESS FOR CERTIFICATE AND ABANDONMENT FILINGS.

PC–3.
DOCKET# RM98–17, 000, LANDOWNER NOTIFICATION, RESIDENTIAL AREA DESIGNATION, AND ENVIRONMENTAL FILING REQUIREMENTS, NOTICE OF TECHNICAL CONFERENCE ON CHANGES TO ENVIRONMENTAL REVIEW PROCESS.

David P. Boergers,

Secretary.

[FR Doc. 98–25825 Filed 9–23–98; 2:09 pm]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–100141; FRL–6031–3]

STG, Inc.; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This is a notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). STG, Inc. has been awarded a contract to perform work for the EPA Region III Office, and will be provided access to certain information submitted to EPA under FIFRA and the FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. This information will be transferred to STG, Inc. consistent with the requirements of 40 CFR 2.307(h)(3) and 2.308(i)(2), and will enable STG, Inc. to fulfill the obligations of the contract.

DATES: STG, Inc. will be given access to this information no sooner than September 30, 1998.

FOR FURTHER INFORMATION CONTACT: By mail: C. Jean Sadlowe Information Resources Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 230, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5362; e-mail: sadlowe.jean@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under contract No. GS03T98–DSD–0003, Order No. EPD688768, STG, Inc. will provide computer operations support to the EPA computer center. STG, Inc. will be responsible for the operation and support of a minicomputer and multiple file servers with varied operation system platforms; support the LAN and Internet functions; provide data entry and retrieval; and support telecommunications equipment. This contract involves no subcontractors.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of the FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(3), the contract with STG, Inc. prohibits use of the information for any purpose not specified in the contract; prohibits disclosure of the information to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA Information Security Manual. In addition, STG, Inc. is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to this contractor until the above requirements have been fully satisfied. Records of information provided to this contractor will be maintained by the Project Officers for this contract in the EPA Region III Office.

All information supplied to STG, Inc. by EPA for use in connection with this contract will be returned to EPA when STG, Inc. has completed its work.

List of Subjects

Environmental protection, Transfer of data.

Dated: September 15, 1998.

Richard D. Schmitt,

Acting Director, Information Resource and Services Division, Office of Pesticide Programs.

[FR Doc. 98–25630 Filed 9–24–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–100140; FRL–6031–2]

Computer Based Systems, Inc.; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This is a notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Computer Based Systems, Inc. has been awarded a contract to perform work for the EPA, Office of Pesticide Programs (OPP), and will be provided access to certain information submitted to EPA under FIFRA and the FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. This information will be transferred to Computer Based Systems, Inc. consistent with the requirements of 40 CFR 2.307(h)(3) and 2.308(i)(2), and will enable Computer Based Systems, Inc. to fulfill the obligations of the contract.

DATES: Computer Based Systems, Inc. will be given access to this information no sooner than September 30, 1998.

FOR FURTHER INFORMATION CONTACT: By mail: C. Jean Sadlowe, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 230, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5362; e-mail: sadlowe.jean@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under Contract No. 68–W–98–045, work assignment number P98–1, Computer Based Systems, Inc. will perform data entry, abstracting, and indexing functions in support of maintaining the Incident Data System, a data base system that manages information about pesticide incidents. This contract involves no subcontractor.

OPP has determined that access by Computer Based Systems, Inc. to information on all pesticide chemicals is necessary for the performance of this contract.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of the FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(2), the contract with Computer Based Systems, Inc. prohibits use of the information for any purpose not specified in the contract; prohibits disclosure of the information to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA Information Security Manual. No information claimed confidential will be provided to this contractor until the above requirements have been fully satisfied. Records of information provided to this contractor will be maintained by the Work Assignment Manager for this contract in the EPA Office of Pesticide Programs. All information supplied to Computer Based Systems, Inc. by EPA for use in connection with this contract will be returned to EPA when Computer Based Systems, Inc. has completed its work.

List of Subjects

Environmental protection, Transfer of data.

Dated: September 15, 1998.

Richard D. Schmitt,

Acting Director, Information Resources and Services Branch, Office of Pesticide Programs.

[FR Doc. 98–25631 Filed 9–24–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5495–7]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared August 17, 1998 Through August 21, 1998 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as Amended

Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1998 (62 FR 17856).

Draft EISs

ERP No. D–DOC–C39012–PR Rating LO, Corals and Reef Associated Plants and Invertebrates, Fishery Management Plan, Amendment I Marine Conservation District (MCD), Exclusive Economic Zone (EEZ), Puerto Islands and U.S. Virgin Islands, PR and VI.

Summary: EPA believed that any of the three options being considered will further the objectives of the Coral Fishery Management Plan and will result in beneficial environmental impacts to the aquatic resources in the US Caribbean. Therefore, in accordance with EPA policy, EPA does not object to the projects implementation.

ERP No. D–DOE–A09828–00 Rating EC2, Surplus Plutonium Disposition (DOE/EIS–0283) for Siting, Construction and Operation of three facilities for Plutonium Disposition, Possible Sites Hanford, Idaho National Engineering and Environmental Laboratory, Pantex Plant and Savannah River, CA, ID, NM, SC, TX and WA.

Summary: EPA expressed environmental concern based on the effects on water and ecological resources and the presence of contamination in the existing environment and lack of assurance that the proposed operations would not lead to further adverse impacts.

ERP No. D–GSA–C60004–NY Rating EC2, Governors Island Disposition of Surplus Federal Real Property, Implementation, Upper New York Bay, NY.

Summary: EPA expressed environmental concerns about potentially significant indirect impacts to historic resources and air quality which could result from the implementation of this project, and that additional information (2) should be presented in the final EIS to address these concerns.

ERP No. D–NOA–A91064–00 Rating EC1, Atlantic Bluefish Fishery Management, Fishery Management Plan, Implementation, Nova Scotia to Florida, Northwestern Atlantic Ocean.

Summary: EPA expressed environmental concerns that supported the suite of management alternatives to be implemented to rebuild bluefish stocks. Reduction of fish limits per angler from ten to four/five bluefish was recommend for recreational fishing.

Final EISs

ERP No. F–FAA–F51043–MN, Dual Track Airport Planning Process, Construction and Expansion, Minneapolis-St. Paul International Airport, Twin Cities, Hennepin and Dakota Counties, MN.

Summary: EPA stated that the FEIS did not provide the level of information that is necessary to fully assess all environmental impacts of the preferred alternative. EPA also expressed objections regarding segmentation of the Runway 4–22 extension project. In addition, the FEIS is lacking the following information: (1) Existing 1994 aircraft operations; (2) details supporting the ''Finding of No Practicable Alternative'' for wetlands lose; (3) clear distinction between impacts associated with plans for 2010 versus 2020; and (4) summaries of sub-alternatives evaluated in the previous studies.

ERP No. F–TVA–E09801–MS, Red Hills Power Project, Proposal to Purchase 440 megawatts (MW) of Electrical Energy, COE Section 404 Permit, Town of Ackerman, Choctaw County, MS.

Summary: EPA continued to have environmental concerns about the project, due to the potential impact of the proposed power plant and surface coal mining operations on environmentally sensitive sites.

Dated: September 22, 1998.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 98–25748 Filed 9–24–98; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5495–6]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 OR (202) 564–7153.

Weekly receipt of Environmental Impact Statements

Filed September 14, 1998 Through September 18, 1998

Pursuant to 40 CFR 1506.9.

EIS No. 980365, Final EIS, AFS, OR, Christy Basin Planning Area, Implementation, Regeneration Timber Harvesting, Willamette National Forest, Oakridge Ranger District, Lane County, OR, *Due:* October 26, 1998, *Contact:* Tim Bailey (541) 782–2283.

EIS No. 980366, Draft EIS, BLM, NV, Sonoma-Gerlach and Paradise-Denio Management Framework Plans Amendment, Implementation of Management of the Black Rock Desert,

Humboldt, Pershing and Washoe Counties, NV, *Due:* November 9, 1998, *Contact:* Gerald Moritz (702) 623–1500.

EIS No. 980367, Draft EIS, AFS, UT, Pine Tract Project, Implementation, Coal Lease Tract (UTU–76195); Modification to Federal Coal Lease (U–63214 Quitchupah Lease) and Permit Amendment Application to Subside Box Canyon, Manti-La Sal National Forest, Ferron/Price Ranger District, Emery and Sevier Counties, UT, *Due:* November 9, 1998, *Contact:* Liane Mattson (435) 637–2817.

EIS No. 980368, Draft Supplement, FHW, IN, IN–145 New Road Construction, Updated Information IN–37 and the existing I–64 Interchange near St. Croix in Perry County to the east junction of IN–64 and IN–145 in Crawford County, IN, *Due:* November 18, 1998, *Contact:* Arthur A. Fendrick (317) 226–7475.

EIS No. 980369, Draft EIS, BLM, AZ, Dos Pobres/San Juan Mining Plan and Land Exchange, Implementation of two Open Pit Copper Mines and one Central Ore Facility, NPDES and COE Section 404 Permits, Graham County, AZ, *Due:* November 25, 1998, *Contact:* Tom Terry (520) 348–4400.

EIS No. 980370, Final EIS, NOA, AK, Kachemak Bay National Estuarine Research Reserve (KBNERR) Management Plan, Operations and Development, Southcentral, AK, *Due:* October 26, 1998, *Contact:* Jeffery R. Benoit (301) 713–3155.

EIS No. 980371, Draft EIS, DOI, CA, San Joaquin River Agreement Project, Implementation of the Meeting Flow Objectives for 1999–2010, Vernalis Adaptive Management Plan, San Joaquin, Stanislaus, Madera, Merced, Fresno and Tuolume Counties, CA, *Due:* November 9, 1998, *Contact:* Michael Delamore (209) 487–5039.

EIS No. 980372, Final EIS, FHW, IA, US–63 Eddyville Bypass Transportation Improvements, Funding and COE Section 404 Permit, the City of Eddyville, Mahaska, Monroe and Wapello Counties, IA, *Due:* October 26, 1998, *Contact:* Bobby W. Blackmon (515) 233–7300.

EIS No. 980373, Draft EIS, FHW, NV, AZ, US 93 Hoover Dam Bypass Project, Construction of a New Bridge and Highway, Funding, Right-of-Way Easement, US Coast Guard, NPDES and COE Section 404 Permits, Federal Lands—Lake Mead National Recreation Area and Hoover Dam Reservation, Clark County, NV and Mohave County, AZ, *Due:* November 10, 1998, *Contact:* Mr. Terry Haussler (303) 716–2116.

EIS No. 980374, Draft Supplement, NOA, AK, Groundfish Fishery of the Bering Sea and Aleutian Islands Area and Groundfish of the Gulf of Alaska, Implementation of Groundfish Total Allowable Catch Specifications and Prohibited Species Catch Limits Under the Authority of the Fishery Management Plans, AK, *Due:* November 9, 1998, *Contact:* James Balsiger (907) 586–7645.

Amended Notices

EIS No. 980344, Draft Supplement, NOA, Northeast Multispecies Fishery Management Plan, Updated Information concerning Overfishing of Red Hake and Silver Hake Fishiers, Northeast United States, *Due:* October 26, 1998, *Contact:* Kathi Rodrigues (978) 281–9300. Published FR 09–11–98, Correction to Telephone.

EIS No. 980358, Draft EIS, USA, HI, Schofield Barracks Wastewater Treatment Plant (WWTP), Effluent Treatment and Disposal, NPDES Permit and COE Section 404 Permit, City of County of Honolulu, Oahu, HI, *Due:* November 2, 1998, *Contact:* William Eng (703) 428–7078. Published FR—09–18–98—Due Date didn't show up Previous **Federal Register**.

Dated: September 22, 1998.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 98–25749 Filed 9–24–98; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6167–3]

Common Sense Initiative Council, (CSIC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of Public Advisory CSI Printing Sector Subcommittee and CSI Council Meetings: open meetings.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Printing Sector Subcommittee and the CSI Council will meet on the dates and times described below. Both meetings are open to the public. Seating at both meetings will be a first-come basis and limited time will be provided for public comment. For further information concerning specific meetings, please contact the individuals listed with the two announcements below.

(1) Printing Sector Subcommittee Meeting—October 14, 1998

Notice is hereby given that the Environmental Protection Agency will hold an open meeting of the CSI Printing Sector Subcommittee on October 14, 1998. Workgroup meetings will be held on October 13 from 9:00 a.m. EST until 5:30 p.m. EST and on October 14 from 8:00 a.m. EST until 12:00 p.m. EST. The Subcommittee meeting will be held on October 14 from 1:00 p.m. EST until 4:30 p.m. EST. The meetings will be held at the Doubletree Hotel Park Terrace on Embassy Row located at 1515 Rhode Island Avenue, NW in Washington, D.C.

The purpose of the meeting will be for the New York City Education Project team to present their plan for concluding the New York City Education Project and the PrintSTEP project team will present the implementation plan for the state grant program. A formal agenda will be available at the meeting.

For further information concerning meeting times and agenda of this Printing Sector Subcommittee meeting, please contact Gina Bushong, Designated Federal Officer (DFO), at EPA by telephone on (202) 564–2242 in Washington, D.C., by fax on (202) 564–0009, or by E-mail at bushong.gina@epa.gov.

(2) Common Sense Initiative Council Meeting—October 15, 1998

The CSI Council will meet on Thursday, October 15, 1998, in the Horizon Ballroom of the Ronald Reagan International Trade Center, 1300 Pennsylvania Ave., N.W. Washington, D.C. The meeting will be held from 8:30 a.m. EST to 5:00 p.m. EST. The telephone number is (202) 312–1300.

The agenda will include discussion of four action plans concerning the sector-based approach to environmental protection, stakeholder involvement, data quality, and data gaps. The Council will also consider two recommendations from the Computers and Electronics Sector Subcommittee regarding the Consolidated Uniform Report on the Environment (CURE), and a performance track program.

Furthermore, it will be announced that the General Services Administration has extended the CSI Council's Federal Advisory Committee charter for four months until February 17, 1999. The final meeting of the CSI Council is tentatively scheduled for December 1998.

For further information concerning this Common Sense Initiative Council meeting, contact Kathleen Bailey,

Designated Federal Officer, on (202) 260–7417, or E-mail: bailey.kathleen@epa.gov.

Inspection of Subcommittee Documents: Documents relating to the above topics will be publicly available at the meeting. Thereafter, these documents and the minutes of the meeting will be available for public inspection in room 3802M of EPA Headquarters, 401 M Street, SW, Washington, D.C. 20460, telephone number 202-260–7417. Common Sense Initiative information can be accessed electronically on our web site at http./ /www.epa.gov/commonsense.

Dated: September 18, 1998.

Kathleen Bailey,

Designated Federal Officer.

[FR Doc. 98–25627 Filed 9–24–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30460; FRL–6031–6]

Certain Companies; Applications to Register Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments must be submitted by October 26, 1998.

ADDRESSES: By mail, submit written comments identified by the document control number [OPP–30460] and the file symbols to: Public Information and Records Intregrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Environmental Protection Agency, Rm. 119, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instructions under ''SUPPLEMENTARY INFORMATION.'' No Confidential Business Information (CBI) should be submitted through e-mail.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. The public docket is available for public inspection in Rm. 119 at the Virginia address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Joanne I. Miller, Product Manager (PM-23), Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 237, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703 305–6224, e-mail: miller.joanne@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

I. Products Containing Active Ingredients Not Included In Any Previously Registered Products

1. File Symbol: 7969–RLT. Applicant: BASF Corporation, P.O. Box 13528, Research Triangle Park, NC 27709. Product Name: Diflufenzopyr Technical Herbicide. Herbicide. Active ingredient: Diflufenzopyr [2-[1-[[[(3,5-difluorophenyl)amino]carbonyl]-hydrazono]ethyl]-3-pyridinecarboxylic acid] at 99.1%. Proposed classification/ Use: None. For formulation of herbicides for use on corn.

2. File Symbol: 7969–RLR. Applicant: BASF Corp. Product Name: Sodium Diflufenzopyr Technical Herbicide. Herbicide. Active ingredient: Sodium salt of diflufenzopyr: 2-[1-[[[(3,5-difluorophenyl)amino] carbonyl]hydrazono]ethyl]-3-pyridinecarboxylic acid, sodium salt at 93%. Proposed classification/Use: None. For formulation of herbicides for use on corn.

3. File Symbol: 7969–RLN. Applicant: BASF Corp. Product Name: BAS 662H 70WG Herbicide. Herbicide. Diflufenzopyr Technical Herbicide. Herbicide. Active ingredients: Sodium salt of diflufenzopyr: 2-[1-[[[(3,5-difluorophenyl)amino] carbonyl]hydrazono]ethyl]-3-pyridinecarboxylic acid at 21.4% and Sodium salt of 3,6-dichloro-o-anisic acid at 55%. Proposed classification/ Use: None. For control of annual broadleaf weeds and grasses on corn.

4. File Symbol: 100–ONO. Applicant: Novartis Crop Protection, Inc., P.O. Box 18300, Greensboro, NC 27419. Product Name: Clodinafop-propargyl Technical. Herbicide. Active ingredient: Clodinafop-propargyl: propanoic acid, 2-[4-[(5-chloro-3-fluoro-2-pyridinyl)oxy]phenoxy]-,2-propynyl ester at 93%. Proposed classification/ Use: None. For formulation only into herbicides for weed control in certain crops.

5. File Symbol: 100–ONT. Applicant: Novartis Crop Protection. Product Name: Clodinafop 2E Herbicide. Herbicide. Active ingredient: Clodinafop-propargyl: propanoic acid, 2-[4-[(5-chloro-3-fluoro-2-pyridinyl)oxy]phenoxy]-,2-propynyl ester at 22.3%. Proposed classification/ Use: None. For use in wheat (including Durum) to control wild oats, green and yellow foxtail, and Persian darnel.

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

II. Public Record and Electronic Submissions

The official record for this notice, as well as the public version, has been established for this notice under docket number [OPP–30460] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official notice record is located at the address in ''ADDRESSES'' at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1/6.1 or ASCII file format. All comments and data in

electronic form must be identified by the docket number [OPP–30460]. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pest, Product registration.

Dated: September 15, 1998.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 98–25629 Filed 9–24–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–50846; FRL–6031–4]

Issuance of Experimental Use Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits to the following applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR part l72, which defines EPA procedures with respect to the use of pesticides for experimental use purposes.

FOR FURTHER INFORMATION CONTACT: By mail: Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person or by telephone: Contact the designated person at the following address at the office location, telephone number, or e-mail address cited in each experimental use permit: 1921 Jefferson Davis Highway, Arlington, VA.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permits:

70515–EUP–2. Issuance. J P BioRegulators, Inc., IR–4 Project Rutgers University, Cook College, P.O. Box 231, New Brunswick, NJ 08903–0231. This experimental use permit allows the use of 72 kilograms (each year) of the biochemical phospholipid: Lyso-PE (lysophosphatidylethanolamine) on 570 acres of apples, citrus, cranberries, grapes, nectarines, peaches, pears, strawberries, and tomatoes to evaluate ripening and extended storage shelf life. The program is authorized only in the States of Arizona, California, Florida, Massachussetts, Michigan, Ohio, Washington, West Virginia, and Wisconsin. The experimental use permit is effective from August 18, 1998 to June 1, 2001. A temporary exemption from the requirement of a tolerance for residues of the active ingredient has been established (40 CFR 180.1199). (Sheila Moats, 9th Floor, CM #2, 703–308–1259, e-mail: moats.sheila@epamail.gov)

58035–EUP–4. Issuance. R J Advantage, Inc., 501 Murray Rd., Cincinnati, OH 45217–1014. This experimental use permit allows the use of 5,056 pounds of the biochemical methyl anthranilate to be used as an aerosol fogger to repel birds on a total of 1,600 acres in or around airports, backyards, electrical substations, golf courses, terrestrial roosts, transit or railway terminals, and urban areas. The program is authorized only in the States of California, Florida, Illinois, Indiana, Maryland, Ohio, Pennsylvania, Texas, and West Virginia. The experimental use permit is effective from July 15, 1998 to July 15, 2000. (Judy Loranger, 9th Floor, CM #2, 703–308–8056, e-mail: loranger.judy@epamail.gov)

Persons wishing to review these experimental use permits are referred to the designated contact person. Inquires concerning these permits should be directed to the person cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Experimental use permits.

Dated: September 14, 1998.

Kathleen D. Knox,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 98–25628 Filed 9–24–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6167–6]

Proposed Administrative Agreement and Covenant Not To Sue Under Section 122(h) of CERCLA for the South Andover Superfund Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposal of administrative agreement and covenant not to sue under section 122(h) of CERCLA for the South Andover Superfund site.

SUMMARY: In accordance with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. 9601 *et seq.*, as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), Pub. L. 99–499, notice is hereby given that a proposed administrative agreement and covenant not to sue under section 122(h) of CERCLA (Agreement), 42 U.S.C. 9622(h), for the South Andover Superfund Site (Site) located in Andover, Anoka County, Minnesota, has been executed by the Settling Parties: the City of Andover (City) and the Andover Economic Development Authority (Authority). The proposed Agreement has been submitted to the Attorney General for approval. The proposed Agreement would resolve certain potential claims of the United States under sections 106 and 107 of CERCLA, 42 U.S.C. sections 9606 and 9607, against the City and the Authority. The proposed Agreement would require the City and the Authority to continue to participate in the Voluntary Investigation and Cleanup Program, administered by the Minnesota Pollution Control Agency, for the further investigation and remediation of Site property acquired by the Settling Parties for the purpose of redeveloping a brownfields area, including the Site, as a light industrial/commercial zone. The Site is on the National Priorities List. The construction of a Remedial Action, implemented pursuant to an August 27, 1993 consent decree between the United States and a number of Potentially Responsible Parties, has been completed. No further U.S. EPA response actions are contemplated at this time, other than any future remaining activities that may be required under the August 27, 1993 consent decree.

DATES: Comments on the proposed Agreement must be received by EPA on or before October 26, 1998.

ADDRESSES: A copy of the proposed Agreement is available for review at U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Please contact Mr. Kevin C. Chow at (312) 353–6181, prior to visiting the Region 5 office.

Comments on the proposed Agreement should be addressed to Kevin C. Chow, Office of Regional Counsel, U.S. EPA, Region 5, 77 West Jackson Boulevard (Mail Code C–14J), Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT:

Kevin C. Chow at (312) 353–6181, of the U.S. EPA, Region 5 Office of Regional Counsel.

A 30-day period, commencing on the date of publication of this notice, is open for comments on the proposed Agreement pursuant to section 122(i) of CERCLA, 42 U.S.C. 9622(i). Comments should be sent to the addressee identified in this document.

Wendy L. Carney,

Acting Director, Superfund Division, Region 5.

[FR Doc. 98–25626 Filed 9–24–98; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) submitted to OMB for Review and Approval

September 14, 1998.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated information techniques or other forms of information technology.

DATES: Written comments should be submitted on or before October 26, 1998. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at 202–418–0217 or via internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0667.

Title: Section 76.630, Compatibility with Consumer Electronics Equipment.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business and other for-profit entities.

Number of Respondents: 11,000.

Estimated Time Per Response: 1–3 hours.

Frequency of Response: On occasion reporting requirements; Third party disclosure.

Total Annual Burden: 11,160 hours.

Cost to Respondents: $19,300 ($960 filing fee/request; stationery and postage costs).

Needs and Uses: Section 76.630 (a) states that cable system operators shall not scramble or otherwise encrypt signals carried on the basic service tier, though operators may file requests for waivers of this prohibition with the Commission. When filing requests for waivers of this prohibition, operators must notify subscribers by mail of waiver requests. Section 76.630(c) states that cable system operators that use scrambling, encryption or similar techniques shall offer to supply each subscriber with special equipment that will enable the simultaneous reception of multiple signals. This offer of special equipment must be made to new subscribers at the time they subscribe, to all subscribers at least once each year, and to subscribers that make such requests at any time. Section 76.630(d) states that cable system operators shall provide a consumer education program on compatibility matters to their subscribers in writing. The information shall be provided to subscribers at the time that they first subscribe and at least once a year thereafter, and may be included in one of the cable system's regular subscriber billings. The Commission has set forth these disclosure requirements for consumer protection purposes, to inform subscribers of compatibility matters, and notify subscribers of cable operators' requests to waive the prohibition on signal encryption.

OMB Approval Number: 3060–XXXX.

Title: Commercial Availability of Navigation Devices.

Type of Review: New collection.

Respondents: Businesses or other for-profit entities.

Number of Respondents: 200.

Estimated Time Per Response: 10 minutes to 40 hours.

Frequency of Response: Semi-annual and on occasion reporting requirements; Third party disclosure.

Total Annual Burden to Respondents: 3,266 hours.

Total Annual Cost to Respondents: $29,632.

Needs and Uses: The disclosure requirements set forth in this proceeding will ensure that consumers can make informed decisions about the purchase and proper installation of navigation devices. The Section 76.1207 petition process will give providers of multichannel video programming and equipment providers a forum in which to request relief from regulations adopted under this part for a limited time, provided that there is an appropriate showing that such a waiver is necessary to assist the development or introduction of a new or improved multichannel video programming or other service offered over multichannel video programming systems, technology, or products. The Section 76.1208 petition process allows interested parties to petition the Commission to provide for a sunset of navigation devices regulations. The semiannual reports will be used by the Commission to monitor the progress of key industry entities of their efforts to assure the commercial availability of navigation devices.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 98–25679 Filed 9–24–98; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Submitted to OMB for Review and Approval

September 17, 1998.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that

does not display a valid control number. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated information techniques or other forms of information technology.

DATES: Written comments should be submitted on or before October 26, 1998. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at 202–418–0217 or via internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–XXXX.

Title: Application for Assignment of a Multipoint Distribution Service Authorization.

Form Number: FCC 305.

Type of Review: New collection.

Respondents: Business and other for-profit entities, and Not-for-profit institutions.

Number of Respondents: 160.

Estimated Time Per Response: 5 hours.

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 800 hours.

Cost to Respondents: $1,610,000.

Needs and Uses: The FCC has developed a new FCC Form 305 application form which streamlines the application process for assignment of a Multipoint Distribution Service (MDS) authorization. This new form will replace the FCC Form 702 (OMB Control No. 3060–0068) for facilities governed by 47 CFR Part 21. The new FCC Form 305 will collect only the information required to evaluate a proposed assignee's qualifications to become a Commission MDS licensee. This new form has been developed to accommodate the electronic filing of an assignment of authorization for MDS applicants. The data are used by FCC staff to determine if the applicant is qualified to become a licensee or permittee and to carry out the statutory provisions of Section 310 (d) of the Communications Act of 1934, as amended.

OMB Approval Number: 3060–XXXX.

Title: Application for Transfer of Control of a Multipoint Distribution Service Authorization.

Form Number: FCC 306.

Type of Review: New collection.

Respondents: Business and other for-profit entities, and Not-for-profit institutions.

Number of Respondents: 20.

Estimated Time Per Response: 5.5 hours.

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 110 hours.

Cost to Respondents: $211,190.

Needs and Uses: The Commission has developed a new FCC Form 306 application which streamlines the application process for transfer of control of a Multipoint Distribution Service (MDS) authorization. This new form will replace the FCC Form 704 (OMB Control No. 3060–0048) for facilities governed by 47 CFR Part 21. The new FCC Form 306 will collect only the information required to evaluate a proposed transferee's qualifications to become a Commission MDS licensee. This new form has been developed to accommodate electronic filing of a transfer of control of an authorization for MDS applicants.

FCC Form 306 is to be used to apply for authority to transfer control of an MDS authorization pursuant to 47 CFR 21.11, 21.38, and 21.39. The data are used by FCC staff in determining if the applicant is qualified to become a Commission licensee or permittee and to carry out the statutory provisions of Section 310 (d) of the Communications Act of 1934, as amended.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 98–25680 Filed 9–24–98; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

Renewing of Charter of the Network Reliability and Interoperability Council and Notice of Meeting

September 18, 1998.

AGENCY: Federal Communications Commission.

ACTION: Notice of public meeting.

SUMMARY: The Charter of the Network Reliability and Interoperability Council was renewed on January 6, 1998. Amendments to that Charter will be forthcoming, and in accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice advises interested persons of a meeting of the Network Reliability and Interoperability Council (''Council''), which will be held at the Federal Communications Commission in Washington, D.C.

DATES: October 14, 1998 at 9:30—1:30 a.m.

ADDRESSES: Federal Communications Commission, Room 856, 1919 M Street, N.W., Washington, D.C. 20554.

FOR ADDITIONAL INFORMATION CONTACT: Marsha MacBride, Director of the FCC Year 2000 Task Force and Designated Federal Officer of the Council, 2000 M Street, N.W., Suite 290, Washington, D.C. 20554; telephone (202) 418–418–2379.

SUPPLEMENTARY INFORMATION: The Council was established by the Federal Communications Commission to bring together leaders of the telecommunications industry and telecommunications experts from academic, consumer and other organizations to explore and recommend measures that would enhance network reliability.

The agenda for the meeting is as follows: the Council will determine how best to proceed with its tasks under its amended charter.

Members of the general public may attend the meeting. The Federal Communications Commission will attempt to accommodate as many people as possible. However, admittance will be limited to the seating available. The public may submit written comments to the Council's designated Federal Officer before the meeting.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 98–25678 Filed 9–24–98; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:30 p.m. on Tuesday, September 29, 1998, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous Board of Directors' meetings.

Reports of actions taken pursuant to authority delegated by the Board of Directors.

Discussion Agenda:

Memorandum and resolution re: Final Statement of Policy for Section 19 of the Federal Deposit Insurance Act.

Memorandum and resolution re: Amendments to Part 362—Activities and Investments of Insured State Banks; Part 303—Applications, Requests, Submittals, Delegations of Authority, and Notices Required to be Filed by Statute or Regulation; and Section 337.4—Securities Activities of Subsidiaries of Insured State Banks: Bank Transactions with Affiliated Securities Companies.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW, Washington, DC.

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 416–2449 (Voice); (202) 416–2004 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: September 22, 1998.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 98–25854 Filed 9–23–98; 2:02 pm]

BILLING CODE 6714–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1244–DR]

New York; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of New York, (FEMA–1244–DR), dated September 11, 1998, and related determinations.

EFFECTIVE DATE: September 17, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of New York, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 11, 1998.

Orleans County for Categories A and B under the Public Assistance program.

Onondaga County for Categories C through G under the Public Assistance program (already designated for Categories A and B and Individual Assistance).

Cayuga, Monroe, Fulton, and Oneida Counties for Individual Assistance (already designated for Categories A and B under the Public Assistance program).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–25714 Filed 9–24–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1244–DR]

New York; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of New York, (FEMA–1244–DR), dated September 11, 1998, and related determinations.

EFFECTIVE DATE: September 14, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of New York, is hereby amended to include Individual Assistance in those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 11, 1998.

Herkimer and Ontario for Categories A and B (debris removal and emergency protective measures) under the Public Assistance program.

Herkimer, Madison, Onondaga, and Wayne Counties for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–25715 Filed 9–24–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1244–DR]

New York; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of New York (FEMA–1244-DR), dated September 11, 1998, and related determinations.

EFFECTIVE DATE: September 11, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 11, 1998, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of New York, resulting from severe storms and high winds on September 7, 1998, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93–288, as amended (''the Stafford Act''). I, therefore, declare that such a major disaster exists in the State of New York.

In order to provide Federal assistance, you are hereby authorized to allocate from funds

available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Categories A and B (debris removal and emergency protective measures) under the Public Assistance program, and Hazard Mitigation in the designated areas, and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Marianne C. Jackson of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of New York to have been affected adversely by this declared major disaster:

Categories A and B (debris removal and emergency protective measures) for the counties of Cayuga, Fulton, Madison, and Onondaga.

All counties within the State of New York are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 98–25716 Filed 9–24–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL MARITIME COMMISSION

Fact Finding Investigation No. 23—Ocean Common Carrier Practices in the Transpacific Trades; Order of Investigation

Pursuant to the Shipping Act of 1984, 46 U.S.C. app. 1701 *et seq.* (''Act''), the Federal Maritime Commission (''Commission'') is responsible for administering a nondiscriminatory regulatory process for the common carriage of goods by water in the foreign commerce of the United States. Section 10 of the Act contains specific prohibitions against conduct which would conflict with this system of common carriage.

During the past few weeks, the Commission has received information and allegations that ocean common carriers in the eastbound Transpacific trades have engaged in activities that may be inconsistent with their obligations as common carriers, and that may be in violation of certain section 10 prohibitions. The activities are said to include various forms of refusals of space for cargo unless the shipper agrees to significantly increase rates or charges, and/or the imposition of novel charges such as an ''Additional Space Protection Surcharge'' or ''Container Repositioning Charge.'' Ocean carriers engaged in this activity appear to include conference lines as well as independents, and may include carrier actions taken individually or collectively. There are some indications that these activities are targeted solely toward small and medium sized shippers and non-vessel-operating common carriers. Large, ''champion'' accounts are said to be exempt from these pressures to pay additional or increased charges to obtain bookings.

The current situation in the inbound Transpacific trades is reported to be one of excess cargo and insufficient vessel space. The primary causes of this situation are said to be weak Asian economies, a strong U.S. dollar, and the holiday cargo surge. Exacerbating this inbound surplus of cargo is a significant decline in westbound shipments, causing an imbalance in cargo and in the need for carrier equipment. Nevertheless, ocean common carriers operating in U.S. trades have an obligation to treat shippers in a fair and non-discriminatory manner in the acceptance, handling and carriage of cargo. If there is insufficient space for the amount of cargo tendered, carriers may not refuse to accept cargo or bookings because of the level of revenue to be achieved by the particular shipment.

In *Banana Distributors, Inc.* v. *Grace Line*, 5 FMB 615, 620 (1959), the Commission was faced with a situation in which the amount of cargo exceeded the carrier's available space. The Commission found that: ''Where the demand for space exceeds the supply, the law is clear: a common carrier must equitably prorate its available space among shippers. *Penna. R.R. Co.* v. *Puritan Coal Co.*, 237 U.S. 121 (1915); *Patrick Lumber Co.* v. *Calmar S.S. Corp.*, 2 U.S.M.C. 494 (1941).'' *Id.* at 625. While that decision was rendered under the Shipping Act, 1916, nothing contained in the 1984 Act, or in subsequent case law, would appear to alter this obligation of common carriers subject to regulation by the Commission to ''equitably prorate'' available space.

In view of these allegations and information, the Commission has determined to commence this nonadjudicatory investigation to gather facts related to recent practices by ocean common carriers in the transpacific trades. Specifically, the Investigative Officer named herein is to develop a record on various practices allegedly engaged in by ocean common carriers in recent weeks, either individually or collectively, to obtain, or attempt to obtain, higher rates or charges for carrying cargo in the inbound trades from the Far East to the United States, including:

1. Demands for rates other than those set forth in applicable tariffs or service contracts;
2. Refusals to accept cargo or provide service absent payment of higher rates;
3. Demands for renegotiation or amendment of service contracts under threat of non-acceptance of cargo;
4. Improper termination of service contracts and application of higher tariff rates;
5. Acceptance of low rated cargo as misdescribed higher rated cargo;
6. ''Voluntary'' rate increases;
7. Unlawful preference or discrimination by exempting large shippers or ''champion accounts'' from rate increases or service refusals;
8. The imposition of unreasonable increases in rates or charges; and
9. Other, similar, practices which may be violative of the Act or Commission regulations.

The Investigative Officer is to report to the Commission within the time specified herein, with recommendations for any further Commission action, including any formal adjudicatory, injunctive or rulemaking proceedings, warranted by the factual record developed in this proceeding.

Interested persons are invited and encouraged to contact the Investigative Officer named herein, at (202) 523–5721 (Phone) or (202) 523–0298 (Fax), should they wish to provide testimony or evidence, or to contribute in any other manner to the development of a complete factual record in this proceeding.

Therefore it is ordered, That pursuant to sections 6, 10, 11, 12 and 15 of the Shipping Act of 1984, 46 U.S.C. app. 1705, 1709, 1710, 1711 and 1714, and Part 502, Subpart R of Title 46 of the Code of Federal Regulations, 46 CFR 502.281, *et seq.*, a nonadjudicatory investigation is hereby instituted into practices of ocean common carriers in the Transpacific trades, to develop the

issues set forth above and to provide a basis for any subsequent regulatory, adjudicatory or injunctive action by the Commission.

It is further ordered, That the Investigative Officer shall be Commissioner D.J.H. Won of the Commission. The Investigative Officer shall be assisted by staff members as may be assigned by the Commission's Managing Director and shall have full authority to hold public or non-public sessions, to resort to all compulsory process authorized by law (including the issuance of subpoenas ad testificandum and duces tecum), to administer oaths, to require reports, and to perform such other duties as may be necessary in accordance with the laws of the United States and the regulations of the Commission;

It is further ordered, That the Investigative Officer shall issue a report of findings and recommendations no later than 90 days after publication of this Order in the **Federal Register**, and interim reports if it appears that more immediate Commission action is necessary, such reports to remain confidential unless and until the Commission provides otherwise;

It is further ordered, That this proceeding shall be discontinued upon acceptance of the final report of findings and recommendations by the Commission, unless otherwise ordered by the Commission; and

It is further ordered, That notice of this Order be published in the **Federal Register**.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 98–25636 Filed 9–24–98; 8:45 am]

BILLING CODE 6730–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Safety and Occupational Health Study Section; NIOSH Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting:

Name: Safety and Occupational Health Study Section (SOHSS), National Institute for Occupational Safety and Health (NIOSH).

Times and Dates: 8 a.m.–5:30 p.m., October 29, 1998; 8 a.m.–5:30 p.m., October 30, 1998.

Place: Holiday Inn, 5520 Wisconsin Ave., Washington, DC 20815.

Status: Open 8 a.m.–8:30 a.m. October 29, 1998; Closed 8:30 a.m.–5:30 p.m. October 29, 1998; Closed 8 a.m.–5:30 p.m. October 30, 1998.

Purpose: The Safety and Occupational Health Study Section will review, discuss, and evaluate grant application(s) received in response to the Institute's standard grants review and funding cycles pertaining to research issues in occupational safety and health and allied areas. The Study Section will also consider grant applications received in response to the Institute's numbered solicitations as follows:

Request for Application Number 98030 entitled, ''Occupational Radiation and Energy-Related Health Research Grants,'' which pertains to the following endeavors: (a) research to identify and investigate the relationships between health outcomes and occupational exposure to radiation and other hazardous agents; (b) epidemiological methods research relevant to energy-related occupational health research; and (c) research related to assessing occupational exposures. The focus of the proposed research should reflect the following topical areas, emphasizing field research: (1) retrospective exposure assessment; (2) radiation measurement issues; (3) non-cancer morbidity and mortality outcomes; (4) meta-analysis and combined analysis methodologies; (5) uncertainty analysis; (6) effects of measurement error on risk estimates; (7) studies of current workers; and (8) risk communication and worker outreach.

Request for Application Number 98056 entitled, ''Mining Occupational Safety and Health Research Grants,'' which pertains to the following endeavors: (a) research to develop knowledge that can be used to prevent occupational diseases and injuries to miners; (b) hypothesis-testing research to identify and quantify occupational health and safety hazards to miners; (c) methods and technology development to measure and control mining related safety hazards; and (d) strategies to translate research findings so that they might be applied to solve health and safety problems in mines. The focus of the proposed grants should emphasize research in the following topical areas, which are in priority order: (1) hearing loss prevention; (2) mining injury prevention; (3) dust and toxic substance control; (4) social and economic consequences of mining illness and injury; and (5) surveillance.

It is the intent of NIOSH to support broad-based research endeavors in keeping with the Institute's program goals which will lead to improved understanding and appreciation for the magnitude of the aggregate health burden associated with occupational injuries and illnesses, as well as tO support more focused research projects which will lead to improvements in the delivery of occupational safety and health services and the prevention of work-related injury and illness. It is anticipated that research funded will promote these program goals.

Matters To Be Discussed: The meeting will convene in open session from 8–8:30 a.m. on October 29, 1998, to address matters related to the conduct of Study Section business. The remainder of the meeting will proceed in closed session. The purpose of the closed sessions is for the Safety and Occupational Health Study Section to consider safety and occupational health related grant applications. These portions of the meeting will be closed to the public in accordance with provisions set forth in section 552(c)(4) and (6) title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Pub. L. 92–463.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Pervis C. Major, Ph.D., Scientific Review Administrator, Office of Extramural Coordination and Special Projects, Office of the Director, NIOSH, 1095 Willowdale Road, Morgantown, West Virginia 26505. Telephone 304/285–5979.

Dated: September 18, 1998.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–25670 Filed 9–24–98; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0335]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Good Laboratory Practices (GLP) Regulations for Nonclinical Studies

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Submit written comments on the collection of information by October 26, 1998.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In compliance with section 3507 of the

PRA (44 U.S.C. 3507), FDA has submitted the following proposed collection of information to OMB for review and clearance.

Good Laboratory Practices (GLP) Regulations for Nonclinical Studies, 21 CFR Part 58—(OMB Control Number 0910–0119—Extension)

Sections 409, 505, 512, and 515 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348, 355, 360b, and 360e) and related statutes require manufacturers of food additives, human drugs and biological products, animal drugs, and medical devices to demonstrate the safety and utility of their product by submitting applications to FDA for research or marketing permits. Such applications contain, among other important items, full reports of all studies done to demonstrate product safety in man and/or other animals. In order to ensure adequate quality control for these studies and to provide an adequate degree of consumer protection, the agency issued the GLP regulations. The regulations specify minimum standards for the proper conduct of safety testing and contain sections on facilities, personnel, equipment, standard operating procedures (SOP's), test and control articles, quality assurance, protocol and conduct of a safety study, records and reports, and laboratory disqualification.

The GLP regulations contain requirements for the reporting of the results of quality assurance unit inspections, test and control article characterization, testing of mixtures of test and control articles with carriers, and an overall interpretation of nonclinical laboratory studies. The GLP regulations also contain recordkeeping requirements relating to the conduct of safety studies. Such records include: (1) Personnel job descriptions and summaries of training and experience; (2) master schedules, protocols and amendments thereto, inspection reports, and SOP's; (3) equipment inspection, maintenance, calibration, and testing records; (4) documentation of feed and water analyses and animal treatments; (5) test article accountability records; and (6) study documentation and raw data.

The information collected under the GLP regulations is generally gathered by testing facilities routinely engaged in conducting toxicological studies and is used as part of an application for a research or marketing permit that is voluntarily submitted to FDA by persons desiring to market new products. The facilities that collect this information are typically operated by large entities, e.g., contract laboratories, sponsors of FDA-regulated products, universities, or Government agencies. Failure to include the information in a filing to FDA would mean that agency scientific experts could not make a valid determination of product safety. FDA receives, reviews, and approves hundreds of new product applications each year based on information received. The recordkeeping requirements are necessary to document the proper conduct of a safety study, to assure the quality and integrity of the resulting final report, and to provide adequate proof of the safety of regulated products. FDA conducts on-site audits of records and reports, during its inspections of testing laboratories, to verify reliability of results submitted in applications.

In the **Federal Register** of June 10, 1998 (63 FR 31786), the agency requested comments on the proposed collections of information. No significant comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
58.35(b)(7)	400	60.25	24,100	1	24,100
58.185	400	60.25	24,100	27.65	666,400
Total burden hours					690,500

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
58.29(b)	400	20	8,000	.21	1,700
58.35(b)(1) to (b)(6) and (c)	400	270.76	108,400	3.36	363,900
58.63(b) and (c)	400	60	24,000	.09	2,200
58.81(a) to (c)	400	301.8	120,000	.14	16,800
58.90(c) and (g)	400	62.7	25,000	.13	3,200
58.105(a) and (b)	400	5	2,000	11.8	23,600
58.107(d)	400	1	400	4.25	1,700
58.113(a)	400	15.33	6,132	6.8	41,700
58.120	400	15.38	6,160	32.7	201,200
58.195	400	251.5	100,000	3.9	392,400
Total					1,048,400

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: September 17, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–25641 Filed 9–24–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98C–0790]

EM Industries, Inc.; Filing of Color Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that EM Industries, Inc., has filed a petition proposing that the color additive regulations be amended to provide for the safe use of synthetic iron oxide and mica to color food and to provide for the safe use of titanium dioxide to color food at levels higher than the current limit.

FOR FURTHER INFORMATION CONTACT: Aydin Örstan, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3076.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 721(d)(1) (21 U.S.C. 379e(d)(1))), notice is given that a color additive petition (CAP 8C0262) has been filed by EM Industries, Inc., 7 Skyline Dr., Hawthorne, NY 10532. The petition proposes to amend the color additive regulations to provide for the safe use of synthetic iron oxide and mica to color food and to provide for the safe use of titanium dioxide to color food at levels higher than the current limit.

The agency has determined under 21 CFR 25.32(r) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: September 4, 1998.

Laura M. Tarantino,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 98–25638 Filed 9–24–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0787]

Parke-Davis Pharmaceutical Research et al.; Withdrawal of Approval of 14 New Drug Applications and 13 Abbreviated New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of 14 new drug applications (NDA's) and 13 abbreviated new drug applications (ANDA's). The holders of the applications notified the agency in writing that the drug products were no longer marketed and requested that the approval of the applications be withdrawn.

EFFECTIVE DATE: September 25, 1998.

FOR FURTHER INFORMATION CONTACT: Olivia A. Pritzlaff, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: The holders of the applications listed in the table in this document have informed FDA that these drug products are no longer marketed and have requested that FDA withdraw approval of the applications. The applicants have also, by their request, waived their opportunity for a hearing.

Application No.	Drug	Applicant
NDA 3–402	Pitressin Tannate in Oil (Vasopressin Tannate), 5 Pressor Units, 1 milliliter	Parke-Davis Pharmaceutical Research, 2800 Plymouth Rd., Ann Arbor, MI 48105.
NDA 6–212	Propylthiouracil Tablets	Abbott Laboratories, 100 Abbott Park Rd., Abbott Park, IL 60064.
NDA 10–355	Quarzan (clindium bromide) Capsules	Hoffmann-LaRoche Inc., 340 Kingsland St., Nutley, NJ 07110–1199.
NDA 12–184	Norlutate (Norethindrone Acetate) 5-milligram (mg) Tablets	Parke-Davis Pharmaceuticals, 2800 Plymouth Rd., Ann Arbor, MI 48105.
NDA 12–470	Akrinol Cream	Schering-Plough Corp., 2000 Galloping Hill Rd., Kenilworth, NJ 07033.
NDA 13–294	Azo-Gantanol (sulfa-methoxazole and phenazo-pyridine hydrochloride) Tablets	Hoffmann-La Roche Inc.
NDA 16–020	Symmetrel (amantadine hydro-chloride) Capsules, 100 mg	Endo Pharmaceuticals, Inc., 500 Endo Blvd., Garden City, NY 11530.
NDA 16–191	Sorbitrate (isosorbide dinitrate) Sublingual Tablets, 2.5 and 5 mg	Zeneca Pharmaceuticals, a business unit of Zeneca, Inc., 1800 Concord Pike, P.O. Box 15437, Wilmington, DE 19850–5437.
NDA 17–117	Symmetrel (amantadine hydro-chloride) Capsules	Endo Pharmaceuticals, Inc.
NDA 17–552	Tylenol Acetminophen Extra Strength Tablets, 500 mg	McNeil Consumer Products Co., 7050 Camp Hill Rd., Fort Washington, PA 19034–2299.
NDA 18–179	Valrelease (diazepam) Capsules	Hoffman-LaRoche Inc.
NDA 50–345	Cordran N Ointment (flurandrenolide)	Lilly Research Laboratories.
NDA 50–346	Cordran N Cream (flurandrenolide)	Do.
NDA 50–379	Sterile Ophthalmic Solution Neo-Hydeltrasol (neomycin sulfate-prednisolone sodium phosphate ophthalmic solution)	Merck & Co., Inc., P.O. Box 4, BLA–20, West Point, PA 19486.
ANDA 62–385	Neomycin Sulfate Powder, USP (for compounding oral products)	Paddock Laboratories, Inc., 3940 Quebec Ave. North, Minneapolis, MN 55427.

Application No.	Drug	Applicant
ANDA 62–455	Polymyxin B Sulfate, USP (for prescription compounding)	Do.
ANDA 62–456	Bacitracin Powder, USP (for prescription compounding)	Do.
ANDA 74–084	Diltiazem Hydrochloride Tablets USP, 30 mg and 60 mg	Novopharm N.C., Inc., agent for Novopharm Ltd., 4700 Novopharm Blvd., Wilson, NC 27893.
ANDA 74–511	SULSTER (Sulfacetamide Sodium and Prednisolone Sodium Phosphate Ophthalmic Solution, 10%/eq. 0.23% phosphate)	Taylor Pharmaceuticals (an Akorn Co.), 150 South Wyckles Rd., P.O. Box 1220, Decatur, IL 62525–1220.
ANDA 80–025	Sulf-10 (Sulfacetamide Sodium Ophthalmic Solution, USP) 10%	Ciba Vision, 11460 Johns Creek Pkwy., Duluth, GA 30097–1556.
ANDA 83–648	Meprotabs (Meprobamate Tablets USP, 400 mg)	Wallace Laboratories, Division of Carter-Wallace, Inc., Half Acre Rd., P.O. Box 1001, Cranberry, NJ 08512–0181.
ANDA 85–136	Methocarbamol Tablets USP (750 mg)	Forest Laboratories, Inc., 909 Third Ave., New York, NY 10022–4731.
ANDA 85–137	Methocarbamaol Tablets USP (500 mg)	Inwood Laboratories, Inc., 909 Third Ave., New York, NY 10022–4731.
ANDA 86–228	Nitroglycerin Extended-release Capsules (2.5 mg)	Geneva Pharmaceuticals, Inc., 2655 West Midway Blvd., P.O. Box 446, Broomfield, CO 80038–0446.
ANDA 86–230	Nitroglycerin Extended-release Capsules (6.5 mg)	Do.
ANDA 87–797	Triamcinolone Acetonide Cream USP, 0.025%	Alpharma USPD, Inc., 333 Cassell Dr., suite 3500, Baltimore, MD 21224.
ANDA 88–220	Nitroglycerin Extended-release Capsules (9 mg)	Geneva Pharmaceuticals, Inc.

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) and under authority delegated to the Director, Center for Drug Evaluation and Research (21 CFR 5.82), approval of the applications listed in the table in this document, and all amendments and supplements thereto, is hereby withdrawn, effective September 25, 1998.

Dated: September 14, 1998.

Janet Woodcock,

Director, Center for Drug Evaluation and Research.

[FR Doc. 98–25713 Filed 9–24–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0503]

Agency Information Collection Activities; Announcement of OMB Approval; New Animal Drug Application (NADA), Form FDA 356 V, 21 CFR Part 514

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''New Animal Drug Application (NADA), Form FDA 356 V, 21 CFR Part 514'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 9, 1998 (63 FR 31505), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under section 3507 of the PRA (44 U.S.C. 3507). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0032. The approval expires on July 31, 2001.

Dated: September 17, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–25642 Filed 9–24–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Water Soluble Drugs and Methods of Preparing Same

DK Ho et al. (SAIC/NCI)
Serial No. 60/093,284 filed 17 Jul 98
Licensing Contact: Girish Barua, 301/496–7056, ext. 263

Many potential drugs of cancer chemotherapy intended for parenteral administration have been abandoned because the active ingredient is slightly soluble or water-insoluble. Various methods have been developed to allow these drugs to be dissolved in water; however, these methods can be complex and have negative impacts resulting from the use of cosolvents and complexing agents. The present invention addresses these problems by providing a method of producing water-soluble analogues of water-insoluble drugs through derivatization and conjugation with a polar moiety via a thiol ether bond with a

heterobifunctional linking molecule. In particular this invention provides a water-soluble analogue of the antitumor drug, geldanamycin. The analogue is expected to exhibit superior solubility under physiological conditions due to the unique configuration and thus permits the use of water-insoluble parent compounds.

Human and Rat gb2 $GABAG_B$ Receptors

J Clark, T Bonner (NIMH)
Serial No. 60/087,274 filed 29 May 98
Licensing Contact: Charles Maynard, 301/496–7735, ext. 243

Disruption of GABAergic neurotransmission has been implicated in a number of neurological and psychiatric disorders. GABAergic neurotransmission is mediated by two very different types of GABA receptors, the ligand-gated ion channels or $GABA_A$ receptors, and the seven transmembrane domain G protein-coupled $GABA_B$ receptors. $GABA_B$ receptors have been shown to modulate adenylyl cyclase and phosphoinositide hydrolysis, inhibit voltage-sensitive calcium currents, and stimulate potassium currents and phospholipase A_2. New $GABA_B$ receptor cDNAs, designated hgb2 and rgb2 $GABA_B$, have been isolated from both rat and human. The rat and human gb2 receptors share ~95% amino acid identity with each other and 27% identity with the gb1.

Therapeutic Blockage of ICER Synthesis To Prevent ICER-Mediated Inhibition of Immune Cell Activity

PA Cohen, J Bodor, D Weng, GK Koski, BJ Czerniecki (NCI)
Serial No. 60/076,293 filed 27 Feb 98
Licensing
Contact: Girish Barua, 301/496–7056 ext. 263

This invention relates to the use of antisense to the ICER (Inducible cAMP Early Repressor) to protect cells of the immune system against ICER suppression by tumors and infectious pathogens.

Normal functioning of the host's immune cells encompasses the recognition and destruction of cancer cells and infectious pathogens. Such immunologic activities are critically dependent upon local antigen-presenting cell (APC) function and T cell restimulation. It is apparent, however, that tumors and infectious pathogens can escape recognition and rejection through local inhibition of APC and lymphocyte function, through diverse mechanisms including prostaglandin secretion. It has recently been discovered that sustained inhibition of APC and lymphocyte function is inducible with cAMP activating stimuli in tandem with other coordinate stimuli, resulting in sustained intracellular expression of the inhibitory nuclear regulatory molecule ICER (Inducible cAMP Early Repressor).

The present invention potentially prevents inhibitory effects of tumors and infectious pathogens on APC and lymphocyte function by utilizing ICER antisense to block ICER synthesis in cells of the immune system. The goal of such treatment is to prevent ICER synthesis in lymphocytes and APC responding to inhibitory stimuli secreted or induced by tumors and infectious pathogens, thereby rendering the immune system less vulnerable to ICER-mediated immunosuppression.

Signal Transduction Inhibitors of Allergic Reactions

B Vonakis, H Metzger, H Chen (NIAMS)
Serial No. 09/020,116 filed 06 Feb 98
Licensing Contact: Kai Chen, 301/496–7735 ext. 247

Allergic reactions affect nearly 40 million persons in the United States. Allergic reactions are due to a sequential interaction beginning with the extracellular aggregation of the high affinity receptor for IgE (FcεRI) followed by intracellular tyrosine phosphorylation which initiates a further cascade of events eventually leading to histamine and cytokine release. The reaction is initiated by Lyn kinase which is pre-associated with the FcεRI. It was shown that the introduction of a unique portion of the N-terminal region of Lyn A kinase into cells inhibits the receptor tyrosine phosphorylation in a dose and time-dependent manner. Without receptor phosphorylation, allergic reactions can not occur. The NIH is looking for a company to license and independently develop the technology or to work in collaboration with the NIH scientists via a Cooperative Research and Development Agreement to further research and develop the allergy treatment. It is believed that this technology may ultimately lead to an anti-allergy drug or allergy therapy.

Method and System for Identifying Acid-Fast Structures in Slide-Mounted Biological Specimens

AE Lash, LA Liotta (NCI)
Serial No. 60/066,234 filed 20 Nov 97
Licensing Contact: John Fahner-Vihtelic, 301/496–7735 ext. 270

The present application describes a system and method for screening subjects who are suspected of having a mycobacterial infection. After obtaining a specimen of interest, a digitized photomicrographic image of a magnified field of the specimen is color filtered to remove pixels in the red to magenta range. The pixels are grouped and analyzed to determine if they form any structures having an elongated shape associated with mycobacteria. Upon identification of target organisms, an alarm sounds and the section of interest is displayed by the system. Problems associated with locating mycobacteria on a slide and determining their morphological appearance, once found, are virtually eliminated with this invention.

Resonant Structure for Spatial and Spectral-Spatial Imaging of Free Radical Spin Probes Using Radiofrequency Time Domain Electron Paramagnetic Resonance Spectrometry

N Devasahayam et al. (NCI)
Serial No. 60/047,786 filed 27 May 97; PCT/US98/10467 filed 21 May 98
Licensing Contact: John Fahner-Vihtelic, 301/496–7735 ext. 270

The present application represents a significant improvement in resonators for use in electron paramagnetic resonance (EPR) imaging systems. This apparatus is designed to detect time domain EPR responses from spin probes after pulsed excitation using radiofrequency irradiation in the range of 60–400MHz. The invention is configured into an array of numerous surface coils of appropriate diameters connected in a parallel fashion with suitable spacing between individual surface coils to form a volume type resonator. This technology provides necessary capabilities and improvements in EPR systems and overcomes obstacles associated with implementation of EPR spectroscopy diagnostic imaging.

Dated: September 18, 1998.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Officer of Technology Transfer.

[FR Doc. 98–25709 Filed 9–24–98; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group, Subcommittee F—Manpower & Training

Date: November 18–20, 1998.

Time: 6:30 pm to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: St. James Hotel, 950 24th Street, NW., Washington, DC 20037.

Contact Person: Mary Bell, Scientific Review Administrator, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, PHS, DHHS, 6130 Executive Boulevard, Rockville, MD 20892, (301) 496–7978.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: September 18, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–25695 Filed 9–24–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Pediatric Brain Tumor Clinical Trials Consortium.

Date: November 15–17, 1998.

Time: 7:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Ray Bramhall, Scientific Review Administrator, Special Review, Referral and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6130 Executive Blvd., Rockville, MD 20892, (301) 496–3428.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: September 18, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–25696 Filed 9–24–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Chemoprevention in Genetically-Identified High-Risk Groups: Interactive Research and Development Projects (RFA: Ca–98–012).

Date: November 4–5, 1998.

Time: 7:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Ramada Inn, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Gerald G. Lovinger, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6130 Executive Boulevard/EPN—Room 630D, Rockville, MD 20892–7405, 301/496–7987.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: September 18, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–25697 Filed 9–24–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Innovative Cancer Control Initiative in Cancer Centers.

Date: October 20–21, 1998.

Time: 3:00 pm to 6:00 pm.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Residence Inn, 9721 Washingtonian Boulevard, Gaithersburg, MD 20878.

Contact Person: Lalita D. Palekar, Scientific Review Administrator, Special Review, Referral and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6130 Executive Boulevard/EPN–622B, Rockville, MD 20892–7405, 301/496–7575.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support;

93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: September 18, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–25698 Filed 9–24–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Technology Development.

Date: November 18–20, 1998.

Time: 6:00 pm to 2:00 pm.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Wilna A. Woods, Deputy Chief, Special Review, Referral and Research Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, Rockville, MD 20852, (301) 496–7903.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated September 18, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–25700 Filed 9–24–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Purusant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(b)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel Basic Behavioral Research on Cancer-Related Behaviors.

Date: October 27, 1998.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20852.

Contact Person: Gerald G. Lovinger, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6130 Executive Boulevard/EPN—Room 630D, Rockville, MD 20892–7405, 301/496–7987.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: September 18, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–25701 Filed 9–24–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel The Carotene and Retinol Efficacy Trail (CARET).

Date: October 2, 1998.

Time: 10:00 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn-Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: C.M. Kerwin, Scientific Review Administrator, Special Review, Referral and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6130 Executive Boulevard/EPN–609, Rockville, MD 20892–7405, 301/496–7421.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: September 18, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–25702 Filed 9–24–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute of Health

National Institute of Dental Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provision set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential

trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: NIDR Special Grants Review Committee 99–01, SGRC.

Date: October 22–23, 1998.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant application.

Place: Gaithersburg Hilton, Gaitherburg, MD 20878.

Contact Person: William J. Gartland, Scientific Review Administrator, National Institute of Dental Research, National Institute Of Health, PHS, DHHS, 45 Center Drive, Natcher Bldg., Rm. 4AN44F, Bethesda, MD 20892

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: September 21, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–25693 Filed 9–24–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental Research; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Dental Research Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Dental Research Council.

Date: October 15–16, 1998.

Open: October 15, 1998, 8:30 am to 5:00 pm.

Agenda: General Business and Strategic Planning Discussions With Patient-Oriented Groups, Council Members and NIDR Staff.

Place: National Institutes of Health, 9000 Rockville Pike, Conference Room 10, Building 31C, Bethesda, MD 20892.

Closed: October 16, 1998, 9:00 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 9000 Rockville Pike, Conference Room 10, Building 31C, Bethesda, MD 20892.

Contact Person: Dushanka V. Kleinman, Deputy Director, National Institute of Dental Research, National Institutes of Health, 9000 Rockville Pike, 31/2C39, Bethesda, MD 20892.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: September 21, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–25694 Filed 9–24–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Initial Review Group, Biomedical Research Review Subcommittee.

Date: October 30, 1998.

Time: 8:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Ronald Suddendorf, PhD, Scientific Review Administrator, Extramural Review Branch, National Institute on Alcohol Abuse and Alcoholism, Suite 409, 6000 Executive Boulevard, Bethesda, MD 20892, 301–443–2926.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: September 18, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–25703 Filed 9–24–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel ZAA1–DD–01.

Date: October 30, 1998.

Time: 3:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Ronald Suddendorf, PhD, Scientific Review Administrator, Extramural Review Branch, National Institute on Alcohol Abuse and Alcoholism, Suite 409, 6000 Executive Blvd. Bethesda, MD 20892, 301–443–2926.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: September 18, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–25704 Filed 9–24–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individual associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel Health Services Review Committee—ZAA1–BB–1.

Date: October 28, 1998.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, Bethesda, Md 20814.

Contact Person: Elsie D. Taylor, Scientific Review Administrator, Extramural Review Branch, National Institute on Alcohol Abuse and Alcoholism, Suite 409, 6000 Executive Boulevard, Bethesda, MD 20892, 301–443–9787.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: September 18, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–25705 Filed 9–24–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness & Other Communication Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Communication Disorders Review Committee.

Date: October 21–22, 1998.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Latham Hotel Georgetown, 3000 M Street, NW, Washington, DC 20007.

Contact Person: Melissa Stick, PhD, MPH, Scientific Review Administrator, NIH/NIDCD/DEA/SRB, 6120 Executive Boulevard (EPS/400), Bethesda, MD 20892.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: September 18, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–25706 Filed 9–24–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Bacteriology and Mycology Subcommittee 2, October 14, 1998, 8:00 a.m. to October 15, 1998; 5:00 p.m., Holiday Inn, 5520 Wisconsin Ave, Chevy Chase, MD, 20815 which was published in the **Federal Register** on September 15, 1998, 63FR178.

The meeting will not be held on October 15–16, 1998. The time and location are the same. The meeting is closed to the public.

Dated: September 18, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–25699 Filed 9–24–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Cell Development and Function Initial Review Group, Human Embryology and Development Subcommittee 2.

Date: October 8–9, 1998.

Time: 8:30 am to 4:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday, Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

Contact Person: Sherry L. Dupere, PHD, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5136, MSC 7840, Bethesda, MD 20892, (301) 435–1021.

Name of Committee: Cell Development and Function Initial Review Group, Cellular Biology and Physiology Subcommittee 2.

Date: October 14–15, 1998.

Time: 8:30 am to 4:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday, Inn, Bethesda, MD 20814.

Contact Person: Gerhard Ehrenspeck, PHD, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, ROOM 5138, MSC 7840, Bethesda, MD 20892, (301) 435–1022, eup@cu.nih.gov

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: October 15, 1998.

Time: 1:00 pm to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Columbia Sheraton, 10207 Wincopin Circle, Columbia, MD 21044.

Contact Person: Herman Teitelbaum, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of

Health, 6701 Rockledge Drive, Room 5190, MSC 7846, Bethesda, MD 20892, (301) 435–1254.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 18, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–25707 Filed 9–24–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Institutes of Health

Notice of Listing of Members of the National Institutes of Health's Senior Executive Service Performance Review Board (PRB)

The National Institutes of Health (NIH) announces the persons who will serve on the National Institutes of Health's Senior Executive Service Performance Review Board. This action is being taken in accordance with Title 5, U.S.C., Section 4314(c)(4), which requires that members of performance review boards be appointed in a manner to ensure consistency, stability, and objectivity in performance appraisals, and requires that notice of the appointment of an individual to serve as a member be published in the **Federal Register**.

The following persons will serve on the NIH Performance Review Board, which oversees the evaluation of performance appraisals of NIH Senior Executive Service (SES) members:

Ruth L. Kirschstein, M.D., Chairperson
Wendy Baldwin, Ph.D.
Henning Birkedal-Hansen, DDS, Ph.D.
Marvin Cassman, Ph.D.
Naomi Churchill, Esq.
Stephen Ficca
William Fitzsimmons
Enoch Gordis, M.D.
Michael Gottesman, M.D.
Barry Hoffer, M.D., Ph.D.
Anthony L. Itteilag
Marvin Kalt, Ph.D.
Yvonne Maddox, Ph.D.

For further information about the NIH Performance Review Board, contact the Office of Human Resource Management, Division of Senior Systems, National Institutes of Health, Building 31/B3C12, Bethesda, Maryland 20892, telephone (301) 496–1443 (not a toll free number).

Dated: September 10, 1998.

Ruth L. Kirschstein,

Deputy Director, NIH.

[FR Doc. 98–25708 Filed 9–24–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4341–N–28]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: September 25, 1998.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of housing and Urban Development, Room 7256, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–G (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: September 17, 1998.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 98–25349 Filed 9–24–98; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Geological Survey

Digital Cartographic Data Sets; Revised Prices

ACTION: Notice.

SUMMARY: USGS Restructures Prices For Digital Map Products.

The U.S. Geological Survey (USGS) has revised prices for some digital cartographic data sets. Known as US GeoData, these data sets include digital elevation models (DEM), digital line graphs (DLG), digital raster graphics (DRG), land use and land cover data (LULC), geographic names information system data (GNIS), and black-and-white and color-infrared digital orthophoto quarter quadrangles (DOQQ).

Prices for these products were last revised more than 10 years ago. Prices have been adjusted to accurately reflect and ensure recovery of the costs associated with their reproduction and distribution, and are directly proportional to file size. These changes are consistent with guidance contained in the Office of Management and Budget Circular A–130 which permits government agencies to recover only reproduction and distribution costs from the sale of its products.

DATES: Revised prices for the US GeoData products are shown in the table below. These prices will become effective on October 1, 1998. A $3.50 handling fee applies to each order.

Product	Price/File	Base charge (media)	Base charge (ftp)
DEM	$1.00	$45.00	$30.00
DLG	1.00	45.00	30.00
DRG	1.00	45.00	30.00
LULC	1.00	45.00	30.00
GNIS	1.00	45.00	30.00
DOQQ (B/W)	7.50	45.00	30.00
DOQQ (CIR)	15.00	45.00	30.00

After October 1, the DRG data sets will only be available for purchase only as individual primary series quadrangles (1:24,000-, 1:25,000-, 1:63,360-scale), priced at $1.00 each. A 1-degree block set will not longer be offered as the standard distribution format. However, 1-degree blocks of DRG's may still be purchased under the new prince structure as a composite of sixty four 7.5-minute files, two 1:100,000-scale files, and one 1:250,000-scale file at a cost of $112.

All US GeoData product order received by or postmarked before October 1, 1998, will be subject to the current price structure. All US GeoData product orders received after October 1, 1998, will be priced according to the new structure. Customers who place orders between September 14, 1998, and October 1, 1998, will be allowed a grace period, ending October 31, 1998, to change their orders. The grace period is not available on customer orders placed before September 14, 1998.

POINT OF CONTACT: Barron Bradford of the National Mapping Division's Office of Data and Information Delivery, 703–648–5774 or by e-mail at brbradford@usgs.gov.

Dated: September 18, 1998.

Richard E. Witmer,

Chief, National Mapping Division.

[FR Doc. 98–25672 Filed 9–24–98; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Public Comment Period on Proposed Agreement for Leasing of Colorado River Water and Non-Irrigation of Lands on Chemehuevi Indian Reservation

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of second opportunity for public comment.

SUMMARY: On June 22, 1998, a notice of opportunity for public comment was published in the **Federal Register** (Volume 63, Number 119) concerning the proposed agreement for leasing of Colorado River water and non-irrigation of lands on the Chemehuevi Reservation. A second comment period was requested by interested parties and is being provided.

The Chemehuevi Indian Tribe entered into an agreement with Southeastern Nevada Water Company, Inc., dated January 31, 1998, for a 25-year lease of 5,000 acre-feet per year of the Tribes's Colorado River water entitlement. The agreement has been submitted to the Secretary of the Interior with a request for the Secretary's approval as a lease of Indian lands within the meaning of 25 U.S.C. 415 and for approval under 25 U.S.C. 81. As part of the Secretary's review, the Bureau of Indian Affairs has determined it is in the public interest to allow an opportunity for interested parties to comment on the proposed lease.

DATES: Any comments must be received by the Agency on or before November 24, 1998.

ADDRESSES: If you wish to comment, you may submit your comments to the Area Director, Bureau of Indian Affairs, Attention: Ms. Cathy Wilson, Phoenix Area Office, P.O. Box 10, MS 420, Phoenix, AZ 85004.

SUPPLEMENTARY INFORMATION: The Chemehuevi Indian Tribe is a federally recognized Indian tribe organized under § 16 of the Indian Reorganization Act of 1934 (25 U.S.C. § 476). The Tribe is the beneficial owner of the Chemehuevi Indian Reservation which is located entirely within San Bernadino County, California. On February 2, 1998, the Chemehuevi Indian Tribe provided the proposed Agreement for the Leasing of Reservation Water and for Non-Irrigation of Reservation Lands to the Secretary of the Interior with a request for the Secretary's approval. If the lease is approved by the Secretary, it will become effective upon that approval and remain in effect for a term of 25 years.

Under the proposed lease agreement, the Tribe will lease 5,000 acre-feet of Colorado River water per year to the lessee, Southeastern Nevada Water Company, Inc. The lessee is a for-profit corporation, organized under the laws of the State of Nevada and based in Scottsdale, Arizona. The lessee is authorized to do business in the State of California and will use the water acquired during the period of the lease to meet the present and future water demands of the lessee and any sublessees or assignees in the State of California.

Copies of the lease are available from the Bureau of Indian Affairs at the address listed under **ADDRESSES**. In addition, the Tribe is assessing the environmental impacts of the lease. Any documents created during the environmental compliance process will be made available, as appropriate, from the Bureau of Indian Affairs' Phoenix Area Office at the address listed under **ADDRESSES**.

FOR FURTHER INFORMATION CONTACT: Ms. Cathy Wilson, telephone (602) 379–6789.

Dated: September 15, 1998.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 98–25652 Filed 9–24–98; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–990–1020–00]

AGENCY: Bureau of Land Management, Upper Columbia—Salmon Clearwater Districts, Idaho.

ACTION: Notice of resource advisory council meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C. Appendix, the Bureau of Land Management (BLM) announce the meeting of the Upper Columbia—Salmon Clearwater District Resource Advisory Council on Monday, October 26, 1998 at the Craig Mountain Wildlife Management Area.

The meeting will be a field tour. Tour objectives are to view and discuss: weed infestations and management options; prescribed burning as a management tool; and collaborative approaches to wildlife management. Following the field tour, a brief business meeting will be held at the Garden Creek Ranch. The tour will begin at 8:00 a.m. and will conclude at approximately 4:00 p.m. The public may address the Council during the public comment period form 1:30 p.m.–2:00 p.m. at the Garden Creek Ranch.

SUPPLEMENTARY INFORMATION: All Resource Advisory Council meetings are open to the public, Interested persons may make oral statements to the Council, or written statements may be submitted for the Council's consideration. Depending on the number of persons wishing to make oral statements, a per-person time limit may be established by the District Manager.

The Council's responsibilities include providing long-range planning and establishing resource management priorities.

FOR FURTHER INFORMATION CONTACT: Ted Graf (208) 769–5004.

Dated: September 18, 1998.

Fritz Rennebaum,

District Manager.

[FR Doc. 98–25710 Filed 9–24–98; 8:45 am]

BILLING CODE 4310–66–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–933–1430–01; IDI–31965]

Public Land Order No. 7365; Withdrawal of National Forest System Land for Calf Creek Long Term Soil Productivity Site; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 96.59 acres of National Forest System land from mining for a period of 50 years for the Forest Service to protect the Calf Creek Long Term Soil Productivity Site. The land has been and will remain open to such forms of disposition as may by law be made of National Forest System land and to mineral leasing.

EFFECTIVE DATE: September 25, 1998.

FOR FURTHER INFORMATION CONTACT: Larry R. Lievsay, BLM Idaho State Office, 1387 S. Vinnell Way, Boise, Idaho 83709, 208–373–3864.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Subject to valid existing rights, the following described National Forest System land is hereby withdrawn from location and entry under the United States mining laws (30 U.S.C. Ch. 2 (1994)), but not from the general land laws or mineral leasing laws, to protect the Calf Creek Long Term Productivity Site:

Boise Meridian

Beginning at the corner common to secs. 7, 8, 17, and 18, T. 19 N., R. 2 W.; Thence S. 82°59′ E., 2952 ft. (899.8m) to Corner No. 1; S. 01°30′ W., 353 ft. (107.6m) to Corner No. 2; S. 34°38′ E., 630 ft. (192.0m) to Corner No. 3; S. 17°11′ W., 515 ft. (157.0m) to Corner No. 4; S. 09°52′ E., 588 ft. (179.2m) to Corner No. 5; S. 55°46′ E., 1437 ft. (438.0m) to Corner No. 6; S. 78°54′ E., 2021 ft. (616.0m) to Corner No. 7; N. 63°39′ E., 739 ft. (225.2m) to Corner No. 8; N. 32°02′ W., 500 ft. (152.4m) to Corner No. 9; N. 86°03′ W., 1678 ft. (511.5m) to Corner No. 10; N. 15°49′ W., 498 ft. (151.8m) to Corner No. 11; Northwesterly along Calf Creek 1290 ft. (393.2m), to a point on the centerline of Forest Service Road No. 50438; Thence continuing Northwesterly along said road 1530 ft. (466.3m) to the point of beginning.

The area described contains 96.59 acres in Adams County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of National Forest System land under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than the mining laws.

3. This withdrawal will expire 50 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1994), the Secretary determines that the withdrawal shall be extended.

Dated: September 21, 1998.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 98–25682 Filed 9–24–98; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

National Park Service

60-day Notice of Intention to Request Clearance of Collection of Information; Opportunity for Public Comment

AGENCY: Department of the Interior, National Park Service.

ACTION: Notice and request for comments.

SUMMARY: Under the Paperwork Reduction Act of 1995 and 5 CFR Part 1320, Reporting and Recordkeeping Requirements, the NPS invites public comments on (1) The need for the information including whether the information has practical utility; (2) the accuracy of the reporting burden estimate; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

The request is for reinstatement, with change, of a previously approved collection for which approval has expired. OMB assigned clearance No. 1024–0111 to the previously approved collection. Copies of the request and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below.

DATES: Public comments will be accepted on or before October 26, 1998.

SEND COMMENTS TO: Diane Cooke, Information Collection Clearance Officer, WASO Administrative Program Center, National Park Service, 1849 C Street NW., Room 3317, Washington, DC 20240, phone 202/208–3933.

FOR FURTHER INFORMATION CONTACT: Dr. Francis P. McManamon, Manager, Archaeology and Ethnography Program, National Park Service, 1849 C Street NW., Room NC210, Washington, DC 20240, phone: 202/343–4101.

SUPPLEMENTARY INFORMATION:

Title: Listing of Outlaw Treachery (LOOT).

Departmental Form Numbers: NPS 10–29.

OMB Number: 1024–0111.

Expiration date: 7/31/98.

Type of request: Reinstatement, with change, of a previously approved collection for which approval has expired.

Description of need: Information collected responds to statutory requirements that Federal agencies provide data on the prosecutions of archaeological resource crimes necessary to fulfill the reporting requirements under Sections 13 and 14(c) of the Archaeological Resource Protection Act of 1979 (16 U.S.C. 470ll & mm). The information collected allows the National Park Service to evaluate Federal archaeological protection programs and report annually to Congress.

Automated data collection: At the present time, there is no automated way to gather this information.

Description of Respondents: Federal, State and local government agencies.

Estimated average number of respondents: 34.

Estimated completion time: 1 hour.

Estimated average burden hours per response: 34.

Diane M. Cooke,

Information Collection Clearance Officer, WASO Administrative Program Center, National Park Service.

[FR Doc. 98–25649 Filed 9–24–98; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent To Reissue a Prospectus for Operation of a Gasoline Service Station at Yosemite National Park

SUMMARY: The National Park Service will shortly release a concession Prospectus seeking operation of a gasoline service station adjacent to the west entrance of Yosemite National Park on Highway 140. The operation is to be located at the park's administrative site at the community of El Portal. An existing operation has one service bay for minor car repair and lubrication service. Sales consist of automotive gasoline, oil, propane, lubricants, batteries, tires and other related

automobile supplies. The operation is year-round with the peak season during the summer months. The annual gross receipts are about $440,000. The recent removal of the Yosemite Valley gasoline station should increase the sales of this station. The new contract will be for approximately eight (8) years expiring December 31, 2006. The new operator will be required to install new gasoline storage tank(s) prior to operation and in accordance with the applicable law. There is an existing concessioner which may submit an offer but has no right of preference in renewal. The current building is the personal property of the existing concessioner and may be available for purchase. The new operator will be responsible for removal of old gasoline storage tanks and piping and, if necessary, contamination cleanup. This opportunity has been advertised previously. No satisfactory offers were received including from the existing concessioner. Offers will be accepted for 30 days following the release of the Prospectus which is expected in the week of September 21, 1998.

SUPPLEMENTARY INFORMATION: The cost for purchasing a Prospectus is $30.00. Parties interested in obtaining a copy should send a check (NO CASH) made payable to ''National Park Service'' to the following address: National Park Service, Pacific Great Basin Support Office, Office of Concession Program Management, 600 Harrison Street, Suite 600, San Francisco, California 94107–1372. Tax Identification Numbers (TIN) OR your Social Security Number (SSN) MUST be provided on your checks. The front of the envelope should be marked ''Attention: Office of Concession Program Management—Mail Room Do Not Open''. Please include in your request a mailing address indicating where to send the Prospectus. Inquiries may be directed to Ms. Teresa Jackson, Office of Concession Program Management at (415) 427–1369.

Dated: September 17, 1998.

Holly Bundock,

Acting Regional Director, Pacific West Region.

[FR Doc. 98–25645 Filed 9–24–98; 8:45 am]

BILLING CODE 4820–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Environmental Statements; Availability, etc.: Southern Terminus (Section 3X), Natchez Trace Parkway, Mississippi

AGENCY: U.S. Department of the Interior, National Park Service.

ACTION: Notice of availability of the Final Environmental Impact Statement, Southern Terminus (Section 3X), Natchez Trace Parkway, Natchez, Mississippi.

SUMMARY: This notice announces the availability of the Final Environmental Impact Statement (FEIS) for the Southern Terminus (Section 3X), of the Natchez Trace Parkway.

DATES: A 30-day no-action period will follow the Environmental Protection Agency's publication of the Notice of Availability of the Final Environmental Impact Statement (FEIS) in the **Federal Register**.

ADDRESSES: Public reading copies of the Natchez Trace Parkway Southern Terminus (Section 3X) Final Environmental Impact Statement will be available for public review at the following locations:

1. Natchez Trace Parkway Headquarters, 2680 Natchez Trace Parkway, Tupelo, Mississippi 38801, (601) 680–4005
2. Natchez National Historical Park, Post Office Box 1208, Natchez, Mississippi 39121, (601) 442–7047
3. Judge George W. Armstrong Library, 220 South Commerce Street, Natchez, Mississippi 39120, (601) 445–8862
4. Jackson/Hinds Library System, Eudora Wetly Library, 300 North State Street, Jackson, Mississippi 39201, (601) 968–5809 (This is the Headquarters or main library in Jackson).

SUPPLEMENTARY INFORMATION: The Final Environmental Impact Statement (FEIS) for the Southern Terminus (Section 3X) of the Natchez Trace Parkway is presented in abbreviated form. The abbreviated FEIS includes responses to public comments, errata, and a Statement of Findings, for Wetlands. The abbreviated FEIS, when combined with the Draft Environmental Impact Statement, Natchez Trace Parkway, Section 3X, Southern Terminus (May 8, 1998), comprises the complete Final Environmental Impact Statement (FEIS). Only minor revisions to the DEIS were necessary.

The FEIS presents a proposal and two alternative locations for the Southern Terminus of the Natchez Trace Parkway. Alternative 1, the no action alternative, would construct an interchange at U.S. 84/98 and make that point the southern terminus of the parkway. The proposal, alternative 2, would extend the parkway another 4.2 miles from U.S. 84/98 toward Natchez to terminate at Liberty Road, where an interchange would be constructed. Alternative 3 would extend the parkway about 4.3 miles from U.S. 84/98 to terminate with an interchange at Sargent Prentiss Drive. Alternative 3 is the only alternative which would not require the acquisition of some additional property. In every alternative, parkway users would enter or exist the parkway utilizing existing city streets to reach the city center or other locations.

The FEIS evaluates the environmental consequences associated with the proposed action and the other alternatives on local traffic and transportation routes, cultural resources, wetland, visual quality, visitor experience, economics and land use, and nearby residents and businesses, amount other topics.

Dated: September 16, 1998.

Daniel W. Brown,

Acting Regional Director, Southeast Region.

[FR Doc. 98–25648 Filed 9–24–98; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

General Management Plan: Whiskeytown Unit; Whiskeytown-Shasta-Trinity National Recreation Area; Notice of Availability of Draft Environmental Impact Statement

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 91–190 as amended), the National Park Service, Department of the Interior, has prepared a Draft Environmental Impact Statement assessing the potential impacts of the proposed General Management Plan for Whiskeytown Unit, Whiskeytown-Shasta-Trinity National Recreation Area, Shasta County, California. Once approved, the plan will guide the management of the unit over the next 15 years.

The Draft General Management Plan and Environmental Impact Statement presents a proposal and three alternatives for the management, use, and development of Whiskeytown Unit. The proposed plan, Alternative C: Diversified Recreation & Interpretation, includes provisions for preserving significant natural and cultural resources and for restoring the backcountry to more natural conditions through watershed restoration activities. The proposed plan provides for increasing the range and depth of interpretive services, expands opportunities for backcountry use, and manages recreation at Whiskeytown Lake to provide opportunities for tranquil recreation experiences. To facilitate more tranquil experience, the use of personal watercraft at the reservoir is discontinued.

Alternative A

No Action, would continue the current situation at Whiskeytown. Management focus would remain on the lake and natural and cultural resource values would continue to decline because of the lack of human and financial resources for their management and protection.

Alternative B

Minimum Requirements, would be similar to Alternative C in terms of provisions for resource management and protection, but would provide fewer visitor services. The visitor service emphasis would continue to be focused on the lake and on safety and visitor protection, with only limited commitments to interpretation. The existing range of recreation uses, including the use of personal watercraft, would continue.

Alternative D

Expanded Recreation, retains the current management focus on active water-based recreation, and increases the capacity of the lake to accommodate use by adding a major new developed area near the mouth of Boulder Creek. Major new utility infrastructure would be required to support this development, and South Shore Drive would be widened, realigned, and paved to provide access. The existing spectrum of recreation uses on the lake, including use of personal watercraft, would be retained. However, a zoning plan would separate the reservoir into a low-speed zone, where personal watercraft use would be discouraged, and an unrestricted zone where all types of activities would be accommodated.

The environmental consequences of the alternatives are fully documented. No significant adverse impacts are anticipated from the action alternatives, because the plans include provisions to avoid or mitigate potentially significant impacts. The No Action Plan, Alternative A, would result in significant long-term impacts to natural and cultural resources due to insufficient management and protection.

SUPPLEMENTARY INFORMATION: Written comments on the Draft General Management Plan and Environmental Impact Statement should be directed to the Superintendent, Whiskeytown Unit, P.O. Box 188, Whiskeytown, California 96095. Comments on the draft plan must be received by November 30, 1998.

Public meetings on the draft plan will be held in the vicinity of the park. Times and locations will be publicized in the local media.

Inquiries on and requests for copies of the draft plan should be directed to Whiskeytown Unit, address as above, or by telephone at (530) 241–6584.

Dated: September 1, 1998.

Patricia L. Neubacher,

Acting Regional Director, Pacific West Region.

[FR Doc. 98–25644 Filed 9–24–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Publication of Final Procedures and Guidance for the Permitting of Filming and Photography in Units of the National Park Service

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: The National Park Service (NPS) announces finalization and publication of the guidance and procedures document dealing specifically with Filming and Photography in units of the NPS. This information was developed to provide guidance and procedures to all units of the National Park System who deal with requests for the making of motion pictures, video taping, sound recording, or still photography. This document will appear as and may be found in Appendix 20 of NPS–53, the NPS Guideline on Special Park Uses which master document is already approved, finalized and published.

ADDRESSES: Copies of the guidance document will be made available upon request by writing to National Park Service, Ranger Activities Division, 1849 C St. NW, Suite 7408, Washington, DC 20240, or by calling 202–208–4874. The guidance document is also available on the Internet at the following web site: http://www.nps.gov.refdesk then selecting Director's Orders and Procedures.

FOR FURTHER INFORMATION CONTACT: Dick Young at 757–898–7846, or 757–898–3400, ext. 51.

On Tuesday, February 3, 1998, the NPS published a notice in the **Federal Register** requesting public comments on the proposed guidance and procedures document for filming and photography in all units of the NPS. The NPS received 15 responses to that notice. Those comments of significance, and the responses to those comments are as follows.

Comment: Approval time line needs to be clearer and needs to be shorter.

Response: The NPS has intentionally generalized this issue to ensure that Superintendents have the flexibility to apply these guidelines, as they are appropriate in his or her park unit. The alternative, establishing a set time line and applying it Servicewide, would potentially lock many less complicated projects into a lengthy permit process.

Comment: Several responders commented on the proposed time restrictions for visitor use in filming locations.

Response: The types and quantity of acceptable disruptions to normal visitor use vary from area to area and situation to situation. Time restrictions may be adjusted by the individual park as needed.

Comment: Some respondents commented on a certain lack of detail when it came to determining which applicants are required to pay fees and how much those fees would be.

Response: The NPS points out that the proposed filming guideline is part of a larger document (NPS–53) that speaks to all aspects of cost and fee recovery which are, therefore, not repeated in this Appendix. In addition, because of the unique resource concerns of each area, costs to the permittee will vary according to the amount of resource and visitor protection needed.

Comment: Responders expressed concern about access to closed areas.

Response: The Superintendent has the authority to provide access to a closed area under the conditions established in a permit if such access does not violate statute or regulations, and the request does not adversely impact the resource or visitor experience.

Comment: Some responders expressed concern about limiting filming activities during times of peak visitation.

Response: The introduction of a commercial film project, or any other special park use, at times of peak visitation, would potentially burden the park resources and compromise the visitor experience beyond reasonable and manageable levels in some park units. As visitation continues to increase in our National Parks, placing limitations on special uses, especially during periods of peak visitation, may become increasingly necessary.

Comment: Some respondents were concerned about the guideline treatment of aircraft used for filming.

Response: Although aircraft use over many NPS areas is generally considered undesirable, the ultimate decision to permit rests with the Superintendent.

Comment: Several responders commented that the NPS should allow last minute changes and give on-site managers discretion to deal with them.

Response: In many parks the level of visitation and sensitivity of the

resources prohibit significant changes, however in most situations the on-site monitor has the authority to approve minor last minute changes that would not create resource damage or visitor impact.

Comment: One commenter questioned the number of permits allowed and approved, who makes this determination, and how is the determination made.

Response: The determination of the allowable number of permits is made by the Superintendent of the individual park unit, in accordance with existing statutes and regulations, by compiling information related to carrying capacity, visitor expectations and the potential for adverse impact to the resource in specific areas of the park unit.

