

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

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

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

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

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

Major expense categories for the 1995 fiscal year include \$165,500 for the market expansion program, \$115,000 for research and development, and \$67,000 for salaries. Funds in the reserve at the end of the 1995-96 fiscal year, estimated at \$26,597, would be within

the maximum permitted by the order of one fiscal year's expenses.

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

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

List of Subjects in 7 CFR Part 928

Marketing agreements, Papayas, Reporting and recordkeeping requirements.

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

PART 928—PAPAYAS GROWN IN HAWAII

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

Authority: 7 U.S.C. 601-674.

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

§ 928.225 Expenses and assessment rate.

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

Dated: October 31, 1995.

Terry C. Long,

Acting Deputy Director, Fruit and Vegetable Division.

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Parts 710 Through 740

[FHWA Docket No. 95-18]

RIN 2125-AC17

Right-of-Way Program Administration

AGENCY: Federal Highway Administration (FHWA), DOT.

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

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

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

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

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

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

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

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

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

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

specifically address the administrative, funding, acquisition, and property management provisions needed for current programs.

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

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

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

1. Current reimbursement policies are outlined in § 710.304. This section contains many limitations regarding Federal participation in costs incurred by States or local governments. Changes in State litigation procedures, the advent of alternative forms of dispute

resolution, and other programmatic developments indicate that many of these limitations may no longer be necessary. Comments on which reimbursement limitations remain appropriate for use in current programs are requested. Alternative ways to address reimbursement policy will also be considered.

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

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

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

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

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

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

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

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

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

should be retained, and the basis for such retention.

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

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

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

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

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

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

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

Rulemaking Analyses and Notices

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

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

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

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

Regulatory Flexibility Act

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

Executive Order 12612 (Federalism Assessment)

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

Executive Order 12372 (Intergovernmental Review)

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

Paperwork Reduction Act

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

National Environmental Policy Act

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

Regulation Identification Number

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

List of Subjects in 23 CFR Parts 710 Through 740

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

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

Issued on: October 27, 1995.

Rodney E. Slater,

Federal Highway Administrator.

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DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 202, 206, and 211

RIN 1010 AC02

Amendments to Gas Valuation Regulations for Federal Leases

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of proposed rulemaking.

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

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

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

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

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

I. Introduction

On June 2, 1994, the Secretary of the Interior chartered the Committee to advise MMS on a rulemaking to address:

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

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

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

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