Comment: One responder questioned whether the NPS should be accommodating, allowing or encouraging filming on the lands or in the structures it administers.

Response: The NPS allows filming when it is consistent with the protection and public enjoyment of park resources, and encourages filming when it is for the specific use of the park or when it assists the NPS in fulfilling it's mission. The NPS has the authority and responsibility to permit, deny and manage these projects consistent with the mission of the NPS.

Comment: One responder believes that the use of the word ''likelihood'' when referring to possible resource damage should not be used.

Response: The NPS agrees and the language will be strengthened in the final guideline.

Comment: Several respondents commented on the prohibition on issuing permits for activities that the general public would not be allowed to do.

Response: Although it is not the policy of the NPS to censor story content, it is appropriate for the NPS to restrict the portrayal of activity that is illegal in the parks.

Comment: The guideline should not allow filming to risk historic objects or facilities.

Response: The section from which this quote was taken addresses insurance and liability. It does not mean that film permittees will be allowed to conduct activity that would place historic objects or facilities at increased risk.

Comment: One responder believes that deliberate infractions of the permit terms should result in automatic revocation and termination of the permit.

Response: The guidelines allow for the NPS representative on site to determine the seriousness of a permit violation and, in consultation with the park manager, take the appropriate action. Current rules promulgated at 36 CFR say violation of a term or condition of a permit may result in suspension or revocation of the permit by the Superintendent.

Comment: Several respondents objected to various sample conditions provided as exhibits in the guidelines.

Response: These conditions have been suggested as samples which, if used at all, must be modified for each park unit.

Comment: One respondent questioned the prohibition on the NPS renting equipment to permittees.

Response: Title 16 of the United States Code prohibits the NPS from renting their equipment to private individuals or companies.

Dated: September 15, 1998.

Chris Andress,

Chief, Ranger Activities Division.

[FR Doc. 98–25650 Filed 9–24–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Aniakchak National Monument Subsistence Resource Commission; Notice of Meeting

AGENCY: National Park Service, Interior.

ACTION: Announcement of subsistence resource commission meeting.

SUMMARY: The Superintendent of Aniakchak National Monument and the Chairperson of the Subsistence Resource Commission for Aniakchak National Monument announce a forthcoming meeting of the Aniakchak National Monument Subsistence Resource Commission. The following agenda items will be discussed:

(1) Call to order. (Chairman)

(2) SRC Roll call; confirmation of quorum. (Chairman)

(3) Welcome and introductions. (Public, agency staff, others)

(4) Review and adopt agenda. (SRC)

(5) Review and adopt minutes from the November 1997 meeting.

(6) Review commission's role and purpose.

(7) Public and agency comments.

(8) Status of commission membership.

(9) Old business:

a. Status of recommendation to designate Ivanoff Bay and Perryville as resident zone communities.

b. Status of Aniakchak National Preserve hunting guide prospectus.

c. Aniakchak National Monument and Preserve visitor use report.

d. Aniakchak National Monument and Preserve status of moose and caribou populations.

e. Status of Unit 9E Board of Game emergency action caribou harvest restriction.

f. Status of 1992 Subsistence Hunting Program recommendations.

g. Status of draft Subsistence Hunting Program recommendations.

(1) 97–1: Establish a one year residency requirement for the resident zone communities.

(2) 97–2: Establish a registration permit requirement for non-subsistence hunting, trapping, and fishing activities within the Aniakchak National Preserve.

(10) New business:

a. Federal Subsistence Program update.

(1) Bristol Bay Regional Council March 12 meeting report.

(2) Report on Unit 9E BBRAC special meeting to consider requests for closure.

b. Public and agency comments.

(11) BBNA Funding Proposal—Northern Alaska peninsula caribou herd.

(12) SRC work session (draft proposals, letters, and recommendations).

(13) Set time and place of next SRC meeting.

(14) Adjournment.

DATES: The meeting will begin at 1 p.m. on Monday, October 5, 1998, and conclude at approximately 7 p.m. The meeting will reconvene at 8 a.m. on Tuesday, October 6, 1998, and adjourn at approximately 1 p.m.

LOCATION: The meeting location is: Community Subsistence Building, Chignik Lake, Alaska.

FOR FURTHER INFORMATION CONTACT: Karen C. Gustin, Unit Manager, Rick Clark, Chief of Resources Management, or Donald Mike, Resource Specialist, Aniakchak National Monument, P.O. Box 7, King Salmon, Alaska 99613. Phone (907) 246–3305.

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. 98–25647 Filed 9–24–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Delaware Water Gap National Recreation Area Citizen Advisory Commission Meeting

AGENCY: National Park Service; Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces two possible upcoming meetings of the Delaware Water Gap National Recreation Area Citizen Advisory Commission. Notice of these meetings is required under the Federal Advisory Committee Act (Public Law 92–463). The Citizen Advisory Commission's authorizing legislation expires October 31, 1998. Reauthorization of the Commission is pending.

In the event the Citizen Advisory Commission is NOT re-authorized, a final public meeting will take place:

Meeting Date and Time: Thursday, October 29, 1998 at 7:00 p.m.

Address: New Jersey District Office, Layton, NJ.

In the event the Citizen Advisory Commission IS re-authorized, the next public meeting will take place:

Meeting Date and Time: Saturday, January 30, 1999 at 9:00 a.m.

Address: New Jersey District Office, Layton, NJ.

The agenda for the meeting consists of reports from Citizen Advisory Commission committees including: Natural Resources and Recreation, Cultural and Historical Resources, Intergovernmental and Public Affairs, Construction and Capital Project Implementation, and Interpretation, as well as Special Committee Reports. Superintendent William G. Laitner will give a report on various park issues.

SUPPLEMENTARY INFORMATION: The Delaware Water Gap National Recreation Area Citizen Advisory Commission was established by Public Law 100–573 to advise the Secretary of the Interior and the United States Congress on matters pertaining to the management and operation of the Delaware Water Gap National Recreation Area, as well as on other matters affecting the recreation area and its surrounding communities.

The meetings will be open to the public. Any member of the public may file a written statement concerning agenda items with the Commission. The statement should be addressed to The Delaware Water Gap National Recreation Area Citizen Advisory Commission, P. O. Box 284, Bushkill, PA 18324. Minutes of the meetings will be available for inspection several weeks after the meeting at the permanent headquarters of the Delaware Water Gap National Recreation Area located on River Road 1 mile east of U.S. Route 209, Bushkill, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Superintendent, Delaware Water Gap National Recreation Area, Bushkill, PA 18324, 717–588–2418.

Dated: September 18, 1998.

William G. Laitner,

Superintendent.

Congressional Listing for Delaware Water Gap NRA

Honorable Frank Lautenberg, U.S. Senate, SH–506 Hart Senate Office Building, Washington, D.C. 20510–3002

Honorable Robert G. Torricelli, U.S. Senate, Washington, D.C. 20510–3001

Honorable Richard Santorum, U.S. Senate, SR 120 Senate Russell Office Bldg., Washington, D.C. 20510

Honorable Arlen Specter, U.S. Senate, SH–530 Hart Senate Office Bldg., Washington, D.C. 20510–3802

Honorable Paul McHale, U.S. House of Representatives, 511 Cannon House Office Bldg., Washington, D.C. 20515–3815

Honorable Joseph McDade, U.S. House of Representatives, 2370 Rayburn House Office Bldg., Washington, D.C. 20515–3810

Honorable Margaret Roukema, U.S. House of Representatives, 2244 Rayburn House Office Bldg., Washington, D.C. 20515–3005

Honorable Tom Ridge, State Capitol, Harrisburg, PA 17120

Honorable Christine Whitman, State House, Trenton, NJ 08625

[FR Doc. 98–25651 Filed 9–24–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Keweenaw National Historical Park Advisory Commission Meeting

AGENCY: National Park Service, DOI.

ACTION: Notice of meeting.

SUMMARY: This notice announces an upcoming meeting of the Keweenaw National Historical Park Advisory Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92–463).

DATES: October 27, 1998; 8:30 a.m. until 4:30 p.m.

ADDRESS: Keweenaw National Historical Park Headquarters, 100 Red Jacket Road (2nd floor), Calumet, Michigan 49913–0471.

The Chairman's welcome; minutes of the previous meeting; update on the general management plan; update on park activities; old business; new business; next meeting date; adjournment. This meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: Superintendent, Keweenaw National Historical Park, Frank C. Fiala, P.O. Box 471, Calumet, Michigan 49913–0471, 906–337–3168.

SUPPLEMENTARY INFORMATION: The Keweenaw National Historical Park was established by Pub. L. 102–543 on October 27, 1992.

Dated: September 11, 1998.

William W. Schenk,

Regional Director, Midwest Region.

[FR Doc. 98–25646 Filed 9–24–98; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–414]

In the Matter of Certain Semiconductor Memory Devices and Products Containing Same; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on August 21, 1998, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Micron Technology, Inc., 8000 South Federal Way, P.O. Box 6, Boise, Idaho 83707–0006. The complaint alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain semiconductor memory devices and products containing same by reason of infringement of claims 2–4 and 6–8 of U.S. Letters Patent 4,436,584, claims 1–23 of U.S. Letters Patent 4,992,137, claims 28, 29, and 31–34 of U.S. Letters Patent 5,486,129, and claims 1–17 of U.S. Letters Patent 5,514,245. The complaint further alleges that there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after a hearing, issue a permanent exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW, Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

FOR FURTHER INFORMATION CONTACT: Smith R. Brittingham IV, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2576. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

Authority. The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (1998).

Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on September 18, 1998, *Ordered that*

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain semiconductor memory devices or products containing same by reason of infringement of claims 2–4 or 6–8 of U.S. Letters Patent 4,436,584, claims 1–23 of U.S. Letters Patent 4,992,137, claims 28, 29, or 31–34 of U.S. Letter Patent 5,486,129, or claims 1–17 of U.S. Letters Patent 5,514,245, and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: Micron Technology, 8000 South Federal Way, P.O. Box 6, Boise, Idaho 83707–0006.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served: Mosel Vitelic, Inc., 1 Creation Road I, Science Based Industrial Park, Hsinchu City, Taiwan; Mosel Vitelic Corporation, 3910 North First Street, San Jose, California 95134–1501.

(c) Smith R. Brittingham IV, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW, Room 401–M, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Sidney Harris is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a) of the Commission's Rules, such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

Issued: September 21, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–25734 Filed 9–24–98; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

Under Section 122(d)(2) of CERCLA, 42 U.S.C. 9622(d)(2), notice is hereby given that on September 16, 1998, a proposed Consent Decree In *United States* v. *AlliedSignal Inc., et al.,* Civil Action No. C3–98–405, was lodged with the United States District Court for the Southern District of Ohio. In this action the United States sought implementation of remedial action and recovery of response costs under Sections 106(a) and 107(a) of CERCLA, 42 U.S.C. 9606(a) and 9607(a), relating to the South Point Plant Superfund Site (''Site'') located near the Village of South Point, Lawrence County, Ohio.

The Site is a 610-acre property that was used for several industrial purposes from 1943 to 1995, including chemical production, alternative fuel pilot plants, and ethanol production. The Site's soils and groundwater have become contaminated with hazardous substances that include volatile organic compounds, ammonia, nitrate, and metals. The Site was placed on the National Priorities List on September 21, 1984.

The settlors are AlliedSignal, Inc., a past owner and operator of the Site, and Ashland, Inc., Ashland Ethanol, Inc., and South Point Ethanol, An Ohio General Partnership, which are both past owners and operators of the Site, as well as the current owners of the Site. The settlors agree in the proposed decree to implement the clean up at the Site consistent with EPA's Record of Decision dated September 26, 1997, at an estimated cost of $4 million; plus to reimburse EPA for all future oversight costs and pay EPA $50,000 for past response costs.

The Department of Justice will receive comments concerning the proposed Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Washington, DC, 20044, and should refer to *United States* v. *AlliedSignal, Inc., et al.,* DOJ Number 90–11–2–1325. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of the Resource Conservation and Recovery Act, 42 U.S.C. 6973(d).

The proposed Consent Decree may be examined at any of the following offices: (1) the Office of the United States Attorney, Southern District of Ohio, 602 Federal Building, 200 West Second Street, Dayton, Ohio 45402, (937) 225–2910; the U.S. Environmental Protection Agency, Region 5, 77 W. Jackson Blvd., Chicago, Illinois 60604, (312) 886–6842; and (3) the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed Consent Decree

may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005. In requesting a copy, please enclose a check in the amount of $40.00 (25 cents per page for reproduction charge) payable to the Consent Decree Library. In requesting a copy exclusive of exhibits, please enclose a check in the amount of $19.25 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Bruce S. Gelber,

Deputy Section Chief, Environmental Enforcement Section, Environment & Natural Resources.

[FR Doc. 98–25665 Filed 9–24–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed Final Consent Decree in *United States* v. *William J. Hall,* Civil No. 2:97–0167–12 (D.S.C.), was lodged with the United States District Court for the District of South Carolina on July 20, 1998. The proposed Decree concerns alleged violations of sections 301(a) and 404 of the Clean Water Act, 33 U.S.C. 1311(a) and 1344, resulting from Defendant's clearing and unlawfully discharging fill material into approximately 0.91 acre of palustrine-forested wetlands. The violations occurred in a tract owned by the Defendant and known as the Marshall Creek Subdivision on Johns Island, Charleston County, South Carolina.

The proposed Final Consent Decree would provide for off-site mitigation, to be approved by the U.S. Army Corps of Engineers, and the payment of a $5,000 civil penalty.

The U.S. Department of Justice will receive written comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of publication of this notice. Comments should be addressed to R. Emery Clark, Assistant United States Attorney, District of South Carolina, 1441 Main Street, Suite 500, Columbia, SC 29201, and should refer to *United States* v. *William J. Hall,* Civil No. 2:97–0167–12 (D.S.C.).

The proposed Final Consent Decree may be examined at the Clerk's Office, United States District Court for the District of South Carolina, Charleston Division, Hollings Judicial Center, Meeting and Broad Streets, Charleston, South Carolina 29401.

Letitia J. Grishaw,

Chief Environmental Defense Section, Environment and Natural Resources Division, United States Department of Justice.

[FR Doc. 98–25664 Filed 9–24–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated May 6, 1998, and published in the **Federal Register** on May 19, 1998, (63 FR 27587), High Standard Products, 1100 W. Florence Avenue, #B, Inglewood, California 90301, made application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of normorphine (9313), a basic class of controlled substance listed in Schedule I.

The firms plans to manufacture an analytical reference standard.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of High Standard Products to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated High Standard Products on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 C.F.R. 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: September 11, 1998.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 98–25654 Filed 9–24–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on August 12, 1998, Pharmacia & Upjohn Company, 7000 Portage Road, 2000–41–109, Kalamazoo, Michigan 49001, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of 2, 5-Dimethoxyamphetamine (7396), a basic class of controlled substance listed Schedule I.

The firm plans to manufacture the controlled substance for distribution as bulk product to a customer.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than November 24, 1998.

Dated: September 10, 1998.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 98–25655 Filed 9–24–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Bureau of Justice Assistance; Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection Under Review; BJA-Offense Coverage Certification-Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act.

Office Management and Budget (OMB) approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on April 16, 1998, allowing for a 60-day public comment period. No comments were received by the Office

of Justice Programs, Bureau of Justice Assistance.

The purpose of this notice is to allow an additional 30 days for public comments until October 26, 1998. This process is conducted in accordance with the Code of Federal Regulation, Part 1320.10.

Written 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 Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to 202–395–7285.

Written comments and suggestions from the public and affected agencies should address one or more of the following points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information, will have practical utility.

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Overview of This Information Collection

(1) Type of information collection: New collection.

(2) The title of the form/collection: BJA-Offense Coverage Certification-Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act.

(3) The agency form number, if any, and the applicable component of the Department sponsoring the collection:

Form Number: None.

Bureau of Justice Assistance, Office of Justice Programs, United States Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: State Government Agency responsible for implementing Jacob Wetterling Act.

Other: None.

The Byrne Formula Grant Program was created by the Anti-Drug Abuse Act of 1988, and is designed to provide support to its constituency group of state and local criminal justice agencies to initiate innovative projects that respond effectively to crime problems and improve operations of the Nation's criminal justice system. Non-compliance with the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act as amended by the prescribed statutory deadlines will result in a 10 percent reduction in the amount of monies awarded to the non-complying state.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply: The time burden of the 56 respondents to research and complete the forms is 2 hours per form.

(6) An estimate of the total public Burden (in hours) associated with the collection: The total annual hour burden to complete all certifications is 112 annual burden hours.

Public comment on this proposed information collection is strongly encouraged.

Dated: September 21, 1998.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 96–25666 Filed 9–24–98; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register,** or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of

Wage Determinations, 200 Constitution Avenue, NW, Room S–3014, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis—Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

New York
NY98004 (Feb. 13, 1998)
NY98005 (Feb. 13, 1998)
NY98007 (Feb. 13, 1998)
NY980010 (Feb. 13, 1998)
NY980021 (Feb. 13, 1998)
NY980026 (Feb. 13, 1998)
NY980041 (Feb. 13, 1998)
NY980045 (Feb. 13, 1998)
NY980048 (Feb. 13, 1998)
NY980060 (Feb. 13, 1998)
NY980072 (Feb. 13, 1998)

Volume II

Pennsylvania
PA980006 (Feb. 13, 1998)

Volume III

None

Volume IV

Indiana
IN980002 (Feb. 13, 1998)
IN980005 (Feb. 13, 1998)
IN980006 (Feb. 13, 1998)
Michigan
MI980081 (Feb. 13, 1998)
MI980082 (Feb. 13, 1998)

Volume V

Iowa
IA980004 (Feb. 13, 1998)
IA980038 (Feb. 13, 1998)

Volume VI

Alaska
AK980001 (Feb. 13, 1998)
AK980002 (Feb. 13, 1998)
AK980010 (Feb. 13, 1998)
Montana
MT980008 (Feb. 13, 1998)

Volume VII

California
CA980028 (Feb. 13, 1998)
CA980030 (Feb. 13, 1998)
CA980037 (Feb. 13, 1998)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon and Related Acts.'' This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC this 17th day of September 1998.

Carl J. Polesky,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 98–25406 Filed 9–24–98; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Permissible Equipment Testing

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program help to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection related to Permissible Equipment Testing. MSHA is particularly interested in comments which:

- evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility, and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

A copy of the proposed information collection request can be obtained by contacting the employee listed below in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

DATES: Submit comments on or before November 24, 1998.

ADDRESSES: Send comments to Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, 4015 Wilson Boulevard, Room 627, Arlington, VA 22203–1984. Commenters are encouraged to send their comments on a computer disk, or via E-mail to psilvey@msha.gov, along with an original printed copy. Ms. Silvey can be reached at (703) 235–1910 (voice) or (703) 235–5551 (facsimile).

FOR FURTHER INFORMATION CONTACT: Theresa M. O'Malley, Program Analysis Officer, Office of Programs Evaluation and Information Resources, U.S. Department of Labor, Mine Safety and Health Administration, Room 715, 4015 Wilson Boulevard, Arlington, VA 22203–1984. Mrs. O'Malley can be reached at tomalley@msha.gov (Internet E-mail), (703) 235–8378 (voice), or (703) 235–1563 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

The Mine Safety and Health Administration (MSHA) is responsible for the inspection, testing, approval and certification, and quality control of mining equipment and components, materials, instruments, and explosives

used in both underground and surface coal, metal, and nonmetal mines. Title 30 CFR, Parts 15 through 36 contain procedures by which manufacturers may apply for and have equipment approved as ''permissible'' for use in mines.

II. Current Actions

Title 30 CFR Parts 15 through 36 require that an investigation leading to approval or certification will be undertaken by the Approval and Certification Center (A&CC) only pursuant to a written application accompanied by prescribed drawings and specifications identifying the piece of equipment. This information is used by engineers and scientists to evaluate the design in conjunction with tests to assure conformance to standards prior to approval for use in mines.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Permissible Equipment Testing.

OMB Number: 1219–0066.

Agency Number: MSHA 702.

Affected Public: Business or other for-profit.

Cite/reference	Total respondents	Frequency	Total responses	Average time per response	Burden hours
Part 15	6	On occasion	6	1 hr., 53 min	11
Part 18	708	On occasion	708	1 hr., 50 min	8,136
Part 19	5	On occasion	5	11 hrs. 36 min	58
Part 20	8	On occasion	8	8 hrs	64
Part 21	8	On occasion	8	8 hrs	64
Part 22	11	On occasion	11	9 hrs., 38 min	106
Part 23	12	On occasion	12	8 hrs., 15 min	99
Part 24	3	On occasion	3	12 hrs	36
Part 26	3	On occasion	3	14 hrs	42
Part 27	8	On occasion	8	8 hrs., 45 min	70
Part 28	3	On occasion	3	13 hrs., 20 min	40
Part 29	3	On occasion	3	10 hrs	30
Part 33	12	On occasion	12	6 hrs., 30 min	78
Part 35	5	On occasion	5	25 hrs	125
Part 36	81	On occasion	81	8 hrs., 44 min	654
Totals	876		876		9,613

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $1,849,376.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: September 22, 1998.

George M. Fesak,

Director, Program Evaluation and Information Resources.

[FR Doc. 98–25685 Filed 9–24–98; 8:45 am]

BILLING CODE 4510–43–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Examinations and Test of Electrical Equipment

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection related to the Examinations and Tests of Electrical Equipment. MSHA is particularly interested in comments which:

- evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility, and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

A copy of the proposed information collection request can be obtained by contacting the employee listed below in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

DATES: Submit comments on or before November 24, 1998.

ADDRESSES: Send comments to Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, 4015 Wilson Boulevard, Room 627, Arlington, VA 22203–1984. Commenters are encouraged to send their comments on a computer disk, or via E-mail psilvey@msha.gov, along with an original printed copy. Ms. Silvey can be reached at (703) 235–1910 (voice) or (703) 235–5551 (facsimile).

FOR FURTHER INFORMATION CONTACT: Theresa M. O'Malley, Program Analysis Officer, Office of Program Evaluation and Information Resources, U.S. Department of Labor, Mine Safety and Health Administration, Room 715, 4015 Wilson Boulevard, Arlington, VA 22203–1984. Mrs. O'Malley can be reached at tomalley@msha.gov (Internet E-mail), (703) 235–1470 (voice), or (703) 235–1563 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Inadequate maintenance of electric equipment is a major cause of serious electrical accidents in the coal mining industry. Improperly maintained electric equipment has also been responsible for many disastrous mine fires and explosions. The most recent example is the mine fire that occurred at the Wilberg Mine, resulting in the deaths of 27 miners. It is imperative that mine operators adopt and follow an effective maintenance program to ensure that electric equipment is maintained in a safe operating condition if electrocutions, mine fires, and mine explosions are to be prevented.

II. Current Actions

The subject regulations require the mine operator to establish an electrical maintenance program by specifying minimum requirements for the examination, testing, and maintenance of electric equipment. The regulations also contain recordkeeping requirements which may in some instances help operators in implementing an effective maintenance program. The subject records of tests and examinations are examined by coal miners, coal mine officials, and MSHA inspectors. MSHA inspectors examine the records to determine if the required tests and examinations have been conducted and to identify units of electric equipment that may be creating excessive safety problems, and to evaluate the effectiveness of the coal mine operator's electrical maintenance programs. By comparing the records with the actual condition of electric equipment, MSHA inspectors may in some cases be able to identify weaknesses in the coal mine operator's electrical maintenance programs and require that he weaknesses by corrected.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Examination and Tests of Electrical Equipment.

OMB Number: 1219–0067.

Agency Number: MSHA 224.

Recordkeeping: 1 year.

Affected Public: Business or other for-profit.

Cite/reference	Total respondents	Frequency	Total responses	Average time per response	Burden hours
75.512	16,742	Weekly	870,584	42 minutes	593,762
75.703–3(d)(11)	Included with 75.512 calculati on.				
77.502	25,485	Monthly	305,820	1 hour	228,091
75.800–4 and 77.800–2	3,115	Monthly	37,380	45 minutes	28,035
77.900–2	1,699	Monthly	20,388	45 minutes	15,291
75.900–4	5,970	Monthly	71,640	1.5 hours	107,460
75.1001–1(c)	1,000	6 months	2,000	1.5 hours	3,000
75.342(a)(4)	1,040	Monthly	12,480	45 minutes	9,360
75.351	647	Monthly	7,764	1.5 hours	9,705
Totals	55,698		1,328,056		994,704

Total Burden Cost (capital/startup): $30,000.

Total Burden Cost (operating/maintaining): $390.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: September 22, 1998.

George M. Fesak,

Director, Program Evaluation and Information Resources.

[FR Doc. 98–25686 Filed 9–24–98; 8:45 am]

BILLING CODE 4310–70–M

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Rescission of Office of Federal Procurement Policy Policy Letter 79–4, Contracting for Motion Picture Productions and Videotape Productions

AGENCY: Office of Management and Budget, Office of Federal Procurement Policy.

ACTION: Proposed rescission of Office of Federal Procurement Policy (OFPP) Policy Letter 79–4, Contracting for Motion Picture Productions and Videotape Productions.

SUMMARY: Notice is hereby given that the Office of Federal Procurement Policy intends to rescind Policy Letter 79–4, Contracting for Motion Picture Productions and Videotape Productions on December 24, 1998. The purpose of the Policy Letter was to designate a uniform government-wide system to be used in contracting for motion picture and videotape production, including the establishment of a Qualified Producers List to enhance competition. Management studies in the 1970s indicated dissatisfaction with the policies and procedures the government followed when contracting for production of motion pictures and videotapes. In response, OFPP Policy Letter 79–4 was developed to: reduce perceived waste and inefficiency in contracting for such services; ensure that the government obtains such services at fair, competitive prices; provide a central point within the government where interested persons can obtain information on relevant contracting procedures and opportunities; and increase competition for these contracts. However, changes over the last 19 years in both the marketplace for these services and procurement laws and regulations make the Policy Letter obsolete. Today there are thousands of commercial producers of motion picture and videotape productions, competition is the norm, contracting officers routinely obtain past performance information, and Internet access (see Supplementary Information below) as well as other marketplace tools provide sources of supply. It is no longer cost-effective or efficient for the government to maintain an office dedicated to evaluating contractors and maintaining a Qualified Producers List in this commercial environment.

DATES: Persons who wish to comment on the proposed rescission of OFPP Policy Letter 79–4 should submit their comments no later than December 9, 1998.

ADDRESSES: Comments should be addressed to Michael Gerich, Office of Federal Procurement Policy, Room 9001 New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Michael Gerich, Office of Federal

Procurement Policy, 202–395–3501. Copies of Policy Letter 79–4 are available at the address above.

SUPPLEMENTARY INFORMATION: The executive agent for Policy Letter 79–4, Defense Visual Information, is developing a world wide website that will contain an Interested Producers List (IPL) as well as links to other sites for current, up to date and valuable solicitation information. Thus, while a Qualified Producers List will no longer be a requirement, all persons or firms interested in doing business with the government will have access to, as a convenience, databases designed to promote the exchange of information for procurement of motion picture, video and multimedia productions. This virtual clearing house of information will provide federal agencies with a valuable information resource and will provide audiovisual and multimedia producers a forum, the IPL, to present their production capabilities, technical skills, experience, and subject matter expertise in a searchable on-line database. Access the website, http://dodimagery.afis.osd.mil and select ''Order/Initiate VI Production'' for more information on the IPL website currently under development. This new website will be activated upon rescission of Policy Letter 79–4.

Deidre A. Lee,

Administrator.

[FR Doc. 98–25653 Filed 9–24–98; 8:45 am]

BILLING CODE 3110–01–U

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Pub. L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received under the Antarctic Conservation Act of 1978, Pub. L. 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45, Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to these permit applications by October 20, 1998. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy at the above address or (703) 306–1030.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), has developed regulations that implement the ''Agreed Measures for the Conservation of Antarctic Fauna and Flora'' for all United States citizens. The Agreed Measures, developed by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas a requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest.

The applications received are as follows:

1. Applicant

Permit Application No. 99–012

Erick Chiang, Head, Polar Research Support Section, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230

Activity for Which Permit Is Requested

Enter Antarctic Specially Protected Areas

The applicant proposes to conduct recreational and educational visits, by authorized U.S. Antarctic Program (USAP) participants, to the following areas: SPA #25—Cape Evans, including Scott's Hut; SPA #26—Cape Adare, including the historic huts; SPA #27—Cape Royds, including Shackleton's Hut; and SPA #28—Discovery Hut (Hut Point). McMurdo Station is located on Hut Point, Ross Island, and is in very close proximity to several historic huts, especially Discovery Hut, which sits adjacent to the station. Access to the huts will be by tracked vehicle, helicopter, or on foot as appropriate. All visits will be conducted in accordance with the management plans for the specific sites. In addition, procedures for monitoring numbers of USAP visitors throughout the season will be implemented.

Location

SPA #25—Cape Evans, including Scott's Hut; SPA #26—Cape Adare, including the historic huts; SPA #27—Cape Royds, including Shackleton's Hut; and SPA #28—Discovery Hut, Hut Point.

Dates

October 1, 1998–September 30, 2003.

Nadene G. Kennedy,

Permit Officer, Office of Polar Programs.

[FR Doc. 98–25727 Filed 9–24–98; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–336]

Northeast Nuclear Energy Company; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Northeast Nuclear Energy Company (NNECO) to withdraw its July 7, 1995, application for proposed amendment to Facility Operating License No. DRP–65 for the Millstone Nuclear Power Station, Unit No. 2, located in New London County, Connecticut.

The proposed amendment would have revised the requirements for the control room air conditioning system and supporting Bases. Subsequently, by letter dated August 4, 1998, NNECO withdrew the amendment request because it is in the process of performing new radiological assessment calculations for various Millstone, Unit No. 2, design basis accidents, which will result in changes to the proposed amendment. NNECO also indicated that it would no longer be necessary to respond to the two requests for additional information dated November 6 and 25, 1997, since the amendment request is being withdrawn.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on August 2, 1995 (60 FR 39443). However, by letter dated August 4, 1998, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated July 7, 1995, and the licensee's letter dated August 4, 1998, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Pubic Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms located at the Learning Resources Center, Three Rivers Community-

Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

Dated at Rockville, Maryland, this 16th day of September 1998.

For the Nuclear Regulatory Commission.

Daniel G. McDonald Jr.,

Senior Project Manager, Millstone Project Directorate, Division of Reactor Projects-I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–25625 Filed 9–24–98; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–313 and 50–368]

Entergy Operations, Inc.; Arkansas Nuclear One, Units 1 and 2, Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of its regulations for Facility Operating License Nos. DPR–51 and NPF–6 issued to Entergy Operations, Inc. (the licensee), for operation of Arkansas Nuclear One, Units 1 and 2 (ANO–1 and ANO–2), located in Pope County, Arkansas.

Environmental Assessment

Identification of Proposed Action

The proposed action would exempt the licensee from the requirements of 10 CFR 70.24(a) as it pertains to the handling and storage of unirradiated fuel at ANO–1 and ANO–2. The requirements of 10 CFR 70.24(a) include (1) having a monitoring system that will energize clear audible alarms if accidental criticality occurs in each area in which special nuclear material is handled, used, or stored and (2) having emergency procedures and conducting related drills to familiarize personnel with the evacuation plan, for each area in which this licensed special nuclear material is handled, used, or stored.

The proposed action is in accordance with the licensee's application for exemption dated October 31, 1997.

The Need for the Proposed Action

The purpose of 10 CFR 70.24 is to ensure that if a criticality event (or accident) were to occur during the handling of special nuclear material, personnel would be alerted to that fact and would take appropriate action. At a commercial nuclear power plant the inadvertent criticality with which 10 CFR 70.24 is concerned could occur during fuel handling operations. The special nuclear material that could be assembled into a critical mass at a commercial nuclear power plant is in the form of nuclear fuel; the quantity of other forms of special nuclear material that is stored on site in any given location is small enough to preclude achieving a critical mass. Because the fuel is not enriched beyond 5.0 weight percent Uranium-235 and because commercial nuclear plant licensees have procedures and design features that prevent inadvertent criticality, the staff has determined that it is unlikely that an inadvertent criticality could occur due to the handling of special nuclear material at a commercial power reactor. The requirements of 10 CFR 70.24, therefore, are not necessary to ensure the safety of personnel during the handling of special nuclear materials at commercial power reactors.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that there is no significant environmental impact if the exemption is granted. Inadvertent or accidental criticality will be precluded through compliance with the ANO–1 and ANO–2 Technical Specifications (TSs), the design of the new fuel storage area, and administrative controls imposed on fuel handling procedures. TSs requirements specify reactivity limits for new fuel assemblies and key design features for the new fuel storage racks, including the minimum spacing between the unirradiated fuel assemblies.

Appendix A of 10 CFR Part 50, ''General Design Criteria for Nuclear Power Plants,'' Criterion 62, requires the criticality in the fuel storage and handling system shall be prevented by physical systems or processes, preferably by use of geometrically-safe configurations. This is met at ANO–1 and ANO–2, as identified in the TSs and the Updated Safety Analysis Reports (USARs). The TSs for storage racks and limits on fuel enrichment for ANO–1 and ANO–2 are such that the ratio of neutron production to neutron absorption and leakage (k-effective) will not exceed 0.98 assuming optimum moderation by an aqueous foam and will not exceed 0.95 when the storage area is flooded with unborated water.

The proposed exemption would not result in any significant radiological impacts. The proposed exemption would not affect radiological plant effluents since the handling and storage of new fuel does not impact the normal operations of the plant that generate radioactive wastes and design and administrative controls previously described provide adequate controls to preclude accidental releases from an inadvertent criticality. The proposed exemption would not cause any significant occupational exposures since the TSs, design controls (including geometric spacing of fuel assembly storage spaces) and administrative controls preclude inadvertent criticality. Existing programs at ANO–1 and ANO–2 also provide reasonable confidence that personnel would be alerted to and would know how to respond to a radiological accident involving the handling and storage of fuel assemblies. The amount of radioactive waste would not be changed by the proposed exemption.

The proposed exemption does not result in any significant nonradiological environmental impacts. The proposed exemption involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded that there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed exemption, the staff considered denial of the requested exemption (no-action alternative). Denial of the request would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for Arkansas Nuclear One, Units 1 and 2.

Agencies and Persons Consulted

In accordance with its stated policy, on August 19, 1998, the staff consulted with Mr. Bernie Bevell, Director, Division of Radiation Control and Emergency Management, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated October 31, 1997, which is available for public inspection at the Commission's Public Document Room, which is located at The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Tomlinson Library, Arkansas Tech University, Russellville, AR 72801.

Dated at Rockville, Maryland, this 18th day of September 1998.

For the Nuclear Regulatory Commission.

William D. Reckley,

Senior Project Manager, Project Directorate IV–1, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 98–25692 Filed 9–24–98; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

Sunshine Act Meeting

TIMES AND DATES: 9:00 a.m., Monday, October 5, 1998; 8:30 a.m., Tuesday, October 6, 1998.

PLACE: Honolulu, Hawaii, at the Halekulani Hotel, 2199 Kalia Road, in Ballroom One.

STATUS: October 5 (Closed); October 6 (Open).

MATTERS TO BE CONSIDERED:

Monday, October 5–9:00 a.m. (Closed)

1. Items Returned to the Postal Rate Commission for Reconsideration in Rate Case R97–1.
2. Postal Rate Commission Decision in Docket No. MC98–1, Mailing Online.
3. Compensation Issues.

Tuesday, October 6–8:30 a.m. (Open)

1. Minutes of the Previous Meeting, August 31–September 1, 1998.
2. Remarks of the Postmaster General/Chief Executive Officer.
3. Board of Governors 1999 Meeting Schedule.
4. Office of the Governors FY 1999 Budget.
5. Amendments to BOG Bylaws.
6. Briefing on Year 2000.
7. Report on the Honolulu Performance Cluster.
8. Tentative Agenda for the November 2–3, 1998, meeting in Washington, DC.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Koerber, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260–1000. Telephone (202) 268–4800.

Thomas J. Koerber,

Secretary.

[FR Doc. 98–25897 Filed 9–23–98; 3:44 pm]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23442; 812–11314]

Gradison-McDonald Cash Reserve Trust, et al.; Notice of Application

September 22, 1998.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 15(a) of the Act.

SUMMARY: The requested order would permit the implementation, without prior shareholder approval, of new investment advisory and subadvisory agreements (the ''New Agreements'') for a period of up to 150 days following the later of the date on which a merger between McDonald & Company Investments, Inc. (''McDonald'') and KeyCorp is consummated (the ''Merger Date'') or the date on which the requested order is issued and continuing until the date the New Agreements are approved or disapproved by the shareholders (but in no event later than April 1, 1999) (''Interim Period''). The order also would permit McDonald & Company Securities, Inc. (the ''Adviser''), and Blairlogie Capital Management (the ''Subadviser'') to receive all fees earned under the New Agreements during the Interim Period following shareholder approval.

APPLICANTS: Gradison-McDonald Cash Reserves Trust (''Cash Reserves Trust''), Gradison Custodian Trust (''Custodian Trust''), Gradison-McDonald Municipal Custodian Trust (''Municipal Trust''); Gradison Growth Trust (''Growth Trust'') (collectively, the ''Trusts''), each on behalf of its separate portfolios (the ''Funds''), the Adviser, and the Subadviser.

FILING DATES: The application was filed on September 21, 1998.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 13, 1998, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549; Trusts and Adviser, 580 Walnut Street, Cincinnati, Ohio 45202; and Subadviser, 125 Princes Street, Edinburgh, Scotland EH2, 4AD.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Attorney Adviser, at (202) 942–0574, or Edward P. Macdonald, Branch Chief, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549 (tel. 202–942–8090).

Applicants' Representations

1. Each Trust is registered under the Act as an open-end management investment company, and each Trust, except the Cash Reserves Trust which is a Massachusetts business trust, is an Ohio business trust. The Cash Reserves Trust, the Custodian Trust, and the Municipal Trust each offer one Fund, and the Growth Trust offers four Funds.

2. The Adviser, a wholly-owned subsidiary of McDonald, is registered under the Investment Advisers Act of 1940 (the ''Advisers Act'') and serves as investment adviser to the Funds. The Subadviser, organized as a Scottish limited partnership, is registered under the Advisers Act. The Subadviser acts as subadviser to the International Fund series of the Growth Trust under a subadvisory agreement with the Adviser.

3. On June 15, 1998, McDonald and Key Corp, a bank holding and financial services company, entered into an Agreement and Plan of Merger under which Key Corp will acquire McDonald and its direct and indirect subsidiaries including the Adviser (the ''Merger''). Upon consummation of the Merger, McDonald will merge into KeyCorp with KeyCorp as the surviving entity.

McDonald and KeyCorp currently intend to combine the businesses of the Adviser and Key Capital Markets, Inc., a wholly-owned subsidiary of KeyCorp, into one wholly-owned subsidiary of KeyCorp with the Adviser continuing as the surviving entity.

4. Applicants state that the Merger will result in an assignment, and thus automatic termination, of the Adviser's existing investment advisory agreements with the Trusts and the Subadviser's existing investment subadvisory agreement with the Adviser (the ''Existing Agreements''). Applicants anticipate that the Merger will occur on or about October 12, 1998.

5. Applicants request an exemption to permit the implementation, during the Interim Period and prior to obtaining shareholder approval, of the New Agreements. The requested exemption would cover an Interim Period of not more than 150 days, beginning on the later of the Merger Date or the date the requested order is issued and continuing until the date the New Agreements are approved or disapproved by each Fund's shareholders (but in no event later than April 1, 1999).[1] The requested order also would permit the Adviser and Subadviser to receive all fees earned under the New Agreements during the Interim Period if, and to the extent, the New Agreements are approved by the Fund's shareholders. Applicants state that the terms and conditions of the New Agreements will substantially identical to those of the Existing Agreements, except for the effective and termination dates and the inclusion of escrow arrangements described below.

6. Each Trust's board of trustees (the ''Boards''), including a majority of each Board's trustees who are not interested persons of the Funds, within the meaning of section 2(a)(19) of the Act (''Independent Trustees'') met on July 31, 1998 and September 14, 1998 and received information deemed reasonably necessary to evaluate whether the terms of the New Agreements are in the best interest of the Funds and their respective shareholders. Each Board, including the Independent Trustees, approved the respective New Agreement in accordance with section 15(c) of the Act and voted to recommend that shareholders of the respective Fund approve the New Agreement during the Interim Period.

7. Proxy materials for the approval of the New Agreements are expected to be mailed to the Funds' shareholders on or about January 15, 1999. Applicants state that although no decisions have been made with respect to the Funds, KeyCorp will likely recommend that the Funds be merged or reorganized into funds of the KeyCorp family of mutual funds during or by the close of the Interim Period. Applicants state that commencing the proxy solicitations on or about January 15, 1999, will allow the Funds to undertake a single proxy solicitation for obtaining shareholder approval of the New Agreements and any proposed mergers or reorganizations, rather than conducting multiple proxy solicitations within a relatively short period of time, and thus, should reduce costs and minimize any potential shareholder confusion that may arise in the circumstances.

8. Fees earned by the Adviser or the Subadviser under the New Agreements during the Interim Period will be maintained in an interest-bearing escrow account with an unaffiliated bank. An escrow agent will make payment of fees (including any interest earned) to the Adviser only if each Fund's shareholders approve the respective New Agreement. The amounts in the escrow account (including interest earned on such paid fees) will be paid (i) to the Adviser or Subadviser only upon approval of the New Agreements by the shareholders of the respective Fund; or (ii) to the respective Fund, in the absence of shareholder approval. The escrow agent will notify the relevant Boards when fees are paid from the escrow account.

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in pertinent part, that it shall be unlawful for any person to serve or act as an investment adviser of a registered investment company, except pursuant to a written contract that has been approved by the vote of a majority of the outstanding voting securities of such registered investment company. Section 15(a) of the Act further requires that such written contract provide for automatic termination in the event of its ''assignment.'' Section 2(a)(4) of the Act defines ''assignment'' to include any direct or indirect transfer of a contract by the assignor, or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor. Applicants state that the Merger will result in an assignment, and thus automatic termination, of the Existing Agreements.

2. Rule 15a–4 under the Act provides, in pertinent part, that if an investment advisory contract with an investment company is terminated by an assignment in which the adviser does not directly or indirectly receive a benefit, the adviser may continue to act as such for the company for 120 days under a written contract that has not been approved by the company's shareholders, provided that: (a) The new contract is approved by that company's board of directors (including a majority of the non-interested directors); (b) the compensation to be paid under the new contract does not exceed the compensation that would have been paid under the contract most recently approved by the company's shareholders; and (c) neither the adviser nor any controlling person of the adviser ''directly or indirectly receives money or other benefit'' in connection with the assignment. Applicants state that they cannot rely on rule 15a-4 because the Adviser may be deemed to receive a benefit in connection with the Merger.

3. Section 6(c) provides that the SEC may exempt any person, security, or transaction from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. Applicants submit that the requested relief meets this standard. Applicants state that the terms and timing of the Merger were determined by McDonald and KeyCorp in response to a number of factors beyond the scope of the Act and substantially unrelated to the Funds. Applicants also state that there is not a sufficient opportunity to secure shareholder approval of the New Agreements before the Merger Date. Applicants assert that the requested relief would permit the continuity of investment management of the Funds, without interruption, during the period following the consummation of the Merger.

5. Applicants submit that the scope and quality of the investment advisory and subadvisory services provided to the Funds during the Interim Period will be equivalent to the scope and quality of the services currently provided to the Funds. Applicants state that the Existing Agreements were approved by the Boards and the

[1] Applicants state that if the Merger Date precedes the issuance of the requested order, the Adviser and, if applicable, the Subadviser will serve after the Merger Date and prior to the issuance of the order in a manner consistent with their fiduciary duty to provide investment advisory services to the Funds even though approval of the New Agreements has not been secured from the Funds' respective shareholders. Applicants submit that in such an event, the Adviser and, if applicable, the Subadviser will be entitled to receive from the Funds, with respect to the period from the Merger Date until the issuance of the order, no more than the actual out-of-pocket cost to the Adviser and, if applicable, the Subadviser for providing investment advisory services to the Funds.

shareholders of the Funds. Applicants represent that the New Agreements will have substantially the same terms and conditions as the Existing Agreements, except for the dates of commencement and termination and the inclusion of the escrow arrangements. Accordingly, applicants assert that each Fund will receive, during the Interim Period, substantially identical investment advisory and/or subadvisory services, provided in the same manner, as it received prior to the Effective Date. Applicants state that, in the event of any material change in the personnel of the Adviser or the Subadviser providing services during the Interim Period, the Adviser or Subadviser will apprise and consult the Boards to assure that the Boards, including a majority of the Independent Directors, are satisfied that the services provided by the Adviser and Subadviser will not be diminished in scope or quality.

6. Applicants contend that to deprive the Adviser and the Subadviser of their customary fees during the Interim Period would be an unduly harsh and unreasonable penalty. Applicants note that the fees payable to the Adviser and the Subadviser under the New Agreements will be the same as the fees paid under the Existing Agreements. Applicants also note that the fees will not be released by the escrow agent to the Adviser or the Subadviser without the approval of the Funds' shareholders.

Applicants' Conditions

Applicants agree as conditions to the issuance of the exemptive order requested by the application that:

1. Each New Agreement will have the same terms and conditions as the respective Existing Agreement, except for their effective and termination dates and the inclusion of escrow arrangements.

2. Fees earned by the Adviser or the Subadviser in accordance with a New Agreement during the Interim Period will be maintained in an interest-bearing escrow account with an unaffiliated bank, and amounts in the account (including interest earned on such paid fees) will be paid: (a) to the Adviser and, if applicable, the Subadviser, upon approval of the New Agreements by the respective Fund's shareholders; or (b) to the respective Fund, in the absence of shareholder approval.

3. Each Fund will promptly schedule a meeting of shareholders to vote on approval of the respective New Agreement to be held within 150 days following the commencement of the Interim Period (but in no event later than April 1, 1999).

4. McDonald, KeyCorp and/or one or more of their subsidiaries, but not the Funds, will pay the costs of preparing and filing the application and the costs relating to the solicitation of shareholder approval of the New Agreements.

5. The Adviser and Subadviser will take all appropriate actions to ensure that the scope and quality of advisory and other services provided to the Fund during the Interim Period will be at least equivalent, in the judgment of the respective Board, including a majority of the Independent Trustees, to the scope and quality of services provided under the Existing Agreement. In the event of any material change in personnel providing services under the New Agreements, the Adviser or Subadviser will apprise and consult the Boards to assure that the Boards, including a majority of the Independent Trustees, are satisfied that the services provided will not be diminished in scope or quality.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–25726 Filed 9–24–98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–26917]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

September 18, 1998.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by October 13, 1998, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After October 13, 1998, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Entergy Corporation (70–9049)

Entergy Corporation (''Entergy''), a registered holding company, 639 Loyola Avenue, New Orleans, Louisiana 70113, has filed an application-declaration under sections 6(a), 7, 12(b), 32 and 33 of the Act and rules 45, 53 and 54 under the Act.

Entergy, through its direct and indirect subsidiary companies, is engaged, among other things, in investing in and developing exempt wholesale generators (''EWGs'') and foreign utility companies (''FUCOs''), as each is defined in the Act. Entergy is currently authorized by several orders to finance these activities through the issuance and sale of debt and equity securities. Under the terms of two such orders,[1] Entergy is authorized to issue and sell up to 30 million shares of its common stock (''Common Stock'') under its dividend reinvestment and stock purchase plan. Under the terms of another such order, dated February 26, 1997 (HCAR No. 26674), Entergy is authorized to issue unsecured notes through December 31, 2002, in an aggregate principal amount at any time outstanding not to exceed $500 million.

Entergy now requests that the Commission exempt Entergy from the requirements of rule 53(a)(1) under the Act, to allow Entergy to issue securities for the purpose of investing in EWGs and FUCOs, and to issue guarantees relative to the obligations of these entities.[2] Under the proposal, the aggregate amount of these securities and guaranties outstanding at any time would not, when added to Entergy's aggregate investment in EWGs and FUCOs, exceed 100% of Entergy's consolidated retained earnings.

The consolidated retained earnings of Entergy through March 31, 1998 were about $2.1936 billion. Entergy had aggregate investments of about $1.1838

[1] HCAR No. 25541 (June 6, 1996) and HCAR No. 26693 (March 25, 1997).

[2] Entergy is currently seeking Commission approval in a separate filing to finance its investments in EWGs and FUCOs through providing guarantees or other forms of credit support in respect of the securities or other obligations.

billion through March 31, 1998 (or approximately 54% of its consolidated retained earnings).[3]

Conectiv, et al. (70–9095)

Conectiv, a registered public utility holding company under the Act, and Conectiv's subsidiary companies, Delmarva Power & Light Company (''Delmarva''), Conectiv Resource Partners, Inc. and Conectiv Energy Supply Company, all located at 800 King Street, Wilmington, Delaware 19899; Delmarva Capital Investments, Inc., Conectiv Services, Inc., Conectiv Communications, Inc., Delmarva Services Company, DCI I, Inc., DCI II, Inc., DCTC–Burney, Inc., Christiana Capital Management, Inc., Delmarva Operating Services Co., Conectiv Solutions, LLC, Conectiv Energy, Inc., Power Consulting Group, Inc., and Conectiv Plumbing LLC, all located at 252 Chapman Road, P.O. Box 6066, Newark, Delaware 19714; Atlantic City Electric Company, Atlantic Energy Enterprises, Inc., and Atlantic Energy International, Inc., all located at 6801 Black Horse Pike, Egg Harbor Township, New Jersey 08234; Atlantic Generation, Inc., Atlantic Southern Properties, Inc., ATE Investment, Inc., Conectiv Thermal Systems, Inc., CoastalComm, Inc., Atlantic Energy Technology, Inc., Binghamton General, Inc., Binghamton Limited, Inc., Pedrick Ltd., Inc., Pedrick Gen. Inc., Vineland Limited, Inc., Vineland General, Inc., Atlantic Jersey Thermal Systems, Inc., ATS Operating Services, Inc., The Earth Exchange, Inc., and Atlantic Paxton Cogeneration, Inc., all located at 5100 Harding Highway, Mays Landing, New Jersey 08330; and Petron Oil Corporation (''Petron''), 180 Gordon Drive, Exton, Pennsylvania 19341–1328, collectively, ''Applicants''), have filed a post-effective amendment to an application-declaration filed under sections 6(a), 7, 9(a), 10 and 12(b) of the Act and rules 43(a), 45 and 54 under the Act.

By order dated February 26, 1998 (HCAR No. 26833) (''Financing Order''), the Commission authorized Conectiv to issue short-term debt through December 31, 2000 up to an amount which, when aggregated with outstanding short-term debt issued by Delmarva, would not exceed $500 million at any one time outstanding (''Short-Term Debt Authorization'').[4] In the Financing Order, the Commission also authorized Conectiv to issue up to 10 million shares of its common stock (''Common Stock'') for benefit plans and a dividend reinvestment plan. In addition, the Financing Order authorized Conectiv and its subsidiaries to establish a system money pool (''Money Pool'').

Conectiv now requests that the Short-Term Debt Authorization for Conectiv be increased from $500 million to $800 million. Conectiv states that it seeks no other changes to the authority granted by the Financing Order to incur short-term debt. The short-term debt will be used to provide working capital for the general corporate purposes of Conectiv and its subsidiaries and to fund the capital requirements of Conectiv's subsidiaries until long-term financing can be obtained.[5]

Applicants also request that the description of the benefit plans under which Common Stock may be issued be amended to include a prior Delmarva incentive plan. In the Financing Order, Conectiv was authorized to issue Common Stock under the terms of the Conectiv incentive compensation plan (the ''Conectiv Plan'') and of future compensation plans, subject to certain conditions. However, Conectiv states that options had been issued under an existing Delmarva long-term incentive plan (the ''Delmarva Plan'') that were not extinguished upon the effective date of the acquisition of Delmarva and Atlantic Energy, Inc. by Conectiv. These options were converted to options to buy Common Stock. Conectiv proposes to expand its authority under the Financing Order so as to include authority to issue Common Stock under the Delmarva Plan as well as the Conectiv Plan and future plans.

Finally, Applicants request authority for Petron to participate in the Money Pool. Conectiv states that Petron was purchased by Conectiv Energy Supply Company (previously Delmarva Energy Company) in an exempt acquisition of securities under rule 58 under the Act after the Money Pool was established.

GPU, Inc., et al. (70–9309)

GPU, Inc. (''GPU''), 300 Madison Avenue, Morristown, New Jersey 07962, a registered holding company, and its electric utility subsidiary companies, Jersey Central Power & Light Company (''JCP&L''), Metropolitan Edison Company (''Met-Ed'') and Pennsylvania Electric Company (''Penelec''), all located at 2800 Pottsville Pike, Reading Pennsylvania 19605, have filed a declaration under section 12(b) of the Act and rules 45 and 54 under the Act.

By order dated March 24, 1997 (HCAR No. 26690) (''1997 Order''), GPU was authorized to enter into letter of credit reimbursement agreements (''Reimbursement Agreements'') with banks in aggregate face amounts of up to $40 million, through December 31, 2006. The letters of credit underlying the Reimbursement Agreements were executed to provide security for the workers compensation obligations of GPU subsidiaries GPU Service, Inc. (''GPUS''), JCP&L, GPU Nuclear Corporation (''GPUN'') and GPU Generation, Inc. (''GPUG'').[6] The Commission reserved jurisdiction in that order over GPU's request to enter into similar letter of credit reimbursement agreements for the benefit of Met-Ed and Penelec. Separately, by orders dated April 14, 1993 (''1993 Order'') and March 15, 1994 (''1994 Order'') (HCAR Nos. 25793 and 26003, respectively), Met-Ed and Penelec, together, and JCP&L, alone, were authorized to enter into similar letter of credit reimbursement agreements to aggregate face amounts of up to $20 and $15 million, respectively, through December 31, 1998.[7]

GPUS now intends, through December 31, 2006, to enter into a reimbursement agreement for the New Jersey employees and a reimbursement agreement for the Pennsylvania employees of itself, JCP&L, Met-Ed, Penelec, GPUN and GPUG. GPU proposes to be a party to these agreements or to guarantee GPUS' obligations under them. GPU, JCP&L, Met-Ed and Penlec propose that an order in this matter supersede the 1993, 1994 and 1997 Orders, except that existing reimbursement agreements made under those orders will not be affected.

Each agreement will have a face amount of up to $20 million and will be co-signed or guaranteed by GPU.

[3] Entergy states that its aggregate investment in EWGs and FUCOs currently exceeds the 50% limitation in Rule 53(a)(1). It states that this is due to certain write-offs against Entergy's consolidated retained earnings, including a net decrease of approximately $140 million from the second quarter to the third quarter of 1997. Entergy attributes this net decrease primarily to the recording of a one-time ''windfall profits tax'' imposed by the British government on London Electricity plc, an indirect subsidiary of Entergy and a FUCO.

[4] Delmarva is limited by order of the Virginia State Corporation Commission to a maximum of $275 million short-term debt at any one time outstanding through December 31, 1999.

[5] Conectiv states that general corporate purposes could include interim funding of the repurchase of outstanding long-term securities.

[6] GPU maintains two separate Reimbursement Agreements under the 1997 Order for workers compensation obligations related to New Jersey and Pennsylvania employees of JCP&L, GPUS, GPUN and GPUG, with face amounts of $9.68 million and $4.84 million, respectively, that expire December 31, 1998.

[7] Under authority of the 1993 Order, Penelec and Met-Ed each have reimbursement agreements with face amounts of $2.73 million and $706,000, also expiring December 31, 1998. JCP&L did not exercise its authority under the 1994 Order to enter into any reimbursement agreements.

Drawings under the Reimbursement Agreements will bear interest at no more than the effective prime rate of the bank issuing a letter of credit. The terms for the Reimbursement Agreements will not exceed three years.

GPUS will seek reimbursement directly from the associate company responsible for the drawing. It will allocate Reimbursement Agreement fees based on loss exposure (determined generally by payroll) in the relevant state.

Niagara Mohawk Holdings, Inc. (70–9339)

Niagara Mohawk Holdings, Inc. (''Holdings''), 300 Erie Boulevard, Syracuse, New York 13202, a wholly owned subsidiary company of Niagara Mohawk Power Corporation (''Niagara Mohawk''), a New York gas and electric utility holding company exempt from registration under section 3(a)(2) and rule 2 of the Act, has filed an application under sections 3(a)(1), 9(a)(2) and 10 of the Act.

Holdings proposes to acquire all of the outstanding common stock of Niagara Mohawk and, indirectly, 86% of the outstanding common stock of Beebee Island Corp. (''Beebee Island''), 67% of the outstanding common stock of Moreau Manufacturing Corp. (''Moreau''), and 50% of Canadian Niagara Power Company (''CNP'') as described below.

The acquisition will be accomplished through an exchange (''Exchange'') of each outstanding share of Niagara Mohawk common stock for one share of Holdings common stock. As a result of the Exchange, Holdings will become a holding company, Niagara Mohawk will become a subsidiary of Holdings, and all of Holdings' common stock outstanding immediately after the Exchange will be owned by the former holders of Niagara Mohawk common stock outstanding immediately prior to the Exchange.

After the Exchange, certain of Niagara Mohawk's existing nonutility subsidiaries will be transferred to Holdings and become subsidiaries of Holdings.[8] Holdings will have no material assets other than its ownership of the stock of its subsidiaries. Holdings states that it will not assume or guarantee the current indebtedness of Niagara Mohawk in connection with the Exchange.

Niagara Mohawk is engaged in the generation, transmission, distribution and purchase of electricity in the eastern, central, northern and western sections of the State of New York having a total population of 3.5 million, and purchasing, transporting and distributing natural gas in the eastern, central and northern sections of the State of New York. Niagara Mohawk had $3,966,404,000 in consolidated operating revenues in 1997. Niagara Mohawk is subject to the regulatory authority of the New York Public Service Commission.

Niagara Mohawk currently owns a subsidiary company, Opinac North America, Inc. (''Opinac NA''), which in turn owns Opinac Energy Corporation, Plum Street Enterprises, Inc. and Plum Street Energy Marketing, Inc. (a subsidiary of Plum Street Enterprises, Inc.). Opinac Energy Corporation owns 50% of CNP, a public utility as defined in the Act, which owns a 99.99% interest in Canadian Niagara Wind Power Company, Inc. and Cowley Ridge Partnership and generates electricity at the William B. Rankine Generating Station located in Niagara Falls, Ontario, Canada.[9] CNP distributes electricity to residential, commercial and industrial customers in Niagara Falls and Fort Erie, Ontario. CNP also has an international electric interconnection with Niagara Mohawk and both sell power to, and purchase power from, Niagara Mohawk at wholesale. Otherwise, CNP conducts its business wholly within Canada.

Niagara Mohawk also owns a majority interest in two additional utility companies: Beebee Island[10] and Moreau.[11] Beebee Island operates a 7.7 megawatt hydroelectric generating station located on the Black River in the State of New York. Moreau operates a 5.0 megawatt hydroelectric generating station located on the Hudson River in New York state. Beebee Island and Moreau have contractual agreements with their respective owners to sell 100% of their power in accordance with ownership percentages on a wholesale basis.

Holdings states that the proposed corporate restructuring is intended to permit Niagara Mohawk and its subsidiaries the financial and regulatory flexibility to compete more effectively in an increasingly competitive energy industry by providing a structure that can accommodate both regulated and unregulated lines of business.

Holdings asserts that following the Exchange, it will be a public utility holding company entitled to an exemption under section 3(a)(1) of the Act because it and each of its public utility subsidiaries from which it derives a material part of its income will be predominately intrastate in character and will carry on their business substantially in the State of New York.

Northeast Utilities (70–9343)

Northeast Utilities (''NU''), a registered holding company, located at 174 Brush Hill Avenue, West Springfield, Massachusetts 01090–0010, has filed an application-declaration under sections 6(a), 7, 9(a), 10, and 12(b) of the Act and rules 45 and 54 under the Act.

NU requests authorization through December 31, 1999, to organize, acquire the capital stock, and provide financing in respect to a new, wholly owned subsidiary (''NEWCO''), which will, through multiple subsidiaries, engage in a variety of energy-related and other activities and acquire and manage nonnuclear generating plants. Upon formation, NEWCO will issue, and NU will acquire, one hundred shares of common stock, par value $1 per share for $100,000. NU further proposes through December 31, 1999, to invest up to $150 million[12] for NEWCO's preliminary development activities and administrative costs associated with, among other things, (1) identifying and analyzing generation acquisition opportunities for these projects (in the aggregate amount of up to $10 million) and (2) developing and managing NEWCO's other investments (in the aggregate amount of up to $140 million).

NEWCO proposes to participate in the auction of nonnuclear generating assets through formation of a wholly owned subsidiary GENCO. GENCO will issue, and NEWCO will acquire, one hundred shares of common stock, par value $1 per share. NEWCO will invest an additional $10 million in GENCO through December 31, 1999. Subsequently, NEWCO will issue to NU and NU will acquire, 100 shares of NEWCO common stock for $100,000, and in turn, GENCO will issue to NEWCO and NEWCO will acquire 100 shares of GENCO common stock for $10,000.

NU and NEWCO also propose through December 31, 1999 to issue guarantees

[8] Niagara Mohawk's nonutility subsidiaries include: NM Uranium, Inc., NM Holdings, Inc. and NM Receivables Corp.

[9] Opinac Energy Corporation is an exempt holding company under section 3(a)(5) of the Public Utility Holding Company Act. (HCAR No. 25632, September 16, 1992).

[10] Niagara Mohawk owns 86% of the outstanding common stock of Beebee Island, the remaining 13% is owned by Ahlstrom Filtration, Inc.

[11] Niagara Mohawk owns 67% of the outstanding common stock of Moreau, the remaining 33% is owned by Finch, Pruyn and Company.

[12] Each investment by NU in NEWCO will take the form of additional acquisitions of capital stock, capital contributions, open account advances or subordinated loans.

or provide other forms of credit support or enhancements (collectively, ''Guarantees'') to, or for the benefit of, nonutility companies and other direct or indirect subsidiaries or affiliates of NEWCO in an aggregate amount not to exceed $75 million. Guarantees may take the form of NU or NEWCO agreeing to guarantee, undertake reimbursement obligations, assume liabilities or other obligations with respect to or act as surety on, bonds, letters of credit, evidences of indebtedness, equity commitments, performance and other obligations undertaken by NU, NEWCO, GENCO, the nonutility companies or its affiliates.

NU and NEWCO represent that the terms and conditions of the Guarantees will be established through arm's length negotiations based upon current market conditions. NU and NEWCO further undertake that any Guarantee they issue will be without recourse to any of the system operating companies to the extent not authorized under rule 52.

NU and NEWCO represent that no Commission authorization is sought under this application-declaration for the acquisition or operation of any public utility company as defined under the Act.

Northern States Power Company (70–9337)

Northern States Power Company (''NSP''), 414 Nicollet Mall, Minneapolis, Minnesota 55401, a Minnesota combination electric and gas public-utility company and a public-utility holding company exempt from registration by order under section 3(a)(2) of the Act,[13] has filed an application under sections 3(a)(2), 9(a) and 10 of the Act in connection with its acquisition of all of the issued and outstanding common stock of Black Mountain Gas Company (''BMG''), an Arizona gas utility company.

NSP is engaged primarily in the generation, transmission and distribution of electricity throughout a 30,000 square mile service area in Minnesota, South Dakota and North Dakota. NSP also purchases, distributes and sells natural gas to retail customers, and transports customer-owned gas, in approximately 118 communities within this area. NSP provides electric utility service in South Dakota and electric and gas utility service in Minnesota and North Dakota. Of the more than 2.5 million people served by NSP, the majority are concentrated in the Minneapolis-St. Paul metropolitan area. In 1997, more than 73% of the electric retail revenue of NSP was derived from sales in the Minneapolis-St. Paul metropolitan area and more than 66% of its retail gas revenue was derived from sales in the St. Paul metropolitan area. As of December 31, 1997, NSP provided electric utility service to approximately 1,220,000 customers and gas utility service to approximately 375,000 customers.[14]

NSP is subject to regulation by the Minnesota Public Utilities Commission (''Minnesota Commission''), the North Dakota Public Service Commission (''North Dakota Commission'') and the South Dakota Public Utilities Commission (''South Dakota Commission'') with respect to its retail sales rates, services and other aspects of its retail operations.[15]

NSP owns all of the outstanding common stock of Northern States Power Company (''NSP–W''), a Wisconsin public-utility company. NSP–W is engaged in the generation, transmission and distribution of electricity to approximately 206,700 retail customers in an approximately 18,900 square mile area in northwestern Wisconsin; to approximately 9,200 electric retail customers in an approximately 300 square mile area in the western portion of the Upper Peninsula of Michigan; and to 10 wholesale customers in the same general area. NSP–W relies primarily on NSP for base load generation and purchases of power to meet the needs of its customers. The electric operations of NSP and NSP–W are fully integrated and all generating units are centrally dispatched by NSP.

NSP–W also purchases, distributes and sells natural gas to retail customers, or transports customer-owned natural gas, in the same service territory to approximately 72,100 customers in Wisconsin and 4,900 customers in Michigan. In 1997, NSP–W provided approximately 13% of NSP's consolidated revenues. NSP–W is subject to regulation by the Public Service Commission of Wisconsin (''Wisconsin Commission'') and the Michigan Public Service Commission (''Michigan Commission'') with respect to its retail sales rates, services and other aspects of its retail operations.

For the year ended December 31, 1997, NSP's operating revenues on a consolidated basis were $3.2 billion, consisting of the following (before intercompany eliminations):

[Dollars in millions]

	Electric utility	Gas utility	Other
NSP	$2,101	$415	$0
NSP–W ..	312	90	0
Non-Utility Subsidiaries	0	0	198

Consolidated assets of NSP and its subsidiaries at December 31, 1997 were approximately $7.1 billion, consisting of $3.7 billion in net electric utility property, plant and equipment ($3.1 billion for NSP and $573 million for NSP–W); $415 million in net gas utility property, plant and equipment ($355 million for NSP and $60 million for NSP–W); $1.4 billion in nonutility subsidiary assets; and $1.6 billion in other corporate assets.

For the twelve months ended March 31, 1998, NSP's operating revenues were $3.1 billion, consisting of the following (before intercompany eliminations):

[Dollars in millions]

	Electric utility	Gas utility	Other
NSP	$2,105	$378	$0
NSP–W ..	312	82	0
Non-Utility Subsidiaries	0	0	198

Consolidated assets of NSP and its subsidiaries as of March 31, 1998 were approximately $7.2 billion, consisting of $3.7 billion in net electric utility property, plant and equipment ($3.1 billion for NSP and $574 million for NSP–W); $414 million in net gas utility property, plant and equipment ($355 million for NSP and $59 million for NSP–W); $1.4 billion in nonutility subsidiary assets; and $1.7 billion in other corporate assets.

As of July 31, 1998, there were 151,415,882 shares of common stock, $2.50 par value (''NSP Common Stock''), and 1,050,000 shares of cumulative

[13] *See Northern States Power Co.*, Holding Co. ACt Release No. 22334 (Dec. 23, 1981). Section 3(a)(2) of the Act provides for the exemption of a public-utility holding company that ''is predominantly a public-utility company whose operations as such do not extend beyond the State in which it is organized and States contiguous thereto.''

[14] NSP is also engaged, directly and indirectly, in various nonutility businesses. For the year ended December 31, 1997, approximately 8% of NSP's consolidated operating revenues (before intercompany elminations) and 8% of its consolidated net income were derived from the nonutility businesses. As of December 31, 1997, approximately 20% of NSP's consolidated assets were invested in nonutility businesses.

[15] Wholesale rates for electric energy sold in interstate commerce, wheeling rates for energy transmission in interstate commerce, and certain other activities of NSP and NSP–W, defined below, are subject to the jurisdiction of the Federal Energy Regulatory Commission (''FERC''). The operation and construction of NSP's Prairie Island and Monticello nuclear facilities are subject to regulation by the Nuclear Regulatory Commission.

preferred stock, issued and outstanding. NSP–W does not have any preferred stock outstanding and all of its common stock is owned by NSP.

In accordance with an Agreement and Plan of Merger dated as of December 29, 1997, and following receipt of necessary state regulatory approvals, BMG was merged into NSP, with NSP as the surviving corporation (''Merger''), on July 24, 1998. The Merger was approved by the Arizona Corporation Service Commission (''Arizona Commission''), the Minnesota Commission and the North Dakota Commission. The application states that the Merger was a transitional combination, an initial step designed to effect the objective, discussed below, of NSP's becoming the holding company of a second public-utility subsidiary, BMG.

BMG, an Arizona corporation, is a gas utility company as defined in section 2(a)(4) of the Act.[16] It provides natural gas distribution in an approximately 100 square mile area in Maricopa County, Arizona, and provides propane gas distribution in an approximately 20 square mile area in Coconino County, Arizona. As of the year ended December 31, 1997, BMG provided utility services to 6,097 customers, primarily residential.[17] The Arizona Commission regulates the retail rates of BMG. BMG is not subject to regulation under the jurisdiction of the FERC.[18]

BMG's total operating revenues for the years ended December 31, 1995, 1996 and 1997 were approximately $4.5 million, $5.2 million, and $6.2 million, respectively.[19] For the same periods, BMG's net income was approximately $900,000, $975,000 and $1.3 million, respectively. BMG's net utility assets as of December 31, 1996 and 1997 were approximately $9.7 million and $10.3 million, respectively.

On a *pro forma* basis, as of December 31, 1997, the combined gas operating revenues of NSP, NSP–W and BMG would have totaled approximately $510 million, of which BMG would have provided approximately 1% of the total. BMG would have represented approximately 0.54% of consolidated net income, 0.24% of consolidated net utility plant and 0.19% of consolidated total assets.

As of December 29, 1997, there were 911,492 shares of BMG common stock (''BMG Common Stock''), no par value, issued and outstanding. The shareholders of BMG Common Stock approved the Merger at a special meeting held on May 21, 1998.

Upon consummation of the Merger, each share of BMG Common Stock (except shares owned by BMG as treasury stock or held by BMG shareholders who perfected dissenters' rights (''Dissenting Shares'')) was cancelled and converted into a fraction of a share of NSP Common Stock equal to the quotient derived by dividing (A) $17,750,000 by (B) the product of (i) the volume weighted average on the New York Stock Exchange for the twenty full trading days ending on the third full trading day prior to the date (''Effective Time'') the Merger became effective (''Average NSP Share Price'') and (ii) the number of shares of BMG Common Stock issued and outstanding immediately prior to the Effective Time.

The application relates to the separation (''Spin-Off,'' and, together with the Merger, ''Transaction'') of the former assets of BMG into a wholly owned, first-tier subsidiary of NSP. NSP will cause the assets to be transferred following receipt of the requested order of the Commission. Upon completion of the Transaction, NSP will own 100% of the common stock of each of NSP–W and BMG. The application states that current utility operations of NSP and NSP–W and the nonutility activities of NSP's other subsidiaries will be unaffected. BMG, as a wholly owned subsidiary of NSP, will continue to distribute natural gas in Arizona and will continue to maintain its headquarters in that state. No significant changes to the operations of BMG are anticipated.

The application states that the Transaction will produce benefits to the gas utility businesses of NSP, NSP–W and BMG. These benefits include: joint procurement of gas and other supplies; sharing of NSP's extensive technological, operational, gas purchasing and other expertise; enhanced computer services; and access to NSP's management, legal, financial, accounting and consulting services.

The NSP, NSP–W and BMG gas systems are not physically interconnected. Following the Transaction, it is anticipated that gas purchasing economic efficiencies can be achieved by having NSP's gas department, which procures gas for NSP and NSP–W, meet the gas purchasing needs of BMG as well. Thus, some of each company's gas supply will be handled by the same entity and on a coordinated basis. The application states that, although these gas purchases for BMG will be made on an economic basis and not with the main goal of ensuring a common source of supply, given economies of scale and the past practice by the same purchasers, it can be expected that each of the three companies will continue to purchase significant amounts of their respective gas supply from the same fields (*i.e.*, the Anadarko and Permian basins). NSP, NSP–W and BMG, through Burlington Resources, Inc., purchase gas from the following major supply fields:

Field/basin	NSP	NSP–W	BMG
Hogoton/Anadarko ..	X	X	X
Permian	X		X
Rocky Mountain	X	X	
Williston	X		
San Juan			X
Alberta, Canada	X	X	

Much of the rest of their respective gas supply will travel through the same pipelines even if it is not from the same field.[20]

The application further states that the combination of the NSP, NSP–W and BMG will tend toward the economic and efficient development of a coordinated gas system in that there will be centralized computer and customer service systems, marketing and operations planning and consulting between the three companies after the Transaction. Improved technology and centralized computer services for customer services and centralized planning will occur to the benefit of BMG and its customers.

Consummation of the Spin-Off will require the prior approval of the Arizona Commission. NSP will also seek the approval of the Spin-Off by the Minnesota Commission and the North Dakota Commission. Following consummation of the Transaction, NSP and BMG expect to engage in various intercompany transactions. These affiliated interest transactions require prior approval of the Arizona Commission and the Minnesota Commission. Accordingly, as part of the application for approval of the Spin-Off, NSP will seek authorization for these

[16] BMG has no subsidiaries.

[17] Non-residential customers include two school districts, three resorts and multiple light commercial customers.

[18] BMG also provides nonutility services and bulk propane sales through its Lake Powell Propane division. Such nonutility services also include appliance repair. In 1997, revenues and net income from nonutility services totalled $865,000 and $190,000, respectively, representing 14% and 14.7% of BMG's operating revenue and net income, respectively, for the year ended December 31, 1997.

[19] Of the total operating revenues of $6.2 million reported for the year ended December 31, 1997, $865,000 (14%) was attributable to BMG's nonutility operations. For the same period, BMG net income was approximately $1.3 million, of which $190,000 (14.7%) was attributable to its nonutility operations.

[20] The purchased gas will be delivered through integrated interstate pipelines, all of which are open access transportation only pipelines under FERC order 636.

affiliated interest transactions from the Arizona and Minnesota Commissions.

The waiting period under the Hart-Scott-Radion Antitrust Improvements Act of 1976, as amended, has expired. Apart from the approval of this Commission, the foregoing approvals are the only governmental approvals required for the Transaction.

NSP requests an order under section 3(a)(2) exempting it from all provisions of the Act, except section 9(a)(2), following consummation of the Transaction. NSP states that it will continue to be entitled to an exemption under section 3(a)(2) because it will continue to be predominately a public utility company operating in Minnesota, its state of incorporation, and the contiguous states of North Dakota and South Dakota.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–25656 Filed 9–24–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23440; File No. 812–11070]

The White Elk Funds, et al.

September 21, 1998.

AGENCY: Securities and Exchange Commission (the ''SEC'' or the ''Commission'').

ACTION: Notice of application for an order under Section 6(c) of the Investment Company Act of 1940 (the ''1940 Act'') for exemptions from the provisions of Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act, and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

SUMMARY: Applicants seek an order to permit shares of certain series of The White Elk Funds that are designed to fund insurance products (the ''Funds'') and shares of any other investment company that is designed to fund insurance products and for which White Elk Asset Management, Inc. or any of its affiliates may serve as investment advisor, administrator, manager, principal underwriter, or sponsor (collectively with the Funds, the ''Insurance Product Funds'') to be sold to and held by: (1) Separate accounts funding variable annuity and variable life insurance contracts (''Separate Accounts'') of both affiliated and unaffiliated life insurance companies (''Participating Insurance Companies''); and (2) qualified pension or retirement plans (''Plans'').

APPLICANTS: The White Elk Funds (the ''Company'') and White Elk Asset Management, Inc. (the ''Advisor'').

FILING DATE: The application was filed on March 13, 1998, and amended and restated on July 14, 1998.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on this application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, in person or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on October 16, 1998, and accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the interest, the reason for the request and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o Joseph J. McBrien, Esq., State Street Bank and Trust Company, 1776 Heritage Drive, AFB4, North Quincy, MA 02171–2197.

FOR FURTHER INFORMATION CONTACT: Zandra Y. Bailes, Senior Counsel, or Mark C. Amorosi, Branch Chief, Division of Investment Management, Office of Insurance Products, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the SEC, 450 Fifth Street, NW., Washington, DC 20549 (tel. (202) 942–8090).

Applicant's Representations

1. The Company is a Massachusetts business trust and is registered under the 1940 Act as an open-end diversified management investment company. The Company currently consists of eleven separate Funds, each of which has its own investment objective and policies. The Company may in the future issue shares of additional Funds and/or multiple classes of shares of each Fund.

2. The Advisor, an investment manager newly registered under the Investment Advisers Act of 1940, is the investment adviser to each of the Funds and is responsible for the overall administration of the Company. The Advisor has entered into a contract with William D. Witter, Inc. (''Witter''), whereby Witter will serve as sub-portfolio manager to various of the Funds.

3. Shares of each Fund may be offered to Separate Accounts, which are either registered or unregistered under the federal securities laws, that fund variable annuity contracts or variable life insurance policies (''Contracts''). Shares of the Funds may also be offered to Plans.

Applicants' Legal Analysis

1. Section 6(c) of the 1940 Act authorizes the Commission, by order upon application, to conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions from any provisions of the 1940 Act or the rules promulgated thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust, Rule 6e–2(b)(15) under the 1940 Act provides partial exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. The exemptions granted by Rule 6e–2(b)(15) are available, however, only where all of the assets of the separate account consist of the shares of one or more registered management investment companies which offer their shares ''*exclusively* to variable life insurance separate accounts of the life insurer, or of any affiliated life insurance company'' (emphasis added).[1] Therefore, the relief granted by Rule 6e–2(b)(15) is not available with respect to a scheduled premium variable life insurance separate account that owns shares of a management company that also offers its shares to variable annuity and variable life insurance separate accounts of the same insurance company or any other insurance company or to trustees of a Plan. The use of a common management investment company as the underlying investment medium for a variable annuity or a variable life insurance separate account of the same insurance company or of any affiliated life insurance company is referred to herein as ''mixed funding.'' In addition, the relief granted by Rule 6e–2(b)(15) is not available if the scheduled premium variable life insurance separate account owns shares of any underlying

[1] The relief provided by Rule 6e–2 is also available to a separate account's investment adviser, principal underwriter, and sponsor or depositor.

investment company that also offers its shares to separate accounts funding variable contracts of one or more unaffiliated life insurance companies. The use of a common management company as the underlying investment medium for separate accounts of unaffiliated life insurance companies is referred to herein as ''shared funding.'' Furthermore, the relief granted by Rule 6e–2(b)(15) is not available if the scheduled premium variable life insurance separate account owns shares of an underlying management company that also offers its shares to Plans.

3. In connection with flexible premium variable life insurance contracts issued through a separate account registered under the 1940 Act, Rule 6e–3(T)(b)(15) under the 1940 Act provides partial exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. These exemptions, however, are available only where all of the assets of the separate account consist of the shares of one or more registered management investment companies which offer their shares ''*exclusively* to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled contracts or flexible contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company'' (emphasis added). Therefore, Rule 6e–3(T) grants the exemptions if the underlying fund engages in mixed funding, subject to certain conditions, but not if it engages in shared funding or sells its shares to Plans.

4. Applicants state that the current federal tax law permits the Insurance Product Funds to increase their asset base through the sale of shares to Plans. Section 817(h) of the Internal Revenue Code of 1986, as amended (the ''Code''), imposes certain diversification requirements on the assets underlying Contracts invested in the Insurance Products Funds. The Code provides that such Contracts will not be treated as annuity contracts or life insurance contracts for any period in which the underlying assets are not, in accordance with regulations issued by the Treasury Department (the ''Regulations''), adequately diversified. To meet the diversification requirements, all of the beneficial interests in the investment company must be held by the segregated asset accounts of one or more life insurance companies. The Treasury Regulations do, however, contain certain exceptions to this requirement, one of which allows shares in an investment company to be held by trustees of a Plan without adversely affecting the ability of shares in the same investment company also to be held by the separate accounts of insurance companies in connection with their Contracts (Treas. Reg. 1.817–5(f)(3)(iii)).

5. Applicants note that if the Insurance Product Funds were to sell their shares only to Plans, no exemptive relief would be necessary. The relief provided under Rule 6e–2(b)(15) and Rule 6e–3(T)(b)(15) does not relate to Plans or to a registered investment company's ability to sell its shares to Plans.

6. Applicants also note that the promulgation of Rules 6e–2(b)(15) and 6e–3(T)(b)(15) preceded the issuance of the Regulations. Thus, the sale of shares of the same investment company to both separate accounts and Plans could not have been envisioned at the time Rules 6e–2(b)(15) and 6e–3(T)(b)(15) were promulgated, given the then-current tax law.

7. Section 9(a)(3) of the 1940 Act provides that it is unlawful for any company to serve as investment adviser or principal underwriter of any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in either Section 9(a)(1) or 9(a)(2) of the 1940 Act. Rules 6e–2(b)(15) (i) and (ii) and 6e–3(T)(b)(15) (i) and (ii) provide exemptions from Section 9(a), subject to the limitations on mixed and shared funding. These exemptions limit the application of the eligibility restrictions to affiliated individuals or companies that directly participate in the management of the underlying fund.

8. Applicants state that the partial relief granted in Rules 6e–2(b)(15) and 6e–3(T)(b)(15) from the requirements of Section 9 of the 1940 Act limits, in effect, the amount of monitoring necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of Section 9. Applicants state that those Rules recognize that it is not necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the 1940 Act to apply the provisions of Section 9(a) to the many individuals who may be involved in an insurance company complex, but who would have no involvement in matters pertaining to investment companies funding the separate accounts. Applicants, assert, therefore, that there is no regulatory purpose in denying the partial exemptions because of mixed and shared funding and sales to Plans.

9. Applicants state that Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) under the 1940 Act provide exemptions from the pass-through voting requirement with respect to several significant matters, assuming the limitations on mixed and shared funding are observed. More specifically, Rules 6e–2(b)(15)(iii)(A) and 6e–2(b)(15)(iii)(A) provide that the insurance company may disregard the voting instructions of its contract with respect to the investment of an underlying investment company or any contract between an underlying investment company and its investment adviser, when required to do so by an insurance regulatory authority and subject to certain requirements. In addition, Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii(A)(*2*) provide that the insurance company may disregard the voting instructions of contract owners if the contract owners initiate any change in an underlying investment company's investment policies, principal underwriter or any investment adviser (provided that disregarding such voting instruction is reasonable and subject to the other provisions of Rules 6e–2 and 6e–3(T)).

10. Applicants assert that the offer and sale of shares of Insurance Product Funds to Plans will not have an impact on the relief requested. Under Section 403(a) of the Employee Retirement Income Security Act (''ERISA''), shares of the Insurance Product Funds sold to Plans would be held by the trustees of the Plan. Section 403(a) also provides that the trustee(s) must have exclusive authority and discretion to manage and control the Plan investments with two exceptions: (a) When the Plan expressly provides that the trustee(s) is (are) subject to the direction of a named fiduciary who is not a trustee, in which case the trustee(s) is (are) subject to proper directions of such fiduciary made in accordance with the terms of the Plan and not contrary to ERISA; and (b) when the authority to manage, acquire or dispose of assets of the Plan is delegated to one or more investment managers pursuant to Section 402(c)93) of ERISA. Unless one of the above two exceptions stated in Section 403(a) applies, Plan trustees have the exclusive authority and responsibility for voting proxies.

11. Where a named fiduciary to a Plan appoints an investment manager, the investment manager has the responsibility to vote the shares held unless the right to vote such shares is reserved to the trustee or the named fiduciary. In any event, Applicants assert that ERISA permits but does not require pass-through voting to participants in Plans. Some of the Plans, however, may provide participants with the right to give voting instructions.

12. Where a Plan provides participants with the right to give voting instructions, Applicants assert that there is no reason to believe that participants in Plans generally or those in a particular Plan, either as a single group or in combination with participants in other Plans, would vote in a manner that would disadvantage Contract owners. The purchase of shares of the Insurance Product Funds by Plans that provide voting rights to participants does not present any complications not otherwise occasioned by mixed and shared funding.

13. Applicants also maintain that no increased conflicts of interest would be presented by the granting of the requested relief. In this regard, Applicants assert that shared funding does not prevent any issues that do not already exist where a single insurance company is licensed to do business in several or all states. A particular state insurance regulatory body could require action that is inconsistent with the requirements of insurance regulators of other states in which the insurance company offer its policies. The fact that different insurers may be domiciled in different states does not create a sigfificantly different or enlarged problem.

14. Applicants submit that shared funding is, in this respect, no different that the use of the same investment company as the funding vehicle for affiliated insurers, which Rules 6e–2(b)(15) and 6e–3(T)(b)(15) permit under various circumstances. Affiliated insurers may be domiciled in different states and be subject to differing state law requirements. Affiliation does not reduce the potential, if any exists, for differences in state regulatory requirements. In any event, Applicants submit that the conditions set forth in the application and included in this notice are designed to safeguard against, and provide procedures for, resolving any adverse effects that differences among state regulatory requirements may produce.

15. Applicants assert that the right of an insurance company under Rules 6e–1(b)(15) and 6e–3(T)(b)(15) to disregard contract owners' voting instructions does not raise any issues different from those raised by the authority of state insurance administrators over separate accounts. Under Rules 6e–2(b)(15) and 6e–3(T)(b)(15), an insurer can disregard contract owner voting instructions only with respect to certain specific items. Affiliation does not eliminate the potential, if any exists, for divergent judgments as to the advisability or legality of a change in investment policies, principal underwriter, or investment adviser initiated by contract owners. The potential for disagreement is limited by the requirements in Rules 6e–26 and 6e–3(T) that an insurance company's disregard of voting instructions be reasonable and based on specific good-faith determinations.

16. A particular insurer's disregard of voting instructions nevertheless could conflict with the majority of Contract owner voting instructions. The insurer's action could be different from the determination of all or some of the other insurers (including affiliated insurers) that the contract owners' voting instructions should prevail, and either could preclude a majority vote approving the change or could represent a minority view. If the insurer's judgment represents a minority position or would preclude a majority vote, the insurer may be required, at the election of the relevant Insurance Product Fund to withdraw its Separate Account's investment in that Insurance Product Fund, and no charge or penalty would be imposed as a result of such withdrawal.

17. Applicants submit that there is no reason why the investment policies of the Insurance Product Funds would or should be materially different from what those policies would or should be if the Insurance Product Funds funded only annuity contracts or only scheduled or flexible premium life contracts. In this regard, Applicants note that each type of insurance product is designed as a long-term investment program. In addition, Applicants represent that each Insurance Product Fund will be managed to attempt to achieve the investment objective of that Insurance Product Fund and not to favor or disfavor any particular insurer or type of insurance product.

18. Furthermore, Applicants submit that no one investment strategy can be identified as appropriate to a particular insurance product or to a Plan. Each pool of variable annuity and variable life insurance contract owners is composed of individuals of diverse financial status, age, insurance and investment goals. A fund supporting even one type of insurance product must accommodate those factors in order to attract and retain purchasers.

19. Applicants note that Section 817(h) of the Code imposes certain diversification standards on the underlying assets of variable annuity and variable life insurance contracts held in the portfolios of management investment companies. The Regulations specifically permit ''qualified pension or retirement plans'' and insurance company separate accounts to share the same underlying investment company. For this reason, Applicants have concluded that neither the Code, nor the Treasury Regulations, nor the revenue rulings thereunder, present any inherent conflicts of interest if Plans, variable annuity separate accounts, and variable life insurance separate accounts all invest in the same management investment company.

20. Applicants note that while there are differences in the manner in which distributions from variable annuity contracts, variable life insurance contracts and Plans are taxed, the tax consequences do not raise any conflicts of interest. When distributions are to be made, and a Separate Account or Plan is unable to net purchase payments to make the distributions, the Separate Account or the Plan will redeem shares of the Insurance Product Fund at their net asset value. A Plan will make distributions in accordance with the terms of the Plan, and the Participating Insurance Company will make distributions in accordance with the terms of the Contract.

21. With respect to voting rights, Applicants state that it is possible to provide an equitable means of giving voting rights to Contract owners and to Plans. Applicants represent that the Insurance Product Funds will inform each shareholder, including each Separate Account and each Plan, of information necessary for the shareholder meeting, including its respective share of ownership in the respective Insurance Product Fund. Each Participating Insurance Company will then solicit voting instructions in accordance with the ''pass-through'' voting requirement.

22. Applicants contend that the ability of the Insurance Product Funds to sell their respective shares directly to qualified plans does not create a ''senior security,'' as that term is defined in Section 18(g) of the 1940 Act. Regardless of the rights and benefits of participants under the Plans or Contract owners under the Contracts, the Plans and the Separate Accounts have rights only with respect to their respective shares of the Insurance Product Funds. They can only redeem such shares at their net asset value. No shareholder of any of the Insurance Product Funds has any preference over any other shareholder with respect to distribution of assets or payments of dividends.

23. Applicants submit that there are no conflicts between the Contract owners of the separate accounts and plan participants with respect to the state insurance commissioners' veto powers over investment objectives. State insurance commissioners have been given the veto power in recognition of

the fact that insurance companies usually cannot simply redeem their separate accounts out of one fund and invest in another. Generally, time-consuming complex transactions must be undertaken to accomplish such redemptions and transfers. Conversely, trustees of Plans can make the decision quickly and redeem their interest in an Insurance Product Fund and reinvest in another funding vehicle without the same regulatory impediments faced by separate accounts or, as is the case with most Plans, even hold cash pending suitable investment. Based on the foregoing, Applicants have concluded that even if there should arise issues where the interests of Contract owners and the interests of participants in Plans are in conflict, the issues can be resolved almost immediately because the trustees of Plans can, on their own, redeem the shares out of the Insurance Product Fund.

24. Applicants assert that various factors have limited the number of insurance companies that offer variable annuities and variable life insurance contracts. These factors include the costs of organizing and operating a funding medium, the lack of expertise with respect to investment management (principally with respect to stock and money market investments), and the lack of name recognition by the public of certain insurers as investment experts. In particular, some smaller life insurance companies may not find it economically feasible, or within their investment or administrative expertise, to enter the variable contract business on their own.

25. Applicants contend that the use of the Insurance Product Funds as common investment vehicles for variable contracts would reduce or alleviate these concerns. Mixed and shared funding should provide several benefits to variable contract owners by eliminating a significant portion of the costs of establishing and administering separate funds. Participating Insurance Companies will benefit not only from the investment and administrative expertise of the Advisor, but also from the cost efficiencies and investment flexibility afforded by a larger pool of assets. Therefore, making the Insurance Product Funds available for mixed and shares funding will encourage more insurance companies to offer variable contracts, and accordingly should result in increased competition with respect to both variable contract design and pricing, which can be expected to result in more product variation and lower charges. Applicants also assert that the sale of shares of the Insurance Product Funds to Plans can also be expected to increase the amount of assets available for investment by the Insurance Product Funds and thus promote economies of scale and diversification.

Applicants' Conditions

Applicants have consented to the following conditions:

1. A majority of the Board of each Insurance Product Fund shall consist of persons who are not ''interested persons'' thereof, as defined by Section 2(a)(19) of the 1940 Act, and the rules thereunder and as modified by any applicable orders of the Commission, except that if this condition is not met by reason of the death, disqualification or bona fide resignation of any Board Member or Members, then the operation of this condition shall be suspended: (a) For a period of 45 days if the vacancy or vacancies may be filled by the remaining Board Members; (b) for a period of 60 days if a vote of shareholder is required to fill the vacancy or vacancies; or (c) for such longer period as the Commission may prescribe by order upon application.

2. The Board will monitor their respective Insurance Product Funds for the existence of any material irreconcilable conflict among the interests of the Contract owners of all Separate Accounts investing in the Insurance Product Funds and of the Plan participants investing in the Insurance Product Funds. The Board will determine what action, if any, shall be taken in response to such conflicts. A material irreconcilable conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretive letter, or any similar action by insurance, tax or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of the Insurance Product Funds are being managed; (e) a difference in voting instructions given by variable annuity Contract owners, variable life insurance Contract owners, and trustees of Plans; (f) a decision by an insurer to disregard the voting instructions of Contract owners; or (g) if applicable, a decision by a Plan to disregard the voting instructions of Plan participants.

3. Participating Insurance Companies, the Advisor or any primary investment advisor of the Insurance Product Funds, and any Plan that executes a fund participation agreement upon becoming an owner of 10 percent or more of the assets of an Insurance Product Fund (a ''Participating Plan''), will report any potential or existing conflicts of which it becomes aware to the Board of any relevant Insurance Product Fund. Participating Insurance Companies, the Advisor and the Participating Plans will be responsible for assisting the appropriate Board in carrying out its responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This responsibility includes, but is not limited to, an obligation by each Participating Insurance Company to inform the appropriate Board whenever voting instructions of Contract owners are disregarded and, if pass-through voting is applicable, an obligation by each Participating Plan to inform the Board whenever it has determined to disregard Plan participant voting instructions. The responsibility to report such information and conflicts, and to assist the Board, will be contractual obligations of all Participating Insurance Companies investing in the Insurance Product Funds under their agreements governing participation in the Insurance Product Funds, and such agreements shall provide that these responsibilities will be carried out with a view only to the interests of the Contract owners. The responsibility to report such information and conflicts, and to assist the Board, will be contractual obligations of all Participating Plans under their agreements governing participation in the Insurance Product Funds, and such agreements will provide that their responsibilities will be carried out with a view only to the interests of Plan participants.

4. If it is determined by a majority of the Board of an Insurance Product Fund, or by a majority of the disinterested Board Members, that a material irreconcilable conflict exists, the relevant Participating Insurance Companies and Participating Plans will, at their own expense and to the extent reasonably practicable as determined by a majority of the disinterested Board Members, take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict, which steps could include: (a) In the case of Participating Insurance Companies, withdrawing the assets allocable to some or all of the Separate Accounts from the Insurance Product Fund or any portfolio thereof and reinvesting such assets in a different investment medium, including another portfolio of an Insurance Product Fund or another Insurance Product Fund, or submitting the question as to whether such segregation should be implemented to a

vote of all affected Contract owners and, as appropriate, segregating the assets of any appropriate group (*i.e.*, variable annuity Contract owners or variable life insurance Contract owners of one or more Participating Insurance Companies) that votes in favor of such segregation, or offering to the affected Contract owners the option of making such a change; (b) in the case of Participating Plans, withdrawing the assets allocable to some or all of the Plans from the Insurance Product Fund and reinvesting such assets in a different investment medium; and (c) establishing a new registered management investment company or managed Separate Account. If a material irreconcilable conflict arises because of a decision by a Participating Insurance Company to disregard Contract owner voting instructions, and that decision represents a minority position or would preclude a majority vote, then the insurer may be required, at the Insurance Product Fund's election, to withdraw the insurer's Separate Account investment in such Insurance Product Fund, and no charge or penalty will be imposed as a result of such withdrawal. If a material irreconcilable conflict arises because of a Participating Plan's decision to disregard Plan participant voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the Participating Plan may be required, at the Insurance Product Fund's election, to withdraw its investment in such Insurance Product Fund, and no charge or penalty will be imposed as a result of such withdrawal. The responsibility to take remedial action in the event of a determination by a Board of a material irreconcilable conflict and to bear the cost of such remedial action will be a contractual obligation of all participating Insurance Companies and Participating Plans under their agreements governing participation in the Insurance Product Funds, and these responsibilities will be carried out with a view only to the interest of Contract owners and Plan participants.

5. For purposes of Condition 4, a majority of the disinterested Board Members of the applicable Board will determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but in no event will the relevant Insurance Product Fund or the Advisor be required to establish a new funding medium for any Contract. No Participating Insurance Company shall be required by Condition 4 to establish a new funding medium for any Contract if any offer to do so has been declined by vote of a majority of the Contract owners materially and adversely affected by the material irreconcilable conflict. Further, no Participating Plan shall be required by Condition 4 to establish a new funding medium for any Participating Plan if (a) A majority of Plan participants materially and adversely affected by the irreconcilable material conflict vote to decline such offer, or (b) pursuant to governing Plan documents and applicable law, the Participating Plan makes such decision without a Plan participant vote.

6. The determination of any Board of the existence of a material irreconcilable conflict and its implications will be made known in writing promptly to all Participating Insurance Companies and Participating Plans.

7. Participating Insurance Companies will provide pass-through voting privileges to Contract owners who invest in registered Separate Accounts so long as and to the extent that the Commission continues to interpret the 1940 Act as requiring pass-through voting privileges for Contract owners. As to Contracts issued by unregistered Separate Accounts, pass-through voting privileges will be extended to participants to the extent granted by issuing insurance companies. Each Participating Insurance Company will also vote shares of the Insurance Product Funds held in its Separate Accounts for which no voting instructions from Contract owners are timely received, as well as shares of the Insurance Product Funds which the Participating Insurance Company itself owns, in the same proportion as those shares of the Insurance Product Funds for which voting instructions from contract owners are timely received. Participating Insurance Companies will be responsible for assuring that each of their registered Separate Accounts participating in the Insurance Product Funds calculates voting privileges in a manner consistent with other Participating Insurance Companies. The obligation to calculate voting privileges in a manner consistent with all other registered Separate Accounts investing in the Insurance Product Funds will be a contractual obligation of all Participating Insurance Companies under their agreements governing their participation in the Insurance Product Funds. Each Participating Plan will vote as required by applicable law and governing Plan documents.

8. All reports of potential or existing conflicts received by the Board of an Insurance Product Fund, and all action by such Board with regard to determining the existence of a conflict, notifying Participating Insurance Companies and participating Plans of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the meeting of such Board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

9. Each Insurance Product Fund will notify all Participating Insurance Companies that separate disclosure in their respective Separate Account prospectuses may be appropriate to advise accounts regarding the potential risks of mixed and shared funding. Each Insurance Product Fund shall disclose in its prospectus that (a) the Insurance Product Fund is intended to be a funding vehicle for variable annuity and variable life insurance contracts offered by various insurance companies and for qualified pension and retirement plans; (b) due to differences of tax treatment and other considerations, the interests of various Contract owners participating in the Insurance Product Fund and/or the interests of Plans investing in the Insurance Product Fund may at some time be in conflict; and (c) the Board of such Insurance Product Fund will monitor events in order to identify the existence of any material irreconcilable conflicts and to determine what action, if any, should be taken in response to any such conflict.

10. Each Insurance Product Fund will comply with all provisions of the 1940 Act requiring voting by shareholders (which, for these purposes, will be the persons having a voting interest in the shares of the Insurance Product Funds), and, in particular, the Insurance Product Funds will either provide for annual shareholder meetings (except insofar as the Commission may interpret Section 16 of the 1940 Act not to require such meetings) or comply with Section 16(c) of the 1940 Act, although the Insurance Product Funds are not the type of trust described in Section 16(c) of the 1940 Act, as well as with Section 16(a) of the 1940 Act and, if and when applicable, Section 16(b) of the 1940 Act. Further, each Insurance Product Fund will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of Board Members and with whatever rules the Commission may promulgate with respect thereto.

11. If and to the extent Rule 6e–2 or 6e–3(T) under the 1940 Act is amended, or proposed Rule 6e–3 under the 1940 Act is adopted, to provide exemptive relief from any provision of the 1940 Act or the rules promulgated thereunder, with respect to mixed or

shared funding on terms and conditions materially different from any exemptions granted in the order requested in the application, then the Insurance Product Funds and/or Participating Insurance Companies and Participating Plans, as appropriate, shall take such steps as may be necessary to comply with such Rules 6e–2 and 6e–3(T), as amended, or proposed Rule 6e–3(T), as adopted, to the extent that such Rules are applicable.

12. The Participating Insurance Companies and Participating Plans and/or the Advisor, at least annually, will submit to each Board such reports, materials or data as the Board may reasonably request so that the Board may fully carry out obligations imposed upon it by the conditions contained in the application. Such reports, materials and data will be submitted more frequently if deemed appropriate by the applicable Board. The obligations of the Participating Insurance Companies and Participating Plans to provide these reports, materials and data to the Board, when the Board so reasonably requests, shall be a contractual obligation of all Participating Insurance Companies and Participating Plans under their agreements governing participation in the Insurance Product Funds.

13. If a Plan should ever become a holder of ten percent or more of the assets of an Insurance Product Fund, such Plan will execute a participation agreement with the Insurance Product Fund that includes the conditions set forth herein to the extent applicable. A Plan will execute an application containing an acknowledgment of this condition upon such Plan's initial purchase of the shares of any Insurance Product Fund.

Conclusion

For the reasons summarized above, Applicants submit that the exemptive relief requested is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–25733 Filed 9–24–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of September 28, 1998.

A closed meeting will be held on Tuesday, September 29, 1998, at 2:30 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Hunt, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Tuesday, September 29, 1998, at 2:30 p.m., will be:

Institution and settlement of injunctive actions.

Institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alternations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: September 23, 1998.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–25824 Filed 9–23–98; 11:54 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40451; File No. SR–CBOE–98–21]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to Minimum Opening Transaction Size in FLEX Equity Options

September 18, 1998.

I. Introduction

On May 18, 1998, the Chicago Board Options Exchange, Incorporated (''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] a proposed rule change which was published for comment in Securities Exchange Act Release No. 40221 (July 16, 1998).[2] No comments were received on the proposal. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description of the Proposal

The Exchange proposes to change the minimum value size for opening transactions (other than FLEX Quotes responsive to a FLEX Request for Quotes) in any FLEX Equity Option[3] series in which there is no open interest at the time the Request for Quotes is submitted. The proposal will change CBOE Rule 24A.4 from requiring a minimum value size for these opening transactions from 250 contracts to the lesser of 250 contracts or the number of contracts overlying $1 million of the underlying securities. According to the CBOE, the rule was originally put in place with a minimum of 250 contracts in order to limit participation in FLEX Equity options to sophisticated, high net worth individuals. The Exchange believes the dollar value of the securities underlying the FLEX Equity Options, if set at the right limit, can also prevent the participation of investors who do not have adequate resources. The CBOE notices that the limitation on the minimum value size for opening transactions in FLEX Index Options is

[1] 15 U.S.C. 78s(b)(1).

[2] 63 FR 39610 (July 23, 1998).

[3] FLEX equity options are flexible exchange-traded options contracts which overlie equity securities. In addition, FLEX equity options provide investors with the ability to customize basic option features including size, expiration date, exercise style, and certain exercise prices.

tied to the same type of standard, the underlying equivalent value.[4]

III. Discussion

The Commission believes that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with Section 6(b)(5) which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.[5]

The Commission believes that changing the requisite minimum value size of opening transactions in FLEX Equity Options to include a minimum dollar amount as an alternative to the existing 250 contract opening size requirement will promote just and equitable principles of trade and facilitate transactions in securities while continuing to foster the public interest and investor protection. In particular, the Commission notes that the minimum size requirement for opening transactions in FLEX equity options was originally designed to ensure that FLEX equity options were primarily used by sophisticated, high net worth individuals rather than retail investors. While it appears that the minimum contract size fulfilled its purpose, the Commission agrees with the CBOE that the result of the existing rule is to require a much greater dollar investment for options on higher priced stocks than for options lower priced stocks. For example, an investor can purchase 250 contracts in a Flex Equity series on low priced stocks (*i.e.*, those worth less than $40) meeting the minimum requirement without even investing a minimum of $1 million, while an investor prepared to invest $1 million may be unable to purchase contracts in a Flex Equity series in higher priced stocks (*i.e.*, those worth more than $40). An opening transaction in a Flex Equity series on a stock priced at $40.01 or more would reach this $1 million limit before it would reach the contract size limit, *i.e.*, 250 contracts times the multiplier (100) times the stock price ($40.01) totals $1,000,250. million in underlying value.

Based on the above, the Commission believes it appropriate to provide, as an alternative to the 250 fixed contract amount, an opening minimum size for FLEX equity options of $1 million. In approving the dollar value as an alternative to the fixed number of contracts, the Commission recognizes that the investment for FLEX equity options on lower priced stocks may still be considerably low. Nevertheless, the Commission believes the alternative requirements are appropriate because they will provide flexibility to investors and will not unduly restrict access to the FLEX equity options market. In summary, the Commission believes that the proposed rule change could result in improved liquidity for FLEX equity options while preserving the investor protections inherent in CBOE Rule 24A.4.

IV. Conclusion

For the foregoing reasons, the Commission believes that the CBOE's proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[6]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (SR–CBOE–98–21) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–25657 Filed 9–24–98; 8:45 am]

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[4] The term ''underlying equivalent value'' is defined in CBOE Rule 24A.1(r) for FLEX Index options, but it is not a defined term for FLEX Equity options. As noted in CBOE's filing, however, the amount of the ''underlying equivalent value'' for FLEX equity options is calculated by multiplying the number of contracts times the multiplier (100) times the stock price.

[5] 15 U.S.C. 78f(b)(5).

[6] In addition, in approving this rule, the Commission notes that it has also considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice: #2895]

Advisory Committee on Historical Diplomatic Documentation; Notice of Meeting

The Advisory Committee on Historical Diplomatic Documentation will meet in the Department of State, 2201 ''C'' Street NW., Washington, DC, October 8–9, 1998, in Conference Room 1951. Prior notification and a valid photo are mandatory for entrance into the building. One week before the meeting the public must notify Gloria Walker, Office of Historian (202–663–1124) providing their date of birth, social security number and telephone number.

The Committee will meet in open session from 9:00 a.m. through 12:00 p.m. on the morning of Thursday, October 8, 1998. The remainder of the Committee's sessions from 1:45 p.m. on Thursday, October 8, 1998 until 5:00 p.m. on Friday, October 9, 1998 will be closed in accordance with Section 10(d) of the Federal Advisory Committee Act (P.L. 92–463). The agenda calls for discussions involving consideration of matters not subject to public disclosure under 5 U.S.C. 552b(c)(1), and that the public interest requires that such activities be withheld from disclosure.

Questions concerning the meeting should be directed to William Z. Slany, Executive Secretary, Advisory Committee on Historical Diplomatic Documentation, Department of State, Office of the Historian, Washington, DC, 20520, telephone (202) 663–1123, (e-mail *pahistoff@panet.us-state.gov*).

Dated: August 28, 1998.

William Z. Slany,

Executive Secretary.

[FR Doc. 98–25711 Filed 9–24–98; 8:45 am]

BILLING CODE 4710–11–M

DEPARTMENT OF STATE

[Public Notice 2896]

Bureau of Oceans and International Environmental and Scientific Affairs (OES); Notice of a Public Meeting Regarding Government Activities on International Harmonization of Chemical Classification and Labeling Systems

SUMMARY: This public meeting will provide an update on current activities related to international harmonization since the previous public meeting, conducted August 5, 1998. (See Department of State Public Notice 2862, on pages 39926–39927 of the **Federal Register** of July 24, 1998). The meeting will also offer interested organizations and individuals the opportunity to provide information and views for consideration in the development of United States Government policy positions. For more complete information on the harmonization process, please refer to State Department Public Notice 2526, pages 15951–15957 of the **Federal Register** of April 3, 1997.

The meeting will take place from 1:30 p.m. until 3:30 p.m. on October 7 in Room N 3437 A&B, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, D.C. Attendees should use the entrance at C and Third Streets NW.

To facilitate entry, please have a picture ID available and/or a U.S. Government building pass if applicable.

FOR FURTHER INFORMATION CONTACT: For further information or to submit written comments or information, please contact Mary Frances Lowe, U.S. Department of State, OES/ENV, Room 4325, 2201 C Street NW, Washington, D.C. 20520. Phone (202) 736–4660, fax (202) 647–5947. A public docket is also available for review (OSHA docket H–022H).

SUPPLEMENTARY INFORMATION: The Department of State is announcing a public meeting of the interagency committee concerned with the international harmonization of chemical hazard classification and labeling systems (an effort often referred to as the ''globally harmonized system'' or GHS). The purpose of the meeting is to provide interested groups and individuals with an update on activities since the August 5, 1998, public meeting, a preview of upcoming international meetings, and an opportunity to submit additional information and comments for consideration in developing U.S. Government positions. Representatives of the following agencies participate in the interagency group: the Department of State, the Environmental Protection Agency, the Department of Transportation, the Occupational Safety and Health Administration, the Consumer Product Safety Commission, the Food and Drug Administration, the Department of Commerce, the Department of Agriculture, the Office of the U.S. Trade Representative, and the National Institute of Environmental Health Sciences.

The Agenda of the public meeting will include:

1. Introduction

2. Reports on Recent International Meetings

—Seventh Meeting of the Advisory Group on Harmonization of Classification and Labelling, September 1–2, Paris, France. This meeting focused on discussion of classification criteria proposals for health and environmental endpoints, including skin and eye irritation/corrosion, target organ toxicity, reproductive toxicity, aquatic toxicity, acute toxicity, and the review of an integrated document comprised of introductory sections on cross-cutting issues and individual chapters on each covered endpoint. The goal was to identify, define and where possible resolve issues in the integrated proposal and other documents in preparation for the high level OECD meeting, described below. Key remaining issues include acute, aquatic, reproductive and target organ toxicity and the integrated proposal.

—OECD High Level Meeting of the Advisory Group, September 3–4, Paris, France. Participants in this meeting were senior level officials charged with reaching agreement on a package of OECD classification criteria for submission to and approval by the OECD Joint Meeting on Chemicals, now planned for November 4–6. Building on the work of the Seventh Advisory Group, the High Level Meeting reached consensus on the content of the integrated proposal and classification criteria for eight health and environmental hazards: acute toxicity, carcinogenicity, germ cell mutagenicity, eye irritation/corrosion, reproductive toxicity, sensitization, and skin irritation/corrosion. The November OECD Joint Meeting will consider a revised integrated proposal containing chapters for each covered endpoint.

3. Preparation for Upcoming Meetings

Participants will outline preparations for upcoming GHS meetings, including meetings of the Inter-Organization Program for the Sound Management of Chemicals (IOMC) Coordinating Group for the Harmonization of Chemical Classification Systems, and OECD Working Group on Mixtures, and the IOMC/International Labour Organisation Working Group on Hazard Communications. These groups will meet in early 1999.

4. Public Comments

5. Concluding Remarks

Interested parties are invited to submit their comments as soon as possible for consideration in the development of U.S. positions and to present their views orally and/or in writing at the public meeting. Participants may address other topics relating to harmonization of chemical classification and labeling systems and are particularly invited to identify issues of concern to specific sectors that may be affected by the GHS. Participants who attended and participated in recent international sessions may also offer their observations on the results of the sessions.

All written comments will be placed in the public document (OSHA docket H–022H). The docket is open from 10 am until 4 pm, Monday through Friday, and is located at the Department of Labor, Room 2625, 200 Constitution Avenue, NW, Washington, D.C. (Telephone: 202–219–7894; Fax: 202–219–5046). The public may also consult the docket to review previous **Federal Register** notices, comments received, Questions and Answers about the GHS, a response to comments on the April 3, 1997, **Federal Register** notice, and other relevant documents.

Dated: September 21, 1998.

Michael Metelits,

Director, Office of Environmental Policy, Bureau of Oceans and International Environmental and Scientific Affairs.

[FR Doc. 98–25681 Filed 9–24–98; 8:45 am]

BILLING CODE 4710–09–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–1998–4468]

National Boating Safety Advisory Council

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: The National Boating Safety Advisory Council (NBSAC) and its subcommittees on boat occupant protection, navigation lights, personal flotation device-life saving index, and prevention through people will meet to discuss various issues relating to recreational boating safety. All meetings will be open to the public.

DATES: NBSAC will meet on Monday, October 26, 1998, from 8:30 a.m. to 5 p.m. and Tuesday, October 27 from 8:30 a.m. to noon. The Personal Flotation Device-Live Saving Index and Navigation Light Subcommittees will meet on Saturday, October, 24, 1998, from 1:30 p.m. to 5 p.m. The Boat Occupant Protection Subcommittee will meet on Sunday, October 25, 1998, from 9:00 a.m. to noon, and the Prevention Through People Subcommittee will meet from 1:00 p.m. to 5:00 p.m. These meetings may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before October 15, 1998. Requests to have a copy of your material distributed to each member of the committee or subcommittees should reach the Coast Guard on or before October 9, 1998.

ADDRESSES: NBSAC will meet at the Wyndham Washington DC Hotel, 1400 M Street, NW, Washington, DC. The subcommittee meetings will be held at the same address. Send written material and requests to make oral presentations to Mr. Albert J. Marmo, Commandant (G–OPB–1), U.S. Coast Guard

Headquarters, 2100 Second Street SW, Washington, DC 20593–0001. You may obtain a copy of this notice by calling the U.S. Coast Guard Infoline at 1–800–368–5647. This notice is available on the Internet at http://dms.dot.gov or at the Web Site for the Office of Boating Safety at URL address www.uscgboating.org/.

FOR FURTHER INFORMATION CONTACT: For questions on this notice, contact Albert J. Marmo, Executive Director of NBSAC, telephone 202–267–0950, fax 202–267–4285. For questions on viewing, or submitting material to, the docket, contact Dorothy Walker, Chief, Dockets, Department of Transportation, 202–366–9329.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agendas of Meetings

National Boating Safety Advisory Council (NBSAC). The agenda includes the following:

(1) Executive Director's report.

(2) Chairman's session.

(3) Personal Flotation Device-Life Saving Index Subcommittee report.

(4) Navigation Light Subcommittee report.

(5) Boat Occupant Protection Subcommittee report.

(6) Recreational Boating Safety Program report.

(7) Reports on Coast Guard Search and Rescue, Aids to Navigation, Law Enforcement and Bridge Administration Programs.

(8) Council discussion of Federal requirements for education in recreational boating safety moderated by the Prevention Through People Subcommittee.

(9) Council discussion of Federal requirements for wearing personal flotation devices moderated by the Personal Flotation Device-Life Saving Index Subcommittee.

(10) Presentation on the results of boat occupant protection studies.

(11) Presentation on the results of personal flotation device (PFD) wear rate study.

(12) Vessel Identification System demonstration and discussion.

(13) National Association of State Boating Law Administrators report.

(14) Canadian Coast Guard Office of Boating Safety report.

(15) Presentation on recreational boating safety national outreach campaigns.

Boat Occupant Protection Subcommittee. The agenda includes the following:

(1) Review and discuss boat occupant protection study results and issues.

(2) Discuss risk management and human factors initiatives.

(3) Discuss propeller injury prevention study results.

(4) Discuss proposals regarding requirements to wear a helmet on personal watercraft (PWC), and for installation of a shroud on PWC extending from the engine cowling.

Navigation Light Subcommittee. The agenda includes the following:

(1) Review and discuss rulemaking to place navigation lights under regulatory control.

(2) Discuss the need for and parameters of a navigation light visibility study considering available applicable information.

(3) Review any new standards which address design, construction, and installation of navigation lights applicable to recreational boats.

Personal Flotation Device-Life Saving Index Subcommittee. The agenda includes the following:

(1) Review and discuss comments received in response to a Coast Guard Federal Register notice of request for comments concerning Federal requirements for wearing personal flotation devices. Identify issues for discussion by the full Council.

(2) Discuss status of development of the life saving index.

(3) Discuss the status of inflatable PFD inflation systems, and approval of automatic inflating PFDs.

(4) Discuss strategies for improving public awareness of the capabilities of the different types of personal flotation devices.

Prevention Through People Subcommittee. The agenda includes the following:

(1) Review and discuss comments received in reponse to a Coast Guard Federal Register notice of request for comments concerning Federal requirements for education in recreational boating safety. Identify issues for discussion by the full Council.

Procedural

All meetings are open to the public. Please note that the meeting may close early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meetings. If you would like to make an oral presentation at a meeting, please notify the Executive Director no later than October 15, 1998. Written material for distribution at a meeting should reach the Coast Guard no later than October 15, 1998. If you would like a copy of your material distributed to each member of the committee or subcommittee in advance of a meeting, please submit 25 copies to the Executive Director no later than October 9, 1998.

Information on Services for Individuals with Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact the Executive Director as soon as possible.

Dated: September 18, 1998.

James D. Hull,

Acting Rear Admiral, U.S. Coast Guard, Assistant Commandant for Operations.

[FR Doc. 98–25668 Filed 9–24–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application (98–02–C–00–GUC) To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Gunnison County Airport, Submitted by the County of Gunnison, Gunnison, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use PFC revenue at Gunnison County Airport under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before October 26, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. Alan Wiechmann, Manager; Denver Airports District Office; Federal Aviation Administration; 26805 E. 68th Avenue, Suite 224; Denver, CO 80249–6361. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Rex A. Tippetts, Airport Manager, at the following address: 711 Rio Grande Avenue, Building B, Gunnison, Colorado 81230.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Gunnison County Airport, under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Chris Schaffer, (303) 342–1258, 26805 E. 68th Avenue, Suite 224; Denver, CO 80249–6361. The

application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application 98–02–C–00–GUC to impose and use PFC revenue at Gunnison County Airport, under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On September 18, 1998, the FAA determined that the application to impose and use the revenue from a PFC submitted by Gunnison County Airport, Gunnison, Colorado, was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than December 15, 1998.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: December 1, 1999.

Proposed charge expiration date: April 1, 2007.

Total requested for use approval: $619,631.

Brief description of proposed project: Planning studies; Terminal area land acquisition (Treadway property); Terminal area land acquisition (B&L property); Terminal area land acquisition (Hertz property); Terminal area land acquisition (Coleman property); Object free area land acquisition (Percery property).

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue SW, Suite 315, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Gunnison County Airport.

Issued in Renton, Washington on September 18, 1998.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 98–25744 Filed 9–24–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. MC–F–20930]

Coach USA, Inc.—Control—Clinton Avenue Bus Company; Orange, Newark, Elizabeth Bus, Inc.; and Wisconsin Coach Lines, Inc.

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice Tentatively Approving Finance Transaction.

SUMMARY: Coach USA, Inc. (Coach), a noncarrier, filed an application under 49 U.S.C. 14303 to acquire control of Clinton Avenue Bus Company (Clinton); Orange, Newark, Elizabeth Bus, Inc. (ONE Bus); and Wisconsin Coach Lines, Inc. (Wisconsin), all motor carriers of passengers. Persons wishing to oppose the application must follow the rules under 49 CFR part 1182. The Board has tentatively approved the transaction, and, if no opposing comments are timely filed, this notice will be the final Board action.

DATES: Comments must be filed by November 9, 1998. Applicant may file a reply by November 24, 1998. If no comments are filed by November 9, 1998, this notice is effective on that date.

ADDRESSES: Send an original and 10 copies of any comments referring to STB Docket No. MC–F–20930 to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, send one copy of comments to applicant's representatives: Betty Jo Christian and David H. Coburn, Steptoe & Johnson LLP, 1330 Connecticut Avenue, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 565–1600. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: Coach currently controls 56 motor passenger carriers.[1] In this transaction, it seeks to acquire control of Clinton,[2] ONE Bus,[3] and Wisconsin,[4] by acquiring all of the stock of each of these carriers.

Coach submits that there will be no transfer of any federal or state operating authorities held by any of the acquired carriers. Following the consummation of the control transactions, these carriers will continue operating in the same manner as before and, according to Coach, although Clinton and ONE Bus already share common owners, granting the application will not reduce competitive options available to the traveling public. Coach submits that each of the acquired carriers is relatively small and that each faces substantial competition from other bus companies and transportation modes.

Coach also submits that granting the application will produce substantial

[1] In addition to the instant application, Coach has three other pending control applications: *Coach USA, Inc.—Control—Brunswick Transportation Company d/b/a The Maine Line; Mini Coach of Boston; Olympia Trails Bus Co., Inc.; Stardust Tours, Inc. d/b/a Gray Line Tours of Memphis; and Valen Transportation, Inc.,* STB Docket No. MC–F–20926 (STB served Aug. 14, 1998), in which it seeks to acquire control of five additional motor passenger carriers; *Coach USA, Inc.—Control—Chenango Valley Bus Lines, Inc.; Colonial Coach Corp.; GL Bus Lines, Inc.; Gray Line Air Shuttle, Inc.; Gray Line New York Tours, Inc.; Hudson Transit Corporation; Hudson Transit Lines, Inc.; and International Bus Services, Inc.,* STB Docket No. MC–F–20927 (STB served Aug. 28, 1998), in which it seeks to acquire control of eight additional motor passenger carriers; and *Coach USA, Inc.—Continuance in Control—Salt Lake Coaches, Inc.,* STB Docket No. MC–F–20928 (STB served Sept. 4, 1998), in which it seeks to continue in control of a new motor passenger carrier.

[2] Clinton is a New Jersey corporation. It holds federally issued operating authority in Docket No. MC–223062, which authorizes it to provide charter and special operations between points in the United States (except Alaska and Hawaii). It operates a fleet of approximately 30 buses, primarily in transit-type services in northern New Jersey. Clinton does not employ any persons, but uses employees of ONE Bus, with which it shares common owners. Together with ONE Bus, Clinton earned gross annual revenues in fiscal 1997 of approximately $8.4 million. Prior to the transfer of its stock into a voting trust, it was owned by Kenneth C. White, Joyce F. Revere, William S. Revere, Norman E. Revere, Richard D. Revere, Frank P. Gallagher, Brenda J. Gallagher, John A. Gallagher, Jr., Stephen A. Gallagher, Alice M. Gallagher, Frank P. Gallagher as Trustee of the Lisa A. Gallagher 1998 Trust, and Frank P. Gallagher as Trustee of the Kathryn A. Gallagher 1998 Trust.

[3] ONE Bus is a New Jersey corporation. It holds federally issued operating authority in Docket No. MC–206227, which authorizes it to provide charter and special operations between points in the United States (except Alaska and Hawaii). It also holds authority from the State of New Jersey to conduct intrastate operations. It operates a fleet of approximately 18 motorcoaches primarily in transit-type service in northern New Jersey, employs approximately 120 persons, and, together with Clinton, earned gross revenues in fiscal 1997 of $8.4 million. Prior to the transfer of its stock into a voting trust, it was owned by Kenneth C. White, Joyce F. Revere, William S. Revere, Norman E. Revere, Richard D. Revere, Frank P. Gallagher, Brenda J. Gallagher, John A. Gallagher, Jr., Stephen A. Gallagher, Alice M. Gallagher, Frank P. Gallagher as Trustee of the Lisa A. Gallagher 1998 Trust, and Frank P. Gallagher as Trustee of the Kathryn A. Gallagher 1998 Trust.

[4] Wisconsin is a Wisconsin corporation. It holds federally issued operating authority in Docket No. MC–123432, which authorizes it to provide charter and special operations between points in the United States (except Alaska and Hawaii). It operates a fleet of approximately 33 motorcoaches, 2 minibuses, and 4 vans, in charter services in Wisconsin and other Midwestern states and intrastate regular route services in Wisconsin; employs approximately 90 full and part time employees; and earned gross revenues in fiscal 1997 of $5.0 million. Prior to the transfer of its stock into a voting trust, it was owned by Michael L. Hansen, Thomas D. Czanecki, and John H. Osborne.

benefits, including interest cost savings from the restructuring of debt and reduced operating costs from Coach's enhanced volume purchasing power. Specifically, Coach claims that each carrier to be acquired will benefit from the lower insurance premiums negotiated by Coach and from volume discounts for equipment and fuel. Coach indicates that it will provide each carrier to be acquired with centralized legal and accounting functions and coordinated purchasing services. In addition, Coach states that vehicle sharing arrangements will be facilitated through Coach to ensure maximum use and efficient operation of equipment, and that coordinated driver training services will be provided. Coach also states that the proposed transaction will benefit the employees of each carrier and that all collective bargaining agreements will be honored.

Coach plans to acquire control of additional motor passenger carriers in the coming months. It asserts that the financial benefits and operating efficiencies will be enhanced further by these subsequent transactions. Over the long term, Coach states that it will provide centralized marketing and reservation services for the bus firms that it controls, thereby further enhancing the benefits resulting from these control transactions.

Coach certifies that none of the carriers to be acquired holds an unsatisfactory safety rating from the U.S. Department of Transportation,[5] that each has sufficient liability insurance; that none is domiciled in Mexico or owned or controlled by persons of that country; and that approval of the transaction will not significantly affect either the quality of the human environment or the conservation of energy resources. Additional information may be obtained from applicant's representatives.

Under 49 U.S.C. 14303(b), we must approve and authorize a transaction we find consistent with the public interest, taking into consideration at least: (1) the effect of the transaction on the adequacy of transportation to the public; (2) the total fixed charges that result; and (3) the interest of affected carrier employees.

On the basis of the application, we find that the proposed acquisition of control is consistent with the public interest and should be authorized. If any opposing comments are timely filed, this finding will be deemed vacated and, unless a final decision can be made on the record as developed, a procedural schedule will be adopted to reconsider the application.[6] If no opposing comments are filed by the expiration of the comment period, this decision will take effect automatically and will be the final Board action.

Board decisions and notices are available on our website at ''www.stb.dot.gov''.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The proposed acquisition of control is approved and authorized, subject to the filing of opposing comments.

2. If timely opposing comments are filed, the findings made in this decision will be deemed as having been vacated.

3. This decision will be effective on November 9, 1998, unless timely opposing comments are filed.

4. A copy of this notice will be served on: (1) the U.S. Department of Transportation, Office of Motor Carriers-HIA 30, 400 Virginia Avenue, SW, Suite 600, Washington, DC 20024; and (2) the U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, NW, Washington, DC 20530.

Decided: September 18, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 98–25599 Filed 9–24–98; 8:45 am]

BILLING CODE 4915–00–M

[5] Clinton and ONE Bus have no safety rating; Wisconsin holds a satisfactory safety rating.

[6] Under revised 49 CFR part 1182, scheduled to become effective October 1, 1998, as adopted in *Revisions to Regulations Governing Finance Applications Involving Motor Passenger Carriers*, STB Ex Parte No. 559 (STB served Sept. 1, 1998), there will be minor changes to the procedures involved in motor passenger finance applications. As pertinent, a procedural schedule will not be issued if the Board is able to dispose of opposition to the application on the basis of the comment and applicant's reply.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. S5R 100]

Association of American Railroads and American Short Line and Regional Railroad Association—Agreement—Application Under 49 U.S.C. 10706

AGENCY: Surface Transportation Board.

ACTION: Notice of interim approval.

SUMMARY: The Association of American Railroads (AAR) and the American Short Line and Regional Railroad Association (ASLRRA) have filed an application under 49 U.S.C. 10706 for approval of the rate-related provisions of an AAR–ASLRRA Agreement (the Agreement) that addresses issues raised in *Review of Rail Access and Competition Issues*, Ex Parte No. 575 (STB served Apr. 17, 1998) *(Review)*. The Agreement, to which rail carriers may subscribe on an individual basis, is intended to provide a framework for improving the ability of smaller (Class II or III) railroads and Class I railroads to work together to fulfill their shared goal of serving the shipping public in the most efficient possible manner. The rate-related principles outlined in the Agreement constitute a series of bilateral commitments by each subscribing Class I carrier to each subscribing smaller railroad with which it connects with respect to switch charges and interline rates between those two carriers. These principles relate to rates within the meaning of 49 U.S.C. 10706(a)(2)(A). The Board is approving the application on an interim basis, subject to comments. If opposing comments are timely filed, the Board will consider the comments, and any reply, and issue a further decision on the application. Absent opposing comments, this notice will constitute final approval of the application and will be the final Board action.

DATES: Comments must be filed by October 26, 1998. Applicants may file a reply by November 10, 1998. If no comments are filed by October 26, 1998, this interim approval will be final as of that date.

ADDRESSES: Send an original and 10 copies of any comments referring to STB Docket No. S5R 100 to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, send one copy of comments to applicants' representatives: Arvid E. Roach II, Covington & Burling, 1201 Pennsylvania Avenue, NW, P.O. Box 7566, Washington, DC 20044–7566, for AAR; and Alice C. Saylor, American Short Line and Regional Railroad Association, 1120 G Street, NW, Suite 520, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 565–1600. (TDD for the hearing impaired: (202) 565–1695.)

SUPPLEMENTARY INFORMATION: In *Review*, slip op. at 8, we discussed impediments to the ability of smaller railroads to reach their full potential in providing service to the shipping public. Noting our preference for private-sector over government-mandated solutions, we urged the railroads to address and resolve these issues expeditiously. We committed to take administrative action as necessary and appropriate to

facilitate any constructive privately-reached agreement. We appreciate the substantial efforts of AAR and ASLRRA and their members in working cooperatively to reach agreement on these difficult and important issues. We now address the instant application seeking approval of certain aspects of the agreement.

Our jurisdiction to approve rate agreements under 49 U.S.C. 10706 extends to agreements of at least two rail carriers that relate to rates (including charges between rail carriers and compensation paid or received for the use of facilities and equipment), classifications, divisions, or rules related to them, or procedures for joint consideration, initiation, publication, or establishment of the same.[1] In order to approve an agreement under 49 U.S.C. 10706(a)(2)(A), we must find that the making and carrying out of the agreement will further the rail transportation policy (RTP) of 49 U.S.C. 10101. If we approve the agreement, which may require compliance with conditions necessary to make the agreement further the RTP, it may be carried out under its terms and under the required conditions, and the antitrust laws (enumerated in that subsection) do not apply to parties and other persons with respect to the making or carrying out of the agreement. We may not approve or continue approval of an agreement if the required conditions are not met or if we do not receive a verified statement specifying for each rail carrier that is a party to the agreement certain information concerning its identity and that of any affiliates. *See* 49 U.S.C. 10706(a)(2)(B) and the regulations at 49 CFR 1331.1. The regulations also require that certain exhibits be filed with the application (49 CFR 1331.2) and that new parties to an agreement comply with the requirements of 49 CFR 1331.1(b) (49 CFR 1331.4).

Applicants submit verified statements identifying each of the AAR and ASLRRA members that either has subscribed or is eligible to subscribe to the Agreement.[2] Applicants seek an exemption under 49 U.S.C. 10502 for further detailed information about the railroads that will subscribe to the Agreement and request that we also approve the Agreement with respect to possible future participation by railroads that have not been identified in their attached verified statements. Applicants contend that we can make the findings necessary to approve the Agreement without having the precise information concerning the identities of all of the railroads that will ultimately become subscribers. Applicants submit that they will maintain a record of the railroads that subscribe in the future and make that list available to the Board and any interested party upon request.

We agree with applicants that we have enough information with regard to the carriers listed in their verified statements to make the necessary findings under 49 U.S.C. 10706(a)(2)(A).[3] Accordingly, under 49 U.S.C. 10706(a)(2)(A), we find that the rate-related provisions of the Agreement further the RTP. The Agreement memorializes certain principles that would apply in specified circumstances when a subscribing Class I carrier provides switching services to, or makes interline rates with, a subscribing smaller railroad. It does not involve collective rate-setting; rather, it embodies principles to be applied by independent railroads acting independently. Application of these principles will assist smaller railroads in reaching their potential and playing a more significant role in providing reasonably priced high-quality and efficient service to the shipping public, thereby enhancing the overall strength, efficiency, and responsiveness of the Nation's rail network. By encouraging a more rational, efficient and cooperative relationship between Class I carriers and smaller railroads, we find that the rate-related provisions of the Agreement promote a safe and efficient rail transportation system [49 U.S.C. 10101(3)]; ensure the development and continuation of a sound rail transportation system with effective competition among rail carriers [49 U.S.C. 10101(4)]; foster sound economic conditions in transportation and ensure effective competition and coordination between rail carriers [49 U.S.C. 10101(5)]; and encourage honest and efficient management of railroads [49 U.S.C. 10101(9)].

Applicants submit, and we agree, that the rate-related provisions of the Agreement do not have any anticompetitive effects and preserve rather than override market forces. They further submit that the Agreement's rate-related provisions offer participating Class I carriers and smaller railroads the unique opportunity to address issues without the need for new regulatory requirements that supplant, rather than harness, market forces. We find that this aspect of the Agreement furthers the twin RTP goals of minimizing the need for Federal regulatory control over the rail transportation system [49 U.S.C. 10101(2)] and providing for the resolution of proceedings permitted to be brought under the statute [49 U.S.C. 10101(15)].

This notice is available on our website at ''WWW.STB.DOT.GOV.''

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This application is approved, on an interim basis, subject to comments.

2. Comments must be filed by October 26, 1998. Applicants may file a reply by November 10, 1998. If no comments are filed by October 26, 1998, this interim approval will be final as of that date.

3. This decision is effective on September 22, 1998.

4. A copy of this notice will be served on: (1) The Federal Trade Commission, Bureau of Competition, 6th Street & Pennsylvania Avenue, NW, Washington, DC 20580; and The Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, NW, Washington, DC 20530.

Decided: September 21, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 98–25751 Filed 9–24–98; 8:45 am]

BILLING CODE 4915–00–P

[1] Applicants note that the Agreement contains other provisions that are unrelated to rates, classifications, divisions or traffic rules. These provisions are aimed at better meeting the car supply needs of customers served by short line and regional railroads, improving the quality of interline service provided jointly by smaller railroads and Class I carriers, and giving Class III carriers access to new routes and haulage arrangements in certain circumstances in order to develop new business. The Application provides for arbitration as a means of dispute resolution.

[2] Applicants do not provide the detailed information required by 49 U.S.C. 10706(a)(2)(B)(iii), which calls for identifying every affiliate, officer, director, and affiliate of an officer or director, of each subscriber to an agreement, because the Agreement does not entail any collective ratemaking or ongoing bureau process. To the extent that such information is required by 49 U.S.C. 10706, applicants request that we exempt them from ''unnecessary and burdensome procedural requirements.''

[3] More detailed information with regard to their affiliates is not necessary to carry out the RTP. Accordingly, we exempt applicants from this requirement under 49 U.S.C. 10502. As to the identities of possible future participating railroads, 49 CFR 1331.4 provides a mechanism for adding new parties to an agreement, and applicants have committed to maintaining a record of all future railroad subscribers and making that list available to the Board and other interested persons.

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Commercial Invoices

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

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burdens, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Commercial Invoices. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before November 24, 1998, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Room 3.2–C, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, Room 3.2–C, 1300 Pennsylvania Avenue NW, Washington, D.C. 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Commercial Invoices.

OMB Number: 1515–0120.

Form Number: N/A.

Abstract: The collection of Commercial Invoices is necessary for the proper assessment of Customs duties. The invoice(s) is attached to the CF7501. The information which is supplied by the foreign shipper is used to ensure compliance with statues and regulations.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 350,000.

Estimated Time Per Respondent: 10 seconds.

Estimated Total Annual Burden Hours: 84,000.

Estimated Total Annualized Cost on the Public: $1,201,200.00.

Dated: September 17, 1998.

J. Edgar Nichols.

Team Leader, Information Services Group.

[FR Doc. 98–25635 Filed 9–24–98; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Submission for OMB Review; comment request

September 21, 1998.

The Office of Thrift Supervision (OTS) has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Interested persons may obtain copies of the submission(s) by calling the OTS Clearance Officer listed. Send comments regarding this information collection to the OMB reviewer listed and to the OTS Clearance Officer, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552.

OMB Number: 1550–0041.

Form Number: Not Applicable.

Type of Review: Extension of an already approved information collection.

Title: Procedures for Monitoring Bank Secrecy Act.

Description: This information collection is necessary for the OTS to determine whether a savings association has implemented a program reasonably designed to assure and monitor compliance with the currency reporting and reporting requirements established by Federal Statute and the U. S. Department of Treasury regulations.

Respondents: Savings and Loan Associations and Savings Banks.

Estimated Number of Recordkeepers: 1,191.

Estimated Burden Hours Per Recordkeeper: 2 average hours.

Frequency of Response: 1.

Estimated Total Recordkeeping Burden: 2,382 hours.

Clearance Officer: Colleen M. Devine, (202) 906–6025, Office of Thrift Supervision, 1700 Street, NW., Washington, D.C. 20552.

OMB Reviewer: Alexander Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, D.C. 20503.

Catherine C.M. Teti,

Director, Records Management and Information Policy.

[FR Doc. 98–25677 Filed 9–24–98; 8:45 am]

BILLING CODE 6720–01–P

Corrections

Federal Register

Vol. 63, No. 186

Friday, September 25, 1998

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 JUSTICE

28 CFR Part 16

[Attorney General Order No. 2156-98]

RIN 1105-AA20

Revision of Freedom of Information Act and Privacy Act Regulations and Implementation of Electronic Freedom of Information Act Amendments of 1996

Correction

In rule document 98–14341 beginning on page 29591, in the issue of Monday, June 1, 1998, make the following corrections:

§ 16.2 [Corrected]

1. On page 29594, in the first column, in § 16.2(b)(9), in the first line, ''In'' should read ''in''.

§ 16.3 [Corrected]

2. On page 29594, in the second column, in § 16.3(a), in the 18th line, after ''office'' add a period.

§ 16.8 [Corrected]

3. On page 29596, in the second column, in § 16.8(c), in the sixth line, ''portion'' should read ''portions''.

§ 16.11 [Corrected]

4. On page 29598, in the third column, in § 16.11(e), in the third from the bottom, ''Departmental'' should read ''Department''.

5. On page 29599, in the first column, in § 16.11(g), in the third line, ''staring'' should read ''starting''.

6. On page 29599, in the first column, in § 16.11(i)(1), in the fifth line, ''made'' should read ''make'' and in the eighth line, ''owned'' should read ''owed''.

7. On page 29599, in the first column, in § 16.11(i)(3), in the sixth line, after ''pay'' remove ''to''.

§ 16.40 [Corrected]

8. On page 29600, in the second column, in § 16.40(a), in the tenth line, after ''records'' insert ''about''.

9. On page 29600, in the second column, in § 16.40(b)(1), after ''*Component*'' remove the period.

10. On page 29600, in the second column, in § 16.40(b)(2), after ''*Request for access*'' remove the period.

§ 16.41 [Corrected]

11. On page 29600, in the third column, in § 16.41(a), in the second line from the bottom, ''make'' should read ''mark''.

12. On page 29601, in the first column, in § 16.41(d), in the first line, ''*identify*'' should read ''*identity*''and in the seventh line from the bottom, after ''Division'' add a comma.

§ 16.42 [Corrected]

13. On page 29601, in the first column, in § 16.42(b), in the fourth line, ''and'' should read ''any''.

14. On page 29601, in the first column, in § 16.42(c), in the first line, ''*Consultation*'' should read ''*Consultations*''

§ 16.50 [Corrected]

15. On page 29603, in the second column, in § 16.50(a), in the eighth line, ''component's's'' should read ''component's'' and in the sixth line from the bottom, after ''and'' add ''a''.

§ 16.54 [Corrected]

16. On page 29604, in the first column, in § 16.54(c)(4), in the first line, ''individuals'' should read ''individual''.

Appendix I to Part 16 [Corrected]

17. On page 29604, in the first column, in appendix I, in the third line, ''(component name)'' should read ''[component name]''.

BILLING CODE 1505-01-D

Friday
September 25, 1998

Part II

Department of Transportation

Federal Railroad Administration

49 CFR Part 230

Inspection and Maintenance Standards for Steam Locomotives; Proposed Revisions; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 230

[Docket No. RSSL–98–1, Notice No. 1]

Inspection and Maintenance Standards for Steam Locomotives; Proposed Revisions

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: FRA is proposing to update its requirements issued in 1978 (''1978 standards'') for steam locomotive inspections and maintenance with new standards that represent the consensus recommendations of the Railroad Safety Advisory Committee's Tourist and Historic Working Group. The proposed standards would relax certain inspection requirements, while tightening others, to recognize and reflect the less frequent use of steam locomotives in today's national system of transportation. Significant changes would include: The creation of a ''service-day'' inspection system that directly relates inspection time periods to the actual use of the steam locomotive; the elimination of waivers for steam boilers, steam locomotives and their appurtenances, with certain exceptions; the inclusion of allowances which encourage the use of new technologies, such as non-destructive testing, for boiler testing and inspections; and the imposition of qualification requirements for individuals making certain repairs to steam locomotive boilers, steam locomotives and their appurtenances.

Certain of the inspection standards would be left substantively intact but would be relocated to new sections and given new section numbers. Due to the magnitude of the changes proposed, the proposed standards would replace the 1978 standards in their entirety.

DATES: (1) *Written comments:* Written comments must be received no later than November 24, 1998. Comments received after that date will be considered to the extent possible without incurring additional expense or delay. Requests for formal extension of the comment period must be made by October 26, 1998.

(2) *Hearing:* Because this proposal is based largely on the consensus recommendations of the agency's safety advisory committee, FRA does not intend to schedule a public hearing regarding this proposal absent a specific request to do so. Any requests for FRA to hold a public hearing into this matter should be received by FRA by October 9, 1998.

(3) *Proposed Effective Date:* Part 230 is proposed to become effective 60 days after the publication date of the final rule.

ADDRESSES: (1) *Written comments:* Written comments should identify the docket and notice numbers and be submitted in triplicate to: Docket Clerk, Office of Chief Counsel, Mail Stop 10, Federal Railroad Administration, 400 Seventh Street, S.W., Washington, D.C., 20590. Persons who wish to be notified that their comments have been received should submit a stamped, self-addressed postcard with their comments. The Docket Clerk will indicate on the postcard the date on which the comments were received and will return the card to the addressee. Written comments will be available for examination, both before and after the comment period closes, during regular business hours at the Federal Railroad Administration's office space in 1120 Vermont Avenue, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: George Scerbo, Motive Power & Equipment Specialist, Federal Railroad Administration, (telephone 202–493–6249); Lawrence Wagner, Trial Attorney, Office of Chief Counsel, FRA, 400 Seventh Street, S.W., Washington, D.C., 20590, (telephone 202–493–6063); or John Megary, Regional Administrator, Federal Railroad Administration, 8701 Bedford-Euless Road, Suite 425, Hurst, TX 76053, (telephone 817–284–8142).

SUPPLEMENTARY INFORMATION:

I. Regulatory Background

In his annual message in 1910, President Taft noted the need for regulation of the steam locomotive industry:

> The protection of railroad employees from personal injury is a subject of the highest importance and demands continuing attention * * *. It seems to me that with respect to boilers a bill might well be drawn requiring and enforcing by penalty a proper system of inspection.

Congressional Record, December 6, 1910, p. 33. At that time, there were no rules or regulations governing the inspection and maintenance of steam locomotives other than the Ash Pan Act, 45 U.S.C.S. 17 (1908), *repealed* Pub. L. 97–468 (1933), which prescribed the method for attaching ash pans to a steam boiler. On February 17, 1911, however, Congress passed the Locomotive Boiler Inspection Act (LBIA). The LBIA, which was opposed by locomotive owners and operators, brought all locomotive steam boilers under Federal jurisdiction and established the Bureau of Locomotive Inspection and its attendant field force of 50 Locomotive Inspectors.

The LBIA became effective on July 1, 1911, and only applied to the steam locomotive boiler. It had an immediate and drastic impact; the number of incidents caused by the failure of the boiler or any of its appurtenances declined sharply. Incidents caused by failures of parts of the locomotive other than the boiler and its appurtenances began to increase, however, and railroad employees appealed to Congress for an amendment that would extend federal jurisdiction over the entire steam locomotive and tender and all its parts with the same force and effect that had previously only applied to the boiler. The railroad owners and operators were, again, vigorously opposed. A bill incorporating the proposed amendment was passed by Congress and signed by President Wilson on March 4, 1915.

When the LBIA became effective in 1911, it required each railroad subject to the Act to file copies of its rules and instructions for the inspection of locomotive boilers. An examination and comparison of the 170 rules and instructions submitted (out of approximately 2,200 railroads in the country at that time) disclosed that these rules were either substantially similar, or identical, to those promulgated by the Master Mechanics' Association. These rules, along with the 1915 amendments, formed the basis for the former Interstate Commerce Commission (ICC) rules which were adopted and have been in effect to date. Modifications to these rules were made over the years by ICC orders to enhance safety. FRA adopted all ICC rules, interpretations, and instructions when the Department of Transportation was created, effective April 1, 1967. These rules were published in the **Federal Register** and incorporated into the Code of Federal Regulations in December of 1968. Since then, the rules have been updated and amended periodically. In 1980, the regulations were removed from the CFR. However, FRA has continued to enforce them through today. For purposes of clarity, whenever those removed standards are referenced, they will be described as ''the 1978 standards'' since there is not current CFR citation for them.

There are currently fewer than 200 steam locomotives in operation. Most of them are used in tourist or historic service on an intermittent, seasonal basis. Several years ago, a task group of the National Board of Boiler and

Pressure Vessel Inspectors comprised of steam locomotive operators, called the Engineering Standards Committee (ESC), petitioned the FRA to change the current rules to more realistically reflect the current use and conditions of service for today's steam locomotives. The agency committed to work with this group to consider revisions to these standards. After the agency established its Railroad Safety Advisory Committee (RSAC or the Committee), the agency identified this subject as one ripe for collaborative rulemaking. Accordingly, the agency tasked the RSAC with the formal revision of steam locomotive inspection standards on July 24, 1996. It was also recommended at that time that the ESC, and the FRA representatives with whom it was working, become a Task Force to the RSAC's Tourist and Historic Working Group.

II. Antecedents of FRA's Consensual Rulemaking Approach

In 1994, FRA established its first formal regulatory negotiation committee (''reg-neg'') to address roadway worker safety. This committee successfully reached consensus conclusions and recommended an NPRM to the Administrator, persuading FRA that a more consensual approach to rulemaking would likely yield more effective, and more widely accepted, rules. In addition, President Clinton's March 1995 Regulatory Reform Initiative directed agencies to expand their efforts to promote consensual rulemaking. In response to these efforts, FRA decided to shift toward a collaborative rulemaking process by establishing, and utilizing the consensus recommendations of RSAC.

III. The Railroad Safety Advisory Committee

The RSAC formally was established on March 25, 1996 to provide recommendations and advice to the Administrator on the development of FRA's railroad safety regulatory program, including the issuance of new regulations, the review and revision of existing regulations, and the identification of non-regulatory alternatives for improvement of railroad safety. The Committee is comprised of 48 representatives from 27 member organizations, including railroads, labor groups, equipment manufacturers, state government groups, public associations, and three associate non-voting representatives from the National Transportation Safety Board (NTSB), Canada, and Mexico. The Administrator's representative (the Associate Administrator for Safety or that person's delegate) is the Chairperson of the Committee.

IV. Steam Task Force of the Tourist and Historic Working Group

During the July 24, 1996 meeting of the RSAC, the agency charged the committee with recommending revisions to the regulations governing locomotive inspection standards for steam-powered locomotives (49 CFR Part 230), in order to promote the safe operation of tourist and historic rail operations, including ''such additions and deletions as may be warranted by appropriate data and analysis.'' In its Task Statement (Task No. 96–5) to RSAC, the agency instructed the Committee to refer this task to the pre-existing Tourist and Historic Railroads working group (THWG or The Group), which it successfully did. The THWG is comprised of the following organizations:

Association of American Private Railcar Owners
American Short Line Railroad Association
Association of American Railroads
Association of Railway Museums
Brotherhood of Locomotive Engineers
FRA
Tourist Railway Association Inc. (TRAIN)

The THWG voted during its April 1996 meeting to adopt the ESC, which had been examining these issues outside of the RSAC arena, and to have it serve as a Task Force reporting to the THWG. As adopted, the Steam Standards Task Force (Task Force) is comprised of knowledgeable persons from the following organizations:

Valley Railroad Company
Durango & Silverton Narrow Gauge
Union Pacific Railroad
Strasburg Railroad
Hartford Steam Boiler Inspection & Insurance Company
National Board of Boiler Inspectors
ABB/Combustion Engineering
Smithsonian Institution
FRA

In addition, a locomotive engineer and several steam locomotive experts, now working as consultants, participated in the proceedings.

To accomplish its goal, the Task Force met approximately six or seven times during an eighteen month period. During these meetings, the Task Force evaluated a previous ESC proposal to revise Part 230, which had been presented to FRA in the early 1990's. Many of the issues in this proposal engendered much discussion and debate within the Task Force. Brief summaries of those discussions are recorded in the appropriate parts of the section-by-section analysis portion of this document. Technical details supporting certain recommendations are not specified in this notice but are recorded in the docket and were discussed by the Task Force. A few issues have been designated by FRA as ''major issues'' and are more fully discussed below.

On September 19, 1997, the THWG communicated to the agency their unanimous consensus that the Task Force's proposed recommended rule text revisions to Part 230 should be forwarded to the RSAC. On January 16, 1998, both the task force, and the full THWG reached consensus that the proposed preamble should be included in the package presented to RSAC. The RSAC was presented with the entire package during its January 27, 1998 meeting. The RSAC considered this proposal and made consensus recommendations to the Administrator of FRA. This document reflects the Administrator's utilization of those recommendations, consistent with applicable law and Presidential guidance.

Throughout this document, the agency explains the rationale and deliberative thought processes of the task force of which it was a part. Unless otherwise noted, the agency agrees with the reasoning and explanations advanced by the task force for making the proposed revisions to these standards contained in this NPRM. The task force's deliberations were frequently characterized by robust debate. Throughout this document, wherever necessary to explain proposed revisions, the agency tries to recapture as much of that debate as is relevant and practical.

V. Task Force Goals

During an early meeting, the task force identified several goals for revising Part 230:

(1) harmonizing FRA and National Boiler Inspection Code terminology and standards;

(2) modernizing the rules to reflect current operating realities;

(3) eliminating any incentives, financial or otherwise, for operators to not follow the rules;

(4) encouraging the use of new technologies; and

(5) producing a rule that is more enforceable for being more clearly written and more understandable.

These goals are reflected throughout this document and are embodied in the changes proposed.

VI. Reorganization of Part 230

The 1978 standards are divided into two main parts—one for the steam locomotive boiler and its appurtenances, and the other for the steam locomotive and tender. As part of the proposed revisions to Part 230, the agency has restructured the rule so that it would contain a ''general'' part, Subpart A, which would contain provisions that would apply to the entirety of Part 230, a boiler part, Subpart B, applicable to the boiler and its appurtenances, and a locomotive part, Subpart C, applicable to the steam locomotive and tender. Some of the concepts contained in the proposed Subpart A were formerly contained in Subparts A and B of the 1978 standards. This proposal is designed to reduce and eliminate identified redundancies in the 1978 standards, and to make the rule more clear, readable and understandable.

VII. Major Issues

A. Responsibility for Compliance.

The agency is proposing to change the term ''railroad company'' throughout the body of the rule to the term ''locomotive owner and/or operator,'' consistent with the task force proposal to do so, in order to reflect the change in steam locomotive operating practices. Many railroad companies are not in the business of either owning or operating steam locomotives today. While some tourist railroads own and operate their own locomotives, frequently steam locomotives are owned and/or operated by entities other than the railroad on whose line they operate. Hence, in many instances, the locomotive owner and/or operator is in a much better position than the railroad company to ensure compliance with various regulatory requirements. Thus, the task force recommended, and the agency is proposing, to more specifically affix responsibility—throughout the rule—on those who are primarily responsible for the locomotive. In most cases, that is the locomotive owner and/or operator. The task force debated how to best articulate the liability standard—whether to use ''owner and operator,'' ''owner/operator,'' or ''owner or operator.'' They settled on the ''owner and/or operator'' construct as the clearest method for affixing joint and severable liability for the inspection and maintenance of steam locomotives on the owner and operator. In certain sections of the rule, however, the owner and the operator are individually identified as the appropriate party on whom liability would rest.

Moreover, as provided by statute, the railroad would also be liable for permitting any entity to use a noncomplying locomotive on its line (see section-by-section discussion of section 230.4, below). The adoption of the owner and/or operator language is a clear signal that FRA intends to look first to the owner and/or operator to ensure compliance, whether or not that happens to be the railroad. It is important to note that the proposed applicability section, section 230.2, which the agency modified from that originally submitted by the task force, uses the term ''railroad'' to describe where the rule applies. As discussed in the section-by-section analysis for the applicability section, the agency is proposing this change to harmonize all of its applicability sections. Since this section best expresses where the rule applies, as contrasted with the proposed ''Responsibility for Compliance'' section, § 230.8, which best expresses to whom the rule applies, the agency does not expect this change to effect a substantive revision of the task force's proposal.

B. Inspection Scheme

In this rule, the agency is proposing to change the inspection scheme for steam locomotive boilers to allow for the changed nature of modern steam locomotive operations. The 1978 standards require steam locomotive boilers to be inspected at various time periods that are linked to an annual calendar, regardless of the amount of actual usage the locomotive has incurred. When locomotives were in continuous service, this system was not unduly burdensome. Operation of steam locomotives today, however, occurs much more infrequently, sometimes only a few times a year. Under the new inspection scheme, locomotives would be required to be inspected based on the number of ''service days'' they accrue, with various intermediate calendar inspection requirements retained to ensure an adequate level of safety.

1. Service Days

This new scheme would be underpinned by the concept of a ''service day,'' which would be defined as any day the locomotive has steam pressure above atmospheric pressure and a fire in the firebox. Because good practice for steam locomotive operation requires that the locomotive boiler be slowly heated before use and slowly cooled after use, due to the damage such rapid heating and cooling can cause the metal of the boiler, a locomotive that runs on weekends could incur three service days for one actual day of ''use.'' Thus, the locomotive could have fire in the firebox and pressure above atmospheric pressure for an entire day before it actually runs, for the entire day that it runs, and during the time it takes to cool down after the day it runs, which could run into a third service day. Some operators were concerned that this definition would create an incentive for operators to ''dump'' their fires after operating the steam locomotive to avoid incurring an extra service day. The task force was of the opinion, however, that the financial cost to operators who might so dump their fires (in terms of stress and damage to their boilers from such behavior) would likely outweigh any inspection time period benefits they might gain from such dumping. The task force also articulated its belief that, with proper damping and draft restriction, fire can be removed from the firebox (and a service day preserved) with no adverse affects for the boiler—and that this practice can be, in fact, easier on the boiler than banking the fire.

2. Daily Inspection

The proposed new ''daily inspection'' section would make clear the inspection requirements for locomotive owners and operators. The 1978 standards contains no requirement for a daily inspection, other than a requirement that the locomotive and tender be inspected ''after each trip, or day's work.'' In the proposed section, the agency would retain that general daily inspection requirement for each day that the locomotive is ''offered for use,'' but also would impose a ''pre-departure'' requirement for the locomotive to be inspected at the beginning of each day the locomotive is actually used, with particular attention called to certain safety critical items—the water glasses and gauge cocks, the boiler's feedwater delivery systems, the air compressors and governors, and the air brake system.

3. 31 and 92 Service Day Inspections

The proposed rule also requires 31 and 92 service day inspection requirements, which would roughly correspond to the monthly and three month inspections in the 1978 standards.

4. Annual Inspections

The proposed rule includes annual inspection requirements that would be similar to the 1978 standards, requiring that the locomotive be inspected after 368 days have elapsed from the time of the prior annual inspection. The 1978 standards require that certain items be inspected at least ''once every 12 months.'' The proposal for the annual

inspection, as for all other inspections, would incorporate the inspection requirements for all inspections required to be conducted at earlier intervals. Thus, locomotives that are operated infrequently enough to not accrue either 31 or 92 service days would have those inspections conducted, at a minimum, once each 368 calendar days. In addition, this proposal would modify the inspection time period for flexible staybolts and caps from once each 2 years under the 1978 standards to during each 5th annual inspection.

5. 1472 Service Day Inspection

Finally, the 1978 standards require that the boiler be inspected, at a minimum, once each 5 calendar years (boiler interior must be inspected after 48 calendar months, within 5 consecutive years, and boiler exterior must be inspected every 5 years, or if the locomotive is out of service for at least one full month, then after 60 calendar months within 6 consecutive years). This inspection is a major one, requiring the removal of the jacket and lagging to conduct the exterior inspection, and the removal of all flues in the locomotive boiler to conduct a ''minute'' inspection of the interior of the boiler. The agency is proposing to modify this requirement by requiring that these inspections be conducted when the locomotive has accrued 1472 service days, not to exceed 15 years. As explained earlier, in section IX(B), the proposed revisions to these standards are designed to track the amount of actual usage the steam locomotive receives. The 15 year maximum, beyond which time the 1472 service day inspection would have to be conducted, is derived from the Task Force's collective experience.

As part of the 1472 service day inspection, the agency is also proposing to require the completion, verification and updating of the locomotive's Form 4, the ''specification card'' required by § 230.54 of the 1978 standards. The agency is making clear that this form must be verified, and updated as necessary, to reflect the current condition of the boiler following the conduct of each 1472 service day inspection.

This recordkeeping requirement would not actually be new, although it might seem as such to some; it would merely clarify and make express what the 1978 standards already require. Because some locomotive owners and/or operators may not understand that the 1978 standards required that the Form 4 be continuously accurate, however, this change might be perceived as new.

The 1978 standards do not expressly require periodic surveying to verify the accuracy of the current Form 4, nor the updating of any changes thereto, although doing so was required by the language of the form itself, which required a testimonial that all information was true and accurate, and by the actual language of the 1978 standards itself, which required that the Form 4 be updated to reflect boiler repairs or changes that might affect the Form 4 data.

In addition, the agency is proposing a competence requirement for the conduct of the 1472 service day inspection and for the surveying of the boiler to recalculate the Form 4. Accordingly, this proposal would require that an individual competent to do so conduct the 1472 service day inspection and, at that time, that an individual competent to do so survey the boiler to evaluate the accuracy of the current Form 4 and use those survey results to recalculate the Form 4, if necessary. The recalculated Form 4 would have to be filed within 1 month after the completion of the 1472 service day inspection.

6. FRA Inspection Oversight

To ensure an adequate level of safety in light of these relaxed time periods, the group recommended, and the agency is proposing, an increased amount of FRA oversight for these inspections. Thus, for certain of these periodic inspections, the agency would be offered the opportunity to be present during the conduct of some, or all, of the inspection. In the case of the 31 service day inspection, the agency would bear the responsibility for communicating to the locomotive owner and/or operator that FRA wants to be notified prior to the inspection and given an opportunity to attend. Once that occurs, however, the owner and/or operator would have to provide the agency with a scheduled date and location for the inspection. At that time, any changes to that schedule would have to be mutually agreed upon. This proposed approach would balance competing interests and would comport with the task force's deliberations. The task force wanted to provide owners and operators the flexibility to conduct their business without unreasonable interference by FRA scheduling conflicts; however, they also intended that owners and/or operators would act in good faith and take all reasonable measures to accommodate an FRA request to be present.

In the case of the annual inspection, however, the locomotive owner and/or operator would bear the onus of providing FRA with one month's prior notice that the annual inspection is to be conducted. The agency would then have the option of indicating a desire to be present for some, or all, of this inspection. The locomotive owner and/or operator would, at that point, have to provide FRA with a scheduled date and location for each aspect of the inspection. As with the 31 service day inspection, once scheduled, any scheduling changes would have to be mutually agreed upon.

This notification scheme would allow the agency to observe the locomotive owner and/or operator's conduct of various inspections, and would allow the FRA field personnel directly responsible for inspecting steam locomotive operations to work cooperatively with the regulated community and to obtain better information about the condition of the steam locomotives in their territories.

C. Elimination of Availability of Waivers

In this rule, the agency is proposing to eliminate the availability of all waivers currently available under this part. The 1978 standards contain a section that allows for the ''modification of rules'' for ''roads operating less than 5 locomotives'' upon a showing that conditions warrant it. This language predated the agency's formal waiver process, codified at 49 CFR 211.41, and was originally intended to apply only to the subpart addressing the steam locomotive and tender, and not the subpart addressing the locomotive boiler. In addition, the flue removal section in the 1978 standards would allow extensions of the time period for removing flues, and for conducting the comprehensive boiler inspection, upon formal application to the Director of the Bureau of Railroad Safety. Thus, throughout the agency's eight regions, different locomotives have been allowed to delay the conduct of the boiler inspection by varying amounts of time based, in part, on the regional processes for addressing these requests. By eliminating the waiver provision, the agency would accomplish several things: (1) regulatory clarification that the agency's waiver process in Part 211 is the appropriate vehicle for gaining relief from the requirements of this part; (2) national knowledge and coordination of all waivers considered and granted for steam locomotives; and (3) an added level of assurance that steam locomotives are being regulated consistently. The group also felt that such extensions and waivers under this part would generally no longer be necessary given the flexibility being

afforded by the proposed new inspection scheme—but where necessary, would be best addressed by the centralized waiver process provided for in Part 211.

D. Standard for Repairs

The agency is proposing to regulate the standards for making certain repairs to the steam locomotive and boiler. The task force was concerned about controlling the quality of the repairs made to steam locomotives and boilers and decided to impose, as a minimum, the requirement that repairs be made in accordance with an ''accepted industry standard.'' While the task force debated simply requiring that repairs be made in accordance with the National Board Inspection Code (NBIC) published by the National Board of Boiler and Pressure Vessel Inspectors (NBBPVI) or the American Petroleum Institute (API) established standards, it ultimately recommended that the agency afford industry members a measure of flexibility by acknowledging the canon of established railroad practices that have been successfully utilized over time; this proposal reflects that decision. While there was some concern about whether the term ''accepted'' was too vague, the task force felt that it was a knowable quantum—that industry members knew what was required to ensure that repairs are properly made. Due to the small size and close-knitness of the steam locomotive community, the group felt that imposing an ''accepted industry standard'' on repairs made, and allowing that standard to include ''established railroad practices, or NBIC or API established standards'' would result in an equivalent level of quality in the repairs made. This proposal reflects those decisions also. Finally, as used in this proposal, ''established railroad practices'' would mean a practice used by one or more railroads over a period of time that could be reasonably shown to have been successful in service, or that most industry members would agree is an appropriate standard to use for a given repair. In practice, the locomotive owner and/or operator would bear the onus of proving that the standard is established within the railroad community and that it is appropriate for the repair under consideration.

The agency also is proposing to expressly allow welding on both stayed and unstayed portions of the boiler, with some limitations. While the 1978 standards did not prohibit welding on unstayed portions of the boiler, it was widely understood that such welding was not allowed. Thus, by expressly allowing it, this proposal would suggest a fairly radical change.

In section 230.33 of this proposed rule, ''Welded Repairs and Alterations,'' the agency is proposing requiring prior approval for any welding done on unstayed portions of high carbon boilers (greater than 0.25% carbon); the risk of welding on the boiler is much higher for boilers with a high carbon content. Welds on unstayed portions of lower carbon boilers (less than 0.25% carbon) would not be similarly restricted.

For both low and high carbon boilers, however, the agency is proposing to impose a repair standard that allows the locomotive owner and/or operator a measure of flexibility while simultaneously insuring a minimum level of safety. Accordingly, the agency is proposing to require that any welded repairs to unstayed portions of the boiler be performed in ''accordance with an accepted national standard for boiler repairs.'' This would modify the general repair standard discussed above to more narrowly apply to boiler repairs.

By referencing an accepted national standard for boiler repairs, the task force, and the agency, wanted to impose a measure of quality control to provide assurance that any welding done is done well, and done safely. Because there are several national organizations that prescribe such procedures, the operator would be allowed to follow any one of a number of methods. ''In accordance with an accepted national standard for boiler repairs,'' therefore, would mean that all physical, mechanical, and documentation requirements delineated in a particular standard, such as the NBIC, have been satisfied. The task force heavily debated simply imposing the NBIC standard itself but decided that the financial burden imposed would be too great. The NBIC program requires reporting of the final repair and third-party oversight throughout the repair, which can be very costly. The task force felt the inspector oversight and reporting requirements already mandated by the agency would perform the same function as the NBIC third-party inspection and reporting requirements. Accordingly, the task force decided to simply reference the standard to which the repair should be done, without incurring the reporting requirements, or third-party inspection requirements, of the NBIC. This proposal reflects that decision.

The task force was also very concerned about follow-up radiography for the welds conducted, and considered mandating that all welds on unstayed portions of the boiler be radiographed. At one point they considered incorporating an American Society of Mechanical Engineers (ASME) radiography standard, which described the procedures for conducting radiography, but ultimately concluded that doing so would be more complicated than they desired this part to be, and that doing so was ultimately unnecessary because the accepted national standard would include radiography where necessary. Accordingly, this proposal does not mandate radiography separate from that required by the accepted national standard chosen for the welded repair at issue.

The task force discussed the potential for abuse of the ''accepted national standard for boiler repairs'' standard but felt that this section clearly requires locomotive owners and/or operators be able to establish and/or document such a national standard—to point to the procedures they followed in performing a particular weld. The locomotive owner and/or operator would bear the onus of establishing that they followed a particular national standard and did so correctly. Accordingly, this standard would require that the locomotive owner and/or operator adhere to whatever the particular national standard requires, from pre-weld treatments and welder qualifications, through post-weld inspection requirements. The locomotive owner and/or operator would also have to demonstrate that they had satisfied the accepted national standard upon request by an FRA inspector.

E. Allowances Encouraging the Use of New Technologies

The task force felt very strongly that the 1978 standards, which had not been substantively revised in over 20 years, did not adequately address new technologies. Accordingly, the task force wanted the rule to address innovations in inspection and maintenance methodology and technology. In many instances, the task force was concerned about the excessive wear on the locomotive, boiler and appurtenances from complying with aspects of the 1978 standards. The task force also felt that the altered nature of steam locomotive service today provided additional justification for updating the rule to reflect modern operating circumstances, and to encourage the use of non-destructive technologies to satisfy various inspection requirements. Accordingly, in many sections of this proposed rule, the agency is encouraging the use of advanced technologies by proposing to grant additional regulatory flexibility where such technologies are utilized. In some cases, however, the task force

recommended, and the proposal incorporates, mandatory non-destructive examination (NDE) testing for safety reasons. The main sections affected are: (1) the flue removal section, 230.31; (2) the Arch tube, water bar tube and circulator section, 230.61; (3)the dry pipe section, 230.62; (4) the main reservoir testing section, 230.72; and (5) the draw gear and draft system section, 230.92.

F. Imposition of Qualification Requirements for Repair

By referencing national standards, this proposed rule would address, for the first time, the qualification requirements for individuals making repairs to steam locomotives. Both the NTSB, and the task force, felt strongly that the rule should address minimum requirements for individuals making certain repairs. Thus, wherever national standards call out qualification requirements, steam locomotive owners and/or operators making such repairs would have to comply with these requirements. The task force considered imposing more explicit qualification requirements than those imputed from these national standards but concluded that such was not necessary at this time. FRA shares that view and is not proposing more explicit qualification requirements.

G. Implementation Schedule

FRA is proposing a gradual phase-in of Part 230 to allow locomotive owners and operators the flexibility necessary to bring their operations into compliance. See section 230.3 for a full discussion of the proposed implementation schedule. FRA is proposing that some requirements must be complied with one year after the proposed effective date for the final rule. In addition, FRA proposes that locomotive owners and/or operators will be allowed to request flue removal extensions until two years after the proposed effective date for the final rule. Finally, locomotive owners and/or operators that qualify to file a Petition for Special Consideration would be required to do so within one year from the proposed effective date for the final rule and the agency will have one year to consider and respond to any petitions filed.

VII. National Transportation Safety Board Recommendations

Following their investigation of the 1995 steam boiler explosion on the Gettysburg Passenger Services railroad, the NTSB issued the following recommendations to the agency:

(1) Require that each operating steam locomotive have either a water column or a water glass in addition to the water glass and three gage cocks that are already required. *(R–96–53).*

(2) Require steam locomotive operators to have a documented water-treatment program. *(R–96–54).*

(3) Describe basic responsibilities and procedures for functions required by regulation, such as blowing down the water glass and washing the boiler. *(R–96–55).*

(4) In cooperation with the Tourist Railway Association, Inc. (TRAIN), promote awareness of and compliance with the Hours of Service Act. *(R–96–56).*

(5) In cooperation with the National Board of Boiler and Pressure Vessel Inspectors and the TRAIN, explore feasibility of requiring a progressive crown stay feature in steam locomotives. *(R–96–57).*

(6) In cooperation with the National Board of Boiler and Pressure Vessel Inspectors and the TRAIN develop certification criteria and require that steam-locomotive operators and maintenance personnel be periodically certified to operate and/or maintain a steam locomotive. *(R–96–58).*

(7) In cooperation with the National Board of Boiler and Pressure Vessel Inspectors and the TRAIN, update 49 CFR Part 230 to take advantage of accepted practical modern boiler-inspection techniques and technologies, to minimize interpretation based on empirical experience, and to maximize the use of objective standards. *(R–96–59).*

This proposed rule reflects the careful consideration of these recommendations, both by the agency and the industry advisory committee members who advised the Administrator regarding revisions to this Part. That advisory committee task force was comprised of steam locomotive experts, steam railroad operators, steam boiler insurance companies, the National Boiler Inspection Code Committee, Volpe National Transportation Systems Center (Volpe Center) and several representatives from FRA. Representatives of NTSB were offered a seat at the table but declined. FRA requested that the task force address the NTSB's recommendations and suggest appropriate responses. The results of that discussion were as follows:

R–96–53 Water Glasses—The task force expressed support for this recommendation, and section 230.51 of this proposal, which requires a minimum of two sight glasses or a sight glass and a water column, reflects that. The proposal eliminates the requirement that boilers be equipped with gage cocks because the task force felt that the second water glass was more accurate and easier to read. This proposal does require, however, that the gage cocks be maintained on a locomotive equipped with them.

R–96–54 Water Treatment—Industry members of the task force did not express support for NTSB's proposed water treatment requirement because they felt that the current regulatory focus on boiler washing was adequate to address the condition of the boiler interior, and to prevent the build up of sediment and mineral deposits. The task force also felt that water treatment programs could be unduly burdensome, especially for steam locomotives with a single water source that requires constant testing due to water quality variations, or where locomotives travel long distances and draw water from numerous sources. Finally, the industry members felt that the issue of water treatment should be addressed in a performance standard, but they indicated that it would be impossible to write a uniform performance standard. FRA agrees that the fundamental issue is the interior condition of the boiler, and the task force recommendations and FRA inspection practice adequately addresses the condition of the boiler interior.

R–96–55 Delineation of Responsibilities—The task force expressed support for this recommendation, and this proposal attempts to clearly delineate basic responsibilities and procedures. In addition, the Volpe Center has produced a training video for steam-locomotive operators for FRA. The video covers items required during daily inspections and pre-trip inspections, such as blowing down water glasses, checking gage cocks and other items to ensure the safe operation of a steam locomotive. This video was unveiled during TRAIN's annual convention in November of 1997, and was mailed to steam locomotive owners and operators throughout the country shortly thereafter. Finally, the industry members of the group endorsed putting together a ''Recommended Practice Manual'' (RPM) for many issues that this proposal does not address. The agency will continue to work with the industry on the development of a RPM.

R–96–56 Hours of Service Act Awareness—The industry members indicated support for FRA's working

in tandem with the TRAIN to promote awareness of the Hours of Service Act. The agency will work with TRAIN to increase awareness of Hours of Service Act requirements, and to promote compliance with the Act.

R–96–57 Progressive Crown Stays—The industry representatives indicated their willingness to explore the feasibility of progressive crown-stays but did not think time would permit their addressing this issue in the Part 230 revisions. FRA has requested that the NTSB make staff assistance available to the task force to outline the steps necessary to conduct this evaluation.

R–96–58 Certification Program—The industry representatives expressed support for this recommendation and are investigating the feasibility of developing certification criteria for several classes of employees or volunteers affected. Some members, however, expressed concern about the cost involved in assessing job and task requirements. The agency would prefer to promote a voluntary certification program. While the current standards for Qualification and Certification of Locomotive Engineers contain training requirements that may serve as a framework for better defining the competencies of steam locomotive operators, those regulations do not currently apply to operations off the general system of rail transportation. Administering a technically elaborate certification program that would ultimately affect the operation of fewer than 150 locomotives does not appear to be a wise use of scarce federal resources. Following completion of the Steam Locomotive Standards revision, FRA will encourage the Tourist & Historic Working Group to carry forward this discussion, with the objectives of supporting private initiatives and offering technical support for sound training programs, including evaluation of current competencies.

R–96–59 Modernization of Part 230—Industry members expressed support for this recommendation and are accomplishing this through its partnership with FRA on the Railroad Safety Advisory Committee/Tourist & Historic Working Group task force.

FRA submitted responses to the NTSB's recommendations and, recently, received the NTSB's reply to our response. The NTSB was satisfied with the agency's plan, influenced by the task force recommendations, to address NTSB recommendations R–96–53, R–96–55, R–96–56, and R–96–59 but was, however, dissatisfied with our plan to address recommendations R–96–54, R–96–57, and R–96–58. These three latter recommendations will be discussed at greater length below.

FRA concurs with the task force responses to NTSB's recommendations and believes that the proposed revisions to the steam locomotive regulations will address most of those recommendations. The agency invited NTSB staff to participate in the task force deliberations, but they were unable to do so. FRA believes that a full technical exchange of views would have been helpful to resolving the remaining recommendations. Notwithstanding the following explanation (which the agency supports) of the task force's deliberations, below, and why they did not agree with certain of the NTSB's recommendations, any party supporting those recommendations should submit data and analysis indicating the safety need for a more prescriptive approach.

NTSB's recommendation R–96–54 would require operators to maintain a documented water treatment program. The task force simply disagreed that such a program was necessary. They felt that the boiler washes were the real issue, not the chemical remediation of the owner or operator's water source. THE NTSB, in its response, concurred with the task force that the wash is ''probably more directly effective in controlling boiler sediment and mineral deposits.'' However, the NTSB added, ''a documented water treatment program does not have to be expensive, rigid or burdensome.'' While the agency lacks the data to evaluate the cost-effectiveness of any such program, it doesn't feel such an inquiry is necessary since all parties agree that the wash is the most ''directly effective'' method of preventing boiler sediment and mineral deposits. Based on discussions in the task force and field experience concerning steam boiler maintenance, it is the agency's judgement that safety will not be enhanced by incorporating this additional requirement into the rule. Operators are always free to voluntarily conduct their own water treatment programs (and many do). Given the effectiveness of the boiler wash, it does not appear to be cost-beneficial to mandate documented water treatment programs at this time. FRA is also concerned with the paperwork burdens associated with such a program. Federal agencies are mandated to reduce information collection burdens, and regulatory burdens on small entities are to be minimized. However, and notwithstanding the above, anyone with specific data and analysis supporting this recommendation should submit it for the agency's consideration.

The NTSB's recommendation R–96–57 would require the agency to explore the feasibility of progressive crown-stays in mitigating the damage caused by boiler failures. The task force's experience with progressive crown stays was not enough, without more, to support a mandate at this time. The agency, in consultation with the task force, indicated to the NTSB its willingness to do so, but felt it lacked time and resources to adequately address this issue at this time, in this rulemaking. The NTSB found this response unacceptable. The agency told the NTSB they would appreciate the Board's making available staff assistance to the task force to help outline the steps necessary to conduct this evaluation. No assistance was forthcoming. The agency remains open to this issue but believes that research is necessary before it can conclude, one way or another, that progressive crown stays are a cost-beneficial safety enhancement. Any party with data or analysis related to progressive crown stays, and their role in mitigating boiler failures, should submit it to the agency at this time.

Finally, NTSB recommendation R–96–58 would require the agency to develop a certification program for steam locomotive operators and maintenance personnel. The agency prefers to promote a voluntary certification program, given the scarcity of federal resources available to administer a technically elaborate certification program for such a small number of affected entities. The Tourist and Historic Working Group's task force has already created and produced, with the Volpe Center, a training video for the conduct of steam locomotive daily inspections. This video was aired during the TRAIN convention held in November of 1997, and was mailed to each steam locomotive owner or operator for whom the agency had user fee records. This is but a first step in response to the NTSB's recommendation; the agency plans to work with the regulated community to carry forward this discussion and will support private initiatives, offering technical support for training programs, including the evaluation of current competencies of steam locomotive operators and maintenance personnel. Of course, any party supporting the NTSB's recommendations should submit data and analysis indicating the safety need for a more prescriptive approach.

Section-by-Section Analysis

The following section-by-section analysis discusses the proposed changes in more detail. As an aid to readers, FRA has denominated as ''new'' sections of the proposed rule which lack a present counter part.

Subpart A—General

FRA is proposing in this subpart to add a series of provisions comparable to those found in its recent regulations. Through these uniform provisions, FRA makes explicit the scope, purposes and applicability of these rules and the potential consequences of noncompliance with the rules once adopted.

Section 230.1. Purpose and Scope (New)

This section proposes to make explicit the scope of Part 230, and that these proposed standards are minimum standards only.

Section 230.2. Applicability (New)

As described in the above ''Responsibility for Compliance'' discussion, the task force wanted to rewrite this Part to make clear that the steam locomotive regulations would apply primarily to steam locomotive owners and/or operators. Their proposed applicability section read as follows:

> This part applies to any entity which owns a steam locomotive or operates one under a contract, agreement or lease. This part does not apply to entities that own or operate steam locomotives over track that is less than 24 inches in gage or to entities that are considered ''insular'' by this agency. See Appendix A for a current statement of the policy on the Federal Railroad Administration's (FRA's) exercise of jurisdiction.

Although the agency changed this language to text that is more in keeping with the purpose and language of the applicability provisions of FRA's other rules, this will not defeat the task force's clear objective to place responsibility primarily on the owner and/or operator of the locomotive, since the *Applicability* section does not indicate on whom the rule will place responsibility for compliance, but rather indicates where, geographically, the rule will apply. That is, the *applicability* section indicates on which railroads the rule will apply. By statute, FRA has jurisdiction over all railroads (except for urban rapid transit operations not connected to the general system), but it frequently limits the reach of a particular rule to something less than the entire universe of railroads, and uses the applicability section to clarify which operations are intended to be covered by the rule. Individuals trying to determine whether they must comply with this Part should turn to section 230.8 *Responsibility for Compliance*, for guidance. That section, which captures and retains the task force intent expressed in their recommended ''Applicability'' language, would indicate to whom the rule applies. In this rule, that would specifically include the locomotive owner and/or operator.

Notwithstanding elimination from the *Applicability* section, the locomotive owner and/or operator remain specifically identified throughout the rule as the party or parties best able to execute certain delineated inspection and maintenance responsibilities. Thus, the fact that the locomotive owner and/or operator have been removed from the Applicability provision does not mean that they will not be held primarily responsible for compliance; rather, section 230.2 should be seen as standard language used to describe the extent of the agency's exercise of its statutory jurisdiction, with section 230.8 providing the practical compliance guidance that the task force included in the *Applicability* section it recommended.

Accordingly, this section proposes to make these standards apply to all railroads that operate steam locomotives. This section further carves out four categorical exceptions (three of which are ''standard'' exceptions) to this broad expression of regulatory authority. First, this section, as proposed, would not apply to railroads with less than 24'' gage. This section is not standard, but is consistent with the agency's historical approach to exercising its safety jurisdiction. Railroads on less than 24'' gage have never been considered railroads by the Federal railroad safety laws and are generally considered miniature or imitation railroads. In the context of this rule, which will clearly apply to certain operations of less than standard gage, it is important to clarify that the smallest gage railroads are not included.

Second, this section, as proposed, would not apply to ''plant'' railroads that exclusively operate freight trains on track inside an installation that is not part of the general system of transportation. This is a standard provision.

Third, this section, as proposed, would not apply to urban rapid-transit operations that are not connected to the general system of transportation. This is also a standard provision that merely restates the statutory limit on FRA's jurisdiction for the convenience of the reader.

Finally, this section, as proposed, would exclude from its reach a railroad that operates passenger trains only on track inside an insular installation—one that's operations are limited to a separate enclave in such a way that the safety of those who do not enter the enclave is not affected by the operations. Insularity is destroyed, however, and the rule would apply, where any of the following exists: (1) a public highway-rail crossing that is in use; (2) an at-grade rail crossing that is in use; (3) a bridge over a public road or commercially navigable waters; or (4) a common corridor with another railroad, i.e., operations conducted within 30 feet of those of any other railroad. This section, too, is standard and reflects the agency's long-standing policy on its exercise of jurisdiction over tourist and historic railroads. This language is used where FRA intends to reach tourist railroads whose operations are not over the general railroad system but affect public safety sufficiently to be covered by a particular rule. As proposed, this section includes the word ''installation'' in its discussion of this Part's applicability to entities that operate ''passenger'' trains. While the agency has included this term with specific reference to passenger operations in three of its rulemakings over the past few years,[1] the agency believes that the regulated industry may not be accustomed to seeing this term in the context of tourist railroads, instead of the customary'plant railroad'' context. It is the agency's view that an ''installation'' is simply a separate enclave off the general system.

Section 230.3. Implementation (New)

This section proposes a staggered implementation scheme to provide additional flexibility to locomotive owners and operators who might be otherwise adversely affected by the magnitude of changes being proposed. The implementation language was strenuously debated by all members of the task force. The task force's greatest concern related to the potential that locomotive owners and/or operators would be required under the proposed rule to conduct an inspection equivalent to that required by this rule's section 230.17 sooner than they would be required to do so under section 230.10

[1] *See* Power Brake Regulations NPRM, 59 FR 47676 (September 16, 1994); Railroad Accident Reporting NPRM, 59 FR 42880 (August 19, 1994); and Grade Crossing Signal System Safety Final Rule, 59 FR 50086, (September 30, 1994). Subsequent publications in the Grade Crossing (GC) and Accident Reporting (AR) arenas have included this language as well. *See* 61 FR 30940 (AR) (6/18/96), 61 FR 31802 (GC), (6/20/96), and 61 FR 67477 (AR) (12/23/96).

of the 1978 standards. This concern was balanced against the concern that locomotive owners and/or operators not be granted a ''windfall'' and allowed more time under the proposed standards than wise to ensure an adequate level of safety.

The task force's primary desire was to apply the new inspection requirements retroactively to certain locomotives that had complied with section 230.10 and section 230.11 of the 1978 standards within a set period of time prior to the effective date of the rule. The task force had a great deal of difficulty determining the appropriate period of time prior to the rule's effective date to allow retroactive application of the proposed inspection standards. The Association of Railway Museums, in particular, wanted to allow locomotive owners and/or operators that had satisfied the inspection requirements under the 1978 standards within ten years prior to this rule's effective date to compute the time for conducting the 1472 service day/15 year inspection from the date on which those inspections were conducted.

The compromise which resulted is reflected in this section. This section would make the conduct of the 1472 service day inspection the trigger for compliance with the entire part, and would require the 1472 service day inspection to be conducted at the time the inspection under section 230.10 of the 1978 standards would be required under the 1978 standards. Thus, with the exception of certain items that become effective one year from the effective date of the rule, the locomotive owner and/or operator would have to begin to comply with the entirety of the rest of Part 230 whenever they conduct the 1472 service day inspection required under the proposed standards. Up until that time, however, compliance with the regulations in effect prior to the effective date of this rule would constitute full compliance with this part.

To provide additional flexibility, however, the agency is proposing to continue to consider flue removal extensions under the provisions of section 230.10 of the 1978 standards until two years from the effective date of the rule. Thus, in a typical case, a locomotive that had received an inspection under section 230.10 of the 1978 standards up to five years ago would have, with this flue extension provision, a potential minimum of two years from the effective date of the rule to conduct the 1472 service day inspection required by these proposed standards. If the locomotive had very recently received the inspection required by section 230.10 of the 1978 standards, likewise, the locomotive owner and/or operator would have the entire period allowed under that section before conducting the 1472 service day inspection required by these proposed standards.

Notwithstanding the above, the implementation section also proposes allowing locomotive owners and/or operators to petition the agency for ''special consideration'' of the rule's implementation. In order to qualify to file a petition for special consideration, the locomotive owner and/or operator would have to have either fully or partially satisfied the proposed 1472 service day inspection requirements within three years prior to the effective date of this rule. If the locomotive had only partially satisfied the requirements of this section, it would have to be in full compliance by the time the petition is actually filed. The petition would have to be filed within one year from the effective date of the rule and would have to include all documentation necessary to establish that the locomotive had satisfied the requirements of the proposed 1472 service day inspection standards. The agency would then respond to the petition within one year. Thus, the time involved in filing a petition for special consideration, and for receiving FRA's response to that petition, would be the same as the two-year grace period allowed to non-petitioning locomotive owner and/or operators who utilize the available flue extension provision. The caveat to this, however, is the additional 6-month extension which would be allowed where the agency did not respond in a timely fashion.

As this language is proposed, the distinction between ''full'' and ''partial'' satisfaction relates to the dual requirements of this rule's section 230.17—both the inspection, and the updating and verification of the Form 4. A locomotive that had satisfied both of these requirements within three years prior to the effective date of this rule would be able to file the petition the day the rule becomes effective. A locomotive that had only satisfied one requirement, however, would have ''partially'' satisfied the requirements of section 230.17 and would have the term of the petition process, one year, to satisfy the second requirement. For example, a locomotive owner and/or operator who had inspected their locomotive under section 230.10 of the 1978 standards within three years prior to the effective date of this rule, without updating and verifying the Form 4 at that time, would have a full year to do so before submitting the application. Likewise, if the Form 4 had been updated and verified within three years prior to the effective date of the rule but an inspection satisfying section 230.10 of the 1978 standards had not been conducted, the locomotive owner and/or operator would have one year to conduct the qualifying inspection before submitting their application for special consideration.

This section also contains provisions to address the requirements related to the filing of the petition. As proposed, this section would require petitions to be accompanied by documentation sufficient to allow the agency to determine the number of ''service days'' the locomotive has accrued from the date of the inspection conducted under the 1978 standards, and how many service days remain before the 1472 service day inspection must be conducted under this rule's section 230.17. The task force was concerned about proving the submission and response to the petition, so the proposed rule would recommend that petitions, and the agency's response thereto, be sent by some form of registered mail to ensure a record of delivery. In addition, this section contains provisions addressing the effect of the petition's disposition on the implementation requirements. If the agency were to grant the petition, the requirements would become effective upon receipt of the response letter. Likewise, if the agency were to deny the petition, the rule would become effective as though the petition had never been filed.

Finally, because many task force members were concerned about the problem of potential untimeliness in the agency's response, this section would address the effect of agency silence within the one year response time period. It would require the petitioner to notify the agency that the response has not been received, and would allow operators at the end of their inspection cycle to operate under the 1978 standards for an additional 6 months, or until they receive FRA's decision, whichever occurs first.

Section 230.4. Prohibited Acts (New)

This proposed section would merely restate, in regulatory language, the dictates of Chapter 207 of Title 49 of the United States Code.

Section 230.5 Penalties (New)

This section, as proposed, merely incorporates the maximum penalties provided for in the Federal railroad safety laws. These penalty amounts, however, have recently been adjusted for inflation pursuant to the Federal Civil Penalties Inflation Adjustment Act

of 1990, Pub. L. 101–410 Stat. 890, 28 U.S.C. 2461 note, as amended by the Debt Collection Improvement Act of 1996, Pub. L. 104–124 (4/26/96). For a more complete discussion of the agency's recent penalty adjustments see *Civil Monetary Penalty Inflation Adjustment,* 63 FR 11618 (March 10, 1998).

Section 230.6. Preemptive Effect (New)

FRA is proposing to add a preemption section, which would parallel the preemption language of section 20106 of Title 49 of the United States Code. As proposed, however, this section would modify that language to make clear that FRA does not intend to preempt states from regulating entities over which it is currently not exercising jurisdiction. Thus, in the case of an entity that operates steam locomotives over track of less than 24'' gage, for example, FRA would allow states to regulate and provide oversight for the inspection and maintenance of those steam locomotives. FRA believes that such a modification is consistent with the legislative intent of section 20106.

Section 230.7. Waivers (New)

FRA is proposing to nullify all waivers previously granted under Part 230 unless they are filed for reassessment with the agency. Under the terms of this provision, the agency would review these waivers and notify applicants whether the waiver has been continued. Locomotive owners and/or operators would have to assume that their waiver had expired unless they heard otherwise from the agency, unless the waiver was for a ''flue extension'' that would automatically expire one year from the date granted.

With this proposal, the agency intends to rectify the misapplication of section 230.158 of the 1978 standards to the steam locomotive boiler and flues. Under the 1978 standards, railroads operating fewer than 5 locomotives can apply for a waiver from the requirements of Subpart B—Steam Locomotives and Tenders. This section was intended to apply only to those regulations in Subpart B but, instead, has been misapplied and extended to Subpart A as well. Consequently, under section 230.158 of the 1978 standards, modern operators frequently received waivers from provisions in Subpart A and applicable only to the boiler, such as the flue removal provision.

With this proposal, in addition, the agency intends to make explicit that its waiver process, described in 49 CFR Part 211, has been centralized since the last time this part was substantively revised. Thus, this proposed section would recognize Part 211, instead of the 1978 standard's section 230.158, as the appropriate process for addressing waivers under Part 230.

Section 230.8. Responsibility for Compliance (New)

This section, as proposed, would indicate which party or parties is responsible for ensuring that the requirements of Part 230 are satisfied. See the discussion in section IX(A) ''Responsibility for Compliance,'' above.

Section 230.9. Definitions (New)

The following is an explanation of each definition that FRA proposes to add or amend.

Alteration—This proposed definition incorporates the NBIC definition to harmonize concepts for the industry.

ANSI—This proposed definition is non-substantive and is included for clarification purposes.

API—This proposed definition is non-substantive and is included for clarification purposes.

ASME—This proposed definition is non-substantive and is included for clarification purposes.

Boiler Surfaces—This proposed definition was added to make explicit, and to help clarify, the portions of the boiler which are referenced throughout the rule.

Break—This proposed definition incorporates the distinction between ''break'' and ''crack'' delineated in Part 229.

Code of Original Construction—This proposed definition is non-substantive and is included for clarification purposes.

Crack—This proposed definition incorporates the distinction between ''break'' and ''crack'' delineated in Part 229

Locomotive Operator—As discussed in the liability section above, the agency is proposing making its liability standards more specific, to acknowledge that many locomotives are owned and operated by entities other than railroad companies. This proposed definition distinguishes between these relevant entities to make clear that the locomotive may be owned and operated by separate entities.

Locomotive Owner—As discussed in the liability section above, the agency is proposing making its liability standards more specific, to acknowledge that many locomotives are owned and operated by entities other than railroad companies. This proposed definition distinguishes between these relevant entities to make clear that the locomotive may be owned and operated by separate entities.

MAWP—This proposed definition is non-substantive and is included for clarification purposes.

NBIC—This proposed definition is non-substantive and is included for clarification purposes.

NDE—This proposed definition is non-substantive and is included for clarification purposes.

NPS—This proposed definition is non-substantive and is included for clarification purposes.

Railroad—This proposed definition incorporates the statutory definition of railroad from 49 U.S.C. § 20102.

Renewal—This proposed definition incorporates industry concepts and is not intended to have substantive effect.

Repair—This proposed definition incorporates the NBIC definition to harmonize concepts for the industry.

Serious Injury—This proposed definition incorporates the definition of serious injury from the ''FRA Guide for preparing Accident Incident Reports'' (Effective: January 1997).

Service Day—As described in the inspection section above, the agency is proposing altering the inspection time periods throughout this part and proposing a new ''service day'' concept. This definition, as proposed, would make each day that the boiler has steam pressure above atmospheric pressure with fire in the firebox count as a ''service day'' for purposes of the accounting that is necessary for the rest of the inspection intervals.

Stayed Portion of the Boiler—This proposed definition establishes a threshold for distinguishing between stayed and unstayed portions of the boiler, both of which are identified in this part. It is not intended to have substantive effect. In addition, at least one group member was concerned that the preamble reflect that reinforced openings in unstayed portions of the boiler are not considered ''stayed'' for purposes of this definition.

Steam Locomotive—This proposed definition modifies the 1978 standard's definition of ''locomotive'' to make it specific to a ''steam locomotive.'' It has also been rewritten for grammatical clarity.

Unstayed Portion of the Boiler—This proposed definition establishes a threshold for distinguishing between stayed and unstayed portions of the boiler, both of which are identified in this part. It is not intended to have substantive effect.

Wastage—This proposed definition is a technical definition and is proposed for purposes of clarifying required minimum thicknesses and condemning limits for the boiler.

Section 230.10. Information Collection (New)

This section, as proposed, is included for the convenience of the reader. It imposes no new requirements upon regulated entities, but simply represents the agency's certification that it has complied with all Office of Management and Budget review requirements pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et. seq.). The review and approval process reflected in this provision are explained in greater detail below.

General Inspection Requirements

Section 230.11. Repair of Non-Complying Conditions (New)

This section would import to Part 230 the requirement embodied in Part 229 that non-complying locomotives be repaired before they are returned to service. In addition, as proposed, it would affix responsibility for such repairs on the locomotive owner and/or operator, as well as the responsibility for approving any noncomplying conditions that are not repaired.

Section 230.12. Movement of Non-Complying Steam Locomotives (New)

This section would make Part 230 current with Part 229 by incorporating the concept of movement for the purpose of repair, which would allow a locomotive with noncomplying conditions to be moved for the purpose of repair, after the locomotive owner and/or operator has determined that the locomotive is safe to be moved. The task force felt strongly that this provision was necessary to acknowledge the operating exigencies which occur in most steam locomotive operations.

Section 230.13. Daily Inspection (New)

This provision, as part of the more comprehensive changes contemplated for the inspection scheme in Part 230, would not effect a substantive change to those regulations governing the inspection of steam locomotives.

Section 230.14.31 Service Day Inspection (New)

This provision, as part of the more comprehensive changes contemplated for the inspection scheme in Part 230, would impose no new inspection requirements for steam locomotives but it would relax the time frame within which certain inspections must occur.

Section 230.15.92 Service Day Inspection (New)

This provision, as part of the more comprehensive changes contemplated for the inspection scheme in Part 230, would impose no new inspection requirements for steam locomotives but it would relax the time frame within which certain inspections must occur.

Section 230.16. Annual Inspection (New)

This provision would not effect a substantive change to those regulations governing annual inspection requirements for steam locomotives.

Section 230.17.1472 Service Day Inspection (New)

This provision, as part of the more comprehensive changes contemplated for the inspection scheme in Part 230, would impose no new inspection requirements for steam locomotives but it would relax the time frame within which certain inspections must occur and would require the verification and updating of information about the steam locomotive for which the Form 4 is filed. See the analysis in section IX(B)(5), above.

Recordkeeping Requirements

Section 230.18. Service Days (New)

This provision, as part of the more comprehensive changes contemplated for the inspection scheme in Part 230, would impose a new recordkeeping requirement for steam locomotives. This section would require locomotive owners and/or operators to keep a record showing the number of service days the steam locomotive has accrued since its last 31 service day, 92 service day, annual and 1472 service day inspections. This section would also require the locomotive owner and/or operator to file a report each January 31 detailing the number of service days the locomotive accrued during the preceding calendar year. The failure to file this report would result in the locomotive being considered ''retired.'' In order to return a ''retired'' locomotive to service, the locomotive owner and/or operator would have to conduct a 1472 service day inspection.

The agency does not intend for this recordkeeping requirement to have a draconian effect; should a service day report be filed a day or two late, the agency will give the operator the benefit of the doubt and allow the report to take effect as though it had been timely filed.

While these proposed changes would impose additional recordkeeping requirements on regulated entities, the agency believes that any additional burdens so imposed are outweighed by the benefits which adhere to the regulated community from the new inspection time periods.

Section 230.19. Posting of FRA Form No. 1 and FRA Form No. 3

This section would impose no new recordkeeping requirements upon locomotive owners and/or operators. The FRA Form No. 1 is the 31 service day and 92 service day inspection report, which is currently the monthly inspection report required by sections 230.51 and 230.160 of the 1978 standards. The FRA Form No. 3 is the annual inspection report, which is identical to the annual inspection report required by sections 230.52 and 230.161 of the 1978 standards.

Section 230.20. Alteration and Repair Report for Steam Locomotive Boilers

This section would impose no new recordkeeping requirements upon locomotive owners and/or operators. The FRA Form No. 19 is the alteration report that regulated entities are required to file by section 230.54 of the 1978 standards. This new provision would require the locomotive owner or operator to file this form whenever alterations that affect the information on the FRA Form No. 4 are made, and would impose new requirements for filing the Form 19 whenever welded or riveted repairs are made to the unstayed portion of the locomotive boiler. This section also would require that the locomotive owner and/or operator record any welded or riveted repairs that are made to stayed portions of the locomotive boiler.

Section 230.21. Steam Locomotive Number Change (New)

This section would incorporate into Part 230, in the interest of harmonizing outstanding requirements addressing steam locomotives, requirements issued by the former Interstate Commerce Commission in its ''Interpretations, Rulings and Explanations on Questions Raised Regarding the Laws, Rules, and Instructions for Inspection and Testing of Steam Locomotives and Tenders and Their Appurtenances' (ICC Interpretations).

Section 230.22. Accident Reports

As proposed, this section would retain the requirements of section 230.162 of the 1978 standards and would impose no new requirements on locomotive owners and/or operators.

Subpart B—Boilers and Appurtenances

Section 230.23. Responsibility for General Construction and Safe Working Pressure

This section, as proposed, would make the locomotive owner and operator, both, jointly and severally

responsible for the general design and construction of the locomotive boiler. section 230.1 of the 1978 standard's places that responsibility on the ''railroad company.'' This change is being proposed to capture the changes which have occurred in the steam locomotive industry since the original steam rules were promulgated, and to place responsibility for the locomotive on the parties best able to satisfy that responsibility. This proposal is designed to affix responsibility on owners and operators whether or not they are railroad companies.

Allowable Stress

Section 230.24. Maximum Allowable Stress

This section, as proposed, does not substantively change section 230.2 of the 1978 standards, but rewrites it to clarify the concepts it expresses.

Section 230.25. Maximum Allowable Stress on Stays and Braces

This section, as proposed, does not substantively change section 230.3 of the 1978 standards, other than to propose removing the distinction for locomotives constructed before and after 1915. The task force felt that this distinction was no longer relevant.

Strength of Materials

Section 230.26. Tensile Strength of Shell Plates

This section, as proposed, would retain section 230.4 of the 1978 standards, without change.

Section 230.27. Maximum Shearing Strength of Rivets

This section, as proposed, would retain section 230.5 of the 1978 standards, without change.

Section 230.28. Higher Shearing Strength of Rivets

This section, as proposed, would retain section 230.6 of the 1978 standards, without change.

Inspection and Repair

Section 230.29. Inspection and Repair

This section, as proposed, would combine the concepts embodied in sections 230.7 and 230.12 of the 1978 standards. The task force decided to change the responsibility for inspection and repair of the locomotive boiler from the ''mechanical officer in charge at each point where boiler work is done'' to the steam locomotive owner and/or operator. This change was proposed since few operations still have chief mechanical officers due to the changed nature of steam operations today, and because the task force wanted to make the ''liability'' as consistent as possible throughout the rule. This section also would require the locomotive owner and/or operator to remove the boiler from service whenever they, or the FRA inspector, considers it necessary due to other defects. The task force was concerned about FRA inspectors' exercise of discretion in this arena. However, it was agreed that the agency would act in good faith and do its best to minimize any disruption of the operator's service whenever such concerns arise. In addition, they agreed that FRA should allow for non-destructive testing in the investigation of any ''safety concerns'' identified.

This section also would make more specific the repair standard in section 230.12 of the 1978 standards, which simply requires that boilers be ''thoroughly repaired, and reported to be in satisfactory condition,'' by requiring that all defects be repaired in accordance with accepted industry standards. These standards may include established railroad practices, or NBIC or API established standards. See section IX(D), above, for a discussion of the meaning of ''established railroad practices.'' This section also would propose replacing the ''satisfactory condition'' repair standard of the 1978 standard's section 230.12 with a requirement that the boiler not be returned to service unless it is in good condition and ''safe and suitable for service.''

Finally, this section proposes to require that welded repairs to unstayed portions of the boiler pursuant to section 230.33, must be made in accordance with an accepted national standard for boiler repairs.

Section 230.30. Lap-Joint Seam Boilers

This section, as proposed, would clarify and eliminate an ambiguity in section 230.13 of the 1978 standards by explaining that ''examined with special care'' means removing enough lagging, jacketing, flues and tubes so that a thorough inspection of the entire joint, (inside and out) can be made. This section is otherwise unchanged and is not intended to restrict the use of modern technology which might allow the conduct of a ''thorough inspection'' without as much disassembly of the locomotive.

Section 230.31. Flues To Be Removed

This proposed section, as part of the more comprehensive changes contemplated for the inspection scheme in Part 230, would change the time period within which locomotive owners and/or operators must remove all flues of locomotive boilers and conduct a thorough inspection of the boiler. Section 230.10 of the 1978 standards require that this be done at least once every four (4) years.

The proposal also would allow the locomotive owner and/or operator to utilize non-destructive examination (NDE) methods to assess the condition of superheater flues and leave them in the boiler during this inspection provided two conditions are satisfied: (1) that the NDE testing shows that they are safe and suitable for locomotive service; and (2) that the boiler can be entered to be cleaned and inspected without their removal. Even if these two conditions are satisfied, however, this proposal would require that the locomotive owner and/or operator remove the superheater flues if they, or if the FRA inspector, thinks doing so is necessary for some identifiable safety concern.

This proposal also would remove the language in the 1978 standards of the flue removal section that allows FRA to grant an extension of the time period within which flues must be removed. The task force felt that the 15-year ''drop dead'' time limit for conducting the 1472 service day inspection should be the absolute outside time period within which the flues must be removed. In the task force's experience, operators who were previously required to remove their flues once each four years, which could become five years with the use of ''out of service credit,'' could get extensions of this requirement for up to twelve and thirteen years. Since this proposal would allow them to stretch that time period out to up to 15 years, the task force felt that no further extensions would be necessary.

As discussed above in section IX(E), the task force felt strongly that operators should be encouraged to take advantage of new technologies in the use and operation of steam locomotives. By allowing the operator to leave superheater flues in the boiler if they could determine that they were safe and suitable for service, the task force felt it was building into this section an incentive for operators to utilize NDE methods, such as ultrasound, in making that determination.

Section 230.32. Time and Method of Inspection

This section, as proposed, combines the inspection requirements for both the boiler interior and exterior in sections 230.9, 230.11, 230.15 and 230.16 of the 1978 standards, and rewrites them for clarity. The task force felt that rewriting this section would consolidate the

various inspection requirements and make them more explicit.

Section 230.33. Welded Repairs and Alterations (New)

This section, as proposed, would restrict, and therefore control, the welding which occurs on both unstayed and stayed portions of the locomotive boiler. Subsection (a) would require the locomotive owner and/or operator to obtain prior written approval of the FRA Regional Administrator before performing any welding on unstayed portions of boilers containing alloy steel, or carbon steel with a carbon content greater than .25 percent. It also would require that any welding so approved be conducted in accordance with an accepted national standard for boiler repairs. See section IX(D)(1), above, for a discussion of this standard.

In subsection (b) of this section, it is proposed that locomotive owners and/or operators perform welding to unstayed portions of boilers containing carbon steel not exceeding .25 percent carbon in accordance with an accepted national standard for boiler repairs. Both subsections (a) and (b) would require the locomotive owner and/or operator to file an FRA Form 19, Report of Welded Repair, as discussed in section 230.20.

In subsection (c) of this section, it is proposed that the locomotive owner and/or operator be restricted in the use of weld build up for wasted areas of unstayed surfaces of the boiler. This proposed restriction would require that the locomotive owner and/or operator submit a written request for approval to the Regional Administrator to build up by weld wasted areas that exceed: (1) a total of 100 square inches; or (2) the smaller of either 25% of the minimum required wall thickness or ½ of an inch. This subsection would also prohibit the use of weld build up for wasted sheets that have been reduced to less than 60 percent of the minimum required thickness required by these rules.

Subsection (d) of this section, proposes to restrict the installation of flush patches of any size on unstayed portions of the boiler without the locomotive owner and/or operator submitting a written request for prior approval to the FRA Regional Administrator.

Finally, subsection (e) would propose allowing locomotive owners and/or operators to perform welded repairs or alteration on stayed portions of the boiler in accordance with established railroad practices, or an accepted national standard for boiler repairs. The task force wanted to recognize the fact that many operations use their own welding procedures on stayed portions of the boiler, and do so successfully. The task force therefore recommended that the locomotive owner and/or operator be allowed to use established ''railroad practices'' as an acceptable standard for conducting welding on stayed portions of the boiler.

As discussed earlier in the preamble, FRA has grave concerns about the quality of the welding being done on locomotive boilers. With these proposed changes, the agency feels comfortable that it is establishing standards that will improve safety while allowing operators the flexibility critical to their business survival by allowing them to make necessary repairs without incurring unnecessary costs.

Section 230.34. Riveted Repairs and Alterations (New)

This section, as proposed, would restrict, and therefore control, the riveting which occurs on both unstayed and stayed portions of the locomotive boiler. In subsection (a) the proposal would require the locomotive owner and/or operator to submit a request for prior written approval to the FRA Regional Administrator before making any riveted alterations to unstayed portions of the boiler, and to make any approved riveting in accordance with established railroad practices, or an accepted national standard for boiler repairs. See the analysis for section 230.29, above, for a discussion of these repair standards. This subsection also would require the locomotive owner and/or operator to satisfy, at this time, the reporting requirements proposed in section 230.20.

In subsections (b) and (c) of this section, the agency is proposing to establish guidelines for the conduct of riveting on locomotive boilers by requiring that riveted repairs to both stayed and unstayed portions of the boiler be made in accordance with established railroad practices, or an accepted national standard for boiler repairs.

Pressure Testing of Boilers

Section 230.34. Pressure Testing (New)

This section, as proposed, would establish a minimum temperature requirement for the application of any kind of pressure to locomotive boilers. It would require that the temperature of locomotive boilers be no less than 60 degrees Fahrenheit anytime the boiler is tested under any type of pressure. This change would incorporate the NBIC temperature standard and harmonize FRA standards with NBIC standards, which the task force wanted and FRA supports.

Section 230.36. Hydrostatic Testing of Boilers

This section, as proposed, would consolidate all 1978 standards relating to the hydrostatic testing of boilers. This section would not substantively change the parameters of section 230.17 of the 1978 standards, which merely stipulates the time of testing and the pressure at which the boiler must be tested, but it would impose an additional requirement that the boiler temperature be raised to between 60 and 120 degrees Fahrenheit each time the boiler is subjected to any hydrostatic pressure. This proposed change would incorporate the NBIC standard for hydrostatic testing into the federal regulations for steam locomotive inspection.

In its consideration of these issues, the task force was divided about the purpose of the hydrostatic test, and the concomitant pressure at which the test should be conducted. Many operators believed that the purpose of the hydrostatic test is merely to test the boiler for leaks—not to see if the boiler is structurally unsound at the time of the test. To them, therefore, testing the boiler at the maximum allowed working pressure (MAWP) (as calculated in the FRA Form No. 4) would serve the requisite safety function of disclosing such leaks without unnecessarily stressing (and prematurely destroying) the boiler. Many in the agency, however, felt strongly that the purpose of the hydrostatic test is to test the boiler's integrity—to disclose weaknesses in the structure of the boiler that have not yet developed into defects. They also felt strongly that there was no data presented that would convince them that testing the boiler at MAWP, as specified on the FRA Form No. 4, would provide an equivalent level of safety. Because the parties could not reach a consensus on this provision, the agency is not proposing any changes to this language and is proposing to leave the required pressure at 25% above MAWP, as specified on the FRA Form No. 4.

Section 230.37. Steam Test Following Repairs or Alterations

This section, as proposed, would substantially rewrite, largely without substantive change, section 230.20 of the 1978 standards to achieve greater clarity. The one substantive change being proposed would change the pressure required for the conduct of the steam test from ''not less than the allowed working pressure'' to ''between 95% and 100% of the MAWP.'' The task force decided that imposing a lower

pressure limit would reduce the stress on the boiler without an accompanying reduction in safety—that 95 to 100 percent of MAWP would be adequate to disclose unsatisfactory conditions in the locomotive boiler.

Staybolts

Section 230.38. Telltale Holes

This section, as proposed, would consolidate 1978 standards' telltale hole provisions, sections 230.23 and 230.26, and the ''reduced body'' staybolt section from the ICC Interpretations in one section. As proposed, subsection (a) would retain section 230.26 of the 1978 standards but would delete, as moot, the application date. Proposed subsection (b) is a new provision created to import the ICC interpretation for reduced body staybolts to Part 230. Finally, proposed subsection (c) is derived from section 230.23 of the 1978 standards and would create a stand alone provision for clarity and to emphasize that telltale holes must be kept open at all times, except as required in section 230.41, which, as proposed, requires the telltale holes of drilled flexible staybolts to be closed with a fireproof porous material that will keep the telltale holes free of foreign matter.

Section 230.39. Broken Staybolts

This section, as proposed, would modify section 230.25 of the 1978 standards. Subsection (a), as proposed, would establish the maximum number of broken staybolts allowed for each locomotive boiler. Currently, section 230.25 of the 1978 standards require that a boiler be taken out of service when it develops two (2) broken or plugged staybolts adjacent to one another in any part of the firebox or combustion chamber, when three (3) or more are broken or plugged in a circle four (4) feet in diameter, and when five (5) or more are broken or plugged in the entire boiler. This section, as proposed, would change this standard by requiring that a boiler be taken out of service when it develops either two (2) broken staybolts within twenty-four (24) inches of each other, as measured inside the firebox or combustion chamber on a straight line, or more than four (4) broken staybolts within the entire firebox and combustion chamber combined.

The NBIC requires boilers with one broken staybolt to be taken out of service and repaired. While the task force wanted to harmonize these proposed standards with the NBIC, they recommended to the agency that this proposal allow for a second broken staybolt within twenty-four (24) inches to accommodate the operational difficulties involved in immediately taking a boiler out of service when one staybolt breaks. Because prolonged exposure in a slowly progressive fail mode turns exponential as additional staybolts break, and to minimize the overload on staybolts in the area of the one which has broken, the task force also recommended that staybolts adjacent to those that break be inspected at the time the broken staybolt is replaced. As proposed, this section includes that recommendation.

Subsection (b), as proposed, would require broken staybolts detected during the 31 service day inspection to be replaced at that time, and broke staybolts detected between 31 service day inspections to be replaced no later than 30 days from the date of detection. The task force determined that a strict time period was required to ensure an adequate measure of safety, but wanted to recognize operational realities that might prevent owners and/or operators from repairing broken staybolts immediately. This proposal reflects the task force consensus that 30 days would be a reasonable period of time within which to make the necessary repairs to the boiler. It would allow owners and/or operators to plan when, within a 30-day time period, they wanted to take the locomotive out of service and replace the broken bolts. This subsection also would require, consistent with the task force's recommendation, that the locomotive owner and/or operator replace broken staybolts eight (8) inches in length or less with staybolts drilled with telltale holes three-sixteenths (3⁄16) to seven thirty-seconds (7⁄32) inch in diameter and not less than one and one quarter (1¼) inches deep in each end, or that have holes three-sixteenths (3⁄16) to seven thirty-seconds (7⁄32) inch in diameter their entire length. This expresses the task force's belief that drilled bolts are useful in revealing progressive failures before they reach catastrophic proportions.

Subsection (c), as proposed, would import from the ICC Interpretations the definition of ''broken'' staybolts as those that are leaking, plugged, or missing, in the interest of consolidating and centralizing all current steam locomotive requirements.

Finally, subsection (d), would prohibit welding, forging or riveting broken staybolt ends as a means of closing telltale holes. The ICC Interpretations state that telltale holes that are leaking, plugged, riveted over, or missing, will be counted as broken staybolts. This proposal would impose a stricter standard for broken staybolts, which the task force believed was desirable.

§ 230.40. Time and Method of Staybolt Testing

This section, as proposed, would consolidate the requirements for staybolt testing from sections 230.21, 230.22, 230.24 of the 1978 standards and the ICC Interpretations addressing the same. Because the 1978 standards do not treat rigid staybolts and flexible staybolts without caps differently, this section, as proposed, consolidates these requirements into ''staybolt testing'' general requirements. Since the testing requirements being proposed for flexible staybolts with caps, however, remain distinct, the agency is proposed to exclude them from this consolidation.

Currently, section 230.21 of the 1978 standards requires that staybolts be tested once a month and immediately after every hydrostatic test. In subsection (a), the agency is proposing to relax this requirement slightly by allowing the monthly inspection to be conducted once each thirty-one (31) service days, consistent with the more comprehensive changes contemplated for the inspection scheme in this Part. The 1978 requirement that the test be conducted following each hydrostatic test would be the same, but is more clearly explained in this new section. In addition, subsection (1) of subsection (a) would create an allowance for inaccessible staybolts that are drilled through their entire length. Under this allowance, any such impediments making the staybolts inaccessible (brickwork, grate bearers, etc.) need not be removed to hammer test the staybolts. The group concurred that since the through-drilled staybolt would begin to leak if it broke, safety would not be sacrificed by granting owners and/or operators a measure of flexibility in the testing of such staybolts.

Subsection (b), as proposed, is a general section that spells out the requirements for testing all forms of staybolts. The task force tried to combine all the different ''method of testing'' provisions from the 1978 standards (sections 230.21–230.27). The result was subsection (b) of this section. The proposed requirement that there must be ''not less than 95 percent of the MAWP'' applied if staybolts are tested while the boiler contains water is a new one and reflects the task force's consensus view.

§ 230.41. Flexible Staybolts With Caps

This section, as proposed, would rewrite section 230.23 of the 1978 standards for clarity, while imposing a few new requirements.

Subsection (a), as proposed, would extend the current timetable for removing the caps and inspecting, flexible staybolts from every two (2) years to every 5th annual inspection, consistent with the comprehensive changes contemplated to the inspection scheme for this part. This proposal reflects the task force's consensus view that this would provide owners and/or operators additional flexibility without compromising the desired level of safety.

Subsection (b), as proposed, has merely been rewritten for clarity and to eliminate superfluous information. Subsections (c) and (d), likewise, would impose no substantive changes but, instead, would rewrite section 230.23 of the 1978 standards for clarity, either deleting text as repetitive, or moving it to other, more relevant, sections. For example, the 1978 requirement that the FRA Form No. 3 be kept in the railroad company's office would be relocated (and slightly modified) to the recordkeeping section of this proposal, section 230.19.

Steam Gauges

Section 230.42. Location of Gauges

This section, as proposed, would rewrite section 230.28 of the 1978 standards for clarity, but would not effect any substantive changes to that section.

Section 230.43. Gauge Siphon

This section, as proposed, would rewrite section 230.29 of the 1978 standards for clarity, but would not effect any substantive changes to that section.

Section 230.44. Time of Testing

This section, as proposed, would modify the requirements of section 230.30 of the 1978 standards in order to address the operational realities presented by the mobility of the gauges. In today's industry, it is common practice for owners and/or operators to remove gauges from the locomotive to prevent them from being stolen or vandalized. Sometimes the removed gauges are stored in conditions that allow for them to be jostled around, which affects their calibration and accuracy. Accordingly, as proposed, this section would require that the gauges be tested prior to being installed or reapplied. In addition, this provision would extend the time period for testing gauges from once ever three months to the 92 service day inspection, consistent with the more comprehensive changes contemplated for the inspection scheme in this part. Finally, as recommended by the task force, the proposed rule retain the requirement in section 230.30 of the 1978 standards that gauges be tested whenever any irregularity is reported.

Section 230.45. Method of Testing

This section, as proposed, would more completely describe the method for testing gages, but would not effect a substantive change.

Section 230.46. Badge Plates

This section, as proposed, would retain section 230.32 of the 1978 standards but would correct its use of incorrect terminology. The term ''boiler head'' is being proposed to be changed to the more correct term ''boiler backhead.''

Section 230.47. Boiler Number

This section, as proposed, would retain section 230.33 of the 1978 standards but would rewrite that section for clarity and to consolidate it with the ICC Interpretations.

Safety Relief Valves

Section 230.48. Number and Capacity

This section, as proposed, would retain the requirements for the number and capacity of locomotive safety relief valves in section 230.34 of the 1978 standards, with two changes. Subsection (a), as proposed, would increase the relieving tolerance from five (5) to six (6) percent above the MAWP. The task force recommended that the rule be modernized to reflect modern testing practice, which uses six percent. That figure is derived from the addition of the manufacturer's tolerance for the safety valve itself (three (3) percent) and the industry standard from the ASME 1952 Code for the testing tolerance for safety valves (an additional three (3) percent). This subsection would also make explicit the FRA inspector's right to require proof of the relieving capacity for safety relief valves on steam locomotives.

Subsection (b) of this section, as proposed, would make explicit the requirement that additional capacity be provided if the capacity testing demonstrates the need to do so. In addition, this section acknowledges the use of the accumulation test as a method for testing safety valve capacity. By including this acknowledgment, the agency does not intend to state its preference for the use of accumulation tests in determining safety relief valve capacity.

Section 230.49. Setting of Safety Relief Valves

In this section, the agency is proposing several changes to the requirements for setting safety relief valves contained in section 230.35 of the 1978 standards. First, this section, as proposed, would impose a new requirement that the individual responsible for setting the safety relief valves be ''thoroughly familiar with the construction and operation of the valve being set.'' This competency requirement was added because the group recognized that modern safety valves have seals, the security of which is certified by certain organizations, but they did not want to officially require that the valves be reset by state officials. This language would create a performance standard—one that would require that those people resetting safety valves be thoroughly familiar with their construction and operation.

Next, this section, as proposed, would change the ''opening pressures'' for safety relief valves contained in section 230.35 of the 1978 standards by requiring that at least one of the two required safety-relief valves open at a pressure that is no greater than the MAWP. This proposal changes the 1978 provision, which requires that both valves be set to open at pressures not exceeding 6 pounds above working pressure (MAWP). This reflects the task force consensus that requiring one of the two safety valves to set to open at pressures not greater than MAWP would achieve a greater level of safety. This section would retain, however, the 6 psi upper limit contained in section 230.35 of the 1978 standards for any additional safety valves utilized.

This section, as proposed, would retain the procedures for setting safety valves, contained in section 230.35 of the 1978 standards, without substantive change. This proposal would change the requirement for the water level to be ''not above the highest gauge cock'' to the equivalent requirement that it not be ''higher than ¾ of the length of the visible water glass, as measured from the bottom of the glass,'' consistent with this document's proposed changes to section 230.37. See the analysis for section 230.51, below.

Finally, this section, as proposed, would create a new requirement that the lowest set safety relief valve pressure be indicated on a tag or label and attached to the steam gauge so that it may clearly be read while observing the gauge. This would present a physical reminder for the locomotive engineer, or other crew members, of the pressure to which the safety relief valve is set so that valve failure might be more easily detected.

Section 230.50. Time of Testing

This section, as proposed, would retain the requirements of section

230.36 of the 1978 standards without change, except for the increase of the inspection time period, from three months, to ninety-two (92) service days to comport with the more comprehensive changes for the inspection scheme contemplated in the part.

Water Glasses and Gauge Cocks

Section 230.51. Number and Location

This section, as proposed, would change the requirements for water level indicating devices contained in section 230.37 of the 1978 standards to require that steam locomotive boilers be equipped with at least two water glasses, the lowest reading for which must be at least 3 inches above the highest part of the crown sheet. This section would not prohibit the use of gauge cocks, but it simply would no longer require it. It would require, however, that any gauge cocks installed on a steam locomotive boiler be properly maintained and located. These changes reflect the task force's recommendation that water level indicator standards be modernized. They expressed the view that water glasses are more reliable than gauge cocks, and easier to use since they do not require manual operation. They also expressed the belief that few operators know how to correctly manually operate gauge cocks anymore. The task force also felt that gauge cocks screwed directly into the backhead are more likely to provide highly inaccurate readings due to the phenomenon where the water rushes against the boiler backhead and creates a surge effect, generating a reading that is artificially high. This requirement would comport with the NTSB's recommendations following its investigation into the boiler explosion involving the Gettysburg Railroad Company, which included a recommendation that boilers be equipped with a second water glass, and with ASME standards, which no longer require that newly constructed boilers be equipped with gauge cocks.

The group was aware of the costs such a change would impose upon owners and/or operators. They discussed, at length, the extra cost this requirement would impose upon owners and/or operators, but concluded that the extra safety measure afforded would well outweigh this imposition. In addition, one member of the group pointed out that gauge cocks are no longer being manufactured, which makes their replacement extremely costly. The task force was also concerned that owners and/or operators have sufficient time to make any necessary changes to their locomotive boilers. Accordingly, this proposal reflects the task force's belief that by delaying the implementation of this provision by one year all parties would have enough notice, and enough implementation time, to add the second water glass.

Section 230.52. Water Glass Valves

This section, as proposed, would rewrite section 230.38 of the 1978 standards to emphasize the functions the valves are designed to fulfill, and for clarity.

Section 230.53. Time of Cleaning

This section, as proposed, would require that water glass valve and gauge cock spindles be cleaned at every 31 service day inspection, and whenever testing indicates that the apparatus is malfunctioning. This change would relax the time period within which this inspection must occur, consistent with the more comprehensive changes contemplated for the inspection scheme discussed earlier. It also would add a performance standard for owners and/or operators to follow, requiring them to clean the spindles when they have indications that water glasses or gauge cocks are not functioning properly.

Section 230.54. Testing and Maintenance

This section, as proposed, would rewrite Section 230.40 of the 1978 standards for clarity and to emphasize the purpose for the water glass testing requirement.

Section 230.55. Tubular Type Water and Lubricator Glasses and Shields

As proposed, this section would modify section 230.41 of the 1978 standards to require that tubular type water glasses be renewed at each 92-service day inspection, and to require that water glasses be situated to provide the engine crew an unobstructed view from their proper positions in the locomotive cab.

This proposal reflects the task force's view, based on their collective experience, that water tubes get thin and develop a risk of breaking after approximately 90 service days. The proposed water glass placement requirements are included here to complement, and give effect to, the proposed changes in section 230.51.

Section 230.56. Water Glass Lamps

This section retains section 230.42 of the 1978 standards without change, consistent with the task force's recommendation.

Injectors, Feedwater Pumps, and Flue Plugs

Section 230.57. Injectors and Feedwater Pumps

As proposed, subsection (b) of this section would retain section 230.43 of the 1978 standards, and subsections (a) and (c) are new. Subsection (a), as proposed, would require that the locomotive be equipped with at least two means of delivering water to the boiler, and would establish, as a minimum, that one of those two means be a live steam injector. Subsection (b), as proposed, would incorporate language from the ICC Interpretations which requires bracing to ''avoid'' vibration. The group decided to change ''avoid'' to ''minimize'' because they felt it was a more realistic standard.

Section 230.58. Flue Plugs

This section, as proposed, would strengthen the rules for plugging flues contained in section 230.44 of the 1978 standards. When this section was originally created by the ICC, it was designed to accommodate the locomotive owner and/or operator's business concerns by allowing them to plug their flues in order to continue in operation until the nearest repair point where the flue could be repaired or replaced. The task force decided to recommend the retention of that concept, to still allow flue plugging, but to recommend the restriction of the manner that flues are allowed to be plugged in order to improve the safety quotient for flue failures.

The task force was concerned that a failed flue was usually a harbinger of additional flue failures since flues are typically replaced all at once, and are exposed to similar stressors which might cause failure. Accordingly, as proposed, this section would only allow one flue to be plugged at any time, and would require that the flue be repaired or replaced within 30 calender days. In addition, the group wanted to distinguish between flues greater than 2¼″ in OD and flues equal to or smaller than 2¼″ in OD, and to prohibit the plugging of the latter. Subsection (b) of this section, as proposed, is largely derived from section 230.44 of the 1978 standards except that it would change that section's implied allowance of plugging flues at one end only, requiring that flues be plugged at both ends. The task force felt that plugging the flue at one end was inconsistent with the function plugging is designed to accomplish.

Fusible Plugs

Section 230.59. Fusible Plugs

This section, as proposed, would retain section 230.14 of the 1978 standards and would impose no new inspection requirements for steam locomotives on locomotive owners and/or operators. Consistent with the more comprehensive changes contemplated for the inspection scheme in Part 230, it would relax the time frame within which fusible plugs must be removed, and cleaned, and their removal reported on the report of inspection.

Washing Boilers

Section 230.60. Time of Washing

This section, as proposed, would retain the concepts of section 230.45 of the 1978 standards and would impose no new inspection requirements for steam locomotives on locomotive owners and/or operators, consistent with the more comprehensive changes contemplated for the inspection scheme in Part 230. It would relax the time frame within which all boilers must be washed from once each month to once each 31-service days.

In its review of the Gettysburg steam explosion, the NTSB recommended that the agency consider regulating water quality, specifically by imposing water treatment program requirements. The task force strenuously debated this topic and concluded the boiler wash itself was the best method for addressing water quality, especially since the regulation currently requires, and would similarly require as proposed, that the boiler be washed as frequently as water conditions require. This proposal gives effect to the task force's recommendation on this subject.

Section 230.61. Arch Tubes, Water Bar Tubes, Circulators and Thermic Siphons

This section, as proposed, would expand the requirements of section 230.46 of the 1978 standards by requiring, in addition to their mere removal, the cleaning and inspection of arch tubes and water bar tubes each time the boiler is washed. In addition, this section proposes the addition of condemning limits for arch tubes and water bar tubes. Both of these proposals are derived from the ICC Interpretations and reflect the task force's desire to incorporate the Interpretations into this part.

Finally, this section would require NDE evaluation of arch tubes, water bar tubes and circulators during the annual inspection in order to assess reduced wall thickness. The task force was concerned about the cost this would impose, and debated whether this requirement would prove too onerous for smaller operations. They concluded, however, that ultrasonic testing was affordable and that the safety levels assured by requiring this testing were worth the imposition of the cost.

Steam Pipes

Section 230.62. (NEW) Dry Pipe

This section would require locomotive owners and/or operators to inspect dry pipes that are subject to pressure during each annual inspection for the purpose of measuring the pipe wall thickness. It would establish a performance standard for owners and/or operators to remove from service pipes that are no longer ''suitable for the service intended.''

Section 230.63. Smoke Box, Steam Pipes and Pressure Parts (New)

This section would require locomotive owners and/or operators to inspect the smoke box, steam pipes and pressure parts at each annual inspection, or whenever conditions warrant, by entering the smoke box and examining it for signs of leaks from any of its pressure parts, as well as by examining all draft appliances.

Steam Leaks

Section 230.64. Leaks Under Lagging

This section, as proposed, would retain the concepts of section 230.49 of the 1978 standards without substantive change, but would rewrite them for clarity.

Section 230.65. Steam Blocking View of Engine Crew

This section, as proposed, would retain the concepts of section 230.50 of the 1978 standards without substantive change, but would rewrite them for clarity.

Subpart C—Steam Locomotives and Tenders

Section 230.66. Design, Construction and Maintenance

This section, as proposed, would retain section 230.101 of the 1978 standards without substantive change other than that necessary to reflect the proposed changed liability standard; see section IX(A).

Section 230.67. Responsibility for Inspection and Repairs

This section, as proposed, would change section 230.102 of the 1978 standards by making the locomotive owner and/or operator, not the mechanical officer, the party responsible for the inspection and repair of all locomotives and tenders under their control. In addition, this section would parallel proposed section 230.23 by delineating the standard for repairs and by requiring that the locomotive not be returned to service unless they are in good condition and safe and suitable for service.

Speed Indicators

Section 230.68. Speed Indicators (New)

This section would require all locomotives that operate at speeds in excess of 20 mph over the general system of transportation to be equipped with speed indicators, consistent with the requirements in Part 229 for non-steam locomotives. Likewise, this section would require these indicators to be maintained to ensure proper functioning. The task force discussed, and wanted to address, the interplay between this part and Part 240's engineer certification standards. Because locomotive engineers may be decertified for speeding, the task force felt that locomotives operating more than 20 mph, consistent with the standards in Part 229, should be equipped with speed indicators.

Ash Pans

Section 230.69. Ash Pans

This section, as proposed, would retain section 230.105 of the 1978 standards without substantive effect, but would rewrite it for clarity.

Brake and Signal Equipment

Section 230.70. Safe Condition

This section, as proposed, would retain section 230.106 of the 1978 standards without substantive effect, but would reorganize and rewrite it for clarity.

Section 230.71. Orifice Testing of Compressors

This section, as proposed, would retain section 230.107 of the 1978 standards without substantive effect, but would reorganize and rewrite it for clarity. In addition, it would, consistent with the more comprehensive changes contemplated for the inspection scheme in Part 230, relax the time frame within which compressors must be orifice-tested from once each three months, to once each 92-service days. Finally, it would expand the table listing the testing criteria to include a 120 LP Westinghouse compressor, which is frequently used.

Section 230.72. Testing Main Reservoirs

Subsection (a) of this section, as proposed, would retain the concepts in Section 230.108 of the 1978 standard's

but would rewrite them for clarity. Subsections (b) through (d) of this section are new. Subsection (b), as proposed, would incorporate Part 229's allowance for drilling of welded main reservoirs. The group felt that drilling was a good idea because it facilitates reservoir failures in a non-catastrophic manner. This section is largely derived from section 229.31 and reflects the task force's desire to harmonize these sections. Subsection (c), as proposed, would encourage the use of appropriate NDE methods for testing the wall thickness of the welded main reservoirs. It would allow welded main reservoirs without longitudinal lap seams to be NDE tested instead of the more destructive hammer and hydrostatic testing otherwise required. The formula for the condemning limits for welded main reservoirs is derived from the ASME Section VIII, Div I. The spacing for the sampling points is derived from section 229.31.

Finally, subsection (d), as proposed, would require NDE testing for welded or riveted longitudinal lap seam main reservoirs. While the task force seriously debated recommending that the use of lap seam main reservoirs be prohibited, they felt that they didn't have a strong enough safety basis for justifying this action. They felt that lap seam main reservoirs would eventually be phased out for economic reasons.

Section 230.73. Air Gauges

This section, as proposed, would retain section 230.109 of the 1978 standards, with minor substantive changes, but would reorganize and rewrite it for clarity. As part of the more comprehensive changes contemplated for the inspection scheme in Part 230, it would relax the time frame for air gauge testing from once each 3 months to the 92 service day inspection. It also would add the requirement that gauges be tested prior to reapplication following removal. The task force recommended that gauges that are removed be retested because they were concerned about the jostling of the gauges that may occur during the time that they are off the locomotive, requiring recalibration before being reapplied. The method of testing required by this section would remain the same as that in section 230.109 of the 1978 standards.

Section 230.74. Time of Cleaning

This section, as proposed, would modify Section 230.110 of the 1978 standard's by broadening the scope of the section to all valves in the air brake system, by specifying a testing procedure, and by relaxing the time frame for conducting the inspection. The task force recommended harmonizing this section, to the largest extent possible, with section 232.10. Many industry members on the task force were concerned about requiring this cleaning too frequently because, in their collective experience, the cleaning process itself disturbs the proper functioning of the valves—once you open the system to clean the valves, dirt gets moved around inside and affects the rest of the system, ruining it. While the task force discussed the testing intervals, from the 1978 standard's six months to a proposed once each fifth annual, they ultimately concluded that the appropriate time period for this cleaning was at least once every 368 service days, but no more than during every second annual inspection.

Section 230.75. Stenciling Dates of Tests and Cleaning

This section, as proposed, would retain section 230.111 of the 1978 standards but would rewrite it for clarification and to eliminate the requirement that testing dates be stamped on metal tags and attached to the locomotive.

Section 230.76. Piston Travel

This section, as proposed, would retain section 230.112 of the 1978 standards without substantive change.

Section 230.77. Foundation Brake Gear

This section, as proposed, would retain section 230.113 of the 1978 standards without substantive change.

Section 230.78. Leakage

This section, as proposed, would retain section 230.l14 of the 1978 standards without substantive change, but would identify specific inspection time periods and requirements in the rule text.

Section 230.79. Train Signal System

This section, as proposed, would retain section 230.115 of the 1978 standards with minor changes. It would recognize other forms of ''onboard communication'' and would relax the train signal system testing requirements from before each trip made, to the beginning of each day the locomotive is used.

Cabs, Warning Signals, and Sanders

Section 230.80. Cabs

This section, as proposed, would change Section 230.116 of the 1978 standard's by removing all the cab curtain requirements and rewriting the standards for clarity. Subsection (a) of this proposed section would incorporate the general provision section of the 1978 standard's, while updating the requirements to parallel Part 229's cab condition language. The task force discussed the language relating to the cab climate at length and agreed to try and draft a performance standard for the cab, rather than select temperature ranges and specific environment controls. The task force also decided to delete all the cab curtain requirements because they believed that the curtains don't adequately keep temperature in the proper range, and that the performance standard in subsection (a) was a better way to achieve the desired outcome.

This section's requirement that the environment not ''unreasonably interfere with the engine crew's performance of duties under ordinary conditions of service'' would establish the performance standard the cab climate must satisfy—therefore, a cab with poor ventilation which gets so hot that the engineer begins to lose consciousness, or to get sleepy, would be in noncompliance with this section. The ''ordinary conditions of service'' language, however, would recognize the type of conditions that are unavoidable in steam locomotive service, such as extreme amounts of heat from the locomotive boiler fire box. The task force wanted to make clear that only cab conditions that were ''abnormal'' for steam locomotive service would constitute noncompliance with this section. The group wanted to move toward a ''common sense'' perspective on cab conditions which would simultaneously be enforceable, and yet not unreasonably interfere with steam locomotive operations by using ''comfort'' as the delimiting factor since most steam locomotive service, by nature, is uncomfortable for the engineer.

Subsection (b) of the proposed section, addressing steam pipes, would retain the Section 230.116 of the 1978 standard's but would make more specific the ''double strength pipe'' description. The task force recommended that, at a minimum, the pipe be ''schedule 80'' to recognize what is more common industry verbiage/terminology.

All other subsections of section 230.116 of the 1978 standard's would be deleted as unnecessary.

Section 230.81. Cab Aprons

This section, as proposed, would expand the requirements of section 230.117 of the 1978 standards by delineating standards for the width of the apron. The group wanted to incorporate the ICC Interpretations regarding apron width that address

individuals standing on the cab apron having their foot crushed when the locomotive goes around a curve, or individuals standing on the apron falling between the locomotive and tender when the safety chains are taut or the drawbar disconnected.

Section 230.82. Fire Doors and Mechanical Stokers

This section, as proposed, would eliminate the requirement contained in section 230.118 of the 1978 standards that all locomotives have mechanically operated fire doors. The task force decided to do so because some smaller locomotives are incapable, by design, of having them. The task force considered making the mechanically operated fire door requirement contingent upon the weight of the locomotive, and the agency is requesting comments on that idea; whether this section should, for example, require that locomotives over 100,000 pounds be equipped with mechanically operated fire doors.

In addition, the task force recommended the removal of subsections (b) and (c) of section 230.118 of the 1978 standards, relating to stokers.

Section 230.83. Cylinder Cocks

This section, as proposed, would retain section 230.119 of the 1978 standards without substantive change, but would rewrite it for clarity.

Section 230.84. Sanders

This section, as proposed, would retain section 230.120 of the 1978 standards without substantive change, but would rewrite it for clarity. Consistent with the changes to the pre-departure inspection concept contemplated by this part, the inspection time period has been relaxed from each trip to the beginning of each day the locomotive is used.

Section 230.85. Audible Warning Device

This section, as proposed, would modernize section 230.121 of the 1978 standards by replacing its whistle requirement with a requirement that steam locomotives be equipped with audible warning devices. The decibel thresholds and the methodology for measuring the sound level are directly derived from section 229.129, which requires audible warning devices for locomotives other than steam locomotives.

Lights

Section 230.86. Required Illumination

This section, as proposed, would retain Section 230.129 and 230.131 of the 1978 standards, but would consolidate and rewrite them for clarity. In addition, this section would eliminate the distinction in the 1978 standards for locomotives in yard and road service, consistent with the task force's recommendation, since any justification for treating them differently disappeared as the nature of steam locomotive operations changed.

Section 230.87. Cab Lights

This section, as proposed, would retain section 230.132 of the 1978 standards without substantive change, other than to extend this section to all locomotives, instead of merely those used between sunset and sunrise. The task force felt that this imposed no hardship upon locomotive owners and/or operators, and would address operating circumstances that could occur during ''daylight'' hours, but which might require being able to see control instruments, or to read timetables within the cab.

Throttle and Reversing Gear

Section 230.88. Throttles

This section, as proposed, would retain section 230.156 of the 1978 standards, without substantive change.

Section 230.89. Reverse Gear

This section, as proposed, would retain section 230.157 of the 1978 standards but would reorganize and rewrite it for clarity. The proposed subsection (a) would retain the general language that appears before subsection (a) verbatim. This section would not retain subsections (a) and (b) of the 1978 standards because the task force believed that many locomotives in service do not have power-operated reverse gear and have suffered no ill-consequences. In addition, the view was expressed that power-reverse gear can be dangerous as well. The group considered attaching a weight restriction to this requirement, but concluded that the problem would be self-regulating since it would be impractical to move certain locomotives with manual reverse operating gear. The proposed subsections (b) and (c) are derived from subsection (c) of the 1978 standards.

Draw Gear and Draft Systems

Section 230.90. Draw Gear Between Steam Locomotive and Tender

Subsection (a) of this section, as proposed, would retain most of the requirements of subsection (a) of section 230.122 of the 1978 standards, except it proposes requiring NDE testing of draw pins and the drawbar during every annual inspection. This section also would require the use of an additional NDE testing method where visual inspection does not disclose any defects. The task force wanted to accommodate the industry's business concerns about conducting this test too frequently, and recommended requiring the use of better technology as the trade-off for extending the inspection time-period from three months to one year. This proposal reflects that recommendation.

Subsection (b) of this section, as proposed, would modify the 1978 standards' requirements for safety bars or chains and their relative strength. The industry task force members disagreed with the 1978 standards' ''two or more safety bars or safety chains'' language, arguing that some locomotives are designed with one (1) safety bar. The consensus was that the old rule was addressing smaller draw bars that could take the place of safety chains, and not the double drawbar design where two bars are on the same pins with one pin bearing no load in normal use. The bar with no load is the safety bar. In addition, this section would incorporate the ICC interpretation of the 1978 standard's ''ample strength'' to require the combined strength of safety chains or bars and their fastenings to be at least 50 percent of the strength of the drawbar and its connections.

Subsections (c), (d), and (e) would retain the subsections (c), (d), and (e) of section 230.122 of the 1978 standards without change.

Section 230.91. Chafing Irons

This section, as proposed, would retain section 230.123 of the 1978 standards without substantive change, but would rewrite it for clarity.

Section 230.92. Draw Gear and Draft Systems

This section, as proposed, would retain section 230.124 of the 1978 standards without substantive change, but would modify it to include couplers, which were not previously addressed.

Driving Gear

Section 230.93. Pistons and Piston Rods

This section, as proposed, would retain section 230.127 of the 1978 standards but would revise it by eliminating the stamping requirement for rods and by adding standards for fasteners. The task force debated whether or not they wanted to retain a mechanism for tracing materials and concluded that they did not want Part 230 to require it. The task force discussed working on a ''recommended practices'' handbook for the operators,

not related to this rule, and including traceability there.

Section 230.94. Crossheads

This section, as proposed, would retain section 230.125 of the 1978 standards without substantive change, but would rewrite it for clarity.

Section 230.95. Guides

This section, as proposed, would retain section 230.126 of the 1978 standards without substantive change.

Section 230.96. Main, Side, and Valve Motion Rods

Subsection (a) of this section, as proposed, would retain subsection (a) of section 230.128 of the 1978 standards without substantive change, but would rewrite it for clarity.

Subsection (b) of this section, as proposed, would change section 230.128 of the 1978 standards by expressly allowing welding of main, side and valve motion rods subject to FRA approval of requests to do so. The task force debated how to control the welding methodology and concluded that requiring the welding in accordance with an accepted national standard was the easiest and most thorough way to do so. The task force concluded that this section should be harmonized with section 230.33 of these proposed standards. See the analysis of welding concerns in that section, which is identical to the task force's discussion of this subsection.

Subsection (c) of this section, as proposed, would retain subsection (c) of section 230.128 of the 1978 standards in its entirety and, for clarity, would add a sentence to address floating bushings.

Subsection (d) of this section, as proposed, would retain subsection (d) of section 230.128 of the 1978 standards without change.

Subsection (e) of this section, as proposed, would retain subsection (e) of section 230.128 of the 1978 standards but would very narrowly rewrite it for clarity.

Subsection (f) of this section, as proposed, would retain subsection (f) of section 230.128 of the 1978 standards without change.

Subsection (g) of this section, as proposed, would retain subsection (g) of section 230.128 of the 1978 standards without change.

This section, as proposed, would not retain subsections (h) and (I) of section 230.128 of the 1978 standards, to reflect the removal throughout this proposed rule of distinctions between road and yard service. As discussed previously, the justification for treating these types of service differently no longer exists.

Section 230.97. Crank Pins

Subsection (a) of this section, as proposed, would change section 230.136 of the 1978 standards by eliminating the stamping requirement, consistent with section 230.92 of this proposal. The task force felt very strongly that it is unnecessary to know, and to have stamped on the pin, the application date.

This subsection also would expand the prohibition for shimming or prick punching to include ''securing the fit of a loose crank pin by shimming, prick punching, or welding.''

Subsection (b) of this section, as proposed, would retain the subsection (b) of section 230.136 of the 1978 standards but would change the word ''bolts'' to ''fasteners.'' This change is non-substantive and reflects the acceptable use of other mechanisms as fasteners.

Running Gear

Section 230.98. Driving, Trailing, And Engine Truck Axles

This section, as proposed, would retain section 230.133 of the 1978 standards with minor substantive change and would rewrite and reorganize it for clarity. As proposed, this section would relax the wear allowance on secondary driving axles. The task force decided to make this change to harmonize the regulation with their operational experience.

Section 230.99. Tender Truck Axles

This section, as proposed, would retain section 230.134 of the 1978 standards without substantive change.

Section 230.100. Defects in Tender Truck Axles and Journals

This section, as proposed, would retain section 230.135 of the 1978 standards without substantive change.

Section 230.101. Steam Locomotive Driving Journal Boxes

This section, as proposed, would retain section 230.137 of the 1978 standards without substantive change, but would reorganize and rewrite it for clarity.

Section 230.102. Tender Plain Bearing Journal Boxes (New)

This section, as proposed, would impose condemning limits for plain bearing journal boxes, consistent with the task force's recommendation to do so. The task force collaborated and identified issues that might affect the operational integrity/function of the journal.

Section 230.103. Tender Roller Bearing Journal Boxes (New)

This section, as proposed, would impose maintenance requirements for tender roller bearing journal boxes, consistent with the task force's recommendation to do so. The task force did not find it necessary to impose specific condemning limits for roller bearing journal boxes, believing that the performance standard ''safe and suitable'' would suffice.

Section 230.104. Driving Box Shoes and Wedges

This section, as proposed, would retain section 230.138 of the 1978 standards without change.

Section 230.105. Lateral Motion

This section, as proposed, would retain section 230.140 of the 1978 standards without change.

Trucks and Frames and Equalizing System

Section 230.106. Steam Locomotive Frame

This section, as proposed, would retain section 230.139 of the 1978 standards but would modify it by adding a section which would allow locomotive owners and/or operators to continue in existence locomotives with broken frames that are properly patched or secured in a way to restore the rigidity of the frame.

Section 230.107. Tender Frame and Body

This section, as proposed, would retain section 230.152 of the 1978 standards and would add a section that would contain condemning limits for a tender frame, consistent with the task force's recommendation.

Section 230.108. Steam Locomotive Leading and Trailing Trucks

This section, as proposed, would retain section 230.143 of the 1978 standards but would modify it to require that all centering devices not permit lost motion in excess of ½ inch, consistent with the task force's recommendation.

Section 230.109. Tender Truck

This section, as proposed, would retain section 230.155 of the 1978 standards but would modify it to establish condemning limits for springs and to include truck centering devices.

Section 230.110. Pilots

This section, as proposed, would retain section 230.141 of the 1978 standards without change but would clarify that minimum and maximum

clearances of the pilot above the rail must be measured on tangent level track.

Section 230.111. Spring Rigging

This section, as proposed would retain section 230.142 of the 1978 standards with minor modifications. This section would change the 1978 standards to allow the adjusting of load weights by shifting weights from one pair of wheels to another, and to allow broken springs within the condemning limits for spring rigging to be repaired by clipping, provided the clips can be secured so as to stay in place.

Wheels and Tires

Sectopm 230.112. Wheels and Tires

This section, as proposed, would combine the 1978 standards of Sections 230.144, 230.150, and 230.151 . Subsections (a), (b) and (c) reflect section 230.144 with a few modifications. Subsection (a), as proposed, would change ''pressed'' to ''mounted.'' This change was recommended to acknowledge the process of shrinking wheels onto the axle, which is not acknowledged by the use of the word ''pressed.'' Next, subsection (b), as proposed, would add a sentence to address gage for track that is less than standard gage. The figures used were derived from back to back measurement. The task force spent a fair amount of time debating the inclusion of standards for ''wide-flange'' wheels, but concluded that they would wait to see if the industry became more saturated with ''wide-flange'' wheels before addressing it. This proposal reflects that recommendation. Finally, subsection (c) would retain subsection (c) of section 230.144 of the 1978 standards without change.

Subsections (d) and (e) new and are derived from sections 230.150 and 230.151 of the 1978 standards. Subsection (d) would retain section 230.151 of the 1978 standards without substantive change but would rewrite it for clarity. Subsection (e) would combine the standards embodied in section 230.150(d) and (e) of the 1978 standards but would rewrite them for clarity.

Section 230.113. Wheels and Tire Defects

This section, as proposed, would combine sections 230.145, 230.146, and 230.149 of the 1978 standards but would rewrite them to make the standards more specific, to eliminate redundancies, and for clarity.

Section 230.114. Wheel Centers

This section, as proposed, would combine sections 230.147 and 230.148 of the 1978 standards but would rewrite them to make the standards more specific and to address welding on wheel centers. The task force recommended that welding on wheel centers be allowed in accordance with section 229.75(m) of the 1978 standards. This proposal reflects that recommendation.

Steam Locomotive Tanks

Section 230.115. Feed Water Tanks

This section, as proposed, would retain section 230.153 of the 1978 standards, largely without change, but would rewrite it for clarity. Subsection (a) of this section would change section 230.153 of the 1978 rule by requiring that all locomotives, regardless of the date of their manufacture or method of use, be equipped with a water level measurement device capable of being read from the cab or tender deck of the locomotive. The task force felt that this was capable of being accomplished very cheaply and eliminated the need for locomotive operators to climb atop the tender tank to check the water levels. In addition, this section would extend the inspection time period for inspecting feed water tanks from once each month to once each 92-service days, consistent with the comprehensive changes to the inspection scheme contemplated by this part.

Section 230.116. Oil Tanks

This section, as proposed, would retain section 230.154 of the 1978 standards without substantive change, but would rewrite it for clarity.

Appendices

FRA proposes to include at least five appendices to this rule. A brief description for each is provided below.

Appendix A—FRA's Exercise of Jurisdiction Over Tourist and Historic Railroads.

FRA proposes to include a statement of the agency's long standing policy concerning the exercise of its broad authority to regulate railroads. The policy statement is being included to help clarify the extent to which it currently exercises its jurisdiction.

Appendix B—Inspection Requirements

FRA proposes to provide in this appendix a simple reference guide for those who would be conducting the inspections required under these regulations. It is not intended to modify the specific requirements contained in any particular section.

Appendix C—FRA Inspection Forms

This appendix contains examples of the six forms being proposed by FRA for recording compliance with the inspection and repair activities contained in various sections of the proposed rule. Use of these forms would be mandatory since, FRA does not contemplate individual operators as being given the freedom to create their own forms for recording this data. FRA will make a concentrated effort to make access to these forms readily available assuming that use of these forms becomes mandatory.

Appendix D—Drawings and Diagrams [Reserved]

In the final rule, this appendix would contain a series of drawings and diagrams that would be cross referenced to various sections of the rule. Each drawing or diagram visually demonstrates how the rule language should be applied. For example, it would depict how to apply an instrument in order to correctly take measurements of objects such as wheels to determine the size of flanges, flat spots, and broken rims for compliance purposes.

Appendix E—Schedule of Civil Penalties [Reserved]

In the final rule, this appendix would contain a penalty schedule similar to those that FRA has issued for its other regulations. Although such FRA penalty schedules are statements of policy and the obligation to provide notice and opportunity to comment prior to their issuance is not required under law, FRA would welcome comments from interested parties expressing their views on what penalties might be appropriate. FRA suggests that those interested in commenting on this issue examine FRA's current policy statement concerning the manner in which the agency enforces the rail safety laws. This policy statement is contained in Appendix A to 49 CFR Part 209,

Regulatory Impact

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This rule has been evaluated in accordance with existing policies and procedures, and determined to be non-significant under both Executive Order 12866 and DOT policies and procedures (44 FR 11034; February 26, 1979). FRA has prepared and placed in the docket a Regulatory Impact Analysis (RIA) addressing the economic impact of this rule. Document inspection and copying

facilities are available at 1120 Vermont Avenue, N.W., 7th Floor, Washington, D.C. Photocopies may also be obtained by submitting a written request to the FRA Docket Clerk at Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, S.W., Washington, D.C. 20590.

As part of the regulatory impact analysis, FRA has assessed quantitative measurements of costs and benefits expected from the adoption of the final rule. For a twenty year period the Net Present Value (NPV) of the potential societal benefits is $11,548,440, and the NPV of the estimated quantified costs is $1,605,679. A majority of the costs would be caused by the transition from the current rule to the proposed rule. A majority of the savings would occur from the changes in the inspection frequencies that occur once an operator is operating under the proposed rule's requirements.

FRA anticipates that this rule will not only reduce the federally mandated burden for the average steam locomotive owner/operator, but also reduce the risk involved in their operations. The NPV of the net benefits is $9.9 million.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires a review of proposed and final rules to assess their impact on small entities. FRA has prepared and placed in the docket an Initial Regulatory Flexibility Assessment (IRFA) which assesses the small entity impact. Document inspection and copying facilities are available at 1120 Vermont Avenue, 7th Floor, Washington, D.C. Photocopies may also be obtained by submitting a written request to the FRA Docket Clerk at Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, S.W., Washington, D.C. 20590.

FRA has recently published an interim policy which formally establishes ''small entities'' as being railroads which meet the line haulage revenue requirements of a Class III railroad. For other entities, the same dollar limit on revenues is established to determine whether a railroad shipper or contractor is a small entity. FRA is proposing to use this alternative definition of ''small entity'' for this rulemaking. Since this is still considered to be an alternative definition, FRA is using this definition in consultation with the Office of Advocacy, SBA, and therefore requests public comments on its use.

The IRFA concludes that this proposed rule would have an economic impact on a sizable number of small entities. However, FRA certifies that this proposed rule is not expected to have a significant economic impact on a substantial number of small entities. The significance of the impact on the potentially affected small entities varies according to the current level of maintenance and inspection that a steam locomotive receives. Thus, an owner and/or operator of a steam locomotive which has only been marginally maintained could be significantly impacted by this proposed rule. In order to determine the significance of the economic impact FRA requests comments to the docket that will provide additional data on the economic impact caused by this proposed rule. The FRA will consider the comments and data it receives—or lack of comments and data—in making a final decision on the significance of the economic impact.

For this proposed rulemaking there are potentially 150 steam locomotives that fall under the FRA's jurisdiction which could be affected. These locomotives are owned by 82 operators. FRA estimates that the somewhere between 85 and 95 percent of these operators are small entities. These operators primarily use their steam locomotives in a tourist, historic, excursion, or museum railway operations. Since this proposed regulation is primarily being imposed on small entities, readers interested in further details about the impacts on these entities should review the NPRM's Regulatory Impact Analysis (RIA).

The impacts that this proposed regulation will have on the affected steam locomotive operators will vary for the 82 different operators. The impact will be inversely proportional to the level of inspection, maintenance and repair that each steam locomotive is currently given. Thus, steam locomotives that have been inspected, maintained and repaired properly should be impacted less than ones that have not. FRA estimates that the Net Present Value (NPV) of the average cost of this rule, per steam locomotive, is approximately $10,000 over twenty years. One of the more significant economic impacts that will affect all steam locomotives is the cost for transitioning from the current rule to the proposed. A proposed change that could impact a small quantity of steam locomotives each year is the proposed change involving replacing broken staybolts. Proposed new equipment requirements, such as a second water glass, total less than $50,000 for all affected steam locomotives over the twenty-year period.

Since this proposed regulation impacts primarily small entities, most of the provisions in it were formed with the recognition that small operations would have to be burdened with its implementation and cost. In other words, all provisions of this proposed rule considered the potential impact to small entities when consensus was being formed on the rule-text. Because of this consideration, all requirements for specific equipment (i.e., cab lights, water glass etc . . .) allow for the operators to have one year from the effective date of the final rule to implement these sections.

The largest impact and the greatest savings occur when a steam locomotive transitions from the current rule to the proposed. The proposed implementation for this is therefore gradually phased in. This proposal would allow steam locomotive owners and operators the flexibility necessary to bring their operations into compliance.

C. Small Business Regulatory Enforcement Fairness Act of 1996

Pursuant to Section 312 of the Small Business Regulatory Enforcement Fairness Act of 1996 (P.L. 104–121), FRA will issue a Small Entity Compliance Guide to summarize the requirements of this rule. The Guide will be made available to all affected small entities to assist them in understanding the actions necessary to comply with the rule. The Guide will in no way alter the requirements of the rule, but will be a tool to assist small entities in the day-to-day application of those requirements.

D. Paperwork Reduction Act

The information collection requirements in this final rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The sections that contain the new information collection requirements and the estimated time to fulfill each requirement are as follows:

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
230.3—Implementation:					
—Interim Flue Extensions	82 owners/operators	30 letters	30 minutes	15	$450
—Petitions for Special Consideration.	82 owners/operators	30 petitions	1 hour	30	1,020
—Agency Silence	82 owners/operators	1 notification	1 hour	1	30
230.12—Conditions for Movement of Non-Complying Steam Locomotives.	82 owners/operators	10 tags	6 minutes	1	30
230.13—Inspection Reports:					
—Recordkeeping	82 owners/operators	3,650 forms	2	122 hours	3,660
230.14—31 Service Day Inspection	82 owners/ operators	100 reports	20 minutes	33	990
—FRA Notification	82 owners/operators	2 notifications	5 minutes	.17	5
230.15—92 Day Service Inspection	82 owners/operators	100 reports	20 minutes	33	990
230.16—Annual Inspection	82 owners/operators	100 reports	30 minutes	50	1,500
—FRA Notification	82 owners/operators	100 notifications	5 minutes	8	240
230. 17—1472 Service Day Inspection (Form No. 4).	82 owners/operators	15 forms	30 minutes	8	240
—Recordkeeping (Form No. 3)	82 owners/operators	15 reports	15 minutes	4	120
230.18—Service Day Report (Form No. 5):					
—Recordkeeping	82 owners/operators	150 reports	15 minutes	38	1,140
230. 19—Posting of Copy:					
—Recordkeeping	82 owners/operators	300 forms	1 minute	5	150
230.20—Alteration Reports For Steam Locomotive Boilers (Form No. 19).	82 owners/operators	5 reports	1 hour	5 hours	150
230.21—Steam Locomotive Number Change.	82 owners/operators	5 documents	2 minutes.	17	5
230.33—Welded Repairs and Alterations.	82 owners/operators	5 letters	50 minutes	1	30
—Wastage and Flush Patches	82 owners/operators	12 letters	10	1	60
230.34—Riveted Repairs and Alterations.	82 owners/operators	37 requests	5 minutes	3	90
230.41—Flexible Staybolts with Caps:					
—Recordkeeping	82 owners/operators	10 entries	1 minute	.17	5
230.46—Badge Plates:					
—Recordkeeping	82 owners/operators	1 report	30 minutes	.50	15
230.47—Boiler Number:					
—Recordkeeping	82 owners/operators	1 report	15 minutes	.25	8
230.75—Stenciling Dates of Tests and Cleaning:					
—Recordkeeping	82 owners/operators	54 tests	1 minute	1	30
230.96—Main, Side, and Valve Rods	82 owners/operators	1 letter	10 minutes	.17 hour	5
230.98—Driving, Trailing, and Engine Truck Axles:					
Journal Diameter Stamped	82 owner/operators	1 stamp	15 minutes	.25	8
230.116—Oil Tanks	82 owners/operators	150 signs	1 minute	3	90

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. Pursuant to 44 U.S.C. 3506(c)(2)(B), the FRA solicits comments concerning: whether these information collection requirements are necessary for the proper performance of the function of FRA, including whether the information has practical utility; the accuracy of FRA's estimates of the burden of the information collection requirements; the quality, utility, and clarity of the information to be collected; and whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized. For information or a copy of the paperwork package submitted to OMB contact Robert Brogan at 202–493–6292.

Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Federal Railroad Administration, Office of Information and Regulatory Affairs, Washington, D.C. 20503, and should also send a copy of their comments to Robert Brogan, Federal Railroad Administration, RRS–21, Mail Stop 25, 400 7th Street, S.W., Washington. D.C. 20590.

OMB is required to make a decision concerning the collection of information requirements contained in this final rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

FRA cannot impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any new information collection requirements resulting from this rulemaking action prior to the effective date of a final rule. The valid OMB control number for this information collection is 2130–0505.

E. Federalism Implications

This final rule will not have a substantial effect on the states, on the

relationship between the national government and the states, or the distribution of power and responsibilities among the various levels of government. Thus, in accordance with Executive Order 12612, preparation of a Federalism assessment is not warranted.

F. Compliance With the Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) each federal agency ''shall, unless otherwise prohibited by law, assess the effects of Federal Regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).'' Section 201. Section 202 of the Act further requires that ''before promulgating any general notice of proposed rulemaking that is likely to result in promulgation of any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement * * * detailing the effect on State, local and tribal governments and the private sector.'' The final rule issued today will not result in the expenditure, in the aggregate, of $100,000,000 or more in any one year, and thus preparation of a statement is not required.

G. Request for Public Comments

In accordance with Executive Order 12866, FRA is allowing 60 days for comments. FRA believes that a 60 day comment period is appropriate to allow parties with interests not represented on the Tourist and Historic Working Group of the Railroad Safety Advisory Committee to comment on this proposed rule. As noted earlier, FRA has not scheduled a public hearing and will not do so unless requested to do in writing. FRA solicits written comments on all aspects of this proposed rule and FRA may make changes to the final rule based on comments received in response to this notice.

In the very near future, FRA's docket system will be integrated with the centralized DOT docket facility which will enable the public to view all documents in a public docket through the Internet. At that time, all comments received in this proceeding will be transferred to the central docket facility and all subsequent documents relating to this proceeding will be filed directly in, and be available for inspection through, the centralized docket system. A notice of the docket system change with complete filing and inspection information will be published in the **Federal Register** at the appropriate time.

List of Subjects in 49 CFR Part 230

Steam locomotives, Railroad safety, Penalties, Reporting and recordkeeping requirements.

The Proposed Rule

For the reasons set out above, FRA proposes revising Part 230 of Title 49 of the Code of Federal Regulations to read as follows:

PART 230—STEAM LOCOMOTIVE INSPECTION AND MAINTENANCE STANDARDS

Subpart A—General

Sec.

General Inspection Requirements

Recordkeeping Requirements

Subpart B—Boilers and Appurtenances

Allowable Stress

Strength of Materials

Inspection and Repair

Pressure Testing of Boilers

Staybolts

Steam Gauges

Safety Relief Valves

Water Glasses and Gauge Cocks

Injectors, Feedwater Pumps, and Flue Plugs

Fusible Plugs

Washing Boilers

Steam Pipes

Steam Leaks

Subpart C—Steam Locomotives and Tenders

Speed Indicators

Ash Pans

Authority: 49 U.S.C. 20103, 20701, 20702; 49 CFR 1.49.

Subpart A—General.

§ 230.1 Purpose and scope.

This part prescribes minimum Federal safety standards for all steam-propelled locomotives. This part does not restrict a railroad from adopting and enforcing additional or more stringent requirements not inconsistent with this part.

§ 230.2 Applicability.

(a) Except as provided in paragraph (b) of this section, this part applies to all railroads that operate steam locomotives.

(b) This part does not apply to:

(1) A railroad with track gage of less than 24 inches;

(2) A railroad that operates exclusively freight trains and does so only on track inside an installation that is not part of the general system of transportation;

(3) Rapid transit operations in an urban area that are not connected to the general system of transportation; or

(4) A railroad that operates passenger trains and does so only on track inside an installation that is insular, i.e., its operations are limited to a separate enclave in such a way that there is no reasonable expectation that the safety of the public—except a business guest, a licensee of the railroad or an affiliated entity, or a trespasser—would be affected by the operation. An operation will not be considered insular if one or more of the following exists on its line:

(i) A public highway-rail crossing that is in use;

(ii) An at-grade rail crossing that is in use;

(iii) A bridge over a public road or waters used for commercial navigation; or (iv) A common corridor with another railroad, i.e., its operations are conducted within 30 feet of those of any other railroad.

(c) See Appendix A of this part for a current statement of the Federal Railroad Administration's (FRA's) policy on its exercise of jurisdiction.

§ 230.3 Implementation.

Except as provided in paragraphs (a) through (c) of this section, the locomotive owner and/or operator shall perform a 1472 service day inspection that meets the requirements of § 230.17 when the locomotive's flues would be required to be removed pursuant to § 230.10, of the regulations in effect prior to [the effective date of the final rule]. (See 49 CFR Parts 200–299, revised October 1, 1978). At the time the locomotive owner and/or operator completes this inspection, it must begin to comply with the rest of the provisions of this part. Up until such time, and except as provided in paragraphs (a) through (c) of this section, compliance with the regulations in effect prior to [the effective date of the final rule] (See 49 CFR Parts 200–299, revised October 1, 1978) will constitute full compliance with this part. Any interested person may obtain the October 1, 1978 revision of 49 CFR Parts 200–999 by contacting the Federal Railroad Administration, Office of Chief Counsel, 400 7th Street, S.W., Washington, D.C. 20590.

(a) *One year after effective date of the final rule.* The following sections of this part must be complied with by [one year after effective date of the final rule]: §§ 230.7, 230.51, 230.57, 230.68, 230.70, 230.85, 230.87, 230.115, and 230.116.

(b) *Interim Flue Removal Extensions.* FRA will continue to consider requests for flue removal extensions under the provisions of § 230.10 of the regulations in effect prior to [effective date of the final rule] (See 49 CFR Parts 200–299, revised October 1, 1978) until [two (2) years after the effective date of the final rule].

(c) *Petition for Special Consideration.* The locomotive owner or operator may petition FRA for special consideration of this part's implementation with respect to any locomotive that has either fully or partially satisfied the requirements of § 230.17 within three (3) years prior to [the publication date of the final rule], provided the locomotive is in full compliance with § 230.17 by the time the petition is actually filed [1].

(1) *Petition process.* Petitions must be filed by [one year after effective date of the final rule] and must be accompanied by all relevant documentation to be considered, including a FRA Form 4 (see Appendix C of this Part) that has been calculated in accordance with § 230.17, and all records that demonstrate the number of days the locomotive has been in service. Based

[1] **Note:** As an example, where the locomotive has received a proper boiler inspection within 3 years prior to the publication date of this rule, but has not had its Form 4 updated, the locomotive owner or operator may update and verify the Form 4 for that locomotive, and submit a timely petition that requests retroactive credit for the boiler inspection that was conducted within the past three years pursuant to §§ 230.10 and 230.11 of the regulations in effect prior to [effective date of the final rule]. (See 49 CFR Parts 200–299, revised October 1, 1978).

upon the documentation provided, the agency will calculate the number of ''service days'' the locomotive has accrued and will notify the petitioner of the number of service days that remain in the locomotive's 1472 service day cycle. Petitions should be sent to the agency by some form of registered mail to ensure a record of delivery. The agency will investigate these petitions and will respond to these petitions within one year of their receipt. The agency will send its response by some form of registered mail to ensure that a record of delivery is created. In its response, the agency may grant the petition or deny it. If the agency grants the petition, the entirety of the revised requirements will become effective upon receipt of the agency's response, unless the agency's response indicates otherwise. If the agency denies the petition, the rule will become effective as provided in the first paragraph of this section.

(2) *Agency silence.* Anyone who does not receive a response within one year of the date they filed their petition, whether through administrative or postal error, must notify FRA that the response has not been received. The notification should be provided to the agency by some form of registered mail to ensure a record of delivery. Upon receipt of this notification, FRA will ensure that a response is either issued, or re-issued, as soon as possible. In the interim, however, any operator who is at the end of their inspection cycle under the rules in effect prior to [effective date of final rule] (See 49 CFR Parts 200–299, revised October 1, 1978) will be allowed to remain in service without conducting the required inspection under § 230.17 for an additional six months, or until they receive FRA's decision, whichever occurs first.

§ 230.4 Prohibited acts.

Chapter 207 of Title 49 of the United States Code makes it unlawful for any railroad to use or permit to be used on its line any steam locomotive or tender unless the entire steam locomotive or tender and its parts and appurtenances—

(a) Are in proper condition and safe to operate in the service to which they are put, without unnecessary danger of personal injury; and

(b) Have been inspected and tested as required by this part.

§ 230.5 Penalties.

(a) Any person who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least $500 and not more than $11,000 per violation, except that: Penalties may be assessed against individuals only for willful violations, and, where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed $22,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense. See Appendix E to this part for a statement of agency civil penalty policy.

(b) Any person who knowingly and willfully falsifies a record or report required by this part may be subject to criminal penalties under 49 U.S.C. 21311.

§ 230.6 Preemptive effect.

Under 49 U.S.C. 20106, issuance of this part preempts any State law, regulation, or order covering the same subject matter, except an additional or more stringent law, regulation, or order that is necessary to eliminate or reduce an essentially local safety hazard; is not incompatible with a law, regulation, or order of the United States Government; and does not unreasonably burden interstate commerce. By issuance of this part, the FRA does not intend to preempt state laws authorizing safety inspections, by state officials pursuant to their own boiler safety programs, of steam locomotive boilers over which the FRA is not currently exercising its safety jurisdiction.

§ 230.7 Waivers.

(a) A person subject to a requirement of this part may petition the Administrator for a waiver of compliance with such requirement. The filing of such a petition does not affect that person's responsibility for compliance with that requirement while the petition is being considered.

(b) Each petition for waiver under this section must be filed in the manner and contain the information required by part 211 of this chapter.

(c) If the Administrator finds that a waiver of compliance is in the public interest and is consistent with railroad safety, the Administrator may grant the waiver subject to any conditions the Administrator deems necessary. Where a waiver is granted, the Administrator publishes a notice containing the reasons for granting the waiver.

(d) All waivers of every form and type from any requirement of any order or regulation implementing the Locomotive Boiler Inspection Act, 36 Stat. 913, *as amended*, 49 U.S.C. 20702, applicable to one or more steam locomotives, shall lapse on [effective date of final rule] unless a copy of the grant of waiver is filed for reassessment prior to that date with the Office of Safety, Federal Railroad Administration, 400 Seventh Street, Washington, D.C. 20590. FRA will review the waiver and notify the applicant whether the waiver has been continued.

§ 230.8 Responsibility for compliance.

(a) The locomotive owner and/or operator is directly responsible for ensuring that all requirements of this part are satisfied, and is the entity primarily responsible for compliance with this part.

(b) Although the duties imposed by this part are generally stated in terms of the duties of a railroad or a steam locomotive owner and/or operator, any person, including a contractor for a railroad, who performs any function covered by this part must perform that function in accordance with this part.

§ 230.9 Definitions.

As used in this part, the terms listed in this section have the following definitions:

Administrator. The Administrator of the Federal Railroad Administration or the Administrator's delegate.

Alteration. Any change to the boiler which affects its pressure retention capability. Rating changes are considered alterations.

ANSI. American National Standards Institute.

API. American Petroleum Institute.

ASME. American Society of Mechanical Engineers.

Boiler surfaces. The boiler interior is all the space inside a boiler occupied by water or steam under pressure, and all associated surfaces inside that space exposed to that water and steam. The boiler exterior is the opposite surface of all components directly exposed to the boiler interior. This includes the fire side of the firebox sheets.

Break. A fracture resulting in complete separation into parts.

Code of original construction. The manufacturer's or industry code in effect when the boiler was constructed. If the exact code is not known, the closest contemporary code may be used provided it does not pre-date the construction date of the boiler.

Crack. A fracture without complete separation into parts, except that castings with shrinkage cracks or hot tears that do not significantly diminish the strength of the member are not considered to be cracked.

FRA. The Federal Railroad Administration.

Locomotive operator. Person or entity which operates, but which does not necessarily own, one or more steam

locomotives. This term means, for purposes of inspection and maintenance responsibility, the entity responsible for the day-to-day operation of the steam locomotive, or their delegate.

Locomotive owner. Person or entity which owns, but which does not necessarily operate, one or more steam locomotives. For purposes of inspection and maintenance responsibility, this term includes their delegate as well.

MAWP. Maximum allowable working pressure as specified by the steam locomotive specification FRA Form No. 4. (See appendix C of this part)

NBIC. National Board Inspection Code published by the National Board of Boiler and Pressure Vessel Inspectors.

NDE. Non-destructive Examination.

NPS. Nominal Pipe Size.

Person. An entity of any type covered under 1 U.S.C. 1, including but not limited to the following: a railroad; a manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any independent contractor providing goods or services to a railroad; and any employee of such owner, manufacturer, lessor, lessee, or independent contractor.

Railroad. Any form of non-highway ground transportation that runs on rails or electromagnetic guideways and any entity providing such transportation, including commuter or other short-haul railroad passenger service in a metropolitan or suburban area and commuter railroad service that was operated by the Consolidated Rail Corporation on January 1, 1979; and high speed ground transportation systems that connect metropolitan areas, without regard to whether those systems use new technologies not associated with traditional railroads; but does not include rapid transit operations in an urban area that are not connected to the general railroad system of transportation.

Renewal. Replacement in kind with a newly manufactured or remanufactured (restored to original tolerances) component. Materials shall be suitable for the service intended.

Repair. Any work which results in a restoration in kind.

Serious injury. An injury that results in the amputation of any appendage, the loss of sight in an eye, the fracture of a bone, or the confinement in a hospital for a period of more than 24 consecutive hours.

Service day. Any calendar day that the boiler has steam pressure above atmospheric pressure with fire in the firebox. In the case of a fireless steam locomotive, any calendar day that the boiler has steam pressure above atmospheric pressure.

Stayed portion of the boiler. That portion of the boiler designed to require support to retain internal pressure by the addition of strength members, such as staybolts, braces, diagonal stays, tubes, etc.

Steam locomotive. A self-propelled unit of equipment powered by steam that is either designed or used for moving other equipment. This includes a self-propelled unit designed or used to carry freight and/or passenger traffic.

Unstayed Portion of the Boiler. That portion of the boiler designed to be self-supported in retaining internal pressure without additional strength members such as staybolts, braces, diagonal stays, tubes, etc.

Wastage. A reduction in the thickness of a mechanical component, such as a pipe or sheet.

§ 230.10 Information collection.

(a) [Reserved]

(b) The information collection requirements are found in the following sections: 230.3, 230.12 though 230.21, 230.33, 230.34, 230.41, 230.46, 230.47, 230.75, 230.96, 230.98, ad 230.116.

General Inspection Requirements

§ 230.11 Repair of non-complying conditions.

The steam locomotive owner and/or operator shall repair any steam locomotive that fails to comply with the conditions of this part, and shall approve any such repairs made, before placing the locomotive back into service.

§ 230.12 Movement of non-complying steam locomotives.

(a) *General limitations on movement.* A steam locomotive with one or more non-complying conditions may be moved only as a lite steam locomotive or a steam locomotive in tow, except as provided in paragraph (b) of this section. Cars essential to the movement of the steam locomotive and tender(s), including tool cars and a bunk car, may accompany lite movements.

(b) *Conditions for movement.* Prior to movement, the steam locomotive owner and/or operator shall determine that it is safe to move the locomotive, determine the maximum speed and other restrictions necessary for safely conducting the movement, and notify in writing the engineer in charge of the defective steam locomotive and, if towed, the engineer in charge of the towing locomotive consist, as well as all other crew members in the cabs, of the presence of the non-complying steam locomotive and the maximum speed and other movement restrictions. In addition, a tag bearing the words ''non-complying locomotive'' shall be securely attached to each defective steam locomotive and shall contain the following information:

(1) The steam locomotive number;

(2) The name of the inspecting carrier;

(3) The inspection location and date;

(4) The nature of the defect;

(5) Movement restrictions, if any;

(6) The destination; and

(7) The signature of the person making the determinations required by this paragraph (b).

(c) *Non-complying conditions developed en route.* The locomotive owner and/or operator may continue in use a steam locomotive that develops a non-complying condition en route until the next daily inspection or the nearest forward point where the repairs necessary to bring it into compliance can be made, whichever is earlier. Before continuing en route, the steam locomotive owner and/or operator shall determine that it is safe to move the steam locomotive, determine the maximum speed and other restrictions necessary for safely conducting the movement, and notify in writing the engineer in charge of the defective steam locomotive and, if towed, the engineer in charge of the towing steam locomotive consist, as well as all other crew members in the cabs, of the presence of the non-complying steam locomotive and the maximum speed and other movement restrictions.

(d) *Special notice for repair.* Nothing in this section authorizes the movement of a steam locomotive subject to a Special Notice for Repair unless the movement is made in accordance with the restrictions contained in the Special Notice.

§ 230.13 Daily inspection.

(a) *General.* An individual competent to conduct the inspection shall inspect each steam locomotive and its tender and appurtenances each day that they are offered for use to determine that they are safe and suitable for service. The daily inspection shall be conducted to comply with all sections of this part, and a daily inspection report filed, by an individual competent to conduct the inspection. See appendices B and C of this part.

(b) *Pre-departure.* At the beginning of each day the steam locomotive is used, an individual competent to do so shall, together with the daily inspection required above, inspect the steam locomotive and its tender and appurtenances to ensure that they are safe and suitable for service, paying special attention to the following items:

(1) Water glasses and gauge cocks;
(2) Boiler feedwater delivery systems, such as injectors and feedwater pumps; and
(3) Air compressors and governors, and the air brake system.

(c) *Inspection reports.* The results of the daily inspection shall be entered on an FRA Form No. 2 (See appendix C of this part) which shall contain, at a minimum, the name of the railroad, the initials and number of the steam locomotive, the place, date and time of the inspection, the signature of the employee making the inspection, a description of the non-complying conditions disclosed by the inspection, conditions found in non-compliance during the day and repaired and the signature of the person who repaired the non-conforming conditions. This report shall be filed even if no non-complying conditions are detected. A competent individual shall sign the report, certifying that all non-complying conditions were repaired before the steam locomotive is operated. This report shall be filed and retained for at least 92 days at the location designated by the steam locomotive owner and/or operator.

§ 230.14 Thirty-one (31) service day inspection.

(a) *General.* An individual competent to conduct the inspection shall perform the 31 service day inspection after the steam locomotive has accrued 31 ''service-days.'' This inspection shall consist of all 31 service day inspection items and all daily inspection items. See appendix B of this part. Days in service shall be counted, recorded and readily available for inspection when requested by an FRA inspector.

(b) *FRA notification.* FRA Regional Administrators, or their delegate(s), may require a steam locomotive owner or operator to provide FRA with notification before a 31 service day inspection. If the Regional Administrator or their delegate indicates their desire to be present for the 31 service day inspection, the steam locomotive owner and/or operator shall provide them a scheduled date and location for inspection. Once scheduled, the inspection must be performed at the time and place specified, unless the Regional Administrator and the steam locomotive owner and/or operator mutually agree to reschedule.

(c) *Filing inspection reports.* Within 10 days of conducting the 31 service day inspection, the steam locomotive owner and/or operator shall file, for each steam locomotive inspected, a report of inspection (FRA Form No. 1), in the place where the steam locomotive is maintained and with the FRA Regional Administrator for that region. When the report of annual inspection (FRA Form No. 3), is filed, the FRA Form No. 1 does not have to be filed until the next 31 service day inspection. (See appendix C of this part)

§ 230.15 Ninety-two (92) service day inspection.

(a) *General.* An individual competent to conduct the inspection shall perform the 92 service day inspection after the steam locomotive has accrued 92 ''service-days.'' This inspection shall include all daily, all 31 service day, and all 92 service day inspection items. See Appendix B of this part. Days in service shall be counted, recorded, and readily available for inspection when requested by an FRA inspector.

(b) *Filing inspection reports.* Within 10 days of conducting the 92 service day inspection, the steam locomotive owner and/or operator shall file, for each steam locomotive inspected, a report of inspection (FRA Form No. 1), in the place the locomotive is maintained and with the Regional Administrator for that region. When the, report of annual inspection (FRA Form No. 3), is filed, the FRA Form No. 1 does not have to be filed until the next 92 service day inspection. (See appendix C of this part)

§ 230.16 Annual inspection.

(a) *General.* (1) An individual competent to conduct the inspection shall perform the annual inspection after 368 calendar days have elapsed from the time of the previous annual inspection. This inspection shall include all daily, all 31 service day, all 92 service day, and all annual inspection items. See Appendix B of this part.

(2) *Fifth annual inspection.* An individual competent to do so shall perform a flexible staybolt and cap inspection in accordance with § 230.41 at each fifth annual inspection.

(b) *FRA notification.* FRA Regional Administrators shall be provided written notice at least one month prior to an annual inspection and afforded an opportunity to be present. If the Regional Administrator or their delegate indicates a desire to be present, the steam locomotive owner and/or operator will provide a scheduled date and location for the inspection. Once scheduled, the inspection must be performed at the time and place specified, unless the Regional Administrator and the steam locomotive owner and/or operator mutually agree to reschedule.

(c) *Filing inspection reports.* Within 10 days of completing the annual inspection, the steam locomotive owner and/or operator shall file, for each steam locomotive inspected, a report of inspection (FRA Form No. 3), in the place where the steam locomotive is maintained and with the Regional Administrator for that region. (See appendix C of this part)

§ 230.17 One thousand four hundred seventy-two (1472) service day inspection.

(a) *General.* Before any steam locomotive is initially put in service or brought out of retirement, and after 1472 service days or 15 years, whichever is earlier, an individual competent to conduct the inspection shall inspect the entire boiler. This 1472 service day inspection shall include all annual, and 5th annual, inspection requirements, as well as any items required by the steam locomotive owner and/or operator or the FRA inspector. At this time, the locomotive owner and/or operator shall complete, update and verify the locomotive specification card (FRA Form No. 4), to reflect the condition of the boiler at the time of this inspection. See appendices B and C of this part.

(b) *Filing inspection reports.* Within 30 days of completing the 1472 service day inspection, the steam locomotive owner and/or operator shall, for each steam locomotive inspected, file in the place where the steam locomotive is maintained and with the FRA Regional Administrator for that region a report of inspection, (FRA Form No. 3), and a completed FRA Form No.4. (See appendix C of this part)

Recordkeeping Requirements

§ 230.18 Service days.

(a) *Service day record.* For every steam locomotive currently in service, the steam locomotive owner and/or operator shall have available, and be able to show an FRA inspector upon request, a current copy of the service day record that contains the number of service days the steam locomotive has accrued since the last 31, 92, Annual and 1472 service day inspections.

(b) *Service day report.* By the 31st of every January, every steam locomotive owner and/or operator shall file a service day report, FRA Form No. 5, with the Regional Administrator accounting for the days the steam locomotive was in service from January 1 through December 31st of the preceding year. If the steam locomotive was in service zero (0) days during that period, a report must still be filed to prevent the steam locomotive from being considered retired by FRA. (See appendix C of this part)

(c) *Retirement where no service day reports filed.* Where the steam

locomotive owner and/or operator does not file the required service day report for a steam locomotive, that steam locomotive may be considered retired by FRA. The steam locomotive owner and/or operator must complete all 1472 service day inspection items to return a retired steam locomotive to service.

§ 230.19 Posting of FRA Form No. 1 and FRA Form No. 3.

(a) *FRA Form No. 1.* The steam locomotive owner and/or operator shall place a copy of the 31 and 92 service day inspection report, (FRA Form No. 1), properly filled out, under transparent cover in a conspicuous place in the cab of the steam locomotive before the boiler inspected is put into service. This FRA Form No. 1 will not be required for the first 31 service days following an annual inspection and the posting of an FRA Form No. 3. (See appendix C of this part)

(b) *Form No. 3.* In addition to the FRA Form No. 1, the steam locomotive owner and/or operator shall also maintain in the cab a current copy of FRA Form No. 3 in the manner described in paragraph (a) of this section. (See appendix C of this part)

§ 230.20 Alteration and repair report for steam locomotive boilers.

(a) *Alterations.* When an alteration is made to a steam locomotive boiler, the steam locomotive owner and/or operator shall file an alteration report (FRA Form No. 19), detailing the changes to the locomotive with the FRA Regional Administrator within 30 days from the date the work was completed. This form shall be attached to, and maintained with, the FRA Form No. 4 until such time as a new FRA Form No. 4 reflecting the alteration is submitted to the Regional Administrator. Alteration reports shall be filed and maintained for the life of the boiler. (See appendix C of this part)

(b) *Welded and riveted repairs to unstayed portions of the boiler.* Whenever welded or riveted repairs are performed on unstayed portions of a steam locomotive boiler, the steam locomotive owner and/or operator shall file with the FRA Regional Administrator, within 30 days from the time the work was completed, a repair report, FRA Form No. 19, that details the work done to the steam locomotive. Repair reports shall be filed and maintained for the life of the boiler. (See appendix C of this part)

(c) *Welded and riveted repairs to stayed portions of the boiler.* Whenever welded or riveted repairs are performed on stayed portions of a steam locomotive boiler, the steam locomotive owner and/or operator shall complete a repair report (FRA Form No. 19), detailing the work done. Repair reports shall be maintained for the life of the boiler. (See appendix C of this part)

§ 230.21 Steam locomotive number change.

When a steam locomotive number is changed, the steam locomotive owner and/or operator must reflect the change in the upper right-hand corner of all documentation related to the steam locomotive by showing the old and new numbers:

Old No. 000
New No. XXX

§ 230.22 Accident reports.

In the case of an accident due to failure, from any cause, of a steam locomotive boiler or any part or appurtenance thereof, resulting in serious injury or death to one or more persons, the railroad on whose line the accident occurred shall immediately report the accident by toll free telephone, Area Code 800–424–0201. The report shall state the nature of the accident, the number of persons killed or seriously injured, the place at which it occurred, as well as where the steam locomotive may be inspected. Confirmation of this report shall be immediately mailed to the Associate Administrator for Safety, Federal Railroad Administration, Washington, D.C. 20590, and contain a detailed report of the accident, including, to the extent known, the causes and a complete list of the casualties.

Subpart B—Boilers and Appurtenances

§ 230.23 Responsibility for general construction and safe working pressure.

The steam locomotive owner and operator are responsible for the general design and construction of the steam locomotive boilers under their control. The steam locomotive owner shall establish the safe working pressure for each steam locomotive boiler, after giving full consideration to the general design, workmanship, age, and overall condition of the complete boiler unit. The condition of the boiler unit shall be determined by, among other factors, the minimum thickness of the shell plates, the lowest tensile strength of the plates, the efficiency of the longitudinal joint, the inside diameter of the course, and the maximum allowable stress value allowed. The steam locomotive operator shall not place the steam locomotive in service before ensuring that the steam locomotive's safe working pressure has been established.

Allowable Stress

§ 230.24 Maximum allowable stress.

(a) *Maximum allowable stress value.* The maximum allowable stress value on any component of a steam locomotive boiler shall not exceed ¼ of the ultimate tensile strength of its material.

(b) *Safety factor.* When it is necessary to use the code of original construction in boiler calculations, the safety factor value shall not be less than 4.

§ 230.25 Maximum allowable stress on stays and braces.

The maximum allowable stress per square inch of net cross sectional area on fire box and combustion chamber stays shall be 7,500 psi. The maximum allowable stress per square inch of net cross sectional area on round, rectangular, or gusset braces shall be 9,000 psi.

Strength of Materials

§ 230.26 Tensile strength of shell plates.

When the tensile strength of steel or wrought-iron shell plates is not known, it shall be taken at 50,000 psi for steel and 45,000 psi for wrought iron.

§ 230.27 Maximum shearing strength of rivets.

The maximum shearing strength of rivets per square inch of cross sectional area shall be taken as follows:

Rivets	Pounds per square inch
Iron Rivets in Single Shear	38000
Iron Rivets in Double Shear	76000
Steel Rivets in Single Shear	44000
Steel Rivets in Double Shear	88000

§ 230.28 Higher shearing strength of rivets.

A higher shearing strength may be used for rivets when it can be shown by test that the rivet material used is of such quality as to justify a higher allowable shearing strength.

Inspection and Repair

§ 230.29 Inspection and repair.

(a) *Responsibility.* The steam locomotive owner and/or operator shall inspect and repair all steam locomotive boilers and appurtenances under their control. They shall immediately remove from service any boiler that has developed cracks in the barrel. The steam locomotive owner and/or operator shall also remove the boiler from service whenever either of them, or the FRA inspector, considers it necessary due to other defects.

(b) *Repair standards.* (1) All defects disclosed by any inspection shall be repaired in accordance with accepted industry standards, which may include established railroad practices, or NBIC or API established standards, before the steam locomotive is returned to service. The steam locomotive owner and/or operator shall not return the steam locomotive boiler or appurtenances to service unless they are in good condition and safe and suitable for service.

(2) Any welding to unstayed portions of the boiler made pursuant to § 230.33 shall be made in accordance with an accepted national standard for boiler repairs. The steam locomotive owner and/or operator shall not return the steam locomotive boiler or appurtenances to service unless they are in good condition and safe and suitable for service.

§ 230.30 Lap-joint seam boilers.

Every boiler having lap-joint longitudinal seams without reinforcing plates shall have enough lagging, jacketing, flues, and tubes removed at every annual inspection so that an inspection of the entire joint, inside and out, can be made, taking special care to detect grooving or cracks at the edges of the seams.

§ 230.31 Flues to be removed.

(a) *Inspection of the boiler interior.* During the 1472 service day inspection, the steam locomotive owner and/or operator shall remove all flues of steam locomotive boilers in service, except as provided in paragraph (b) of this section, for the purpose of inspecting the entire interior of the boiler and its bracing. After removing the flues, the steam locomotive owner and/or operator shall enter the boiler to remove scale from the interior and thoroughly clean and inspect it.

(b) *NDE testing.* If the boiler can be thoroughly cleaned and inspected without removing the superheater flues, and it can be shown through appropriate NDE testing methods that they are safe and suitable for service, their removal may not be required at this time. Their removal may be required, however, if the FRA inspector, or the steam locomotive owner and/or operator, considers it necessary due to identifiable safety concerns.

§ 230.32 Time and method of inspection.

(a) *Time of inspection.* The entire boiler shall completely be inspected at the 1472 service day inspection. The jacket, lagging and any other components interfering with the provision of inspection access shall be removed at this time. Those portions of the boiler that are exposed and able to be inspected as required by the daily, 31 service day, annual and fifth annual inspections shall be inspected at those times. The interior of the boiler also shall be inspected at each annual inspection, after the completion of any hydrostatic test above MAWP, and whenever a sufficient number of flues are removed to allow examination. The jacket, lagging and any other components shall also be removed to provide inspection access whenever the FRA inspector, or the steam locomotive owner and/or operator, considers it necessary due to identifiable safety concerns.

(b) *Method of Inspection.*—(1) *Entire boiler.* During the 1472 service day inspection, the entire boiler shall be examined for cracks, pitting, grooving, or indications of overheating and for damage where mud has collected, or heavy scale formed. The edges of plates, all laps, seams, and points where cracks and defects are likely to develop, shall be thoroughly inspected. Rivets shall be inspected for corrosion and looseness.

(2) *Boiler interior.* When inspecting the boiler interior, it must be seen that braces and stays are taut, that pins are properly secured in place, and that each is in condition to support its proportion of the load. Washout plugs shall be removed for access and visual inspection of the water side of the firebox sheets. Washout plug threads, sleeves and threaded openings shall be examined at this time.

(3) *Boiler exterior.* A thorough inspection shall be made of the entire exterior of the boiler while under hydrostatic pressure.

§ 230.33 Welded repairs and alterations.

(a) *Unstayed portions of the boiler containing alloy steel or carbon steel with a carbon content over 0.25 percent.* Prior to welding on unstayed portions of the boiler, the steam locomotive owner and/or operator shall submit a written request for approval to the FRA Regional Administrator. If the approval is granted, the steam locomotive owner and/or operator shall perform any welding to unstayed portions of the boiler in accordance with an accepted national standard for boiler repairs. The steam locomotive owner and/or operator shall satisfy reporting requirements in § 230.20 at this time.

(b) *Unstayed portions of the boiler containing carbon steel not exceeding 0.25 percent carbon.* The steam locomotive owner and/or operator shall perform any welding to unstayed portions of the boiler in accordance with an accepted national standard for boiler repairs. The steam locomotive owner and/or operator shall satisfy reporting requirements in § 230.20 at this time.

(c) *Wastage.* The steam locomotive owner and/or operator shall submit a written request for approval to the FRA Regional Administrator before performing weld build up on wasted areas of unstayed surfaces of the boiler that exceed a total of 100 square inches, or the smaller of 25 percent of minimum required wall thickness or ½ of an inch. Wasted sheets shall not be repaired by weld build up if the wasted sheet has been reduced to less than 60 percent of the minimum required thickness as required by this part.

(d) *Flush patches.* The steam locomotive owner and/or operator shall submit a written request for approval to the FRA Regional Administrator for the installation of flush patches of any size on unstayed portions of the boiler.

(e) *Stayed portions of the boiler.* The steam locomotive owner and/or operator shall perform welded repairs or alterations on stayed portions of the boiler in accordance with established railroad practices, or an accepted national standard for boiler repairs. The steam locomotive owner and/or operator shall satisfy reporting requirements in § 230.20 at this time.

§ 230.34 Riveted repairs and alterations.

(a) *Alterations to unstayed portions of the boiler.* Prior to making riveted alterations on unstayed portions of the boiler, the steam locomotive owner and/or operator shall submit a written request for approval to the FRA Regional Administrator. If approval is granted, the steam locomotive owner and/or operator shall perform any riveting to unstayed portions of the boiler in accordance with established railroad practices, or an accepted national standard for boiler repairs. The steam locomotive owner and/or operator shall satisfy reporting requirements in § 230.20 at this time.

(b) *Repairs to unstayed portions of the boiler.* The steam locomotive owner and/or operator shall perform any riveted repairs to unstayed portions of the boiler in accordance with established railroad practices, or an accepted national standard for boiler repairs. The steam locomotive owner and/or operator shall satisfy reporting requirements in § 230.20 at this time.

(c) *Repairs to stayed portions of the boiler.* The steam locomotive owner and/or operator shall perform riveted repairs or alterations on stayed portions of the boiler in accordance with established railroad practices, or an accepted national standard for boiler

repairs. The steam locomotive owner and/or operator shall satisfy reporting requirements in § 230.20 at this time.

Pressure Testing of Boilers

§ 230.35 Pressure testing.

The temperature of the steam locomotive boiler shall be raised to at least 60 °F any time pressure is applied to the boiler.

§ 230.36 Hydrostatic testing of boilers.

(a) *Time of test.* The locomotive owner and/or operator shall hydrostatically test every boiler at the following times:

(1) During the 1472 service day inspection, and at every annual inspection thereafter;

(2) After making any alteration to the boiler;

(3) After installing a flush patch on an unstayed portion of the boiler; and

(4) After any riveting on an unstayed portion of the boiler.

(b) *Method of testing.* The metal temperature of the boiler shall be between 60 °F and 120 °F each time it is subjected to any hydrostatic pressure. Hydrostatic testing required by these rules shall be conducted at 25 percent above the MAWP.

(c) *Internal inspection.* An internal inspection of the boiler shall be conducted following any hydrostatic test where the pressure exceeds MAWP.

§ 230.37 Steam test following repairs or alterations.

Upon completion of any repair or alteration, the locomotive owner and/or operator shall conduct a steam test of the boiler with steam pressure raised to between 95 percent and 100 percent of the MAWP. At this time, the boiler shall be inspected to ensure that it is in a safe and suitable condition for service.

Staybolts

§ 230.38 Telltale holes.

(a) *Staybolts less than 8 inches long.* All staybolts shorter than 8 inches, except flexible bolts, shall have telltale holes 3/16 inch to 7/32 inch diameter and at least 1¼ inches deep in the outer end.

(b) *Reduced body staybolts.* On reduced body staybolts, the telltale hole shall extend beyond the fillet and into the reduced section of the staybolt. Staybolts may have through telltale holes.

(c) *Telltale holes kept open.* All telltale holes, except as provided for in § 230.41, must be kept open at all times.

§ 230.39 Broken staybolts.

(a) *Maximum allowable number of broken staybolts.* No boiler shall be allowed to remain in service with two broken staybolts located within 24 inches of each other, as measured inside the firebox or combustion chamber on a straight line. No boiler shall be allowed to remain in service with more than 4 broken staybolts inside the entire firebox and combustion chamber, combined.

(b) *Staybolt replacement.* Broken staybolts must be replaced during the 31 service day inspection, if detected at that time. Broken staybolts detected in between 31 service day inspections must be replaced no later than 30 calendar days from the time of detection. When staybolts 8 inches or less in length are replaced, they shall be replaced with bolts that have telltale holes 3⁄16 inch to 7⁄32 inch in diameter and at least 1¼ inches deep at each end, or that have telltale holes 3⁄16 inch to 7⁄32 inch in diameter their entire length. At the time of replacement of broken staybolts, adjacent staybolts shall be inspected.

(c) *Assessment of broken staybolts.* Telltale holes leaking, plugged, or missing shall be counted as broken staybolts.

(d) *Prohibited methods of closing telltale holes.* Welding, forging or riveting broken staybolt ends is prohibited as a method of closing telltale holes.

§ 230.40 Time and method of staybolt testing.

(a) *Time of hammer testing.*—(1) *General.* All staybolts shall be hammer tested at every 31 service day inspection, except as provided in paragraph (a)(2) of this section. All staybolts also shall be hammer tested under hydrostatic pressure any time hydrostatic pressure above the MAWP specified on the boiler specification form (FRA Form No. 4), is applied to the boiler. (See appendix C of this part)

(2) *Exception for inaccessible staybolts.* The removal of brickwork or grate bearers for the purpose of hammer testing staybolts during each 31 service day inspection will not be required if the staybolts behind these structural impediments have a telltale hole 3⁄16 inch to 7⁄32 inch in diameter their entire length. Whenever the brickwork or grate bearers are removed for any other reason, however, the bolts shall be inspected at that time.

(b) *Method of hammer testing.* If staybolts are tested while the boiler contains water, the hydrostatic pressure must be not less than 95 percent of the MAWP. The steam locomotive owner and/or operator shall tap each bolt with a hammer and determine broken bolts from the sound or the vibration of the sheet. Whenever staybolts are tested while the boiler is not under pressure, such as during the 31 service day inspection, the staybolt test must be made with all the water drained from the boiler.

§ 230.41 Flexible staybolts with caps.

(a) *General.* Flexible staybolts with caps shall have their caps removed during every 5th annual inspection for the purpose of inspecting the bolts for breakage, except as provided in paragraph (b) of this section.

(b) *Drilled flexible staybolts.* For flexible staybolts that have telltale holes between 3⁄16 inch and 7⁄32 inch in diameter, and which extend the entire length of the bolt and into the head not less than one third of the diameter of the head, the steam locomotive owner and/or operator need not remove the staybolt caps if it can be established, by an electrical or other suitable method, that the telltale holes are open their entire length. Any leakage from these telltale holes during the hydrostatic test indicates that the bolt is broken and must be replaced. Before the steam locomotive is placed in service, the inner ends of all telltale holes shall be closed with a fireproof porous material that will keep the telltale holes free of foreign matter and permit steam or water to exit the telltale hole when the bolt is broken or fractured.

(c) *Recordkeeping.* The removal of flexible staybolt caps and other tests shall be reported on FRA Form No. 3. (See appendix C of this part)

(d) *Testing at request of FRA inspector.* Staybolt caps also shall be removed, or any of the above tests made, whenever the FRA inspector or the steam locomotive owner and/or operator considers it necessary due to identifiable safety concerns about the condition of staybolts, staybolt caps or staybolt sleeves.

Steam Gauges

§ 230.42 Location of gauges.

Every boiler shall have at least one steam gauge which will correctly indicate the working pressure. The gauge shall be positioned so that it will be kept reasonably cool and can conveniently be read by the engine crew.

§ 230.43 Gauge siphon.

The steam gauge supply pipe shall have a siphon on it of ample capacity to prevent steam from entering the gauge. The supply pipe shall directly enter the boiler and be maintained steam tight. The supply pipe and its connections shall be cleaned each time the gauge is tested.

§ 230.44 Time of testing.

Steam gauges shall be tested prior to being installed or being reapplied, during the 92 service day inspection, and whenever any irregularity is reported.

§ 230.45 Method of testing.

Steam gauges shall be compared with an accurate test gauge or dead weight tester. While under test load at the MAWP of the boiler to which the gauge will be applied, the gauge shall be set to read that pressure as accurately as the physical limitations of the gauge will allow. Under test the gauge shall read within the manufacturer's tolerance at all points on the gauge up to 25 percent above the allowed pressure. If the manufacturer's tolerance is not known, the gauge must read within 2 percent full scale accuracy at all points on the gauge up to 25 percent above allowed pressure.

§ 230.46 Badge plates.

A metal badge plate showing the allowed steam pressure shall be attached to the boiler backhead in the cab. If boiler backhead is lagged, the lagging and jacket shall be cut away so that the plate can be seen.

§ 230.47 Boiler number.

(a) *Generally.* The builder's number of the boiler, if known, shall be stamped on the steam dome or manhole flange. If the builder's number cannot be obtained, an assigned number, which shall be used in making out specification cards, shall be stamped on the steam dome or manhole flange.

(b) *Numbers after January 10, 1912.* Numbers which are stamped after January 10, 1912 shall be located on the front side of the steam dome or manhole flange at the upper edge of the vertical surface, oriented in a horizontal manner, and have figures at least ⅜ inch high.

(c) *Name of manufacturer or owner.* The number shall be preceded by the name of the manufacturer if the original number is known or the name of the steam locomotive owner if a new number is assigned.

Safety Relief Valves

§ 230.48 Number and capacity.

(a) *Number and capacity.* Every boiler shall be equipped with at least two safety relief valves, suitable for the service intended, that are capable of preventing an accumulation of pressure greater than 6 percent above the MAWP under any conditions of service. An FRA inspector may require verification of sufficient safety valve relieving capacity.

(b) *Determination of capacity.* Safety relief valve capacity may be determined by making an accumulation test with the fire in good, bright condition and all steam outlets closed. Additional safety relief valve capacity shall be provided if the safety relief valves allow an excess pressure of more than 6 percent above the MAWP during this test.

§ 230.49 Setting of safety relief valves.

(a) *Qualifications of individual who adjusts.* Safety relief valves shall be set and adjusted by a competent person who is thoroughly familiar with the construction and operation of the valve being set.

(b) *Opening pressures.* At least one safety relief valve shall be set to open at a pressure not exceeding the MAWP. Safety relief valves shall be set to open at pressures not exceeding 6 psi above the MAWP.

(c) *Setting procedures.* When setting safety relief valves, two steam gauges shall be used, one of which must be so located that it will be in full view of the persons engaged in setting such valves; and if the pressure indicated by the gauges varies more than 3 psi they shall be removed from the boiler, tested, and corrected before the safety relief valves are set. Gauges shall in all cases be tested immediately before the safety relief valves are set or any change made in the setting. When setting safety relief valves, the water level shall not be higher than ¾ of the length of the visible water glass, as measured from the bottom of the glass.

(d) *Labeling of lowest set pressure.* The set pressure of the lowest safety relief valve shall be indicated on a tag or label attached to the steam gauge so that it may be clearly read while observing the steam gauge.

§ 230.50 Time of testing.

All safety relief valves shall be tested, and adjusted if necessary, under steam at every 92 service day inspection, and also when any irregularity is reported.

Water Glasses and Gauge Cocks

§ 230.51 Number and location.

Every boiler shall be equipped with at least two water glasses. The lowest reading of the water glasses shall not be less than 3 inches above the highest part of the crown sheet. If gauge cocks are used, the reading of the lowest gauge cock shall not be less than 3 inches above the highest part of the crown sheet.

§ 230.52 Water glass valves.

All water glasses shall be equipped with no more than two valves capable of isolating the water glass from the boiler. They shall also be equipped with a drain valve capable of evacuating the glass when it is so isolated.

§ 230.53 Time of cleaning.

The spindles of all water glass valves and of all gauge cocks shall be removed and valves and cocks thoroughly cleaned of scale and sediment at every 31 service day inspection, and when testing indicates that the apparatus may be malfunctioning. In addition, the top and bottom passages of the water column shall be cleaned and inspected at each annual inspection.

§ 230.54 Testing and maintenance.

(a) *Testing.* All water glasses must be blown out, all gauge cocks must be tested, and all passages verified to be open at the beginning of each day the locomotive is used, and as often as necessary to ensure proper functioning.

(b) *Maintenance.* Gauge cocks, water column drain valves, and water glass valves must be maintained in such condition that they can easily be opened and closed by hand, without the aid of a wrench or other tool.

§ 230.55 Tubular type water and lubricator glasses and shields.

(a) *Water glasses.* Tubular type water glasses shall be renewed at each 92 service day inspection.

(b) *Shields.* All tubular water glasses and lubricator glasses must be equipped with a safe and suitable shield which will prevent the glass from flying in case of breakage. This shield shall be properly maintained.

(c) *Location and maintenance.* Water glasses and water glass shields shall be so located, constructed, and maintained that the engine crew can at all times have an unobstructed view of the water in the glass from their proper positions in the cab.

§ 230.56 Water glass lamps.

All water glasses must be supplied with a suitable lamp properly located to enable the engine crew to easily see the water in the glass.

Injectors, Feedwater Pumps, and Flue Plugs

§ 230.57 Injectors and feedwater pumps.

(a) *Water delivery systems required.* Each steam locomotive must be equipped with at least two means of delivering water to the boiler, at least one of which is a live steam injector.

(b) *Maintenance and testing.* Injectors and feedwater pumps must be kept in good condition, free from scale, and must be tested at the beginning of each day the locomotive is used, and as often as conditions require, to ensure that

they are delivering water to the boiler. Boiler checks, delivery pipes, feed water pipes, tank hose and tank valves must be kept in good condition, free from leaks and from foreign substances that would obstruct the flow of water.

(c) *Bracing.* Injectors, feedwater pumps, and all associated piping shall be securely braced so as to minimize vibration.

§ 230.58 Flue plugs.

(a) *When plugging is permitted.* Flues greater than 2¼ inches in outside diameter (OD) shall not be plugged. Flues 2¼ inches in outside diameter (OD) or smaller may be plugged following failure, provided only one flue is plugged at any one time. Plugs must be removed and proper repairs made no later than 30 days from the time the plug is applied.

(b) *Method of plugging.* When used, flue plugs must be made of steel. The flue must be plugged at both ends. Plugs must be tied together by means of a steel rod not less than ⅝ inch in diameter.

Fusible Plugs

§ 230.59 Fusible plugs.

If boilers are equipped with fusible plugs, the plugs shall be removed and cleaned of scale each time the boiler is washed, but not less frequently than during every 31 service day inspection. Their removal shall be noted on the FRA Form No. 1 or FRA Form No. 3. (See appendix C of this part)

Washing Boilers

§ 230.60 Time of washing.

(a) *Frequency of washing.* All boilers shall thoroughly be washed as often as the water conditions require, but not less frequently than at each 31 service day inspection. The date of the boiler wash shall be noted on the FRA Form No. 1 or FRA Form No. 3. (See appendix C of this part)

(b) *Plug removal.* All washout plugs, arch tube plugs, thermic siphon plugs, circulator plugs and water bar plugs must be removed when boilers are washed.

(c) *Plug maintenance.* All washout plugs, washout plug sleeves and threaded openings shall be maintained in a safe and suitable condition for service and shall be examined for defects each time the plugs are removed.

(d) *Fusible plugs cleaned.* Fusible plugs shall be cleaned in accordance with § 230.59.

§ 230.61 Arch tubes, water bar tubes, circulators and thermic siphons.

(a) *Frequency of cleaning.* Each time the boiler is washed, arch tubes and water bar tubes shall thoroughly be cleaned mechanically, washed, and inspected. Circulators and thermic siphons shall thoroughly be cleaned, washed and inspected.

(b) *Defects.* Arch tubes and water bar tubes found blistered, bulged, or otherwise defective shall be renewed. Circulators and thermic siphons found blistered, bulged or otherwise defective shall be either repaired or renewed.

(c) *Method of examination.* Arch tubes, water bar tubes and circulators shall be examined using an appropriate NDE method that accurately measures wall thickness at each annual inspection. All arch brick shall be removed for this inspection. If any are found with wall thickness reduced below that required to render them safe and suitable for the service intended at the MAWP specified on the boiler specification FRA Form No. 4, they must be replaced or repaired. (See appendix C of this part)

Steam Pipes

§ 230.62 Dry pipe.

Dry pipes subject to pressure shall be examined at each annual inspection to measure wall thickness. Dry pipes with wall thickness reduced below that required to render the pipe suitable for the service intended at the MAWP must be replaced or repaired.

§ 230.63 Smoke box, steam pipes and pressure parts.

The smoke box, steam pipes and pressure parts shall be inspected at each annual inspection, or any other time that conditions warrant. The individual conducting the inspection must enter the smoke box to conduct the inspection, looking for signs of leaks from any of the pressure parts therein and examining all draft appliances.

Steam Leaks

§ 230.64 Leaks under lagging.

The steam locomotive owner and/or operator shall take out of service at once any boiler that has developed a leak under the lagging due to a crack in the shell, or to any other condition which may reduce safety. Pursuant to § 230.29, the boiler must be repaired before being returned to service.

§ 230.65 Steam blocking view of engine crew.

The steam locomotive owner and/or operator shall keep the boiler, and its piping and appurtenances, in such repair that they do not emit steam in a manner that obscures the engine crew's vision.

Subpart C—Steam Locomotives and Tenders

§ 230.66 Design, construction, and maintenance.

The steam locomotive owner and operator are responsible for the general design, construction and maintenance of the steam locomotives and tenders under their control.

§ 230.67 Responsibility for inspection and repairs.

The steam locomotive owner and/or operator shall inspect and repair all steam locomotives and tenders under their control. All defects disclosed by any inspection shall be repaired in accordance with accepted industry standards, which may include established railroad practices, before the steam locomotive or tender is returned to service. The steam locomotive owner and/or operator shall not return the steam locomotive or tender to service unless they are in good condition and safe and suitable for service.

Speed Indicators

§ 230.68 Speed indicators.

Steam locomotives that operate at speeds in excess of 20 mph over the general system of railroad transportation shall be equipped with speed indicators. Where equipped, speed indicators shall be maintained to ensure accurate functioning.

Ash Pans

§ 230.69 Ash pans.

Ash pans shall be securely supported from mud-rings or frames with no part less than 2½ inches above the rail. Their operating mechanism shall be so arranged that they may be safely operated and securely closed.

Brake and Signal Equipment

§ 230.70 Safe condition.

(a) *Pre-departure inspection.* At the beginning of each day the locomotive is used, the steam locomotive operator shall ensure that:

(1) The brakes on the steam locomotive and tender are in safe and suitable condition for service;

(2) The air compressor or compressors are in condition to provide an ample supply of air for the locomotive service intended;

(3) The devices for regulating all pressures are properly performing their functions;

(4) The brake valves work properly in all positions; and

(5) The water has been drained from the air-brake system.

(b) *Brake pipe valve required.* Each steam locomotive shall have a brake

pipe valve attached to the front of the tender, the rear of the back cab wall, or adjacent to the exit of a vestibuled cab. The words ''Emergency Brake Valve'' shall be clearly displayed near the valve.

§ 230.71 Orifice testing of compressors.

(a) *Frequency of testing.* The compressor or compressors shall be tested for capacity by orifice test as often as conditions may require, but not less frequently than once every 92 service days.

(b) *Orifice testing criteria.* (1) Compressors in common use, as listed in the following table, shall have orifice test criteria as follows:

Make	Compressor size	Single strokes per minute	Diameter of orifice (in inches)	Air pressure maintained (in pounds)
Westinghouse	9½	120	11/64	60
Westinghouse	11	100	3/16	60
Westinghouse	150 HP 8½ CC	100	9/32	60
Westinghouse	120 LP 8½ CC	100	15/64	60
New York	2a	120	5/32	60
New York	6a	100	13/64	60
New York	5b	100	15/64	60

NOTE: This table shall be used for altitudes to and including 1,000 feet. For altitudes over 1,000 feet the speed of compressor may be increased 5 single strokes per minute for each 1,000 feet increase in altitude.

(2) For compressors not listed in the table in paragraph (b) (1) of this section, the air pressure to be maintained shall be no less than 80 percent of the manufacturer's rated capacity for the compressor.

§ 230.72 Testing main reservoirs.

(a) *Hammer and hydrostatic testing.* Except as described below, every main reservoir, except those cast integrally with the frame, shall be hammer and hydrostatically tested during each annual inspection. The reservoir shall be hammer tested while empty and with no pressure applied. If no defective areas are detected, a hydrostatic test of MAWP shall be applied.

(b) *Drilling of main reservoirs.* (1) Each welded main reservoir originally constructed to withstand at least five times the MAWP may be drilled over its entire surface with telltale holes that are 3/16 of an inch in diameter. The holes shall be spaced not more than 12 inches apart, measured both longitudinally and circumferentially, and drilled from the outer surface to an extreme depth determined by the following formula:

$D=(.6PR/(S-.6P))$

Where:

D = Extreme depth of telltale holes in inches but in no case less than one-sixteenth inch;
P = certified working pressure in psi;
S = 1/5 of the minimum specified tensile strength of the material in psi; and
R = inside radius of the reservoir in inches.

(2) One row of holes shall be drilled lengthwise of the reservoir on a line intersecting the drain opening. When main reservoirs are drilled as described in paragraph (b)(1) of this section, the hydrostatic and hammer tests described in paragraph (a) of this section are not required during the annual inspection. Whenever any telltale hole shall have penetrated the interior of any reservoir, the reservoir shall be permanently withdrawn from service.

(c) *Welded main reservoirs without longitudinal lap seams.* For welded main reservoirs that do not have longitudinal lap seams, an appropriate NDE method that can measure the wall thickness of the reservoir may be used instead of the hammer test and hydrostatic test required in paragraph (a) of this section. The spacing of the sampling points for wall thickness shall not be greater than 12 inches longitudinally and circumferentially. The reservoir shall permanently be withdrawn from service where the NDE testing reveals wall thickness less than the value determined by the following formula:

$t=(PR/(S-.6P)$

Where:

t = Minimum value for wall thickness;
P = Certified working pressure in psi;
S = 1/5 of the minimum specified tensile strength of the material in psi, or 10,000 psi if the tensile strength is unknown; and
R = Inside radius of the reservoir in inches.

(d) *Welded or riveted longitudinal lap seam main reservoirs.* (1) For welded or riveted longitudinal lap seam main reservoirs, an appropriate NDE method that can measure wall thickness of the reservoir shall be used instead of, or in addition to, the hammer test and hydrostatic test. The spacing of the sampling points for wall thickness shall not be greater than 12 inches longitudinally and circumferentially. Particular care shall be taken to measure along the longitudinal seam on both plates at an interval of no more than 6 inches longitudinally. The reservoir shall be withdrawn permanently from service where NDE testing reveals wall thickness less than the value determined by the following formula:

$t=(PR/(0.5S-0.6P))$

Where:

t = Minimum value for wall thickness;
P = Certified working pressure in psi;
S = 1/5 of the minimum specified tensile strength of the material in psi, or 10,000 psi if the tensile strength of steel is unknown; and
R = Inside radius of the reservoir in inches.

(2) Repairs of reservoirs with reduced wall thickness are prohibited.

§ 230.73 Air gauges.

(a) *Location.* Air gauges shall be so located that they may be conveniently read by the engineer from his usual position in the cab. No air gauge may be more than three psi in error.

(b) *Frequency of testing.* Air gauges shall be tested prior to reapplication following removal, as well as during the 92 service day inspection and whenever any irregularity is reported.

(c) *Method of testing.* Air gauges shall be tested using an accurate test gauge or dead weight tester designed for this purpose.

§ 230.74 Time of cleaning.

All valves in the air brake system, including related dirt collectors and filters, shall be cleaned and tested in accordance with accepted brake equipment manufacturer's specifications, or as often as conditions require to maintain them in a safe and suitable condition for service, but not less frequently than after 368 service days or during the second annual inspection, whichever occurs first.

§ 230.75 Stenciling dates of tests and cleaning.

The date of testing and cleaning, and the initials of the shop or station at which the work is done, shall legibly be stenciled in a conspicuous place on the tested parts, or placed on a card displayed under a transparent cover in the cab of the steam locomotive.

§ 230.76 Piston travel.

(a) *Minimum piston travel.* The minimum piston travel shall be sufficient to provide proper brake shoe clearance when the brakes are released.

(b) *Maximum piston travel.* The maximum piston travel when steam locomotive is standing shall be as follows:

Type of wheel brake	Maximum piston travel (in inches)
Cam Type Driving Wheel Brake	3½
Other forms of Driving Wheel Brake	6
Engine Truck Brake	8
Tender Brake	9

§ 230.77 Foundation brake gear.

(a) *Maintenance.* Foundation brake gear shall be maintained in a safe and suitable condition for service. Levers, rods, brake beams, hangers, and pins shall be of ample strength, and shall not be fouled in any way which will affect the proper operation of the brake. All pins shall be properly secured in place with cotter pine, split keys, or nuts. Brake shoes must be properly applied and kept approximately in line with the tread of the wheel.

(b) *Distance above the rails.* No part of the foundation brake gear of the steam locomotive or tender shall be less than 2½ inches above the rails.

§ 230.78 Leakage.

(a) *Main reservoirs and related piping.* Leakage from main reservoir and related piping shall be tested at every 92 service day inspection and shall not exceed an average of 3 psi per minute in a test of 3 minutes duration that is made after the pressure has been reduced to 60 percent of the maximum operating pressure.

(b) *Brake cylinders.* Leakage from brake cylinders shall be tested at every 92 service day inspection. With a full service application from maximum brake pipe pressure, and with communication to the brake cylinders closed, the brakes on the steam locomotive and tender must remain applied for a minimum of 5 minutes.

(c) *Brake pipes.* Steam locomotive brake pipe leakage shall be tested at the beginning of each day the locomotive is used, and shall not exceed 5 psi per minute.

§ 230.79 Train signal system.

Where utilized, the train signal system, or any other form of on-board communication, shall be tested and known to be in safe and suitable condition for service at the beginning of each day the locomotive is used.

Cabs, Warning Signals, Sanders and Lights

§ 230.80 Cabs.

(a) *General provisions.* Cabs shall be securely attached or braced and maintained in a safe and suitable condition for service. Cab windows of steam locomotives shall provide an undistorted view of the track and signals for the crew from their normal position in the cab. Cab floors shall be kept free of tripping or slipping hazards. The cab climate shall be maintained to provide an environment that does not unreasonably interfere with the engine crew's performance of their duties under ordinary conditions of service.

(b) *Steam pipes.* Steam pipes shall not be fastened to the cab. New construction or renewals made of iron or steel pipe greater than ⅛ inch NPS that are subject to boiler pressure in cabs shall have a minimum wall thickness equivalent to schedule 80 pipe, with properly rated valves and fittings. Live steam heating radiators must not be fastened to the cab. Exhaust steam radiators may be fastened to the cab.

(c) *Oil-burning steam locomotives.* If the cab is enclosed, oil burning steam locomotives that take air for combustion through the fire-door opening shall have a suitable conduit extending from the fire-door to the outside of the cab.

§ 230.81 Cab aprons.

(a) *General provisions.* Cab aprons shall be of proper length and width to ensure safety. Cab aprons shall be securely hinged, maintained in a safe and suitable condition for service, and roughened, or other provision made, to afford secure footing.

(b) *Width of apron.* The cab apron shall be of a sufficient width to prevent, when the drawbar is disconnected and the safety chains or the safety bars are taut, the apron from dropping between the steam locomotive and tender.

§ 230.82 Fire doors and mechanical stokers.

(a) *General provisions.* Each steam locomotive shall have a fire door which shall latch securely when closed and which shall be maintained in a safe and suitable condition for service. Fire doors on all oil-burning locomotives shall be latched securely with a pin or key.

(b) *Mechanically operated fire doors.* Mechanically operated fire doors shall be so constructed and maintained that they may be operated by pressure of the foot on a pedal, or other suitable appliance, located on the floor of the cab or tender at a suitable distance from the fire door, so that they may be conveniently operated by the person firing the steam locomotive.

(c) *Hand-operated doors.* Hand operated fire doors shall be so constructed and maintained that they may be conveniently operated by the person firing the steam locomotive.

§ 230.83 Cylinder cocks.

Each steam locomotive shall be equipped with cylinder cocks which can be operated from the cab of the steam locomotive. All cylinder cocks shall be maintained in a safe and suitable condition for service.

§ 230.84 Sanders.

Steam locomotives shall be equipped with operable sanders that deposit sand on the rail head in front of a set of driving wheels. Sanders shall be tested at the beginning of each day the locomotive is used.

§ 230.85 Audible warning device.

(a) *General provisions.* Each steam locomotive shall be equipped with an audible warning device that produces a minimum sound level of 96db(A) at 100 feet in front of the steam locomotive in its direction of travel. The device shall be arranged so that it may conveniently be operated by the engineer from his normal position in the cab.

(b) *Method of measurement.* Measurement of the sound level shall be made using a sound level meter conforming, at a minimum, to the requirements of ANSI S1.4–1971, Type 2, and set to an A-weighted slow response. While the steam locomotive is on level, tangent track, the microphone shall be positioned 4 feet above the ground at the center line of the track and shall be oriented with respect to the sound source in accordance with the microphone manufacturer's recommendations.

§ 230.86 Required illumination.

(a) *General provisions.* Each steam locomotive used between sunset and sunrise shall be equipped with an operable headlight that provides illumination sufficient for a steam locomotive engineer in the cab to see, in a clear atmosphere, a dark object as large as a man of average size standing at least 800 feet ahead and in front of

such headlight. If a steam locomotive is regularly required to run backward for any portion of its trip other than to pick up a detached portion of its train or to make terminal movements, it shall also be equipped on its rear end with an operable headlight that is capable of providing the illumination described in this paragraph (a).

(b) *Dimming device.* Such headlights shall be provided with a device whereby the light from same may be diminished in yards and at stations or when meeting trains.

(c) *Where multiple locomotives utilized.* When two or more steam locomotives are used in the same train, the leading steam locomotive only will be required to display a headlight.

§ 230.87 Cab lights.

Each steam locomotive shall have cab lights that sufficiently illuminate the control instruments, meters and gauges to enable the engine crew to make accurate readings from their usual and proper positions in the cab. These lights shall be so located and constructed that the light will shine only on those parts requiring illumination and does not interfere with the engine crew's vision of the track and signals. Each steam locomotive shall also have a conveniently located additional lamp that can be readily turned on and off by the persons operating the steam locomotive, and that provides sufficient illumination for them to read train orders and timetables.

Throttle and Reversing Gear

§ 230.88 Throttles.

Throttles shall be maintained in safe and suitable condition for service, and efficient means provided to hold the throttle lever in any desired position.

§ 230.89 Reverse gear.

(a) *General provisions.* Reverse gear, reverse levers, and quadrants shall be maintained in a safe and suitable condition for service. Reverse lever latch shall be so arranged that it can be easily disengaged, and provided with a spring which will keep it firmly seated in quadrant. Proper counterbalance shall be provided for the valve gear.

(b) *Air-operated power reverse gear.* Steam locomotives that are equipped with air operated power reverse gear shall be equipped with a connection whereby such gear may be operated by steam or by an auxiliary supply of air in case of failure of the main reservoir air pressure. The operating valve handle for such connection shall be conveniently located in the cab of the locomotive and shall be plainly marked. If an independent air reservoir is used as the source of the auxiliary supply for the reverse gear, it shall be provided with means to automatically prevent loss of pressure in event of failure of the main reservoir air pressure.

(c) *Power reverse gear reservoirs.* Power reverse gear reservoirs, if provided, must be equipped with the means to automatically prevent the loss of pressure in the event of a failure of main air pressure and have storage capacity for not less than one complete operating cycle of control equipment.

Draw Gear and Draft Systems

§ 230.90 Draw gear between steam locomotive and tender.

(a) *Maintenance and testing.* The draw gear between the steam locomotive and tender, together with the pins and fastenings, shall be maintained in safe and suitable condition for service. The pins and drawbar shall be removed and tested for defects using an appropriate NDE method at every annual inspection. Where visual inspection does not disclose any defects, an additional NDE testing method shall be employed. Suitable means for securing the drawbar pins in place shall be provided. Inverted drawbar pins shall be held in place by plate or stirrup.

(b) *Safety bars and chains generally.* One or more safety bar(s) or two or more safety chains shall be provided between the steam locomotive and tender. The combined strength of the safety chains or safety bar(s) and their fastenings shall be not less than 50 percent of the strength of the drawbar and its connections. These shall be maintained in safe and suitable condition for service, and inspected at the same time draw gear is inspected.

(c) *Minimum length of safety chains or bars.* Safety chains or safety bar(s) shall be of the minimum length consistent with the curvature of the railroad on which the steam locomotive is operated.

(d) *Lost motion.* Lost motion between steam locomotives and tenders not equipped with spring buffers shall be kept to a minimum and shall not exceed ½ inch.

(e) *Spring buffers.* When spring buffers are used between steam locomotives and tenders the spring shall be applied with not less than ¾ inch compression, and shall at all times be under sufficient compression to keep the chafing faces in contact.

§ 230.91 Chafing irons.

Chafing irons that permit proper curving shall be securely attached to the steam locomotive and tender, and shall be maintained to permit lateral and vertical movement.

§ 230.92 Draw gear and draft systems.

Couplers, draft gear and attachments on steam locomotives and tenders shall be securely fastened, and maintained in safe and suitable condition for service.

Driving Gear

§ 230.93 Pistons and piston rods.

(a) *Maintenance and testing.* Pistons and piston rods shall be maintained in safe and suitable condition for service. Piston rods shall be inspected for cracks each time they are removed, and shall be renewed if found defective.

(b) *Fasteners.* Fasteners (keys, nuts, etc.) shall be kept tight and shall have some means to prevent them from loosening or falling out of place.

§ 230.94 Crossheads.

Crossheads shall be maintained in a safe and suitable condition for service, with not more than ¼ inch vertical or 5⁄16 inch lateral clearance between crossheads and guides.

§ 230.95 Guides.

Guides shall be securely fastened and maintained in a safe and suitable condition for service.

§ 230.96 Main, side, and valve motion rods.

(a) *General.* Main, side or valve motion rods developing cracks or becoming otherwise defective shall be removed from service immediately and repaired or renewed.

(b) *Repairs.* Repairs, and welding, of main, side or valve motion rods shall be made in accordance with an accepted national standard. The steam locomotive owner and/or operator shall submit a written request for approval to the FRA Regional Administrator prior to welding defective main rods, side rods, and valve gear components.

(c) *Bearings and bushings.* Bearings and bushings shall so fit the rods as to be in a safe and suitable condition for service, and means shall be provided to prevent bushings from turning in the rod. Straps shall fit and be securely bolted to rods. Floating bushings need not be provided with means to prevent bushings from turning.

(d) *Side motion of rods.* The total amount of side motion of each rod on its crank pin shall not exceed ¼ inch.

(e) *Oil and grease cups.* Oil and grease cups shall be securely attached to rods, and grease cup plugs shall be equipped with a suitable fastening that will prevent them from being ejected.

(f) *Main rod bearings.* The bore of main rod bearings shall not exceed pin diameters more than 3⁄32 inch at front or back end. The total lost motion at both ends shall not exceed 5⁄32 inch.

(g) *Side rod bearings.* The bore of side rod bearings shall not exceed pin diameters more than 5/32 inch on main pin nor more than 3/16 inch on other pins.

§ 230.97 Crank pins.

(a) *General provisions.* Crank pins shall be securely applied. Securing the fit of a loose crank pin by shimming, prick punching, or welding is not permitted.

(b) *Maintenance.* Crank pin collars and collar fasteners shall be maintained in a safe and suitable condition for service.

Running Gear

§ 230.98 Driving, trailing, and engine truck axles.

(a) *Condemning defects.* Driving, trailing, and engine truck axles with any of the following defects shall be removed from service immediately and repaired, see appendix B of this part for inspection requirements:

(1) Bent axle;

(2) Cut journals that cannot be made to run cool without turning;

(3) Transverse seams in iron or steel axles;

(4) Seams in axles causing journals to run hot;

(5) Axles that are unsafe on account of usage, accident or derailment;

(6) Any axle worn ½ inch or more in diameter below the original/new journal diameter, except as provided in paragraph (a)(7) of this section;

(7) Any driving axles other than main driving axles with an original or new diameter greater than 6 inches that are worn ¾ inch or more in diameter below the original/new diameter.

(b) *Journal diameter stamped.* For steam locomotives with plain bearings, the original/new journal diameter shall be stamped on one end of the axle by [5 years after effective date of the final rule].

§ 230.99 Tender truck axles.

The minimum diameters of axles for various axle loads shall be as follows:

Axle load (in pounds)	Minimum diameter of journal (in inches)	Minimum diameter of wheel seat (in inches)	Minimum diameter of center (in inches)
50000	5½	7⅜	6 7/16
38000	5	6¾	5⅞
31000	4½	6¼	5 5/16
22000	3¾	5	4⅜
15000	3¼	4⅝	3⅞

§ 230.100 Defects in tender truck axles and journals.

(a) *Tender truck axle condemning defects.* Tender truck axles with any of the following defects shall be removed from service immediately and repaired:

(1) Axles that are bent;

(2) Collars that are broken, cracked, or worn to ¼ inch or less in thickness;

(3) Truck axles that are unsafe on account of usage, accident, or derailment;

(4) A fillet in the back shoulder that is worn out; or

(5) A gouge between the wheel seats that is more than ⅛ of an inch in depth.

(b) *Tender truck journal condemning defects.* Tender truck journals with any of the following defects shall be removed from service immediately and repaired :

(1) Cut journals that cannot be made to run cool without turning;

(2) Seams in axles causing journals to run hot;

(3) Overheating, as evidenced by pronounced blue black discoloration;

(4) Transverse seams in journals of iron or steel axles; or

(5) Journal surfaces having any of the following:

(i) A circumferential score;

(ii) Corrugation;

(iii) Pitting;

(iv) Rust; or (v) Etching.

§ 230.101 Steam locomotive driving journal boxes.

(a) *Driving journal boxes.* Driving journal boxes shall be maintained in a safe and suitable condition for service. Not more than one shim may be used between the box and bearing.

(b) *Broken bearings.* Broken bearings shall be renewed.

(c) *Loose bearings.* Loose bearings shall be repaired or renewed.

§ 230.102 Tender plain bearing journal boxes.

Plain bearing journal boxes with the following defects shall be removed from service immediately and repaired:

(a) A box that does not contain visible free oil;

(b) A box lid that is missing, broken, or open except to receive servicing;

(c) A box containing foreign matter, such as dirt, sand, or coal dust that can reasonably be expected to damage the bearing; or have a detrimental effect on the lubrication of the journal and bearing;

(d) A lubricating pad that:

(1) Is missing;

(2) Is not in contact with the journal;

(3) Has a tear extending half the length or width of the pad, or more, except by design;

(4) Shows evidence of having been scorched, burned, or glazed;

(5) Contains decaying or deteriorated fabric that impairs proper lubrication of the pad;

(6) Has an exposed center core (except by design); or

(7) Has metal parts contacting the journal;

(e) A plain bearing that:

(1) Is missing, cracked, broken;

(2) Has a bearing liner loose;

(3) Has a broken out piece; or

(4) Has indications of having been overheated, as evidenced by:

(i) Melted babbitt:

(ii) Smoke from hot oil; or

(iii) Journal surface damage; or

(f) A plain bearing wedge that:

(1) Is missing, cracked or broken; or

(2) Is not located in its design position.

§ 230.103 Tender roller bearing journal boxes.

Tender roller bearing journal boxes shall be maintained in a safe and suitable condition.

§ 230.104 Driving box shoes and wedges.

Driving box shoes and wedges shall be maintained in a safe and suitable condition for service.

§ 230.105 Lateral motion.

(a) *Condemning limits.* The total lateral motion or play between the hubs of the wheels and the boxes on any pair of wheels shall not exceed the following limits:

Engine truck wheels (with swing centers).....1″
Engine truck wheels (with rigid centers).....1½″
Trailing truck wheels.....1″
Driving wheels.....¾″

(b) *Limits increased.* These limits may be increased on steam locomotives operating on track where the curvature exceeds 20 degrees when it can be shown that conditions require additional lateral motion.

(c) *Non-interference with other parts.* The lateral motion shall in all cases be kept within such limits that the driving wheels, rods, or crank pins will not interfere with other parts of the steam locomotive.

Trucks, Frames and Equalizing System

§ 230.106 Steam locomotive frame.

(a) *Maintenance and inspection.* Frames, decks, plates, tailpieces, pedestals, and braces shall be maintained in a safe and suitable condition for service, and shall be cleaned and thoroughly inspected each time the steam locomotive is in shop for heavy repairs.

(b) *Broken frames.* Broken frames properly patched or secured by clamps or other suitable means which restores the rigidity of the frame are permitted.

§ 230.107 Tender frame and body.

(a) *Maintenance.* Tender frames shall be maintained in a safe and suitable condition for service.

(b) *Height difference.* The difference in height between the deck on the tender and the cab floor or deck on the steam locomotive shall not exceed 1½ inches.

(c) *Gangway minimum width.* The minimum width of the gangway between steam locomotive and tender, while standing on tangent track, shall be 16 inches.

(d) *Tender frame condemning defects.* A tender frame with any of the following defects shall be removed from service immediately and repaired:

(1) Portions of the tender frame or body (except wheels) that have less than a 2½ inches clearance from the top of rail;

(2) Tender center sill that is broken, cracked more than 6 inches, or permanently bent or buckled more than 2½ inches in any six foot length;

(3) Tender coupler carrier that is broken or missing;

(4) Tender center plate, any portion of which is missing or broken or that is not properly secured; or

(5) Tender that has a broken side sill, crossbearer, or body bolster.

§ 230.108 Steam locomotive leading and trailing trucks.

(a) *Maintenance.* Trucks shall be maintained in safe and suitable condition for service. Center plates shall fit properly, and the male center plate shall extend into the female center plate not less than ¾ inch. All centering devices shall be properly maintained and shall not permit lost motion in excess of ½ inch.

(b) *Safety chain required.* A suitable safety chain shall be provided at each front corner of all four wheel engine trucks.

(c) *Clearance required.* All parts of trucks shall have sufficient clearance to prevent them from interfering with any other part of the steam locomotive.

§ 230.109 Tender trucks.

(a) *Tender truck frames.* A tender truck frame shall not be broken, or have a crack in a stress area that affects its structural integrity. Tender truck center plates shall be securely fastened, maintained in a safe and suitable condition for service, and provided with a center pin properly secured. The male center plate must extend into the female center plate at least ¾ inch. Shims may be used between truck center plates.

(b) *Tender truck bolsters.* Truck bolsters shall be maintained approximately level.

(c) *Condemning defects for springs or spring rigging.* Springs or spring rigging with any of the following defects shall be taken out of service immediately and renewed or properly repaired:

(1) An elliptical spring with its top (long) leaf or any other five leaves in the entire spring pack broken;

(2) A broken coil spring or saddle;

(3) A coil spring that is fully compressed;

(4) A broken or cracked equalizer, hanger, bolt, gib or pin;

(5) A broken coil spring saddle; and

(6) A semi-elliptical spring with a top (long) leaf broken or two leaves in the top half broken, or any three leaves in the entire spring broken.

(d) *Tender securing arrangement.* Each tender shall have a device or securing arrangement to prevent the truck and tender body from separating in case of derailment. This arrangement shall be maintained in a safe and suitable condition for service.

(e) *Side bearings and truck centering devices.* Where equipped, side bearings and truck centering devices shall be maintained in a safe and suitable condition for service.

(f) *Friction side bearings.* Friction side bearings shall not be run in contact, and shall not be considered to be in contact if there is clearance between them on either side when measured on tangent level track.

(g) *Side bearings.* All rear trucks shall be equipped with side bearings.

When the spread of side bearings is 50 inches, their maximum clearance shall be ⅜ inch on each side for rear trucks and ¾ inch on each side for front trucks, where used. When the spread of the side bearings is increased, the maximum clearance shall be increased proportionately.

§ 230.110 Pilots.

(a) *General provisions.* Pilots shall be securely attached, properly braced, and maintained in a safe and suitable condition for service.

(b) *Minimum And maximum clearance.* The minimum clearance of pilot above the rail shall be 3 inches and the maximum clearance shall be 6 inches measured on tangent level track.

§ 230.111 Spring rigging.

(a) *Arrangement of springs and equalizers.* Springs and equalizers shall be arranged to ensure the proper distribution of weight to the various wheels of the steam locomotive, maintained approximately level and in a safe and suitable condition for service. Adjusting weights by shifting weights from one pair of wheels to another is permissible.

(b) *Spring or spring rigging condemning defects.* Springs or spring rigging with any of the following defects shall be removed from service immediately and renewed or properly repaired:

(1) Top leaf broken or two leaves in top half or any three leaves in spring broken. (The long side of a spring to be considered the top.) Broken springs not exceeding these requirements may be repaired by applying clips providing the clips can be made to remain in place;

(2) Any spring with leaves excessively shifting in the band;

(3) Broken coil springs; or

(4) Broken driving box saddle, equalizer, hanger, bolt, or pin.

Wheels and Tires

§ 230.112 Wheels and tires.

(a) *Mounting.* Wheels shall be securely mounted on axles. Prick punching or shimming the wheel fit will not be permitted. The diameter of wheels on the same axle shall not vary more than 3/32 inch.

(b) *Gage.* Wheels used on standard gage track will be out of gage if the inside gage of flanges, measured on base line is less than 53 inches or more than 53⅜ inches. Wheels used on less than standard gage track will be out of gage if the inside gage of flanges, measured on base line, is less than the relevant track gage less 3½ inches or more than the relevant track gage less 3⅛ inches.

(c) *Flange distance variance.* The distance back to back of flanges of wheels mounted on the same axle shall not vary more than ¼ inch.

(d) *Tire thickness.* Wheels may not have tires with a minimum thickness less than that indicated in the table in this paragraph (d). When retaining rings are used, measurements of tires to be taken from the outside circumference of the ring, and the minimum thickness of tires may be as much below the limits specified earlier in this paragraph (d) as the tires extend between the retaining rings, provided it does not reduce the thickness of the tire to less than 1⅛ inches from the throat of flange to the counterbore for the retaining rings. The required minimum thickness for tires, by wheel center diameter and weight per axle, is as follows:

Weight per axle (weight on drivers divided by number of pairs of driving wheels)	Diameter of wheel center (inches)	Minimum thickness (inches)
30,000 pounds and under	44 and under	1¼
	Over 44 to 50	1 5/16
	Over 50 to 56	1⅜
	Over 56 to 62	1 7/16
	Over 62 to 68	1½
	Over 68 to 74	1 9/16
	Over 74	1⅝
Over 30,000 to 35,000 pounds	44 and under	1 5/16
	Over 44 to 50	1⅜
	Over 50 to 56	1 7/16
	Over 56 to 62	1½
	Over 62 to 68	1 9/16
	Over 68 to 74	1⅝
	Over 74	1 11/16
Over 35,000 to 40,000 pounds	44 and under	1⅜
	Over 44 to 50	1 7/16
	Over 50 to 56	1½
	Over 56 to 62	1 9/16
	Over 62 to 68	1⅝
	Over 68 to 74	1 11/16
	Over 74	1¾
Over 40,000 to 45,000 pounds	44 and under	1 7/16
	Over 44 to 50	1½
	Over 50 to 56	1 9/16
	Over 56 to 62	1⅝
	Over 62 to 68	1 11/16
	Over 68 to 74	1¾
	Over 74	1 13/16
Over 45,000 to 50,000 pounds	44 and under	1½
	Over 44 to 50	1 9/16
	Over 50 to 56	1⅝
	Over 56 to 62	1 11/16
	Over 62 to 68	1¾
	Over 68 to 74	1 13/16
	Over 74	1⅞
Over 50,000 to 55,000 pounds	44 and under	1 9/16
	Over 44 to 50	1⅝
	Over 50 to 56	1 11/16
	Over 56 to 62	1¾
	Over 62 to 68	1 13/16
	Over 68 to 74	1⅞
	Over 74	1 15/16
Over 55,000 pounds	44 and under	1⅝
	Over 44 to 50	1 11/16
	Over 50 to 56	1¾
	Over 56 to 62	1 13/16
	Over 62 to 68	1⅞
	Over 68 to 74	1 15/16
	Over 74	2

(e) *Tire width.* Flanged tires shall be no less than 5½ inches wide for standard gage and no less than 5 inches wide for narrow gage. Plain tires shall be no less than 6 inches wide for standard gage and no less than 5½ inches wide for narrow gage.

§ 230.113 Wheels and tire defects.

Steam locomotive and tender wheels or tires developing any of the defects listed in this section shall be removed from service immediately and repaired. Except as provided in § 230.114, welding on wheels and tires is prohibited. A wheel that has been welded is a welded wheel for the life of the wheel.

(a) *Cracks or breaks.* Wheels and tires may not have a crack or break in the flange, tread, rim, plate, hub or brackets.

(b) *Flat spots.* Wheels and tires may not have a single flat spot that is 2½ inches or more in length, or two adjoining spots that are each two or more inches in length.

(c) *Chipped flange.* Wheels and tires may not have a gouge or chip in the flange that is more than 1½ inches in length and ½ inch in width.

(d) *Broken rims.* Wheels and tires may not have a circumferentially broken rim if the tread, measured from the flange at a point ⅝ inch above the tread, is less than 3¾ inches in width.

(e) *Shelled-out spots.* Wheels and tires may not have a shelled-out spot 2½ inches or more in length, or two adjoining spots that are each two or more inches in length, or so numerous as to endanger the safety of the wheel.

(f) *Seams.* Wheels and tires may not have a seam running lengthwise that is within 3¾ inches of the flange.

(g) *Worn flanges.* Wheels and tires may not have a flange worn to a 15/16 inch thickness or less, as measured at a point ⅜ inch above the tread.

(h) *Worn treads.* Wheels and tires may not have a tread worn hollow 5/16 inch or more.

(i) *Flange height.* Wheels and tires may not have a flange height of less than

1 inch nor more than 1½ inches, as measured from the tread to the top of the flange.

(j) *Rim thickness.* Wheels may not have rims less than 1 inch thick.

(k) *Wheel diameter.* Wheels may not have wheel diameter variance, for wheels on the same axle or in the same driving wheel base, greater than 3/32 inch, when all tires are turned or new tires applied to driving and trailing wheels. When a single tire is applied the diameter must not vary more than 3/32 inch from that of the opposite wheel on the same axle. When a single pair of tires is applied the diameter must be within 3/32 inch of the average diameter of the wheels in the driving wheel base to which they are applied.

§ 230.114 Wheel centers.

(a) *Filling blocks and shims.* Driving and trailing wheel centers with divided rims shall be properly fitted with iron or steel filling blocks before the tires are applied, and such filling blocks shall be properly maintained. When shims are inserted between the tire and the wheel center, not more than two thicknesses of shims may be used, one of which must extend entirely around the wheel. The shim which extends entirely around the wheel may be in three or four pieces, providing they do not lap.

(b) *Wheel center condemning defects.* Wheel centers with any of the following defects shall be removed from service immediately and repaired:

(1) Wheels centers loose on axle;

(2) Broken or defective tire fastenings;

(3) Broken or cracked hubs, plates, bolts or spokes, except as provided in paragraph (b)(4) of this section; or (4) Driving or trailing wheel center with three adjacent spokes or 25 percent or more of the spokes in the wheel broken.

(c) *Wheel center repairs.* Wheel centers may be repaired by welding or brazing provided that the defect can properly be so repaired and, following the repair, the crankpin and axle shall remain tight in the wheel. Banding of the hub is permitted.

(d) *Counterbalance maintenance.* Wheel counterbalances shall be maintained in a safe and suitable condition for service.

Steam Locomotive Tanks

§ 230.115 Feed water tanks.

(a) *General provisions.* Tanks shall be maintained free from leaks, and in safe and suitable condition for service. Suitable screens must be provided for tank wells or tank hose and shall be maintained in a manner that allows the unobstructed flow of water. Feed water tanks shall be equipped with a device that permits the measurement of the quantity of water in the tender feed water tank from the cab or tender deck of the steam locomotive. Such device shall be properly maintained.

(b) *Inspection frequency.* As often as conditions warrant but not less frequently than every 92 service days, the interior of the tank shall be inspected, and cleaned if necessary.

(c) *Top of tender.* Top of tender behind fuel space shall be kept clean, and means provided to carry off excess water. Suitable covers shall be provided for filling holes.

§ 230.116 Oil tanks.

The oil tanks on oil burning steam locomotives shall be maintained free from leaks. The oil supply pipe shall be equipped with a safety cut-off device that:

(a) Is located adjacent to the fuel supply tank or in another safe location;

(b) Closes automatically when tripped and that can be reset without hazard; and

(c) Can be hand operated from clearly marked locations, one inside the cab and one accessible from the ground on each exterior side of the steam locomotive.

Appendix A to Part 230—FRA's Exercise of Jurisdiction Over Tourist and Historic Railroads

1. Basic Statutory Concept. FRA's authority to regulate railroads arises from Title 49 of the United States Code section 20103 which gives the agency plenary authority over ''every area of railroad safety.'' 49 U.S.C. 20103. ''Railroad'' is defined by statute as ''all forms of non-highway ground transportation that run on rails or electromagnetic guideways * * *.'' 49 U.S.C. 20102(1). The definition excludes only rapid transit systems that operate in urban areas and are not connected to the general railroad system of transportation.[1] ''Railroad carrier'' is defined by the statute as ''a person providing railroad transportation.'' 49 U.S.C. 20102(2). For resource and policy reasons, FRA does not extend the reach of most of its regulations as far as the statute permits. (See 49 CFR Part 209, Appendix A.) In an effort to clarify the proper extent of the exercise of FRA's jurisdiction, FRA has recently settled on several principles that it will use as guidelines.

2. Programatic Approach. FRA will exercise jurisdiction over all tourist operations, whether or not they operate over the general railroad system, except those that are (1) less than 24 inches in gage and/or (2) insular. Operations with less than 24-inch gage have never been considered railroads under the Federal railroad safety laws and are generally considered miniature or imitation railroads. FRA will consider a tourist operation insular if its operations are limited to a separate enclave in such a way that there is no reasonable expectation that the safety of any member of the public—except a business guest, a licensee of the tourist operation or an affiliated entity, or a trespasser—would be affected by the operation. An operation will *not* be considered insular if one or more of the following exists on its line: a public highway-rail crossing that is in use; an at-grade rail crossing that is in use; a bridge over a public road or waters used for commercial navigation; or a common corridor with a railroad, i.e., its operations are within 30 feet (track centers) of those of any railroad. Thus, the mere fact that a tourist operation is not connected to the general railroad system would not make it insular under these criteria. While these criteria will tend to sort out the insular theme parks and museums, there will still be a need to do case-by-case analysis in some close situations.

3. How the Safety Regulations Apply. If the railroad operates on the general system, all statutes and regulations apply unless and until any appropriate waiver has been applied for and granted. Of course, FRA generally lacks authority to waive statutory requirements. However, note that a mere physical connection to a general system railroad does not necessarily make the tourist or historic railroad part of the general system, unless its operations extend onto the general system or the connecting general system railroad operates on its property. The fact that the tourist or historic railroad acts as a shipper or consignee of rail rolling stock delivered from or to the connecting railroad does not make the shipper/consignee a general system railroad, so long as the two operations are kept physically separate to ensure safety. FRA Regional Administrators are authorized to evaluate means of separating tourist and historic railroads from the general system so as to ensure no interference between freight and passenger operations. Examples might include use of a locked derail, locked or spiked switch, or temporary removal of a section of rail when tourist or historic passenger operations are being conducted. Some railroads are neither insular nor part of the general system (*i.e.*, stand-alone lines with no freight traffic). For these railroads, only the following regulations and statutory provisions apply: (a) 49 U.S.C. 20102, 20301, 20302, 20502–20505, 20902, 21302, 21304 (formerly 45 U.S.C. 1, 2, 4, 9, 11 of the Safety Appliance Act and 45 U.S.C. 22 of the Locomotive Inspection Act); (b) Federal signal inspection laws, 49 U.S.C. 20102, 20502–20505, 20902, 21302, 21304; (c) Hazardous materials regulations (49 CFR Parts 171–179); (d) FRA's procedural regulations at 49 CFR Parts 209, 211, and 216; (e) Noise emission regulations (49 CFR Part 210); but note that the regulations do NOT apply to steam locomotives; (f) Freight car safety standards (49 CFR Part 215) applicable only to standard gage lines; (g) Accident/incident reporting regulations (49 CFR Part 225); (h) Hours of Service restrictions on duty hours (but NOT reporting or record keeping); (i) Steam locomotive inspection regulations (49 CFR

[1] ''General railroad system of transportation'' is defined at 49 CFR Part 209, Appendix A as: ''the network of standard gage railroads over which the interchange of goods and passengers throughout the nation is possible.''

Part 230); (j) Grade crossing signal system safety regulations (49 CFR Part 234); and (k) All general power and enforcement provisions of the rail safety statutes (*e.g.*, subpoena authority, civil penalty authority, disqualification authority, and emergency order authority). Thus, there are many FRA regulations that do not presently apply to tourist railroads that are not operated over the general system. However, FRA's emergency order authority permits it to address a true safety emergency arising from conditions (*e.g.*, the proper functioning of air brakes) covered by those regulations or any other regulations (*e.g.*, the track safety standards) that do not apply outside of the general system. Thus, even off-the-system tourist railroads should understand that FRA has *jurisdiction* to inspect their operations and to take emergency action if those operations pose an imminent hazard of death or injury.

Appendix B to Part 230—Inspection Requirements

The lists in this appendix are intended as guidance only. Adherence to this list does not relieve the steam locomotive owner and/or operator of responsibility for either: (1) completing the inspection and maintenance requirements described in this part; or (2) ensuring that the steam locomotive, tender and its parts and appurtenances are safe and suitable for service.

Daily Inspection Requirements; § 230.13

1. Observance of lifting pressure of the lowest safety valve.
2. Testing of water glasses and gauge cocks.*
3. Inspection of tubular water glass shields.
4. Inspection of all cab lamps.*
5. Inspection of boiler feedwater delivery systems.*
6. Inspection of lagging for indication of leaks.
7. Inspection for leaks obstructing vision of engine crew.
8. Observance of compressor(s) and governor to ascertain proper operation.*
9. Inspection of brake and signal equipment.*
10. Inspection of brake cylinders for piston travel.
11. Inspection of foundation brake gear.
12. Inspection of sanders.*
13. Inspection of draw gear and chafing irons.
14. Inspection of draft gear.
15. Inspection of crossheads and guides.
16. Inspection of piston rods and fasteners.
17. Inspection of main, side, and valve motion rods.
18. Inspection of headlights and classification lamps.*
19. Inspection of running gear.
20. Inspection of tender frames and tanks.
21. Inspection of tender trucks for amount of side bearing clearance.

Note: All items marked (*) should be checked at the beginning of each day the locomotive is used.

31 Service Day Inspection Requirements; § 230.14

1. Washing of boiler.
2. Cleaning and inspection of water glass valves and gauge cocks.
3. Cleaning, washing and inspection of arch tubes, water bar tubes, circulators and siphons.
4. Removal and inspection of all washout and water tube plugs.
5. Testing of all staybolts.
6. Removal, cleaning and inspection of fusible plugs (if any).

92 Service Day Inspection Requirements; § 230.15

1. Removal and testing of all air and steam gauges.
2. Cleaning of steam gauge siphon pipe.
3. Renewal of tubular water glasses.
4. Testing and adjusting of safety relief valves.
5. Testing of main reservoir and brake cylinder leakage.
6. Entering and inspection of tender tank interior.

Annual Inspection Requirements; § 230.16

1. Testing of thickness of arch and water bar tubes (arch brick to be removed)
2. Hydrostatic testing of boiler.
3. Testing of all staybolts.
4. Interior inspection of boiler.
5. Thickness verification of dry pipes.
6. Smoke box inspection.
7. Main reservoir hammer or UT testing and hydrostatic testing (for non-welded and drilled main reservoirs)
8. Removal and inspection of steam locomotive drawbar(s) and pins (NDE testing other than merely visual)
9. Inspection of longitudinal lap joint boiler seams.

5 Year Inspection Requirements; § 230.16

1. Inspection of flexible staybolt caps and sleeves.

1472 Service Day Inspection Requirements; § 230.17

1. Removal of boiler flues (as necessary) and cleaning of boiler interior.
2. Removal of jacket and lagging and inspection of boiler interior and exterior.
3. Hydrostatic testing of boiler.
4. Thickness verification (boiler survey) and recomputation and update of steam locomotive specification card, (FRA Form No. 4).

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Appendix C to Part 230 - FRA Inspection Forms

FRA Form No. 1 **31 and 92 Service Day Inspection Report**

Date of Inspection_____ Owner_____ Operator_____ Locomotive Initials_____ Locomotive No._____

31 and 92 Service Day Requirements

Instructions: Non-complying conditions shall be repaired and this report approved before the locomotive is returned to service. Where condition is called for, enter either: **(1) Good -** No defects which could be discovered by a reasonable inspection; **(2) Fair -** Functioning less than optimally but safe and suitable and not in violation of the regulations; or **(3) Poor -** Not in compliance with the regulations. In any case **N/A** means - not applicable.

Was boiler washed?_____
Were water gauge and valve passages cleaned?_____
Were gauge cock passages cleaned?_____
Were all washout plugs removed and inspected?_____
Were arch tubes, circulators, siphons and water bar tubes cleaned and inspected?_____
Were fusible plugs removed, cleaned & inspected?_____
Were staybolts hammer tested?_____
Were all broken staybolts replaced?_____
Were steam leaks repaired?_____
Condition of draft system and draw gear._____
Condition of running gear._____
Condition of driving gear._____
Condition of spring/equalizing system._____
Condition of tender running gear._____
Condition of brake equipment._____
Were injectors tested and in good condition?_____
Was feedwater pump tested and in good condition?_____

92 Service Day Requirements

Date of previous 92 Service Day Inspection_____
Safety relief valves pop at_____psi_____psi_____psi
Were all steam gauges tested?_____
Were all air brake gauges tested?_____
Were steam gauge siphon pipe(s) cleaned?_____
Were tubular water glasses renewed?_____
Were air compressor(s) orifice tested?_____
Was main reservoir tested for leakage?_____
Were brake cylinders tested for leakage?_____
Was tender tank entered and inspected?_____
If no 92 Service Day Inspection is done, enter number of service days used since last 92 Service Day Insp._____

_____ The above work has been performed and the report is approved._____
INSPECTOR OFFICER IN CHARGE

_____
INSPECTOR

FRA Form No. 2

Daily Locomotive Inspection Report

Date of Inspection_____ Owner_____ Operator_____ Locomotive Initials_____ Locomotive No._____

Instructions: Non-complying conditions shall be repaired and this report approved before locomotive is returned to service. This report shall be filed even if no non-complying conditions are reported, however it does not have to be approved before the locomotive is returned to service if no non-complying conditions are reported. Locomotive, including its tender and appurtenances, shall be inspected each day it is offered for use.

Repairs needed:	**Repairs done by:**

CONDITION OF WATER GLASSES:_____ _____

CONDITION OF AIR COMPRESSOR:_____

CONDITION OF GAUGE COCKS:_____

MAIN RESERVOIR PRESS.: HP_____**psi, LP**_____**psi**

CONDITION OF INJECTORS / PUMPS:_____

BRAKE PIPE PRESSURE:_____ _____**psi**

BOILER SAFETY VALVE LIFTS AT:_____**psi**

LOCOMOTIVE BRAKE PIPE LEAKAGE:_____**lbs. per minute**

SEATS AT:_____**psi**

CONDITION OF BRAKES:_____

CONDITION OF PISTON ROD AND VALVE STEM PACKING_____

CONDITION OF SANDERS:_____

Where condition is called for enter:

Good - No defects which could be discovered by a reasonable inspection.
Fair - Functioning less than optimally but is in safe and suitable condition, and not in violation of the rules.
Poor - Not in compliance.
N/A - Not applicable.

Inspector's signature:_____ **Occupation:**_____

The above work has been performed, except as noted, and the report is **approved by:**_____

_____ **Occupation**

_____ **Date Approved**

Note: Additional items may be added to this form if desired.

FRA Form No. 3 **Annual Inspection Report**

Date of Inspection_____ Owner_____ Operator_____ Locomotive Initials_____ Locomotive No._____

Instructions: Non-complying conditions shall be repaired and this report approved before the locomotive is returned to service. Where condition is called for, enter either: **(1) Good -** No defects which could be discovered by a reasonable inspection; **(2) Fair -** Functioning less than optimally but safe and suitable and not in violation of the regulations; or **(3) Poor -** Not in compliance with the regulations. In any case **N/A** means - not applicable.

Boiler hydrostatically tested to _____psi, at a water temperature of _____degrees F.

Was boiler washed?_____
Were water gauge and valve passages cleaned?_____
Were gauge cock passages cleaned?_____
Were all washout plugs removed and inspected?_____
Were arch tubes, circulators, siphons and water bar tubes cleaned and inspected?_____
Thickness of arch tubes_____; Water bar tubes_____
Dry pipe thickness_____;Circulator thickness_____
Were water column passages cleaned and inspected?_____
Was boiler entered and inspected?_____
Were drilled flexible staybolt telltale holes tested?_____
Were staybolts hammer tested?_____
Were all broken staybolts replaced?_____
Were longitudinal lap seams inspected?_____
Was smoke box entered and inspected?_____
Safety relief valves pop at_____psi_____psi_____psi
Were injectors tested and in good condition?_____
Was feedwater pump tested and in good condition?_____
Were all steam gauges tested?_____

Were steam gauge siphon pipe(s) cleaned?_____
Were steam leaks repaired?_____
Were tubular water glasses renewed?_____
Were fusible plugs removed, cleaned & inspected?_____
Flexi caps removed on (date)_____
Were all air brake gauges tested?_____
Main reservoir hydro_____psi, hammer_____
NDE_____, Drilled_____
Were brake cylinders tested for leakage._____
Was main reservoir tested for leakage._____
Were air compressor(s) orifice tested?_____
Condition of driving gear._____
Condition of running gear._____
Condition of draft system and draw gear._____
Condition of spring/equalizing system._____
Condition of brake equipment._____
Condition of tender running gear._____
Was tender tank entered and inspected?_____

_____
INSPECTOR

_____
INSPECTOR

The above work has been performed and the report is approved._____
OFFICER IN CHARGE

Locomotive Air Brake Cleaning, Testing and Inspection Record

EQUIPMENT	SERVICE PERIOD	Previous Inspection	Current Annual Date	Inspection Date	Inspection Date	Inspection Date	Inspection Date	Notes
AIR COMPRESSOR ORIFICE TEST	92 service day							
AIR GAUGES	92 service day							
MAIN RESERVOIR LEAKAGE	92 service day							
BRAKE CYLINDER LEAKAGE	92 service day							
FILTERS	Annual Inspection							
DIRT COLLECTORS	Annual Inspection							
MAIN RESERVOIR HYDRO, HAMMER, NDE	Annual Inspection							
BRAKE VALVES	368 service days or second							

FRA Form No. 4

BOILER SPECIFICATION CARD

Locomotive No._____; **Boiler No.**_____; **Date built**_____
Boiler built by:_____
Owned by:_____
Operated by:_____
Type of boiler:_____; **Dome, where located:**_____

BOILER SURVEY DATA

Where **condition** is called for, use: **New** - New material at the time of the boiler survey; **Good** - Little or no wear and/or corrosion; **Fair** - Obvious wear and/or corrosion.

Boiler Shell Sheets

Material:	Type of Material (wrought iron, carbon steel, or alloy steel)	Carbon Content	Condition
1st course (front)	_____	_____	_____
2nd course	_____	_____	_____
3rd course	_____	_____	_____
Rivets	_____	n/a	n/a

Documentation of how material was determined shall be attached to this form.

Measurements:		At Seam	Thinnest	
Front flue sheet,	thickness	n/a	_____	
1st course,	thickness	_____,	_____,	ID_____,ID_____
2nd course,	thickness	_____,	_____,	ID_____,ID_____
3rd course,	thickness	_____,	_____,	ID_____,ID_____

When courses are not cylindrical give ID at each end

Is boiler shell circular at all points?_____
If shell is flattened, state location and amount_____
Are all flattened areas of shell stayed adequately for the pressure allowed by this form?_____

Water Space at Mud Ring: Sides_____, Front_____, Back_____
Width of water space at sides of fire box measured at center line of boiler: Front_____, Back_____

Firebox and Wrapper Sheets

Firebox sheets:	Thickness	Material	Condition	
Rear flue sheet	_____	_____	_____	Crown
	_____	_____	_____	
Sides	_____	_____	_____	
Door	_____	_____	_____	
Combustion chamber	_____	_____	_____	
Inside throat	_____	_____	_____	
Wrapper sheets:				
Throat	_____	_____	_____	
Back head	_____	_____	_____	
Roof	_____	_____	_____	
Sides	_____	_____	_____	

Steam Dome

Dome is made of _____pieces (not including seam welts, if any), Top opening diameter_____
Middle cylindrical portion - ID_____ , Opening in boiler shell, longitudinally - _____

Dome sheets:	Thickness	Material	Condition
Base	_____	_____	_____
Middle cylindrical portion	_____	_____	_____
Top	_____	_____	_____
Lid	_____	_____	_____
Boiler shell liner for steam dome opening:	_____	_____	_____

Is liner part of longitudinal seam?_____

Arch Tubes, Flues, Circulators, Thermic Siphons, Water Bar Tubes, Superheaters, and Dry Pipe

Arch tubes: OD_____, wall thickness_____; number _____; condition_____

Flues:
OD_____, wall thickness_____, length_____; number_____; condition_____
OD_____, wall thickness_____, length_____; number_____; condition_____
OD_____, wall thickness_____, length_____; number_____; condition_____

Circulators: OD_____, wall thickness_____; number _____; condition_____

Thermic siphons: number_____; plate thickness_____; condition_____
neck OD_____, neck thickness_____; condition_____

Water bar tubes: OD_____, wall thickness_____

Superheater units directly connected to boiler with no intervening valve:
Type_____, Tube OD_____, wall thickness_____; number_____; condition_____

Dry pipe subject to pressure:
OD_____, wall thickness_____, material_____; condition_____

Stay Bolts, Crown Bar Rivets, and Braces

Stay bolts:
Smallest crown stay diameter_____, avg. spacing_____X_____; condition_____
Smallest stay bolt diameter_____, avg. spacing_____X_____ ; condition_____
Smallest combustion chamber stay bolt dia._____,
avg. spacing_____X_____; condition_____

Measurement at smallest diameter

Crown bar bolts & rivets:
Roof sheet rivets, smallest dia._____, ave. spacing_____X_____; condition_____
Roof sheet bolts, smallest dia._____, ave. spacing_____X_____; condition_____
Crown sheet rivets, smallest dia._____, ave. spacing_____X_____; condition_____
Crown sheet bolts, smallest dia._____, ave. spacing_____X_____;condition_____

Braces:			Total Cross Sectional Area of Braces	
	Number	Total Area Stayed	Actual	Equivalent Direct Stay
Backhead	_____	_____	_____	_____
Throat sheet	_____	_____	_____	_____
Front tube sheet	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

Safety Valves, Heating Surface, and Grate Area

Safety valves: Total number of safety valves on locomotive_____

Valve Size	Manufacturer	No. valves of this size and manufacture

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Heating Surface:

Heating surface, as part of a circulating system in contact on one side with water or wet steam being heated and on the other side with gas or refractory being cooled, shall be measured on the side receiving heat.

Firebox and Combustion Chamber	_____	square feet
Flue Sheets (less flue ID areas)	_____	square feet
Flues	_____	square feet
Circulators	_____	square feet
Arch Tubes	_____	square feet
Thermic Siphons	_____	square feet
Water Bar Tubes	_____	square feet
Superheaters (front end throttle only)	_____	square feet
Other	_____	square feet
Total Heating Surface	_____	square feet

Grate area:_____square feet

Water Level Indicators, Fusible Plugs, and Low Water Alarms

Height of lowest reading of gauge glasses above crown sheet:_____ _____

Height of lowest reading of gauge cocks above crown sheet:_____

Is boiler equipped with fusible plug(s)? _____, number_____

Is boiler equipped with low water alarm(s)? _____, number_____

Calculations

Staybolt stresses:

Stay bolt under greatest load, maximum stress _____psi
Location_____
Crown stay under greatest load, maximum stress _____psi
Location_____
Combustion chamber stay bolt under greatest load, maximum stress _____psi
Location_____

Braces:

Round or rectangular brace under greatest load, maximum stress _____psi
Location_____
Gusset brace under greatest load, maximum stress _____psi
Location_____

Boiler shell plate tension:

Greatest tension on net section of plate in longitudinal seam _____psi
Location (course #)_____ ; Seam Efficiency_____

Boiler plate and components, minimum thickness required @ tensile strength:

Front tube sheet	_____@_____	Rear flue sheet	_____@_____
1st course at seam	_____@_____	1st course not at seam	_____@_____
2nd course at seam	_____@_____	2nd course not at seam	_____@_____
3rd course at seam	_____@_____	3rd course not at seam	_____@_____
Roof sheet	_____@_____	Crown sheet	_____@_____

Side wrapper sheets	_____@_____	Firebox side sheets	_____@_____
Back head	_____@_____	Door sheet	_____@_____
Throat sheet	_____@_____	Inside throat sheet	_____@_____
Combustion chamber	_____@_____	Dome, top	_____@_____
Dome, middle	_____@_____	Dome, base	_____@_____
Arch tubes	_____@_____	Dome, lid	_____@_____
Water bar tubes	_____@_____	Thermic siphons	_____@_____
Dry pipe	_____@_____	Circulators	_____@_____

If tensile strength used is greater than 50,000 psi for steel or greater than 45,000 psi for wrought iron, supporting documentation must be furnished.

Boiler Steam Generating Capacity: _____pounds per hour

The following may be used as a guide for estimating steaming capacity:

Pounds of Steam Per Hour Per Square Foot of Heating Surface:

Hand fired	8 lbs. per hr.
Stoker fired	10 lbs. per hr.
Oil, gas or pulverized fuel fired	14 lbs. per hr.

Record of Alterations

Description of Alteration	Date of Alteration

Record of Waivers

Waiver No.	Section No. Affected	Scope and Content of Waiver

Calculations done by:_____; Verified by:_____

Data used to verify the foregoing specifications is current and accurate. Based upon the information contained in this document and all necessary calculations, this boiler of Locomotive (Initial & number)_____ is safe for a working pressure of _____psi.

_____ Date_____; _____ Date_____

Locomotive Owner **Locomotive Operator**

Make working sketch here or attach drawing of longitudinal and circumferential seams used in shell of boiler, indicating on which courses used and give calculated efficiency of weakest longitudinal seam.

FRA Form No. 5 **Locomotive Service Day Record**

Locomotive Initial and No.__________________ **owned by** ___________________________________ and **operated by**___________________________________was placed in service following a 1472 Service Day Inspection on (start date)_________. This locomotive shall not be operated after (date)_________, or it shall not be operated after it has accumulated 1472 service days from the above start date, whichever comes first, at which time it shall be due for a 1472 Service Day Inspection.

	Year															
Serv. days since last insp.																
Annual Date																
Serv. days since last insp.																
31 Service Day Date																
Serv. days since last insp.																
31 Service Day Date																
Serv. days since last insp.																
92 Service Day Date																
Serv. days since last insp.																
31 Service Day Date																
Serv. days since last insp.																
31 Service Day Date																
Serv. days since last insp.																
92 Service Day Date																
Serv. days since last insp.																
31 Service Day Date																
Serv. days since last insp.																
31 Service Day Date																
Serv. days since last insp.																
92 Service Day Date																
Serv. days since last insp.																
31 Service Day Date																
Serv. days since last insp.																
31 Service Day Date																
Serv. days since last insp.																
Annual Date																
TOTAL																

A copy of this record shall be filed with the Regional Administrator after 31 December and prior to 31 January of each year.

Signed__________________________**Officer in Charge**

FRA Form No. 19

Report of
ALTERATION ☐
or
Welded or Riveted REPAIR ☐

Locomotive Initials_____ **Locomotive No.**_____; **Boiler No.**_____;

Owned by _____

Operated by _____

Date work completed_____

Description of work:_____

Stress Calculations:

Remarks:_____

Attach drawings used in the repair or alteration or make drawings on back of this form.

Work done by:_____;

Certified by:_____

BILLING CODE 4910–06–C

Appendix D to Part 230—Diagrams and Drawings [Reserved]

Note: The text of this appendix will be included when this part is published as a final rule.

Appendix E to Part 230—Civil Penalty Schedule [Reserved]

Note: The text of this appendix will be included when this part is published as a final rule.

Issued in Washington, D.C. on August 28, 1998.

Jolene M. Molitoris,

Administrator.

[FR Doc. 98–23856 Filed 9–24–98; 8:45 am]

BILLING CODE 4910–06–P

Federal Register

Friday
September 25, 1998

Part III

Department of Agriculture

Rural Housing Service
Rural Business-Cooperative Service
Rural Utilities Service
Farm Service Agency

7 CFR Part 1980

Implementation of Preferred Lender Program and Streamlining of Guaranteed Regulations; Proposed Rule

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Part 1980

RIN: 0560–AF38

Implementation of Preferred Lender Program and Streamlining of Guaranteed Regulations

AGENCY: Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, and Farm Service Agency, USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend the regulations governing the Farm Service Agency Guaranteed Farm Loan Programs. It proposes to clarify and simplify the procedures to apply for, make, and service an FSA Guaranteed Loan. This rule also proposes to establish the Preferred Lender Program.

DATES: Comments on this proposed rule, or comments on alternatives to this proposal, must be received on or before October 26, 1998 to be given full consideration.

ADDRESSES: Submit written comments to the Farm Service Agency, U.S. Department of Agriculture, Farm Loan Programs Loan Making Division, Attention: Director, Room 5438–S, 1400 Independence Avenue, SW, STOP 0522, Washington, DC 20250–0522. All written comments received in connection with this rule will be available for public inspection 8:15 am–4:45 pm, except holidays, at 1400 Independence Avenue, SW, Washington, DC 20250–0522.

Comments on the information collection requirements of this proposed rule must be sent to the Office of Management and Budget (OMB) or the Department at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Steven K. Ford, Senior Loan Officer, Farm Service Agency; telephone: 202–720–3889; Facsimile: 202–690–1117; E-mail: sford@wdc.fsa.usda.gov

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be significant and was reviewed by the Office of Management and Budget under Executive Order 12866.

This rule substantially streamlines FSA's forms and procedures implementing the Guaranteed Loan Program. By making FSA's Guaranteed Loan Program more consistent with standard practices used within the lending industry, lenders will be more willing to use the program. This will increase the availability of commercial credit for family size farmers.

FSA currently guarantees repayment on approximately 65,000 farm loans to 40,000 farmers. Each year, FSA receives 15,000 request for new loans. By reducing the application burden on lenders, and making FSA rules more consistent with industry practices, we expect lenders will increase requests for loan guarantees by 25%, or an additional $395 million. This means an additional 3000 farmers will be able to receive commercial credit. These farmers would otherwise have gone without credit or required assistance through FSA's Direct loan programs.

The Agency is requesting comments regarding the accuracy of the projected benefits described above as well as any actual benefits experienced by farmers or lenders affected by these program changes.

Regulatory Flexibility Act

The Agency certifies that this rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Pub. L. 96–534, as amended (5 U.S.C. 601). An insignificant number of guaranteed loan borrowers and no lenders are small entities. This rule does not impact the small entities to a greater extent than large entities.

Environmental Impact Statement

It is the determination of the issuing agency that this action is not a major Federal action significantly affecting the environment. Therefore, in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, and 7 CFR part 1940, subpart G, an Environmental Impact Statement is not required.

Executive Order 12988

This proposed rule has been reviewed in accordance with E.O. 12988, Civil Justice Reform. In accordance with this rule: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule: and (3) administrative proceedings in accordance with 7 CFR parts 11 and 780 must be exhausted before bringing suit in court challenging action taken under this rule unless those regulations specifically allow bringing suit at an earlier time.

Executive Order 12372

For reasons set forth in the Notice to 7 CFR, part 3015, subpart V (48 FR 29115, June 24, 1983), the programs and activities within this rule are excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, requires Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments or the private sector. Agencies generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures of $100 million or more in any 1 year for State, local, or tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule.

The rule contains no Federal mandates, as defined under title II of the UMRA, for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Paperwork Reduction Act

The amendments to 7 CFR part 1980 contained in this proposed rule make several revisions to the information collection requirements that were previously approved by OMB under the provisions of 44 U.S.C. chapter 35. Comments regarding the following issues should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 and to Steve Ford, Senior Loan Officer, USDA, FSA, Farm Loan Programs Loan Making Division, Farm Service Agency, USDA, 1400 Independence Avenue, SW, STOP 0522, Washington, D.C. 20013–0522: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of

appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments regarding paperwork burden will be summarized and included in the request for OMB approval of the information collection. All comments will also become a matter of public record.

Good cause is shown for a comment period of less than 60 days because of the need to accelerate the availability of assistance under this program. Numerous natural disasters throughout the country have reduced farm production and income which has resulted in deteriorating financial conditions for numerous producers. As a result of those deteriorating financial conditions, we anticipate an increased demand for guaranteed farm loans. The proposed streamlined regulations will enable the Agency to serve the needs of the financially stressed farmers and their lenders more quickly and efficiently; therefore it is justified to implement the proposed guaranteed farm loan changes as soon as possible.

Title: 7 CFR 1980, subpart B, Farmer Program Loans.

OMB Control Number: 0560–0155.

Expiration Date of Approval: March 31, 1998.

Type of Request: Request for Comments.

Abstract: The information collected under OMB Control Number 0560–0155, as identified above, is needed in order for FSA to effectively administer its guaranteed farm loan programs. The information is collected by the FSA loan official in consultation with participating commercial lenders. The basic objective of the guaranteed loan program is to provide credit to applicants who are unable to obtain credit from lending institutions without a guarantee. The reporting requirements imposed on the public by the regulations set out in 7 CFR part 1980, subpart B, are necessary to administer the guaranteed loan program in accordance with statutory requirements of the Consolidated Farm and Rural Development Act and are consistent with commonly performed lending practices. Collection of information after loans are made is necessary to protect the Government's financial interest.

This proposed rule will reduce information requirements which are imposed on the public. Savings will be reflected in (1) reduced loan origination and servicing requirements under the new Preferred Lender program, (2) reduced application requirements for loans under $50,000, (3) reduced historical financial and production history requirements for all lenders, (4) more flexible appraisal requirements, and (5) simplified borrower default procedures. However, increased information requirements are necessary with new regulatory authorities. Additional financial information will be required when a lender is requesting a partial release, subordination, or a release from liability. This information was not needed previously because the authority to grant these actions did not exist in regulation.

Estimate of Burden: Public reporting burden for the collection of information in this regulation is estimated to average .71 hours per response.

Respondents: Commercial Banks, Farm Credit System, farmers and ranchers.

Estimated Number of Respondents: 5500 lenders, 15,000 loan applicants.

Estimated Number of Responses per Respondent: 52.26 per lender, 1 per loan applicant.

Estimated Total Annual Burden on Respondents: 212,218.75.

Discussion of the Proposed Rule

General Changes

The regulations governing the FSA guaranteed farm loan programs are being totally revised in the following manner. First, the requirements in subpart A, of part 1980, which contains general provisions for farm loan guarantees, community program guarantees and business and industry loan guarantees, applicable to Guaranteed Farm Program Loans, will be incorporated into subpart B, and subpart A will no longer be applicable to farm loan guarantees.

Second, Subpart B is being rewritten and reorganized into a more logical structure. Under current regulations, many topics are addressed in different locations. For example, loan collateral requirements are contained in sections 1980.108, 1980.175, 1980.180, and 1980.185. Current and proposed sections of this subpart do not correspond directly since it is being rewritten entirely and program rules are being revised throughout. Thus, the Agency has not prepared a side by side comparison of current and planned provisions. If a comparison is desired, current regulations are available by inquiring at the address above.

Third, clarity, readability and structure is being improved, and policies are being explained or simplified. The Agency has identified several provisions as vague and confusing over the years through inquiries from lenders and Agency field personnel. Provisions have been added where the regulation is currently silent and to clarify those requirements that frequently cause confusion. However, the requirements for interest assistance are not being revised in this proposed rule. The interim rule published at 56 FR 8258–8272 (February 28, 1991) will be finalized in a separate final rule, and Exhibit D to subpart B of 1980 will be removed from the **Federal Register**.

Finally, specific references to use of FSA County Committees in the guaranteed farm loan program regulations are being eliminated. Current plans are to not have these committees involved in the guaranteed farm loan program. Should that policy change, however, the definition of ''Agency'' is broad enough to include these committees too. Proposed substantive changes to program rules are discussed below by subject matter.

Conflict of Interest

Lender reporting requirements for actual or potential conflicts of interest as currently covered by the lender's agreement are clarified. The Agency defines what it considers an actual or potential conflict of interest to be reported, based on the degree of relationship or association between the lender, applicant, or FSA employees. The Agency hopes to reduce lender confusion by clarifying what is considered a reportable relationship. When the Agency determines that potential conflicts of interest exist, the regulation provides lenders flexibility to develop safeguards to control potential conflicts of interest. This was felt to be less onerous of a burden than prohibiting all loans where a potential conflict of interest exists. The new section also restricts directors and employees of lenders and FSA employees from deliberations, decisions, and actions that impact loans where they have a personal interest. This restriction is also applied to defined relatives, associates and entities of the restricted individuals. This section was developed to clarify and enhance existing restrictions and enhance consistency of application. The section attempts to be minimally restrictive while assuring that high levels of objectivity are maintained in dealing with loans to directors or employees and their relatives and business associates.

Certified Lender Program

An interim rule was published on June 24, 1994, [58 FR 34302–34342] to implement a Certified Lender Program (CLP) for Guaranteed Operating loans (OL) as required by § 339(c) of the Consolidated Farm and Rural Development Act (Act). This Act did not

include Farm Ownership (FO) or Soil and Water (SW) loans in the CLP nor did it address the relationship between the Approved Lender Program (ALP) and the CLP. The primary benefits to being a CLP were (1) the ability to certify to, rather than provide, supporting documentation for loan requests, (2) reduced application requirements, (3) faster Agency response times, and (4) streamlined line of credit procedures.

The CLP was established largely due to problems with the ALP. The ALP provided lenders with a less burdensome application, but did not establish a strict set of criteria for eligibility as the CLP does. This caused several Agency offices to over-scrutinize the ALP applications, resulting in excessive paperwork and unacceptably lengthy processing times. We propose to expand the CLP under the general rule making authority of § 339(a) of the Act to include FO loans. The Agency supports expansion to cover SW loans, but has removed all references to guaranteed SW loans because the Agency has not received appropriations for SW loans since 1994 and does not anticipate future appropriations for these guaranteed loans. Almost all lenders active in the guaranteed loan program make and service both OL and FO loans. If the Agency trusts the lender to properly make an OL loan, it is difficult to justify imposing additional requirements on the lender for an FO loan. The risk for the Agency is not increased by incorporating FO loans into the CLP. The performance of CLP lenders has been good. Losses on Guaranteed OL loans made by Standard Eligible lenders has averaged 1.47 percent, while losses in the CLP averaged only .78 percent. The decision processes are very similar for OL and FO loans. Requiring a separate application process and additional documentation for FO loans from CLP lenders reduces lender acceptability of the guaranteed loan program.

The criteria for lenders to gain and retain CLP status also are clarified in the proposed rule. Only one change to the criteria for having status revoked is being proposed with this rule—failure to repurchase a loan that was sold on the secondary market upon request from the holder. A vibrant secondary market for FSA guarantees is integral to the continued growth and effectiveness of our program. In order to protect the integrity of the secondary market for FSA guaranteed loans, the Agency has adhered to a policy of universal buyback from holders upon default, when the original lender refuses to do so. Unfortunately, this Agency policy has resulted in some lenders using the secondary market as a means to avert risk rather than as a liquidity or earnings tool as intended. The Agency has little recourse for inadequate handling of a loan when a lender refuses to repurchase from holders. Also, the borrower is denied the benefit of loan servicing actions unless the guaranteed portion is not held by the Government. Therefore, the Agency proposes that a Certified or Preferred lender repurchase a defaulted loan or a loan that needs servicing from a holder in order to maintain that status.

Approved Lender Program

Since the CLP provides FSA's best lenders with additional authority and less paperwork, there is no longer a need for the less effective ALP, and we propose to eliminate the program. The Agency cannot reasonably offer lenders enough different combinations of benefits, such as faster approval time, reduced application requirements, and increased authorities to differentiate between four levels of lender status (standard eligible, approved, certified, and preferred). The application process will be less confusing and burdensome to the lenders and Agency employees with fewer levels of lender status. Therefore, the Agency will no longer enter into new ALP agreements and expiring agreements will not be renewed. ALP lenders may continue to participate in the program as Standard Eligible Lenders or qualify for CLP or Preferred Lender Program (PLP) status.

Certified and Preferred Lender Programs

Section 339(d) of the Act requires the Agency to implement a Preferred Lender Program (PLP). The statutory provision also requires the Agency to automatically approve loans not acted upon within 14 days of receipt of an application from a Preferred lender. Provisions of that section also require CLP loans to be acted upon by the Agency within 14 days; however, the Agency is not penalized for failure to act within that time period. Additional statutory provisions related to being a Preferred Lender include an 80 percent guarantee, permitting the lender to make all decisions concerning credit worthiness, the closing, monitoring, collection and liquidation of loans and to provide appropriate certifications that the borrower is in compliance with all requirements of law and regulation. In contrast, statutory provisions for the CLP permit Certified Lenders to make certifications regarding creditworthiness, repayment ability, and adequacy of collateral, but do not give the lender the authority to make all decisions on these issues or the closing, collection and liquidation of guaranteed loans.

The PLP lender will be given the maximum authority possible. The Agency cannot, however, give the lender authority to approve FSA guaranteed loans without prior Agency review. Section 339(c)(5) of the Act maintains the Agency's responsibility to certify eligibility, review financial information, and otherwise assess an application. Therefore, approval authority must remain with the Agency.

Because of the automatic approval provisions, the requirements to become a PLP lender will be more strict, but will follow closely with the CLP criteria and cover experience with, and knowledge of the program and performance measured through losses and quality of applications and servicing. Section 339(d) of the Act requires PLP lenders to establish knowledge of, experience under, and demonstrate proficiency in the CLP program before obtaining PLP status. The Agency proposes for PLP lenders to have made a minimum of 20 CLP loans and have a loss rate of not more than 3 percent. This compares with 10 guaranteed loans and no more than a 7 percent loss rate to hold CLP status. This PLP loss rate is established at a level that will permit the Agency to grant PLP status to one percent of its approximately 2500 lenders that make guaranteed farm loans each year.

The approval of CLP status has been based primarily on these objective quantity and loss rate criteria with minimal reliance on loan origination and servicing performance. CLP criteria will be strengthened in this proposed rule to require the lender to have submitted substantially complete and correct applications and serviced guaranteed loans according to Agency regulations.

For PLP, in addition to the objective quantity and loss rate criteria, even stronger performance criteria are proposed for loan origination and servicing quality. Through Agency review of previous applications and lender file reviews, the Agency must determine that there have been no major errors and no recurring minor errors in the loan applications submitted as a CLP lender. Major errors are those which could directly affect the soundness of a loan. In addition, PLP lenders must have a history of using the guaranteed program for new loans, instead of refinancing the lender's existing debts. While the Agency does not want to restrict lenders from using the program for authorized purposes, we are concerned about lenders using the

program excessively to reduce their existing exposure. This may also reflect lender capability to assess loan quality.

The main difference between PLP lenders and other lenders will be the Agency's approval of the lender's credit management system when PLP status is granted. In the past, the Agency has required its Approved and Certified lenders to process and service loans and maintain their files according to the same set of Agency regulations. PLP lenders, however, will be allowed to propose to the Agency how they intend to process and service loans. The Agency will review and approve these proposals to assure that the lender is utilizing prudent lending practices and is protecting the Government's interests. Loan documentation, underwriting rules and processes, and servicing procedures will differ between PLP lenders. Since these are the industry's elite lenders, the Agency is allowing them this additional flexibility.

The items to be submitted to the Agency with the loan application will be substantially simplified for PLP lenders. The PLP lender's credit management system will outline what procedures that lender will follow to originate guaranteed loans. A guarantee request may consist of a one page FSA loan application form and a complete loan narrative. The narrative, outlining the 5 ''C's'' of credit; character, capacity, collateral, capital, and conditions, must provide the necessary information to permit FSA to adequately assess the application. The PLP is certifying that the loan was processed as proposed in their application for PLP status. In addition, the PLP lender will receive an automatic approval of the guarantee if no response is given within 14 calendar days, as required by the Act. This approval will be contingent on the availability of funds, as are all Agency approvals now.

In the case of servicing activities, a similar policy is proposed. PLP lenders will service the account in accordance with their agreement with the Agency at the time of PLP certification. CLP lenders are given reduced paperwork burdens and greater authority in the following areas: CLP lenders only perform annual analyses if needed based on the financial strength of the borrower, and only a narrative analysis need be submitted to the Agency. They are not required to notify the Agency upon completion of construction, repair, or land development. The Agency also will consider CLP and PLP lenders' request for subordination, partial release, or transfer and assumption within 14 (versus 30 for standard eligible lenders) calendar days from the receipt of a complete request. CLP lenders must obtain Agency prior written approval of restructuring only in the case of writedown. For other restructuring actions, the CLP lender need only provide certification of regulatory compliance, a narrative and copies of any calculations.

All of the changes to a lender's loan servicing authorities made by this rule are intended to be retroactive, unless otherwise noted in the rule. After the effective date of this rule, servicing authority will be based on the lender's status and the requirements of this rule without regard for the date the loan was closed. That is to say that a lender's authority to conduct servicing activities, obtain Agency concurrence, or provide the Agency documentation and reports on a particular loan at a given time, is based on the lender's status when they desire to take the action and not based on the lender's status at the time the loan was closed. When a lender is awarded Preferred status, they must certify that they have serviced the loans in their portfolio as required by the applicable regulations, servicing agreements, and loan agreements. If a status is revoked, future actions on a loan will be as required for standard eligible lenders, although the loan may have been closed while Preferred status was in effect.

Lender Eligibility

The Agency is considering allowing certain non-traditional financial entities to be eligible to make FSA guaranteed loans. Currently, a lender must be regulated by a State or Federal government body, such as the State banking commissioner, the Federal Reserve, or the Office of Thrift Supervision. We also guarantee loans made by Government Sponsored Enterprises, like the Farm Credit System and state agencies, such as the Vermont Economic Development Authority. This requirement was initially broad enough to permit most major agricultural lending organizations to participate in the Guaranteed loan program. Recently, however, certain nontraditional lenders, such as machinery manufacturers, agricultural supply firms, and others have acquired a significant share of the agricultural credit market. To assist us in considering this proposal, we are specifically asking for comments regarding the reasons for or against such action and any limitations the Agency should include.

The Agency will also add a requirement that lenders agree to provide credit information to consumer and commercial credit reporting agencies, as appropriate. This requirement is mandated by the Debt Collection Improvement Act of 1996 (31 U.S.C. 3711).

Year 2000 Compliance

The Agency is considering adding a requirement that lenders have computer systems which are Year 2000 compliant. This requirement is needed because of the potential risk to the Agency from lenders servicing Guaranteed loans using inadequate computer systems. The Agency is requesting comments on the impact of such a requirement.

Loan Application Forms and Regulations

The Agency plans to further shorten its guaranteed application form and reduce application requirements to minimize burden on all lenders applying for guarantees and their borrowers. Several requirements have been eliminated such as the need for the lender to submit copies of all leases and contracts, and the requirement to submit detailed legal documentation on all entity borrowers. In addition to requirements for individuals, entity borrowers will only be required to submit a list of members with personal balance sheets. Corporate charters, joint operation agreements, articles of incorporation, etc, will no longer be required. The Agency believes lending standards are sufficiently established to permit the lender to review the customary documents and determine their effect on the soundness of a loan. It is the lender's responsibility to ensure the loan applicant has authority to operate in their state and they have the security interest in the items of collateral they propose.

The amount of historical documentation will be reduced to conform closer to industry standards. Currently, the Agency requires 5 years of financial and production documentation, while most commercial agricultural lenders use 3 years of financial records and many do not rely on production records at all. While some additional requirements are necessary because of the additional risk inherent in a loan requiring a guarantee, the additional material that has been requested does not significantly improve the quality of the loan officers' decisions. This is indicated by strong loan portfolio performance of experienced private industry lenders who do not use the additional information. This rule proposes that lenders with CLP or PLP status will not be required to obtain specific documentation on an applicant's production history. CLP and PLP lenders are certifying that the cash flow

budget in the application is based on the loan applicant's history. Since these are proven lenders, the Agency will not dictate whether this is to be based on production records, income statements, or a combination of the two. The Agency also proposes to reduce the requirement for financial records from 5 to 3 years to reflect industry standards.

The Agency feels that the documentation requirements needed to support the loan decision generally should be left to the lender's judgment and prudent credit administration practices. However, for lenders that are less active in the guaranteed program, those without CLP or PLP status, the Agency needs more documentation to complete an adequate analysis. Reduction of the documentation requirements should increase participation in the guaranteed program, reduce demand for more costly direct loans, and provide funding to areas currently under served. Therefore, we choose to retain the requirement for obtaining both production and financial records, but reduce the amount required to 3 years.

The Agency also plans to further reduce the application requirements for small loans as directed by 333A(g) of the Act. When implementing this change for loans under $50,000, the Agency did not reduce the amount of documentation the lender must obtain, it only reduced the documentation the lender must submit to the Agency. It is not reasonable for the Agency to require the lender to put the same time and effort into a $25,000 loan as a $400,000 loan. Lenders find it more difficult to justify their processing costs for the income received on small loans, therefore, they avoid small loans and leave the smaller farmers under served. The Agency proposes to reduce the verification and historical documentation requirements on these small loans. However, the lender would be required to perform at least the same level of documentation and review as they do on their non-guaranteed loans under $50,000, and complete an application form with a cash flow budget and balance sheet. Supporting financial and production history and verifications would not be required unless the lender obtains this for their non-guaranteed loans. This reduced documentation requirement will increase the availability of credit to small farmers. Should the lender begin to experience increased loss claims, we have included a provision to permit the Agency to require full financial and production documentation and verification at its discretion to make eligibility and approval decisions.

Packager Requirements

Many parts of the country are served by management consultants, record keeping firms, and similar companies that actively promote the guaranteed loan program. These firms or individuals are often hired by producers and lenders to provide assistance on debt and financial management and assemble or ''package'' FSA guaranteed loan applications. The Agency is concerned about loan packagers charging excessive fees to prepare guaranteed loan applications. Therefore, it proposes to restrict loan processing or packaging fees to those charged non-guaranteed customers for similar transactions. The Agency has had a long-standing limitation on fees charged by lenders, but has had no similar requirement for fees charged by independent loan packagers. The Agency recognizes the benefits loan packagers provide and knows that most are reasonably priced. We also recognize the variation in costs in different parts of the country due to appraisal requirements and competition among packagers. However, with the simplified forms, reduced application requirements, and software packages available, lenders should be able to process guaranteed applications in the same manner that they do other agricultural loans. Also, Agency personnel are able to assist lenders and loan applicants in completing applications through the Market Placement Program at no charge.

Environmental Requirements

Various environmental requirements have been clarified to better define Agency and lender responsibilities and update program regulations to reflect statutory and regulatory changes regarding floodplains. Pursuant to the National Flood Insurance Reform Act of 1994 and implementing regulations, 60 FR 35286—35289 (July 6, 1995), the Agency is requiring the lender to use the standard flood hazard determination form to decide whether improved real estate or mobile home security is located in a floodplain. The Agency, not the lender, is responsible for compliance with the National Environmental Policy Act and must diligently seek the information it needs to comply. The lender has the responsibility to properly monitor a loan applicant's operation as it relates to environmental laws. A guarantee remains valid only so long as the lender acts prudently. The lender must provide Agency officials with any information on the loan applicant's operation that may impact compliance with environmental and other laws. The final determination on National Environmental Policy Act issues are required to be made by the Agency.

A provision will be added concerning lender requirements in relation to hazardous substances. Lenders must perform ''due diligence'' in evaluating any real estate security for contamination from the release of hazardous substances, petroleum products, or other environmental hazards and determining the effect of such contamination on the security value of the property. This change is necessary to assure accurate valuation of security for guaranteed loans. Hazardous waste contamination may substantially lower the value of any real estate security and may be hidden or overlooked. Evidence of due diligence must be shown by the most current version of the American Society of Testing and Materials (ASTM) Transaction Screen Questionnaire, supplemented as necessary by the ASTM Phase I Environmental Site Assessments form, or similar documentation. Lenders will maintain due diligence documentation in the applicant or borrower loan file and provide the Agency with copies upon request.

Loan Limits

No changes are proposed by this rule to the existing statutory limits of $300,000 for the Guaranteed FO program and $400,000 for the Guaranteed OL program—$700,000 combined.

Collateral

The Agency plans to consolidate and add flexibility to its collateral regulations. Over the years, additional collateral requirements were adopted for certain loans to address specific situations. This has culminated in a very confusing, and often conflicting regulation. We plan to reduce these detailed constraints to a clearer, more flexible set of requirements. The type of security for each loan has been clarified to permit any collateral as long as the life and depreciation rate of the collateral will not cause the loan to be undersecured. The amount of collateral required and basic restrictions that protect the government's interest will not be reduced. In fact, the more flexible guidance may lead to more secure loans as lenders use collateral which is appropriate for the situation without being constrained by regulatory requirements. The Agency anticipates that the proposed change will result in increased participation in the guaranteed program and decreased

demand on FSA's more costly direct loan program.

The Agency also will have authority to grant an exception to any of the security requirements if the repayment of the loan will not be impaired and the proposed action is in the Government's best interest. This will permit quality guaranteed loans to be made without jeopardizing the Government's interest.

The Agency has removed the requirement that all nonessential real estate assets be liquidated to receive a Guaranteed FO loan. This requirement was unnecessary and often put the lender and government in a difficult position of defining which assets were nonessential. The borrower will still be required to pledge the assets as collateral for the loan, and the assets will be considered when evaluating the ability to obtain credit without a guarantee.

Appraisals

The Agency proposes to permit approval of loans subject to the lenders obtaining an acceptable appraisal. In many areas of the country, appraisals are expensive and loan applicants are reluctant to incur this expense without some indication that the other factors of the loan proposal are acceptable. The lender and Agency would continue to be protected by the approval condition specifying the security required and minimum appraised value.

Also, the Agency proposes to bring its appraisal standards more in line with the private lending industry. FSA will raise its threshold to require a State Certified General Appraiser on real estate transactions from $100,000 to $250,000. Loans under $250,000 must have an appraisal using all three conventional approaches to value, and the appraiser must be acceptable to the agency. This change will permit the lenders greater use of their normal practices.

Lender's Forms

The Agency proposes to clarify its restriction against notes that contain a ''payment on demand'' clause. The lender's promissory note must still set forth a schedule of payments; however, the lender does not need to modify the ''boiler plate'' language commonly used in the industry.

Use of Line of Credit Funds

This rule proposes to revise the use of guaranteed line of credit funds in two areas. First, the Agency proposes to allow lenders to advance funds from a line of credit for a borrower to make term debt payments on capital items. This change is being made as a result of input from participating lenders who have indicated that current restrictions on this practice are contrary to normal industry practice. Many farm borrowers have automobile loans and debts with manufacturers' credit arms with payment schedules that often do not conform to the farm operation's cash flow cycle. Lenders have indicated that they would like to have the option of making such regularly occurring payments with lines of credit, instead of having to release crop proceeds, or refinance the loan with a guaranteed loan note. Such purpose is permissible under § 312(b) of the Act as an essential operating expense or other farm, ranch or home need. This change will be applicable to future lines of credit, as well as those outstanding as of the effective date of this rule, with regard to subsequent years' advances.

Second, this rule specifies that total advances on a line of credit cannot exceed the total projected credit needs indicated on the plan. This requirement is implicit in current regulations through use of the ''total credit needs'' column on plans that must be submitted with a request for guarantee. However, there is some confusion regarding this requirement, and some lenders continue to readvance on lines of credit in excess of the planned expenses with no reasonable prospects of repayment. This leaves the Agency vulnerable to unnecessary loss claim payments. This requirement will apply to all current and future lines of credit upon publication of this rule in final.

Loan Underwriting Criteria

For many years, the Agency has relied solely on the projected cash flow to determine whether a loan applicant has the financial strength to qualify for a loan, with the single determining factor being the ability to develop what the Agency has defined as a positive cash flow. The Agency is concerned that the single, typical year's projection does not adequately analyze a loan applicant's financial position, considering solvency, liquidity, and profitability. In many cases the Agency does observe and evaluate these items, but does not use them directly in the approval process. The Agency believes more comprehensive guidelines incorporating a loan applicant's balance sheet and past income statement measures should be incorporated into the approval process. Comments are requested regarding the Agency adopting more comprehensive underwriting criteria, the Agency's definition of positive cash flow, and the potential for use of credit screens.

Discussion of Loan Servicing Regulation Changes

Delinquent Account Servicing

In order to reduce the reporting burden on lenders and the review burden on Agency personnel, this rule proposes a simplified procedure for lenders to follow when a guaranteed borrower defaults on their loan. The lender must meet with a borrower within 30 days after default and determine a course of action to correct the delinquency within 90 days. The lender must inform FSA of their plans and may consult FSA officials for regulatory interpretations and ideas. However, since the Agency is not directly involved with servicing the loan, it is no longer mandatory for FSA officials to be involved in initial discussions following default. Also, a separate written summary of the default meeting is not required and may be provided on the regular default report due within 45 days of the default and every 60 days thereafter. Agency personnel will still be available to lenders for advice on complicated cases, procedural matters or regulatory guidance. This change will apply to all loans after it becomes effective.

Also, the Agency is removing the requirement that the delinquency be beyond the borrower's control because the requirement is viewed as superfluous. The Agency can find no example of a case when it would benefit a borrower to not make an installment as agreed when they have the capability to do so. Nonetheless, the lender in such a case would have the option of not requesting Agency concurrence with a restructuring action, should they feel that the borrower has exhibited a lack of good faith and the loan should be liquidated instead.

Agency Repurchase of Loans

The Agency recognizes the importance of the secondary market as a source of capital for rural credit. In this rule, we attempt to make several modifications to current policies and procedures that are intended to improve the working relationship between secondary market participants, lenders, and the Agency.

First, for all loans guaranteed after publication of this rule in final, the Agency will require a lender to repurchase the guaranteed portion of the loan unless they are physically or financially unable to complete repurchase. If a lender does not repurchase, or refuses to repurchase when they were able to, the lender's future involvement in the Agency's guaranteed loan program may be

jeopardized. Furthermore, the Agency plans to apply this requirement retroactively as a condition for maintenance of Preferred or Certified Lender status. Both for loans currently sold on the secondary market and those sold after this rule is final, status will be revoked if the lender does not repurchase a loan when requested.

Second, the Agency plans to provide a method for the Government to continue as holder of a loan when it has purchased the guaranteed portion from a secondary market holder and reimbursement from the lender is not practical. Currently, after the Agency repurchases a guaranteed loan from a secondary market holder, the lender generally must liquidate the loan to compensate the Agency for the repurchase. In some cases, the borrower may pay the loan current or file for bankruptcy protection while the repurchase is being processed. Thus, liquidation becomes inappropriate. Regardless, under current provisions the lender is required to purchase the loan back from the Agency. Under the proposed change, the Agency will be able to allow lenders to continue to receive payments on a repurchased guaranteed loan held by the Government and forward those payments to FSA, as long as the account remains current or in compliance with an approved bankruptcy plan. This change will allow the Agency to keep the loan performing, keep the affected farmers in business, and avoid the losses associated with legal action to recover the repurchase expense.

Third, in conjunction with this change, the Agency proposes to allow the lender to purchase the guaranteed portion from the Agency without recourse at the Agency's discretion.

Bankruptcy Fees

The Agency intends to allow the guarantee to cover a lender's reasonable legal fees in bankruptcy. Legal fees, when a borrower files under Chapter 7 of the bankruptcy code, will be deducted from the proceeds of the liquidation of the collateral after discharge. Lender attorney fees incurred when a borrower files under Chapter 11, 12, and 13 will be paid in the same percentage as the guarantee.

Currently, regulations do not authorize the Agency to pay attorney's fees in reorganization bankruptcies. Legal fees in reorganizations were considered ''normal'' servicing costs similar to farm visits, filing fees, documentation, and overhead and are the lender's responsibility. However, program lenders have suggested that the nature of a guarantee should be to protect the lender against any additional expenses or loss that occurs when a borrower defaults, which includes the filing under Chapter 11, 12, or 13 of the bankruptcy code. The Agency agrees. Lenders should be very actively involved in the bankruptcy legal proceedings to assure that collateral is protected, plans are realistic, and actions taken are not adverse to the interests of the borrower or the Government under the guaranteed loan.

Currently, the Agency allows legal fees necessary to repossess or foreclose collateral to be deducted as liquidation costs from collateral proceeds whether the liquidation is forcible, voluntary, or as the result of liquidation under Chapter 7 of the bankruptcy code. Reimbursement of most of the attorney fees by the Agency will provide incentive for lenders to closely monitor all cases that are in bankruptcy. Still, the Agency will not guarantee legal fees in any bankruptcy action if those fees are frivolous, unreasonable or exorbitant. Furthermore, the Agency will not include as part of any loss payment a lender's legal fees resulting from a lender liability suit or similar action.

Appraisal Expenses

Currently, the lender and FSA share equally in the cost of appraisals obtained for liquidation purposes. The Agency is proposing to allow appraisal fees to be deducted from liquidation proceeds in the case of liquidation and allow the cost of appraisals for bankruptcies to be included on the bankruptcy loss claim as applicable. Lenders will still be required to bear the cost of appraisals necessary in connection with normal servicing, such as releases, reamortization or writedown.

This change is being proposed for a number of reasons. First, this will reduce the burden on lenders by no longer requiring that a special form be completed to obtain reimbursement of the Government's share of the appraisal expense. Second, this will make payment of the fee for an appraisal consistent with Agency regulations governing payment of other expenses associated with liquidation. Finally, this change will encourage lenders to obtain an appraisal to document that the amount being obtained in the liquidation represents market value.

Partial Releases

This rule proposes to clarify provisions for partial releases of guaranteed loan collateral. Current regulations allow lenders to release security only when full market value is received or when replacement or substitute collateral is obtained. The Agency feels that this proposed change is justified for a number of reasons. First, the Agency has begun to receive more frequent requests for concurrence with releases of security without consideration and many of these requests are reasonable. For example, FSA regularly receives requests for concurrence to the release of an acre or so of land from real estate security for the borrower's child to construct a dwelling. Second, many guaranteed loans are over 10 years old and may be secured by items that have served their useful life and are now valueless. These items could be released without damaging the lender's security position. Third, the rise in farm asset values and income may have reduced the risk of loss on a guaranteed loan substantially. The lack of release provisions often prevents guaranteed lenders from doing ''business as usual'' and may place them at a competitive disadvantage. Without these provisions, the release request may be affected only by refinancing with a new loan, or through an action that would place the guarantee at risk.

In order to protect the interest of the Government, this proposal will allow releases only in farming operations where there is substantial equity (loan to value ratio of .75 or less) or in which approval would not increase the Government's exposure on its guarantee. Also, releases are intended to be for reasonable purposes, and generally releases of income-generating assets will be prohibited. For example, a partial release of productive cropland, with no consideration, simply because the borrower would like to have the property free of a mortgage or deed of trust would not be a valid request, regardless of whether the borrower's cash flow and security exceeded the requirements contained in this proposal. Also, while it is expected that a partial release of a residence may be necessary in conjunction with release of liability of a divorced spouse, it is not intended that these provisions be used to allow a member of the farm family to be given acreage, equipment, mineral rights, and other business assets without paying consideration.

Subordinations

The Agency also plans to provide authority to approve a lender's request to subordinate a guaranteed loan in certain situations. This proposal is being made for similar reasons as discussed above for partial releases. This authority will be limited to subordinations requested by a guaranteed lender to facilitate outside financing for lower-

risk guaranteed borrowers who have the opportunity to refinance higher interest debt or otherwise improve their situation. The rule proposes to allow subordinations when the Agency determines that a subordination will reduce the risk of loss to the Government. It is anticipated that such subordinations will be seldom and only approved at the National office level of the Agency.

Rescheduling Lines of Credit

The Agency intends to clearly state that when a line of credit loan is rescheduled, subsequent advances on the line of credit are not authorized. This will eliminate the partial rescheduling and advancing of line of credit loans. Current regulations are silent on this issue. Many lenders reschedule unpaid portions of lines of credit over a period of years but continue to make advances against the portion of the line of credit that was previously paid. This practice often results in the borrower not having adequate funding under the original line of credit, increased financial stress on the operation, and ultimately a loss claim. The line of credit should not take on a dual role of providing short-term and intermediate term credit. This proposal provides that rescheduled lines of credit will still not be allowed to be sold to secondary market purchasers, despite multi-year terms.

Shared Appreciation Agreements

The Agency also proposes to clarify policy and procedures for handling Shared Appreciation Agreements (SAA) that expire or are triggered. Current regulations allow the recapture amount to be rescheduled or reamortized if the borrower is unable to pay the recapture amount at the expiration date of the agreement. This rule proposes that upon recapture at any time, the lender may pay the Agency its pro rata share of the recapture due in a lump sum and pursue collection of the recapture from the borrower, or forward the Agency its pro-rata share of each payment. If the lender reamortizes the recapture debt, such debt will be covered by the guarantee only if the lender pays the Agency its pro rata share of the recapture amount first. This proposed policy will reduce the burden on lenders by making the treatment of recapture more flexible and encourage lenders to accept installment payments on recapture amounts instead of liquidating the account.

Release of Liability

The Agency plans to establish specific criteria under which lenders may release guaranteed borrowers from personal liability. This proposal is being made as a result of the advancing age of a portion of the Agency's guaranteed loan portfolio and the Agency's experiences with the silence of current regulations. Lack of clear provisions with regard to releasing obligors in cases of divorce, bankruptcy, liquidation or withdrawal from the operation has resulted in a lack of flexibility that reduces lender satisfaction with the program. In many instances of divorce, a spouse will convey all interest in the farming operation to the remaining spouse. Often this creates a need for a new guaranteed loan, use of scarce loan funds, and the payment of a guarantee fee, when a release of liability would have been a sound and reasonable alternative.

Approval of release of liability will be based on the strength of the remaining party, determined by criteria proposed in this rule. The withdrawing party will not have to document total lack of assets and income from which to collect, if the remaining party meets the established criteria. However, some restriction will apply. First, releases are not to be extended to dissolution of the farming operation. This is because guaranteed loans are to be made to eligible family farmers. When a party is quitting the operation and the remaining party does not plan to continue the farming operation, the objectives of the program are not met. Second, restrictions are proposed on releases of entity principals when the withdrawal of that principal may result in the legal dissolution of the entity to which the loans were made. The more appropriate action in those cases would be a transfer of the security to, and assumption of the debt by, the new entity or remaining party.

Consolidations of Loans

The Agency proposes to restrict the consolidation of loans made prior to October 1, 1991, to only those made before that date. Likewise, loans made on or after October 1, 1991, may only be consolidated with loans made on or after that date. This is due to restrictions placed on loan subsidies as a result of the Federal Credit Reform Act of 1990 and appropriation laws. The Agency has no budgetary authority to provide Interest Assistance for servicing purposes for those loans made after October 1, 1991, which do not have Interest Assistance obligated when the loan is made. Therefore, if loans made without Interest Assistance are consolidated with those loans that are eligible for Interest Assistance, the older loan loses Interest Assistance eligibility. Office of Management and Budget rules governing the Agency's loan subsidies dictate that when consolidation takes place the most recent loan made is the budgetary cost factor used to determine funding priorities for that loan. This action is proposed in order to reduce the likelihood of the lender and borrower inadvertently losing the Interest Assistance option. The Agency would appreciate any public comments concerning whether the benefits of a consolidation would outweigh those of interest assistance eligibility.

Final Loss Claims

Currently, the Agency accepts final loss claims on the ultimate disposition of the real property only if the Agency approves the request and documentation is provided that this method results in cost savings to the Government. The Agency proposes to allow the lender to request a final payment based on receiving full appraised value at the time they receive title to the real property, or based on final disposition after deducting the expenses associated with the receipt, maintenance and sale of the property. This gives the lender flexibility and encourages proper maintenance of the inventory property. The Agency will reduce the final loss claim for any loss caused by the lender's negligent servicing of the account.

Electronic Funds Transfer (EFT)

The liquidation section of this proposed rule will be revised to address recent legislation of EFT payments. The Federal Financial Management Act of 1994, as amended, (31 U.S.C. 3332) generally requires Federal agencies to make payments to recipients by EFT. The statute further provides that recipients designate one or more financial institutions or other authorized agents to which any Agency payments will be made and provide the Agency information as necessary for them to receive EFT payments through each institution or agent designated. Lenders may be recipients of EFT payments under this proposed rule; therefore, they must designate the institutions or agents and provide other necessary information to carry out EFT payment.

Balloon Payments With Restructuring

The Agency proposes to prohibit reamortization of loans with a balloon payment. Current regulations are silent where reamortization is concerned. Since Agency servicing regulations allow for Interest Assistance, a deferral, or a writedown of the loan, the arguments often stated for balloon payments have little relevance to

guaranteed loans. Reamortizing with a balloon payment schedule becomes self-defeating by requiring additional servicing at a definite point in the future. The Agency has found that balloon payments are often used when a guaranteed borrower's cash flow is insufficient to make an amortized principal and interest payment over normal or allowable terms for reamortization of the loan. However, even when a borrower suffers a setback that requires reamortization, future cash flow should still be sufficient to cover interest accrual and a meaningful principal reduction in the loan. If that level of cash flow is not achieved, other servicing options that may be more beneficial, such as a deferral or writedown, must be considered. Further, balloon payments are often a means for lenders to impose a restricted term on those borrowers deemed higher risk. This may result in the denial of servicing options and possibly liquidation or the need for refinancing with another lender when the balloon becomes due. To simplify the procedure and provide for the development of meaningful plans of operation that protect both the borrower and the Government, the Agency will prohibit restructuring plans from including balloon payments.

Interest Assistance and Writedowns

This rule will prohibit Interest Assistance when a guaranteed loan is being written down. Guaranteed write downs are based upon the present value of the future projected income available for payment on the loan. If Interest Assistance is approved on a loan at the time of the writedown, the calculations will result in a reduced writedown, based on the interest subsidy being provided in future years. However, Interest Assistance is awarded on an annual basis and its future availability is in question. Moreover, although the writedown loss payment may be reduced through the use of Interest Assistance, this initial loss claim savings is offset by the processing and payment of a subsidy over a possible multiple-year term. Again, the requirements for interest assistance are not being revised in this proposed rule. The interim rule published at 56 FR 8258–8272 (February 28, 1991) will be finalized in a separate final rule, and Exhibit D to subpart B of 1980 will be removed from the **Federal Register**.

Feasible Plan versus Positive Cash Flow

The Agency proposes to provide a regulatory distinction between actions requiring a debt service margin and those that do not. Ideally, a guaranteed loan borrower would continually have sufficient resources to meet all of their obligations, plus have an excess that would allow for economic setbacks and replenishment of depleted assets or replacement of capital items. Current regulations define positive cash flow as having a Term Debt and Capital Lease Coverage Ratio (TDCLCR) of 1.10, meaning the borrower has a .10 or 10 percent cushion after meeting all obligations. Strict interpretation of this provision may result in liquidation of a borrower who can demonstrate the ability to make a restructured payment. However, the Agency did not intend to require that borrowers requiring guaranteed loan servicing have an excess margin. Therefore, this rule defines a feasible plan as a TDCLCR of 1.00 and establishes this as the minimum requirement for loan servicing actions. However, the Agency recommends loans be restructured to allow for a 10 percent cushion. The Agency is requesting comments on this recommendation. A feasible plan will also be the minimum required for renewed advances on a line of credit, renewal of Interest Assistance and calculation of present value. This requirement will allow restructuring of all loans that have repayment ability. Current regulations are not clear as to what margin is required for restructuring or writing down, however, the Agency believes that to require a margin for restructuring was never the intent of the program and would require lenders to put numerous potentially successful borrowers out of business and increase government loss payments on loans.

List of Subjects in 7 CFR Part 1980

Agriculture, Loan programs—Agriculture.

Accordingly, it is proposed that 7 CFR chapter XVIII be amended as follows:

PART 1980—GENERAL

1. The authority citation for part 1980 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989 and 42 U.S.C. 1480.

Subpart A—General

2. Revise § 1980.1 to read as follows:

§ 1980.1 Purpose.

This subpart contains the general regulations and prescribed forms which are applicable to Community Programs Guaranteed Loans under subpart I of this part.

3. Amend § 1980.6 as follows:

a. Remove in paragraph (a) the definitions of ''Conditional Commitment (Farmer Programs) (Form FmHA or its successor agency under Public Law 103-354 1980–15),'' ''Contract of Guarantee (Line of Credit) (Form FmHA or its successor agency under Public Law 103–354 1980–27),'' ''Guaranteed line of credit,'' ''Insured loans,'' and ''Line of credit agreement'';

b. Remove in paragraph (a), in the definition of ''Guaranteed loan,'' the phrase ''or Form FmHA 1980–38,'';

c. Remove in paragraph (b), the abbreviations ''ASCS,'' ''CLP,'' ''EM,'' ''FO,'' ''OL,'' ''OL–Y,'' ''RL,'' and ''SW''; and

d. In paragraph (a), remove the definition of ''Lender's Agreement (Forms FmHA or its successor agency under Public Law 103–354 449–35 or 1980–38)'' and add a new definition to read as follows:

§ 1980.6 Definitions and abbreviations.

(a) * * *

Lender's Agreement (Form RD 449–35). The signed agreement between Rural Development and the lender setting forth the lender's loan responsibilities when the Loan Note Guarantee is issued.

* * * * *

§ 1980.11 [Amended]

4. Amend § 1980.11 as follows:

a. In the first sentence, remove the phrase ''and Contract of Guarantee'' and revise the word ''constitute'' to read ''constitutes'';

b. In the second sentence, remove the phrase '',Contract of Guarantee'';

c. In the fifth sentence, remove the phrase ''or Contract of Guarantee''; and

d. Remove the third and sixth sentences.

5. Amend § 1980.13 as follows:

a. In the introductory text to paragraph (b), remove the fourth sentence; and

b. Revise paragraph (b)(4) to read as follows:

§ 1980.13 Eligible lenders.

* * * * *

(b) * * *

(4) Conflict of interest. The Agency shall determine whether such ownership or business dealings are sufficient to likely result in a conflict of interest. All lenders will, for each proposed loan, inform the Agency in writing and furnish such additional evidence as the Agency requested as to whether and the extent for those loans covered by Form RD 449–35, the lender or its principal officers (including immediate family) or the borrower or its principals or officers (including immediate family) hold any stock or

other evidence of ownership in the other.

* * * * *

6. Amend the fourth sentence of the introductory paragraph of § 1980.20(a) to read as follows:

§ 1980.20 Loan Guarantee Limits.

(a) * * * Also, the maximum loss covered by Form FmHA 449–34 (available in any Agency office) can never exceed the lesser of:

* * * * *

7. Revise § 1980.21 to read as follows:

§ 1980.21 Guarantee fee.

The fee will be the applicable rate multiplied by the principal loan amount multiplied by the percent of guarantee, paid one time only at the time the Loan Note Guarantee is issued.

(a) The fee will be paid to the Agency by the lender and is nonreturnable. The lender may pass on the fee to the borrower.

(b) Guarantee fee rates are specified in exhibit K of Rural Development Instruction 440.1 (available in any Rural Development Office).

8. Amend § 1980.22 as follows:

a. In the introductory text of paragraph (b) and in paragraph (b)(3), remove the phrase ''or Contract of Guarantee''; and

b. Revise paragraph (a) to read as follows:

§ 1980.22 Charges and fees by lender.

(a) Routine charges and fees. The lender may establish the charges and fees for the loan, provided they are the same as those charged other applicants for similar types of transactions. ''Similar types of transactions'' means those transactions involving the same type of loan requested for which a non-guaranteed loan applicant would be assessed charges and fees.

* * * * *

§ 1980.46 [Removed and reserved]

9. § 1980.46 is removed and reserved.

§ 1980.60 [Amended]

10. Amend § 1980.60 as follows:

a. In the heading, remove the phrase ''or Contract of Guarantee'';

b. In the introductory text of paragraph (a) in the second sentence, remove the phrase ''For all other loans, Form FmHA or its successor agency under Public Law 103–354'' and in its place add ''Form'' and remove the first sentence;

c. In paragraph (a)(1), remove the phrases ''or line of credit'' and ''or Conditional Commitment for Contract of Guarantee'';

d. In paragraphs (a)(6) and (a)(7), remove the phrases ''or line of credit'';

e. In paragraph (a)(9), remove the phrase ''joint operation, (for Farmer Program loans only),'';

f. In paragraphs (a)(10) and (a)(11), remove the phrases ''or Conditional Commitment for Contract of Guarantee'';

g. In paragraph (a)(12), remove the second sentence;

h. In paragraph (b), remove the phrase ''or Contract of Guarantee''; and

i. In paragraph (c), remove the phrase at the end ''or Form FmHA or its successor agency under Public Law 103–354 1980–38''.

§ 1980.61 [Amended]

11. Amend § 1980.61 as follows:

a. In the heading, remove the phrase '', Contract of Guarantee'';

b. In the first sentence of paragraph (a)(1), remove the phrase ''Except for Farmer Programs loans, the'' and add in its place ''The'';

c. Remove paragraph (a)(2) in its entirety and redesignate paragraph (a)(3) as paragraph (a)(2), respectively;

d. In newly redesignated paragraph (a)(2), remove the phrase ''or Contract of Guarantee;''

e. In paragraph (b)(1) remove the phrase ''or Form FmHA or its successor agency under Public Law 103–354 1980–38'';

f. In paragraphs (b)(3) and (4), remove the phrases ''or § 1980.119 of subpart B of this part'';

g. Remove paragraph (c) and redesignate paragraphs (d) through (h) as paragraphs (c) through (g), respectively;

h. In newly redesignated paragraph (c), remove the last sentence;

i. In newly redesignated paragraph (d), remove the phrase ''or Contract of Guarantee'' from the first sentence;

j. In newly redesignated paragraph (f), remove the phrase ''or Contract of Guarantee''

k. In newly redesignated paragraph (g), remove the phrases ''or Form FmHA or its successor agency under Public Law 103–354 1980–38'' and ''the Contract of Guarantee,'' from the last sentence.

§ 1980.62 [Amended]

12. Amend § 1980.62 as follows:

a. In the first and third sentences, remove the phrase ''or § 1980.119 of subpart B of this part''; and

b. Remove the last sentence.

§ 1980.63 [Amended]

13. Amend § 1980.63(a) to remove the phrase ''or I.D.6. of Form FmHA or its successor agency under Public Law 103–354 1980–38''.

§ 1980.64 [Amended]

14. Amend § 1980.64 as follows:

a. In paragraph (a), remove the phrase ''or paragraph I.D.6. of Form FmHA or its successor agency under Public Law 103–354 1980–38''; and

b. In paragraph (b), remove the two occurrences of the phrase ''or line of credit.''

§ 1980.65 [Amended]

15. Amend § 1980.65 to remove the phrase '', or for Farmer Programs Loans, § 1980.136 of subpart B of this part''.

§ 1980.66 [Amended]

16. Amend § 1980.66 to remove the phrase '', or paragraph I.D.6.(b) of Form FmHA or its successor agency under Public Law 103–354 1980–38''.

§ 1980.67 [Amended]

17. Amend § 1980.67 as follows:

a. In paragraph (a), remove the first sentence; and

b. In paragraph (b), remove the phrase ''or line of credit''.

§ 1980.68 [Amended]

18. Amend § 1980.68 as follows:

a. In the heading, remove the phrase ''or Contract of Guarantee'';

b. In the first sentence, remove the phrase ''or Contract(s) of Guarantee'';

c. In the second sentence in the parentheticals, remove the phrase '', or paragraph 6 of Form FmHA or its successor agency under Public Law 103–354 1980–27'';

d. In the third sentence, remove the phrases ''or line(s) of credit,'' ''or Contract(s) of Guarantee,'' and ''or Form FmHA or its successor agency under Public Law 103–354 1980–27''; and

e. Remove the last two sentences.

§ 1980.83 [Amended]

19. Amend § 1980.83 to remove the second sentence.

§ 1980.84 [Amended]

20. Amend § 1980.84 as follows:

a. Remove the phrases ''Contract of Guarantee'' and ''or Contract of Guarantee'' from the first sentence of paragraph (b)(1)(iv);

b. Remove the phrase ''Contract of Guarantee'' from paragraph (b)(1)(v); and

c. Remove the phrase ''or § 1980.119 of subpart B of this part'' from the first and fourth sentences in paragraph (b)(4).

Appendices D–L to Subpart A [Removed]

21. Amend part 1980, subpart A to remove Appendices D through L.

22. In subpart B, § 1980.101 is revised to read as follows:

§ 1980.101 Introduction.

(a) Scope. This subpart contains regulations governing Operating Loans

and Farm Ownership loans guaranteed by the Farm Service Agency. This subpart applies to lenders, holders, borrowers, Agency personnel, and other parties involved in making, guaranteeing, holding, servicing, or liquidating such loans.

(b) Policy. The Agency issues guarantees on loans made to qualified loan applicants without regard to race, color, religion, sex, national origin, marital status, age, or physical or mental handicap, provided the loan applicant can enter into a legal and binding contract, or whether all or part of the applicant's income derives from any public assistance program or whether the applicant, in good faith, exercises any rights under the Consumer Protection Act.

(c) Lender list and classification.

(1) The Agency maintains a current list of lenders who express a desire to participate in the guaranteed loan program. This list is made available to farmers upon request.

(2) Lenders who participate in the Agency guaranteed loan program will be classified into one of the following categories:

(i) Standard Eligible Lender under § 1980.105,

(ii) Certified Lender, or

(iii) Preferred Lender under § 1980.106.

(d) Type of Guarantee. There are two types of guarantees issued under the Farm Loan Programs Guaranteed Loan Program:

(1) Loan Note Guarantee. A Loan Note Guarantee is used for a loan of fixed amount and term.

(2) Contract of Guarantee. A Contract of Guarantee is only available for Operating Loan lines of credit. The Contract of Guarantee has a fixed term, but no fixed amount. The principal amount outstanding at any time, however, may not exceed the line of credit ceiling contained in the contract.

(e) Termination of Loan Note Guarantee or Contract of Guarantee. The Loan Note or Contract of Guarantee will automatically terminate as follows:

(1) Upon full payment of the guaranteed loan. A zero balance within the period authorized for advances on a line of credit will not terminate the contract of guarantee;

(2) Upon payment of a final loss claim; or

(3) Upon written notice from the lender to the Agency that a guarantee is no longer desired provided the lender holds all of the guaranteed portion of the loan. The Loan Note or Contract of Guarantee will be returned to the Agency office for cancellation within 30 days of the date of the notice by the lender.

23. Sections 1980.102 through 1980.105 are added to read as follows:

§ 1980.102 Abbreviations and definitions.

(a) Abbreviations:

CLP—Certified Lender Program
CONACT—Consolidated Farm and Rural Development Act (7 U.S.C. 1921 *et seq.*)
EPA—Environmental Protection Agency
EIS—Environmental Impact Statement
EM—Emergency loans
FO—Farm Ownership loans
FSA—Farm Service Agency
OL—Operating loans
PLP—Preferred Lender Program
SW—Soil and Water
USDA—United States Department of Agriculture

(b) Definitions:

Additional security. Collateral in excess of that needed to fully secure the loan.

Agency. The Farm Service Agency, including its employees and state and area committee members, and any successor agency.

Allonge. An attachment or an addendum to a note.

Applicant. For guaranteed loans, the lender requesting a guarantee is the applicant. The party applying to the lender for a loan will be considered the loan applicant.

Aquaculture. The husbandry of aquatic organisms in a controlled or selected environment. An aquatic organism is any fish, amphibian, reptile, or aquatic plant. An aquaculture operation is considered to be farm only if it is conducted on the grounds which the loan applicant owns, leases, or has an exclusive right to use. An exclusive right to use must be evidenced by a permit issued to the loan applicant and the permit must specifically identify the waters available to be used by the loan applicant only.

Assignment of guaranteed portion. A process by which the lender transfers the right to receive payments or income on the guaranteed loan to another party, usually in return for payment in the amount of the loan's guaranteed principal. The lender retains the unguaranteed portion in its portfolio and receives a fee from the purchaser or assignee to service the loan, and receive and remit payments according to a written assignment agreement. This assignment can be reassigned or sold multiple times.

Average farm customers. Those conventional farm borrowers who are required to pledge their crops, livestock, and other chattel and real estate security for the loan. This does not include those high-risk farmers with limited security and management ability who are generally charged a higher interest rate by conventional agricultural lenders. Also, this does not include those low-risk farm customers who obtain financing on a secured or unsecured basis, who have as collateral items, such as savings accounts, time deposits, certificates of deposit, stocks and bonds, and life insurance, which they are able to pledge for the loan.

Beginning farmer or rancher. A beginning farmer or rancher is an individual or entity who:

(1) Meets the loan eligibility requirements for OL or FO loan assistance, as applicable, in accordance with this subpart;

(2) Has not operated a farm or ranch, or who has operated a farm or ranch for not more than 10 years. This requirement applies to all members of an entity;

(3) Will materially and substantially participate in the operation of the farm or ranch:

(i) In the case of a loan made to an individual, individually or with the immediate family, material and substantial participation requires that the individual provide substantial day-to-day labor and management of the farm or ranch, consistent with the practices in the county or State where the farm is located.

(ii) In the case of a loan made to an entity, all members must materially and substantially participate in the operation of the farm or ranch. Material and substantial participation requires that the individual provide some amount of the management, or labor and management necessary for day-to-day activities, such that if the individual did not provide these inputs, operation of the farm or ranch would be seriously impaired;

(4) Agrees to participate in any loan assessment, borrower training, and financial management programs required by Agency regulations;

(5) Does not own real farm or ranch property or who, directly or through interests in family farm entities owns real farm or ranch property, the aggregate acreage of which does not exceed 25 percent of the average farm or ranch acreage of the farms or ranches in the county where the property is located. If the farm is located in more than one county, the average farm acreage of the county where the loan applicant's residence is located will be used in the calculation. If the loan applicant's residence is not located on the farm or if the loan applicant is an entity, the average farm acreage of the

county where the major portion of the farm is located will be used. The average county farm or ranch acreage will be determined from the most recent Census of Agriculture developed by the U.S. Department of Commerce, Bureau of the Census or USDA;

(6) Demonstrates that the available resources of the loan applicant and spouse (if any) are not sufficient to enable the loan applicant to enter or continue farming or ranching on a viable scale; and

(7) In the case of an entity:

(i) All the members are related by blood or marriage; and

(ii) All the stockholders in a corporation are beginning farmers or ranchers.

Borrower. An individual or entity which has outstanding obligations to the lender under any Agency loan program. A borrower includes all parties liable for Agency debt, including collection-only borrowers, except those whose total loan and accounts have been voluntarily or involuntarily foreclosed or liquidated, or who have been discharged of all Agency debt.

Collateral. Property pledged as security for a loan to ensure repayment of an obligation.

Conditional Commitment. The Agency's commitment to the lender that the material it has submitted is approved subject to the completion of all conditions and requirements contained therein.

Consolidation. The combination of outstanding principal and interest balance of two or more OL loans.

Controlled. When a director or employee has more than a 50 percent ownership in the entity or, the director or employee, together with relatives of the director or employee, have more than a 50 percent ownership.

Cooperative. An entity which has farming as its purpose and whose members have agreed to share the profits of the farming enterprise. The entity must be recognized as a farm cooperative by the laws of the State in which the entity will operate a farm.

Cosigner. A party who joins in the execution of a promissory note to assure its repayment. The cosigner becomes jointly and severally liable to comply with the terms of the note. In the case of an entity loan applicant, the cosigner cannot be a member, partner, joint operator, or stockholder of the entity.

Debt writedown. To reduce the amount of the borrower's debt to that amount that is determined to be collectible based on an analysis of the security value and the borrower's ability to pay.

Deferral. A postponement of the payment of interest or principal or both.Principal may be deferred in whole or in part.

Direct loan. A loan made to a borrower and serviced by the Agency as lender.

Entity. Cooperatives, corporations, partnerships, or joint operations.

Family farm. A farm which:

(1) Produces agricultural commodities for sale in sufficient quantities so that it is recognized in the community as a farm rather than a rural residence;

(2) Provides enough agricultural income by itself, including rented land, or together with any other dependable income to enable the borrower to:

(i) Pay necessary family living and operating expenses;

(ii) Maintain essential chattel and real property; and

(iii) Pay debts;

(3) Is managed by:

(i) The borrower when a loan is made to an individual; or,

(ii) The members, stockholders, partners, or joint operators responsible for operating the farm when a loan is made to an entity;

(4) Has a substantial amount of the labor requirement for the farm and nonfarm enterprise provided by:

(i) The borrower and the borrower's immediate family for a loan made to an individual; or

(ii) The members, stockholders, partners, or joint operators responsible for operating the farm, along with the families of these individuals, for a loan made to an entity; and

(5) May use a reasonable amount of full-time hired labor and seasonal labor during peak load periods.

Farm. A tract or tracts of land, improvements, and other appurtenances which are used or will be used in the production of crops, livestock, or aquaculture products for sale in sufficient quantities so that the property is recognized as a farm rather than a rural residence. The term ''farm'' also includes any such land and improvements and facilities used in a nonfarm enterprise. It may also include the residence which, although physically separate from the farm acreage, is ordinarily treated as part of the farm in the local community.

Feasible plan. A plan for loan servicing purposes which shows the elements of ''positive cash flow'' except that the minimum acceptable ''Term Debt and Capital Lease Coverage Ratio'' is 1.0 rather than 1.1 required for ''positive cash flow.'' However, it is strongly recommended that any servicing action provide for a Term Debt and Capital Lease Coverage Ratio of 1.1.

Financially viable operation. A financially viable operation is one which, with Agency assistance, is projected to improve its financial condition over a period of time to the point that the operator can obtain commercial credit without further Agency direct or guaranteed assistance. A borrower that will meet the Agency classification of ''commercial,'' as defined in Agency Instruction 2006–W, available in any Agency office, will be considered to be financially viable. Such an operation must generate sufficient income to:

(1) Meet annual operating expenses and debt payments as they become due;

(2) Meet basic family living expenses to the extent they are not met by dependable nonfarm income;

(3) Provide for replacement of capital items; and

(4) Provide for long-term financial growth.

Fish. Any aquatic, gilled animal commonly known as ''fish'' as well as mollusks, or crustaceans (or other invertebrates) produced under controlled conditions (that is, feeding, tending, harvesting, and such other activities as are necessary to properly raise and market the products) in ponds, lakes, streams, or similar holding areas.

Fixture. Generally a chattel item attached to real estate in such a way that it cannot be removed without defacing or dismantling the structure, or substantially damaging the structure itself.

Graduation. The Agency's determination that a borrower on a direct loan, is financially stable enough to refinance that loan with a commercial lender with or without a guarantee.

Guaranteed loan. A loan made and serviced by a lender for which the Agency has entered into a Lenders Agreement and for which the Agency has issued a Loan Note Guarantee. This term also includes lines of credit except where otherwise indicated.

Hazard insurance. Includes fire, windstorm, lightning, hail, explosion, riot, civil commotion, aircraft, vehicles, smoke, builder's risk, public liability, property damage, flood or mudslide, workers compensation, or any similar insurance that is available and needed to protect the security, or that is required by law.

Holder. The person or organization other than the lender who holds all or a part of the guaranteed portion of an Agency guaranteed loan but who has no servicing responsibilities. When the lender assigns a part of the guaranteed loan to an assignee, the assignee becomes a holder when an Assignment form is executed.

In-house expenses. Expenses associated with credit management and loan servicing. In-house expenses include, but are not limited to: employee salaries, staff lawyers, travel, supplies, and overhead.

Joint operation. Individuals that have agreed to operate a farm or farms together as a business unit. The real and personal property is owned separately or jointly by the individuals. For example, husband and wife who apply for a loan together will be considered a joint operation. Joint operations include limited liability companies having more than one member.

Land development. Items such as terracing, clearing, leveling, fencing, drainage and irrigation systems, ponds, forestation, permanent pastures, perennial hay crops, basic soil amendments, and other items of land improvements which conserve or permanently enhance productivity.

Lender. The organization making and servicing the loan or advancing and servicing the line of credit which is guaranteed under the provisions of Agency regulations. The lender is also the party requesting a guarantee.

Lender's Agreement. The appropriate Agency form executed by the Agency and the lender setting forth the general loan responsibilities of the lender and agency when the Loan Note Guarantee or Contract of Guarantee is issued.

Lien. A legally enforceable hold or claim on the property of another obtained as security for the repayment of indebtedness or an encumbrance on property to enforce payment of an obligation.

Liquidation expenses. The cost of an appraisal, environmental assessment, outside attorney fees and other costs incurred as a direct result of liquidating the security for the guaranteed loan. Liquidation fees do not include in-house expenses.

Loan or Line of Credit Agreement. A document which contains certain lender and borrower agreements, conditions, limitations, and responsibilities in a process of credit extension and acceptance in a loan format where loan principal balance may fluctuate throughout the term of the document.

Loan Applicant. The party applying to a lender for a guaranteed loan or line of credit.

Loss Claim. A request made to the Agency by a lender to receive a reimbursement based on a percentage of the lender's loss on a loan covered by an Agency guarantee.

Majority interest. Any individual or a combination of individuals owning more than a 50 percent interest in a cooperative, corporation, joint operation, or partnership.

Market value. The amount which an informed and willing buyer would pay an informed and willing but not forced seller in a completely voluntary sale.

Mortgage. An instrument giving the lender a security interest or lien on real or personal property of any kind.

Negligent servicing. The failure to perform those services which would be considered normal industry standards of loan management or failure to comply with any servicing requirement of this subpart. The term includes the concept of a failure to act or failure to act timely consistent with actions of a reasonable lender in loan making, servicing, and collection.

Net recovery value. The estimated future value of security property that has been taken into inventory, exposed to prevailing market conditions and sold based on the properties highest and best use at the time of the sale less the Government's costs of liquidation, property maintenance, and disposition.

Nonessential asset. Assets in which the borrower has an ownership interest that do not contribute an income to pay essential family living expenses or maintain a sound farming operation, and are not exempt from judgment creditors.

Participation. A loan arrangement where a primary or lead lender is typically the lender of record but the loan funds may be provided by one or more other lenders due to loan size or other factors. Typically, participating lenders share in the interest income or profit on the loan based on the relative amount of the loan funds provided after deducting the servicing fees of the primary or lead lender.

Partnership. Any entity consisting of two or more individuals who have agreed to operate a farm as one business unit. The entity must be recognized as a partnership by the laws of the State in which the entity will operate and must be authorized to own both real estate and personal property and to incur debts in its own name.

Positive cash flow. The ability of a borrower's operation to demonstrate: a Term Debt and Capital Lease Coverage Ratio of at least 1.1; and a Capital Replacement and Term Debt Repayment Margin equal to or greater than any planned capital asset purchases not financed. The Term Debt and Capital Lease Coverage Ratio and the Capital Replacement and Term Debt Repayment Margin are calculated in the following manner:

(1) Add projected net farm operating income, projected annual nonfarm income, projected capital depreciation and amortization expenses, scheduled annual interest on term debt, and scheduled annual interest on capital leases.

(i) Net farm operating income is the gross income generated by a farming operation annually, minus all yearly operating expenses (including withdrawals from entities for living expenses), operating loan interest, interest on term debt and capital lease payments, and depreciation and amortization expenses. Net farm operating income does not include off-farm income and social security taxes, carryover debt and delinquent interest.

(ii) Depreciation and amortization expenses are an annual allocation of the cost or other basic value of tangible capital assets, less salvage value, over the estimated life of the unit (which may be a group of assets), in a systematic and rational manner.

(iii) Capital leases are agreements under which the lessee effectively acquires ownership of the asset being leased. A lease is a capital lease if it meets any one of the following criteria:

(A) The lease transfers ownership of the property to the lessee at the end of the lease term.

(B) The lessee has the right to purchase the property for significantly less than its market value at the end of the lease.

(C) The term of the lease is at least 75 percent of the estimated economic life of the leased property.

(D) The present value of the minimum lease payments equals or exceeds 90 percent of the fair market value of the leased property.

(2) Subtract from this sum projected annual income and social security tax payments, including any delinquent taxes, and family living expenses. The difference is the Balance Available for Term Debt Repayment.

(i) Family living expenses are any withdrawals from income to provide for needs of family members.

(ii) Family members are considered to be the immediate members of the family residing in the same household with the individual borrower, or, in the case of an entity, with the operator.

(3) Divide the Balance Available for Term Debt Repayment by the sum of the annual scheduled principal and interest payments on term debt, plus the annual scheduled principal and interest payments on capital leases, excluding delinquent installments. The quotient is the Term Debt and Capital Lease Coverage Ratio.

(4) Add the Balance Available for Term Debt Repayment to any cash carryover from the preceding year.

(5) Subtract from this sum the amount of the Total Annual Scheduled Term Debt and Capital Lease Payments, and any debt carried over from the previous year. The difference is the Capital Replacement and Term Debt Repayment Margin.

Potential liquidation value. The amount of the lender's protective bid at the foreclosure sale. Potential liquidation value is determined by an independent appraiser using comparables from other forced liquidation sales.

Present value. The present worth of a future stream of payments discounted to the current date.

Primary security. The minimum amount of collateral needed to fully secure a proposed loan.

Principals of borrowers. Includes owners, officers, directors, entities and others directly involved in the operation and management of a business.

Protective advances. Advances made by a lender to protect or preserve the collateral itself from loss or deterioration. Protective advances include but are not limited to:

(1) Payment of delinquent taxes,

(2) Annual assessments,

(3) Ground rents,

(4) Hazard or flood insurance premiums against or affecting the collateral,

(5) Harvesting costs,

(6) Other expenses needed for emergency measures to protect the collateral.

Reamortization. To rearrange the rates or terms, or both, of a loan made for real estate purposes.

Related by blood or marriage. Individuals who are connected to one another as husband, wife, parent, child, brother, or sister.

Relative. An individual or spouse and anyone having the following relationship to either: parent, son, daughter, sibling, stepparent, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, uncle, aunt, nephew, niece, grandparent, granddaughter, grandson, and the spouses of the foregoing.

Rescheduling. To rewrite the rates and terms of a single note or line of credit Agreement which acknowledges indebtedness for a loan made for operating purposes.

Restructuring. Changing terms of a debt through either a consolidation, rescheduling, reamortization, deferral, or writedown or a combination thereof.

Sale of guaranteed portion. See Assignment of guaranteed portion.

Security. Property of any kind subject to a real or personal property lien. Any reference to ''collateral'' or ''security property'' shall be considered a reference to the term ''security.''

Shared Appreciation Agreement. This agreement requires the borrower to repay the lender all or a portion of the debt written down in conjunction with a Debt Writedown when the agreement is triggered or expires and there is an increase in value of the real estate that secured the loans.

State. The major political subdivision of the United States and the organization of program delivery for the Agency.

Subsequent loans. Any loans processed by the Agency after an initial loan has been made to the same borrower.

Transfer and assumption. The conveyance by a debtor to an assuming party of the assets, collateral, and liabilities of the loan in return for the assuming party's binding promise to pay the debt outstanding.

United States. The United States itself, each of the several States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

Veteran. Any person who served in the active military, naval, or air service during the Spanish-American War, the Mexican border period, World War I, World War II, the Korean conflict, the Vietnam era, the Persian Gulf War, or the period beginning on the date of any future declaration of war by the Congress and ending on the date prescribed by Presidential proclamation or concurrent resolution of the Congress.

§ 1980.103 Full faith and credit.

(a) Fraud and misrepresentation. The Loan Note Guarantee and Contract of Guarantee constitute obligations supported by the full faith and credit of the United States. The Agency may contest the guarantee only in cases of fraud or misrepresentation by a lender or holder, in which:

(1) The lender or holder had actual knowledge of the fraud or misrepresentation at the time it became the lender or holder, or

(2) The lender or holder participated in or condoned the fraud or misrepresentation.

(b) Lender violations. The Loan Note Guarantee or Contract of Guarantee cannot be enforced by the lender, regardless of when the Agency discovers the violation, to the extent that the loss is a result of:

(1) Violation of usury laws;

(2) Negligent servicing;

(3) Failure to obtain the required security; or,

(4) Failure to use loan funds for purposes specifically approved by the Agency.

(c) *Enforcement by holder.* The guarantee and right to require purchase will be directly enforceable by the holder even if:

(1) The Loan Note Guarantee or Contract of Guarantee is contestable based on the lender's fraud or misrepresentation; or

(2) The Loan Note Guarantee is unenforceable by the lender based on a lender violation.

§ 1980.104 Appeals.

(a) The loan applicant or borrower and lender must generally jointly execute the written request for review of an alleged adverse decision made by Agency. However, in cases where the Agency has denied or reduced the amount of the final loss payment, the decision may be appealed by the lender only.

(b) A decision made by the lender adverse to the borrower is not a decision by the Agency, whether or not concurred in by the Agency, and may not be appealed.

(c) Appeals will be handled in accordance with parts 11 and 780 of this title.

§ 1980.105 Eligibility and substitution of lenders.

(a) General. To participate in FSA Guaranteed Farm Loan Programs, a lender must meet the eligibility criteria in this section. The Standard Eligible Lender must demonstrate eligibility for each guarantee request submitted and provide such evidence as the Agency may request.

(b) Standard Eligible Lender eligibility criteria.

(1) A lender must have the capability to adequately make and service the loan for which a guarantee is requested;

(2) A lender must be subject to credit examination and supervision by an acceptable State or Federal regulatory agency;

(3) A lender must be in good standing with all applicable State or Federal regulatory agencies;

(4) The lender must maintain an office near enough to the collateral's location so it can properly and efficiently discharge its loan making and loan servicing responsibilities or use agents, correspondents, branches, or other institutions or persons to provide expertise to assist in carrying out its responsibilities. The lender must be a local lender unless it:

(i) normally makes loans in the region or geographic location in which the loan applicant's operation being financed is located, or

(ii) demonstrates specific expertise in making and servicing loans for the proposed operation.

(5) The lender must not be debarred or suspended from participation in a Government contract or delinquent on a Government debt.

(c) Substitution of Lenders. A new eligible lender may be substituted for the original lender under the following conditions:

(1) The Agency approves of the substitution in writing;

(2) The new lender agrees in writing to assume all servicing and other responsibilities of the original lender and to acquire the unguaranteed portion of the loan; and

(3) The substituted lender agrees to notify any holder of the substitution.

(d) Lender Name or Ownership Changes.

(1) When a lender undergoes an ownership change or otherwise begins doing business under a new name, the lender will notify the Agency.

(2) The lender's CLP or PLP status is subject to reconsideration when ownership changes.

(3) The new lender will execute a new Lender's Agreement.

24. Section 1980.106 is revised to read as follows:

§ 1980.106 Preferred and Certified Lender Programs.

(a) General. (1) Lenders who desire PLP or CLP status must prepare a written request addressing:

(i) The States in which they desire to receive PLP or CLP status; and

(ii) Each item of the eligibility criteria for PLP or CLP in this section, as appropriate.

(2) The lender may include any additional supporting evidence or other information the lender believes would be helpful to the Agency in making its determination.

(3) The lender must send its request to the Agency State office for the State in which the lender's headquarters is located.

(4) The lender will provide any additional information needed to process a PLP or CLP request, upon Agency request.

(5) The term ''loss rate'' as used in this section equals the net amount of guaranteed OL, FO, and SW loss claims paid on loans made in the past 7 years divided by the total loan amount of the OL, FO, and SW loans made in the past 7 years.

(b) CLP Criteria. The lender must meet the following requirements to obtain CLP status:

(1) Qualify as a standard eligible lender under § 1980.105;

(2) Have a lender loss rate not in excess of the maximum CLP Loss Rate established by the Agency and available in any Agency office.

(3) Have proven an ability to process and service Agency guaranteed loans by showing that the lender:

(i) Submitted substantially complete and correct guaranteed loan applications; and

(ii) Serviced all guaranteed loans according to Agency regulations;

(4) Have closed a minimum of 10 Agency guaranteed loans or lines of credit;

(5) Have closed a total of five Agency guaranteed loans or lines of credit, not including readvances on lines of credit, within the past 2 years;

(6) Maintain an acceptable level of financial soundness as determined by a bank rating service or comparable rater acceptable to the Agency.

(7) Designate a qualified person or persons to process and service Agency guaranteed loans for each of the lender offices which will process CLP loans. To be qualified, the person must meet the following conditions:

(i) Have attended Agency sponsored training in the past 12 months or will attend training in the next 12 months; and

(ii) Agree to attend Agency sponsored training each year;

(8) Use forms acceptable to the Agency for processing, analyzing, securing, and servicing Agency guaranteed loans and lines of credit;

(9) Submit copies of financial statements, cash flow plans, budgets, loan agreements, analysis sheets, collateral control sheets, security agreements and other forms to be used for farm loan processing and servicing;

(10) Agree to provide credit information to consumer or commercial reporting agencies, as appropriate.

(c) PLP Criteria. The lender must meet the following requirements to obtain PLP status:

(1) Meet the CLP eligibility criteria under this section.

(2) Have a satisfactory credit management system based on the following:

(i) the lender's written credit policies and underwriting standards;

(ii) loan documentation requirements;

(iii) exceptions to policies;

(iv) analysis of new loan requests;

(v) credit file management;

(vi) loan funds and collateral management system;

(vii) portfolio management;

(viii) loan reviews;

(ix) internal credit review process;

(x) loan monitoring system; and

(xi) the board of director's responsibilities.

(3) Have made at least 20 PLP, CLP, or ALP loans, or a combination of these type loans, within the past 5 years.

(4) Have a lender loss rate not in excess of the rate for PLP lenders established by the Agency and available in any Agency office.

(5) Show a consistent practice of submitting applications for guaranteed loans detailed with accurate information that supports a sound loan proposal.

(6) Show a consistent practice of processing Agency guaranteed loans without any major or reoccurring minor deficiencies. A major deficiency is one that directly affects the soundness of the loan. A minor deficiency violates Agency procedure, but does not affect the soundness of a loan.

(7) Have a history of using the guaranteed program for new loans, instead of refinancing the lender's existing debts.

(8) Demonstrate a consistent, above average ability to service guaranteed loans based on the following:

(i) Borrower supervision and assistance;

(ii) Timely and effective servicing; and

(iii) Communication with the Agency.

(9) Designate a person or persons, approved by the Agency, to process and service PLP loans for the Agency.

(d) CLP and PLP approval.

(1) If a lender applying for CLP or PLP status has recently been involved in a merger or acquisition, all loans and losses attributed to both lenders will be considered in the eligibility calculations.

(2) The Agency will determine which branches of the lender have the necessary experience and ability to participate in the CLP or PLP program.

(3) Lenders who meet the criteria will be granted CLP or PLP status for a period of 5 years.

(4) PLP status will be conditioned on the lender carrying out its credit management system as proposed in its request for PLP status and any additional loan making or servicing requirements agreed to and documented in an attachment to the Lender's Agreement.

(e) Monitoring CLP and PLP lenders. CLP and PLP lenders will provide information and access to records upon Agency request to permit the Agency to monitor the lender for compliance with Agency regulations.

(f) Renewal of CLP or PLP status.

(1) PLP or CLP status will expire 5 years from the date the Lender's Agreement is executed, unless a new Lender's Agreement is executed.

(2) Renewal of PLP or CLP status is not automatic. A lender must submit a

written request for renewal of a Lender's Agreement with PLP or CLP status which includes information:

(i) Updating the material submitted for the initial application; and,

(ii) Addressing any new criteria established by the Agency since the initial application.

(3) PLP or CLP status will be renewed if the applicable eligibility criteria under this section are met, and no due cause exists for denying renewal under paragraph (g) of this section.

(g) Revocation of PLP or CLP Status.

(1) The Agency may revoke the lender's PLP or CLP status at any time during the 5 year term for due cause.

(2) Any of the following instances constitute due cause for revoking or not renewing PLP or CLP status:

(i) Violation of the terms of the Lender's Agreement;

(ii) Failure to maintain PLP or CLP eligibility criteria;

(iii) Knowingly submitting false or misleading information to the Agency;

(iv) Basing a request on information known to be false;

(v) Multiple deficiencies in processing or servicing Agency Guaranteed Farm Loan Programs loans in accordance with this subpart;

(vi) Failure to correct cited deficiencies in loan documents upon notification by the Agency;

(vii) Failure to submit status reports in a timely manner;

(viii) Failure to use forms, or follow credit management systems (for PLP lenders) accepted by the Agency; or

(ix) Failure to repurchase the guaranteed portion of a loan sold on the secondary market upon written request by the holder.

(3) A lender which has lost PLP or CLP status must be reconsidered for eligibility to continue as a Standard Eligible Lender (for former PLP and CLP lenders), or as a CLP lender (for former PLP lenders only) in submitting loan guarantee requests. They may reapply for CLP or PLP status when the problem causing them to lose their status has been resolved.

§ 1980.107 through 1980.109 [Removed and reserved]

25. Sections 1980.107 through 1980.109 are removed and reserved.

26. Section 1980.110 is revised to read as follows:

§ 1980.110 Loan Application.

(a) Loans for $50,000 or less. (1) A complete application for loans of $50,000 or less must, at least, consist of:

(i) the application form;

(ii) loan narrative;

(iii) balance sheet;

(iv) cash flow budget;

(v) credit report; and,

(vi) a plan for servicing the loan.

(2) In addition to the minimum requirements, the lender will perform at least the same level of evaluation and documentation for a guaranteed loan that the lender typically performs for non-guaranteed loans of a similar type and amount.

(b) Loans for over $50,000. A complete application for loans over $50,000 will consist of the items required in paragraph (a) of this section plus the following:

(1) verification of income;

(2) verification of debts over $1,000;

(3) 3 years financial history;

(4) 3 years of production history for Standard Eligible Lenders only;

(5) A proposed loan agreement; and

(6) If construction or development is planned, a copy of the plans, specifications, and development schedule.

(c) Applications from PLP lenders. Notwithstanding paragraphs (a) and (b) of this section, a complete application for PLP lenders will consist of at least:

(1) An application form;

(2) A loan narrative; and

(3) Any other items agreed to during the approval of the PLP lender's status.

(d) *Submitting applications.*

(1) All lenders must compile and maintain in their files a complete application for each guaranteed loan.

(2) The Agency will notify CLP lenders which items to submit to the Agency.

(3) PLP lenders will submit applications in accordance with their agreement with the Agency for PLP status.

(4) CLP and PLP lenders must certify that the required items are in its files.

(5) Also, the Agency may request additional information from any lender or review their loan file as needed to make eligibility and approval decisions.

(e) Incomplete applications. If the lender does not provide the information needed to complete its application by the deadline established in an Agency notice to the lender, the application will be considered withdrawn by the lender.

(f) Conflict of interest. (1) When a lender applies for a guaranteed loan, the lender will inform the Agency in writing of any actual or potential conflicts of interest.

(2) Actual or potential conflicts of interest include:

(i) The lender or its officers, directors, principal stockholders (except stockholders in a Farm Credit System institution that have stock requirements to obtain a loan), or other principal owners have a substantial financial interest in the loan applicant or borrower.

(ii) The loan applicant or borrower, a relative of the loan applicant or borrower, anyone residing in the household of the loan applicant or borrower, any officer, director, stockholder or other owner of the loan applicant or borrower holds any stock or other evidence of ownership in the lender.

(iii) The loan applicant or borrower, a relative of the loan applicant or borrower, or anyone residing in the household of the loan applicant or borrower is an Agency employee.

(iv) The officers, directors, principal stockholders (except stockholders in a Farm Credit System institution that have stock requirements to obtain a loan), or other principal owners of the lender have substantial business dealings (other than in the normal course of business) with the loan applicant or borrower.

(v) The lender or its officers, directors, principal stockholders, or other principal owners have substantial business dealings with an Agency employee.

(3) The lender must furnish additional information to the Agency upon request.

(4) The Agency will not approve the application until the lender develops acceptable safeguards to control any actual or potential conflicts of interest.

§ 1980.113 through 1980.119 [Removed and reserved]

27. Sections 1980.113 through 1980.119 are removed and reserved.

28. Sections 1980.120 through 1980.121 are added to read as follows:

§ 1980.120 Loan applicant eligibility.

Loan applicants must meet all of the following requirements to be eligible for a Guaranteed Operating loan or a Guaranteed Farm Ownership loan:

(a) The loan applicant, and anyone who will execute the promissory note, has not caused the Agency a loss by receiving debt forgiveness on all or a portion of any direct or guaranteed loan made under the authority of the CONACT by debt write-down, write-off, compromise under the provisions of section 331 of the CONACT, adjustment, reduction, charge-off, or discharge in bankruptcy or through any payment of a guaranteed loss claim under the same circumstances. Notwithstanding the preceding sentence, applicants who receive a write-down under section 353 of the CONACT may receive direct and guaranteed OL loans to pay annual farm and ranch operating expenses, which includes family subsistence, if the applicant meets all other requirements for the loan.

(b) The loan applicant, and anyone who will execute the promissory note, is not delinquent on any Federal debt, other than a debt under the Internal Revenue Code of 1996.

(c) The loan applicant, and anyone who will execute the promissory note, have no outstanding recorded judgments obtained by the United States in a Federal court. Such judgments do not include those filed by the United States Tax Courts.

(d) Citizenship. (1) The loan applicant is a citizen of the United States or an alien lawfully admitted to the United States for permanent residence under the Immigration and Nationalization Act. Indefinite parolees are not eligible. For an entity applicant, all members of an entity must meet the citizenship test.

(2) Aliens must provide the appropriate Immigration and Naturalization Service forms to document their permanent residency.

(e) The loan applicant must possess the legal capacity to incur the obligations of the loan.

(f) The individual loan applicant, or members of the entity applicant, must have sufficient applicable educational, on-the-job training, or farming experience in managing and operating a farm or ranch which indicates the managerial ability necessary to assure reasonable prospects of success in the proposed plan of operation. This education, training, or experience must have occurred within the past 5 years and the experience must have covered an entire production cycle.

(g) Credit History. (1) The individual or entity loan applicant and all entity members must have acceptable credit history demonstrated by debt repayment.

(2) A history of failures to repay past debts as they came due when the ability to repay was within their control will demonstrate unacceptable credit history.

(3) Unacceptable credit history will not include:

(i) Isolated instances of late payments which do not represent a pattern and were clearly beyond their control; or,

(ii) Lack of credit history.

(h) Test for Credit. (1) The loan applicant is unable to obtain sufficient credit elsewhere without a guarantee to finance actual needs at reasonable rates and terms.

(2) The potential for sale of any significant nonessential assets will be considered when evaluating the availability of other credit.

(3) Ownership interests in property and income received by an individual or entity loan applicant, or any entity members as individuals also will be considered when evaluating the availability of other credit to the loan applicant.

(i) Operating Loans. (1) For Operating Loans, the individual or entity loan applicant must be an operator of not larger than a family farm after the loan is closed.

(2) In the case of an entity borrower:

(i) The entity must be authorized to operate, and own if the entity is also an owner, a farm in the state or states in which the farm is located; and

(ii) If the entity members holding a majority interest are related by marriage or blood, at least one member of the entity also must operate the family farm; or,

(iii) If the entity members holding a majority interest are not related by marriage or blood, the entity members must also operate the family farm.

(j) Farm Ownership Loans. (1) For Farm Ownership Loans, the individual or entity loan applicant must be the operator and owner of not larger than a family farm after the loan is closed.

(2) In the case of an entity borrower:

(i) The entity must be authorized to own and operate a farm in the state or states in which the farm is located; and

(ii) If the entity members holding a majority interest are related by marriage or blood, at least one member of the entity also must own and operate the family farm; or,

(iii) If the entity members holding a majority interest are not related by marriage or blood, the entity members must also own and operate the family farm.

(k) For entity loan applicants. Entity loan applicants also must meet the following eligibility criteria:

(1) Each entity member's ownership interest may not exceed the family farm definition limits;

(2) The collective ownership interest of all entity members may exceed the family farm definition limits only if the following conditions are met:

(i) All of the entity members are related by blood or marriage;

(ii) All of the members are or will be operators of the entity; and,

(iii) The majority interest holders of the entity must meet the requirements of paragraphs (d), (f), (g), and (i) through (j) of this section;

(3) The entity must be controlled by farmers or ranchers engaged primarily and directly in farming or ranching in the United States after the loan is made; and

(4) The entity members are individuals and not entities.

(l) Neither the applicant nor any entity member has been convicted of planting, cultivating, growing, producing, harvesting, or storing a controlled substance under Federal or state law within the last five crop years. ''Controlled substance'' is defined at 21 CFR part 1308. Applicants must attest on the Agency application form that it and its members, if an entity, have not been convicted of such a crime within the relevant period.

(m) The loan applicant must execute an Agency agreement to meet any training requirements in accordance with § 1980.150.

§ 1980.121 Loan purposes.

(a) Operating Loan purposes.

(1) Loan note guarantee. Loan funds disbursed under a loan note guarantee may only be used for the following purposes:

(i) Payment of costs associated with reorganizing a farm or ranch to improve its profitability.

(ii) Purchase of livestock, including poultry, and farm or ranch equipment or fixtures, quotas and bases, and cooperative stock for credit, production, processing or marketing purposes.

(iii) Payment of annual farm or ranch operating expenses, examples of which include feed, seed, fertilizer, pesticides, farm or ranch supplies, repairs and improvements which are to be expensed, cash rent and family subsistence.

(iv) Payment of scheduled principal and interest payments on term debt.

(v) Other farm and ranch needs.

(vi) Payment of costs associated with land and water development for conservation or use purposes.

(vii) Refinancing indebtedness incurred for any authorized OL loan purpose, when the lender and loan applicant can demonstrate the need to refinance.

(viii) Payment of loan closing costs.

(ix) Payment of costs associated with complying with Federal or State-approved standards under the Occupational Safety and Health Act of 1970 (29 U.S.C. § § 655 and 667). This purpose is limited to applicants who demonstrate that compliance with the standards will cause them substantial economic injury.

(x) Payment of training costs required or recommended by the Agency.

(2) Contract of guarantee—line of credit. Lines of credit may be advanced only for the following purposes:

(i) Payment of annual operating expenses, family subsistence, and purchase of feeder animals.

(ii) Payment of current annual operating debts advanced for the current operating cycle. Under no circumstances can carry-over operating debts from a previous operating cycle be refinanced.

(iii) Purchase of routine capital assets, such as replacement of livestock, that will be repaid within the operating cycle.

(iv) Payment of scheduled, non-delinquent, term debt payments.

(v) Purchase of cooperative stock for credit, production, processing or marketing purposes.

(vi) Payment of loan closing costs.

(b) Farm Ownership loan purposes. Guaranteed FO loans are authorized only to:

(1) Acquire or enlarge a farm or ranch. Examples include, but are not limited to, providing down payments, purchasing easements for the loan applicant's portion of land being subdivided, and participating in the Beginning Farmer Downpayment Farm Ownership program under part 1943, subpart A, of this chapter.

(2) Make capital improvements. Examples include, but are not limited to, the construction, purchase, and improvement of farm dwellings, service buildings and facilities that can be made fixtures to the real estate. Capital improvements to leased land may be financed subject to the limitations in § 1980.122.

(3) Promote soil and water conservation and protection. Examples include the correction of hazardous environmental conditions, and the construction or installation of tiles, terraces and waterways.

(4) Pay closing costs, including but not limited to, purchasing stock in a cooperative, and appraisal and survey fees.

(5) Refinancing indebtedness incurred for authorized loan purposes, provided the lender and loan applicant demonstrate the need to refinance the debt.

(c) Highly Erodible Land or Wetlands Conservation.

(1) Loans may not be made for any purpose which contributes to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity.

(2) A decision by the Agency to reject an application for this reason is appealable. However, an appeal questioning either the presence of a wetland, converted wetland, or highly erodible land on a particular property must be filed directly with the USDA agency making the determination in accordance with its appeal procedures.

(d) Loans may not be used to satisfy judgment debts filed in the United States Federal courts. However, Internal Revenue Service judgment liens may be paid with loan funds.

29. Sections 1980.122 through 1980.126 are revised to read as follows:

§ 1980.122 Loan Limitations.

(a) OL limitations. (1) The total outstanding combined OL direct and guaranteed principal balance owed by the loan applicant or anyone who will sign the note must not exceed $400,000 at loan closing.

(2) The total dollar amount of line of credit advances and income releases cannot exceed the total estimated expenses, less interest expense, as indicated on the borrower's plan, unless the plan is revised and continues to reflect a feasible plan.

(3) Term Limitations. (i) General. No guaranteed OL loan shall be made to any loan applicant after the 15th year that a loan applicant, or any individual signing the promissory note, received direct or guaranteed OL loans.

(ii) Transition rule. If a borrower was indebted for a direct or guaranteed OL loan on October 28, 1992, and had any combination of direct or guaranteed OL loans closed in 10 or more prior calendar years, eligibility to receive new guaranteed OL loans is extended for 5 additional years from October 28, 1992, and the years need not run consecutively. However, in the case of a line of credit, each year in which an advance is made after October 28, 1992, counts toward the 5 additional years. Once determined eligible, a loan or line of credit may be approved for any authorized term.

(b) FO limitations. (1) The total outstanding combined FO and SW direct and guaranteed principal balance owed by the loan applicant or anyone who will sign the note must not exceed $300,000 at loan closing.

(2) Leased Land. When FO funds are used for improvements to leased land the terms of the lease must provide reasonable assurance that the loan applicant will have use of the improvement over its useful life, or provides compensation for any unexhausted value of the improvement if the lease is terminated.

(c) Tax-exempt transactions. The Agency will not guarantee any loan or line of credit made with the proceeds of any obligation the interest on which is excludable from income under Section 103 of the Internal Revenue Code of 1954, as amended. Funds generated through the issuance of tax-exempt obligations may not be used to purchase the guaranteed portion of any Agency guaranteed loan or line of credit nor may an Agency guaranteed loan or line of credit serve as collateral for a tax-exempt issue.

§ 1980.123 Insurance and farm inspection requirements.

(a) Insurance. (1) Lenders are responsible for ensuring that borrowers maintain adequate property, public liability, and crop insurance coverage to protect the lender and Government's interests.

(2) By loan closing, loan applicants must either:

(i) Obtain at least the catastrophic risk protection (CAT) level of crop insurance coverage, if available, for each crop of economic significance, as defined by part 402 of this title, or

(ii) Waive eligibility for emergency crop loss assistance in connection with the uninsured crop. EM loss loan assistance under part 1945, subpart D, of this chapter is not considered emergency crop loss assistance for purposes of this waiver.

(3) Loan applicants must purchase flood insurance if buildings are or will be located in a special flood or mudslide hazard area and if flood insurance is available.

(4) Insurance, including crop insurance, also must be obtained as required by the lender or the Agency based on the strengths and weaknesses of the loan.

(b) Farm inspections. Before submitting an application the lender must make an inspection of the farm to assess the suitability of the farm and to determine any development that is needed to make it a suitable farm.

§ 1980.124 Interest rates, terms, charges, and fees.

(a) Interest rates. (1) *Fixed or variable.* The interest rate on a guaranteed loan or line of credit may be fixed or variable as agreed upon by the borrower and the lender.

The lender may charge different rates on the guaranteed and the non-guaranteed portions of the note. The guaranteed portion may be fixed while the unguaranteed portion may be variable, or vice versa. If both portions are variable, different bases may be used.

(2) *Variable rate.* If a variable rate is used, it must be tied to a rate specifically agreed to by the lender and borrower in the loan instruments. Variable rates may change according to the normal practices of the lender for its average farm customers, but the frequency of change must be specified in the loan or line of credit instrument.

(3) *Ceiling.* Neither the interest rate on the guaranteed portion nor the unguaranteed portion may exceed the rate the lender charges its average farm customer. At the request of the Agency, the lender must provide evidence of the

rate charged the average farm customer. This evidence may consist of average yield data, or documented administrative differential rate schedule formulas used by the lender.

(4) *Interest charges.* Interest must be charged only on the actual amount of funds advanced and for the actual time the funds are outstanding. Interest on protective advances made by the lender to protect the security may be charged at the rate specified in the security instruments.

(5) *Interest assistance program.* The lender and borrower may collectively obtain a temporary reduction in the interest rate through the Interest Assistance program in accordance with Exhibit D of this subpart.

(b) OL terms. (1) Loan funds or advances on a line of credit used to pay annual operating expenses will be repaid when the income from the year's operation is received, except when the borrower is establishing a new enterprise, developing a farm, purchasing feed while feed crops are being established, or recovering from disaster or economic reverses.

(2) The final maturity date for each loan cannot exceed 7 years from the date of the promissory note or line of credit agreement. Advances for purposes other than for annual operating expenses will be scheduled for repayment over the minimum period necessary considering the loan applicant's ability to repay and the useful life of the security, but not in excess of 7 years.

(3) Balloon installments under Loan Note Guarantee.

(i) Extended repayment schedules may include equal, unequal, or balloon installments if needed to establish a new enterprise, develop a farm, or recover from a disaster or an economical reversal.

(ii) Loans with balloon installments must have adequate collateral at the time the balloon installment comes due. Crops, livestock, or livestock products produced are not sufficient collateral for securing such a loan.

(iii) The borrower must likely be able to refinance the remaining debt at the time the balloon payment comes due based on the expected financial condition of the operation, the depreciated value of the collateral, and the principal balance on the loan.

(4) All advances on a line of credit must be made within 5 years from the date of the Contract of Guarantee.

(c) FO terms. Each loan must be scheduled for repayment over a period not to exceed 40 years from the date of the note or a shorter period as may be necessary to assure that the loan will be adequately secured, taking into account the probable depreciation of the security.

(d) Charges and Fees.

(1) Routine charges and fees. The lender may charge the loan applicant and borrower fees for the loan provided they are no greater than those charged to nonguaranteed customers for similar transactions. The lender may not charge, or cause to be charged, any processing or packaging fees not charged to nonguaranteed customers for similar transactions. Similar transactions are those involving the same type of loan requested (for example, operating loans or farm real estate loans).

(2) Late payment charges. Late payment charges (including default interest charges) are not covered by the guarantee. These charges may not be added to the principal and interest due under any guaranteed note or line of credit. However, late payment charges may be made outside of the guarantee if they are routinely made by the lender in similar types of loan transactions.

(3) Lenders may not charge a loan origination and servicing fee greater than 1 percent of the loan amount for the life of the loan when a guaranteed loan is made in conjunction with a down payment FO loan for beginning farmers under part 1943, subpart A, of this chapter.

§ 1980.125 Financial Feasibility.

(a) General. (1) Notwithstanding any other provision of this section, PLP lenders will follow their internal procedures on financial feasibility as agreed to by the Agency during their PLP certification.

(2) The loan applicant's proposed operation must project a positive cash flow as determined by the Agency.

(3) For standard eligible lenders, the projected income and expenses of the borrower and operation used to determine positive cash flow must be based on the loan applicant's proven record of production and financial management.

(4) For CLP lenders, the projected income and expenses of the borrower and operation will be based on the loan applicant's financial history and proven record of financial management.

(5) The plan of operation analyzed to determine positive cash flow must represent the predicted cash flow of the operating cycle.

(6) Lenders must use price forecasts that are reasonable and defensible. Sources must be documented by the lender and acceptable to the Agency.

(7) When positive cash flow depends on income from other sources in addition to income from owned land, the income must be dependable and likely to continue.

(8) The lender will analyze business ventures other than the farm operation to determine their soundness and contribution to the operation. Guaranteed loan funds will not be used to finance a nonfarm enterprise. Nonfarm enterprises include, but are not limited to: raising earthworms, exotic birds, tropical fish, dogs, or horses for nonfarm purposes; welding shops; roadside stands; boarding horses; and riding stables.

(9) When the loan applicant has or will have a farm operating plan developed in conjunction with a proposed or existing Agency direct loan, the two plans must be consistent.

(b) Estimating production. (1) Standard eligible lenders must use the best sources of information available for estimating production in accordance with this subsection when developing operating plans.

(2) Deviations from historical performance may be acceptable, if specific to changes in operation and adequately justified and acceptable to the Agency.

(3) For existing farmers, actual production for the past 3 years will be utilized.

(4) For those farmers without a proven history, a combination of any actual history and any other reliable source of information that are agreeable with the lender, the loan applicant, and the Agency will be used.

(5) When the production of a growing commodity can be estimated, it must be considered when projecting yields.

(6) When the loan applicant's production history has been so severely affected by a declared disaster that an accurate projection cannot be made, the following applies:

(i) County average yields are used for the disaster year if the loan applicant's disaster year yields are less that the county average yields. If county average yields are not available, State average yields are used. Adjustments can be made providing there is factual evidence to demonstrate that the yield used in the farm plan is the most probable to be realized.

(ii) To calculate a historical yield, the crop year with the lowest actual or county average yield may be excluded, provided the loan applicant's yields were affected by disasters at least 2 of the past 5 years.

(c) Refinancing. Loan guarantee requests for refinancing must ensure that a reasonable chance for success still exists. The lender must demonstrate that problems with the loan applicant's operation have been identified can be

corrected and the operation returned to a sound financial basis.

§ 1980.126 Security requirements.

(a) General. (1) The lender is responsible for ensuring that proper and adequate security is obtained and maintained to fully secure the loan, protect the interest of the lender and the Agency, and assure repayment of the loan or line of credit.

(2) The lender will obtain a lien on additional security when necessary to protect the Government's interest.

(b) Guaranteed and unguaranteed portions. (1) All security must secure the entire loan or line of credit. The lender may not take separate security to secure only that portion of the loan or line of credit not covered by the guarantee.

(2) The lender may not require compensating balances or certificates of deposit as means of eliminating the lender's exposure on the unguaranteed portion of the loan or line of credit. However, compensating balances or certificates of deposit as otherwise used in the ordinary course of business are allowed.

(c) Identifiable security. The guaranteed loan must be secured by identifiable collateral. To be identifiable, the lender must be able to distinguish the collateral item and adequately describe it in the security instrument.

(d) Type of security. (1) Typically, annual operating loans will be secured by crops and livestock, loans to be repaid within 2 to 7 years by breeding livestock and equipment, and loans repaid over greater than 7 years by real estate. However, guaranteed loans may be secured by any property provided the term of the loan and expected life of the property will not cause the loan to be undersecured.

(2) For loans with terms greater than 7 years, a lien must be taken on real estate.

(3) Loans can be secured by a mortgage on leasehold properties if the lease has a negotiable value and is mortgageable.

(4) The lender or Agency may require additional personal or corporate guarantees, or both, to adequately secure the loan. These guarantees are separate from, and in addition to, the personal obligations arising from members of an entity signing the note as individuals.

(e) Lien position. All guaranteed loans will be secured by the best lien obtainable provided:

(1) When the loan is made for refinancing purposes, the guaranteed loan must hold a security position no lower than on the existing loan.

(2) Any chattel-secured guaranteed loan must have a higher lien priority (including purchase money interest) than an unguaranteed loan secured by the same chattels and held by the same lender. Also, guaranteed loan installments will be paid before unguaranteed loans held by the same lender.

(3) Junior lien positions are acceptable only if the equity position is strong. Junior liens on livestock, crops, or livestock products will not be relied upon for security unless the lender is involved in multiple guaranteed loans to the same borrower, and also has first lien on the collateral.

(4) Any loan of $10,000 or less may be secured by the best lien obtainable on real estate without title clearance or legal services normally required, provided the lender believes from a search of the county records that the loan applicant can give a mortgage on the farm. This exception to title clearance will not apply when land is to be purchased.

(5) When taking a junior lien, prior lien instruments may not contain future advance clauses (except for taxes, insurance, or other reasonable costs to protect security), or cancellation, summary forfeiture, or other clauses that jeopardize the Government's or the lender's interest or the borrower's ability to pay the guaranteed loan, unless any such undesirable provisions are limited, modified, waived or subordinated insofar as the Government and the lender are concerned.

(f) Multiple owners. If security has multiple owners, all owners must pledge security for the loan.

(g) Nonessential assets. A lien will be taken on all significant nonessential assets.

(h) The Agency has the authority to grant an exception to any of the requirements involving security, if the proposed change is in the best interest of the Government and the collectability of the loan will not be impaired.

30. Sections 1980.127 through 1980.128 are added to read as follows:

§ 1980.127 Appraisal requirements.

(a) General.

(1) The Agency may require a lender to obtain an appraisal based on the type of security, loan size, and whether it is primary or additional security.

(2) Except for authorized liquidation expenses, the lender is responsible for all appraisal costs, which may be passed on to the borrower, or a transferee in the case of a transfer and assumption.

(b) Exception. Notwithstanding other provisions of this section, an appraisal is not required in the following cases:

(1) For any additional security.

(2) For loans of $50,000 or less if a strong equity position exists as determined by the Agency.

(c) Chattel appraisals. (1) A current appraisal (not more than 12 months old) of primary chattel security generally is required on all loans. An appraisal for loans or lines of credit for annual production purposes that are secured by crops is only required when a loan note or line of credit guarantee is requested late in the current production year and actual yields can be reasonably estimated.

(2) The appraised value of chattel property will be based on public sales of the same, or similar, property in the market area. In the absence of such public sales, reputable publications reflecting market values may be used.

(3) Appraisal reports may be on the Agency's Appraisal of Chattel Property form or on any other appraisal form containing at least the same information.

(4) Chattel appraisals will be performed by appraisers who possess sufficient experience or training to establish market (not retail) values as determined by the Agency.

(d) Real estate appraisals.

(1) A current real estate appraisal is required when real estate will be primary security. Agency officials may accept an existing appraisal only if the appraisal was properly completed within the past 12 months, or older if updated by a qualified appraiser, and there have been no significant changes in the market or on the subject real estate.

(2) Appraiser qualifications. (i) On loan transactions of $250,000 or less, the lender must demonstrate to the Agency's satisfaction that the appraiser possesses sufficient experience or training to estimate market values.

(ii) On loan transactions greater than $250,000, which includes principal plus accrued interest through the closing date, the appraisal must be completed by a state certified general appraiser. A loan transaction is defined as any loan approval or servicing action.

(3) Appraisal reports. Real estate appraisal reports must be completed in accordance with the Uniform Standards of Professional Appraisal Practice. Appraisals may be either a complete or limited appraisal provided in a self-contained or summary format. Restricted reports are not acceptable.

§ 1980.128 Environmental and special laws

(a) Environmental requirements. The requirements found in part 1940, subpart G, of this chapter must be met for guaranteed operating and farm

ownership loans. CLP and PLP lenders may certify that they have documentation in their file to demonstrate compliance with paragraph (c) of this section. Standard eligible lenders must submit evidence supporting compliance with this section.

(b) Determination. The Agency determination of whether an environmental problem exists will be based on:

(1) The information supplied with the application;

(2) The Agency's personal knowledge of the operation;

(3) Environmental resources available to the Agency including, but not limited to, documents, third parties, and governmental agencies;

(4) A visit to the farm operation when the available information is insufficient to make a determination;

(5) Other information supplied by the lender or loan applicant upon Agency request.

(c) Special requirements. Lenders will assist in the environmental review process by providing environmental information. In all cases, the lender must retain documentation of their investigation in the applicant or borrower's case file.

(1) *Floodplains.* A determination must be made as to whether there are any structures located within a 100 year floodplain as defined by Federal Emergency Management Agency floodplain maps, Natural Resources Conservation Service data, or other appropriate documentation. Floodplain determinations will be documented by using the Standard Flood HazardDetermination Form.

(2) *Water quality standards.* The lender will consult with the Agency for guidance on activities which require consultation with State regulatory agencies, special permitting or waste management plans. The lender will also assist in securing any applicable permits or plans.

(3) *Historical or archeological sites.* The lender will consult with the Agency for guidance on which situations will need further review in accordance with the National Historical Preservation Act and part 1940, subpart G, and part 1901, subpart F, of this chapter. The lender will examine the security property to determine if there are any structures or archeological sites which are listed or may be eligible for listing in the National Register of Historic Places.

(4) *Wetlands and highly erodible land.* The loan applicant must certify they will not violate the Food Security Act provisions relating to Highly Erodible Land and Wetland Conservation.

(5) *Hazardous substances.* All lenders are required to ensure that due diligence is performed in conjunction with a request for guarantee involving real estate. Due diligence is the process of evaluating real estate in the context of a real estate transaction to determine the presence of contamination from release of hazardous substances, petroleum products, or other environmental hazards and determining what effect, if any, the contamination has on the security value of the property. The Agency will accept as evidence of due diligence the most current version of the American Society of Testing Materials (ASTM) Transaction Screen Questionnaire available from 1916 Race Street, Philadelphia, Pennsylvania 19103, or similar documentation, supplemented as necessary by the ASTM Phase I Environmental Site Assessments form.

(d) Equal opportunity and nondiscrimination.

(1) With respect to any aspect of a credit transaction, the lender will not discriminate against any applicant on the basis of race, color, religion, national origin, age, sex, marital status, or physical or mental handicap, provided the applicant can execute a legal contract. Nor will the lender discriminate on the basis of whether all or a part of the applicant's income derives from any public assistance program, or whether the applicant in good faith, exercises any rights under the Consumer Protection Act.

(2) Where the guaranteed loan involves construction, contractor or subcontractor must file all compliance reports, equal opportunity and nondiscrimination forms, and otherwise comply with all regulations prescribed by the Secretary of Labor pursuant to Executive Orders 11246 and 11375.

(e) Other Federal, State and local requirements. Lenders are required to coordinate with all appropriate Federal, State, and local agencies and comply with special laws and regulations applicable to the loan proposal.

31. Sections 1980.129 and 1980.130 are revised to read as follows:

§ 1980.129 Percent of guarantee and maximum loss.

(a) General. The percent of guarantee will not exceed 90 percent as determined by the Agency based on the credit risk to the lender and the Agency both before and after the transaction.

(b) Exceptions. The guarantee will be issued at 95 percent in any of the following circumstances:

(1) The sole purpose of a guaranteed FO or OL loan is to refinance an Agency direct farm loan. When only a portion of the loan is used to refinance a direct Agency farm credit program loan, a weighted percentage of a guarantee will be provided;

(2) When the purpose of an FO loan guarantee is to participate in the down payment loan program; or

(3) When a guaranteed OL is made to a farmer or rancher who is participating in the Agency's down payment loan program. The guaranteed OL must be made during the period that a borrower has the down payment loan outstanding.

(c) PLP guarantees. All guarantees issued to PLP lenders ineligible for 95 percent guarantees under this section will be guaranteed at 80 percent.

(d) CLP Guarantees. All guarantees issued to CLP lenders will not be less than 80 percent.

(e) Maximum loss. The maximum amount the Agency will pay the lender under the Loan Note Guarantee or Contract of Guarantee will be any loss sustained by such lender on the guaranteed portion including:

(1) Principal and interest indebtedness as evidenced by the note or by assumption agreement;

(2) Any loan subsidy due and owing;

(3) Principal and interest indebtedness on secured protective advances for protection and preservation of collateral made in accordance with this subpart; and

(4) Principal and interest indebtedness on recapture debt pursuant to a Shared Appreciation agreement provided the lender has paid the Agency its pro rata share of the recapture amount due.

§ 1980.130 Loan approval and issuing the guarantee.

(a) Processing timeframes.

(1) Standard Eligible Lenders. Complete applications from Standard Eligible Lenders will be approved or rejected, and the lender notified in writing, no later than 30 calendar days after receipt.

(2) CLP and PLP lenders.

(i) Complete applications from CLP or PLP lenders will be approved or rejected not later than 14 calendar days after receipt.

(ii) For PLP lenders, if this time frame is not met, the proposed guaranteed loan will automatically be approved, subject to funding, and receive an 80 percent guarantee.

(b) Funding preference. Loans are approved subject to the availability of funding. When it appears that there are not adequate funds to meet the needs of all approved loan applicants, applications that have been approved will be placed on a preference list

according to the date of receipt of a complete application. If approved applications have been received on the same day, the following will be given priority:

(1) An application from a veteran

(2) An application from an Agency direct loan borrower

(3) An application from a loan applicant who:

(i) Has a dependent family, or

(ii) Is an owner of livestock and farm implements necessary to successfully carry out farming operations, or

(iii) Is able to make down payments.

(iv) Any other approved application.

(c) Conditional Commitment.

(1) The lender must meet all of the conditions specified in the conditional commitment to secure final Agency approval of the guarantee.

(2) The lender, after reviewing the conditions listed on the Conditional Commitment, will complete, execute, and return the form to the Agency. If the conditions are not acceptable to the lender, the Agency may agree to alternatives or inform the lender and the loan applicant of their appeal rights.

(d) Lender requirements prior to issuing the guarantee.

(1) *Lender certification.* The lender will certify as to the following on the appropriate Agency form:

(i) No major changes have been made in the lender's loan or line of credit conditions and requirements since the issuance of the Conditional Commitment (except those approved in the interim by the Agency in writing);

(ii) Required hazard, flood, or Federal crop insurance, worker's compensation, and personal life insurance (when required) are in effect;

(iii) Truth in lending requirements have been met;

(iv) All equal employment opportunity and nondiscrimination requirements have been or will be met at the appropriate time;

(v) The loan or line of credit has been properly closed, and the required security instruments have been obtained, or will be obtained, on any acquired property that cannot be recovered initially under State law;

(vi) The borrower has a marketable title to the collateral owned by the borrower, subject to the instrument securing the loan or line of credit to be guaranteed and subject to any other exceptions approved in writing by the Agency. When required, an assignment on all USDA crop and livestock program payment has been obtained;

(vii) When required, personal, joint operation, partnership, or corporate guarantees have been obtained;

(viii) Liens have been perfected and priorities are consistent with requirements of the Conditional Commitment;

(ix) Loan proceeds have been, or will be disbursed for purposes and in amounts consistent with the Conditional Commitment and as specified on the loan application. In line of credit cases, if any advances have occurred, advances have been disbursed for purposes and in amounts consistent with the Conditional Commitment and Line of Credit Agreements;

(x) There has been no material adverse changes in the borrower's condition, financial or otherwise, during the period of time from the Agency's issuance of the Conditional Commitment to issuance of the guarantee; and

(xi) All other requirements specified in the Conditional Commitment have been met.

(2) *Inspections.* The lender must notify the Agency of any scheduled inspections during construction and after the guarantee has been issued. The Agency may attend these field inspections. Any inspections or review performed by the Agency, including those with the lender, are for the benefit of the Agency only. Agency inspections do not relieve any other parties of their inspection responsibilities, nor can these parties rely on Agency inspections in any manner.

(3) *Execution of Lender's Agreement.* The lender must execute the Agency's lender's agreement and deliver it to the Agency.

(4) *Closing report and guarantee fees.* (i) The lender must complete a Closing Report and return it to the Agency along with any guarantee fees.

(ii) Guarantee fees are 1 percent and are calculated as follows: Initial Fee = Loan Amount × % Guaranteed × .01. The nonrefundable fee is paid to the Agency by the lender. The fee may be passed on to the borrower and included in loan funds.

(iii) The following guaranteed loan transactions are not charged a fee:

(A) Loans involving interest assistance;

(B) Loans where a majority of the funds are used to refinance an Agency direct loan; and

(C) Loans to beginning farmers or ranchers involved in the direct beginning farmer downpayment program.

(e) Promissory notes, line of credit agreements, mortgages, and security agreements. The lender will use its own promissory notes, line of credit agreements, real estate mortgages (including deeds of trust and similar instruments), and security agreements (including chattel mortgages in Louisiana and Puerto Rico), provided:

(1) The forms are consistent and meet Agency requirements;

(2) Documents comply with state law and regulation;

(3) The principal and interest repayment schedules are stated clearly in the notes and consistent with the conditional commitment;

(4) Promissory notes are signed as follows:

(i) For individuals, only one person signs the note as a borrower. If a cosigner is needed, the cosigner also signs the note.

(ii) For entities, the note is executed by the member who is authorized to sign for the entity, and by all members of the entity as individuals. Individual liability can be waived by the Agency for members holding less than 10 percent ownership in the entity if the collectability of the loan will not be impaired; and

(5) When the loan purpose is to refinance or restructure the lender's own debt, the lender may continue to use the existing debt instrument and attach an allonge that modifies the terms of the original note.

(f) Replacement of Loan Note Guarantee, Contract of Guarantee, or Assignment Guarantee Agreement. If the guarantee or assignment guarantee agreements are lost, stolen, destroyed, mutilated, or defaced, except where the evidence of debt was or is a bearer instrument, the Agency will issue a replacement to the lender or holder upon receipt of acceptable documentation including a certificate of loss and an indemnity bond.

§ 1980.131 [Removed and reserved]

32. Section 1980.131 is removed and reserved.

§ 1980.136 [Removed and reserved]

33. Section 1980.136 is removed and reserved.

§ 1980.139 [Removed and reserved]

34. Section 1980.139 is removed and reserved.

35. Sections 1980.140 through 1980.143 are added to read as follows:

§ 1980.140 General servicing responsibilities.

(a) General. (1) Lenders are responsible for servicing the entire loan in a reasonable and prudent manner, protecting and accounting for the collateral, and remaining the mortgagee r secured party of record.

(2) The lender cannot enforce the guarantee to the extent that a loss results from a violation of usury laws or negligent servicing.

(b) Borrower supervision. The lender's responsibilities regarding borrower supervision include, but are not limited to the following:

(1) Ensuring loan funds are not used for an unauthorized purpose.

(2) Ensuring borrower compliance with the covenants and provisions provided in the note, loan agreement, security instruments, any other agreements, and this subpart. Any violations which indicate non-compliance on the part of the borrower, must be reported, in writing, to both the Agency and the borrower.

(3) Ensure the borrower is in compliance with all laws and ordinances applicable to the loan, the collateral, and the operations of the farm.

(4) Receive all payments of principal and interest on the loan as they fall due and promptly disburse to any holder its pro-rata share according to the amount of interest the holder has in the loan, less only the lender's servicing fee.

(5) Perform an annual analysis of the borrower's financial condition to determine the borrower's progress. The annual analysis will include:

(i) For loans secured by real estate only, the analysis for standard eligible lenders must include a Statement of Financial Condition. CLP lenders will determine the need for the annual analysis based on the financial strength of the borrower and document the file accordingly. PLP lenders will perform a borrower analysis in accordance with the requirements established when the Lender's Agreement was signed.

(ii) For loans secured by chattels, all lenders will review the borrower's progress regarding liquidity, solvency, profitability, repayment capacity and financial and production efficiency, including a comparison of actual to planned income and expenses for the past year.

(iii) An account for the whereabouts or disposition of all collateral.

(iv) A discussion of any observations about the farm business with the borrower.

(v) Verification that the borrower and any party liable for the loan is not released from liability for all or any part of the loan, except in accordance with Agency regulations.

(c) Monitoring of development. The lender's responsibilities regarding the construction, repairs, or other development include, but are not limited to:

(1) Determining that all construction is completed as proposed in the loan application;

(2) Making periodic inspections during construction to ensure that any development is properly completed within a reasonable period of time; and

(3) Verification that the security is free of any mechanic's, materialmen's, or other liens which would affect the priority of the lender's lien which the lender agreed would be taken on the security.

§ 1980.141 Reporting requirements.

Lenders are responsible for providing the local Agency credit officer with all of the following information on the loan and the borrower:

(a) When a loan becomes 30 days past due, all lenders will submit the appropriate Agency form showing guaranteed loan borrower default status. The form will be resubmitted every 60 days until the default is resolved;.

(b) All lenders will provide the appropriate Agency guaranteed loan status reports as of March 31 and September 30 of each year;

(c) PLP lenders also must provide periodic reports as agreed on the application and the requirements established when the Lender's Agreement was signed.

(d) CLP lenders also must provide the following:

(1) A narrative indicating that an annual borrower analysis has been performed and the borrower's progress is acceptable, unless such analysis was not needed based on the borrower's financial strength. The reasons for not conducting an analysis will be documented in the narrative.

(2) For lines of credit, an annual certification stating that a projected cash flow has been developed and is feasible, that the borrower is in compliance with the provisions of the line of credit agreement, and that the previous year income and loan funds and security proceeds have been accounted for.

(e) The standard eligible lender also will provide:

(1) Borrower's Statement of Financial Condition, and Income and Expense Statement for the previous year.

(2) For lines of credit, the projected cash flow for the borrower's operation for the upcoming operating cycle. The standard eligible lender must receive approval from the Agency before advancing future years' funds.

(3) An annual farm inspection report.

(f) A lender receiving a final loss payment must complete and return an annual report on its collection activities for each unsatisfied account for 3 years following payment of the final loss claim.

§ 1980.142 Servicing related to collateral.

(a) General. The lender's responsibilities regarding servicing collateral include, but are not limited to, the following:

(1) Obtain income assignments when required.

(2) Ensure the borrower has or obtains marketable title to the collateral.

(3) Inspect the collateral as often as deemed necessary to properly service the loan.

(4) Ensure the borrower does not convert loan security.

(5) Ensure proceeds from the sale or other disposition of collateral are accounted for and applied in accordance with the lien priorities on which the guarantee is based or used for the purchase of replacement collateral.

(6) Ensure the loan and the collateral are protected in the event of foreclosure, bankruptcy, receivership, insolvency, condemnation, or other litigation.

(7) Ensure taxes, assessments, or ground rents against or affecting the collateral are paid.

(8) Ensure adequate insurance is maintained.

(9) Ensure that insurance loss payments, condemnation awards, or similar proceeds are applied on debts in accordance with lien priorities on which the guarantee was based, or used to rebuild or acquire needed replacement collateral.

(b) Partial releases and transfers and assumptions. Partial releases and transfers and assumptions are subject to the following conditions:

(1) For standard eligible and CLP lenders, the servicing action must be approved by the Agency in writing.

(2) In the case of standard eligible and CLP lenders, the request for Agency approval will include:

(i) An application provided by the Agency;

(ii) A narrative explaining then proposed servicing action;

(iii) A current balance sheet on the borrower;

(iv) A projected cash flow budget showing a positive cash flow after the proposed servicing action;

(v) A current appraisal of the guaranteed loan security, unless the lenders guaranteed loan lien position will not be adversely affected;

(vi) Any other information requested by the Agency needed to evaluate the proposed servicing action;

(3) PLP lenders will request servicing approval in accordance with their agreement with the Agency at the time of PLP status certification.

(4) Any required security appraisals must meet the requirements of § 1980.127.

(5) The Agency will review and approve or reject the request and notify a standard eligible lender within 30

calendar days, and CLP and PLP lenders within 14 calendar days, from receipt of a complete request for servicing.

(6) The lender will provide the Agency copies of any agreements executed to carry out the servicing action.

(c) Subordinations. (1) Subordinating direct loan security to secure a guaranteed loan. The Agency may subordinate its security interest on a direct loan when a guaranteed loan is being made if, as appropriate, the requirements of § 1962.30 of subpart A of part 1962 of this chapter and § 1965.12 of subpart A of part 1965 of this chapter are met and only in any of the following circumstances:

(i) To permit a guaranteed lender to advance funds and perfect a security interest in crops, feeder livestock, or livestock products, (e.g., milk, eggs, wool, etc.);

(ii) When the lender requesting the guarantee needs the subordination of the Agency's lien position to maintain its lien position when servicing or restructuring;

(iii) When the lender requesting the guarantee is refinancing the debt of another lender and the Agency's position on real estate security will not be adversely affected; or

(iv) To permit a Contract of Guarantee—Line of Credit to be advanced for annual operating expenses.

(v) The Agency may subordinate its basic security in a direct loan under paragraph (c)(1)(iv) of this section only when both of the following additional conditions are met:

(A) The total unpaid balance of the direct loans is less than or equal to 75 percent of the value of all of the security for the direct loans, excluding the value of growing crops or planned production, at the time of the subordination. The direct loan security value will be determined by an appraisal. The lender requesting the subordination and guarantee is responsible for providing the appraisal and may charge the applicant a reasonable appraisal fee.

(B) The applicant cannot obtain sufficient credit through a conventional guaranteed loan. Before approving a combination guaranteed loan and subordination, the local loan approval official will document that the applicant requested a Contract of Guarantee—Line of Credit through at least one participating lender.

(2) Subordinating guaranteed loan security. The lender may not subordinate its interest in property which secures a guaranteed loan.

(3) The Agency's National Office may provide an exception to the subordination prohibition if such action is in the Government's best interest as determined by the Agency. However, in no case can the loan made under the subordination include tax exempt financing.

(d) Partial releases. In addition to the conditions set out in paragraph (b) of this section, the following limitations apply to partial releases:

(1) A partial release of security interest may be approved by the Agency if any of the following conditions are met:

(i) Proceeds from the sale of the released security will be applied to debts in accordance of their lien priority.

(ii) The security item will be used as a trade-in or source of down payment funds for a like item that will be taken as security;

(iii) The security item has no present or prospective value.

(iv) The loan to value ratio after the release is .75 or less.

(2) Standard eligible lenders and CLP lenders will submit the following to the Agency:

(i) A current appraisal of the security, except for the following:

(A) Unless specifically requested by the Agency, the lender will not be required to provide an appraisal of any real estate security being released.

(B) Based on the level of risk and estimated equity involved, the Agency will determine what security needs to be appraised.

(ii) How the proceeds, if any, will be used.

(e) Transfer and assumption. In addition to the conditions set out in paragraph (b) of this section, the following limitations apply to transfers and assumptions:

(1) The transferee meets the eligibility requirements and loan limitations for the loan being transferred, all requirements relating to loan rates and terms, loan security, feasibility, and environmental and other laws applicable to a loan applicant under this subpart.

(2) The lender will use their own assumption agreements or conveyance instruments providing they are legally sufficient to obligate the transferee for the total outstanding debt.

(3) The lender must note the assumption on the Loan Note Guarantee or Contract of Guarantee in the space provided. If the loan terms or interest rates are changed, a new Loan Note Guarantee or Contract of Guarantee is required.

(4) The lender must give any holder notice of the transfer. If the rate and terms are changed, written concurrence from the holder is required.

(5) The Agency will agree to releasing the transferor or any guarantor from liability only if the requirements of § 1980.146(c) are met.

§ 1980.143 Servicing Distressed Accounts

(a) Default by borrower. A borrower is in default when they are 30 days past due on a payment or have otherwise violated a loan agreement.

(b) Lender responsibilities. In the event of a borrower default, all lenders will:

(1) Report to the Agency in accordance with § 1980.141.

(2) If the guaranteed portion of the loan was sold on the secondary market, the lender will repurchase the guaranteed portion from the holder in accordance with § 1980.144 of this subpart.

(3) Arrange a meeting with the borrower within 45 days of its occurrence to identify the nature of the delinquency and develop a course of action that will eliminate the delinquency and correct the underlying problems.

(i) The lender and borrower will prepare a current balance sheet and cash flow in preparation for the meeting. If the borrower refuses to cooperate, the lender will prepare a balance sheet and cash flow based upon the best available information.

(ii) The lender or the borrower may request the attendance of an Agency credit officer. If requested, the local credit officer will assist in developing solutions to the borrower's financial problems.

(iii) The lender will summarize the meeting and proposed solutions on the Agency form for guaranteed loan borrower default status completed after the meeting. The borrower's eligibility for interest assistance will be automatically determined upon receipt of this form. Copies of correspondence sent to the borrower regarding agreements reached may be attached to this report.

(iv) The lender must decide whether to restructure or liquidate the account within 90 days of default, unless circumstances justify an extension by the Agency. PLP lenders may document the need for an extension without Agency approval.

(v) The lender may not initiate foreclosure action on the loan until 60 days after eligibility of the borrower to participate in the Interest Assistance Programs has been established by the Agency. If the lender or the borrower does not wish to consider servicing options under this section, this should be documented, and then liquidation under § 1980.149 should begin.

36. Sections 1980.144 through 1980.146 are revised, and §§ 1980.147 through 1980.149 are added to read as follows:

§ 1980.144 Repurchase of guaranteed portion from a secondary market holder.

(a) Request for repurchase. The holder may request the lender to repurchase the unpaid guaranteed portion of the loan when:

(1) The borrower has not made a payment of principal and interest due on the loan for at least 60 days; or

(2) The lender has failed to give the holder its pro-rata share of any payment made by the borrower within 30 days of receipt of a payment.

(b) Repurchase by the lender. (1) A lender will repurchase a loan from the holder upon request of the holder.

(2) The repurchase by the lender will be for an amount equal to the unpaid guaranteed portion of the principal and accrued interest, less the lender's servicing fee.

(3) The Agency will not reimburse the lender for any servicing fees which have been assessed to the holder.

(c) Repurchase by the agency. (1) If the lender is unable to repurchase the loan, the Agency will purchase the unpaid principal balance of the guaranteed portion with accrued interest to the date of repurchase within 30 days after written demand to the Agency, from the holder.

(2) With its demand on the Agency, the holder will include:

(i) A copy of the written demand made upon the lender.

(ii) Evidence of its right to require payment from the Agency. Evidence consists of either the originals of the Loan Note Guarantee and note properly endorsed to the Agency, or the original of the Assignment Guarantee Agreement which has been properly assigned to the Agency without recourse including all rights, title, and interest in the loan.

(iii) A copy of any written response to the demand provided to the holder by the lender.

(3) The amount due the holder from the Agency includes unpaid principal, unpaid interest to the date of demand, and interest which has accrued from the date of demand to the proposed payment date.

(i) For verification purposes, the lender must furnish upon Agency request a current statement, certified by a bank officer, of the unpaid principal and interest owed by the borrower and the amount due the holder.

(ii) Any discrepancy between the amount claimed by the holder and the information submitted by the lender must be resolved by the lender and the holder before payment will be approved by the Agency. The Agency will not participate in resolution of any such discrepancy.

(iii) The Loan Note Guarantee does not cover the note interest to the holder on the guarantee loan accruing after 90 days from the date of the demand letter to the lender requesting the repurchase. However, if for any reason not attributable to the holder and the lender, the Agency cannot make payment within 30 days of the holder's demand to the Agency, the holder will be entitled to interest to the date of the payment.

(4) Repurchase by the Agency does not change, alter, or modify any of the lender's obligations to the Agency specified in the Lender's Agreement, the Loan Note Guarantee or Contract of Guarantee, nor does the purchase waive any of the Agency's rights against the lender.

(5) The Agency has the right to set-off all lender's rights which have been passed along to the Agency from the holder representing the Agency's obligation to the lender under the Loan Note Guarantee.

(6) Within 180 days of the Agency's repurchase, the lender will reimburse the Agency the amount of repurchase, with accrued interest through one of the following ways:

(i) By liquidating the loan security and paying the Agency its pro-rata share of liquidation proceeds; or

(ii) Paying the Agency the full amount paid to the holder plus any accrued interest.

(iii) Purchasing the guaranteed portion from the Government on a non-recourse basis if the Agency determines that selling the portion of the loan that it holds is in the Government's best interest;

(iv) The lender has submitted a written request to the Agency to repurchase the guaranteed portion from the Agency on a non-recourse basis and has received written approval from the Agency.

(7) [Reserved]

(8) If the lender does not reimburse the Agency within 180 days, the lender will be liable for the repurchase amount and any expenses incurred by the Agency to maintain the loan in its portfolio or liquidate the security. While the Agency holds the guaranteed portion of the loan, the lender will transmit to the Agency any payment received from the borrower, including the pro-rata share of liquidation or other proceeds.

(9) If the borrower files bankruptcy or pays the account current while the repurchase by the Government is being processed, the Agency may hold the loan as long as it determines it to be in the Government's interest.

(10) The Agency will revoke, in writing, the Preferred or Certified Lender status, as applicable, of any lender that does not repurchase a loan from the secondary market when requested by the holder in writing.

(11) If a lender does not repurchase a loan from the holder the lender shall provide documentation to the Agency that they were physically or financially unable to repurchase the guaranteed portion from the holder when the request was made or otherwise provide justification to the Agency as to why they did not complete the repurchase. The Agency will review this documentation and if the failure to repurchase is not justified, as determined by the Agency, the lender will be provided with no additional loan guarantees.

(d) Repurchase for servicing.

(1) If due to loan default or imminent loan restructuring, the lender determines that its repurchase is necessary to adequately service the loan, the lender may repurchase the guaranteed portion of the loan from the holder, with the written approval of the Agency.

(2) The lender will not repurchase from the holder for arbitrage purposes.

(3) The holder will sell the guaranteed portion of the loan to the lender for an amount equal to the unpaid principal and interest, less lender's servicing fee.

§ 1980.145 Restructuring guaranteed loans.

(a) General.

(1) Lender submissions.

(i) Standard eligible lenders.

(A) Standard eligible lenders must obtain prior written approval of the Agency for all restructuring actions.

(B) Standard eligible lenders must provide the items in paragraph (a)(2) and (e) of this section to the Agency for approval.

(C) If the lender's proposal for servicing is not agreed to by the Agency, the Agency approval official will notify the lender in writing within 14 days of the lender's request.

(ii) CLP lenders.

(A) CLP lenders must obtain prior written approval of the Agency only for debt write down under this section.

(B) For debt write down, all calculations required in paragraph (e) of this section will be submitted to the Agency.

(C) For restructuring other than write down, CLP lenders will provide FSA with a certification that each requirement of this section has been

met, a narrative outlining the circumstances surrounding the need for restructuring, and copies of any applicable calculations.

(iii) PLP lenders will restructure loans in accordance with their agreement with the Agency at the time of the PLP certification.

(iv) All lenders will submit copies of any restructured notes or lines of credit to the Agency.

(2) Requirements. For any restructuring action, the following conditions apply:

(i) The borrower meets the eligibility criteria of § 1980.120 except the borrower may have had prior debt forgiveness. In addition, borrowers applying for restructuring of guaranteed loans will not be required to complete borrower training unless such training has been required as part of a previous loan but has not yet been satisfactorily completed.

(ii) The borrower's ability to make the amended payment is documented by the following:

(A) A feasible plan.

(B) Current financial statements from all liable parties.

(C) Verification of nonfarm income.

(D) Verification of all debts of $1,000 or more.

(E) Applicable credit reports.

(F) Financial history (and production history for standard eligible lenders) for the past 3 years to support the cash flow projections.

(iii) A final loss claim may be reduced, adjusted, or rejected as a result of negligent servicing after the concurrence with a restructuring action under this section.

(3) Balloon payments are prohibited; however, the loan can be restructured with unequal installments, provided the current year and any typical year plan demonstrates that these installments can be repaid without further restructuring.

(4) The lender may capitalize the outstanding interest when restructuring the loan in accordance with the following:

(i) As a result of the capitalization of interest, a rescheduled or reamortized note or line of credit agreement may increase the amount of principal which the borrower is required to pay. However, in no case will such principal amount exceed the statutory loan limits contained in § 1980.122.

(ii) When accrued interest causes the loan amount to exceed the statutory loan limits, rescheduling or reamortization may be approved without capitalization of the amount that exceeds the limit. Noncapitalized interest may be scheduled for repayment over the term of the rescheduled note.

(iii) Only interest that has accrued at the rate indicated on the borrower's original promissory notes may be capitalized. Late payment fees or default interest penalties that have accrued due to the borrower's failure to make payments as agreed are not covered under the guarantee and may not be capitalized.

(iv) If any of the guaranteed loan or line of credit agreements previously executed prohibit the capitalization of interest, the Agency will provide the lender with a modification form to waive the restriction for capitalization of interest resulting from restructuring a Farm Loan Programs loan and not exceeding statutory limits. If the documents do not prohibit the capitalization of interest, the new loan principal and the guaranteed portion, if greater than the original loan amounts, will be identified on the appropriate Agency modification form. Any modification will be attached to the original Loan Note Guarantee or Contract of Guarantee as an addendum.

(v) Approved capitalized interest will be treated as part of the principal and interest that accrues thereon, in the event that a loss should occur.

(5) The lender and Government's security position will not be adversely affected because of the restructuring. New security instruments may be taken if needed, but a loan does not have to be fully secured in order to be restructured.

(6) Any holder agrees in writing to any changes in the original loan terms, including the approval of interest assistance. If the holder does not agree, the lender must repurchase the loan from the holder for any loan restructuring to occur.

(7) After a guaranteed loan is restructured, the lender must provide the Agency with a copy of the restructured promissory note.

(b) Consolidation. The following conditions also apply to consolidation:

(1) Only OL loans or lines of credit may be consolidated.

(2) Existing lines of credit may only be consolidated with a new line of credit if the terms (to make advances as well as final maturity date) of the new line of credit are within the terms of the existing line of credit. OL loan note guaranteed loans may only be consolidated with other OL loan note guarantees.

(3) Guaranteed loans made prior to October 1, 1991, cannot be consolidated with those loans made on or after October 1, 1991.

(4) OL loans and lines of credit secured by real estate or with an outstanding Interest Assistance Agreement, or Shared Appreciation Agreement cannot be consolidated.

(5) A new note or line of credit agreement will be taken. The new note or line of credit agreement must describe the note or line of credit agreement being consolidated and must state that the indebtedness evidenced by the note or line of credit agreement is not satisfied. The original note or line of credit agreement must be retained for identification purposes.

(6) The interest rate for a consolidated OL loan is the negotiated rate agreed upon by the lender and the borrower at the time of the action, subject to the loan limitations for each type of loan.

(7) A new Contract of Guarantee or Loan Note Guarantee will be provided.

(c) Rescheduling and reamortization. The following conditions also apply when rescheduling or reamortizing a guaranteed loan:

(1) Payments will be rescheduled or reamortized within the following terms:

(i) FO and existing SW loans will be reamortized over the remaining term of the note or over a period not to exceed 40 years from the date of the original note.

(ii) OL loan notes must be rescheduled over a period not to exceed 15 years from the date of the action. An OL line of credit must be rescheduled over a period not to exceed 7 years from the date of the action or 10 years from the date of the original note, whichever is less. Advances cannot be made against a line of credit loan that has had any portion of the loan rescheduled.

(2) The interest rate for a rescheduled or reamortized loan is the negotiated rate agreed upon by the lender and the borrower at the time of the action, subject to the loan limitations for each type of loan. If the rescheduled or reamortized loan has an outstanding Interest Assistance Agreement, any change of the interest rate must occur on the anniversary date of the existing Interest Assistance Agreement.

(3) A new note is not necessary when rescheduling or reamortization occurs. However, if a new note is not taken, the existing note or line of credit agreement must be modified by attaching an ''allonge'' or other legally effective amendment, evidencing the revised repayment schedule and any interest rate change. If a new note is taken, the new note must reference the old note and state that the indebtedness evidenced by the old note or line of credit agreement is not satisfied. The original note or line of credit agreement must be retained for record keeping purposes.

(d) Deferrals. The following conditions also apply to deferrals:

(1) Payments may be deferred up to 5 years, but in no case extended beyond the final due date of the note.

(2) Principal may be deferred either in whole or in part. Payment of a reasonable portion of accruing interest as indicated by the borrower's cash flow projections is required for multi-year deferrals.

(3) There are reasonable prospects that the borrower will be able to resume full payments at the end of the deferral period.

(e) Debt writedown. The following conditions also apply to debt writedowns:

(1) A lender may only writedown a delinquent guaranteed loan or line of credit in an amount sufficient to permit the borrower to develop a feasible plan of operation.

(2) The lender will request other creditors to negotiate their debts before a writedown is considered.

(3) The borrower cannot develop a feasible plan after consideration is given to rescheduling, reamortization and deferral under this section.

(4) The present value of the loan to be written down will be equal to or exceed the net recovery value of the loan security.

(5) The loan will be restructured with regular payments at terms no shorter than 5 years for a line of credit and OL loan note and no shorter than 20 years for an FO loan.

(6) No further advances may be made on a line of credit that is written down.

(7) Loans may not be written down with interest assistance. If a borrower's loan presently on interest assistance requires a writedown, the writedown will be considered without interest assistance. If approved, the existing Interest Assistance Agreement will be terminated.

(8) The writedown is based on writing down the shorter-term loans first.

(9) When a lender requests approval of a writedown for a borrower with multiple loans, the security for all of the loans will be cross-collateralized and continue to serve as security for the loan that is written down. If a borrower has multiple loans and one loan is written off entirely through debt writedown, the security for that loan will not be released and will remain as security for the other written down debt. Additional security instruments will be taken if required to cross-collateralize security or maintain lien priority.

(10) The writedown will be evidenced by an allonge or amendment to the existing note or line of credit reflecting the writedown.

(11) The borrower executes an Agency Shared Appreciation Agreement for loans which are written down and secured by real estate.

(i) The lender will attach the original agreement to the restructured loan document.

(ii) The lender will provide the Agency a copy of the executed agreement, and

(iii) Security instruments must ensure future collection of any appreciation under the agreement.

(12) The lender will prepare and submit the following to the Agency:

(i) A current appraisal of all property securing the loan in accordance with § 1980.127.

(ii) A completed report of loss on the appropriate Agency form for the proposed writedown loss claim.

(iii) Detailed writedown calculations.

(iv) The amount of writedown is calculated as follows:

(A) Calculate the present value.

(B) Determine the net recovery value.

(C) If the net recovery value exceeds the present value, writedown is unavailable; liquidation becomes the next servicing consideration. If the present value equals or exceeds the net recovery value, the debt may be written down to the present value.

(v) The lender will make any adjustments in the calculations, as requested by the Agency.

§ 1980.146 Other servicing procedures.

(a) Additional loans and advances.

(1) Notwithstanding any provision of this section, the PLP lender may make additional loans or advances in accordance with its agreement with the Agency at the time of PLP certification.

(2) Lenders must not make additional loans without prior written approval of the Agency, except as provided for in the borrower's Loan or Line of Credit Agreement.

(3) In cases of a Guarantee line of credit, lenders may make an emergency advance when a line of credit has reached its ceiling provided the following conditions have been met:

(i) The loan funds to be advanced are for authorized operating loan purposes;

(ii) The financial benefit to the lender and the Government from the advance will exceed the amount of the advance; and

(iii) The loss of crops or livestock is imminent unless the advance is made.

(4) Protective advances are covered by § 1980.149.

(b) Release of liability upon withdrawal. An individual who is obligated on a guaranteed loan may be released from liability by a lender with the written consent of the Agency provided the following conditions have been met:

(1) The individual to be released has withdrawn from the operation;

(2) A divorce decree and final property settlement does not hold the withdrawing party responsible for the loan payments;

(3) The withdrawing party's interest in the security is conveyed to the individual or entity with whom the loan will be continued;

(4) Either the ratio of the amount of debt to the value of the remaining security is less than or equal to .75, or the withdrawing party has no income or assets from which collection can be made; and

(5) Withdrawal of the individual does not result in legal dissolution of the entity to which the loans are made. Individually liable members of a full partnership may not be released from liability.

(c) Release of liability after liquidation. After a final loss claim has been paid on the borrower's account, the lender may release the borrower or guarantor from liability if;

(1) The Agency agrees to the release in writing;

(2) The lender documents its consideration of the following factors concerning the borrower or guarantors:

(i) Potential income,

(ii) Inheritance prospects,

(iii) If collateral has been properly accounted for,

(iv) The availability of other income or assets which are not security for the guaranteed debt,

(v) The possibility that assets have been concealed or improperly transferred,

(vi) The effect of other guarantors on the loan,

(vii) Cash consideration or other collateral in exchange for the release of liability.

(3) The lender will execute its own release of liability documents.

(d) Interest rate changes.

(1) The lender may change the interest rate on a performing (nondelinquent) loan only with the borrower's consent.

(2) To change a fixed rate of interest to a variable rate of interest or vice versa, the lender and the borrower must execute a legally effective amendment or allonge to the existing note.

(3) If a new note is taken it will be attached to and refer to the original note.

(4) The lender will inform the Agency of the rate change.

§ 1980.147 Servicing Shared Appreciation Agreements.

(a) Lender responsibilities. The lender is responsible for:

(1) Monitoring the borrower's compliance with the Shared Appreciation Agreement;

(2) Notifying the borrower of the amount of recapture due; and,

(3) Reimbursing the Agency for its pro-rata share of recapture due.

(b) Recapture.

(1) *Triggering recapture.*—Recapture of any appreciation of real estate security will take place at the end of the term of the Agreement, or sooner, if the following occurs:

(i) On the conveyance of the real estate security (or a portion thereof) by the borrower.

(A) If only a portion of the real estate is conveyed, recapture will only be triggered against the portion conveyed. Partial releases will be handled in accordance with § 1980.141(b) of this subpart.

(B) Transfer of title to the spouse of the borrower on the death of such borrower, will not be treated as a conveyance under the agreement.

(ii) On the repayment of the loans; or

(iii) If the borrower ceases farming operations.

(2) *Figuring recapture.* (i) The amount of recapture will be based on the difference between the value of the security at the time recapture is triggered and the value of the security at the time of writedown as shown on the Shared Appreciation Agreement.

(ii) Security values will be determined through appraisals obtained by the lender and meeting the requirements of § 1980.127.

(iii) All appraisal fees will be paid by the lender.

(iv) The amount of recapture will not exceed the amount of writedown shown on the Shared Appreciation Agreement.

(v) If recapture is triggered within 4 years of the date of the Shared Appreciation Agreement, the lender shall recapture 75 percent of any positive appreciation in the market value of the property securing the loan or line of credit agreement.

(vi) If recapture is triggered after 4 years from the date of the Shared Appreciation Agreement, the lender shall recapture 50 percent of any positive appreciation in the market value of the property securing the loan or line of credit agreement.

(3) *Servicing recapture debt.* (i) If recapture is triggered under the Shared Appreciation Agreement and the borrower is unable to pay the recapture in a lump sum, the lender may:

(A) Reamortize the recapture debt with the consent of the Agency, provided the lender can document the borrower's ability to repay the reamortized debt plus other obligations. In such case, the recapture debt will not be covered by the Loan Note Guarantee or Contract of Guarantee;

(B) Pay the Agency its pro rate share of the recapture due. In such case, the recapture debt of the borrower will be covered by the Loan Note Guarantee or Contract of Guarantee; or

(C) Service the account in accordance with § 1980.149.

(ii) If recapture is triggered, and the borrower is able, but unwilling to pay the recapture, in a lump sum, the lender will service the account in accordance with § 1980.149.

(4) *Paying the Agency.* Any shared appreciation recaptured by the lender will be shared on a pro-rata basis between the lender and the Agency.

§ 1980.148 Bankruptcy.

(a) Lender responsibilities. The lender must protect the guaranteed loan debt and all collateral securing the loan in bankruptcy proceedings. The lender's responsibilities include, but are not limited to:

(1) Filing a proof of claim where required and all the necessary papers and pleadings;

(2) Attending, and where necessary, participating in meetings of the creditors and court proceedings;

(3) Protecting the collateral and resisting any adverse changes that may be made to the collateral securing the guaranteed loan;

(4) Seeking a dismissal of the bankruptcy proceeding when the operation as proposed by the borrower to the bankruptcy court is not feasible;

(5) When permitted by the Bankruptcy Code, requesting a modification of any plan or reorganization if it appears additional recoveries are likely.

(6) Monitor confirmed plans under Chapters 11, 12 and 13 of the bankruptcy code to determine borrower compliance. If the borrower fails to comply, the lender will seek a dismissal of the plan by the court; and

(7) Keeping the Agency regularly informed in writing on all aspects of the proceedings.

(i) The lender will submit a Default Status Report when the borrower defaults and every 60 days until the default is resolved or a final loss claim is paid.

(ii) The Default Status Report will be used to inform the Agency of the bankruptcy filing, the plan confirmation date, the plan's effective date, when the reorganization plan is complete, and when the borrower is not in compliance with the reorganization plan.

(b) Bankruptcy expenses.

(1) Reorganization bankruptcy.

(i) Lender's in-house expenses are not covered by the guarantee in a reorganization bankruptcy.

(ii) Other expenses, such as legal fees and appraisals, incurred by the lender as a direct result of the borrower's chapter 11, 12, or 13 reorganization are covered under the guarantee.

(2) Liquidation bankruptcy.

(i) Reasonable and customary liquidation expenses may be deducted from the proceeds of the collateral in liquidation bankruptcy cases.

(ii) In-house expenses are not considered customary liquidation expenses, may not be deducted from collateral proceeds, and are not covered by the guarantee.

(c) Estimated loss claims in reorganization bankruptcies.

(1) At confirmation. The lender may submit an estimated loss claim upon confirmation of the plan in accordance with the following:

(i) The estimated loss payment will cover the guaranteed percentage of the principal and accrued interest written off, plus any allowable costs incurred as of the effective date of the plan.

(ii) The lender will submit supporting documentation for the loss claim.

(iii) The estimated loss payment may be revised as consistent with a court-approved plan.

(iv) Protective advances. Protective advances made and approved in accordance with § 1980.149 may be included in an estimated loss claim associated with a reorganization bankruptcy, if:

(A) They were incurred in connection with the initiation of liquidation action prior to the bankruptcy filing; or

(B) The advance is required to provide repairs, insurance, etc. to protect the collateral as a result of delays in the case, or failure of the borrower to maintain the security.

(2) Interest only losses. The lender may submit an estimated loss claim for interest only after confirmation of the plan in accordance with the following:

(i) The loss claims may cover interest losses sustained as a result of a court-ordered, permanent interest rate reduction.

(ii) The loss claims will be processed annually on the anniversary date of the effective date of the bankruptcy plan.

(iii) If the borrower performs under the terms of the plan, annual interest reduction loss claims will be submitted on or near the same date, beyond the period of the reorganization plan.

(3) Actual loss.

(i) Once the reorganization plan is complete, the lender will provide the Agency with documentation of the actual loss sustained.

(ii) If the actual loss sustained is greater than the prior estimated loss payment, the lender may submit a revised estimated loss claim to obtain payment of the additional amount owed by the Agency under the guarantee.

(iii) If the actual loss is less than the prior estimated loss, the lender will reimburse the Agency for the overpayment plus interest at the note rate from the date of the payment of the estimated loss.

(4) Payment to holder. In reorganization bankruptcy if a holder makes demand upon the Agency, the Agency will pay the holder interest to the plan's effective date. Accruing interest thereafter, will be based upon the provisions of the reorganization plan.

(d) Liquidation bankruptcy.

(1) Upon receipt of notification that a borrower has filed for protection under Chapter 7 of the bankruptcy code, or a liquidation plan under Chapter 11, the lender shall proceed according to the liquidation procedures of this subpart.

(2) If the property is abandoned by the trustee, the lender will conduct the liquidation according to § 1980.149.

(3) Proceeds received from partial sale of collateral during bankruptcy may be used by the lender to pay reasonable costs, such as freight, labor and sales commissions, associated with the partial sale. Reasonable use of proceeds for this purpose must be documented with the final loss claim in accordance with § 1980.149 (a)(vi).

§ 1980.149 Liquidation.

(a) Mediation. When it has been determined that a default cannot be cured throughany of the servicing options available or if the lender does not wish to utilize any of the authorities provided in this subpart, the lender must:

(1) Participate in mediation according to the rules and regulations of any State which has a mandatory farmer-creditor mediation program.

(2) Consider private mediation services in those states which do not have a mandatory farmer-creditor mediation program.

(3) The lender must not agree to any proposals to rewrite the terms of a guaranteed loan which do not comply with this subpart.

(4) Any agreements reached as a result of mediation involving defaults and or loan restructuring must have written concurrence from the agency before they are implemented.

(b) Liquidation plan. If a default cannot be cured after considering servicing options and mediation, the lender will proceed with liquidation of the collateral in accordance with the following:

(1) Within 30 days of the decision to liquidate, all lenders will submit a written plan to the Agency which includes:

(i) Documentation of the lender's ownership of the guaranteed loan promissory note and related security instruments;

(ii) A current balance sheet from all liable parties, or in liquidation bankruptcies, a copy of the bankruptcy schedules or discharge notice; and

(iii) A proposed method of maximizing the collection of debt which includes specific plans to collect any remaining loan balances on the guaranteed loan after loan collateral has been liquidated, including possibilities for judgment.

(A) If the borrower has converted loan security, the lender will determine whether litigation is cost effective. The lender must address, in the liquidation plan, whether civil or criminal action will be pursued. If the lender does not pursue the recovery, the reason must be documented when an estimated loss claim is submitted.

(B) Any proposal to release the borrower from liability will be addressed in the liquidation plan.

(iv) An independent appraisal report on all collateral securing the loan which reflects the current market value and potential liquidation value. The appraisal will meet the requirements of § 1980.127. If the bankruptcy trustee is handling the liquidation, the lender should submit the trustee's determination of value.

(v) An estimate of time necessary to complete the liquidation.

(vi) If the liquidation period is expected to exceed 90 days and the lender owns any of the guaranteed portion of the loan, the lender will submit an estimated loss claim.

(vii) An estimate of reasonable liquidation expenses.

(viii) An estimate of any protective advances.

(c) Agency approval of plan.

(1) A lender's liquidation plan, and any revisions of the plan, must be approved by the Agency.

(2) If the Agency fails to approve the liquidation plan or request that the lender make revisions to the plan within 30 days, the lender may assume the plan is approved, make protective advances and begin liquidation actions at their discretion after waiting the 60 days from determining the eligibility of borrower for interest assistance.

(3) At its option, the Agency may liquidate the guaranteed loan as follows:

(i) The lender will transfer to the Agency all rights and interests necessary to allow the Agency to liquidate the loan upon Agency request. The Agency will not pay the lender for any loss until after the collateral is liquidated and the final loss is determined.

(ii) If the Agency conducts the liquidation, interest accrual will cease on the date the Agency notifies the lender in writing that it assumes responsibility for the liquidation.

(iii) The Agency will keep the lender informed of its progress in liquidating the account.

(d) Estimated loss claims. An estimated loss claim will be submitted by the lender with the liquidation plan. The estimated loss will be based on the following:

(1) The Agency will pay the lender the guaranteed percentage of the total outstanding debt, less the fair market value of the remaining security, any unaccounted for security, and estimated liquidation expenses. The market value will be determined by an appraisal meeting the requirements of § 1980.127.

(2) The lender will apply the estimated loss payment to the outstanding principal balance owed on the guaranteed debt and will credit the principal balance with the calculated lender's loss on the unguaranteed percentage of the loan. The lender must then discontinue interest accrual on the defaulted loan at the time the estimated loss claim is paid by the Agency.

(e) Protective advances.

(1) Written authorization from the Agency is required for all protective advances in excess of $3,000 for CLP lenders, $500 for standard eligible lenders. The dollar amount of protective advances for PLP lenders will be specified when PLP status is awarded and attached to the Lender's Agreement.

(2) The lender may claim recovery for the guaranteed portion of any loss of monies advanced as protective advances allowable under this subpart. This includes any accrued interest resulting from the protective advances.

(3) Payment for protective advances is made by the Agency when the final loss claim is approved, except in bankruptcy actions.

(4) Protective advances are used only when the borrower is in liquidation, liquidation is imminent, or when the lender has taken title to real property in a liquidation action.

(5) Attorney fees are not a protective advance.

(6) Protective advances may only be made when the lender can demonstrate the advance is in the best interest of the lender and the Government.

(7) Protective advances must constitute a debt of the borrower to the

lender and be secured by the security instrument.

(8) Protective advances must not be made in lieu of additional loans.

(f) Unapproved loans or advances. The amount of any payments made by the borrower on unapproved loans or advances outside of the guarantee will be deducted from any loss claim submitted by the lender on the guaranteed loan, if that loan or advance was paid prior to the guaranteed loan.

(g) Acceleration.

(1) If the borrower is not in bankruptcy, the lender shall send the borrower notice that the loan is in default and the entire debt has been determined due and payable immediately after other servicing options have been exhausted.

(2) The loan cannot be accelerated until after the borrower has been considered for Interest Assistance.

(3) The lender will submit a copy of the acceleration notice or other document to the Agency.

(h) Foreclosure.

(1) The lender is responsible for determining who the necessary parties are to any foreclosure action or who should be named on a deed of conveyance taken in lieu of foreclosure.

(2) When the property is liquidated, the lender will apply the net proceeds to the guaranteed loan debt.

(3) When it is necessary to enter a bid at a foreclosure sale, the lender may bid that amount that they determine is reasonable to protect their and the Government's interest. At a minimum, the lender will bid the lesser of the net recovery value or the unpaid guaranteed loan balance.

(i) Final loss claims.

(1) Lenders may submit a final loss claim when the security has been liquidated and all proceeds have been received and applied to the account.

(2) If a lender acquires title to property either through voluntary conveyance or foreclosure proceeding, the lender may choose to submit a final loss claim, if applicable, at the point title is obtained or at the time the lender disposes of the property. Maintenance expenses incurred for the property while it is owned by the lender will be through use of protective advances.

(3) The lender will make its records available to the Agency for its investigation into the propriety of any loss payment.

(4) All lenders will submit the following documents with a final loss claim:

(i) An accounting of the use of loan funds.

(ii) An accounting of the disposition of loan security and its sales proceeds.

(iii) A copy of the loan ledger indicating loan advances, interest rate changes, protective advances, and application of payments, rental proceeds, and security proceeds, including a running outstanding balance total.

(iv) Documentation, as requested by the Agency, concerning the lender's compliance with the requirements of this subpart.

(5) The Agency will notify the lender of any discrepancies in the final loss claim or, approve or reject the claim within 40 days.

(6) The Agency will reduce a final loss claim based on their calculation of the dollar amount of loss caused by the lender's negligent servicing of the account.

(7) The final loss will be the remaining outstanding balance after application of the estimated loss payment and the application of proceeds from the liquidation of the security. The final loss will include any interest accrual on the principal that remained after application of the estimated loss.

(8) If the final loss is less than the estimated loss, the lender will reimburse the Agency for the overpayment plus interest at the note rate from the date of the estimated loss payment.

(j) Future Recovery. The lender will remit any recoveries made on the account after the Agency's payment of a final loss claim to the Agency in proportion to the percentage of guarantee in accordance with the Lender's Agreement until the account is paid in full or otherwise satisfied.

(k) Overpayments. The lender will repay any final loss overpayment determined by the Agency upon request.

(l) Electronic funds transfer. The lender will designate one or more financial institutions or other authorized agents to which any Agency payments will be made. The lender will provide the Agency information as necessary for the lender to receive electronic funds transfer payments through each institution or agency designated.

37. Section 1980.151 is added to read as follows:

§ 1980.151 Borrower training

(a) Requirements. (1) Borrowers with farm loans guaranteed by the Agency must obtain training in production and financial management concepts unless waived by the Agency in accordance with this section. Failure to complete the training as agreed will cause the borrower to be ineligible for future Agency benefits including future direct and guaranteed loans, primary loan servicing of direct loans, Interest Assistance renewals, and restructuring of guaranteed loans.

(2) A decision that the loan applicant needs such training will not be used as a basis for rejecting the request for assistance.

(3) In the case of an entity loan applicant, any entity member holding a majority interest in the operation or who is operating the farm must agree to complete the training on behalf of the entity or qualify for a waiver. However, if one entity member is solely responsible for financial or production management, then only that entity member will be required to complete the training in that area for the entity or qualify for a partial waiver. If the financial and production functions of the farming operation are shared, the knowledge and skills of the individual with the responsibility of production or financial management, or both, of the operation will be considered in the aggregate for granting a waiver or requiring that training be completed.

(4) When production training is required, a borrower must complete course work covering production management in crop or livestock enterprises which constitute twenty percent of the cash farm income for the coming production cycle, as determined by the Agency, and set out in the training agreement.

(5) Borrowers who are adding a new enterprise must agree to complete any required production training in that enterprise unless a waiver is granted.

(6) All required training must be completed within two years after the borrower signs the training agreement. The lender may recommend to the Agency a 1-year extension to this deadline where the borrower is unable to complete the training due to circumstances beyond the borrower's control.

(b) Waiver. (1) Lenders may request a waiver from the production or financial management, or both, training requirements on behalf of the loan applicant.

(2) CLP and PLP lenders may certify that loan applicants meet the criteria for waiver without submitting supporting documentation. Standard eligible lender requests must include evidence that the loan applicant meets one of the following conditions:

(i) The loan applicant has successfully completed an equivalent training program.

(ii) The loan applicant has demonstrated adequate knowledge and ability in the subject areas covered under this training program. For waiver

under this paragraph, standard eligible lenders must submit a brief narrative describing the loan applicant's past production or financial management performance specifically related to satisfaction of the course objectives.

(iii) Lenders do not need to submit supporting evidence for a waiver if the loan applicant has previously received a waiver or satisfied the borrower training requirements needed.

(c) Fees. Training fees must be included in the plan of operation as a farm operating expense. Payment of training fees is an authorized use of operating loan funds.

(d) Choosing vendor. The loan applicant is responsible for selecting and contacting the vendors necessary to complete the training required under this section.

(e) Vendor reporting. (1) The vendor will provide the lender and the Agency with periodic progress reports, as determined by the Agency. These reports are not intended to reflect a grade or score, but to indicate whether the borrower is attending sessions and honestly endeavoring to complete the training program.

(2) Upon completion of the training, the vendor will provide the lender and the Agency with an evaluation which specifically addresses the borrower's improvement toward meeting the training goals. The instructor will also assign the borrower a recommended score according to the following criteria:

Score

1—The borrower attended classroom sessions as agreed, satisfactorily completed all assignments, and demonstrated an understanding of the course material.

2——The borrower attended classroom sessions as agreed and attempted to complete all assignments; however, the borrower does not demonstrate an understanding of the course material.

3——The borrower did not attend classroom sessions as agreed or did not attempt to complete assignments. In general, the borrower did not make a good faith effort to complete the training.

(i) Borrowers receiving a score of 1 will have met the requirements of the agreement.

(ii) Borrowers receiving a score of 2 will have met the requirements of the agreement. However, since these borrowers do not adequately understand the course material, the lender will develop a plan outlining the additional supervision the borrower will require to accomplish the objectives of the guaranteed loan program.

(iii) Borrowers receiving a score of 3 will not have met the requirements of the agreement for training.

38. Section 1980.160 is added to read as follows.

§ 1980.160 Sale, assignment and participation.

(a) The following general requirements apply to selling, assigning or participating guaranteed loans.

(1) The lender may sell, assign or participate all or part of the guaranteed portion of the loan to one or more holders at or after loan closing only if, the loan is not in default. However, a line of credit can be participated, but not sold or assigned.

(2) The lender will provide the Agency with copies of all appropriate forms used in the sale or assignment.

(3) The guaranteed portion of the loan may not be sold or assigned by the lender until the loan has been fully disbursed to the borrower. A line of credit may be participated prior to being fully advanced.

(4) The lender is not permitted to sell, assign or participate any amount of the guaranteed or unguaranteed portion of loan to the loan applicant or borrower or members of their immediate families, their officers, directors, stockholders, other owners, or any parent, subsidiary, or affiliate.

(5) Upon the lender's sale or assignment of the guaranteed portion of the loan, or participation of the line of credit, the lender will remain bound to all obligations indicated in the Loan Note Guarantee, Lender's Agreement, the Agency program regulations, and to future program regulations not inconsistent with the provisions of the Lenders Agreement. The lender retains all rights under the security instruments for the protection of the lender and the United States.

(b) Effect of sale or assignment on holder.

(1) Upon the lender's sale or assignment of the guaranteed portion of the loan, the holder will assume all rights of the Loan Note Guarantee pertaining to the portion of the loan purchased.

(2) The lender will send the holder the borrower's executed note attached to the Loan Note Guarantee.

(3) The holder, upon written notice to the lender and the Agency, may assign the unpaid guaranteed portion of the loan. The holder must sell the guaranteed portion back to the original lender if necessary for liquidation of the account.

(4) The Loan Note Guarantee or Assignment Guarantee Agreement in the holder's possession does not cover:

(i) Interest accruing 90 days after the holder has demanded repurchase by the lender.

(ii) Interest accruing 90 days after the lender or the Agency has requested the holder to surrender evidence of debt repurchase, if the holder has not previously demanded repurchase.

(c) Participations.

(1) In a participation, the lender sells an interest in a loan but retains the note, the collateral securing the note, and all responsibility for loan servicing and liquidation.

(2) The lender must retain at least 10 percent of the total guaranteed loan amount from the unguaranteed portion of the loan in its portfolio, except when the loan guarantee exceeds 90 percent, the lender must retain the total unguaranteed portion.

(3) Participation with a lender by any entity does not make that entity a holder or a lender as defined in this subpart.

(d) Premiums, fees, and penalties. Negotiations concerning premiums, fees, and additional payments for loans, etc. are to take place between the holder and the lender.

The Agency will participate in such negotiations only as a provider of information.

§ 1980.174 through 1980.175 [Removed and reserved]

39. Sections 1980.174 through 1980.175 are removed and reserved.

§ 1980.180 [Removed and reserved]

40. Section 1980.180 is removed and reserved.

§ 1980.185 [Removed and reserved].

41. Section 1980.185 is removed and reserved.

§ 1980.190 through 1980.191 [Removed and reserved]

42. Sections 1980.190 through 1980.191 are removed and reserved.

Exhibits A, C, E, F, and G [Removed]

43. In subpart B, Exhibits A and C are removed and reserved and Exhibits E, F, and G are removed.

Signed in Washington, D.C., on September 21, 1998.

August Schumacher, Jr.,

Under Secretary for Farm and Foreign Agricultural Services.

Inga Smulkstys,

Acting Under Secretary for Rural Development.

[FR Doc. 98–25574 Filed 9–22–98; 1:19 pm]

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Federal Register

Friday
September 25, 1998

Part IV

Department of the Treasury

Fiscal Service

31 CFR Part 208

Management of Federal Agency Disbursements; Final Rule

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 208

RIN 1510–AA56

Management of Federal Agency Disbursements

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: This regulation implements the provisions of section 31001(x) of the Debt Collection Improvement Act of 1996 (Act) that require that, subject to the authority of the Secretary of the Treasury (Secretary) to grant waivers, all Federal payments (other than payments under the Internal Revenue Code of 1986) made after January 1, 1999, must be made by electronic funds transfer (EFT). This regulation establishes the circumstances under which waivers are available; sets forth requirements for accounts to which Federal payments may be sent by EFT; provides that any individual who receives a Federal benefit, wage, salary, or retirement payment shall be eligible to open a low-cost Treasury-designated account at a financial institution that offers such accounts; and sets forth the responsibilities of Federal agencies and recipients under the regulation.

In addition, this regulation provides for the designation of financial institutions as Financial Agents for purposes of implementing electronic benefits transfer (EBT) programs. EBT is the provision of Federal benefit, wage, salary, and retirement payments electronically, through disbursement by a Financial Agent. EBT includes payment through an electronic transfer account (ETA℠) as well as payment through a Federal/State program.

DATES: This rule is effective January 2, 1999.

ADDRESSES: This rule is available on the Financial Management Service's EFT web site at the following address: http://www.fms.treas.gov/eft/.

FOR FURTHER INFORMATION CONTACT: Diana Shevlin, Financial Program Specialist, at (202) 874–7032; Donna Wilson, Financial Program Specialist, at (202) 874–6799; Sally Phillips, Senior Financial Program Specialist, at (202) 874–6749; Natalie H. Diana at (202) 874–6950; Cynthia L. Johnson, Director, Cash Management Policy and Planning Division, at (202) 874–6590; or Margaret Marquette, Attorney-Advisor, at (202) 874–6681.

SUPPLEMENTARY INFORMATION:

I. Background

A. Introduction

Section 31001(x) of the Act amends 31 U.S.C. 3332 to require that agencies convert from paper-based payment methods to EFT under regulations issued by the Secretary. The Act, which exempts only payments under the Internal Revenue Code of 1986, provides that the conversion from checks to EFT be made in two phases. During the first phase, recipients who became eligible to receive Federal payments on or after July 26, 1996, are required to receive such payments by EFT unless they certify in writing that they do not have an account with a financial institution or an authorized payment agent. Treasury issued an interim rule on July 26, 1996, to implement these requirements. 61 FR 39254. The interim rule will remain in effect through January 1, 1999.

The second phase begins January 2, 1999. Beginning on that date, all Federal payments, except payments under the Internal Revenue Code, must be made by EFT unless waived by the Secretary. This regulation (Part 208), which was published for comment on September 16, 1997 (62 FR 48714)(208 NPRM), implements the second phase requirements.

Part 208 provides guidance to agencies and recipients regarding compliance with the Act's requirements. In developing this rule, Treasury followed four principles: (1) The transition to EFT should be accomplished with the interests of recipients being of paramount importance; (2) Treasury's policies should maximize private sector competition for the business of handling Federal payments, so that recipients not only have a broad range of payment options, but also receive their payments at a reasonable cost, with substantial consumer protections, and with the greatest possible convenience, efficiency, and security; (3) recipients, especially those having special needs, should not be disadvantaged by the transition to EFT; and (4) recipients without accounts at financial institutions should be brought into the mainstream of the financial system to the extent possible.

Proposed 31 CFR Part 207

Part 208 also incorporates selected provisions from the proposed rule 31 CFR Part 207, Electronic Benefits Transfer; Selection and Designation of Financial Institutions as Financial Agents (207 NPRM) published for comment on May 9, 1997. 62 FR 25572. As described below, the EBT system is a system for making certain types of Federal payments available electronically (by EFT) to recipients. In EBT, the payments are disbursed to the recipient by a financial institution acting as Treasury's Financial Agent. Legislation enacted in 1996 authorized the Secretary of the Treasury to designate financial institutions as Financial Agents to provide EBT services. Section 664, Omnibus Consolidated Appropriations Act, 1997, Pub. L. 104–208.

At the time the 207 NPRM was published, Treasury contemplated fulfilling the mandate in the Act that it assure that individuals required to have an account in order to receive electronic payments have access to an account at a reasonable cost and with the same consumer protections as other account holders at the same financial institution, by establishing one or more EBT systems through a competitive selection process, and thus provide for the electronic delivery of payments to those individuals who did not have an account with a financial institution. The 207 NPRM proposed to establish a legal framework for obtaining the services of financial institutions as Financial Agents to perform the disbursement of public funds that is central to the Federal EBT program.

As indicated below in the discussion on § 208.5, Treasury has determined that the statutory mandate to assure recipients access to accounts is better implemented by designing an ETA℠ that may be offered by any Federally-insured financial institution that enters into an ETA℠ Financial Agency Agreement with Treasury. It has also determined that the ETA℠ should be made available to any individual who receives a Federal benefit, wage, salary, or retirement payment. Under Part 208, an ETA℠ falls within the definition of ''EBT.''

Also within the definition of EBT are Federal/State programs under which a recipient who receives benefit payments from both the Federal government and a State government can receive his or her payments through the same system. This is consistent with the National Performance Review implementation plan for nationwide EBT encouraging Federal agencies, in partnership with State and local governments, to develop a nationwide integrated EBT system utilizing the existing commercial infrastructure to provide combined access to Federal payments and State-administered benefits for a recipient on a single card. As discussed below in the analysis of § 208.5, Treasury intends, where requested by States to do so, to work with States in implementing joint

Federal/State EBT programs. Individuals who are in States with a Federal/State program and who receive both Federal and State benefit payments will have the option of participating in the program.

Based on the shift in focus from a competitive selection process for obtaining EBT services to the development of an ETA℠ to be offered at the option of Federally-insured financial institutions, as well as on comments to the 207 NPRM indicating some confusion over the relationship of the 207 NPRM to Part 208 and other related documents, Treasury believes that a separate Part 207 rulemaking is no longer necessary or desirable. Instead, those portions of the 207 NPRM that relate to the statutory authority of the Secretary to designate financial institutions to provide EBT services, including the offering of ETAs℠, as Treasury's Financial Agents, have been modified and incorporated in Part 208. Those portions of the 207 NPRM that outline the duties of financial institutions designated as Financial Agents, some of which may vary depending on a specific EBT program, will be included in the Financial Agency Agreement for that particular program, e.g., the ETA℠ Financial Agency Agreement or the Financial Agency Agreement governing the disbursement of Federal benefits in a Federal/State EBT program. Selected duties, *e.g.*, the duty related to complying with Regulation E, 12 CFR Part 205, will also be reflected in the notice of ETA℠ attributes to be published at a later date in the **Federal Register**.

B. Participation in Rulemaking Process

As part of the rulemaking process for Part 208, Treasury has provided multiple forums for public comment and discussion. Since the publication of the 208 NPRM, Treasury has actively solicited the views of interested parties, including consumer and community-based organizations, most of which are advocates for Federal recipients likely to be most affected by the rule. For example, focus groups were held nationwide to understand better the needs of Federal payment recipients and to test public education messages and materials developed to explain EFT to recipients. Also, the public was invited to attend four Treasury-sponsored public hearings in the cities of Baltimore, Dallas, Los Angeles, and New York. Over 50 interested parties testified as to their views and concerns regarding EFT. In addition, representatives from consumer and community-based organizations and from financial institutions, financial institution trade associations, and ATM networks were invited to participate in two public meetings to discuss the account to be made available pursuant to § 208.5.

Finally, through an EFT Interagency Policy Workgroup, Treasury has worked with Federal agencies to solicit input on EFT conversion as well as to understand better agency implementation concerns. Agency feedback has been essential to formulating a final rule that meets both Federal agency and recipient needs.

II. Comments

A. 208 NPRM

Treasury received 212 comment letters in response to the 208 NPRM that was published on September 16, 1997. Copies of the comments are available on the Financial Management Service's (Service's) web site at http://www.fms.treas.gov/eft/. Comments were received from consumer and community-based organizations, recipients, financial institutions, non-financial institutions, Federal agencies, and other interested parties. In addition, comments were received in the form of testimony at the four public hearings on EFT.

In general, commenters supported the use of EFT for Federal payments. Although comments were received on a multitude of issues, the principal issues addressed in the comment letters were the expansion of hardship waivers; the availability and features of the ETA℠ to be made available by Treasury pursuant to § 208.5 of the 208 NPRM; and the regulation of accounts other than the ETA℠ to which Federal payments may be sent.

These issues are discussed below in the section-by-section analysis.

B. 207 NPRM

Treasury received 33 comment letters on the 207 NPRM that was published on May 9, 1997. Copies of the comments are available on the Service's web site at http://www.fms.treas.gov/eft/. Comments were received from consumer organizations, financial institutions, financial trade associations, a representative of non-bank financial service providers, State government organizations, and a software development company. The comment letters generally supported the use of EBT to make Federal payments.

Some of the comments on the 207 NPRM related to issues that were the subject of Part 208, in particular § 208.5, Availability of the ETA℠. Those comments have been addressed below in the section-by-section analysis of Part 208.

Other comments related to issues that will be the subject of a notice of proposed ETA℠ features to be published in the **Federal Register** and, therefore, will be addressed in that document. Comments related to the attributes of the ETA℠ include comments on provisions in proposed § 207.3 that an account established by a Financial Agent may be closed only at the direction of Treasury; that Financial Agents must comply with Regulation E; and that recipients must be provided debit card access to the account.

Still other comments, related to the duties and compensation of Financial Agents, will be reflected in the Financial Agency Agreement between Treasury and any financial institution that elects to provide EBT services, e.g., ETAs℠, as Treasury's Financial Agent. The characteristics and requirements of EBT programs, including the duties of the Financial Agent for a particular program, may vary according to the program. Therefore, Treasury believes that these duties are best incorporated in the Financial Agency Agreement for the particular program.

III. Section-by-Section Analysis of Part 208

A. Section 208.1—Scope and Application

Final § 208.1, which is unchanged from proposed § 208.1, states that this rule applies to all Federal payments made by an agency and, except as waived by the Secretary, requires that such payments be made by EFT. This part does not apply to payments under the Internal Revenue Code of 1986.

B. Section 208.2—Definitions

All definitions contained in the 208 NPRM are substantively unchanged in the final Part 208 rule. Definitions for the terms ''ETA℠,'' ''Federal/State EBT program,'' and ''Federally-insured financial institution'' have been added to the rule. In addition, definitions from the 207 NPRM for ''Direct Federal electronic benefits transfer (EBT)'' and ''disburse'' have been modified and incorporated into Part 208 as ''electronic benefits transfer (EBT)'' and ''disbursement.'' The definitions of ''eligible financial institution'' and ''Financial Agent'' have been combined as ''Financial Agent.'' Comments were received on the 208 NPRM definitions of ''authorized payment agent'' and ''Federal payment.'' For the reasons discussed below, Treasury has left these two definitions unchanged in the final rule.

Disbursement

The final rule includes a definition for ''disbursement.'' This definition is similar to that for ''disburse'' in the 207 NPRM. The term ''disbursement'' is used in the definition of ''electronic benefits transfer (EBT)'' as meaning the performance of a series of functions by a financial institution that has been designated by Treasury as a Financial Agent. The functions are: the establishment of an account that meets the requirements of the Federal Deposit Insurance Corporation or the National Credit Union Administration Board for deposit or share insurance; the maintenance of the account; the receipt and crediting of Federal payments to the account; and the provision of access to the account on terms specified by Treasury.

The broad definition of ''disbursement'' in Part 208 reflects Treasury's determination that all of the functions must be performed in order to accomplish Treasury's goal of providing recipients access to their payments through an ETA℠ or a Federal/State EBT program. By contrast, the term ''disburse'' is used in a narrower sense in 31 CFR Part 206, Treasury's regulation dealing with the management of Federal agency receipts and collections. ''Disburse'' is defined in 31 CFR 206.2 as the initiation of an EFT because, in the context of agency cash management where all the parties have accounts at financial institutions, the only function that needs to be performed in order to deliver public money by EFT to the intended recipient is the initiation of the EFT.

The definition of ''disburse'' in proposed § 207.3(a)(1) required that the Financial Agent establish an account in the name of each unbanked recipient. Part 208 deletes the requirement that the account be ''in the name of'' the recipient because this requirement, and certain exceptions, are already set forth in § 208.6 of the final rule.

However, the reference in the definition of ''disbursement'' to the establishment of an EBT account ''for the recipient'' is intended to clarify that the account is established on behalf of the recipient and that the recipient has an ownership interest in the account. While Treasury controls the nature of the account and imposes certain obligations on the Financial Agent, the account itself, once established, is the recipient's account. Accordingly, when Treasury sends a Federal payment to the account, the funds transferred to the account cease to be public monies and become the property of the recipient. In addition, it is the recipient's account for deposit or share insurance purposes. Also, the recipient is entitled to any available protection under Regulation E and other consumer protection laws with respect to the account. Just as with any other account to which Federal payments are sent, Treasury's liability to the recipient is extinguished upon final crediting of the transfer of the funds to the recipient's account.

The final rule adds the phrase ''or other electronic means'' to the definition of ''disbursement'' to clarify that EBT may not necessarily be effected through the Automated Clearing House (ACH) system. In addition, the final definition incorporates, with minor modifications, the requirement in proposed § 207.3, Duties of the Financial Agent, that the account established by the Financial Agent be eligible for Federal deposit insurance.

Electronic Benefits Transfer (EBT)

The final rule includes a definition for ''electronic benefits transfer (EBT)'' to make clear that certain types of Federal payments disbursed by a Financial Agent through an ETA℠ or a Federal/State EBT program are considered to be EBT payments. ''EBT'' is defined specifically as the provision of Federal benefit, wage, salary, and retirement payments electronically, through disbursement by a Financial Agent. This definition has been modified from the definition of ''direct Federal electronic benefits transfer (EBT)'' that appeared in the 207 NPRM. For reasons discussed below in the section-by-section analysis of § 208.5, the definition of ''EBT'' is no longer limited to the disbursement of payments to recipients who do not have an account at a financial institution.

In 1996, Congress amended the Federal laws that govern Treasury's designation of financial institutions as Financial Agents. The amendments clarify the broad authority of the Secretary to define EBT and to utilize any process deemed appropriate to select Financial Agents to provide EBT services:

> Notwithstanding the Federal Property and Administrative Services Act of 1949, as amended, the Secretary may select [financial institutions] as financial agents in accordance with any process the Secretary deems appropriate and their reasonable duties may include the provision of electronic benefit transfer services (including State-administered benefits with the consent of the States), as defined by the Secretary.

Section 664, Omnibus Consolidated Appropriations Act, 1997, Pub. L. 104–208 amending 12 U.S.C. 90. Conforming amendments were made to 12 U.S.C. 265, 266, 391, 1452(d), 1767, 1789a, 2013, 2122 and to 31 U.S.C. 3122 and 3303.

Part 208 defines the term ''EBT'' for purposes of Pub. L. 104–208 as the provision of certain types of Federal payments electronically, through disbursement by a financial institution acting as a Financial Agent. As indicated above, the term ''EBT'' includes disbursement through ETAs℠ and Federal/State EBT programs.

EBT is distinguished from Direct Deposit, the program used by agencies, at the request of the payment recipient, to send funds through the ACH system to an account established by the recipient at a financial institution. Although Direct Deposit and EBT are similar in that both involve the movement of funds by EFT to an account at a financial institution, there are significant distinctions between them. In Direct Deposit, Treasury initiates an electronic payment to a recipient's account, but has no responsibilities with respect to the account or the nature or quality of the account services provided. In contrast, in an EBT program, the attributes of the account to which the Federal payments are sent are determined by Treasury, and the financial institution provides recipients access to their payments in the manner and on terms specified by Treasury. The financial institution holding the EBT account acts as Treasury's Financial Agent in establishing and maintaining the account for the recipient, and thus has a legal relationship with Treasury with respect to the account.

In addition, as mentioned above, although both Direct Deposit and EBT involve the disbursement of public funds, what is involved in accomplishing the disbursement differs. In Direct Deposit, Treasury disburses public funds by originating an ACH credit to the financial institution designated by the recipient as the financial institution that holds the recipient's account. In EBT, disbursement is a multi-step process that includes, in addition to the origination of an ACH credit, the establishment of an account for the recipient by Treasury's Financial Agent and the provision of access to that account by the Financial Agent in accordance with the terms specified by Treasury.

ETA℠

The final rule includes a definition for ''ETA℠. The 208 NPRM did not use the term ''ETA℠ and, therefore, did not define the term. Since the final rule uses the term in § 208.5 as well as selected other sections, a definition has been

added to facilitate the referencing of the Treasury-designated account to which Federal payments may be made electronically. The definition states that an ETA℠ is a Treasury-designated account, i.e., Treasury will determine the features of the account. In addition, the definition makes clear that a financial institution offering an ETA℠ does so as Treasury's Financial Agent. As indicated above in the discussion on ''EBT,'' an ETA℠ falls within the definition of ''EBT.''

Federal/State EBT Program

The final rule includes a definition for ''Federal/State EBT program'' to distinguish an account offered through this type of program from an ETA℠. As defined, a Federal/State EBT program is a program that provides access to Federal payments and State-administered benefits through a single delivery system and in which Treasury designates the Financial Agent to disburse the Federal payments.

Federally-Insured Financial Institution

The final rule includes a definition for ''Federally-insured financial institution. This definition was added because of the requirement in § 208.5 that all financial institutions that offer an ETA℠ must be Federally insured.

Financial Agent

The final rule includes a definition for ''Financial Agent.'' ''Financial Agent'' is defined as a financial institution that has been designated by Treasury as a Financial Agent for EBT pursuant to any statutory Financial Agent designation authority. The definition makes reference to certain selected United States Code sections, amended by Pub. L. 104–208, that authorize the designation of financial institutions as Financial Agents.

As indicated in the discussion on ''EBT,'' Pub. L. 104–208 clarifies the Secretary's authority to designate financial institutions as Financial Agents to provide EBT services. As also indicated, for purposes of Part 208, EBT services include disbursement of Federal payments through ETAs℠ as well as through Federal/State EBT programs, where applicable.

The Part 208 definition of ''Financial Agent'' combines the 207 NPRM definitions of ''eligible financial institution'' and ''Financial Agent.'' The substance of the definition remains the same.

Financial Agent—Designation

A number of financial institutions and financial trade associations commenting on the 207 NPRM requested clarification as to whether a financial institution could be designated as a Financial Agent and compelled to provide EBT services even if the institution did not wish to do so. These entities urged Treasury to allow financial institutions to decide whether or not they wish to act as Financial Agents for the provision of EBT services and to clarify in the rule that participation is voluntary. Treasury does not intend to designate as Financial Agents financial institutions that do not wish to provide EBT services. To clarify this point, § 208.5 has been modified to read, ''Any Federally-insured financial institution shall be eligible, but not required, to offer ETAs℠ as Treasury's Financial Agent.''

Financial Agent—Liability

A number of commenters on the 207 NPRM requested clarification regarding the responsibilities and liabilities of financial institutions that are designated as Financial Agents for the provision of EBT services. Some financial institutions and financial trade associations were concerned about the potential liabilities that financial institutions would face in serving as Financial Agents. Several of these organizations commented that, in particular, the regulations should be more specific regarding the potential liability of a Financial Agent for erroneous payments. Other financial institutions commented that since Financial Agents will be required to accept recipients as customers and will not have the discretionary right to freeze or close an EBT account, the risk of loss associated with such accounts may be significantly higher than for regular customer accounts. For example, losses could be incurred if the Financial Agent is required, pursuant to Regulation E, to provide provisional funds as a result of an account dispute and the funds are subsequently withdrawn. In light of the higher risk that commenters believe EBT accounts might involve, Treasury was urged to indemnify Financial Agents against all losses associated with providing EBT services.

With respect to the issue of erroneous payments, Federal payments made pursuant to an EBT program through the ACH system will be governed by 31 CFR Part 210, Treasury's regulation establishing the rights and liabilities of parties in connection with ACH credit entries, debit entries, and entry data originated or received by a Federal agency through the ACH system. A Notice of Proposed Rulemaking to revise Part 210 was published for public comment on February 2, 1998. 63 FR 5426.

Treasury has not included in Part 208 any reference to the closing of accounts. Rather, Treasury will include in the Financial Agency Agreement a provision that the account may only be closed in circumstances that have been approved by Treasury. It is not Treasury's intent to restrict a Financial Agent's ability to prevent losses arising from fraudulent or abusive activity in the account. However, Treasury is concerned that the closure of EBT accounts could pose a significant hardship to recipients who are relying on the availability of such accounts in order to receive their Federal payments. Treasury believes that the hardship to recipients that could result from the closing of EBT accounts must be balanced against the need to detect and limit fraudulent activity on the accounts. Treasury also believes that the bases upon which it is appropriate to permit a Financial Agent to close an account may vary among EBT programs, depending on the nature and features of the accounts. The Financial Agency Agreement will include program-specific criteria for the closing of accounts, i.e., will establish the circumstances under which a Financial Agent may close an account. The Financial Agency Agreement will also address the allocation of any resulting losses.

With respect to losses to Financial Agents resulting from recipients' abuse of EBT accounts, Treasury's legal authority to indemnify Financial Agents must be determined on a case-by-case basis. Treasury does not believe that, as a general matter, it is necessary or appropriate to indemnify Financial Agents for all losses associated with providing the EBT services. Any unusual risks that might be presented by the structure of a particular EBT program will be evaluated and addressed on a program-specific basis.

Financial Agent—Compliance With Regulation E

Several financial trade associations and financial institutions requested clarification on the responsibilities of Financial Agents regarding Regulation E. Section 207.3(a)(2) of the 207 NPRM proposed to require all Financial Agents to comply with Regulation E. At the same time, § 207.3(b) of the 207 NPRM proposed that the Financial Agent ''be accountable only to the Treasury,'' which appeared to some commenters to conflict with the obligations that a financial institution would have to recipients under Regulation E. In addition, several State government entities requested clarification on how Regulation E claims would be handled

in cases where both State and Federal funds are included in the same account. Two financial trade associations commented that the Regulation E exemption for small financial institutions should be available for such institutions. Another financial institution trade association commented that Financial Agents should be allowed to delegate Regulation E compliance requirements to a third party, such as a corporate credit union (in the case of credit unions).

The rule language of Part 208 does not incorporate the 207 NPRM provision on Regulation E. The extent to which Regulation E applies to an account established under a particular EBT program will be addressed on a program-by-program basis, including in the context of a Federal/State EBT program. The Board of Governors of the Federal Reserve System is responsible for the implementation and interpretation of Regulation E. *See* 15 U.S.C. 1693b. Accordingly, Treasury does not believe it is appropriate for Treasury to address the availability of the exemption for small financial institutions or the ability of financial institutions to delegate Regulation E requirements. For purposes of the ETA℠, requirements related to Regulation E will be included in the notice of proposed ETA℠ attributes and in the ETA℠ Financial Agency Agreement.

Treasury has not included in Part 208 the accountability language of § 207.3(b) of the 207 NPRM. Treasury notes, however, that a Financial Agent will be accountable to Treasury for any failure of the Financial Agent to comply with its obligations under the agreement between Treasury and the Financial Agent.

Authorized Payment Agent

The 208 NPRM defined ''authorized payment agent'' as any individual or entity that is appointed or otherwise selected as a representative payee or fiduciary, under regulations of the Social Security Administration, the Department of Veterans Affairs, the Railroad Retirement Board, or other agency making Federal payments, to act on behalf of an individual entitled to a Federal payment. The final rule makes no change in this definition.

Treasury received comments from non-financial institutions requesting Treasury to expand the definition of an authorized payment agent to include non-financial institutions. Commenters stated that the current financial infrastructure is not sufficiently extensive to reach all Federal recipients required to receive payments electronically. Many of these entities stressed their extensive network of agents in locations in rural areas and low and moderate income neighborhoods. These locations include convenience stores, supermarkets, pharmacies, travel agents, gas stations, and other retail outlets. In their comments, money transmitters, currency exchanges, and check cashers stressed their current role in providing financial services in locations where there are few bank branches.

Treasury has considered the role of non-financial institutions in two contexts in the rule: § 208.5 related to the ETA℠ and § 208.6 related to account requirements. A discussion of comments received and Treasury's response is included in the section-by-section analysis of the respective sections.

Federal Payment

The definition of ''Federal payment'' in the final rule is identical to the definition of that term in the proposed rule.

Treasury received many comments from agencies seeking clarification on whether payments made to recipients through third parties are required to be made by EFT. For example, the Department of Health and Human Services requested that Treasury clarify whether payments made by third-party contractors to doctors and hospitals for Medicare claims are required to be made by EFT. Typically, when an agency relies on a third-party contractor for payment services, the contractor makes a payment to a Federal payment recipient on behalf of the Government and the Government either (1) funds the payment by sending the funds to the contractor before the contractor makes the payment, or (2) reimburses the contractor for amounts already paid on the Government's behalf.

Treasury will consider on a case-by-case basis situations in which an agency makes an EFT payment to a third-party contractor for purposes of funding a paper payment issued by that third party to a recipient. Treasury believes that some of these arrangements comply with this part. For example, in light of certain specific statutory provisions governing the issuance of Medicare payments, as well as the overall structure of the program, the issuance of paper Medicare payments by intermediaries and carriers would be in compliance with this part. However, Treasury does not believe that other arrangements in which a Federal agency reimburses a contractor by EFT for the contractor's issuance of checks to the agency's payees necessarily comply with this part.

Several agencies also requested clarification on whether third-party drafts and certain other paper-based instruments such as credit card convenience checks utilized by some agencies are considered to be in compliance with the Act. Under current third-party draft and convenience check arrangements, agencies make payments using drafts and checks drawn against an account held by a third party. After the draft or check has been presented to and paid by the third party's bank, the third party bills the agency and the agency reimburses the third party by EFT. Several agencies commented that the issuance of a check or draft in these circumstances is only a component of the overall transaction which, viewed in its entirety, should be considered to be a Federal payment made by EFT because the agency is reimbursing the third party by EFT.

It is Treasury's view that a payment made by a third-party draft or convenience check in this manner is a Federal payment, and therefore must be made by EFT unless a waiver is available. The fact that third-party drafts and convenience checks are not drawn against an account of the United States Government does not exclude them from the category of Federal payments. The essential nature of such arrangements is simply the issuance of a paper check, with the added step of utilizing an account owned by a third party. One goal of the Act is to save the Government money by eliminating checks and the incremental costs associated with them and converting all payments to less costly EFT. Third-party draft arrangements involve all the costs associated with paper instruments, plus the additional expense of reimbursing the third party for the agency's use of the account. Accordingly, third-party drafts, credit card convenience checks, and similar arrangements utilizing paper-based instruments may only be used when the requirement to make payment by EFT is waived under the waiver categories found at § 208.4.

C. Section 208.3—Payment by Electronic Funds Transfer

This section, which is unchanged from § 208.3 of the 208 NPRM, implements 31 U.S.C. 3332(f)(1) and provides that, subject to § 208.4 and notwithstanding any other provision of law, effective January 2, 1999, all Federal payments made by an agency shall be made by EFT. Pursuant to the definition of Federal payment, payments made under the Internal

Revenue Code of 1986 are not required to be made by EFT.

D. Section 208.4—Waivers

Waiver Standards

Section 208.4 lists waivers from the requirement that Federal payment be made by EFT. As explained in the preamble to the 208 NPRM, the waiver categories are based on the following four standards developed by the Secretary: (1) Hardship on the recipient; (2) impossibility; (3) cost-benefit; and (4) law enforcement and national security. The 208 NPRM provided eight waiver categories; for the reasons described below, the final rule provides seven waiver categories.

The waivers contained in the 208 NPRM related to standards two through four named above remain the same, except for a minor change in wording in proposed § 208.4(e) from ''armed forces'' to ''uniformed services'' to reflect the use of that term in 10 U.S.C. 101(1)(13) defining contingency operations. Those waivers, contained in the 208 NPRM as §§ 208.4(c) through (h), appear in the final rule as §§ 208.4(b) through (g).

Hardship Waivers

Sections 208.4(a) and (b) of the 208 NPRM, related to standard one (hardship on the recipient), have been revised and combined into § 208.4(a) in the final rule. As with §§ 208.4(a) and (b) of the 208 NPRM, the hardship waivers referenced in final § 208.4(a) apply only to recipients who are individuals as defined under § 208.2.

Hardship Waivers—Recipients With and Without Accounts

Final § 208.4(a) broadens the hardship waivers available to individuals. The final rule does not distinguish between recipients who have an account with a financial institution and those who do not. Rather, it simply refers to individuals who determine that payment by EFT would impose a hardship.

Treasury received a number of comments from consumer organizations, recipients, and Government agencies stating that the hardship waivers should apply to all Federal payment recipients, regardless of whether they have an account at a financial institution. Commenters stated that by limiting the financial hardship provision in the 208 NPRM to individuals who do not have an account at a financial institution, no accommodation is made for recipients who may have an account but, for whatever reason, may not be able to afford keeping such an account. This could happen if, for example, account fees or charges increase to what becomes an unaffordable amount for the recipient. It could also happen if the recipient's overall financial situation were to change for the worse for some reason beyond the recipient's control, such as a job loss, a serious illness of a dependent, or the death of an income provider.

Commenters also noted that, as proposed, the financial hardship provision would not be available to those recipients who opened accounts because of the fear of losing or interrupting their benefits. A number of consumer organizations stated that some of their constituents had enrolled in high cost programs with financial and non-financial institutions in the mistaken belief that they needed to have an account in order to continue to receive Federal benefit payments. In response to these comments, Treasury has deleted from the hardship waiver category any reference to persons having or not having an account at a financial institution.

Hardship Waivers—Date of Eligibility

The final rule does not distinguish between recipients who became eligible for a Federal payment before July 26, 1996, and those who became eligible on or after that date. Final § 208.4(a) provides that certain hardship waivers are available to individuals, regardless of when they became eligible to receive their Federal payments.

The majority of consumer organizations, recipients, and Government agencies commenting on the 208 NPRM objected to the ''date of eligibility'' distinction in the NPRM. As proposed, there were no hardship waivers for recipients who had an account with a financial institution and who became eligible for a Federal payment on or after July 26, 1996. Commenters stated that a recipient's physical condition and geographic location have no direct relationship to the recipient's date of eligibility for his or her Federal payments. For example, recipients who are physically disabled may need a hardship waiver, regardless of when they began receiving their benefits. In addition, commenters pointed out that the date of eligibility distinction makes no allowance for future changes in the circumstances of a recipient. For example, a recipient who was receiving payment by EFT and then becomes physically disabled should be eligible for a physical hardship waiver.

Benefit agencies presented other reasons for removing the ''date of eligibility'' distinction from the hardship waiver provisions. Several agencies expressed concern about the complexity of implementing a system to track waivers where a hardship waiver would be available for one type of payment for which an individual became eligible prior to July 26, 1996, and not available for another type of payment for which the same individual became eligible after that date.

Several other agencies, however, defended the ''date of eligibility'' distinction in the NPRM, based on their past experiences in enrolling Federal payment recipients in EFT. These agencies stated that even though there is no direct relationship between a recipient's ability to receive an EFT payment and his or her date of eligibility for Federal benefits, this policy makes sense from an operational perspective, since the majority of new payment recipients voluntarily enroll in EFT. For example, the Social Security Administration is currently enrolling 85% of its new benefit recipients in EFT. In addition, these agencies expressed concern that Treasury would diminish the effectiveness of the EFT mandate by providing liberal waiver policies. However, even though there is clear evidence that the majority of new Federal payment recipients voluntarily enroll in EFT, it is not clear that those for whom EFT would impose a hardship are proportionately represented. Based on this and on the comments received, Treasury has determined that there is not sufficient justification to distinguish between recipients based on their date of eligibility for payment.

Expansion of Hardship Waivers

Final § 208.4(a) expands the hardship waiver provisions to accommodate recipients with mental disabilities or language or literacy barriers. Comments on the 208 NPRM from consumer and community-based organizations and payment recipients presented reasons as to why EFT may not be a viable option for recipients with such disabilities and barriers. A recurring argument heard for each of these categories was that there are factors specific to EFT payments that present greater challenges to recipients than do check payments. For example, a recipient with a mental disability or a language or literacy barrier may be able to sign his or her name on a check but may not be able to navigate through the information on ATM screens.

Consumer and community-based organizations also took issue with the position taken in the 208 NPRM that agencies currently accommodate recipients with mental disabilities by allowing for representative payees to manage the recipients' benefit payments, and that the method by

which payment is made to the representative payee has no effect on the actual recipient. These commenters stated that many recipients with mental disabilities are able to perform tasks necessary to negotiate a check payment on their own and do not need to rely on a representative payee to do so. However, this is not usually the case with EFT payments, since an electronic system is more difficult to conceptualize. As a result, the EFT requirement can drastically reduce a recipient's financial independence and subject him or her to the inherent risks associated with relying on a third party to access a payment.

Broadening the hardship waivers available to recipients is consistent with the legislative history of the Act which refers specifically to ''individuals who have geographical, physical, mental, educational, or language barriers'' and a concern that these individuals may not be able to receive their benefits if payment is required to be made by EFT. *See* 142 Cong. Rec. H4090 (April 25, 1996).

Waiver Process

In addition to broadening the hardship waivers available to individuals, the final rule makes clear Treasury's intent that the waiver process will be based on an individual's self-determination that a hardship exists. By changing the language from ''certifies'' to ''determines'' and adding the phrase ''in his or her sole discretion,'' Treasury is indicating that an individual has the right to determine whether he or she qualifies for a waiver. As discussed below in the section-by-section analysis of § 208.7, an agency may request that the individual inform the agency of his or her election to rely upon a waiver. However, the agency may not require evidence of any condition underlying the recipient's election of a waiver. In addition, if the agency receives no response from a recipient, the agency must continue to make payment by check.

The change from ''certifies'' to ''determines'' also addresses a concern raised by the Social Security Administration and other agencies that collecting and documenting written waiver certifications would impose a heavy administrative burden on those agencies. Under the final rule, there is no requirement that written certifications be obtained.

In contrast to § 208.4(a), the availability of a waiver under §§ 208.4(b) through (g) is to be determined in the first instance by the agency responsible for making the payment. Under the regulation, there is no requirement that Treasury approve or certify the applicability of a waiver under circumstances described in §§ 208.4(b) through (g). Treasury believes that, as a general matter, agencies are in the best position to determine whether the criteria set forth at §§ 208.4(b) through (g) are met in a particular set of circumstances. Treasury does not intend to review routinely agency decisions to make payment by check or cash in circumstances addressed in §§ 208.4(b) through (g). However, Treasury may consider the appropriateness of check or cash payments in reliance on §§ 208.4(b) through (g) on a case-by-case basis.

Automatic Waiver

In addition to the changes mentioned above, the final rule contains three changes in the automatic waiver provision for individuals who do not have an account with a financial institution. In the 208 NPRM, this waiver was until the earlier of January 2, 2000, or the date as of which the Secretary determines that the ETA℠ is available.

First, the final rule adds the phrase ''who are eligible to open an ETA℠'' to reflect the change made in final § 208.5 limiting eligibility for an ETA℠ to individuals who receive a Federal benefit, wage, salary, or retirement payment. Second, the final rule deletes the phrase ''who certify'' to emphasize that individuals who do not have an account with a financial institution do not need to take any action in order to invoke the automatic waiver. Third, the final rule deletes the reference to January 2, 2000, and states that an automatic waiver is granted until such date as the Secretary determines that the ETA℠ is available. Agencies stated that they will need six to nine months after the ETA℠ becomes operationally available to enroll recipients who elect to have access to their payment through this account. In order to ensure that agencies have the necessary lead time, Treasury has deleted the January 2, 2000, date reference.

Waiver for Non-Recurring Payments

Agency comments were received on proposed § 208.4(g), which provides a waiver for payment by EFT where the agency does not expect to make more than one payment to the same recipient within a one-year period, i.e., the payment is non-recurring, and the cost of making the payment via EFT exceeds the cost of making the payment by check. This waiver was intended to address those situations in which payment by check might be more cost-effective than payment by EFT given the administrative cost of enrolling a recipient for an EFT payment.

One agency requested clarification as to who would be responsible for the cost/benefit analysis. Another agency requested clarification as to whether a cost/benefit analysis must be documented to support an agency's decision to issue a check. While the cost/benefit of making an EFT payment over a check payment is generally known, the cost to each agency of enrolling a recipient for EFT payment is best determined by that agency. Therefore, Treasury is leaving it to the agency to determine if it is more cost-effective to make a non-recurring payment by check rather than electronically. Agencies will not be expected to document a cost/benefit analysis for every non-recurring payment, but should establish internal procedures for determining when such payments are to be made by check.

As pointed out in the preamble to the 208 NPRM, this waiver category was not meant to suggest that the dollar amount of the payment is at any time a determining factor for the application of the waiver. Rather, the determining factor is whether the payment is a one-time payment as opposed to a recurring payment.

No Waiver for Vendor Payments

As with the 208 NPRM, the final rule contains no specific waiver for vendor payments. Treasury received several comments from agencies and Federal Government vendors citing a need for a waiver in those circumstances where remittance data, i.e., information that identifies the payment, is not available to the vendor. This may happen because a financial institution is not capable operationally of delivering the data to the vendor in human readable form or because the cost to the vendor of obtaining the data is determined to be unacceptably high. Vendors require this payment-related information to reconcile payments against outstanding invoices.

Since the publication of the 208 NPRM, much progress has been made in the effort to provide vendors with access to remittance data. As of September 1998, the National Automated Clearing House Association rules require that upon request of a recipient, a financial institution receiving a payment to be credited to the recipient's account through the ACH must provide all payment-related information sent with the payment. To assist in this effort, the Board of Governors of the Federal Reserve System has acquired low-cost software that will enable financial institutions to capture payment

information and present it to the vendor in readable form. This software, expected to be released in the fourth quarter of 1998, will be made available to approximately 12,000 financial institutions through Fedline, the Federal Reserve's telecommunication service.

Also, the Service's Austin Financial Center has developed an online internet site where vendors can use a password to access information about a Federal payment. This service currently is available to all Federal agencies and their vendors. Other ongoing efforts include training for agencies on correctly formatting the addenda record in which payment information is contained and outreach through literature and local ACH association workshops for financial institutions and their customers. In addition, Treasury has developed a standard check insert, which agencies are encouraged to use, to assist in enrolling vendors in Direct Deposit.

Treasury expects that these efforts will result in readily available solutions to this problem by the January 2, 1999, deadline. Treasury will continue to monitor the development of these solutions to determine if some modification is needed.

E. Section 208.5—Availability of the ETA℠

Proposed § 208.5 provided that where the requirement to pay by EFT is not waived and an individual either certifies that he or she does not have an account with a financial institution or fails to provide information necessary to send the payment by EFT, Treasury would provide the individual with access to an account at a Federally-insured financial institution selected by Treasury.

In response to comments and as a result of further research and analysis, Treasury has taken a different approach to account access in the final rule. Final § 208.5 states that an individual who receives a Federal benefit, wage, salary, or retirement payment shall be eligible to open an ETA℠ at a financial institution that offers ETAs℠. Any Federally-insured financial institution will be permitted (but not required) to offer ETAs℠ as Treasury's Financial Agent upon entering into an ETA℠ Financial Agency Agreement. (The designation of the financial institution as Treasury's Financial Agent is authorized under Pub. L. 104–208.) The final regulation provides that Treasury shall publish required attributes for ETAs℠ and that any ETA℠ offered by a financial institution must comply with those requirements. Further, it clarifies that the offering of an ETA℠ constitutes the provision of EBT services within the meaning of Pub. L. 104–208.

Eligibility for an ETA℠

The final rule limits eligibility for an ETA℠ to individuals who receive a Federal benefit, wage, salary, or retirement payment. The comments received indicate that it is this group of recipients of Federal payments—rather than recipients of vendor or miscellaneous payments—who most need, and would benefit from, a low-cost account such as the ETA℠. It is Treasury's objective to encourage this group of individuals to move into the financial mainstream through access to ETAs℠.

The 208 NPRM stated that Treasury would provide access to an account ''where the requirement to pay by electronic funds transfer is not waived'' and ''an individual either certifies that he or she does not have an account with a financial institution, or fails to provide information pursuant to § 208.8.'' All of these conditions have been removed in the final rule. Under final § 208.5, any recipient of a Federal benefit, salary, wage, or retirement payment is eligible to open an ETA℠. However, if a recipient does not affirmatively elect electronic deposit to an ETA℠ or another account at a financial institution, the recipient will receive payment by check.

Comments received from consumer and community-based organizations urged Treasury to allow recipients to receive their Federal payments through an ETA℠ even if the recipient has another account at a financial institution. Several commenters expressed the concern that some recipients are opening accounts which are too costly because of the fear that their payments would be stopped or interrupted if an account was not opened. Some commenters were concerned that financial institutions' fee structures are confusing for some recipients and that account-related fees may increase, with the result that recipients can no longer afford to maintain an account that was affordable when opened. Other commenters expressed a concern that a recipient's financial circumstances can change, so that the recipient can no longer afford to maintain an account at a financial institution. Some consumer and community-based organizations also commented that individuals may have established accounts for certain limited uses, such as a savings account set up for a special purpose, which they do not wish to use to access their Federal payment.

The final rule addresses all of these concerns by making any individual who receives a Federal benefit, wage, salary, or retirement payment eligible for an ETA℠, regardless of whether the individual has an account at a financial institution.

Regulation of Non-ETA℠ Accounts

Treasury believes that expanding eligibility for the ETA℠ mitigates the concern expressed by several consumer organizations that the provision of the ETA℠ as contemplated in the 208 NPRM would not fully satisfy the Act's ''reasonable cost'' and ''same consumer protections'' requirements.

Specifically, the Act provides:

Regulations under this subsection shall ensure that individuals required under subsection (g)[1] to have an account at a financial institution because of the application of subsection (f)(1)[2]—

(A) Will have access to such an account at a reasonable cost; and

(B) Are given the same consumer protections with respect to the account as other account holders at the same financial institution. 31 U.S.C. 3332(i).

As discussed in the preamble to the 208 NPRM, the requirement that Treasury ensure access to an account could be read very broadly to refer to all individual recipients who are required to receive their Federal payments by EFT, whether or not they already have an account. 62 FR 48714, 48723. The Act also could be read more narrowly as referring to those individuals who have not voluntarily selected or opened an account at a financial institution, who are not eligible for a waiver, and who will need access to an account in order to receive a Federal payment by EFT. Several commenters urged Treasury to read the requirement in the broader fashion and to regulate the pricing and terms of all accounts at financial institutions to which Federal payments may be sent by EFT. Consumer and community-based organizations in favor of such regulation stated that some financial institutions charge fees for basic banking services that are excessive or inadequately disclosed. These groups were particularly concerned with the development of arrangements between financial institutions and non-financial institution payment service providers in

[1] Subsection (g) requires each recipient of Federal payments required to be made by EFT to designate a financial institution or other authorized agent to which payments shall be made and to provide the paying agency with the information necessary for the recipient to receive EFT payments through the institution or agent.

[2] Subsection (f)(1) requires that, with certain exceptions, all Federal payments made after January 1, 1999, be made by EFT.

which individuals may have access to their Federal payments only through the service provider under terms and conditions that the individuals may not understand. Consumer and community-based organizations stated that the fees charged in connection with accessing payments through these types of arrangements may be both substantial and complicated.

In contrast to comments received from consumer and community-based organizations, financial institutions commented that Treasury should not regulate banking fees and services because such regulation would interfere with the efficient operation of the free market. Both financial institutions and other providers of financial services, including check cashers, urged Treasury not to regulate arrangements in which recipients establish and access accounts at financial institutions through check cashers, stating that check cashers provide convenient hours and locations and a variety of services not otherwise available to recipients.

Treasury has decided in this rulemaking not to engage in a broad regulation of accounts, other than ETAs℠, offered directly by financial institutions. By providing that all recipients of Federal benefit, wage, salary, and retirement payments are eligible for an ETA℠, Treasury believes that many of the concerns expressed by consumer organizations should be allayed. Regulating all accounts opened voluntarily by Federal payment recipients would create a significant burden on bank regulatory agencies and the banking industry and would interfere with the functioning of the market for financial services. Treasury believes that the emphasis of the Act is on ensuring that individuals required to have an account in order to receive Federal payments will not be disadvantaged by establishing an account for receipt of their payments. To this end, the Act requires that these individuals be afforded access to an account at a reasonable cost and with the same consumer protections made available to other individuals who maintain accounts at the same financial institution.

Non-Financial Institution Payment Service Providers

Treasury believes that a majority of Federal payment recipients receiving electronic Federal payments have chosen or will choose an account that best suits their needs and resources. However, Treasury is very concerned with the nature of certain arrangements that some financial institutions have entered into with non-financial institution providers of payment services, such as check cashers, currency exchanges, or money transmitters. Such arrangements may involve giving recipients access to EFT deposits in their insured accounts through the uninsured service provider. Some commenters stated that non-financial institutions provide payment services in rural areas and low and moderate income neighborhoods not served by banks and other financial institutions. While arrangements between financial institutions and non-financial institution payment service providers could provide recipients with an expanded range of alternatives for payment services, they also raise the possibility that recipients would not be clearly informed of the fee structures involved, the legal nature of the relationship, the application of deposit insurance, or the other options available under the Act. At present, there is no comprehensive Federal regulation of non-financial institution payment service providers and, except in limited cases, no Federal oversight of arrangements between financial institutions and non-financial institution service providers.

Treasury has advised the Federal bank regulatory agencies that supervise financial institutions that an insured financial institution should provide appropriate disclosures to customers when it participates in arrangements with non-financial institution providers of payment services. Such disclosures should fully and fairly convey information about the fees and costs imposed by all of the parties to the arrangement, as well as the legal relationships involved, and should explain the applicability of federal deposit insurance insofar as it is relevant to the arrangement. In addition, disclosures should be framed so as not to mislead recipients as to the requirements of the Act.

Treasury is monitoring the development of arrangements between financial institutions and uninsured non-financial institution payment service providers and may propose a regulation covering these arrangements. Any such action would be undertaken as a new regulatory action and will be published for public comment.

Notice of ETA℠ Attributes

With respect to the particular features and structure of the ETA℠, the preamble to the 208 NPRM requested comment on several questions related to the ETA℠, including the role of non-financial institutions in providing access to the ETA℠. Treasury expects to publish shortly in the **Federal Register** a notice of proposed ETA℠ features with a request for comment. Following the comment period, Treasury will publish a notice setting forth the required attributes for ETAs℠.

Access to an ETA℠

In formulating a final rule that allows, but does not require, any Federally-insured financial institution to offer ETAs℠, Treasury's goal is to provide maximum convenient access for recipients. However, Treasury is aware that not all financial institutions may opt to offer ETAs℠ and that some recipients may not have convenient access to an ETA℠. In such cases, the recipient will have the option of relying on a geographic, financial, or other hardship waiver in order to continue receiving payment by check.

Participation by Credit Unions

Treasury received comments from a number of credit unions expressing an interest in providing ETAs℠. Credit unions emphasized their long tradition of providing low-cost banking services and financial education to their members. Credit unions were concerned, however, that the common bond and field of membership limitations contained in the Federal Credit Union Act (FCUA) would limit their ability to provide ETAs℠ to non-members.

Treasury recognizes that credit unions' current common bond and field of membership requirements may limit their ability to offer accounts to non-members, and is aware of recent legislation that broadens the common bond requirements of the FCUA. Treasury encourages credit unions to participate in making low-cost accounts available to recipients, subject to any applicable constraints on their legal authority to do so.

Federal/State EBT Programs

Several States submitted comments requesting clarification of the relationship between the ETA℠ and State EBT programs. One State sought reassurance that the development of the ETA℠ would not conflict with the ongoing development of joint Federal/State EBT programs. Another State requested clarification of whether the use of existing account structures for Federal/State EBT programs would be in compliance with this regulation. Two States raised concerns about the relationship between a Financial Agent designated for the Federal/State EBT program and a Financial Agent designated for the ETA℠. One State expressed the concern that different requirements for Regulation E coverage

for State-administered benefits and for Federal benefits would hinder efforts to have both State and Federal benefits on a single card. One State commented that States should be allowed to participate in the selection of a Financial Agent in situations in which the State wishes to credit payments to an account opened by Treasury on behalf of a recipient. A financial institution providing State EBT services urged Treasury to make Federal benefit card services available through a State EBT program on a voluntary basis and regardless of whether or not a recipient was receiving State EBT services.

It is Treasury's intention to continue working with States in designing and implementing Federal/State EBT programs. States will play an active role in developing the linkage between State and Federal EBT programs and will have an opportunity to provide input on many of the duties and qualifications of the Financial Agents designated by Treasury in connection with Federal/State EBT programs.

Treasury anticipates that many individuals who receive both Federal and State benefit payments may elect to participate in a Federal/State EBT program in light of the convenience of receiving both Federal and State payments through a single delivery system. Those individuals will also have the option of receiving their State payments through a State EBT program, if available, and their Federal payments through Direct Deposit or an ETA℠.

F. Section 208.6—General Account Requirements

Section 208.6 provides requirements for accounts held by recipients at a financial institution and designated by the recipient for deposit of a Federal payment. These accounts include ETAs℠ as well as accounts other than ETAs℠ to which a Federal payment is sent.

Proposed § 208.6 required that all Federal payments made by EFT be deposited into an account at a financial institution. It further required that the account at the financial institution be in the name of the recipient with two exceptions: (1) where an authorized payment agent has been selected and (2) where payment is to be deposited into an investment account established through a registered broker/dealer, provided the account and associated records are structured so that the recipient's interest is protected under applicable Federal or State deposit insurance regulations.

Account Title Requirement

Treasury received numerous comments regarding the requirement that the account be in the name of the recipient. Several vendors pointed out that, for operational reasons, it may be advantageous for vendor payments to be deposited into an account other than one in the name of the vendor. For example, to avoid a proliferation of bank accounts, a vendor that is a subsidiary of a corporation may designate that payment be made to an account in the general corporate name rather than one in the name of the subsidiary. Other vendors, especially small businesses, commented that they routinely designate a bank account in the name of an accountant or other service provider to receive payments on behalf of the business.

Other commenters explained that Federal wage, salary, and retirement payments are sometimes deposited into savings, debt repayment, and other accounts that may not be in the recipient's name. In the case of Federal wage and salary payments, recipients may request that their payment be directed to a third party's account for a variety of reasons including those related to child support and payments to designated charities. For retirement payments, it is common for a surviving spouse to be entitled to a portion of a deceased recipient's retirement payment. In these cases, the payment may be deposited into an account in the name of the surviving spouse.

The requirement that an account be in the name of the recipient is designed to ensure that a payment reaches the intended recipient. Treasury acknowledges, however, that there may be valid reasons for allowing payments to be made to accounts in names other than those of the payment recipient. In the case of vendor payments, Treasury believes that the benefits of allowing payments to be deposited into an account in a name other than that of the vendor outweigh the risks of doing so. Therefore, Treasury has modified the ''in the name of the recipient'' requirement in § 208.6 to exclude vendor payments.

Treasury has not made any changes to final § 208.6 with respect to wage, salary, and retirement payments. Treasury has considered the concerns expressed in the comment letters and believes that such concerns are in most, if not all, cases already addressed by existing rules. For example, where a recipient's payment is garnished for child support purposes or where a recipient has designated a discretionary allotment for a charity, such garnishment or allotment is made prior to the time the recipient's payment is deposited into an account at a financial institution and, therefore, would not fall within the ''in the name of the recipient'' requirement. Where a surviving spouse is entitled to a deceased recipient's retirement payment, the surviving spouse is considered to be the recipient and, therefore, the payment would be deposited into the surviving spouse's account.

Exceptions to Account Title Requirements

As with the 208 NPRM, final § 208.6 contains two exceptions to the ''in the name of the recipient'' requirement. The first exception related to authorized payment agents is unchanged from the 208 NPRM. The second exception related to investment accounts contains two changes from the 208 NPRM.[3] First, the exception has been expanded to cover investment accounts established through an investment company registered under the Investment Company Act of 1940 in addition to investment accounts established through a securities broker or dealer registered under the Securities Exchange Act of 1934. Second, the requirement contained in the 208 NPRM that the investment account and all associated records be structured so that the recipient's interest is protected under applicable Federal or State deposit insurance regulations has been deleted.

Authorized Payment Agent Exception

Numerous comments were received on the two exceptions to the ''in the name of the recipient'' requirement contained in proposed § 208.6(b). Some commenters argued for expanding the first exception related to authorized payment agent. As discussed above in the section-by-section analysis of § 208.2, these commenters believed that the definition of ''authorized payment agent'' should be expanded beyond its present definition of an authorized payment agent as representative payee or fiduciary under payment agency regulations.

Two types of entities that requested either an expansion of the definition or another exception to the requirement that the account be in the name of the recipient were nursing homes and non-financial institutions. According to the

[3] This exception from the requirement that the account be ''in the name of the recipient'' would not be available for an ETA℠ since ETAs℠ will not be investment accounts established through a securities broker or dealer or through an investment company.

comments received from nursing homes, many nursing home residents sign their monthly benefit checks over to the nursing home for payment of services rendered and funds maintenance. To comply with EFT, these check recipients would be required to establish individual bank accounts to receive their Federal benefit payments unless a representative payee or fiduciary is designated. According to one nursing home, many of their residents are not able to designate the nursing home as representative payee or fiduciary because the residents in question do not satisfy the required qualifications issued by benefit agencies. Comments from nursing homes indicate that by allowing Federal payments to be deposited into a trust account held by the nursing home, not only would the cost to the recipient decrease, since one account would replace a myriad of accounts, but this would allow for more efficient and convenient service to recipients.

In the 208 NPRM, Treasury noted that the determination of who can act on behalf of a payment recipient is addressed under the rules of the various agencies, e.g., the Railroad Retirement Board, the Social Security Administration, and the Department of Veterans Affairs. The rules governing these representational relationships are longstanding and well established. In the 208 NPRM, Treasury deferred to the administrating agencies in determining who is authorized to receive payment on behalf of a beneficiary and, therefore, left any questions regarding who is or who may be considered a representative payee or fiduciary to the agency making the payment.[4] While recognizing that there may be specific circumstances not addressed in the current regulations, Treasury believes that these issues are better left to the payment agencies. Therefore, Treasury has left unchanged the exception related to authorized payment agent.

Numerous comments were also received from non-financial institutions requesting an exception to the requirement that the account be in the name of the recipient. According to non-financial institutions, an exception would streamline the process by which non-financial institutions would have access to Federal payments. Instead of the funds being deposited into an account in the name of the recipient and then swept into a master account held by the non-financial institution, the funds could be directly deposited to the master account. In its comments to the 208 NPRM, one money transmitter pointed out that it is far more efficient and cost-effective to maintain one master account than a multitude of individual transaction accounts. According to the money transmitter, a reduction in the costs incurred to set up the accounts would result in a reduction in the cost passed on to the recipient.

Treasury acknowledges that allowing payments to be deposited into a master account in the name of a non-financial institution could potentially be a cost savings to a recipient. However, as discussed in the preamble to the 208 NPRM, Treasury is concerned that such arrangements might not provide the same level of consumer protection as do the arrangements otherwise provided for in § 208.6. Specifically, Treasury is concerned about the potential failure of entities to honor their obligations, especially since there is no comprehensive Federal regulation of non-financial institution service providers and, except in limited cases, no Federal oversight of arrangements such as were proposed in the comment letters. Therefore, permitting Federal payments to be deposited into accounts controlled by a wide range of entities may expose recipients to the credit risk associated with the failure of such entities. For the above reasons, Treasury has decided not to extend the authorized payment agent exception to non-financial institutions or provide an additional exception for such institutions.

Investment Account Exception

In addition to comments on the authorized payment agent exception contained in proposed § 208.6(b), Treasury also received comments on the investment account exception. Investment advisors and investment management companies generally commented that limiting the exception to investment accounts established through a broker or dealer registered under the Securities Exchange Act of 1934 was too restrictive and requested that the exception be broadened. Commenters stated that, as proposed, this exception would not permit the deposit of Federal payments directly into money market mutual funds. Rather, a recipient would be required to have the payment first deposited into his or her own account or into a brokerage account and then transferred to the mutual fund account.

In support of their request, commenters emphasized that registered investment companies, like registered brokers and dealers, are highly regulated entities. The Investment Company Act of 1940 imposes comprehensive requirements on the organization and operation of investment companies. Before making a public offering, an investment company must register under the Investment Company Act, and it must register its securities under the Securities Act of 1933. Among other things, the Investment Company Act imposes requirements regarding custody of assets, capital structure, investment activities, valuation of assets, and conflicts of interest.

Treasury has carefully considered these comments and has consulted with the Securities and Exchange Commission regarding the regulation of registered investment companies. Based on the information received, Treasury believes it is appropriate to expand the ''investment account'' exception to include investment accounts established through an investment company registered under the Investment Company Act of 1940, and has modified proposed § 208.6(b)(2) accordingly.

Another provision in proposed § 208.6(b)(2) that received comment was the requirement that, for an account in the name of the broker or dealer, the account and all associated records be structured so that the recipient's interest is protected under applicable Federal or State deposit insurance regulations. Commenters urged Treasury to reconsider this requirement. They stated that the costs and burden of restructuring operations to establish and maintain a system that would provide individual deposit insurance coverage would far outweigh any possible benefit to payment recipients.

According to commenters, funds deposited into an account in the name of a broker or dealer generally remain in the account for a very short period of time. In most cases, the funds, once deposited, are transferred immediately to an investment vehicle. Therefore, the required deposit insurance would only apply for the short period of time that the funds remained in the account. Commenters also stated that any recipient depositing a payment into a broker or dealer account would have already established an account with the broker or dealer and therefore would be aware of the uninsured nature of an investment and the associated risks.

Based on these comments and after consultation with the Securities Investor Protection Corporation and the Federal Deposit Insurance Corporation, Treasury has determined that the nature of

[4] Several nursing homes requested clarification on whether a trust account could be established to receive benefit payments on behalf of all residents that had designated the nursing home as representative payee. Treasury's regulations require only that the account be titled in accordance with the regulations governing the representative payee or fiduciary, i.e., the account may be titled in any manner that satisfies the regulations of the payment agency.

investment accounts makes it impractical to require that deposit insurance apply to such accounts. Treasury has, therefore, deleted in the final rule the requirement that any account in the name of the broker or dealer and all associated records be structured so that the recipient's interest is protected under applicable Federal or State deposit insurance regulations.

G. Section 208.7—Agency Responsibilities

Final § 208.7 requires agencies to notify check recipients and newly-eligible payment recipients of options available to them and to establish procedures that allow recipients to indicate that they elect to have payment deposited by EFT to an account held by them.

Requirement To Make Disclosures

Final § 208.7(a) requires agencies to notify each individual who is eligible to receive a Federal benefit, wage, salary, or retirement payment and who is not already receiving payment by EFT, of the individual's rights and obligations under §§ 208.3, 208.4(a), and 208.5. The agency disclosure requirement does not extend to individuals to whom the agency is not required to make payments electronically pursuant to a waiver provided in §§ 208.4(b) through 208.4(g).

Treasury received comments from consumer and community-based organizations urging Treasury to fully inform Federal benefit payment recipients of all options available to them so that these recipients would not enter into costly or otherwise inappropriate account arrangements. Some community-based organizations asked that Treasury's public education efforts be stopped until the features of the ETA℠ and waiver categories are established. One benefit agency requested that it be exempted from the January 2, 1999, deadline for all payments and instead be allowed to begin its enrollment for all recipients after the features of the ETA℠ have been established.

Treasury agrees that fully informing recipients of all options is a critical component of EFT implementation. Treasury sees no benefit to stopping the public education effort or delaying implementation of EFT but will instead focus on ensuring that recipients are aware of available waiver categories and options concerning the ETA℠. As of the effective date of this regulation, agencies are required to begin providing such disclosures to all individuals eligible to receive a Federal benefit, wage, salary, or retirement payment and who are not already receiving payment by EFT. In addition, once the ETA℠ is available, agencies will be expected to notify all eligible individuals who are not receiving payment by EFT, including those who may have received a prior disclosure, of the availability of the ETA℠ and other options.

Agencies must provide the required disclosure to newly eligible recipients and those currently receiving checks, but not to those currently receiving their payments by EFT. Requiring agencies to notify recipients who currently receive payments by EFT would place a heavy administrative and financial burden on agencies. However, to ensure that all recipients are aware of their options, including those recipients who currently receive their payments electronically, it is Treasury's intent to provide, through the public education effort, ongoing disclosure and notification.

Model Disclosure Language

To facilitate compliance with § 208.7(a), Appendices A and B set forth model language for agency use. Appendix A is for use until the date the Secretary determines the ETA℠ is available. Appendix B is for use on and after the date the Secretary determines the ETA℠ is available. The phrase ''substantially similar'' in § 208.7 gives an agency the flexibility to tailor the model disclosure to its recipients. For example, the Social Security Administration might prefer to use the phrase ''Social Security payment'' instead of ''Federal payment'' in communicating with its recipients.

Requirement To Establish Procedures

In addition to requiring disclosure, the final rule requires agencies to establish procedures that allow recipients to indicate that the recipient elects to have payment deposited by EFT to an account held by the recipient. Proposed § 208.7 required that the agency ''obtain'' either 1) information to make an EFT payment if the recipient had an account at a financial institution or 2) a written certification that the recipient did not have an account or that receiving an EFT payment would impose a hardship on the recipient. The word ''obtain'' implied that a written response was necessary and also implied that the recipient must respond in all cases.

The requirement in final § 208.7(b) that agencies ''put into place procedures that allow recipients to indicate that the recipient elects to have payment deposited by electronic funds transfer to an account held by the recipient'' replaces the requirement in the 208 NPRM that agencies ''obtain'' account information or written waiver certifications from recipients. The word ''indicate'' is used to make it clear that the communication need not be in writing, as was implied by the use of the term ''certification'' in the 208 NPRM. The term ''elect'' is used to clarify that individuals have a range of options.

Under final Part 208, agencies are not required to obtain written waiver determinations, and in the case of the automatic waiver, recipients need not respond at all. The language in final § 208.7(b) makes it clear that although the agency must have a procedure in place for collecting account information if the recipient elects to receive payment electronically, the agency is not required to gather waiver information from the recipient. Rather, the agency may decide, at its discretion, whether or not to request information from the recipient, in writing or orally, indicating that a hardship waiver has been invoked. However, if the recipient does not respond to such a request, the agency must presume that the recipient has invoked a waiver until further communication is received and may not delay or withhold the recipient's payment.

H. Section 208.8—Recipient Responsibilities

The wording of final § 208.8 is identical to that in proposed § 208.8(a). In the 208 NPRM, however, the phrase ''an account with a financial institution'' referred only to non-ETA℠ accounts. In the final rule ''an account with a financial institution'' refers to ETAs℠ as well other accounts held by recipients at financial institutions. As with the 208 NPRM, the phrase ''who is required to receive payment by electronic funds transfer'' is an acknowledgment that waivers will apply in some cases.

Under proposed § 208.8(b), any individual required to receive payment by EFT who does not have an account with a financial institution would have been required to certify in writing that he or she does not have an account, and would have been provided with an ETA℠. As discussed in connection with § 208.5, the final rule provides that the ETA℠ is available to all individuals who are eligible to receive a Federal benefit, wage, salary, or retirement payment and who request an ETA℠, whether or not they already have an account at a financial institution. Therefore, final § 208.8 removes this provision.

Proposed § 208.8(c) required that each individual who qualifies for, and wishes to apply for, a waiver must certify that

election in writing. As discussed above in connection with § 208.4(a), the recipient has the sole discretion to determine whether he or she qualifies for a waiver. There is no longer an application and written certification requirement. Therefore, proposed § 208.8(c) is removed from the final rule.

I. Section 208.9—Compliance

Monitoring Compliance

Final § 208.9 is unchanged from proposed § 208.9 except that the 208 NPRM stated that Treasury may require agencies to provide information about ''the methods by which they make payments,'' whereas the final regulation provides that Treasury may require agencies to provide information about ''their progress in converting payments to electronic funds transfer.'' This change was made to clarify that Treasury intends to monitor agencies' progress in converting payments to EFT. If Treasury has reason to believe that sufficient progress is not being made, notwithstanding payments made by check as a result of waivers, an agency may be required to furnish to Treasury information concerning their conversion efforts.

Documentation of Waivers

Comments were received from several agencies requesting guidance on documenting compliance with this section. Agencies requested clarification as to what information they must provide to Treasury to document compliance, particularly with respect to the documentation of waivers. One agency asked if Treasury would ever challenge a waiver. Another agency urged Treasury to clearly state that check payments that result from the invocation of a waiver will not result in the assessment of a charge pursuant to 31 U.S.C. 3335.

Treasury does not intend to challenge, or to permit agencies to challenge, the bases upon which individuals invoke waivers. As discussed in connection with § 208.8, individuals are given discretion to determine their eligibility for waivers under § 208.4(a). Check payments made by an agency on the basis of such a waiver will not result in the assessment of a charge. Moreover, Treasury does not intend to review routinely agency decisions to make payment by check or cash in circumstances addressed in §§ 208.4(b) through (g). However, Treasury may consider the appropriateness of check or cash payments by agencies in reliance on §§ 208.4(b) through (g) on a case-by-case basis.

Treasury expects that agencies will document their policies and procedures regarding the use of waivers (including any presumption that a waiver has been invoked where a recipient has not responded to the agency). If Treasury finds such documentation to be sufficient for determining compliance, Treasury will not assess a charge to the agency pursuant to 31 U.S.C. 3335. If there is no documentation for a waived payment or classes of payments, Treasury may determine whether those payments are in compliance with this part on a case-by-case basis.

J. Section 208.10—Reservation of Rights

This section states that the Secretary reserves the right to waive any provision(s) of this regulation in any case or class of cases. Treasury received a comment on this section from a consumer advocacy organization concerned that the Secretary's discretion in waiving any provision(s) of Part 208 was overly broad and potentially harmful to those recipients currently protected from hardship by waiver provisions set forth in § 208.4(a). Treasury has no intention of withdrawing any hardship waivers set forth in this rule. The intent of this section is to give Treasury flexibility to grant waivers, without amending the rule, for any unforseen situation where an EFT payment is impossible or impracticable and for which no waivers set forth in § 208.4 may be relied upon.

IV. Special Analysis

Although it has been determined that this regulation is a significant regulatory action for purposes of § 3(f)(4) of Executive Order 12866, the Office of Management and Budget (''OMB'') has waived the preparation of a Regulatory Assessment.

Pursuant to the Regulatory Flexibility Act, it is hereby certified that the regulation will not have a significant economic impact on a substantial number of small entities. Treasury has included seven categories of waivers in the final rule. Further, the rule does not restrict small entities who are currently participating in the delivery of services to recipients who receive their Federal payments by EFT from continuing to do so in the future. Therefore, Treasury believes the rule does not have a significant economic impact on a substantial number of small entities and that a regulatory flexibility analysis is not required.

The collection of information contained in the final rule has been reviewed and approved by the Office of Management and Budget under section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) under Control Number 1510–0066. Under the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number.

The collection of information in this regulation is contained in § 208.8. The information (name of financial institution, routing number, and account number) is required to enable an agency to pay a recipient of a Federal payment by EFT. The collection of information is mandatory. 31 U.S.C. 3332(g), as amended, requires recipients of Federal payments to ''provide to the Federal agency that makes or authorizes the payments information necessary for the recipient to receive electronic funds transfer payments.'' The likely respondents vary depending on the agency making the payment. For the Service, the likely respondents are employees of the Service who currently receive payments, such as payments for salary, travel reimbursement, or retirement, by check; and individuals and vendors that currently receive vendor payments by check.

The estimated total annual reporting burden is 46 hours. The estimated burden hours per respondent is 0.25 hours. The estimated number of respondents is 183. These figures represent the burden imposed by the Service. The reporting burden imposed by other agencies will be addressed by those agencies.

Comments on the accuracy of the estimate for this collection of information or suggestions to reduce the burden should be sent to the Office of Information and Regulatory Affairs of the Office of Management and Budget, Attention: Desk Officer for Department of the Treasury, Financial Management Service, Washington, D.C., 20503, with copies to Jacqueline Perry, Public Reports Clearance Officer, Financial Management Service, 3361 75th Avenue, Landover, MD, 20785.

List of Subjects in 31 CFR Part 208

Accounting, Automated Clearing House, Banks, Banking, Electronic funds transfer, Financial institutions, Government payments.

Authority and Issuance

For the reasons set out in the preamble, 31 CFR Part 208 is revised to read as follows:

PART 208—MANAGEMENT OF FEDERAL AGENCY DISBURSEMENTS

Sec.

Authority: 5 U.S.C. 301; 12 U.S.C. 90, 265, 266, 1767, 1789a; 31 U.S.C. 321, 3122, 3301, 3302, 3303, 3321, 3325, 3327, 3328, 3332, 3335, 3336, 6503; Pub. L. 104–208, 110 Stat. 3009.

§ 208.1 Scope and application.

This part applies to all Federal payments made by an agency and, except as specified in § 208.4, requires such payments to be made by electronic funds transfer. This part does not apply to payments under the Internal Revenue Code of 1986 (26 U.S.C.).

§ 208.2 Definitions.

(a) *Agency* means any department, agency, or instrumentality of the United States Government, or a corporation owned or controlled by the Government of the United States.

(b) *Authorized payment agent* means any individual or entity that is appointed or otherwise selected as a representative payee or fiduciary, under regulations of the Social Security Administration, the Department of Veterans Affairs, the Railroad Retirement Board, or other agency making Federal payments, to act on behalf of an individual entitled to a Federal payment.

(c) *Disbursement* means, in the context of electronic benefits transfer, the performance of the following duties by a Financial Agent acting as agent of the United States:

(1) The establishment of an account for the recipient that meets the requirements of the Federal Deposit Insurance Corporation or the National Credit Union Administration Board for deposit or share insurance;

(2) The maintenance of such an account;

(3) The receipt of Federal payments through the Automated Clearing House system or other electronic means and crediting of Federal payments to the account; and (4) The provision of access to funds in the account on the terms specified by Treasury.

(d) *Electronic benefits transfer (EBT)* means the provision of Federal benefit, wage, salary, and retirement payments electronically, through disbursement by a financial institution acting as a Financial Agent. For purposes of this part, EBT includes disbursement through an ETA℠ and through a Federal/State EBT program.

(e) *Electronic funds transfer* means any transfer of funds, other than a transaction originated by cash, check, or similar paper instrument, that is initiated through an electronic terminal, telephone, computer, or magnetic tape, for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit an account. The term includes, but is not limited to, Automated Clearing House transfers, Fedwire transfers, and transfers made at automated teller machines and point-of-sale terminals. For purposes of this part only, the term electronic funds transfer includes a credit card transaction.

(f) *ETA℠* means the Treasury-designated electronic transfer account made available by a Federally-insured financial institution acting as a Financial Agent in accordance with § 208.5 of this part.

(g) *Federal payment* means any payment made by an agency.

(1) The term includes, but is not limited to:

(i) Federal wage, salary, and retirement payments;

(ii) Vendor and expense reimbursement payments;

(iii) Benefit payments; and

(iv) Miscellaneous payments including, but not limited to: interagency payments; grants; loans; fees; principal, interest, and other payments related to U.S. marketable and nonmarketable securities; overpayment reimbursements; and payments under Federal insurance or guarantee programs for loans.

(2) For purposes of this part only, the term ''Federal payment'' does not apply to payments under the Internal Revenue Code of 1986 (26 U.S.C.).

(h) *Federal/State EBT program* means any program that provides access to Federal benefit, wage, salary, and retirement payments and to State-administered benefits through a single delivery system and in which Treasury designates a Financial Agent to disburse the Federal payments.

(i) *Federally-insured financial institution* means any financial institution, the deposits of which are insured by the Federal Deposit Insurance Corporation under 12 U.S.C. Chapter 16 or, in the case of a credit union, the member accounts of which are insured by the National Credit Union Share Insurance Fund under 12 U.S.C. Chapter 14, Subchapter II.

(j) *Financial Agent* means a financial institution that has been designated by Treasury as a Financial Agent for the provision of EBT services under any provision of Federal law, including 12 U.S.C. 90, 265, 266, 1767, and 1789a, and 31 U.S.C. 3122 and 3303, as amended by the Omnibus Consolidated Appropriations Act, 1997, Section 664, Public Law 104–208.

(k) *Financial institution* means:

(1) Any insured bank as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) or any bank which is eligible to make application to become an insured bank under section 5 of such Act (12 U.S.C. 1815);

(2) Any mutual savings bank as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) or any bank which is eligible to make application to become an insured bank under section 5 of such Act (12 U.S.C. 1815);

(3) Any savings bank as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) or any bank which is eligible to make application to become an insured bank under section 5 of such Act (12 U.S.C. 1815);

(4) Any insured credit union as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752) or any credit union which is eligible to make application to become an insured credit union under section 201 of such Act (12 U.S.C. 1781);

(5) Any savings association as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) which is an insured depository institution (as defined in such Act) (12 U.S.C. 1811 et seq.) or is eligible to apply to become an insured depository institution under the Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.); and

(6) Any agency or branch of a foreign bank as defined in section 1(b) of the International Banking Act, as amended (12 U.S.C. 3101).

(l) *Individual* means a natural person.

(m) *Recipient* means an individual, corporation, or other public or private entity that is authorized to receive a Federal payment from an agency.

(n) *Secretary* means Secretary of the Treasury.

(o) *Treasury* means the United States Department of the Treasury.

§ 208.3 Payment by electronic funds transfer.

Subject to § 208.4, and notwithstanding any other provision of law, effective January 2, 1999, all Federal payments made by an agency shall be made by electronic funds transfer.

§ 208.4 Waivers.

Payment by electronic funds transfer is not required in the following cases:

(a) Where an individual determines, in his or her sole discretion, that payment by electronic funds transfer would impose a hardship due to a physical or mental disability or a geographic, language, or literacy barrier, or would impose a financial hardship. In addition, the requirement to receive payment by electronic funds transfer is automatically waived for all individuals who do not have an account with a financial institution and who are eligible to open an ETA℠ under § 208.5, until such date as the Secretary determines that the ETA℠ is available;

(b) Where the political, financial, or communications infrastructure in a foreign country does not support payment by electronic funds transfer;

(c) Where the payment is to a recipient within an area designated by the President or an authorized agency administrator as a disaster area. This waiver is limited to payments made within 120 days after the disaster is declared;

(d) Where either:

(1) A military operation is designated by the Secretary of Defense in which uniformed services undertake military actions against an enemy, or

(2) A call or order to, or retention on, active duty of members of the uniformed services is made during a war or national emergency declared by the President or Congress;

(e) Where a threat may be posed to national security, the life or physical safety of any individual may be endangered, or a law enforcement action may be compromised;

(f) Where the agency does not expect to make more than one payment to the same recipient within a one-year period, i.e., the payment is non-recurring, and the cost of making the payment via electronic funds transfer exceeds the cost of making the payment by check; and

(g) Where an agency's need for goods and services is of such unusual and compelling urgency that the Government would be seriously injured unless payment is made by a method other than electronic funds transfer; or, where there is only one source for goods or services and the Government would be seriously injured unless payment is made by a method other than electronic funds transfer.

§ 208.5 Availability of the ETA℠.

An individual who receives a Federal benefit, wage, salary, or retirement payment shall be eligible to open an ETA℠ at any Federally-insured financial institution that offers ETAs℠. Any Federally-insured financial institution shall be eligible, but not required, to offer ETAs℠ as Treasury's Financial Agent. A Federally-insured financial institution that elects to offer ETAs℠ shall, upon entering into an ETA℠ Financial Agency Agreement with the Treasury, be designated as Treasury's Financial Agent for the offering of the account pursuant to Public Law 104–208. Treasury shall make publicly available required attributes for ETAs℠ and any ETA℠ offered by a Federally-insured financial institution shall comply with such requirements. The offering of an ETA℠ shall constitute the provision of EBT services within the meaning of Public Law 104–208.

§ 208.6 General account requirements.

(a) All Federal payments made by electronic funds transfer, including those made through an ETA℠, shall be deposited into an account at a financial institution. For all payments other than vendor payments, the account at the financial institution shall be in the name of the recipient, except as provided in paragraph (b) of this section.

(b)(1) Where an authorized payment agent has been selected, the Federal payment shall be deposited into an account titled in accordance with the regulations governing the authorized payment agent.

(2) Where a Federal payment is to be deposited into an investment account established through a securities broker or dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934, or an investment account established through an investment company registered under the Investment Company Act of 1940 or its transfer agent, such payment may be deposited into an account designated by such broker or dealer, investment company, or transfer agent.

§ 208.7 Agency responsibilities.

(a) An agency shall disclose to each individual who is eligible to receive a Federal benefit, wage, salary, or retirement payment and who is not already receiving payment by electronic funds transfer the individual's rights and obligations under §§ 208.3, 208.4(a) and 208.5 of this part, unless payment by electronic funds transfer is not required pursuant to any provision of subsections (b) through (g) of § 208.4.

(1) Prior to the date the ETA℠ becomes available, the disclosure shall be in a form substantially similar to the model disclosure set forth in appendix A of this part.

(2) On and after the date the ETA℠ becomes available, the disclosure shall be in a form substantially similar to the model disclosure set forth in appendix B of this part.

(b) An agency shall put into place procedures that allow recipients to indicate that the recipient elects to have payment deposited by electronic funds transfer to an account held by the recipient at a financial institution. In addition, an agency may put into place procedures to request that individuals who are invoking a hardship waiver under § 208.4(a) indicate, in writing or orally, that a hardship waiver has been invoked. However, an agency may not delay or withhold payment if a recipient does not respond to such a request.

§ 208.8 Recipient responsibilities.

Each recipient who is required to receive payment by electronic funds transfer and who has an account with a financial institution must, within the time frame specified by the agency making the payment, designate a financial institution through which the payment may be made and provide the agency with the information requested by the agency in order to effect payment by electronic funds transfer.

§ 208.9 Compliance.

(a) Treasury will monitor agencies' compliance with this part. Treasury may require agencies to provide information about their progress in converting payments to electronic funds transfer.

(b) If an agency fails to make payment by electronic funds transfer, as prescribed under this part, Treasury may assess a charge to the agency pursuant to 31 U.S.C. 3335.

§ 208.10 Reservation of rights.

The Secretary reserves the right, in the Secretary's discretion, to waive any provision(s) of this regulation in any case or class of cases.

Appendix A to Part 208—Model Disclosure for Use Until ETA℠ Becomes Available

The Debt Collection Improvement Act of 1996 requires that most Federal payments be made by electronic funds transfer after January 2, 1999.

If you are currently receiving your Federal payment by check or you have just become eligible to begin receiving a Federal payment, you have several choices:

(1) Receive your payment by Direct Deposit through the financial institution of your choice.

The Government makes payments electronically through a program called Direct Deposit. Direct Deposit is a safe, convenient, and reliable way to receive your Federal payment through a financial institution. (A financial institution can be a

bank, credit union, savings bank, or thrift.) Many financial institutions offer basic, low-cost accounts in addition to full-service checking or savings accounts.

(2) Do nothing now and wait for a basic, low-cost account, called an ETA SM, to become available.

If you do not have an account with a financial institution, you do not need to do anything now. In the future a low-cost account, called an ETA SM, will be available at many financial institutions. Like Direct Deposit, the ETA SM (which stands for electronic transfer account) is a safe, convenient, and reliable way to receive your Federal payment through a financial institution. You are eligible to open this account, at a low monthly fee, if you receive a Federal benefit, wage, salary, or retirement payment. [Agency name] will contact you and let you know when the ETA SM is available and which financial institutions in your area offer the account.

(3) Continue to receive a check.

If receiving your payment electronically would cause you a hardship because you have a physical or mental disability, or because of a geographic, language, or literacy barrier, you may receive your payment by check. In addition, if receiving your payment electronically would cause you a financial hardship because it would cost you more than receiving your payment by check, you may receive your payment by check.

Please call [agency name] at [agency customer service number] if you would like more information on Direct Deposit, the ETA SM, or hardship waivers.

Appendix B to Part 208—Model Disclosure for Use After ETA SM Becomes Available

The Debt Collection Improvement Act of 1996 requires that most Federal payments be made by electronic funds transfer after January 2, 1999.

If you are currently receiving your Federal payment by check or you have just become eligible to begin receiving a Federal payment, you have several choices:

(1) Receive your payment by Direct Deposit through the financial institution of your choice.

The Government makes payments electronically through a program called Direct Deposit. Direct Deposit is a safe, convenient, and reliable way to receive your Federal payment through a financial institution. (A financial institution can be a bank, credit union, savings bank, or thrift.) Many financial institutions offer basic, low-cost accounts in addition to full-service checking or savings accounts.

(2) Receive your payment through a basic, low-cost account called an ETA SM.

If you receive a Federal benefit, wage, salary, or retirement payment, you are eligible to open an ETA SM. This account is available for a low monthly fee at many financial institutions. Like Direct Deposit, the ETA SM (which stands for electronic transfer account) is a safe, convenient, and reliable way to receive your Federal payment through a financial institution. Please call the customer service number listed below to find out which financial institutions in your area offer the ETA SM.

(3) Continue to receive a check.

If receiving your payment electronically would cause you a hardship because you have a physical or mental disability, or because of a geographic, language, or literacy barrier, you may receive your payment by check. In addition, if receiving your payment electronically would cause you a financial hardship because it would cost you more than receiving your payment by check, you may receive your payment by check.

Please call [agency name] at [agency customer service number] if you would like more information on Direct Deposit, the ETA SM, or hardship waivers.

Dated: September 21, 1998.

Richard L. Gregg,

Commissioner.

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Federal Register

Friday
September 25, 1998

Part V

The President

Notice of September 23, 1998—Continuation of Emergency With Respect to UNITA

Federal Register
Vol. 63, No. 186
Friday, September 25, 1998

Presidential Documents

Title 3—

The President

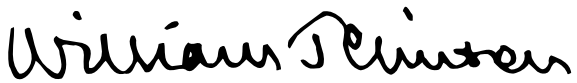
Notice of September 23, 1998

Continuation of Emergency With Respect to UNITA

On September 26, 1993, by Executive Order 12865, I declared a national emergency to deal with the unusual and extraordinary threat to the foreign policy of the United States constituted by the actions and policies of the National Union for the Total Independence of Angola (''UNITA''), prohibiting the sale or supply by United States persons or from the United States, or using U.S. registered vessels or aircraft, of arms, related materiel of all types, petroleum, and petroleum products to the territory of Angola, other than through designated points of entry. The order also prohibits the sale or supply of such commodities to UNITA. On December 12, 1997, in order to take additional steps with respect to the national emergency declared in Executive Order 12865, I issued Executive Order 13069, closing all UNITA offices in the United States and imposing additional sanctions with regard to the sale or supply of aircraft or aircraft parts, the granting of take-off, landing and overflight permission, and the provision of certain aircraft-related services. Most recently, on August 19, 1998, in order to take further steps with respect to the national emergency declared in Executive Order 12865, I issued Executive Order 13098, blocking all property and interests in property of UNITA and designated UNITA officials and adult members of their immediate families, prohibiting the importation of certain diamonds exported from Angola, and imposing additional sanctions with regard to the sale or supply of equipment used in mining, motorized vehicles, watercraft, spare parts for motorized vehicles or watercraft, mining services, and ground or waterborne transportation services.

Because of our continuing international obligations and because of the prejudicial effect that discontinuation of the sanctions would have on the Angolan peace process, the national emergency declared on September 26, 1993, and the measures adopted pursuant thereto to deal with that emergency, must continue in effect beyond September 26, 1998. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency with respect to UNITA.

This notice shall be published in the **Federal Register** and transmitted to the Congress.



THE WHITE HOUSE,
September 23, 1998.

[FR Doc. 98–25857
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S. 1683/P.L. 105–238

To transfer administrative jurisdiction over part of the Lake Chelan National Recreation Area from the Secretary of the Interior to the Secretary of Agriculture for inclusion in the Wenatchee National Forest. (Sept. 23, 1998; 112 Stat. 1562)

S. 1883/P.L. 105–239

Marion National Fish Hatchery and Claude Harris National Aquacultural Research Center Conveyance Act (Sept. 23, 1998; 112 Stat. 1564)

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